

Chair Jennifer Nash:

Good morning and welcome to the July 24th, 2024, Oregon Public Defense Commission meeting. My name is Jennifer Nash, and I am the chair of the commission. Today we will be discussing items related to the unrepresented persons crisis, including a response to the Governor's letter to the commission. We'll be discussing budget information, including requests to the E Board and the policy option package requests that will be made by the commission for the 2025-27 legislative session. We are going to be, after this afternoon, after a break, hearing from Judge Greenlick, who's going to talk to us about what's going on in Multnomah County. And we'll receive updates from the Appellate Division and a report regarding the financial case management system project and what's happening. And then Director Kampfe will also update us on operations issues and other things of import for the commission.

So, with that, we'll start with public comment. I want to acknowledge receiving written public comment from Nathan Law, James Comstock, and Laura Rittall. And we have requests for oral public comment from Carl Macpherson and Addie Smith, and I'll start with Mr. Macpherson. Public comment will be limited to three minutes.

Carl Macpherson:

Good morning, Chair Nash, members of the commission. My name is Carl Macpherson, executive director of Metropolitan Public Defender. We're an office of 225 people and we're the primary provider in Multnomah and Washington County. I'm also a member of Public Defenders of Oregon and we are proud public defenders representing clients across the state. I want to start, first of all, by thanking Chair Nash for your leadership. Since you've been chair on the commission, we recognize and believe you've done an excellent job in leading this commission and working on reform. Secondly, we want to thank the commission for your time. You are volunteering your time at a time of crisis, and we recognize that and want to thank you for that and your hard work and diligence.

We particularly want to thank you for your commitment to training and supervision. Just want to reiterate that in the last six years at Metropolitan Public Defender, we've brought over 110 new attorneys into the public defense system in Multnomah County and Washington County. The public defenders are the training ground, and we are the offices that are bringing in new people into the state, which the state desperately needs as we do not have enough attorneys to provide representation. So, we appreciate and look forward to your continued support of training and supervision so we can continue to provide new

attorneys to the state and be the pipeline for training and supervising excellent attorneys.

I raise that point because I think that in other aspects of our system outside of OPDC, I think that there are people who want to point fingers at OPDC and the providers as the cause of the crisis, and I think it's very misguided. There's a lack of accountability, in my opinion, from other members of the system, people who many of them have never represented a client, have never been a public defender, or if they have, it's been a really long time, and they are no longer in touch with what it actually means to represent a client at this time. We have grave concerns when we have judges and other people in the system telling us that we should be just reassigning cases to people who might not be ready to take those types of matters and handle those types of clients, people who believe that we should just be wholesaling, reassigning caseloads. That violates the ABA 10 principles of a public defense system and also violates our contract, which requires vertical representation. And those are things that we've been told about. And I will continue to pass it on to the agency, so you know when that's occurring because that's just not something that we're going to do. It's unethical, violates national standards, and also violates our contract. So, we will not do that going forward. And I want you to be aware of that.

I also believe that, at times, the fingers pointed to take away blame from – I don't believe in blame – but people who don't want to actually recognize what's going on. The unrepresented crisis is not just because we have too few lawyers. The unrepresented crisis is because of inefficiencies within the system. And OCLA and others have gone to the UTCR and other committees and said, "These are things that really should happen to create a system that functions better for our clients and for everyone involved," which will also help them with retention, and those requests and proposals have been repeatedly rejected. So, I just want to provide my personal support to the commission and all the work that you're doing and my recognition that there are proposals that have been made to other actors and other people within the system that have been rejected that would help the unrepresented crisis. But I will give you my commitment. We will continue to make those proposals and continue to push the other aspects of the criminal legal system to do things and make change that will help our system, help our clients, and will alleviate the unrepresented crisis.

Because the answer cannot be to simply give more cases to people who are already overloaded. That is bad for clients, as you all well know. It does not work for the system overall. And what you will do, if they

succeed in that attempt, is you will have more attrition, and you'll have people who will leave, and rightfully so, particularly when they can go across the river to Washington State and have lower caseloads. So, thank you so much for your support, training, and supervision. Thank you for working towards a workload plan and having a six-year plan to actually do something that's going to help with public defense. And please hear with skepticism people outside this community when they try to just levy blame against yourselves, the commission, the state agency, and the people who are committed, dedicated, doing the work every day. Thank you very much.

Chair Jennifer Nash: Thank you, Mr. Macpherson. Next is Addie Smith.

Female: Chair Nash, I do not see her on the screen.

Chair Jennifer Nash: All right, well, we will move on then, thank you, to the next item on the agenda, which is an update on the unrepresented persons in Oregon Courts, Director Kampfe.

Chair Jennifer Nash: You have no audio, you're muted right now.

Mona Riesterer: She's having some technical difficulties and she's trying to work with our IT department to try to see if we can get her some help. I do know that Mr. Law is on. He also wanted to provide public comment as well.

Chair Jennifer Nash: I'm sorry, I missed that. I had him only as written comment. So, I'm happy to. I'm sorry about that, that's my fault. I'm happy to have him speak. Mr. Law, thank you.

Nathan Law: Thank you, Chair Nash. Good morning, members of the commission. I appreciate the opportunity to speak today. I'm the owner of Cornerstone Law Group, a law firm in Washington County that's been committed to public defense for over 30 years. Throughout the unrepresented crisis currently, I've been asking myself, been challenging my firm, how can we help? What difference can we make? What is our ultimate main value that we can provide? And my answer has been that our real value lies in being able to attract, train, and retain new attorneys for public defense. As an organization that's established, that's been doing this in the county for a long time, that's the real value that we have. And I think as a defense community, we've made significant strides in working towards a new monitored workload focus. It's crucial that we celebrate that progress. I really want to capitalize on that momentum by utilizing the active resources that we have that are already in place toward stabilizing our workforce. So, I recommend

adopting and really encouraging a mentor center model to systematically address public defense capacity in Oregon. It's really time to systemize it effectively, work on attracting, training, and retaining new attorneys.

My journey in public defense began unexpectedly, and I was exposed to this discipline from a private firm situation, from a private firm scenario where I eventually then trained numerous other attorneys over the last decade. Had not my mentors in that setting invested in me heavily, I wouldn't have engaged in it over a decade of public defense myself, nor would I be continuing now to dedicate my firm to that. Today, my firm faces challenges with attorney departures due to the uncertainty in public defense, and this makes it difficult to hire the replacements. And a reason I'm so passionate about this is because I live it every day and see it every day, and I see what the individual attorneys are struggling with in terms of their decision making for whether to stay in public defense or not.

We have made the effort to be an approved SPPE firm. We have a new attorney from out of state who's starting the SPPE program with us next week in August. And at this point, we don't know how he's going to fit into public defense. Currently, there's not room in the annual contracting for SPPE, at least in our county. And we don't know if he's going to be able or allowed to work on cases on an hourly basis to help alleviate the unrepresented crisis. So, I think we've been given this gift of the SPPE program as another potential way to open up this pipeline for new attorneys that's really going to be attractive, but it's going to be useless to public defense if we don't have the mentor centers to implement it. So, I would just urge the commission to lean into organizations that are established and ready to train new attorneys, and let's leverage all organizations, whether nonprofit, state-run, private firms, to be set up to train new attorneys and get Oregonians the representation they need. Thank you so much.

Chair Jennifer Nash: Thank you, Mr. Law, I appreciate it. All right, Ms. Smith, it looks like we have you now as an attendee and you can make public comment. So, when you're ready, please feel free to start. You're muted.

Addie Smith: Can you see me and hear me now?

Chair Jennifer Nash: Yes, thank you.

Addie Smith: Awesome. I wanted to say to Carl Macpherson, if he's still here, he has refused to return my phone calls or even take my phone calls, and I've

only emailed him a couple of times, and I've only called him maybe three times. Before I begin, I also want to say this board has no Black board members and this board has no members who have either been defendants in this system or a family member of a defendant who's been in the system. And I believe that that should change as an African American mother and a family member of a person who is a defendant of Oregon jails and OPDC represents, I would like to be on the board. I would like to have Justice Walters or the new justice to nominate me to be on the board. I would like to participate in the structuring and in the whole system.

My name is Addie Smith. Today is July 24th and I hope someone took a note of that. I do want to be a member of this board. There's no Black people on this board. That's problematic. My name is Addie Smith. Today is July 24th and I'm not trying to be hostile. I am just frustrated with your system. Today is July 24th, 2024, and I am speaking before the Oregon Public Defense Commission in Salem, Oregon. These commission members were appointed by former Chief Justice Martha L. Walters. My son Jalen Smith was accused of crimes he didn't commit. The Washington County Circuit Court, Washington County Sheriff's Department, and Washington County DA Kevin Barton and his staff worked tirelessly to systemically and structurally violate the laws of the state of Oregon with impunity and apparently support from the attorneys contracted by OPDC. Providing more bad attorneys is worse than having no attorneys. When OPDC contracts ineffective, less than adequate attorneys, a poor reflection of this agency isn't the only damage being done. It leads to civil suit.

The contract OPDC has with attorneys states that their performance and services simply must be adequate. This is mediocre. These attorneys understand that they don't have to perform well. They only have to basically show up, which is what Shelly Fuller, Melissa Garcia, Reza Khanjan, and the gentleman who just spoke, Nathan Law, have consistently done. Nathan Law is a dump truck. His contract with OPDC must be terminated. They receive thousands and thousands of Oregon taxpayer money to simply show up. The excuse that attorneys like them need more money is bogus. They must be fired. Their contracts must be terminated. Reza Khanjan, Shelly Fuller, Nathan Law, and Melissa Garcia are ineffective, poor performing, less than adequate attorneys.

Chair Jennifer Nash:

Ms. Smith?

Addie Smith:

If the increase...

