

Chair Jennifer Nash:

Thank you. Good morning and welcome to the May 8th meeting of the Oregon Public Defense Commission. The public portion of the meeting is scheduled to begin at 9:30 this morning. First, OPDC will meet in executive session pursuant to ORS 192.660(2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other participants may not attend. Representatives of the news media are specifically directed not to report on or otherwise disclose any of the deliberations or anything said about these subjects during the executive session except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to the open session, and we'll begin that meeting no earlier than 9:30 a.m. So, members of the commission, you should log off the Zoom link and then log on to the team's executive session so that we can begin executive session.

[No dialogue]

Chair Jennifer Nash:

All right, I see that we have nearly all of our commissioners logged back on. Maybe I'll wait just for one more minute to see if we can get the last remaining one or two.

[No dialogue]

Chair Jennifer Nash:

Who is our technical person? Is it Cody, Mona?

Mona Riesterer:

Cody and Les, yeah.

Chair Jennifer Nash:

Okay. Cody, thank you. Can you reach out to... Oh, there he is. Never mind. All right. We will get started. Welcome back to the public session of the May 8th, 2024, meeting of the Oregon Public Defense Commission. This meeting will address issues of 2025-27 budget requests, the hourly rate and economic survey study that will assist the commission in setting appropriate hourly rates for providers, and a discussion about adoption of caseload and workload standards. We also have other issues that we will be discussing related to the Comprehensive Public Defense Report submission to the Legislature and updates regarding Unrepresented Persons Crisis and the Accounts Payable and PAE delays.

With that, we will start with public comment. Before I begin with public comment, I'd like to just make a general statement about public comment, and that is that we received a number of written public comment documents at the very last minute and some this morning as well. As you know, we are volunteers, and we have to take a substantial period of time to review all the public comment, and we take it very seriously, and we review that public comment before the meeting. It makes it very hard to do that when we're receiving it very last minute. So, some of the public comment that came in today, I'm assuming that many of the commissioners did not have an opportunity to review that, but we will as part of the process. But it's just a personal pitch to please get your public comment in as early as possible. I know everyone is busy, I really do, but it makes our lives much easier, and we really do want to hear from you before we talk about these issues.

We received public comment from Laura Rittall, Brittany McCoy, the Public Defenders of Oregon, Marion County Association of Defenders, Salvador Peralta, Nathan Law, Dawn Krantz-Watts, and Kevin Leik. Is that right, mister... I always get your name [Inaudible 00:47:00]. We have verbal comment requests this morning from Carl Macpherson, Kevin Leik, Michelle Bartov, Olcott Thompson, Salvador Peralta, Steve Wilson, and Dawn Krantz-Watts. When I call your name for public comment, please introduce yourself, and if you are associated with or affiliated with an organization, please also identify that as well. We'll start with public comment from Mr. Macpherson.

Carl Macpherson:

Good morning, Chair Nash, Executive Director Kampfe, members of the commission. My name is Carl Macpherson. I'm the executive director of Metropolitan Public Defender, and I'm also a member of Public Defenders of Oregon. Thank you for giving me the opportunity to briefly give comment this morning. I fully adopt and I fully support the letter from Public Defenders of Oregon that was submitted to the commission, but additionally, I want to take a moment to say that I believe adopting a workload and caseload standard for the state of Oregon is one of the most important things this commission can do. It is an opportunity this commission has to ensure that our clients and all clients in the state are receiving an appropriate level of care from all providers. It's been legislatively mandated since 2021 and also is in line with standards across the country

for the commission to do this, and I want to touch on three things very quickly.

One, adopting a workload standard and caseload standard will help with retention and recruitment. At Metropolitan Public Defender, we are the largest provider in the state, so we have a significant number of attorneys, but we lost 65 attorneys from 2020 to 2023. We lost 41 attorneys in 2022 and 2023 alone, and the three reasons that people left were pay, too low of pay, high caseloads, and stress. And it depended on the individual, which one was one, two, or three for them, but they all contributed. Workload standards would significantly deal with the caseload issue that we have and that we've suffered from.

This is particularly important in terms of retention and recruitment, not only because our MAC standards are two to three times higher in almost all categories than the Oregon Project, the National Workload Study, but it's the Washington State Bar. It really is a game changer, and so I just want to reiterate that. We are miles from the border in Portland, and we recruit nationally. So, when we lost all those attorneys, we also brought in 67 attorneys in the last five years from across the country to work in Oregon. So, yes, it's helping MPD, but it's also helping the ecosystem in the state. We also brought an additional 27 from in-state law schools. We have to recruit nationally because there are not enough public defenders being raised in law schools in the state of Oregon. It's the only way to survive. And when you lose those 65 attorneys that are experienced felony qualified attorneys, you're replacing them with brand new attorneys almost every single time. So, having a workload standard is going to be incredibly important because we compete against King County. So, not just to retain attorneys and keep them from leaving and going to Washington State where they can have a fraction of the workload, but also so that we can recruit people because we're often competing against King County Public Defender in Seattle, and no one's going to come to Oregon when they can have a fraction of the caseload and work in Washington State nationally. It'll kill us in terms of recruiting.

Secondly, it will set expectations and levels of representation that are required to have a workload standard. This was something that was addressed in the Sixth Amendment Center Report from 2019. But when you have a workload standard, I

would ask that you also strongly consider setting expectations and requirements for what attorneys are supposed to be giving and providing for each client. I know there's ethical responsibilities, but given the high caseloads in the state of Oregon and the volume of discovery and responsibilities, I have a hard time believing that people are meeting that across the state, particularly given your responsibility to communicate with clients diligently, actually visiting them in the jails, actually reviewing every piece of discovery you receive, doing the appropriate legal research and writing motions, actually using investigation in all your cases unless your client says they don't want to. Because that's an ethical requirement. That would be easy to confirm whether people are using investigation or not through the appropriate channels, and whether people are going to trial and they're meeting those expectations for their clients. Those would be something else that you'd be able to work with, with a workload model.

And lastly, it would eliminate the economic incentive that currently exists. We used to have a pay-by-case model, but we essentially have the same thing now, where providers are able to take more cases above too high MAC caseloads for more money. That is an economic incentive that the 2019 Sixth Amendment Center report said was unethical, and it also violates ethics to be doing things of that nature, if you cannot do so and provide all of those requirements for every single client. So, thank you for your time, I apologize if I went over, but please adopt a workload standard. It is so important for every reason I stated, and I want to thank you for all your time. I understand you're a volunteer board, and you are committed to moving things forward, just like the rest of us, so that all of our clients – because that's the only reason we exist, is for our clients – so that all of our clients get the level of representation they deserve. Thank you very much.

Chair Jennifer Nash:

Thank you, Mr. Macpherson, for your comments. Kevin Leik.

Kevin Leik:

Thank you, Chair Nash and commission members. I'm Kevin Leik. I'm the director of Clackamas Indigent Defense Corporation. As you know, OPDC was tasked some time ago with putting together a study to determine what would be a reasonable market rate for attorneys taking court-appointed cases. Up until last week, we in the private defense bar really had no idea what was the status of that study. I run the largest

consortium in the state. I'm on the board of the Oregon Defense Consortia Association, so I expected that we would have heard from whoever was doing the study at some point, but we didn't. Since we had no idea what OPDC was doing, I had concerns about how pay scales might affect capacity. It's a big issue for us. We have a lot of really skilled attorneys in private practice working for our consortium. The attorneys, they've done other more lucrative work, and we know we're making less to do this, but we do it because we believe in the work. But also, there's a benefit in having a contract, so we don't have to chase down clients and deal with billing or have to fight with your clients or insurance companies to get your bills paid on time.

But when you shift the proposed system with panel counsel, you take away a lot of the advantages to having a public defense contract. And it's a real question as to whether the attorneys will continue to do this work at hourly rates. A couple of months ago, I put out a survey to the attorneys at CIDC to get a sense of how different pay scales would impact capacity. When we got the results, I thought they were worrying, so I talked to OPDC about it and asked to discuss this with people up higher in that office. And unfortunately, I didn't hear anything back. In April, I updated that survey, and we sent it out to consortia statewide.

The survey itself is pretty straightforward. It asked the respondents to tell us what percentage of their current caseload was devoted to appointed criminal matters. Then it asked what percentage of their caseload they would devote long term to appointed criminal matters at a series of pay rates, starting at \$100 an hour, capping at \$300 an hour. And then using this very basic data, we were able to see how much capacity we would retain at each of the dollar amounts we listed. I've delivered this morning, and I apologize for getting it to you late, but I delivered a copy of that survey for your review, along with a copy of the resulting data. And to be clear, I'm not saying this is a scientifically rigorous study, I'm not a statistician, but we did have a statistically meaningful response, and I think the data is useful, and the results are pretty telling.

At \$100 or \$125 an hour, the vast majority of respondents said they wouldn't take any cases. At \$150 an hour, we had just a few people start to say they'd devote part of their practices to public defense, but you'd still lose 88% of current attorney

capacity. At \$175, I think, is where it gets interesting, and frankly, I kind of fall into this category. People come back and say that they will take cases, but almost every single one of them significantly reduced the percentage of their workload they would devote to public defense. So, instead of working full time, a lot of people say they'd do half-time or less. End result is at \$175 an hour, you only retain about 40% of the current attorney capacity. At \$200 an hour, you finally get over half. You end up retaining about 56% of attorney capacity, but you'd still lose 44% at that rate. Even at \$250 an hour, which nobody's talking about, you still lose 16% of the existing private bar capacity. And for context on that, once again, 60% of the attorney capacity in the state comes from the private bar.

But at the last meeting in the packet, OPDC talked about switching everything over to panel council in 2025, then said, "Hey, when that's done, there's going to be a big influx of attorneys to handle cases." And these numbers show that that's just magical thinking. At the hourly rates the state is discussing today, you're going to lose half the private bar attorney capacity at a time when the state can't keep up as it is. This is potentially disastrous. It's bad public policy and the agency should be headed in a different direction. At a minimum, the commission should be pushing that start date back to 2027 and communicating with the consortia regarding the transition to try and find ways to ensure that the capacity is retained. Thank you for your time.

Chair Jennifer Nash:

Thank you, Mr. Leik. Steve Wilson.

Steve Wilson:

Chair Nash, members of the commission, and Director Kampfe, I appreciate the time to discuss some public comments with you today. My name is Steve Wilson. I'm a defense investigator. I've been an investigator for 21 years. I'm here to share oral public comment on behalf of my colleague, James Comstock, who is traveling on a plane right now and so is, excuse me, unavailable to give this comment himself. I'm just going to read what James has written out.

"My name is James Comstock. I'm a licensed investigator, a member of Defense Investigators of Oregon, and co-chair of the OCDLA Investigator Committee. I come to you again following up on my comments from last month's meeting. My colleagues and I remain concerned that despite our comments to the

agency and commission last month regarding the slow payment crisis, in the interim, payment times have actually gotten worse. I personally have yet to be paid for over 150 hours of work submitted on March 17th. At this point, the earliest that the money would hit my account would be tomorrow, May 9th. That would make 53 days from submission to payment. This leads us to ask if our comments on this matter to the commission made any difference at all. You have heard in written public comment about providers who are unable to pay rent on their homes or offices and providers who are facing utility disconnection, not because they do not have work but because a state agency cannot pay its bills in a timely manner.

"I personally researched what other Oregon state agencies do in this situation and found that there is virtually no precedent, as this simply does not occur with any frequency elsewhere in the state government in Oregon. I implore you as a commission to take extreme emergency action to remedy this problem. We no longer wish to hear reasons for the problem. As a profession and a community of defense providers, we plead with you for a material and sustained fix that can be implemented at once. This is not a new issue. My colleagues and I have been raising this issue for over four years.

"We remain similarly concerned with the delays for approval for experts and other providers in major cases. The short form has been a boon to new cases and to lower-level cases, but major cases that last more than one year, and which impact the most vulnerable defendants with the most exposure, continue to face risks of material and irreparable damage to the case due to delayed approval, non-approval, and partial approval. Attorney time is wasted on protracted back-and-forth communication quibbling over less money than it costs to discuss the dispute. We feel strongly that there is a lack of knowledge regarding criminal defense in the decision-making regarding the approval for defense requests, which exacerbates this problem.

"Finally, we are pleased to see that the recently released salary study places the mid-range of the investigator rate at \$74 an hour, \$1 less than the amount investigators have been requesting for nearly two years. We exhort the commission to begin taking steps to raise the base rate for all investigator providers to \$75 an hour as soon as possible via the Emergency Board. Waiting to address this matter via policy option package

in the 2025 session would delay any implementation of a rate increase for at least 14 months. Defense investigators, defense attorneys, and most importantly, indigent defendants in Oregon cannot afford to wait that long for a problem that was identified by our community two years ago and which has been proven through a study requested and paid for by the agency. I ask the commission to place high priority on these issues and to not delay implementation of efforts to remedy them."

That's the end of James' comments. I would like to add just on a personal level that last year, I came on to talk to the board about what I saw as an increasing amount of distrust between the agency and the investigator community, and to me, this slow pay issue has just increased the distrust. It's a real issue that needs to be dealt with. In addition, it makes it difficult to recruit new investigators who not only are going to have a significant amount of time to wait to receive their bills, they're going to be working likely for months unpaid and taking on the expenses before they even get the time to submit a bill. So, potentially three to six months from when they start to a case to when they actually end up getting paid. And we need new investigators, and we need to be able to tell them that they can get paid more quickly. Thank you.

Chair Jennifer Nash:

Thank you for your comments. Michelle Bartov.

Dawn Krantz-Watts:

Can you hear me? This is Dawn Krantz. She cannot get on. She needs permission. Her video won't. She can't talk.

Chair Jennifer Nash:

Thank you. I just saw that. So, we're having some technical issues. We'll work on that. In the meantime, I'll just bump her down until we get her on, but I'll leave her in the queue. So, Mr. Thompson.

Olcott Thompson:

Thank you, Chair Nash, members of the commission, I'm Olcott Thompson. I am the executive director of the Marion County Association of Defenders, which is the consortium in Marion County. Urge you to adopt the caseload workload standards from the Oregon report. Those were created with Oregon cases in mind, not national cases. They were done by Oregon lawyers who know Oregon. And ultimately, it was done using money that the Oregon Legislature gave to your predecessor to do the report and then follow that report. So, don't throw that money away. Please adopt the Department of Justice billing hours as



the number of hours needed to be a "full-time person in the private bar." I have never been in a public defender's office. I don't know really how well they work, well how they work. And so, I really don't have comments on that. But obviously, there need to be within there some, I don't know how it all works.

Issue with the six-year plan that you're looking at. If you look at it, budget numbers don't include even any inflationary pay increases. You need to, at a minimum, include pay increases. Otherwise, you may have, instead of gaining lawyers, you're going to lose lawyers because people, "Oh, look, this is flat money for six years, doesn't work." As in my written comments, the hourly study needs to go back and get corrected. There are significant errors in it. There are missing taxes. Overhead is computed incorrectly. Ultimately, the pay rate needs to be at least \$20 per attorney more. And then, it doesn't even discuss what you do with staff. The big problem, and I'm going to echo some of the stuff from Mr. Comstock, the agency needs to do stuff timely if they want to keep people in this system. Two-plus weeks for an approval to have a client in the temporary hourly increase program, and it only comes after you push the agency, I need a decision. Otherwise, I'm going to have to withdraw. That doesn't work. Over a month after somebody submits a request to change their qualifications before the agency even starts to look at it? That's not working.

I can report that yesterday, I got paid on a bill I submitted 50 days ago. As Mr. Wilson said, the time is getting longer and longer and longer, and the result is going to be fewer and fewer people willing to do it. I can tell you that within MCAD, there are multiple attorneys who could take cases out of contract, but they will not do so because they do not want to have to deal with the at least half an hour per bill to submit it to the agency, and then waiting for now 50-plus days to get paid. It does not work, and it is going in the wrong direction. We have already lost massive numbers of interpreters and massive numbers of investigators, and people will not do hourly work if they have to wait and wait and wait and wait and wait to get paid. This has to stop. It has to get fixed. And if it doesn't, we're just going to have fewer and fewer lawyers if the agency pushes us all to do hourly work. Thank you for your time. Thank you for all your efforts. Appreciate it all.

Chair Jennifer Nash:

Thank you, Mr. Thompson. Michelle Bartov.

Michelle Bartov:

Thank you, and thank you, Dawn, for the assist in getting that fixed. Good morning, commission members. My name is Michelle Bartov. I am a member of the Clackamas Indigent Defense Corporation, and I have been a consortia provider for the entirety of my career, essentially providing public defense services first in Eastern Oregon and now here in Clackamas County. I'd like to focus my comments on OPDC's plan to move to a panel model of providing services in 2025. First, I'd like to note the stark lack of communication to consortia about this plan. In fact, the first notice of that plan came when the materials for the 4/17 meeting were released. I think that came as a surprise to pretty much everyone in the consortia community, and that is extremely concerning. And besides the lack of communication is the lack of a plan to implement this service model.

Specifically, as spoken of by many other commentators here, as of April 25th, accounts payable processing unit was processing invoices submitted through March 11th. That's a 45-day waiting period, and it sounds like some people have been waiting even longer. If it's taking 45 days now, how can we expect improvement with the increased volume that would be anticipated upon moving to an hourly panel model? That's not going to make the problem better. That's going to exacerbate the already existing problem that is not getting any better. People who want to do this kind of work and are passionate about this kind of work still need to make a living. They need to be able to pay the people who are helping them, their paralegals, their legal assistants, their overhead. You can't wait 45 days to get paid for services rendered.

I would also note that the payment submission process is tedious, time-consuming, and rather unforgiving. In the federal system, for example, the panel tracks their time as they go. If rejected for some reason, you simply go back and you edit the draft that you've already been working on. Whereas with the OPDC system, if you get rejected and OPDC does not opt to fix the problem for you, you have to start over on that bill from scratch. So, I think Olcott was just saying half an hour on each bill. Well, now you're stuck doing that again, starting all over, entering all that information. And again, to contrast with the federal panel system, you have all of your information already previously entered. You don't have to put in your email, your

contact information, your bar number. All of that's pre-filled for you because you're logging into the eVoucher system. The Nintex system is not set up for that. It is, as I said, just not well-suited for the influx of hourly billing that the agency is set to receive if it transitions to an hourly panel model. Moreover, OPDC does not provide software to track time. The FCMS project is underway, but it's unclear when or if that project will eventually roll out. And essentially, you're putting the onus on providers to keep hourly billing without providing any software to do so.

Additionally, I am concerned that OPDC has not stated anything about the payment timeline. If they move to a panel model, are providers going to be able to bill on a monthly basis or are we going to have to wait until our case closes? That is extremely concerning. If we have to wait till the case closes, well, then we're waiting much more than 45 days to get paid for services rendered. So, there's just been a lot of unknowns. Overall, what this adds up to is that OPDC has not prepared itself and has not prepared the provider community for a shift to the panel model. Every issue I've raised is a basis upon which I believe providers will decide that their time and efforts are better spent doing other work, resulting in providers not agreeing to sign up for that panel and exacerbating the current capacity issues already creating a public defense crisis. The legislator gave OPDC until 2027 to implement a new contracting model and attempting to rush through these changes with so many unknowns is likely to lead to disaster, and frankly, it does not seem like a realistic endeavor. I would urge OPDC to forego attempting to do so, to gather more feedback from the provider community before rushing to make such drastic changes. Thank you for your time.

Chair Jennifer Nash:

Thank you for your comments. Salvador Peralta.

Salvador Peralta:

Chair Nash and members of the committee, good morning. My name is Sal Peralta. I'm the executive director of the Oregon Defense Consortia Association, which represents more than 200 private bar attorneys who hold public defense contracts with the state. Our association supports the comments about the crisis in timely payments made today by Mr. Wilson, Mr. Thompson, and Ms. Bartov, and with the comments about the importance of adopting workload and caseload standards, and we appreciate the work that has been done to put together

these reports. I provided two written documents for this meeting yesterday, both to the agency and to your emails. Please let me know offline if you did not receive them.

One of the letters that I sent talks about annual caseload assumptions that you'll be revisiting today, why the number 2080 was never intended as a caseload number in national documents used by the agency and Moss Adams, and the false equivalency and how that number was used in a chart related to workforce compensation in your packet. I hope members will have time to review that testimony ahead of today's conversation on workload and caseload. The second document I sent talks about the Oregon Criminal Justice Commission Public Defense Crisis Report. In the last two meetings and today we've heard people have asked the commission to use its authority to significantly slow down the pace of the proposed transition away from the elimination of consortia and direct contracting with private bar attorneys. The agency should instead focus on doing a few things well, like its executive transition and making timely payments to its workforce and do more to address the immediate crisis in public defense.

Our association and the attorneys we represent are not the only ones making these recommendations. In October of 2023, the Oregon Criminal Justice Commission released a crisis report from Oregon's judicial districts that made several recommendations both to the Legislature and to this commission. These OCJC recommendations were jointly presented to the Legislature with OPDC in January of 2024, but they have not been brought to this body for consideration. I believe it was the intent or the hope of legislators that OPDC would align its policy direction with the courts to make course corrections as needed for necessary implementation tweaks following the passage of Senate Bill 337 to prevent further disruptions to the public defense system.

I'd note that OPDC is operating under a remediation plan that requires collaboration with its major stakeholders, and the district courts are certainly major stakeholders. The judicial district recommendations were to establish policies that prioritize the retention of existing public defense workforce, that preserve consortia, and that improve the agency's recruitment into the profession rather than recruiting from the existing workforce. I've included both the full report and the top

line recommendations in my written testimony for your consideration as you consider the agency's legislative policy requests. Aligning the agency's policy requests with the recommendations of the judicial districts will better meet all stakeholder needs. It will be more cost-effective, more consistent with the current capacity of the agency, and more consistent with Governor Kotek's directive that agencies limit their policy option package requests to no more than 1% of the agency's budget. Thank you for your consideration.

Chair Jennifer Nash:

Thank you. Dawn Krantz-Watts.

Dawn Krantz-Watts:

Thank you for the opportunity to speak today. I know our time is precious. I'm currently waiting right now for an invoice to be paid, and I'm sitting at 43 days. The last invoice was 38 days, the two previous invoices were 36 days. As you can see, the time it is taking for invoices to be paid is increasing, not decreasing. And frankly, this is an untenable situation being forced upon us as providers. As a private investigator, I have cost associated with doing business. In April, I sent the state of Oregon \$550 to renew my license. I do not get a grace period if I pay my renewal fee late. I have fixed costs that are due every 30 days, or I risk cancellation, and I can't do my job. And lastly, I pay a monthly rent expense for my office, and if I did not pay them in 30 days, I could potentially be evicted. What consequences does OPDC face when contractors like myself are waiting longer and longer to get paid? We cannot continue to sustain the increased length of time it takes to pay our invoices, nor should we be expected to. Do the employees working for OPDC wait more than 30 days for a paycheck? If they were put in that position, what would happen? Would they quit? Would they make wage claims? How would their personal bills be paid? Of course, those employees are going to get paid. That would not happen.

When the issue of payment time was first addressed in 2023, at least first addressed where I was available, I had hoped our invoice submissions would be reviewed sooner than 30 days. However, at this point, I would be thrilled to know I'm going to get my checks no later than 30 days. I believe in public defense work, I love my job, but I've reached a point in my career where I'm being forced to make tough decisions on whether this is something I can afford to do. One of the hard decisions is because of the unreliability of payments, I'm considering giving up my office because rent or a mortgage, it's kind of a no

brainer. I shouldn't have to decide that. Myself and many other investigators are in similar positions, and the inordinate length of time we are waiting to be paid is creating financial hardships that we should not be burdened with. Forty-two days, 46 days for PAEs. So, we work, and we worry we won't get paid because the old days, you wouldn't have paid us.

Anthony just received a payment at 50 days and is waiting on a payment that is now 47, Christina is at 52 days, Sean is waiting 47 to 48 days, Suzanne received payment, excuse me, at 49 days, and she has two sitting in the hopper at 43 days. Of course, you all know James has his 150 hours that he is hoping to be paid on. He's sitting at 52 days. Wes, another investigator, received a payment at 49 days and another payment at 50. He was one day short of being required to pay a \$200 late fee for his rental housing. These are real problems that we are facing, and yet we love our job. We talk to people all the time. We want other people to join this profession. We are excited about what we do, but frankly, I don't trust OPDC to take care of me anymore, and I am disappointed at how low we have come down on the totem pole of providers. Our work is valuable, and our paychecks should not be held up. That goes hand in hand with what we make per hour, but at this point in time, I think we'd all like to just be paid in a more timely manner. Thank you so much for your time today, and I hope that my comments are considered.

Chair Jennifer Nash:

Thank you. That concludes public comment requests that I have for verbal public comment, but before we move on to the next items on the agenda, I'd just like to address some of the overall comments that were made. And specifically, I think it's really important that the agency and the commission apologize to providers for the lengthy payment delay. We know this is an issue. This is an issue that I can assure you, I'm having multiple times a week conversations with Director Kampfe and other staff members about, with the agency, and they are very concerned about it. I know in the absence of information and especially given the history of the relationship between providers and the agency and frankly, just sometimes the overall lack of communication from the agency, that can be interpreted as the agency not doing anything about the problem or that the agency is hostile to providers and doesn't want to help and doesn't want to solve this problem.