Chair Jennifer Nash: Ms. Smith, public comment has been limited to three minutes and your three minutes are now up.

Addie Smith: Ms. Nash, I need to finish this please. It is very difficult to get before this board. My comments are four minutes and 34 seconds long. Please allow me to continue.

Chair Jennifer Nash: Ms. Smith, you can...

Addie Smith: I am almost done.

Chair Jennifer Nash: You can submit written comment up to 48 hours after the meeting.

Addie Smith: Ms. Nash, please allow me to continue. I am almost done. You have granted that to the attorneys who spoke before me. You didn't interrupt them when they were speaking. Please allow me to just complete my comment and I will be done. And I will submit it in writing. Please allow me to finish.

Chair Jennifer Nash: All right.

Addie Smith: I would appreciate that. Thank you. Thank you very much. If the increase in money to OPDC is to continue to pay for horrible attorneys, then this agency doesn't deserve it and has done nothing to earn it. My tax dollars. Their inadequacy is why OPDC will be named in future litigation. It is not beyond my purview why Democrats continue to treat Black voters the way you do. One of the reasons is because of the blind loyalty you've been comfortable with controlling and those days are over. I know that certain Democrats with the majority of them in Democrat-led states would rather watch this country burn than vote for a Black woman. I see it in the way you treat all of us and our children. We do not support Zionists or the continued genocide of Palestinians.

Chair Jennifer Nash: Ms. Smith, now I am going to interrupt you and I'm going to end the public comment because it's not something that we have the ability to do anything about.

Addie Smith: Ma'am, Ms. Nash, Ms. Nash, please allow me to finish.

Chair Jennifer Nash: So, I appreciate your comments, and you can...

Addie Smith: Ms. Nash, please allow...

Chair Jennifer Nash: And you can submit them in writing, and we will consider them. Thank you. And with that, we have no other people who are delivering public comment. Do we have Director Kampfe's audio/video situation worked out yet?

Mona Riesterer: I do not believe so, no.

Chair Jennifer Nash: No, okay. So, is there an alternative person who can present information regarding the unrepresented persons update that you were going to give?

Mona Riesterer: I will defer to Jessica with a head nod if she would like. We do have Harry Noone who put together the presentation. I'm not sure if she would like to defer to him to have him present that. Okay, we're going to give it to Harry. Go ahead, Harry. Thank you.

Harry Noone: Good morning, Chair Nash, members of the commission. Just a brief update on some similar slides to what we've seen in the past on the unrepresented persons crisis and THIP spending. So, if we can please start the short PowerPoint, Mona.

Mona Riesterer: Yes, just one moment.

Harry Noone: Sure.

Mona Riesterer: I'm sorry, I'm having some difficulties, please just give me just a moment.

Chair Jennifer Nash: It's the theme of the week, I think, so we'll be patient.

Harry Noone: Okay, so the first slide here is just kind of an overview of what we've...a similar view to what we've seen in the past. I changed the time dimension to just show since the beginning of the current calendar year. So, you can see the difference, sort of trend lines between different categories during that time period. I will note the unrepresented in-custody count. That sort of obscures what we've been tracking with OJD recently, which are the Betschart cases, which are getting a lot of attention in terms of our THIP assignments. And so the green line is inclusive of those as well as other cases which are not subject to Betschart. But yeah, we've seen a rise as well in the out-of-custody population on the top right there, and this is inclusive of all counties. Next slide, please.

This is an overview of THIP spending, similar to what we've seen in the past. So, the THIP spending model, which is also used to compile the costs of the projected caseload going forward, I believe, which is also being considered in this meeting, is broken out by attorneys' fees, investigators' fees, and all other expenses associated with PAE costs. And so this is historical spending. I'd be happy to talk more about the projections involved based upon these later on, if that's helpful. Next slide, please.

So, I was asked to put this together as well. I think this is important for the unrepresented persons conversation because this is a visual on sort of the impact that we might expect based upon the change of what we weight a single appointment at under different workload standards. So, right now, these are the utilization rates, what we have currently on the left under the max standard. And as we move towards full implementation of the national public defense workload standard, the way to interpret that would be, at 107%, at one-third implementation, that would mean you would need 7% more criminal contract FTE just to cover the appointed caseload, what contractors have reported to us in this cycle.

Chair Jennifer Nash:

Yeah, I want to kind of jump in here. I asked to have this slide prepared. I think it's really, really important because we keep hearing about how concerns from outside entities about MAC utilization, questions about why is it that the statewide average is... A particular provider, what's their MAC utilization? Why is it the statewide average is 88%, etc.? And my sense, and I've talked with Director Kampfe about this is that the MAC utilization is what it is because the caseload standard that we've been operating under is way too high. So, I asked the agency to prepare this slide to show if we apply the new workload and caseload standards that we've adopted under the current utilization for the current contracts, what would that look like? And that's what this slide is showing.

So, the providers are at 223% MAC utilization if we apply the caseload standards or workload standard that we just adopted. And that's really the message that we need to be carrying to the Legislature and to other entities when they start talking about things like, "Well, your providers are only doing 75% of the work or 88% of the work." They're doing that because the caseload standard that was adopted 20-some years ago is way too high. So, I just wanted to provide a little bit of context for this slide to really kind of drive home that this, I think, is a critical piece of information that we need moving forward. Sorry for interrupting you, Mr. Noone, go ahead.

Harry Noone: No, not at all. Thank you, Chair Nash. I think that's helpful context and I don't want to display a MAC utilization to imply that anyone is not fulfilling their workload. It's important to remind ourselves it's a maximum, it's not a mandate, right? So, if there are behaviors under contract, which we see at roughly 85 to 88%, that's the behavior that contractors are saying which is an appropriate workload to them. So, this is the effect of... At the full implementation, you're moving from 300 to 114. So, I hope this is a useful visual to see the effect of moving away from a standard which exists today. So, those are my comments. Thank you. And I believe that's the last slide.

Chair Jennifer Nash: Does anyone have any questions or comments about those materials? Director Kampfe, I see that Cody said that he enabled a certain number to speak. Is that you that ends in 910? No, we can't hear you. By phone though, if you called. No? We're still trying to get Director Kampfe audio. Commissioner Harris?

Jessica Kampfe: How about now?

Chair Jennifer Nash: Oh.

Jessica Kampfe: Can you hear me now?
R:Yes, we can hear you.

Jessica Kampfe: Okay, all right.

Chair Jennifer Nash: Okay, Commissioner Harris.

Rob Harris: Thanks, I just had a question for Mr. Noone, and that is that on the utilization rates, do you have those broken down by provider internally? Because one of my issues, one of my concerns is that we have at least some parity between providers within counties that are taking similarly outrageously high caseloads so that the quality or the time allocated to a client is not drastically or grossly differentiated between who they get appointed by. And I guess the question then would be what standards are the providers maybe using internally so at least you understand those, and we go towards parity within counties for our clients, our clientele that we are serving, thanks.

Harry Noone: Thank you for the question, Commissioner Harris. I can slice the data in any number of ways. It's just a matter of what would be most helpful for the commission in light of I think some of the challenges in terms of data quality which we see based on provider reports, which we're

always working to make more accurate and more effective for analysis. But I would defer to our director and the commission in terms of how to slice that number in future.

Rob Harris: Thank you, Mr. Noone. I would just suggest to the agency and to the executive director that that could be a valuable number to have for you. I'm not going to do it myself, obviously, we're a volunteer commission. But I think it is something that you should consider as far as equitable quality between clientele within counties. Thank you, that's the end of my comments.

Chair Jennifer Nash: Thank you. Director Kampfe, is there anything you wanted to add to the update regarding the unrepresented persons situation?

Jessica Kampfe: No, not at this time. I want to thank Harry Noone for jumping in unscripted and doing that update for us.

Chair Jennifer Nash: Perfect, thank you very much. All right, we'll move on to the next item, which is the update regarding the... It's not an update, sorry, I just read the wrong word, the Governor's letter, the response that we are preparing. And I'm going to turn that over to Commissioner Smith, Director Kampfe, and Lisa Taylor.

Commissioner Addie Smith: All right, Lisa, I'll kick us off and then we can sort of tag team walking through it. Does that feel like a good plan to you? Okay, great. So, as many of you probably are aware, the Governor sent a letter and the gist of the letter was what's the plan on this unrepresented crisis with a gentle reminder, of course, that we transition in January to the executive branch from the judicial branch where we are currently housed. So, the Legislative Subcommittee had a series of two very thoughtful and robust meetings discussing what that response should look like.

Based on those conversations, we've put together a letter laying out a series of things, but sort of most importantly, reminding the Governor what we've already been doing, but then coming up with a little bit more of a 90-day crisis-oriented plan. And it centers around things that can be done imminently to decrease the number specifically of in-custody unrepresented with an eye to both the September E Board and then how we're going to move that forward. I think it was our strong goal in the Legislative Subcommittee to be very responsive to the questions and to recognize the urgency with which the letter came from the Governor's office. So, Lisa, if you are open to sharing your screen because I am a tech Luddite, I would really appreciate that. Take your

time. I should have said that before I started commenting, but I'll orient us just really briefly, and then I'm going to let Lisa handle the nitty gritty, but also manage my obnoxious interjections and clarifications whenever they arise.

It starts, of course, with a letter. The purpose of the cover letter to the response is to provide a general overview of what's to come in short, succinct language that's sort of direct and responsive. So, you'll see a little bit of background is being provided to set the stage, followed by bullet points that essentially highlight the contents of the follow-up in one sentence with, as discussed, sort of a focus on the crisis plan and then the continued requests, etc. I think one of the things we really wanted to approach in this was to balance the reminder of some of these need to be long-term ongoing initiatives to ultimately end the crisis while also recognizing the importance to each of those individuals who are currently unrepresented of coming up with a solution in the short term or near term, which is a term that Lisa uses that I really like. So, you'll have the overview letter and then we dive right in and get into some of the details.