I can assure you that's not what the situation is. There are some significant organizational issues. Really what it comes down to simplify it is staffing issues that the agency is working on, and it's not just being understaffed, it's not just people missing. It's just the structure of the agency. It's very difficult. Also, the system for payment is antiquated, as you all know because you're dealing with it on the submission end. And so the agency has been undertaking a step-by-step analysis of how it is that payments are first authorized then ultimately paid to determine whether or not there are some efficiencies that can be built in to eliminate some of those really cumbersome steps that are holding things back.

Yes, the payment times are getting longer. I'm aware of this. My law partner has won the FIP cases and so I know how long it's taking to get paid and it's a constant topic of conversation. He comes in my office and complains all the time about it. It's fair, it's absolutely correct. And so we're working on it, and by we, I mean the agency every day is doing everything it can to try to figure out how to pay these invoices faster. And it's not getting better, I know it's not, but they're working on it, and I'm really sorry, and we're trying very, very hard, and we'll continue to do that. I mean, at the last meeting we set our expectation to try to get that to 30 days. It's gotten worse since April. I know that, and they're working on it. I know that sounds hollow and I don't mean it that way. So, when I say, "We're working on it, it's okay," I don't really mean it's okay because it's not, but I'm just telling you it is being addressed.

I also wanted to address the... And I see some other commissioners that want to make comments too. Before I take those comments, I just want to also say that we acknowledge and just want to let you know that it is on our radar about the hourly panel difficulties transitioning to that in 2025, especially given how long it's taking to pay people. So, yes, that is a legislative mandate, and it is something that we are going to have to deal with as a commission and figure out how it is that we want to deal with that, and we will be having that discussion within the next few months and today as well about what we do about that situation. Because you're right, we're not. It's going to be very difficult to have people paid hourly if we can't pay them. All right, that's the notes I have about public comment, and first, I saw that Bob raised his hand.

Commissioner Robert Selander: Thank you. Chair Nash, I appreciate your comments about lack of timely pay, but I don't understand them. And I think that's what the providers have been hearing, that we're working on it, and it's going to get better, and it doesn't seem to be getting better. I understand what you said, but I can't find a logical excuse. I wonder if it's time for the director to actually address this directly personally with not only the providers but all the commissioners to explain why they can't get a simple payment system out that doesn't put the providers being late on their rent or choosing between rent and whatever the stories are. It's frustrating being a commissioner and hearing what seem to be excuses without having any power to really correct them. But one of the powers I think we do have is to have the director explain why this can't be solved.

Chair Jennifer Nash: Yeah, and I'm happy to do that. I think it makes sense. I will just say with one little asterisk and that is that, I mean, she can explain in detail, and I think then what's going to happen, and I'm just kind of putting this out here is she's going to get a flood of emails about ideas about how to solve the problem. Which is great, very helpful, but on the other hand I think it's also it can overwhelm the staff with, "But why don't you do this? And why don't you do that?" So, I'm just kind of throwing that out there, but I think it does make sense to have some context for the comments to the extent that Director Kampfe wants to go into kind of the nitty-gritty detail of what exactly is happening.

Director Kampfe: Thank you, Chair Nash.

Senator Floyd Prozanski: Madam Chair? Madam Chair, before we do this, I'm going to call a point of reference as to us going into this Q&A between us as compared to getting everything out there. There may be more questions that Director Kampfe may be asked, and I would suggest that we just get everything out on the table and allow her to respond to us either now if she's ready or she sends something to us in short fashion.

Chair Jennifer Nash: Thank you, very good suggestion. So, table that, Director Kampfe. So, first Tom, and then I'll have you, Floyd.

Commissioner Tom Lininger: Thank you, Chair Nash, and some of the concerns that Commissioner Selander has raised resonate with me. I just wanted to mention as a state employee myself I think it's intolerable that there's such a long delay and I as one



commissioner am ready to approve some sort of late payment penalty fee just acknowledging the time value of money. I think we've really reached the point where we're withholding people's money to the extent that the money has less value, they're incurring all sorts of expenses or potentially exposed expenses that make it difficult to practice, and I think it's time to impose some sort of a fee or penalty if we're late.

Chair Jennifer Nash:

Thank you. Senator Prozanski.

Senator Floyd Prozanski:

Yeah, and following up with that, I guess part of the questions I'd like to have answers – was DAS on this part of the concept that we had as the Legislature by having the agency moving from the judicial branch into the executive branch? DAS would be able to help remedy many of the issues that we have for the commission to deal with. This is one that should be cookie-cutter from my perspective. They should be able to come in and basically either direct whatever system we have for payment, or we should just basically take whatever they're using because we have enough testimony that's come in to show that it appears that we are one of few agencies that are basically not paying our bills on time. And I would agree with Tom that if we can't get this fixed, we should be held ourselves accountable, meaning the commission and being paying for late fees because they should not be, and this is not personal, but it should not be dragged out to the point where we will be losing vital individuals either attorneys, investigators, or any other support staff for the work we have to do. Thank you very much.

Chair Jennifer Nash:

Commissioner Parrish Taylor.

Commissioner Jennifer Parrish Taylor:

This computer, sorry. You alluded to it briefly in terms of there being some internal reorganization or what have you, things that need to be addressed. I would recommend that we have an executive session to speak to that plainly. I'm a context person and so I think there's a lot of context that we as commissioners don't have about the internal workings of the agency that might be contributing to these delays, and I think it would be helpful to know that information so that folks can make informed decisions.

Chair Jennifer Nash:

Thanks. That would not be the topic of an executive session, that would be a public session, and I got a note, we all did, from Director Kampfe that she plans to address these issues during

the budget presentation. So, let's go ahead and get our comments and our questions out, and then she can address those today during the meeting. I wasn't necessarily also referring to personnel other than just organizational stuff, but she can talk about all of that. So, I think Commissioner Wright was...

Commissioner Jasmine Wright:

Yeah, and I guess my only comment is just to echo what everyone else is saying, and I appreciate what Chair Nash was saying about the staff getting a lot of emails and questions about this. And I'll just be very brash about this. I don't care if the staff gets 10,000 emails. They need to get emails. The agency is at ground zero here. Providers are not getting paid. They have not remedied the situation, and the situation needs to be remedied. Everyone needs to look at all potential options and we need to fix the problem. We haven't fixed the problem. We need to look at the options. Agency needs to look at every potential option. We've heard this ever since every meeting that I have been on since January. We've heard the exact same issue from providers. We've heard the exact same response from the agency. Nothing has gotten better. So, obviously, it's not working, and it needs to work because what providers have said today is accurate. The agency is getting paid, and their employees are getting paid, but providers are not. So, that needs to change. Whatever it takes, whatever we need to do in order to get that change to happen.

Chair Jennifer Nash:

Thank you. Commissioner Harris.

Commissioner Robert Harris:

Thank you. So, I would urge everyone to read the letter from Nathan Law. He did not testify today but he submitted written testimony. He is a manager, owner, partner of a law firm in Washington County. They have about five or six lawyers doing about 90% public defense work. They're a flat fee contract. He talks about other things but one of the important things is he's in the process right now of getting his five or six lawyers to become sole practitioners. And I would like you to reflect on what the agency's policy going forward will be on hourly because they have said they're going to have individual contracts with each lawyer. I had brought this up at the 337 task force that this is potentially going to destroy law firms because there's no partner that's going to let all their associates, employees sign individual contracts and get paid directly from

the state. That's not how a law firm works. And I think you're going to see that.

And so a couple of results. Number one, the agencies have a lot more billings going on because you're not going to get a billing from a law firm. You're going to get billing from individual attorneys either at the law firm or a bunch of lawyers who are sole practitioners. You're going to have less oversight of these lawyers who probably have less experience because they're newer lawyers and less training opportunities. Thirdly, the alternative would be for the aid for the law firm to submit an hourly billing to the agency guaranteeing these are the qualified lawyers that work for this law firm. And then the agency can go ahead and pay the law firm through some sort of an hourly rate, which should be acceptable under the terms of 337, in the language of 337.

And the other thing is, of course, those law firms can turn around, and as a law firm, as a business, they should have some cash flow capital available. They can make sure these lawyers get paid. These lawyers don't have to wait 65 days or 45 days to get paid on their bill. These lawyers will be paid. The law firm will pick up the slack on that, and I think that's a potential thing the agency should be looking at. I suggested that to them in the past, they have not really responded as to whether or not they'd be willing to do that. But I think that could solve a couple of problems, including oversight, training, this pay problem, and guarantee that we continue to have this workforce.

Chair Jennifer Nash:

All right. Thank you. All right, I want to table this for a minute because we have one action item and I want to make sure that we deal with it, which we should be able to deal with pretty quickly before we kind of move on to the broader discussions. I don't want to lose a forum potentially because that's happened before. So, I want to move on to the approval of the Comprehensive Public Defense Report, which should just take a few minutes to discuss and vote on, Ms. Taylor and Director Kampfe.

Director Kampfe:

Thank you, Chair Nash. I'm going to pass this to Ms. Taylor to talk about the report and the request from the agency to the commission.

Lisa Taylor:

Hi, Lisa Taylor. I'm just realizing that my screen says Jessica Kampfe for some reason. I hope maybe that's just on my end. Nope. Okay. I'm not Jessica Kampfe. I'm Lisa Taylor, your government relations manager. And I can share my screen to go over the memo of our comprehensive plan. So, Senate Bill 337 directs OPDC to submit a report by May 15th of 2024 on the commission's plan for providing public defense services in the state. This report will be submitted yearly through 2027 and then biannually through 2035. This first report is going to be submitted to the Senate and House committees on judiciary by May 15th. We presented the draft of this report during the April commission meeting. After that meeting, I met with Commissioner Smith, who's now the chair of the Legislative Committee. And based on feedback from her and other commissioners, we determined that the best course of action was to redraft the report as more of a work plan rather than a more detailed report. And the version in front of you today is that work plan. It focuses on how the commission will adopt the standards to create the financial projections based on workload that Senate Bill 337 directs the commission to produce.

And as you'll see in the report, and this was also in the draft report, those factors are the public defense forecast or how many cases are projected, the caseloads and workloads, which are how many attorney hours are needed per case, and the economic study, which is what the appropriate compensation for attorney and non-attorney work will be. The report also includes a timeline of when these will be adopted. You'll see, and this is in the report, in April, the Oregon Economic Analysis released the public defense forecast. And the agency also received the economic study on attorney and non-attorney hourly rates. And today, the May commission meeting, we're having a briefing on those caseloads and workload standards and a briefing on the six-year plan, which will be adopted. In June, we're adopting those caseload and workload standards. We'll also be adopting the policy option packages to implement those standards and also potentially amending the six-year plan with those adopted caseload ratios and standards.

The report also briefly discusses the various provider types and training, supervision, and oversight standards, and that is mainly to fulfill the direction of the report from Senate Bill 337. These sections were brief intentionally because the details of these sections have yet to be fully developed or acted on by the

commission, and we wanted to make sure that this report wasn't getting ahead of the commission in any way. So, the agency recommendation on this is that the commission approve the Comprehensive Public Defense Report for submission to the Legislature, and I have a proposed motion available.

Chair Jennifer Nash: Thank you. Are there any questions about the report or process for Ms. Taylor? Commissioner Harris, you have your hand raised. Is that from old or for now?

Commissioner Robert Harris: I'm sorry. That's an older one. I was trying to... There it goes. Sorry.

Chair Jennifer Nash: That's all right. I can't see everyone because I have everyone on... Hold on. Let me see. Okay. I don't see any hands, but if you have something to say, just unmute yourself and go for it. All right. I will just say, I sent an email that said this, but I just want to publicly acknowledge this report is excellent. Thank you for the work that was done on the draft. Very good work, very appreciative of the report. And I didn't hear you say in your presentation, but in the report, we don't have to report back to the Legislature on this until December 2025. And we're asking that we come back in December 2024 to update the Legislature early to be able to explain what we have been doing and update this report.

Lisa Taylor: Yes. And sorry, I should have included that in the briefing, but we are requesting to come back early. Whether or not they accept that or direct us, we can also produce another report for the commission regardless.

Chair Jennifer Nash: Thank you. All right. I will entertain a motion to approve the Comprehensive Public Defense Report for submission to the Interim Committee of the Legislative Assembly related to judiciary. Does someone want to make a motion?

Commissioner Susan Mandiberg: So moved.

Chair Jennifer Nash: Commissioner Mandiberg makes the motion. Commissioner Leininger seconds the motion. Mona, are you available to take a roll call vote?

Mona Riesterer: Jennifer Nash?

Chair Jennifer Nash: Yes.

Mona Riesterer: Susan Mandiberg? Robert Harris?

Commissioner Robert Harris: Yes.

Mona Riesterer: Tom Lininger?

Commissioner Tom Lininger: Yes.

Mona Riesterer: Jennifer Parrish Taylor?

Commissioner Jennifer Parrish Taylor: Yes.

Mona Riesterer: Robert Selander?

Commissioner Robert Selander: Yes.