I would also say before Lisa jumps into those details, the other pieces that we really tried to highlight here were what do we expect this will do pretty clearly? What is the change you're going to see? What is the cost? What are the barriers to any of these solutions? What are the sort of built-in supports for these solutions? And then sort of at the request of the Governor in her letter, an inclusion of what her office can do to help support us as we attempt to put some of these plans into action. You'll see bold subheadings that really walk through all of those puzzle pieces to make it pretty clear what we think we can do, what we're up against, and what kind of support that we need. So, it's meant to be both a response but also hopefully a conversation starter with partners, not just in the Governor's office, but criminal justice system-wide about how to start or continue to chip away at these things. Lisa, you're welcome to correct anything I just misspoke about and jump in. And I guess my other question to the commission would be what level of detail would be helpful at this point in terms of walking through the response? We're happy to go deep into the details, but we also recognize people's time is valuable.

Chair Jennifer Nash:

Well, I'll jump in and say my expectation, and I'm sure it's true that everybody's reviewed the commission materials and has reviewed the plan and reviewed kind of the update that I provided yesterday, and so I think it might be a more efficient use of our time to just open it up for comments and questions. What do you think?

Commissioner Addie Smith: I love that.

Chair Jennifer Nash: Okay.

Commissioner Addie Smith: I think that's great, Chair Nash. I appreciate that input. That's the direction I was leaning. So, you've validated my suspicions. Thank you.

Chair Jennifer Nash: You can call on whoever you want to.

Commissioner Addie Smith: [Laughter] We're on Vulcan mind meld today, clearly. Go right ahead.

Brook Reinhard: Thanks. I did read this. I appreciate the materials that are here. There were a lot, but I was able to get through them. I think my question about response to the unrepresented crisis is whether we're able to shift our Trial Divisions to try to do more out-of-state recruiting because I think that will really bring in providers, particularly since the Trial Division can recruit at a higher rate than nonprofits or even consortia can, once you calculate what it works out to with state benefits and the other opportunities of working for the state. And as part of that, I noticed that it looks like so far, the Trial Division has taken maybe 263 cases. I don't think we delineate in the letter exactly how many cases, or maybe we did, I can't remember which material says that, but it will be useful to know how much they're ramping up now. Because I understand since December and for folks that were hired last month, they probably don't have very many cases yet, but I would love to see more of a breakdown of Trial Division, particularly as we're asking the Legislature to invest at least through the E Board in more Trial Division. I know maybe not opening a new office, maybe instead we're adding capacity to a current office, but regardless, I'd love to see that. Thank you.

Commissioner Addie Smith: I think that's a really great point. We certainly talk in the recruitment plan that is the next biennium POP request about recruitment, but you're right, an area that we can take another look at is how we're going to talk about out-of-state recruitment. Because I do think a lot of our efforts heretofore have been focused on in-state recruitment. And even as we heard from testimony today, one area that is lesser tapped is that out-of-state recruitment. So, that's something Lisa and I can take a look at, in terms of putting a line in the letter about that for the POP. The other comment about Trial Division and what's happening there, we do talk about how many cases have been taken, as you've mentioned. And I think as we're asking for more, sort of further clarifying what that capacity is, is an area where we can, again, kind of go in with a fine-

tooth comb and ensure that we're discussing it in a way that you just mentioned. So, I appreciate that feedback. Susan? Oh, sorry, Lisa, if you wanted to jump in, by all means.

Lisa Taylor: I was just going to say, it'd be pretty simple for us to add a graph that kind of shows how capacity has increased as we've established these offices.

Commissioner Addie Smith: I love that idea. As you know, I keep pushing for more visuals, so that sounds great. [Laughter] Susan.

Vice-Chair Susan Mandiberg: Yeah, thank you. I have one kind of nit and one more substantive comment. The nit is that I think that the cover letter would benefit from a sentence pointing out that this is a cover letter that is summarizing what's going to come in the fuller report because I was reading a lot of material, as I'm sure the Governor's office people will be, and I didn't realize that there was a report that was coming afterwards till I got to the report. Certainly hoping that what was in the summary wasn't all of what was going to be given to the Governor's office.

The second more substantive comment I had is that the letter and the report talk about MAC, and we've heard over and over again that people are confused about whether MAC is a maximum or a requirement. And I think that we should take every opportunity to clarify what MAC is, and I don't think either the letter or the report does that effectively. So, again, a sentence at the beginning of when MAC is mentioned, and also then in the report, I think it should be very clear what MAC is. I understand that we need the POP that we're going to be putting in to move beyond MAC because the workload approach has to be funded. But I was wondering whether it was important, and maybe it's in there and I just missed it, important to say that our plan involves moving beyond MAC to a different way of thinking through how people are contracted to do this work. And like I say, if that part of our plan was in here, I missed it, and maybe it needs to be emphasized more, more than it is.

The third thing is, I think this comes out in the report but wondered whether it should also be mentioned in the letter, and that is that there's part of the plan for more administrative money going into OPDC, especially for accounts payable and PAE staff. And I thought maybe it could be made clearer, especially in the letter part, the overview part, how increasing OPDC staff will help solve the unrepresented problem. I think there's a connection between those two things that needs to be made very clear because otherwise, I think the reaction might just be,

"Oh, you're just looking for more staff money, you're just looking for agency money." And I know that I've heard providers in the past say, "You all are looking to increase your own capacity rather than to increase provider capacity." I think we need to spell out the relationship between those two things as clearly as we possibly can. That's it.

Commissioner Addie Smith: Susan, I appreciate that. I have to admit, I'm embarrassed that the letter doesn't contain that note in the front. I'm usually a tell them what you're going to tell them, tell them what you told them, and then tell them kind of person. So, I take full accountability for that and appreciate that, and we'll absolutely get that added in. With regard to your other two comments, it's a good point. We're really trying to balance out how much we want to talk about the six-year plan and the bigger, longer-term plans versus focusing on those sort of near-term plans. So, one of the things Lisa and I can strategize is, we certainly do talk a bit about the need for agencies or support staff, administrative staff, etc., but we can certainly highlight with a sentence or two a little bit more thoroughly the benefits of that.

And then one of the things we can talk about is the letter sort of references the six-year plan without the same level of detail as the other timeline sections of what we're doing. So, Lisa and I can game plan about how we include some of these longer-term change strategies that you're discussing in a way that's approachable, overwhelming, but doesn't detract too much from the, "We hear that you really want to know what we're doing immediately to tackle this, and here's how we're looking at the long-term." So, I appreciate all those comments and you're a close read. I have to admit, I noticed a capitalization typo in this and was ready for that to be your nitpicky. [Laughter] But we will also send it through another round of proofreading, of course, before it goes out. That's why the draft watermark is still there. Thank you for those thoughtful comments. Judge?

Bob Selander: I agree with much of what Susan said, but I think we have a flaw in our basic calculations, and I think it's going to come up at some time. We all agreed that attorneys should have a maximum caseload, so they weren't overworked. And we determined that caseload by looking at each case type, giving each case type a necessary number of hours, and then simply adding up those hours when they were appointed to an attorney and said the attorney has now reached the caseload. What we have not considered is the criminal episode, and the criminal episode simply means that if you have somebody who's charged with a driving under the influence or driving while suspended and a reckless driving, under our calculations, that would be a certain number of hours. But in

reality, an attorney is not spending that number of hours on what amounts to one case or one case in a part. That is equally true on more serious cases, such as rape and assault that are part of the same criminal episode.

On our calculations, it seems to me that potentially we're overpaying the attorneys and we're underestimating their ability to take cases. So, we're asking for too many attorneys and too much money. If we looked at the criminal episode calculation in there and put a variable that somebody could ask for more money, if in fact the attorney that got five driving while suspendeds actually had to spend a lot more time than it appears, we could solve the problem. But I think when it gets to the Legislature, we have everything in favor of the attorneys. And I agree they should not be overworked. I agree they should be adequately paid, but I don't think they should be underworked simply because we gave them five cases that are essentially one case. And I don't know if I've explained it very well, but I am reminded of the quote on statistics that said statistics are like a bikini. What they reveal is interesting, what they conceal is critical, and it seems to me that we're concealing some critical information in our calculations.

Commissioner Addie Smith: Judge, I really appreciate that comment, and I think I might even look to the chair in general to say perhaps this is a topic that's slightly beyond the scope of this immediate response letter, but worth taking up at another time. I know a lot of careful consideration, including voting and other board matters, has occurred in the past that have sort of set these standards where they are. And so I'm not sure that at this moment in time we can make adjustments to this letter. I do think though it's worth having a conversation perhaps at a future meeting about some of these measurements, how we're using them, and why we're using them. And getting to the extent that it's helpful to all of us and statisticians and our data people here to break some of this down for us to help engage that conversation. Because I, like you, only know enough about statistics to be dangerous, but not particularly helpful.

Chair Jennifer Nash: I think that makes sense. I mean, that is always a difficulty when we calculate hours in cases. And I think that that's a great topic of conversation that we can have at a future meeting that's specifically related to case forecasting and how that's tied to the budget, which is kind of out of our hands to some extent. But yes, I think that's outside the what we're talking about right here, but it is very, very important.

Commissioner Addie Smith: Great. Peter.

Peter Buckley: I'd let Jessie go first here if she has things to comment on this.

Jessica Kampfe: Oh, thank you, Commissioner Buckley. Can you all hear me? This is my [Inaudible 00:45:03]. Okay, wonderful. I do believe that MAC only attaches to the top charge on an indictment. So, if somebody has multiple charges, they don't get multiple MAC. So, I understand the judge's concerns, but I'm not sure that that characterization is accurate in terms of how we calculate MAC. So, I'd be happy to have a deeper conversation about caseload reporting and how we attach value to cases if that's something the commission's interested in.