Mona Riesterer: Addie Smith?

Commissioner Addie Smith: Yes.

Chair Jennifer Nash: Mona, we're having a little bit of trouble hearing you.

Mona Riesterer: Sorry. Motion passes.

Chair Jennifer Nash: Did you get Commissioner Mandiberg's vote?

Mona Riesterer: I did not.

Chair Jennifer Nash: Ah, she... Okay. She's here and...

Commissioner Susan Mandiberg: I said yes.

Chair Jennifer Nash: She votes yes.

Mona Riesterer: Thank you.

Chair Jennifer Nash: All right. Motion passes unanimously. Thank you. All right. I'll take just a brief check-in. Does anybody want a quick break? It's not scheduled right now, but I'm just... We have one person that says yes. Okay. Only one person. So, if you want a break, Tom, take a break. [Laughter] Otherwise, we're going to keep going for a little while. All right. Let's move on. Let's just move

on to the budget presentation so that we can just come back to the issue that we were just discussing, if that's all right, Director Kampfe.

Director Kampfe:

Yes. I believe we can move on to the budget presentation next, but I'll just have to have Mona pull up the slides. Our presentation on the budget is somewhat in two parts. First, we thought it would be helpful to the commission to get an understanding and an overview of the agency's budget build process so that you have the context when you are making decisions about adopting a workload and caseload standard and new hourly rates. When we move to that conversation in June, you'll have the context to put that in. And then the other part of the budget presentation is to talk specifically about an update on what is happening with our pre-authorized expenses and...

Chair Jennifer Nash:

. Why don't we actually start with that so we can pick up where we left off? So, why don't we start with the update about accounts payable and pre-authorized expenses? And I don't know how granular you planned on getting, but it seems like it would be helpful for everyone if you could talk specifically about the challenges on a more contextual level, so people understand what the issues really have been with payment and with the PAE process.

Director Kampfe:

Sure. I will do my best to do that. And then I would also like to take the Senator up on his suggestion that the agency write up a more comprehensive memorandum for folks, that I can get into more detail and get some feedback from my staff before providing answers because I don't want to misinform anybody by accident. So, with that, we can get started. Mona, is it possible for you to pull up these slides or do you need me to do it? Ah, she's got it.

Mona Riesterer:

Thank you.

Director Kampfe:

Okay, so this is our update on the pre-authorized expenses and accounts payable. And Mona, if you would move to the next slide. We're having some success with our pre-authorized expenses and working through that backlog. So, at the peak, the backlog was 2,650 requests and today it's down to 1,469 requests. We have made changes within our system and are anticipating being caught up by the end of this month. We are currently processing requests from April 15th. Some of those

changes that we made to our system had to do with the direction that the commission gave us in terms of changing policies that helped to expedite some pre-authorized expenses at our last meeting when this came up.

In addition to the policy changes that the commission put forward, the agency changed some procedures internally to help to expedite the pre-authorized expense process. And so, one of those important procedures is that we've expanded the use of the short form. So, when a lawyer wants to hire a subject matter expert to assist them in their case, they have to make a request to the agency to hire that person, and that request is called a pre-authorized expense. And so, it used to be the case that almost all pre-authorized expense requests required a much more detailed longer form, and that took a lot of time for the lawyer to do, but it also took a lot of time for the agency to process. And so, for pre-authorized expense requests that we see all the time on pretty much every case that qualifies for them, we have moved more of those requests to the short form. So, we've expanded the access to the shorter form for aid and assist requests. So that's requests people make for an evaluation when they think that their client is not competent to stand trial. For psychosexual evaluations, which are requests we receive on pretty much every case alleging a sexual offense, we made a change to the investigation short form.

It used to only be able to be used one time per case, and now it's one time per attorney. That's really important when you have more than one lawyer on a case at different periods of time. So, that should create more clarity around the use of the investigation short form. Coming soon, we've got short forms coming for ASAM evaluations. These are drug and alcohol evaluations to get people placed into treatment programs, and alternative sentencing or optional probation hours evaluation. So, those two should be up and running in short form pretty soon. So, that switch from the long form to the short form has been really helpful in expediting these requests. We've also improved some intake processes. So, the agency is now contacting lawyers by phone or email to resolve quick issues on their intake. They had been rejecting those forms, and then they have to be resubmitted, but we've changed that process, and we're resolving the issue with a quick communication to the lawyer. We are also now processing requests that are sent to the in-court inbox. So, all of those changes have helped us to



really start moving these forms forward. So, we have speeded up the time on the PAEs, and we do hope to be caught up completely by the end of the month. Mona, can you put me on to the next slide?

So, in terms of the agency's process, a lawyer would make a request to get a subject matter expert on a case, and they would do that through the pre-authorized expense process and submit the form to the agency. We do some review, and then we issue an authorization to the lawyer saying, yes, you're authorized to hire this subject matter expert to work on your case. The lawyer sends that authorization to the subject matter expert, who then starts doing the work, and then the bill comes in. So, one challenge that we have seen is that as our pre-authorized expense backlog clears, it pushes that volume of work into the next step, which is actually paying the bills. So, we are very concerned that as we are processing pre-authorized expenses more timely, that we're going to see the cases that were backlogged in that part of the system now moving to the next part of the system where they're hitting [Inaudible 01:47:10]. We're already seeing, as the pre-authorized expenses have been catching up, that the net length of time to actually pay the bills is getting longer. So, that is part of the reason why we're hearing from people that it's taking longer to pay the bills.

I will note that we're trying to have some transparency around the length of time that it's taking to pay bills, and we have posted on our website the date that we're paying bills back to right now, so anybody can look on the website and see what they were processing for invoices, and we're updating that information every Friday. Currently, we are paying bills from March 21st, and one of the big challenges that we have seen with accounts payable is that because of a lot of work that this commission has done quite successfully to increase the number of people who are doing public defense work in Oregon, we have had a big increase in the amount of billing that we're dealing with, but we have not made comparable increases to our stack, and we have not modernized our infrastructure to deal with the increased volume of bills.

We do have some mitigation strategies that we're looking at deploying, so we are working to hire some temporary staff to vastly increase the volume. We are reviewing our business processes to see where we have system efficiencies, and if we

can be a little less risk-averse in some of the decisions that we're making to help expedite the processing of bills. And to that point, I guess I'd talk a little bit about the staffing within the agency. So, our accounts payable staff is divided into subject matter experts, so we have staff that all they do is investigation requests, staff that deal with interpreter and transcriptionist requests, staff that deal with psychologist requests. And right now, we actually have two full-time staff people that all they're doing is processing attorney billing.

That is a big change for us because we used to do about 1% of our attorney representation through hourly billing, but with programs like the FIP program, and the commission taking action to increase the hourly rate for our standard rate, we've seen a greater amount of attorneys that are doing hourly billing, so we've had to devote resources more specifically to that function. So, all of our staff have subject matter expertise in the kind of billing that they're processing, but we don't have any staff that's dedicated to doing compliance audits on bills. So what that means is that the staff, every time a bill comes across their desk, they're having to do a compliance audit on that particular bill. And that slows down the process, and we aren't staffed in a way that that can be done first, and then the bills can just get paid. So, adding temporary staff is definitely a key component of trying to get a handle on this.

Chair Jennifer Nash:

Can I interrupt? Can you just speak, well, two things. One, if you can move a little closer to the microphone because you're coming in garbled sometimes, but also you can talk specifically about what you mean by compliance audit so that people understand the kind of nuts and bolts of what you're talking about.

Director Kampfe:

Sure. So, let me give you the most common mistake that we audit for, and it's on the lowest point I have on my list here. When a lawyer submits a pre-authorized expense, they put in that pre-authorized expense request what the rate is that the subject matter expert is going to bill at. So, let's say it's like a psychologist. They would put the rate that the psychologist would bill at. The agency has increased our hourly rates for a lot of providers, and so in those initial requests, they're putting too low of an hourly rate in for the psychologist. And so the agency, before we submit the approval of that pre-authorized expense, we check that rate, and then we are approving it at the higher

rate, the rate that the agency is authorized to pay out at. We hand that approval back to the lawyer who provides it to the vendor. But what we're seeing is that the vendors, instead of using the pre-authorized expense rate, they're billing us at the original rate that they submitted the request for. I assume that's because it's programmed into their billing software or something of that nature, what rate they're going to bill at.

So when the bill comes across somebody's desk to pay it, they're having to check that rate, and then we're internally fixing it and paying them at the rate that we authorized rather than the rate that we billed at. But we're having to do that check on every bill. There's not a fast track and a slow track because we don't have any compliance audit staff that can do that audit function and then just push the bills through to pay them. So that's taking a lot of time. One of the things that we've been talking about doing internally is how do we do outreach to vendors who are not part of the public defense community? They're not members of OCDLA and that sort of thing because they are like forensics experts and psychologists and those types of providers that aren't just specific to the defense community. And so we're brainstorming ways now that we can do that communication to make sure that everybody has our current billing rates because it would certainly expedite a lot of these bills if we were able to do less checking on each and every one of them.

Another challenge that we have is that throughout time, the agency's been really inconsistent in the way that we have updated our payment structure. Prior to the commission taking up a new pre-authorized payment policy and routine and non-routine expense policy, it had been years since the policies had been updated, and so in that interim period, the agency had issued all of these memorandums about payment. Now that the commission has adopted an updated pre-authorized expense policy, those memorandums should no longer be controlling, but we haven't taken them down off of our website, and so that has created some confusion. So, we're going to be coming back in front of the commission in June and asking you all to approve language on our pre-authorized expense policy that basically says this makes all other previous memorandums null and void, this is the standard document, and then we'll be able to pull all that information back to reduce that confusion. So, those are

some of the steps that we're taking internally to address the backlog in accounts payable.

I am concerned that as we are processing the pre-authorized expenses, that that's going to move all of that backlog into the billing part. And so that's something that we're watching a lot and closely right now, and we have seen an overall increase in the amount of billing that the agency is dealing with. Mona, can [Inaudible 01:54:33] the next slide please? So, this next slide gives you some visual representation of the increases that we've been experiencing from our billing. In total, we're up 15% over the last 12 months in terms of bills. But you can see more specifically if you look, I believe Commissioner Wright had mentioned that since January, we've been hearing from providers pretty consistently about their frustrations with the billing [Inaudible 01:55:05]. If you look at the increase in billing since January 2024, it's up significantly. We had almost a thousand more invoices in January 2024 over January of 2023. And then we experienced a backlog in the pre-authorized expenses, and so we saw the numbers start to come down that were going through accounts payable.

In March, when our pre-authorized expense backlog was really big, we saw a reduction in the increase of billing coming through. Now that we're working through that pre-authorized expense backlog, we're seeing that the billing is again increasing. So, we're up 734 invoices in April over where we were in April of 2023. In total over the last 12 months, we've seen 6,310 more invoices than we processed the previous year. We have the same staffing capacities and the same infrastructure that we had the year before for having to deal with an increase in piling up bills. So, that's kind of a basic overview of what challenges the agency's facing, and I am happy to talk with my staff and the experts in this area and provide for the commission and for the community a more detailed memo going into some of this stuff. And Mona, I think that is the end of my slides.

Chair Jennifer Nash:

Do any of the commissioners have any questions about the information that Director Kampfe has presented? Bob?

Commissioner Robert Selander:

I do. The comments we've heard were from investigators. I don't recall hearing comments from professionals, the psychiatrists, psychologists, those people. And yet one of the

reasons you're giving for being delayed on payments is because the professionals are charging less than they're entitled to charge. Is that the situation with the investigators? And if the investigators are...

Director Kampfe: Well, investigators tend to be pretty good billers.

Commissioner Robert Selander: Excuse me?

Director Kampfe: That's not the situation with investigators. Our investigators tend to be pretty good billers. They tend to charge at the correct rate.

Commissioner Robert Selander: So, the reason the investigators cannot be paid timely? If you have investigators, isn't there a way to put them in a separate pile rather than in this huge category, you're coming up with an excuse for a specific problem, which is investigators being delayed 40 or 50 days on getting payments on something that I understand is pre-approved.

Director Kampfe: Yes, I guess. Everybody is delayed in getting the payment. So, right now, our accounts payable department is processing payments from March 21st. So, investigators are not the only ones experiencing the delay, but they are the ones that are coming to the commission and talking to you all about it. I see Ralph popped on who is the manager of this department. So, he may have some more detailed information to answer your question. So, I will hand it over to him.

Ralph Amador: Good morning, Ralph Amador, Chief Finance Officer for the commission. Commissioner Selander, we have always operated on a first in, first out basis, just because when I got here a few years ago, the commission was being accused of playing favorites and picking and choosing who they were going to pay. So, just like the inventory type system, we do first in, first out. And we do this on a frequent basis, if somebody calls us up and says, "Hey, I really need this, I need some help here." We drop everything and push them to the front of the line and everything that happens. If there is a billing issue, the staff stops, sends an email.

And again because of a memorandum that has been issued and put into it by a previous commission, saying that on every \$10 change to a bill up or down, the staff has to stop, issue an email

to the provider, and let them know that this is happening, they give a timeframe, and that person doesn't lose their place in line, but says, "Hey, we've noticed this. We'd like for you to respond back so we can tell you this is coming. And then get back to us in two days or you're going to lose your place in line." And so then they usually don't do that, but they keep trying to do that. But again, if the commission is going to ask us to not do the first in, first out, we can possibly do that as we get more staff on and try and portal things a little bit better. But right now we're, again, as Director Kampfe has mentioned, we are at a staffing issue right now. We're trying to find people to come on a temporary basis to work for us, but we're experiencing the same kind of issues with hiring folks as everybody else does. Again, not an excuse. That's just the reality of what we're facing at this point. Hopefully, that answers your question, Commissioner.

Commissioner Robert Selander:

Thank you.

Chair Jennifer Nash:

Senator Prozanski.

Senator Floyd Prozanski:

Thank you. And just following up from the public testimony we heard today, and Jessica in your presentation, if the agency is currently processing accounts payable for March 21st going forward, it would seem to me that some of the testimony we heard today should not have been provided to us because they would have been within that 40-whatever days. We had a couple of people saying there out 50-something days, and so I'm not sure what that means. If you could give us clarification when you're talking about accounts payable, that you're now working on bills that are for March 21st.

Director Kampfe:

Thank you, Senator Prozanski. I think I'll defer to Ralph if he can speak a little bit more to what it means that we're processing those today for March 21st.

Ralph Amador:

Thank you, Director Kampfe. Ralph Amador again, for the record. Senator, when we talk about the bills we're paying, those are the actual days that we're processing when we got them. We send them out in the manner that we send them out and it goes through the DAS portal at that point. And then it'll take one or two days for that to happen. The particular instances that were referred to as being over, I think we're at 48 days or something like that now currently, based on what our

timeframes are. And so we used to try to calculate days out, but that was confusing for people. So, we went to, in this recent iteration, every Friday we post the day that we're working on that particular day. So, folks can say when my bill was submitted, that's when I can refer to that. So, we're trying to make sure folks can have a one-to-one alignment of when they submitted the bill and when we got it.

So, all bills submitted on that day are the ones we're working on. If there's other outliers that people haven't got paid on, then again, we urge them to say, "Hey, where's this at?" Or there's other extenuating circumstances, much of which I mentioned before to where there had been an adjustment or something of that matter to where we're waiting for people to get back to us. Again, they don't lose their place in line, but that could cause issues in there. Again, we always welcome the ability for folks to call up and say, "Hey, where's this at? Can you do that?" And people do. We do get the thousands of emails that happen. Again, but I just have to say, as we get all these increasing emails, that slows down the process of payment because people have to stop and research all those things, which we're happy to do, but again, that's just adding to the work processes as it's going forward. Did I answer your question, Senator?

Senator Floyd Prozanski:

You did. Thank you.

Ralph Amador:

Okay. Thank you.

Chair Jennifer Nash:

Commissioner Harris.

Commissioner Robert Harris:

Thank you. So, Ralph, help me with this. When you say you're processing them from March 21st, does that mean number one, we're starting to look at it? Or number two, we've submitted to the DAS because we've completed it? Or number three, the check is being issued? So, what are you specifically? Because as far as I know, it takes a week to process, for instance. So, I guess what I would want to know is when are those checks being sent out?

Ralph Amador:

Thank you for the question, Commissioner. When I say that we're starting the process, that means they're in the system and we're pulling from that day. We're starting the process of going through the bills and making sure everything matches up. And

Director Kampfe sent me a request saying that we should do a white paper. And I'd love to do a white paper on this so we can explain the process and the tediousness of the process. If we could just pay bills, we could get them out a whole lot quicker. I guarantee. If we were just paying what's out there, but then we're running into the issue of paying incorrectly and then having to reissue checks and stuff like that. And we don't want to do that. We want to be good to people. We want to make sure everybody gets paid what they're supposed to get paid.

But if we say March 21st is what we're working on, that's the day we're working on. Bills submitted on March 21st are what's in the queue and that they're pulling now and going forward from that point. And then it takes however long it takes to get through that. So, there's a stack of bills, 100, 200 bills that come in on that day. They pull them, people start pulling from the stack and it goes through the check of going through, making sure we're matching it up with the pre-authorized expenditure, making sure they're paying at the right rate, make sure that the guidelines are all in there. And it gets passed through to a final review person who goes through and make sure it's all done, gets batched and sent in. And then we send it over to SFMA for it to be paid in that matter. So, it's just again, how quickly we can get through the process of doing all these checks and everything else.

And it is a function of disparate databases because our accounts payable database doesn't talk to our pre-authorized expense database. We have to bring those both up. If there's a discrepancy, they're going to have [Inaudible 02:05:45] judicial thing, check the – I'm talking faster because I'm very passionate about this, so I apologize for that talking faster type stuff. So, just having to pull all these things in to make sure that it's paid to the right case, it's paid to the right person, paid at the right level, and everything else. And that just takes a matter of time. Once we get it from us, it goes to DAS. DAS takes one or two days to pay. Once it gets into the DAS system and gets put in the queue, then you'll get your email saying you're getting a payment, it'll be in one or two days, depending on whether you're a paper check or ACH transfer.

Commissioner Robert Harris:

Okay, so just a quick follow-up.

Ralph Amador:

Mm-hmm.



Commissioner Robert Harris:

I get it, but how many of these bills are processed within one day or two days or three days or four days or 80% processed within two days? Because I think this is where some of the disconnect happens. The agency report, it's processing bills within 36 days, but people don't see checks for 52 or 58 days. And perhaps, I'm saying perhaps that's one of the disconnects. So, do you know how many are 80% processed within one day, or what does the processing framework look like? Because that would give me a more accurate idea of how long it's taking these people to get paid.

Ralph Amador:

I would really like to get a better answer for you and talk to the AP folks to get you an exact how much time it was. Again, it really depends on the complexity of the bill. It shouldn't take more than maybe a week tops to get through the entire process. It just depends on the workload that's sitting on each person's desk. So, I may process a bill in one day, but then I get it to the person who puts it in SFMS in the batch form so they can be transferred over. They may have three days' worth of work to do. So, as they're getting caught up and everything else, I have two people who do final approval for all these bills that happen. So, if we get 300 bills processed in one day, I have two people to go through and get those things entered into the system so that we can get them paid at this point. And it's just different levels of work, different levels of expertise that we have to get to.

So, when you're asking me, how long does it take to process? It could take half an hour to process one, or it could take one or two days to process it depending on the level. Because if we have investigator bills, for instance, you have to go through and take all of the travel and everything else and make sure it matches up to all the things that they're doing, put that in the system manually because they're keying all this information into a system to get paid and then send it on over to be checked to make sure it's done it that way. So, not the answer you're looking for. I can get you a better answer when we do a white paper, but that's probably the best answer I can give you on that today, sir.

Commissioner Robert Harris:

Yeah, the only thing I would say with – thank you for that information – the only thing I could say is that your processing time should be probably two weeks then from the date of

submission. Because if people want to get paid net 30 and it's going to take you a week or 10 days to go through all this, worst case scenario, worst go through this, you better be looking at a processing gap of two weeks or 10 days. So, that's the only thing I would say is you start, develop your plan. Thank you.

Ralph Amador:

Yes, sir. Understood. Thank you.

Chair Jennifer Nash:

So, I realize that we're wildly off time, but this is also, frankly, one of the biggest risks to the agency right now and the biggest risk for retention and being able to bring new people in. So, I appreciate everyone's time. And with that, I've been listening to you and as you know, I have a tendency to get into the micromanaging. So, I don't mean to do that, but I do know that if I have these questions, providers have the same questions, and I think it's worth talking about. I'm really confused about why it is that you're not just paying bills that you think the amount should be paid and sending a thing with it that says, "If you disagree with the audit that we've made to this bill, you have 30 days to resubmit your reasons why you should be paid a different amount."

My guess is that providers would be much happier with receiving a bill... I mean, my guess is we're not talking 50%, 70%. We're talking about a small deviation. The providers would be much happier receiving the bulk of whatever bill it is that they've paid with the opportunity to correct whatever deficiencies it is that you identify than holding the whole thing up. Or if someone's on vacation or they have their kid's birthday party and they don't respond within 48 hours, their bill goes to the back of the line? That seems wildly inappropriate and unfair to me. And I can imagine, puts a lot of this into context about why providers are so upset about not being paid over these, their words, "nitpicky little amounts." So, is there some reason why it is that you aren't just doing that?

Ralph Amador:

Chair Nash, and again, this is a product of time. I understand what you're saying, and I've actually proposed, "Just pay what's on the invoice."

Chair Jennifer Nash:

That's not what I'm saying.

Ralph Amador:

Okay.

Chair Jennifer Nash: I'm saying if you identify a discrepancy, pay the amount that you believe is in discrepancy. If someone submits a bill for \$1,000 and you think it should be 800, pay 800 and say, "If you want your other \$200, send me something within 30 days that tells me why you should get the other \$200."

Director Kampfe: Thank you, Chair Nash. That goes to that memo issue. So, the agency has a memo published that says, "If we're going to reduce your bill by more than \$10, we will contact you and talk about it before reducing your bill." And that was something that we got a lot of provider input on before it went into place. It's an old memo, it's out of date. And when I talk about needing to update our PAE policy to say, "This is the policy and it replaces all other memos and things of that nature," that's one of the memos that it would be replacing so that we could just pay the bill at the amount that we'd identified and give people an opportunity to let us know if they contest it.

Chair Jennifer Nash: All right. Well, I think that for the June – so you're talking about making changes to the PAE policy, that's not PAE, that's accounts payable. So, I think that for the June meeting, we need to have that on the agenda as well so we can vote to fix that problem because it seems like that would fix a huge problem. And I encourage providers to give feedback about whether or not they would have an issue with that because I think that will speed things up tremendously. Does anybody else have any questions or comments? Senator Prozanski.

Senator Floyd Prozanski: I just want to clarify, it sounds like in June at our meeting, we will have a proposal to modify this. I mean, the \$10, that's really crazy. I mean, I could see a different number if we need to put a number in there, but I thought, Jennifer, what you suggested is to, if it's not in conflict, pay it, and then let's move forward. So, I'm hoping the agency will look at giving us a couple of options where we can discuss and actually get something implemented. Because there's no reason to hold them back on three quarters of the bill when there's only a quarter of it in dispute.

Chair Jennifer Nash: All right, thank you. And then let's talk about the second part of the budget presentation, which is about building the current service level and policy option packages.

Ralph Amador: Good morning. Thank you, Mona. Ralph Amador again, Chief Financial Officer for the commission. And I will probably be able

to make up some time on this depending on whether or not we have questions. This is a budget overview. It's a slide presentation to give a brief overview on what the budget process is and discuss where the commission fits into our budget building process. And just so you know, so everybody has an understanding of the things that we're going through currently to get to where we start getting the policy option packages and everything else. So, there we go.

So, just a basic outline, we're going to go with the budget outline, budget process overview, something about policy option packages, and then initial agency proposals that we have on the table that we are looking at specifically now. So, there we go. So, this slide talks about agency actions that DAS does with DAS CFO, Department of Administrative Services, Chief Financial Officer, which is our representative similar to the Legislative Fiscal Officer. We have one in Department of Administrative Services as well. So, briefly, so we start with the 2023-25 legislatively adopted budget. We go through the February session and whatever corrections need to be made are made during the session. Any additions, anything else that's put in there gets entered into the system into our budget building packages and we get what's called a legislatively approved budget, which is kind of our starting point.

From there, we use our statewide administrative adjustments, any changes to personal services, inflationary adjustments, and then we get our base budget. We add our essential packages, and this will get more detail in the next slide. And then we get what we call our current service level. And basically what our current service level is, in a nutshell, it's basically how to maintain our current level of service with changes to inflation, the recognition of the increased caseloads and such things and other adjustments that we go on to. So, Mona, if you'd go to the next slide.

This is what it basically looks like, and we have a couple of books and a bunch of software systems to help us with this. The very first box is the adjusted base budget. That's after the short session. And after all the changes have been made and all the additions up until that point, that includes all the E Boards, or no, I'm sorry, the Interim Joint Ways and Means Committee that happened before the small session, get rolled into the system, and we get what's called the adjusted base budget, which is the

starting point for the '25-'27 budget process. From there, we go into packages. What's not listed in here is package 10, which is all the personal services, all those increases, all the positions that are limited durations, they drop off and everything else at that point. So, it's a lot of other administrative stuff that's done by the budgeting software systems at Department of Human Services... I'm sorry, at the Department of Administrative Services that get us to where we need to get to.