Peter Buckley: And I was just going to add again on the idea of getting a little bit more information about the six-year plan into this document, I think we need to be upfront about the cost. The six-year plan is costly. So, I think we need to actually let the Governor know upfront that this is expensive, and also a let her know, but this is what we are going to accomplish. By the end of six years, we will have a fully functioning public defense system in Oregon with pay that is comparable to other states, etc., a well-paid workforce, and effective representation. So, I think, again, we need to mention the costs, but also say what the outcome's going to be.

Commissioner Addie Smith: Great, I appreciate that. We'll certainly, Lisa and I, when we turn back to this, and certainly Lisa, who's doing the lion's share of this work, will include all of those points. And I think you're always right. It's better to put the cost upfront in the discussion and not to hide the ball. I appreciate that. Brook, did you want to jump back in?

Brook Reinhard: Yes, very briefly, just on the judge's comments. I would agree, Director Kampfe, that I don't think that MAC calculates in that way. It does only calculate the top-line case. And actually, the way OPDS contracts used to be, is you could count up to five individual episodes within one set of charges because some DA's offices charged things differently. That's not the case and hasn't been for a long time. So, I just wanted to reiterate, since the provider community knows that. Because we're all well aware we used to be able to count things much more granularly. That's not the case now. I think this is a really good topic for a future commission meeting because I'd love to delve into it further. I agree, it's probably beyond the scope of the letter. That's all I got.

Commissioner Addie Smith: Super, Tom?

Tom Lininger: Hi, Commissioner Smith, you did a great job leading the subcommittee discussions, and I appreciate Ms. Taylor's work on this letter too. I think it's a strong letter. I wondered how we should amend the letter, to what

extent we should amend the letter in light of the email we received from the chair concerning the limitations of requests we can make to the E Board. And do you have thoughts to share about that? Is that something we should postpone for a later...

[Crosstalk 00:48:06]

Chair Jennifer Nash:

I do have a thought about that actually. In terms of order of operations, we do have an action item regarding this letter, and then we also have action items regarding E Board funding. And my thought was to defer the action item on the Governor's letter until we have a full discussion about E Board funding and then circle back about the Governor's letter and how we want to amend that. And so that is what I'd like to do. I know there's a few more comments, I can see a few more hands raised, and I want to make sure we... I'm looking at the time on the agenda and I know we lose Commissioner Smith at noon. So, I want to make sure that she's here for us to be able to get through that E Board discussion and vote on both of those. So, a few more comments and then let's just pivot to the E Board discussion.

Commissioner Addie Smith:

That sounds great. Thanks, Tom, and thanks, Chair Nash, for jumping right in. Judge?

Bob Selander:

Yeah, I'll be happy to discuss this later, but I raised two points. One was attorney utilization. The other was cost. And if we've handled the utilization, we still have a lot of costs that's built into this that I think we need to discuss.

Commissioner Addie Smith:

Judge, with regard to concerns about costs that are in the letter, can you say a little bit more about sort of what those concerns are? Is it just that sort of all of the price tags look too much? Is it perhaps that we should be prioritizing between the different tactics that we have used to increase client access to attorneys? Just talk about it in a different way than we usually do. What are some of your biggest concerns about the attorney cost, or is it simply that each individual attorney you believe is too expensive?

Bob Selander:

No, I don't want to say that. I don't think each attorney is too expensive. I think if we base payment simply on case type and the number of cases that somebody's assigned rather than the criminal episode type, then our costs are too high. And I'll jump ahead to what Chair Nash had in her letter about the \$40 million being available from the E Board. We're asking for \$47 million, whatever, which exceeds it. This doesn't directly get to that, but certainly every time we pay an attorney money simply

based on case type and not the amount of time the attorney spent on that case, it's raising the cost, and I think it's going to make it more difficult for us in front of the Legislature. So, I just think we need to be upfront in what we're paying attorneys for and paying them for work they actually need to do on the cases.

Chair Jennifer Nash:

I will say we're going to move to that later. We do have a policy option package that shifts that model entirely. We voted in previous meetings to shift our entire model of public defense to get away from this paying by case because it's unconstitutional, and to pay lawyers for their time. And then they take cases that they take based on the amount of hours that they have to work, and we have that policy option package that's on our agenda that we're going to talk about later. But I mean, you're exactly right.

Commissioner Addie Smith:

I think Judge, you're really highlighting something that has already been touched on, which is what this letter is trying to do is create a more firm bandage to get us to exactly where you want us, and I think the board wants us to get, while recognizing that with the tools we currently have in our toolbox, we can imperfectly do a little bit more so that each individual who is currently waiting for an attorney has a better chance of getting assigned an attorney sooner. In the meantime, while we're working on that overall systemic reform that we both have sort of voted and agreed on and recognize will create the long-term sustainable solution to the problem. So, I think I would say, just to echo what Chair Nash has said, you're not wrong and you're right to point out that some of the short-term solutions in particular in this letter are imperfect, and for that reason meant to be short-term, whereas the POPs, which are going to be longer term and then the six-year plan, which we've talked about, are trying to get at the heart of what you're saying.

What I'm also hearing though, that Lisa and I can certainly bake better into the letter is a common saying, these are imperfect short-term solutions that don't move away from sort of what has been problematic in the past but are just meant to be a stopgap measure. So, I think I heard you say, at the very least, we need to be more candid with the Governor about that. And I think there's a sentence that we can add to the cover letter and then perhaps to the sections of the plan that sort of drops a footnote to say that. Because I think you're right. We want to remain consistent in our long-term goals and language. I appreciate that. Senator?

Sen. Floyd Prozanski:

Thank you. I just want to just put a note here, both for the letter and I know we're going to be talking about the proposal for E Board. Bottom

line for me is that we have to be telling the Legislature what the total cost is, the big picture of what the cost is. We cannot water it down. And I know we're going to go in a little bit more detail based on what Mr. [Inaudible 00:53:46] has said as to what the limitations are, how much money, but we have to do that. And the reason I feel that's so imperative is I believe that we will need as a Legislature to be looking at alternatives than just money to the agency. And it's imperative that we have these markers, so individuals understand that there are other options to take care of the problem besides just putting more and more money in, as to how we allow for criminal prosecutions to go forward and sentencing range, all kinds of stuff. So, to me, it's very important that we maintain what we know it's going to cost instead of somehow sugarcoating it for piecemeal. Thank you.

Commissioner Addie Smith: Yeah, I appreciate that, Senator.

Chair Jennifer Nash: Hear, hear.

Commissioner Addie Smith: I think we can definitely, as Peter put or mentioned, we can definitely put that price tag. And I really like your framing of the issue, which is this is the price tag if we continue with the criminal justice system as it currently stands, and there are ways that we can change the larger criminal justice system to bring down that price tag. I think it's really smart to start talking about it in those terms and putting that price tag in this letter is a great way to do that. So, I appreciate that. I think Chair Nash, I'll hand it back.

Chair Jennifer Nash: Yeah, thank you very much. I'll just say one other thing about that before we kind of move on to the next thing so we can make sure we have enough time. And that is that I think that needs to be the message period consistently from every member of the commission when they talk to every person related to the Legislature, or budgeting, anything. And that is, "This is how much this costs. And if we don't want to pay that, then we need to make value judgments that are different than what's already been made." Because this is the true cost. We're not going to keep coming in and saying, "Well, here's how we can do it on the cheap. If you give us this, we might be able to do that," because that's how we got where we got.

And I think that needs to be the consistent message. That's been the message that I've been delivering to anybody who will listen to me. Interestingly, I've been getting lots of phone calls, unsolicited of course, from people running for office outside my district because I'm on a list and I talk to everyone. And when they ask me, what are your issues? I

say, well, here's who I am and here are my issues. So, I've talked to all kinds of people running for office across the state. And if you all have that opportunity, you should do that too. Answer your phone, even if you don't know the number. Okay, let's move on to the next item, which is...

Commissioner Addie Smith: And I would just add that, yep.

Chair Jennifer Nash: Go ahead. Oh, okay. Let's move on to the next item, which is the budget update and then moving on next and related to that, the E Board requests.

Jessica Kampfe: Thank you. We'll have Ralph Amador do the budget update, and this is really to give you all a sense of framing for the conversation for the E Board requests. So, this is a status update on where the agency is right now, and Ralph, I'll hand it off to you.

Chair Jennifer Nash: And Ralph, you're muted if you're talking.

Ralph Amador: Hopefully, I'm doing this correctly. Thank you, Chair Nash, Director Kampfe, members of the commission. Hopefully, all you see is Oregon Public Defense Commission up there on your screen and not me. Great. This is a new platform for me and I'm trying not to screw it up. So, what we have for us today is Oregon Public Defense Commission budget presentation for the period ending May 31st, 2024. This is a new format. I'm trying to be more cohesive or more gentler or better about presenting information that people can understand and digest, other than just big spreadsheets that turn everybody's eyeballs crazy.

So, we're going to first start with contractor payments. And I would say that we have three levels of contractor payments, when we're talking about the contracts that we're doing. We first start out with the criminal contracts. They have a budget of \$279 million. They've actually spent about 220, no, I'm sorry, almost \$122 million. They plan to spend 152 more million dollars. And that would be remaining \$4.5 million as a variance. Now, when I say variance, I need everybody to understand on these contractor payments that the variance assumes that no changes from the current payments. So, when I say a variance of 4.5, that's saying if we maintain the payment that we paid in May for the remainder of the biennium with no changes, we would have 4.5 million. Now we've made subsequent payments in June and July, and that number is remaining pretty constant. And that will include the supervision and the investigation money that we added for the second year. So, that's all taken care of.