We go into package 22, which is our phase out. Our phase-out period is all of the one-time funding opportunities that were given to us in the current biennium are phased out. Anything that's supposed to go away, that money in that program is phased out in our budgeting process so that we [Inaudible 02:17:26] what's called the adjusted base budget, which is a more cleaner type thing at that point. We also have a phase-in period where if we get positions like we got positions halfway through the biennium or at an E Board. They will come with SNS and stuff like that...or positions that we'll get beyond the small session are not in the position management system. So, we'll have to phase those in as well as we go through the system. But again, we're trying to get to our adjusted base to inflate there. The 30 packages are 31, 32, and 33, are inflationary consumer price index inflation packages. Thirty-one is standard inflation, 32 and 33 are special inflations that we get. We get standard inflation, which I think is about 4.8%; 4.8% for most of our stuff, our payments to providers and everything are inflated at a higher rate, which I think is at 6% or so right now. And so that gets rolled in through software to get us to where we're going to be after that.

And the next one talks about package 10, package 21. We talked about those already, but then we get to mandated caseload, which is package 40. This is the big one that includes the forecasted amounts of stuff. Let me talk about mandated caseload. Mandated caseload is what the Legislature has decided... Or I'm sorry, not legislative, but the Chief Financial Office and the Legislative Fiscal Office have decided that these are programs that are going to be prioritized to be funded because of the needs in particular instances that are there. This agency of the commission, their mandated caseloads are adult trial. They are court mandated expense, appellate division, and pre-authorized expenditures. Juvenile and PCRP are not mandated caseloads at this point. I think juvenile is, I think we

got it wrapped in last biennium. I'll double-check on that, but we treat them the same.

We apply factors that show inflation so that we're trying to say, "We can't continue at a current service level because cases are increasing." So, we want to make sure that we're capturing our current forecast with what our forecast is for the next two years and trying to factor in what that increase in amount of capacity that we're going to need budgetarily wise to show what kind of attorneys we're going to need and everything else at that point. What kind of pre-authorized expenditure increases we'll need, what kind of court mandated or non-routine expenses we're going to need as well. So, we build those factors in through models as well. We have to decide on certain things going forward with that. And then we'll use the same models that we use in the mandated caseload to build any potential policy option packages where we decide we're going to change our caseload standards, our workload standards, or anything else. Because we have to use what we currently have. So, the caseload standards that we currently have and the rates that we're paying currently now are the ones we have to use to inflate going forward. We can't change those because that would be a policy option package.

Package 50 is a fund shift. We really don't do anything with package 50 because we don't have a lot of federal money and we don't have any other funds money. The only other funds we have are money that we have with Title IV-E for our juvenile, and our PCRIP which we contract, do an agreement with the Department of Human Services to where they give us federal money to replace some of the general fund that we're missing for that to extend the program. Package 60 are technical adjustments. This is where we would make any adjustments to our agency that we see fit, moving positions around, changing programs from one area to another. We have to get those approved by Department of Administrative Services and by Legislative Fiscal before we move a lot of stuff, but that's where we make all those adjustments.

And then we get to the current service level. All of this stuff is pretty much in the background and is done by myself and staff that I have here. And we are doing it in concert with the Department of Administrative Services, their programs that they have over there. We don't currently predict any revenue

shortfalls but usually in package 70...but that usually any revenue shortfall that comes to us is if we weren't going to get enough IV-E money. And that's usually not the case because that's continuously appropriated by the federal government. Or if there's a change in the stuff we get from judicial for... I can't remember what it's called but it's a program that approves whether or not folks can qualify for services or not. We have to modify case current service level, which is the ending point of our CSL. And then that's when we start going into the policy option packages is where the commission really starts to play a role here in telling us what we're going to invest. They would like to see us invest our money and ask for certain changes. And then we got our agency request budget which according to our timeline, we'd like to have a draft agency request budget to you folks by July, by the July commission meeting. So, we'll give you a full month to look it over and review it and make changes or suggestions because in the August commission meeting, we're going to need for the commission to approve the agency request budget and because we have to turn it in at the end of August. That's the process overview going forward that we're doing. And next slide, Mona.

So, this is the commission input side. This is the policy option packages. For those of you who are new to policy option packages, we put a little thing that says, what are they for? They're for any change of level of service, any change to funding sources, any new programs, any change in a program or any need to define a public or customer need. The policy option packages should roughly answer the following – the nature of the request, they should provide background and history of the things, state-level considerations, any facility or capital outlays, provide a very distinct justification, which includes what happens if they don't fund this request. If we don't do this, if they don't go forward with this, what does that mean to the agency, the state, and to the people of Oregon? Analysis of feasible alternatives is what we'll have to consider. What can we do other than this? And then a timetable for implementation. And so those are the things that we'll have to talk about, that we'll have to prepare once the commission says, "These are the policy option packages that we want to go forward with." One more slide, Mona.

Currently, based on what we're doing going forward, our agency proposals initially that we're considering are a financial case

management system, talking about the case management rollout, change management process and positions. This is an in-flight project. So, it'd get prioritized on the IT structure side because it's moving forward and it's going forward. So, it probably will be our highest policy option package right now because we already started working towards that. The next one we have out there is the workload, which is the six-year plan, where we have to decide on caseload standards, if there's going to be a change for that. The development of a workload model and support staff augmentation for, not internally, but for externally for providers. Any augmentation that they'll need for support staff out there.

We also are considering a hourly rates POP, where we're talking about the hourly rates and the economic study changes that were provided by the report that was given to us. And we'll have to discuss about panel attorney and vendor rates and everything else that goes into that. We'll have to also discuss state-level trial offices. Senate Bill 337 says we have to have a certain, I think 20%, of all people doing public defense need to be state employees by 2031, which roughly means about every biennium, it's about 40 to 50 new attorneys in the state system, plus their support staff, plus their offices. So, we'd have to figure out if we're going to do another round of offices this next biennium or defer it. If we defer it, that just means it gets bigger down the road because the number doesn't get any smaller.

And lastly, agency staffing and gap analysis. We've done a gap analysis already, finding that we don't have the positions that we need to do all of the things that's being asked of the agency. And so we're putting together what it should look like, how it should go, and the decisions that we'll need to do that, and either change, modify, or add to the agency. I think that's the end of my slides. Thank you. If there's any questions, I'm happy to answer.

Chair Jennifer Nash:

Do people have questions? Commissioner Buckley.

Commissioner Peter Buckley:

Thank you. Yeah, the ability to add additional policy option packages, if we're going to have that discussion. And the areas of recruitment, I have great concern, and I think we need to have a policy option package that's going to talk about how we're going to recruit more attorneys into the system, not just the compensation adjustment, but how are we going to actively



recruit attorneys in. And I think we also need to have a plan to how we're going to shift over consortia attorneys to the new program. Do we have the capacity to do the outreach necessary to work with consortia to make a transition to the new model in an intentional and effective way? So, those are just comments I would like to make.

Chair Jennifer Nash:

Thank you. I think that's a really good point. We did receive, for lack of a better way to put it, seed money for the law school programs, but that's one-time money. And so if we want that to continue, that's something that we're going to need to ask for. And I think that's one piece of the puzzle regarding recruiting. And also, do we include retention? Although that would really, I think, maybe better go in the six-year plan and the hourly rate study. But for sure, I think we need to talk about, we've heard some comment from folks over the period of time about rural outreach and some – I'm forgetting what they're called – not interns, but everybody knows what I mean. The ability to have law students and work in outlying areas. So, does anyone else have any comments or questions or ideas about policy option packages that aren't currently on the list? Addie?

Commissioner Addie Smith:

I like Peter's idea a lot. And I think we want to not only think about these POPs, but the POPs to come after this and what we need to tackle first. Just harkening back to sort of Carl's testimony earlier this morning, it was pretty clear, at least from his perspective, that shoring up some of these loose ends around workload and otherwise are going to do a great deal in terms of both retention and recruitment. And so I think I'd be interested to see what the landscape looks like after getting some of these implemented and then doing some more sort of strategic and thoughtful recruitment efforts based on that. So, maybe as a transitioned approach. I also think it's really important, and everyone already knows this, but to state the obvious, that we directly address meaningfully what we've been asked to do because I think that's an area of growth for this board and agency. And so I would just say that I think there are lots of really good ideas about all of these pieces, and I think doing a really good job of what we've been asked to do first and then having the time and space to understand how that affects the landscape and getting really creative might be one option to think about.

Chair Jennifer Nash:

Thank you. Anybody else have any comments? Mr. Amador.

Ralph Amador:

I would just like to caveat that when we're considering policy option packages for this next biennium, we need to be, much to what Commissioner Buckley and Commissioner Smith are saying, we need to be aware that these are for what we can do in the next two-year period. Because there's a lot of great ideas that may not be on deck this next two years but could be on deck strategically for the next two years as we're going forward looking at it. From a budget perspective, we try to look at things six years out so that we start staging things and seeing things that way. Just don't want to quell ideas, but just to make sure people understand that if we're looking at this next two-year period, what we can actually achieve at that time to set ourselves up for success. Thank you for your time.

Chair Jennifer Nash:

I appreciate that comment. But I also think that, or I shouldn't say but, and I also think that we need to think of it that way too. I mean, that's why we have the six-year plan. So, we need to think about what we want to be accomplishing and make sure that step one, we have building blocks so that we can go to step two, step three, rather than thinking of these, and I really feel like that we, the big picture we, kind of have done that where we've only looked at things in two-year increments. And that I don't think is particularly helpful for our strategic planning moving forward. Commissioner Parrish Taylor.

Commissioner Jennifer Parrish Taylor:

I think to that point, I also feel like we need to look at this as a whole of ecosystem view. So, beyond just the agency, who else can contribute to growing this pool of lawyers and where are the gaps? And where can we, by asking for money, fill those gaps? I've asked this kind of previously and the response has been, "Well, the agency has a lane." Well, we need to broaden that lane. And I think whether or not we own that lane, we can figure out, but this is going to require everyone working together to solve this problem, and I just don't think we've done that in a very coordinated kind of way.

Chair Jennifer Nash:

Point well taken. All right, anyone else have any comments or questions before we move on to the next topic? Okay, so we're scheduled for a break at 11:45, but our upcoming discussions are pretty substantial. So, I think it makes sense to take a break now and then come back and tackle those. And let me take a look at... I think it's important that before we move on to talking about the economic study and the six-year plan, we really

should have an update about the unrepresented persons issue. So, we'll tackle that next, and then we'll move on to those broader discussions. Oh, I just saw your note, Director Kampfe, supervised practice pathway. Yes, that's what I was thinking about. We'll move on to those other issues. So, let's take a 10-minute break. It's 10:35, I'm sorry, 11:35. Let's come back in 10 minutes at 11:45, and we'll talk about the unrepresented persons update.

[No dialogue]

Chair Jennifer Nash:

All right, we have a quorum and it's 11:45. So, we will resume the meeting and we will move on to an update about the Unrepresented Persons Crisis.

Director Kampfe:

Thank you, Chair Nash. I'll have Mona pull up those slides. I am going to be providing this update along with Harry Noone, who is a senior research analyst within the agency and is the brains behind the data piece of this. So, I'll walk through the overview, and then if we have specific data related questions, Harry is prepared to help assist on that. Okay, so we're updating on the unrepresented persons. And if Mona, you could move to the next slide.

This is just an overview of where the numbers of unrepresented persons are across the state. As you can see, we are holding pretty steady with the numbers of both in- and out-of-custody unrepresented persons. This is significant because if we look back to last year in April, many contracted public defenders reached their annual caseload maximums. And so that's when we saw the beginning of a big spike in the unrepresented persons numbers. The commission made changes to the contracts this cycle and had that number prorated per month with the hope that that would stave off a big spike in unrepresented persons in the spring as we came to the end of the first year of the contract. And so far, that appears to be happening. We aren't seeing the same kind of big spike in April that we saw in April of last year, which is good news, but it's something that we are monitoring closely. And I will note that we have an emerging issue in Deschutes County where we had six public defenders change jobs in about six weeks. And so there may be individual counties where we do see a spike, but it looks like the statewide trend is holding pretty steady right now. Mona, if we could see the next slide.

So, this is just an update for you all on the FIP program. We have in here who is providing representation under this program, and so 63 of the lawyers that have provided representation under this program are folks that have a contract with the agency. They may or may not have a full MAC contract with the agency. So, some of these folks might be half-time public defenders and then half-time private bar and selling us their time on the private market. And 107 of the lawyers that have accepted appointment do not have a contract with the agency under this program. The vast majority of money that we have paid has been to attorneys, but we have also paid money out to pre-authorized expenses and investigation fees. I think it's important to note that regardless of whether this program was used, we would have paid those pre-authorized expense costs. So, that 4.5 million we would have paid out anyway. And so really, the elevated rates are for the attorneys and the investigator fees. We can see what case types we are paying out on and how much, and as well as what counties we have the highest utilization rate for the program. All right, keep going.

I want to talk about maximum attorney caseload and our utilization in the Senate Bill 337 crisis counties. So, one of the things that Senate Bill 337 did was it directed, I believe the Criminal Justice Commission, but it directed a number of entities to work together to create crisis plans for the counties where the unrepresented crisis was the worst at the time that the bill passed, or counties that were of a large enough size that they met a size requirement, even if they didn't have a significant Unrepresented Persons Crisis. And so we wanted to talk with you all, looking at those same counties that did the 337 crisis planning, about what their MAC utilization is.

So, I want to start by talking about what MAC is. This is the way that we currently contract for cases. So, what we do is we contract with people who are full-time lawyers or part-time lawyers, and based on the percentage of time that that lawyer is doing public defense work, we estimate that they could handle a maximum number of cases for that percentage. So, if they're a full-time public defender, we estimate that they could do up to 300 weighted misdemeanors. If they're a half-time public defender, we would estimate that they could do up to 150 weighted misdemeanors. And so when we use the term MAC, we're talking about the way that we're currently

contracting for representation. And this is really important for the commission to understand, when we talk about adopting a caseload and workload standard. And Mr. Amador explained earlier that our current service-level budget is based on our current programming. So, when the Legislature is funding our current service-level budget, what they're going to look at is how much would it cost to deliver public defense if we continue to use the MAC model. And if the commission wants to make a shift away from MAC to a caseload workload model, the request for funding to implement that shift is going to have to come in the form of a policy option package. So, right now, this is the model that we're working with, and this is where our current service-level budget is going to be based from. And I see that Commissioner Lininger has his hand up, would that be okay? All right.

Commissioner Tom Lininger:

May I ask a quick question? Thank you for this presentation, Director Kampfe. Is now a time I could ask why our expectation for individual attorney workload is so different from Washington's?

Director Kampfe:

Thank you for the question. So, that's a great question. So, when we built out our MAC, we first started this way of doing our contracting back in 2021. And at that time, what we had available to us was a statutory requirement that we base our caseload workload on national and regional best practices. And so what the agency did at that time was they looked to the state of Washington for a regional best practice, and at that time, the state of Washington had a caseload maximum of 300 misdemeanors. And so that is actually where we get that base number from for MAC. And then what the agency did was it took that base number of 300 misdemeanors, and it used the American Bar Association's Oregon study and applied a case weighting model based on that study to that base 300 misdemeanor level. We adopted it in 2021. More recently in 2024, Washington updated its standard. And so they now have adopted the national RAND standard for caseloads, which is about 150 annual misdemeanors. So, because we have not updated our caseload standards yet, we are now no longer in sync with Washington, but we were at the time that MAC was first adopted as a standard.

Chair Jennifer Nash:

We have that, I just wanted to add, we have that for a full discussion as our next item on the agenda today.

Director Kampfe:

And I do think it's important to note that MAC is not a mandate, it is a maximum. So, we are not requiring providers to handle the maximum number of cases. And this has created a lot of challenges with this model because many people in the community perceive it to be a maximum, even though it hasn't been treated that way by the agency. And when we have done forecasting, the forecast has been based on the idea that MAC is a quota as opposed to a maximum, and that has made it very difficult to know what the gap is. So, there've been a lot of challenges with the implementation of this model. All right, can we go to the next slide?

And this slide is about the concept of what we'd call prorated MAC. So, we say a full-time public defender could handle a maximum of 300 cases under the MAC model, but what does it mean to be a full-time public defender? It's a point in time measurement, right? So, are you a full-time public defender for 12 months? Because then you could potentially handle a maximum of 300 cases. But what if you're a full-time public defender who joins a contract six months into the contract? Then we would need to prorate that number from 300 to 150 weighted misdemeanors. One of the things that we've seen is that many, many changes happen throughout the contract cycle to the percentage of time that lawyers are spending doing public defense. And so under previous contracts, we barely amended our contracts, but that has changed significantly.

In 2022 to 2023, we had approximately 175 contracts for public defense services and managed 496 amendments to those contracts. So, that means people were adding new lawyers, lawyers were leaving, or lawyers were adjusting the percentage of time that they were devoting to public defense throughout the contract cycle. At that time, we were not tracking start and end dates for lawyers in the same way that we are now, and so it was very difficult for us to measure the amount of prorated MAC that had been used under the contracts. That changed in 2023 to 2024, and so we now are tracking prorated MAC, and that gives us the ability to see much more clearly what MAC utilization looks like. If we could move to the next slide.

Before we jump into an actual depiction of those MAC utilization rates, I do want to just make clear that while we are measuring the number of cases that providers take in a given

period based on their caseload reports, that is not a measure of whether or not they're providing competent and effective legal representation. We are not asking those kinds of qualitative questions of providers right now. And our caseload reports are limited in that they were due to us at the end of March, and so we're looking at caseload reports that are about six weeks old right now. Additionally, the caseload reports don't compare to overall filings in a county. So, it doesn't tell us if we are keeping up with the number of cases that are filed in the county or not. All right, let's move to the picture one.

So, this slide gives a lot of information about MAC utilization. You can see in the upper left-hand corner, the timeframe that we're looking at, and this is really our new contract cycle when we started prorating MAC. And so it is that change in the ability to prorate the MAC that gives us the ability to depict this information. In the 337 Group 1 category, you can see all of the counties that were identified by Senate Bill 337 as needing to do a crisis plan. And you can see the prorated MAC that exists within those counties, the overall utilization rate within those counties, and then the number of unrepresented persons in those counties. It should be noted...

Harry Noone:

Very quickly, Director Kampfe.

Director Kampfe:

Thank you, Harry.

Harry Noone:

For the record, my name's Harry Noone. I'm a research analyst here at OPDC. What you see for the column for the unrepresented count is the count of cases, not persons. And that count is inclusive of cases and warrant status.

Director Kampfe:

Thank you, Harry. And please feel free to jump in because Harry is definitely the subject matter expert on this, so he'll keep me on track. I would note that the criminal utilization rate statewide is about 88%. So, when you're looking at a point of comparison, it is about 88% statewide. And so that's for all counties, ones that have unrepresented numbers and ones that do not. And then we can see where each county is in their utilization against an average number and compare that to the unrepresented. So, I am happy to answer questions that folks might have about this information. There are some things that jump out. For example, you see a county like Lane County that maybe has 79% utilization rate, but they also have only six

unrepresented persons in Lane County. That tells us that there's likely less case filings in Lane County, and so they haven't needed to increase the utilization rates in order to keep up with the demand for lawyers. Our understanding is that the unrepresented in Lane County is more related to conflict cases than it is to overall attorney capacity. And so we can start to tease some of those things out from the data.

Chair Jennifer Nash:

Commissioner Harris.

Commissioner Robert Harris:

Thank you, and thanks for putting this together, Director Kampfe. We had a couple of conversations on the phone, Harry as well. And I think this helps a great deal for us to navigate this unrepresented crisis. First question, what's the difference between Group 1 and Group 2?

Harry Noone:

For the record, Harry Noone, research analyst, OPDC. Group 1, my understanding is that these were the counties which were first outlined in Senate Bill 337's crisis team. And the second group came along somewhat later. We also included Clatsop County, which was not necessarily part of Group 2, but it was relevant to a recent report from OJD on their unrepresented problem in that county. So, we felt it relevant to include them there as well.

Harry Noone:

Okay, thank you. And then the second question is, there's an old saying that you can drown in a river that's on average four feet deep, right? Because some places are 12 feet deep, and some places are 1 foot deep. So, looking at some of these counties with unrepresented folks in them, and then looking at the current utilization rate, that's the entire group. Not to pick on anybody, but looking at Marion County, they've got the lowest utilization rate, but one of the highest unrepresented count rates. That county, I believe, has a system of a large consortia, a nonprofit. I don't believe that there's any state trial-level strike force people in there. Perhaps there is. I didn't see any appointments in there. But can we break out a little more about which contractors are lower in utilization rates and then go to them and ask them about what do you need to get your utilization rate up or what's the hang up? And so maybe the best way to increase capacity would be looking at the ones that are underutilizing, find out why and help them increase that rate. Can we see that piece of information, utilization rates by provider?



Director Kampfe:

Thank you for the question, Commissioner Harris. We do now have a state trial-level office in Marion County and we're having an open house tomorrow, which all of the commissioners are invited to attend, and we would love to see you there. In terms of when you have more than one provider in a county, are there discrepancies in the utilization rates among the providers? Sometimes there are. And even within a provider, sometimes we see that within one contract, discrepancy in utilization rate among lawyers under one contract. And so at the commission level, it seems like it's a good idea to talk about the counties and what the utilization rate is in counties. If we want to have a follow-up conversation with specific contract administrators about the administration of their contracts, I think it would be appropriate for the agency to do that by reaching out to the providers in the community and having those conversations directly with them.

Chair Jennifer Nash:

And to follow up a little bit on that, we did receive public comment from a Marion County provider that indicated that the consortium is essentially over capacity and could add people, but there isn't adequate funding, and other providers might be having trouble filling vacancies. And is there a way, and I'll just ask, not that you answer the question directly in the meeting, but to have the agency look at it, is there a way to shift around some of that capacity so that the consortium can bring people on if they have people to do that? Adjusting with other providers if they can't fill positions that have been vacant for a long period of time, so that we can get the utilization rate up and the unrepresented count down.

Director Kampfe:

Briefly, the commission approved vacancy policies for the agency around vacancy funding. So, that says how long we would pay for vacancy funding for a position before that entity kind of lost position authority for that position. And so the agency is using the commission's adopted policies on vacancies. And if a vacancy is open for the correct period of time for the position authority to end with that entity, we would then look statewide at where the need was in order to repurpose that funding for a different position. It may be in the same county, or it may be in an underserved county in a different area. So, it's not always from one provider to another provider in the same county. It's looking at where the need is across the state.

Chair Jennifer Nash:

That was my follow-up. That was really what I was asking. I mean, we have a policy. So, I meant if they couldn't fill that position and it expired, then can that money be taken and reallocated? So, thank you for that. Commissioner Harris.

Commissioner Robert Harris:

Thanks. Just to follow up on the conversation that Director Kampfe and I had. And thank you, Chair Nash, for jumping in on that too. I think that's an issue that revolves around the same issue we were talking about, which is providers within a county where some have lower utilization rates than others, and how can we manage that? How can the agency manage that? I take your point, Director Kampfe, that whether or not what the commission's role is in helping the agency or guiding or ordering the agency or directing the agency in some way, I suppose, depending on what our authority is, to dig into these details a little bit more and report back and tell us what's going on in this county. I guess that's for the commission to decide whether how much – I don't want to call it micromanaging because I'm not sure it is. But just to say, "Hey, give us more information on these counties. Tell us which of these providers are having higher utilizations." And I'm not saying that we need a big, long, confidential report that you may have based on discussions of each individual provider.

But I guess I'm just throwing out there, what is our role? When we see a county that's at 71% utilization rate and has, frankly, one of the worst unrepresented crisis in the state, and should the commission just know what the county utilization rate or does this merit the commission getting more involved? Or do we just hold the executive actor accountable for these numbers and say, "It's your job to go figure this out," I guess. I'm just throwing that out there. I'm not sure what the right answer is because as a volunteer commissioner who doesn't know nearly as much as you and your staff do, I'm reticent to jump in too much into these details. But I think something like this, given the level of the crisis, might merit some additional involvement by the commission ordering or directing the agency to get this information and pursue some of these questions. Maybe, maybe not. Maybe I'm totally wrong and no one else thinks like this. But when I see some of these numbers, I'm not too concerned about anyone that's over the standard 88% statewide normalized utilization rate. I think they're doing what they need to do probably. It's close enough. Maybe even if they're slightly under, close enough. But if you see some sort of

outliers, at least among the providers, and I'm not asking you to give a list, but if you see something, perhaps that merits some more formal presentation to this commission asking specific questions. Thank you.

Chair Jennifer Nash:

I'll also note, I mean, we haven't talked about the couple, three providers that are way over, which is also problematic. I mean, we have some providers that are taking more than 20% more of their MAC, which is problematic. I mean, we prorated it for a reason so that we don't hit a wall like we did last year. But hitting the wall also means that providers were taking too many cases, and we don't know because we don't measure this, but perhaps not providing the kind of qualitative, robust representation that we would expect because their caseloads are too high. So, that is also something that I think that we need to, well, that I'd ask the agency to pay attention to as well. I mean, there's both because of the high caseload month to month, but also then what happens? Now we're in April, maybe they say, "Sorry, we took all of our cases for the entire year," and then all of a sudden we have an Unrepresented Persons Crisis that blooms in that county because providers are saying, "We're not going to take any more cases." Oh, Commissioner Wright.