This variance also takes in consideration the \$3 million that was added for MAC in the short session. And it also takes in consideration we've set aside the \$5 million that's associated with I think it's House Bill 4002, the recriminalization bill, which gave us \$3 million more for MAC in provider area and \$2 million for case managers. So, that money set aside plus the incentive payment set aside. This is just money that we'll have out there to add increased capacity if we need to on the criminal side. And Commissioner Reinhard, for you in the bottom of all these areas, you'll see two percentages. The first percentage is the percent of budget that has been spent for this particular bucket, and 46% is where we're at in the biennium. So, I tried to address everything I could there. So, if there are no questions on the criminal, we'll go on to the...

Jessica Kampfe:

Ralph, I think you've got a question.

Ralph Amador:

I can't see questions. So, you have to just speak up.

Chair Jennifer Nash:

So, 4.5 million in the black, we can anticipate that there will be up qualifications that will eat some of that away. Are the up qualifications baked into this or not? And if they are not, how much, if you can guess, do you think that will leave us with?

Ralph Amador:

That's a million-dollar question, Commissioner Nash, thank you for the question. It's something that our CS and D manager, Shannon Flowers, and I have many, many discussions, some of them heated about. I would say that if I'm a betting man, I'm going to say there's going to be probably another million dollars or so up qualifications minimum over the next year. That being said, that will leave us about three-and-a-half-million dollars to add capacity. Now I know down the road in the day, you're going to talk about additional capacity in some other areas of adding stuff. So, I think it was in the Governor's letter and E Board, somewhere around there, there's [Inaudible 01:01:25] for that. I just wanted to make sure you see this.

When we talk about the amendments, we went to great lengths to have discussions with the CS and D areas so that we have a dashboard that measures everything that we're trying to do as far as keeping track of the money. The CS and D is Child Support and Development Division, sorry for the acronyms. They have their own tracker where they track the amendments that actually happen. They're supposed to be, according to our policy, I believe that, and this is my belief of the policy, is that we only do downplays in between the quarters, and we only add MAC...and only add qualification changes on the quarter, but we will

add whole MAC at any time if necessary. So, again because of the churn, I think there's maybe a million dollars or maybe a million and a half that will happen because of up qualifications if necessary. That's being said knowing that the caseload is at the C felony level and above is where the majority of our caseload is, and that's not where a lot of our qualifications are. So, a lot of information there to try and dance around it.

Chair Jennifer Nash: No, so I think what you're saying is, conservatively, there's \$3 million in the black.

Ralph Amador: Yes, ma'am.

Chair Jennifer Nash: How many MAC is \$3 million for people who don't want to do math?

Jessica Kampfe: It depends how long you're buying them for, Chair. So, for one year, a MAC is conservatively about 2.5, 250,000.

Chair Jennifer Nash: Yeah, so it would be for the remainder of the biennium is what I'm asking. So, for the remainder of the biennium, \$250,000.

Ralph Amador: C level felony is going to get you about 13 or 14 MAC, I would say. Or I think we just said, yeah, maybe a little bit more than that conservatively because we only have nine months left. It may get you up to 20.

Chair Jennifer Nash: All right, so I'm going to ask, maybe not now, but when we get to the E Board section, for a recommendation regarding adjustment for E Board requests based on available funds that we have. So, if we want 25 MAC and we can already pay for a bunch of that, I'm going to ask for a recommendation about whether we should be adjusting the request to the E Board because we have funds that are available.

Ralph Amador: Understood, thank you.

Chair Jennifer Nash: Okay.

Ralph Amador: Any more questions? Again, if you have a question, speak up because I cannot see anything but my own screen here. Awesome, on to juvenile. Juvenile, we have a little bit of a problem. We've overshot this a little bit at this point. So, we have to meticulously manage this one. It's a negative balance. So, we have too many juvenile people accounted for at this point. But again, there'll be some fluctuation. There'll be some changes that usually do happen. One of the things with juvenile and PCRIP is we still have to apply all the IV-E dollars. We haven't had that.

We're behind on that because our accountant was out for eight months, and we haven't been able to catch up on that because of our year-end processes that we're doing. But we'll get that done and we'll be able to get a better handle on what's going on there. I think the juvenile has got, with our June and July payments, that remaining, that overage has probably gone down a couple hundred thousand at this point. So, we'll just see how it fleshes out the remainder of this month and the next month.

Chair Jennifer Nash:

What are the IV-E reimbursements for IV-E's federal money? So, what are the IV-E reimbursements that we're expecting? What's that amount if we got it all?

Ralph Amador:

So, it's about 4.5, but again, it's just dollar for dollar. We don't get extra money. We just get replaced. And it's 4.5 million for the juvenile bucket and 11-point-some-change for the PCRCP area. But it's just basically a swap for money. We have to spend \$4 to get \$1 in federal money. And it's a lot of work for us.

Chair Jennifer Nash:

What's the impact on the budget in terms of the bottom-line number if we receive the IV-E reimbursement?

Ralph Amador:

It really, it may increase our availability somewhat because we have some past quarters. If we are able to recoup all of the money before the end of the biennium, then we may have to ask for some additional other fund limitation to apply more cash and draw down some stuff here. Again, IV-E's a whole different discussion. We're not fully utilizing IV-E because we could be getting IV-E money for stuff in our preauthorized expenditures, court mandated expenditures and everywhere else, but we haven't evolved there yet. We're still trying to mature in that calculation, and it's a sore spot in some areas of the state. So, hopefully that's it there. Any questions for that?

Okay, on to PCRCP, Parent Child Representation Program. They have \$56 million, actuals at 25 million, plan of 30 million. They're looking at 621. And I believe in June and July, that's actually grown. Savings has grown because I think they lost a provider. So, there's been some money grown there. So, that's actually in a fairly good spot for PCRCP at this point. No concerns with that one. Hearing no questions, we'll move on to vendor services.

Vendor services is our preauthorized expense unit, and they have a budget there of \$58 million. They've spent \$21 million, they've planned \$30 million, and they're about \$6.4 million in the black today. And I'm

sorry, not today, as far as May. A couple things about PAE. Work requests for PAE are up a thousand a month. So, we were cruising for a long time about 2,000 work requests a month, and since we've ramped up staff and went through our little dip and caught up, we're looking at about 3,000 a month of work requests. That's a lot. There are some policy changes that were done by the commission and travel expenditures have doubled. Mileage expenditures have doubled because we're paying for it. Not that that's a bad thing, but that's just things that we weren't paying for before. And we're trying to currently forecast when invoices will appear. Currently it's about, if I round everything up, it's about 130 days from approval to invoice. So, it's trying to get some headway on when accounts payable is going to happen so we can get a better area.

I'm saying all this because I have concerns about preauthorized expenditures. And preauthorized expenditures are, when we built this budget, we build these budgets off historical expenditures. We add inflation, we add some other things on there to try and anticipate what's going to happen. We're taking more cases now, we're adding attorneys, we're taking more cases, which means that we're adding expenditures that weren't really in our budget to begin with. So, we really have to be careful and forecast these items out. It looks good right now, but we're really watching this particular budget. We're applying a lot of really good brain power in parts of the agency to try and develop some models so we can be more predictive on when the expenditures are going to hit so that we can make sure we have enough money to end the biennium. You'll hear more about this every month as we're meticulously tracking preauthorized expenditures and court mandated expenses, which is the next one.

Chair Jennifer Nash:

I have a question. When you say planned expenses, are those authorizations?

Ralph Amador:

Those are what we're... They're not all authorizations. These are just what we're...if we spend the way we're currently spending now. So, we're trying to incorporate in our projections what we're getting now and trying to develop some sort of analytical trends that's going to help influence what we've spent. This plan may be an undershoot is what I'm trying to get at because we don't know what we don't know, which is we're taking on many more cases than we were taking on before because of the unrepresented and stuff like that. And since we switched to hourly, we're seeing more. Again, not that they weren't already in the queue. It's just that when our work requests, our PAE requests increase

a thousand per month, that's more stuff that's in there that's not in the planned area because we don't have historical data to plan.

Chair Jennifer Nash: Well, I guess what I'm asking more simply is do we know how much we've authorized?

Ralph Amador: We do. We do know how much we authorize, but that's a scary number because we haven't cleaned up that data because we've authorized \$108 million worth of authorizations that are sitting out there. They go back a number of days, and we've actually changed the policy to try and clean that up to 180 days, which changes the game a little bit. So, there's stuff that's six to eight years out there because the policy before was you had four years before you had to bill on something. And so we have stuff that's sitting out there six to eight years that we're trying to clean up to give the authorization for.

Chair Jennifer Nash: Okay, thank you.

Ralph Amador: And at this point I think we have about 12 million waiting to be paid in AP right now. So, I mean, and that's between these two areas. Court mandated expense, same issues here. This is where all the attorney bills are for the hourly. Again, this is on our watch list for the same real reasons. We're looking at a positive variance right now. We're expecting to pay all of the bills. And one of the things with THIP right now is that we call it the enhanced rate in our budget areas. Our enhanced rate budget is lower, but our hourly rate is higher. So, when you look at our budget spreadsheets, it looks like we're really, really far overspent on the enhanced rate, but we have tons of savings on the hourly rates. Basically nobody's taking hourly cases... Not nobody's taking hourly cases. There's not as many people as we anticipated taking hourly cases. There's more people taking the enhanced rate cases because that's what's out there. So, that's causing a little rift on things.

But again, it's just on our watch list, again, where this is another one we're trying to be meticulous and trying to find out if we can spot some trends and go forward with that. The research team, Harry Noone specifically, is doing a lot of good work and trying to be more predictive and see what's out there. But again, we feel that we're just kind of scratching the surface on the unrepresented cases. So, as that grows, these expenses will grow, and so we're kind of just foreshadowing. This is an area that we need to really watch at this point. Questions? No questions. All right.

So, these next two slides are just basically just THIP slides. So, right now for court mandated expenses, we were given a budget this year. And just to let you know, these expenses are not outside of what you've already seen. These court mandated expense for THIP and PAE expenses for THIP are already assumed in the previous slides. So, this is just to give you an overview of what's happening with THIP. So, we got a budget of THIP of 9.9 for court mandated expense which is basically enhanced attorney fees. We've spent 13.9. We've planned 16.5, which is what we got from research saying that that's what they think's going to come forward. So, we're looking at probably spending...having 20 million more. So, again, it's about \$30 million is what we're expecting to spend in THIP, and we have about \$9 million. The rest of the money for this area is in the normal hourly rate for attorneys. So, we pretty much have this covered. I just wanted to display this so that we can see what's happening with the attorney bills. Mr. Reinhard.

Brook Reinhard:

Thank you, Mr. Amador. This came up in an update that our chair was going to give us later as well, I think, on this topic, but there is some sort of cost savings between the, I would assume for instance, 145 an hour for the elevated rate versus 200 for the highest THIP rate because we would already be paying money for hourly. Is that calculated as a savings elsewhere in the budget?

Ralph Amador:

So, I don't understand the savings part of it. I do know that what I was trying to explain a little bit earlier was the fact that we have a budget of about \$30 million for hourly rate, assume for hourly rate attorneys. We have a budget of 9.9 for THIP attorneys. That budget line item is obviously for THIP, meaning enhanced rate attorneys. That is being blown. That line item is being blown. However, the savings at the normally hourly rate is covering this overage here in a line-item thing. So, generally to the agency, there's no cost savings because we're paying more for cases, but on those line-item savings, again, when you look at the spreadsheets, you'll say, "Ooh, that one's got a lot of money saved. Ooh, that one's really overspent." Because it's the same bucket, it overlaps and it's covering the other one. Does that make sense?

Chair Jennifer Nash:

Sort of. Here's what I think – I'm going to jump in, Brook – here's what I think we really want to know. We want to know the bottom line. So, we understand that the agency has a budget for 130, 145 for hourly rate, and we're paying, for the enhanced cases, hourly rates of 164 and 200. So, really the deficit is the delta between the 135 and the 164, and the 145 and the 200. That's the extra money that we're paying out that we weren't originally budgeted for. So, what does that mean for the bottom line? I appreciate it comes out of different buckets, but for the

court mandated expenses, what's the bottom-line number? If you put everything in, what do we need to ask for because...is there a shortfall for THIP cases or do we still have those covered in what we've already been budgeted?

Ralph Amador: I think currently we, and I put this to my staff, my group, not really staff, to my budget folks, my budget compadres, we were talking about that last night and this morning. We believe that currently with the extension of THIP, we have enough money to make it through now. If you extend it another six months, we may have to ask for more resources to pay for that in maybe December. Right now, as we're going along, we're pretty okay. We got a couple million dollars to the good if we're covering all the predicted expenditures for attorney costs when you combine the two, 145 bucket and the 200 bucket, the enhanced and the normally hourly rate bucket. I'd say we got a couple million dollars to play with there, based on the current projections.

Chair Jennifer Nash: When you say now, it's July 24th. So, do you mean through July 24th, or do you mean right now you believe that we can pay all of our bills, including THIP, through December 31st? That's what I'm wondering.

Ralph Amador: That's what I'm telling you. I'm saying, yes. Based on current projections right now, yes. We do not have to ask for any money. We should have enough money to last through probably January. And it may go further than that. I just, again, I can't predict the number of cases and the crimes and everything else that's going to happen. I'm saying based on the numbers and how we're running with the projections, the data we have today, July 24th, we believe that we can make it.

Jessica Kampfe: Mr. Amador, this is Jessica. I heard you say we could make it to the end of January. Of course, the end of the fiscal year is June. Would we make it to the end of the fiscal year, or would we need to be asking the E Board to cover the 2025 expenses?

Ralph Amador: So, being pretty conservative, I'm going to say yes. I said January for a reason because we would need to ask for money in December to be 100% sure that we had the money to get forward through the end of the biennium. Again, the 200 bucks an hour, it scares the pants off me because I can't tell you how many people are out there. And when I look at the...we look at the data and I'm probably saying way too much more than I need to, but this is what goes through my head. If we're just covering 25 or 30 or maybe even 50% of the actual unrepresented caseload out there, if we add more attorneys, if we add this other stuff, that means we're going to have more costs at 200 bucks an hour, which

just scares me. I really don't have an empirical thought about how many cases. We may be covering 100% of the unrepresented at this time. I don't know that. That's not my purview. I'm just saying what the money is to cover it now.

Chair Jennifer Nash:

So, that's the follow-up question then. Are you saying that we have enough money for all of the cases that are appointed through today to pay out? I think what I hear you saying is that if the projections hold, you believe that for every THIP case that's appointed through December 31st, we have the money to pay for those. Actually, that's a question. Is that what you're saying?

Ralph Amador:

Holding everything constant, if we double the amount of hourly cases that we have... So, if we double the amount of hourly cases that we're currently taking now, we're going to have a problem by the end of the biennium. If we maintain status quo, we're taking just what we have right now, I think we're fine adding because we're adding state staff, which is taking some stuff over, I mean, we're building in other areas that should take some pressure off this hourly valve at this point, I believe. I mean, again, you're talking to a budget guy who you're pushing way out beyond his skis at this moment, but I'm trying to hold on. But I think right now, all things remain constant, we should be fine. If you start changing the variables and increasing the amount of people we start covering and helping with, which is what the goal is, we're going to need more money, I think, for this area.

Chair Jennifer Nash:

And it would be okay to defer that decision until December. We would be okay if we didn't get any money until then to pay the bills that we have coming due now, you think?

Ralph Amador:

We're fine right now because we have another six months. Because when I look at the projection, I look at the projections for the entire biennium. I'm thinking we'll run out of money towards the latter months.

Chair Jennifer Nash:

Got it, right.

Ralph Amador:

Currently, we'll cover expenses through, I'd say, through January. My recommendation that I've given before is like, look, we've got \$6 million in the caseload SPA. That's where we're going to need that money here because this is where our problem is, which is why we highlight the fact that the contract areas have money to build capacity. So, we have money, if we have extra money sitting in a SPA, this is where it should be earmarked for, in my belief. But that's what it is.

Chair Jennifer Nash: Okay. Thank you.

Ralph Amador: Mr. Harris.

Rob Harris: Thank you, Mr. Amador. I guess a question and then a comment. But from what I heard you just say, that if the number of appointments holds steady through January, the agency will have enough money to pay all the billings through the end of the year, but it has to stop appointing the THIP program in January for that to work. Is that accurate?

Ralph Amador: That's my comfort level, yes, sir.

Rob Harris: Okay, and then fine. And then the second, just more of a comment, I think this reflects what Commissioner Reinhard and others have said, which is looking at this, I could see someone choking at \$20 million and say, "We got to stop THIP right now." But that's really not the total cost. And it sort of misleads someone into thinking that needs to be terminated. And I understand the bucket theory, I guess, or the legislative requirement of buckets, but it would be helpful to say the THIP program is not costing 20 million more. It's costing, like what Chair Nash said, the delta. It's an additional this much money. And I think that would put it in better perspective for policy makers and decision makers to show what the actual additional cost is. That's my only comment. Thank you.

Ralph Amador: Thank you very much, Commissioner Harris. That's very helpful. And again, that's why I showed the first two slides to begin with saying that we're okay. This is just for these programs here, but it took me more than a month of Sundays to figure out how to present this stuff to everybody, trying to create some more clarity rather than just a big spreadsheet.

Chair Jennifer Nash: This is very helpful, thank you.

Ralph Amador: So, PAE, same conversation we just had. This is just we have a budget of 3.2, we're spending 7.0. Again, we're covered and PAE is fine at this point, but this is just targeted towards the THIP program at this point. Okay, staff costs, services, and supplies. Pilot Project, which is the state level public defenders, they've got a budget currently of \$10.7 million. They've actually spent about 1.2. They have planned 6.7, 3.1 remaining. Again, as we bring folks on board, as the offices continue to mature, this 3.1 will erode over the next few months. Will there be savings there?

There could be savings there because of the deferred hiring that actually occurred, but as they're anticipating doing other things, there could be opportunities to maybe add staff or do something different with some of these vacancy savings on a one-time basis. The problem is that if you add something, you got to make sure that it continues in the next biennium, but this is the money that's been appropriated, and it's been considered for the next biennium. Their external costs have already been assumed.

Chair Jennifer Nash: Go ahead, Director Kampfe.

Jessica Kampfe: Thank you, Chair Nash. I just want to note that when it comes to state employees, we actually need position authority to add new staff members. So, we can't just take savings and go out and hire new staff. So, if the commission wanted us to add more state employees after the E Board, even if we've had savings to do it, we would still have to go to the E Board and request the position authority to move it forward because we can't create new jobs in the state without the legislators' direction.

Chair Jennifer Nash: Very helpful, thank you.

Ralph Amador: Okay, Appellate Division. Appellate Division, you're going to hear from them later. They are a bright, shiny rose on this agency. And they are performing as we would expect them to be performing, budget of 26.4 million. They've spent 11.2. The remainder of the biennium is at 4.5 and 700,000-ish. And that's usually where they end up anyway because of vacancy savings, but it could get eroded depending on hirings and everything else at this point. No questions.

Administrative and Executive Division, I've combined these two divisions together because they work hand in hand. They're obviously separate buckets and I can separate out if the commission desires that. But their budget's \$22 million. They spent 9.4, there's 11.4 planned. And 1.4 remaining, some of that is vacancy savings and other things that are going out the door. Again, this, depending on who's hired, what we've done, what we're instructed to do, this could go in a heartbeat. I know that we're still waiting for a lot of attorney general bills or waiting on other things that we weren't normally paying for to be hit in this area here. So, that's what's going on here. No questions.