Commissioner Jasmine Wright:

I guess I'm just wondering, obviously, I keep an idea of what's going on in my own county. And I guess I'm wondering why I don't remember the numbers in Klamath being as high as I see them here at 122%, and the unrepresented crisis numbers being as high. And I guess I'm wondering whether or not is this me just not having... Have the numbers always been this high in Klamath, and I just didn't notice them? Or has this been a sudden spike?

Director Kampfe:

I think I've got Harry on with me to help answer the question. In terms of the unrepresented numbers, as Harry mentioned before, our numbers are inclusive of cases and warrant status, and OJD's report is not inclusive of numbers and warrant status. So, ours may look higher because we're counting different cases than they are. And then in terms of MAC utilization, we're basing it on caseload reporting information from the providers. So, this is by self-report from the providers. Harry, is there anything additional that you could add to help in this conversation?

Harry Noone: Yes, I think typically when we look at the utilization rate, we are talking about Odyssey data, OJD data. This is our, as Director Kampfe mentioned, this is our caseload reports which come directly from the contractors themselves, and so there will be some variations in the numbers based on that. And the reason why prorating is so important is because if you just use the nominal value, you tend to overestimate the capacity that's available on any given day. So, prorating is really, in my opinion, a very welcome development that we've worked across teams and agency to start to use, and it's really a more precise measure than the nominal measure which tends to overestimate the capacity.

Chair Jennifer Nash: Thank you. All right. If there aren't any other questions, let's move on to talking about the pilot project.

Director Kampfe: And Harry is going to walk us through the pilot project presentation.

Harry Noone: Thank you, Director Kampfe. For the record, Harry Noone, I'm a research analyst. I'd like to share a project we've developed. I've worked very closely with our trial support and development staff as well as our IT staff, and what this project is in a nutshell is an attempt to upgrade our process by which we assign cases on unrepresented persons, and most especially for the FIP program. More specifically, we're trying to upgrade our IT tools available that we use in that process. And so the basic problem that I've seen is, of course, there are so many unrepresented cases. And based on that, there's a high volume of communication which comes into the agency, which is hard even for most people within the agency to see. So, the high volume of emails and phone calls have come in, and basically, they have very similar questions. "I have a case which needs an attorney. Can you get me an attorney?" Or "Where does this particular case stand?" And so what I've seen is that when we base such a fast-moving program on that type of communication, it's very difficult to get an organized response to those pending notices. And so the theory here is that if we collect these messages in a single place, we can impose more organization over the process and really try to increase the efficiency by which we respond to these notices. So, if you'll begin with the next slide, please.

So, this is what we've come up with. And again, I've worked very closely with our unrepresented persons analysts and IT specialists who have been very instrumental to this project. And so this is a simple intake form that people can use instead of contacting us by email or by phone, and this form we are making available. We're piloting it in several jurisdictions right now, which we'll talk more about later. But basically, people can use this form in the field to let us know that "Look, there's a case where an attorney is needed," or perhaps a small handful of cases, and they can ping us basically in a direct way. Especially if they see inconsistencies with information that they see on the unrepresented persons dashboard, which has come up sometimes. They can also provide us additional context besides the simple details we're collecting here, such as case number, custody status, and that sort of thing. So, before I get into more of the mechanics of the workflow that this form generates, I'd like to show a little bit about the timeline of development of this project. If you'll go to the next slide, please.

So, I've talked a little bit about what I've seen to be the current challenges based on our current practices. I personally have been working on this project since December. I have worked on a weekly basis with our trial support and development staff and our IT staff to make sure we are creating something that's going to be useful and that has minimal technical issues and so forth. And so not only that, we've conducted outreach to stakeholders across the state. We've met with some of our colleagues from the State Court Administrator's office, who've...as we move forward with our data share agreement, we're going to have more resources available to start to plug into this process as well. So, I'm very excited about a new data warehouse we are about to begin utilizing, especially for this project.

I've also engaged with stakeholders and specifically in Douglas County, where I've seen relatively... Obviously, there's a high number of unrepresented persons in that county, but I've also seen a high volume of communication coming from that county. And I've also met with Coos and Curry County Court staff and Lynn County Court staff and one of their provider staff persons in that county. And where we are today is we have just added a second unrepresented persons analyst who will be working through these case assignments in addition to the one we've had all along. And if you'll go to the next slide, please.

We've begun piloting this form about a week ago, and we've gotten some people in the field using it. And it's really an opportunity for us to work out some of the challenges. This is a new process, a new thing we're experimenting with that I believe will make our process more efficient. But the reason why we haven't rolled it out to the entire state is we, again, we want to make sure that we're minimizing the potential for errors and that we understand the tool that we're about to be using on a broader scale. And so we can start to think about the types of things that our stakeholders need when they use this form. And you see as we move along in the future, we intend to roll this out. My goal is the beginning of June. And this process is once we roll it out, there's opportunities for tailoring and making sure that as new problems arise, we are being consistent in responding to them, and maybe it's a technical bug that arises or what have you. We'll have the opportunity to continue to try to innovate with this process. And that as we move forward with our transition to DAS and maybe potential future hourly programs which are on the horizon, that this type of tool, since I don't think the communication problems we are seeing are going to go away. We can start to think about how we can craft this tool to meet the needs of future programs as well. If you'll move to the next slide, please.

So, this is what happens when someone uses the form. It begins a workflow that our analysts will verify the case details of as they're making approvals, okay, on notices of pending case assignments of unrepresented persons. And so what happens when they make that approval is one of the biggest reasons we get contacted, again, is people want to know what happened to their request. We have limited staff to respond to that communication with. And so what this is going to do instead of hand typing responses, is it's going to generate automatic communication. There's two messages here from our testing environment, that one will go to court staff, one will go to the approved attorneys. And you'll notice that they reference the case details, which the very first slide had the client name, the case number, and so on. If you'll go to the next slide, please.

So, this is sort of the way to visualize the whole workflow. The intake form is very beginning. So, there are three types of submitters. We're going to make this available to judges and court staff, attorneys and their staff, and our own staff have the ability to initiate this process. And so when they use the form, it

creates a task. Basically, one of the chief advantages of this workflow will be that these tasks get queued up in a way that our analysts can see and have greater command over. So, they're going to be consulting this queue as they are contacting attorneys to get on these unrepresented cases. And as they make their decisions, they collect data on these cases. They verify the details. A murder, there's a murder in Clackamas County, for instance. We verify those details. And when we do that, as I mentioned, we're going to be sending automatic communication. So, automatic emails, but this whole system will allow me to collect every data point that is here, from the intake through the approval. So, I can see how many approvals come in, how many we turn out. And basically, we will be replacing an old database that we're currently using to report on and use this going forward. That's my goal, that we can, by putting this in place, we're going to be generating communication at the very same time as we're collecting data. Next slide, please.

So, here are the benefits that I see. The main one is organization. We're not going to be as reliant upon emails and phone calls, which are very difficult to organize. But instead we're going to queue these up and allow our analysts to churn through them in a way that is going to increase the volume of the case assignments we can turn around. People will not feel the need to contact us as much anymore to learn of their pending assignment. Since we're going to be auto-generating emails, it's going to create a more consistent message. So, it's going to be a more transparent process. Since we're generating these messages, people are going to know instantly. And one thing I've heard is that it's fairly common for attorneys to not necessarily know if we've approved a particular rate relevant to FIP cases, or if they are indeed on a particular case, I think this will help cut down on that confusion.

And my favorite part is, of course, as someone who works very closely with data, that every single thing that's done on this form and in the workflow that comes after it is collected. And so at the very same time as we will be generating these messages of approvals or denials, we are collecting all the data from this process, and we'll be using that to report on the program going forward. Next slide, please. Well, that's all I have for now, except if there are questions or comments, I'd be happy to take them.

Chair Jennifer Nash: Thank you for your work on this. I really appreciate it, and it looks like this is going to make a pretty big difference, especially with the communication piece, people knowing, both court and lawyers, what the status is of their appointments. So, thank you for working through this and presenting it to us. Does anybody have any questions or comments? No. Okay. Well, thank you very much. All right. I want to do a quick time check. It's 12:23. We have about two hours more material on the agenda. We're scheduled to adjourn in an hour. So, my question to you is, do we want to add additional time on? Can people stay? I have time until about 2:30. Or do you want to push one of these items to tag onto our executive session that we're going to schedule? My preference would be, and I think the agency's would be to try to deal with it today. And the two big items are the six-year plan, which I would tackle first because I noticed while we were sitting here that there's an action item attached to that. And then the second one is the briefing on the hourly rate and economic survey, and that one is scheduled for 45 minutes. And if we were going to move something, that's what I would slide. Any preferences, thoughts? Tom.

Commissioner Tom Lininger: I have another obligation that requires me to leave at 1:30.

Chair Jennifer Nash: Okay.

Senator Floyd Prozanski: And I have to leave by 1:15.

Chair Jennifer Nash: Okay. All right. Well, let's check back in after we talk about the six-year plan, which we have scheduled for an hour. So, let's get started. Six-year plan. And this is specifically related to workload and caseload standard discussion. Oh, Mr. Dietrick, hello. I did not know you were going to be available.

Eric Deitrick: Thank you. Yeah. Can you hear me, Chair Nash?

Chair Jennifer Nash: Yes.

Eric Deitrick: All right. Well, Chair Nash, members of the commission, this is Eric Dietrick. Just to preview this, in March, this commission reviewed a draft of a proposed six-year plan aimed at reducing Oregon's public defender deficiency for adult criminal cases and expanding the public defense workforce over a period of six years. At that meeting, there was discussion about one of the



assumptions of the six-year plan in the Oregon report, specifically the amount of casework being 2,080 hours per year. At the end of the discussion, there was consensus amongst the commissioners that the six-year plan should probably use DOJ standard of 1,578 hours of casework per year. At this meeting, we are seeking further direction on how to proceed with the six-year plan. Specifically, OPD staff is seeking clarification as to whether to use...the six-year plan, whether it should rely upon the caseload numbers in the Oregon report or those in the National Public Defense Workload Study. Now there is a summary of the relevant statutory mandates regarding caseload and workload, both in your materials from the agency and from those providing public comment.

Most importantly, the commission is required to establish and maintain a public defense system that ensures the provision of public defense services are consistent with the Oregon Constitution, the United States Constitution, and national standards of justice, and the commission is required to adopt policies for public defense providers that ensure caseloads are in accordance with national and regional best practices. There are two sets of published caseload standards that comply with these mandates. The Oregon report, published by the American Bar Association and Moss Adams in January of 2022, and the National Public Defense Workload Study published by the RAND Corporation, the American Bar Association, the National Center for State Courts, and lawyer Stephen Hanlon in July 2023. There is a chart in your materials that demonstrates the annualized caseload standard for both options, assuming 1,578 hours of casework, 1,650 which is what Washington just used, or 2,080, the assumption which is in both the Oregon report and the National Public Defense Workload Study.

Chair Jennifer Nash:

Do you have a slide that shows that?

Eric Deitrick:

I don't.

Chair Jennifer Nash:

All right, I have it pulled up. Let me see if I can share my screen. Nope, that's not it. Oh, yep, there. Can everyone see the chart that has the Oregon study and the national study? Okay. So, this is the comparison that was in the materials, just so people can reference it while Mr. Dietrick is talking.

Eric Deitrick:

Thanks, Chair Nash. And at this point, the commission is requesting that the commission discuss the various options and direct us on whether to use the annual caseload numbers in either the Oregon report or the National Public Defense Workload Standard to complete the six-year plan. We're also just, as a part of that, requesting to get clarity on the number of case hours the commission would also like us to use as the foundation for those standards as well. Thank you.

Chair Jennifer Nash:

Thank you. So, I think there's really two things we need to talk about, as Mr. Dietrick said, and maybe it might make sense to take those one at a time. And of course, there's an interplay, but it might make sense to talk about the workload...I'm sorry, the caseload study first, Oregon or national. And actually, I know Commissioner Harris has done a lot of work on his own digging through these numbers, and he was actually part of the panel of lawyers who participated in the Oregon study. So, he's got some background information about that, and I know he has some strong feelings. So, I'll kind of let him talk about those.

Commissioner Robert Harris:

Thanks, Chair Nash. I wasn't really expecting that, but I will. This is not pre-planned, you guys. Yeah, and I've talked to Eric on this as well, and we've had some candid conversations on this. I was on the misdemeanor panels, and frankly, I thought that the numbers that the panels came up with were too high per case for a couple of reasons, not on some stuff, but for a couple of reasons, like how many cases should go to trial. Because once you say 15% should go to trial, these numbers go up a lot. Because as you know, when you go to trial, that increases the average amount. So, if you think that trial level should be 5 or 10%. [Inaudible 03:28:16] 15, it's going to increase these numbers by 30, 40% probably, which I think may have would have happened on the panel I was at. These are the Delphi panels, as they call them, and they're pretty subjective, in my opinion. And so not that they're not valuable, but I am saying they are somewhat subjective. And so you can have a couple people on the panels that...