Compliance, Audit, and Performance, performing as it should. Their budget's 7 million. They've spent 2.4, they're planned 4.4, and they got about \$200,000 left there as well. This remaining may go up. There's

current vacancy savings in there, so that may rise over the next few months or so. But again, it's about where we expect it to be performing. Financial/case management system. This is actually in the Administrative Services Division budget bucket. This has been taken out because it's a standalone thing that people like to see. We have a budget of \$8.8 million. We've spent \$602,000 for the biennium. We have 4.8 and 3.4 remaining. This remaining will probably go up because we're currently just getting ready to do an RFP the next month. And so it's going to look like we have a bunch more savings. So, once the RFP is done, we get a contractor on board, this money will start getting eaten up very quickly over the next few months, like the last three, four or five months of the biennium. It should significantly eat into this amount of money here. But it's just kind of sitting there and I wanted you to be aware of that.

Last thing, Special Programs, Contracts, and Distributions. This budget's 12.4. This is where the discovery money is. That's coming in as, I mean, there's no way to trend discovery money because it comes in when it comes in, whenever they bill us, there's nothing for us we can tell them to do or say what they're going to do or anything else. We just get the bill, we pay it. We look at it to make sure it's not outrageous. And then if it's outrageous or double payments or something like that, we just investigate it for that. We've spent 4 million, plan 7 million, 500,000 remaining, which is the other fund area that was just given to us in this thing before it was related to Marion County stuff from last biennium. That's a whole thing that just... It's just an accounting thing at this point.

I do know that we did get the money back. I'm sorry, we're in the tail end of getting the \$995,000 of CJC grant that we had this money back. So, we spent general fund. We got the other funds from CJC in the grant form. So, we're replenishing that fund. So, we'll be able to... It doesn't help us. It just allows us to pay discovery and everything else when it comes in. We are also in the final stages of getting the contract signed or the grant signed for the law school so they can get their money for their pilot programs out the door. And I think that's all I have for this presentation. If there's any further questions, I'm happy to do that. And I'm also happy to close my camera and be gone for the day.

Chair Jennifer Nash:

Well, thank you, Mr. Amador. That was very, very helpful. I mean, you're right, much better than just a spreadsheet that is hard for us to understand. So, very helpful information. Thank you for answering all of our questions. Does anybody have any other questions or comments for Mr. Amador before we send him on his way? All right, well, thank you. You may notice from the agenda we're behind, but I don't think we

really are because the times are estimates and these things all really nicely go together. And I think that we can pivot very nicely now to our E Board discussion, which will then pivot very nicely into the POP discussion. And just so we're keeping track of where we are, I want to be at the action item phase at about 11:30, if at all possible because we'll have Governor's letter, we'll have E Board, and then we'll have POP issues to vote on, and I think that we could probably do that. So, with that, I want to turn it over to Director Kampfe and Lisa Taylor to talk about E Board funding. And yes, go ahead. Thank you.

Jessica Kampfe:

Thank you very much. So, timing wise, the next step for us is that we would need to send a notice of intent to the Legislature, notifying them if we are making any requests at the Emergency Board in September. And the notice of intent is a somewhat informal notice in that we send it over as an email and let them know, these are the things we are looking at making formal requests for. After we provide the Legislature with our notice of intent, we will then work on formalizing the requests for the E Board. And so that will be creating a letter that lays out in much more detail what the request is, what the purpose of the request is, and we would then send that letter as the formal request. You all will have an opportunity in August to review those letters, I believe, before they go to the E Board. So, the commission meets again on August 21st, and I believe the letters to the E Board are due on the 24th. So, our conversation today is around that first piece in the process in terms of notifying the Emergency Board about what we are going to be submitting as a more formal request.

Chair Jennifer Nash:

And Director Kampfe, before you kind of launch in, I think the best way to do this for a couple of reasons is to do them one by one. So, present 1, we'll have the commission discuss it, present 2, we'll have the commission discuss it. And part of that is just for ease, but also so that everyone knows there is one part of this that I'm going to have an actual conflict on and cannot be part of the discussion or the voting. So, I'm going to turn it over to Commissioner Mandiberg to take over that part of the meeting. So, with that.

Jessica Kampfe:

That sounds good, and I know Lisa Taylor is here too. Lisa, are you prepared to drive us through this document?

Lisa Taylor:

Oh yeah, absolutely. Would you like me to share my screen?

Jessica Kampfe:

Sure.

Lisa Taylor: Okay, great. Here we go. Great, so this is the memo. It's in your materials, and let's just go one by one. So, our first request is OPDC organizational structure. This has a cost estimate of a total of around \$860,000, and this request is the first step for this organizational structure that aligns with agency standard practices. This has to do with the organizational chart I'm sure you've heard a lot about and that we've been working on for quite some time with the Legislative Fiscal Office. So, in this request, we're going to do a few things that have a net zero cost. We're going to be reorganizing some misplaced positions and then moving positions into new sections to better meet the needs and better defining sections within divisions. Yes. So, like we're going to move the PAE into its own division so we can better track budgets and things like that.

We're then going to reclass some positions with a net zero and then request some positions with the cost savings from those reclasses. We have some empty positions that we can reclass. With those savings, we can build new positions. This has to do with the procurement issues that I believe we've discussed before, and I think we've come to a solution that will solve that and allow us to separate the program analysts who are working on our contracts from our procurement shop that really needs to be procurement standalone. And then in addition to this, and this is where costs come in, well, any potential costs that do come from those additional position requests, I believe we will be able to request through the executive transfer SPA depending on the type of position it was.

Jessica Kampfe: And Lisa, how much money is left in that SPA?

Lisa Taylor: Oh, I was just looking at that. I believe this is my document, yeah. We have 2.6 million left in that SPA.

Jessica Kampfe: Thank you.

Lisa Taylor: I'm sorry, here we go. But that would depend on what the positions were and whether or not they were directly tied to being a standard executive agency. Next, we'd like to request some money to contract out a classification and compensation study. This is something that agencies should do regularly, and we have not done one in quite some time. And getting an outside consultant to do this, I think, will result in a better work product that's more standardized, I guess. And then finally, we're requesting funding to backfill and continue temporary staff positions that we've brought on under accounts payable and the preauthorized expenses. And this is the largest cost of this whole

program because those costs go back some time, I believe, since we brought on those temps. Is there any questions with this first one? Chair Nash, I don't know if you wanted to action these as we go or if these have to be actioned or just...

Chair Jennifer Nash: Big question. Let's get through them because some of them are interrelated and then let's do the action items at the end.

Lisa Taylor: All right, sounds great. Okay, our second one is to fund the legislatively approved extension of the THIP program from June to December of '24. This is the one, as you'll remember, last Emergency Board we asked for an extension of THIP from June through December of '24. Initially, we were going to ask for the costs at that time, but we were actually directed to just ask for the extension. So, they approved the extension for the program to continue through '24. They told us to come back in September to ask for the funds that we would need. You can see this cost estimate here. This is, again, inclusive of what it costs to run THIP for six months. And I know this ties back to the budget conversation that we just had about how much of this can be offset. I don't know if you want to get into that now during this discussion.

Chair Jennifer Nash: Yeah, I mean, it sounds like...

[Crosstalk 01:38:56]

Chair Jennifer Nash: ...Mr. Amador, we don't have to ask for this, right? Because he said we can pay all of our bills through December, and if we can't, we can come back to the E Board in December. But Director Kampfe, correct me if you think that's different.

Jessica Kampfe: So, Chair Nash, what I would suggest that the commission do at this point in time in terms of the notice to the Legislature is to provide them notice that we're going to ask to cover costs. We don't have to put in the notice that it's the \$18 million number, but just they told us in May, "Come back in September and ask for what you need to pay for this program." So, following up on that direction, I think we should be coming back and telling them what we would need to cover the cost. Between now and our next commission meeting when the commission will authorize the actual letters, we will work with the budget shop to make sure we're refining and getting that number down to exactly what we need, but I think we should build in as much flexibility as possible right now, and in our notice to the Legislature say that we are going to be asking for whatever is necessary to cover the costs at this time.

Chair Jennifer Nash: Commissioner Buckley.

Peter Buckley: Yeah, I would just add to it, another option to look at is the Legislature typically does a rebalance bill early in the session. DHS always has a rebalance that it needs to do as it heads towards the end of the biennium. So, we might want to look at the one option is asking the December E Board for the amount that we need. Another option is to look at the budget rebalance bill early in the session to see if we have funds to cover us into March or the end of March, and then this might be addressed. If we can't get it through the E Board, this might be addressed in the budget rebalance early in the session.

Chair Jennifer Nash: Sorry, thank you. That's very helpful. I was already like I think that we'd have a better idea of whether or not we have cost savings someplace else to be able to come back and ask for rebalance. I just have a really hard time, especially with all of the pressure that we're getting about asking for money and large amounts of money, when we have information that says that we don't need the money, coming back and asking for money. It strains our credibility, I think, and I have some concerns about that. And I guess I would feel, I don't know what other commissioners think, I would feel comfortable with taking the dollar amount out and saying we're going to request the funding, but then doing a really, really careful, and really good job between now and August of nailing those numbers down. And if we don't need the money, we should not ask for the money.

And if it turns out we're wrong and the bills go way up and we have a lot more appointments in the next six months, we can go back in December and say, "We had a lot more bills than we thought we were going to. So, now we do need that money. We were mindful of the small amount of money that was available, we were very conservative, and we missed the mark, and here's how we missed the mark, and here's what we're asking for." But I don't know, I'm not a budget person. Commissioner Buckley can talk about whether or not he thinks that's a good idea based on the information that's been presented today.

Peter Buckley: Yeah, I always think working with the LFO analyst, make sure the LFO analyst is really clear on what the existing available funds might be within the agency that could possibly be shifted over, what the projections are based on. As long as we're on the same page as LFO, then I think that whatever communication we have with the Legislature through the Emergency Board is based on that information. And I think it's perfectly fine to tell the Emergency Board in September, "This is what we're working on. This is what we're projecting. These are some of

the options we are considering. We believe we're fine until December, but we are going to get back to you in December with a more accurate request." I think that's a fair thing to do. But again, the real key is to make sure that our numbers and LFO's numbers are the same numbers.

Chair Jennifer Nash: Fair enough. Commissioner Smith.

Commissioner Addie Smith: I just want to echo that. I think continuing to increase our transparency on these types of conversations, stating the obvious with LFO, with the Legislature, is going to be important as we continue to do sort of reputation rebuilding. And so to the extent that there may be an opportunity to shift costs, as Peter was saying, and move things around with the risk that later there are concerns, I think front loading that conversation now, being candid about it, engendering goodwill by saying we're trying to get ahead of it while also recognizing we may not get there might be a nice tactic. Also, it's one of our biggest asks, so it frees up the possibility of getting some of our other asks. So, there's also that balance of strategy to be thinking about. And if one of our biggest asks isn't looking emergent based on the numbers that were just presented to us, I want to be really cautious about that ask. So, sort of me too, to what Peter is saying or seconding what Peter is saying.

Chair Jennifer Nash: Thank you. Also, I think what I heard, and Ralph, Mr. Amador can correct me if I'm wrong, but that that 18.9 million is not accurate. That's the gross amount for THIP, but that isn't the delta. So, that isn't the difference between what we've been budgeted and what THIP costs, that's the gross amount for the program, which is not what we should be asking for anyway. We should be asking for the shortage, for that difference. So, that number should be much, much, much, much smaller, no matter what. Correct, Mr. Amador?

Ralph Amador: Commissioner Nash, members of the commission, Ralph Amador for the record. That is correct. There should be some modifications. And I think we need to... I've been chatting with one of the analysts. When we look at the \$18 million number, that's not what we're going to have to pay in the next six months. That's what we need, that's what it's going to cost for the program. It may take three years to reach the 18 million. When we first did the things, it was like what we were going to need to continue beyond. I mean, our POP 107 was, what will you need to continue for the extension? What amount of money will we need to carry forward to the next biennium to cover the cost of THIP outside of what we have now? So, we're looking at 18... If we extend it for six more months, it's going to be \$18 million. That's not what we need to pay by June. That's what the cost is going to be over that extension. So,

again, the bills are going to happen, but we don't need 18 million by the end of the biennium to cover an extension of THIP.

Chair Jennifer Nash: Well, that's not an E Board request then. An E Board request is we're short the money and have to pay it, but we don't have to pay this. Basically what this is saying is we want authorization for a program that over some X period of time is going to cost \$18 million.

Ralph Amador: That's what I'm saying. That's what I hope, and I think that's what this [Phonetic 01:46:32] says.

Chair Jennifer Nash: So, that's not an E Board request, correct? E Board is, gosh, we don't have enough money left to pay for something that's happening.

Ralph Amador: We still need authorization to extend the program.

Chair Jennifer Nash: Well, we have that. We were just supposed to come back for the money part, right?

Ralph Amador: But we don't...

Jessica Kampfe: Number three is the authorization.

Lisa Taylor: Yes.

Jessica Kampfe: To extend the program. We're on number two right now.

Ralph Amador: Oh, okay.

Chair Jennifer Nash: We were already authorized to extend the program through December. They just told us, "Come back if you need money to pay for it." And what I'm hearing is we don't need money to pay for it. Am I summarizing that correctly?

Lisa Taylor: I don't think that the request was, "Come back if you need money." I think the request was, "Come back and tell us how much this will cost." So, if I could recommend, maybe number two is more of a cost update and potential request to fund the continuation of THIP. Because I think even if... And it seems like that's where we're headed is that we're not going to actually need money to pay bills through the end of December. I think that the Emergency Board is still expecting and would like us to come forward with a report about, "Here's how THIP is going. Here's how much money we've spent," and better explaining the fact that

there are these roll up and carry forward costs because cases don't close in a two-year cycle.

Chair Jennifer Nash:

I think that's great, and I think that's exactly right. But I don't think we're, I just want to be clear, we're not asking the E Board to give us \$18.9 million. So, that's what we need to be clear about, is we are not asking you to give us \$18 million for this program. We're just telling you how it's going and what we think it's going to cost over X period of time for cases appointed through December 31st, 2024. Okay. Okay. And then for item number three, I have an actual conflict regarding the discussion and voting on increasing the Temporary Hourly Increase Program. My conflict is that our law firm currently handles one THIP case. Not me, my law partner. And if the commission were to vote on this, we would have a financial benefit. So, I cannot participate in discussion or voting on this particular item. So, with that, I'm going to turn it over to Commissioner Mandiberg.

Vice-Chair Susan Mandiberg:

Thank you, Commissioner Nash. Chair Kampfe, would you like to explain what we're asking for and whether what is in the written materials is still accurate?

Jessica Kampfe:

Thank you, Vice Chair Mandiberg. So, this ask was derived from conversation with the Legislative Subcommittee where we were working on the plan for the Governor to address the unrepresented crisis. And in that conversation, we talked about whether or not we've really reached saturation with the lawyers that are taking THIP cases at the existing THIP rates. And if starting to use the stabilized rates that the economic survey determined were market match rates could attract additional attorneys to do THIP work in the next six months, and therefore help jumpstart the plan that we're presenting to the Governor, after careful conversation and consultation with our legislative fiscal analyst, we are recommending against increasing the rates at the Emergency Board.

So, the agency's recommendation to the board is that you all request permission from the Legislature to extend the THIP program as it currently exists, which would be with the 164- and 200-dollar an hour rates for attorneys and the \$75 an hour rate for investigators to extend that beyond its expiration in December of 2024, so that it would stay in place until June of 2025. And that would align with the full Legislature's ability to have a robust discussion and vote on our policy option package to implement the stabilized hourly rates that align with the market match. And when the Legislature takes up the issue of our policy option package of the stabilized rates, that really is the transition and

wind-down of the THIP program because once we have those new stabilized hourly rates in place, we would no longer need the THIP program in order to attract lawyers to this work.

So, our recommendation is that the agency ask the Emergency Board for permission to extend THIP, and that we also ask to come back in December for the funding request on that because we don't need money in September for a program that doesn't even start until January. We wouldn't expect that we would start seeing bills on these cases. I think Mr. Amador said most of the bills start coming in 120 days after an authorization. Conservatively speaking, it would probably be 90 days we'd start to see billing coming in on these cases, so that puts us well into 2025. There is money in a SPA for caseload, and we could request against that SPA at the December Emergency Board. So, our recommendation is that we actually only ask for permission in September and ask to come back in December to make a request against the SPA if we need additional money to get us to the end of the year.

Vice-Chair Susan Mandiberg: Thank you, Chair Kampfe. So, my understanding is that the dynamic would be the same as we used for number two on this agenda. In other words, asking for permission now, and then keeping open the possibility of asking for funding in December. And probably we would need the funding in December because there wouldn't be anything left over from this year that we could use in 2025. And so that in December, we would be asking for – and this is a question now – in December, we would be asking for enough money to get us through 2025 until the Legislature could approve the POP or approve us using money from the SPA. We'd have to have some kind of money. Because the Legislature is not necessarily going to be approving that right away, right? In the new session. So, we would need money to get us through however long it takes for them to approve the new budget. Is that right?

Jessica Kampfe: That's mostly right. Yeah, one of the SPAs that was allocated to the agency for this biennium is one about increased caseload, and there is money that is remaining in that SPA. So, we could come in December and ask to access that SPA to cover costs that the agency incurs on THIP cases in 2025 until the end of the fiscal biennium. The full cost of the six-month extension we expect would be about \$18.9 million, but not all of those costs are going to hit in this biennium. Some of those costs hit next biennium.

One of the policy option packages that the commission has worked on is a policy option package on the costs incurred under THIP that need to

be paid next biennium. So, a portion of these expenditures would actually be included in a policy option package that the Legislature would consider to pay for money that we have dedicated to this program in one biennium, but the bills actually hit us in the next biennium. So, that's one place where that money would come from. The other place is if the Legislature adopts our policy option package to implement the market match rates from the economic survey, then moving forward, we would be paying hourly cases at the 205- and 230-an-hour rate, and that would stabilize our hourly panel rates moving forward. So, we do think that based on Mr. Amador's presentation that we would need to go back and ask for additional money this biennium, but we think we have an opportunity to do that in December, and we don't think that we would need the funding before 2025 because the program extension doesn't even start until 2025.

Vice-Chair Susan Mandiberg: Got it. Okay, Brook, you had your hand up first.

Brook Reinhard: Yeah, sorry. I should have declared when Chair Nash declared her conflict. I have a potential conflict. Even though I'm a non-voting member, I think I should declare it. I am actually leaving my office to do solo private practice starting in October, and I will be taking THIP cases. So, I've read the commission bylaws and talked to Director Kampfe about this. I believe I can still serve on the commission since I'll be doing public defense providing, but I can't participate in things regarding THIP. So, I just wanted to declare my conflict. I'll be back on later, thanks.

Vice-Chair Susan Mandiberg: All right, and Commissioner Smith, you had your hand up. You're muted.

Commissioner Addie Smith: I just want to foreshadow that I think adjustments we're making here are going to need to be reflected in the Governor's letter where we price things out, which I think has already been mentioned, but I'm just going to drop that footnote, and we can revisit it, but while we're in the midst of those conversations.

Vice-Chair Susan Mandiberg: Okay, does anyone else have any questions or concerns about item three? Rob?

Rob Harris: Thanks, I think that this discussion really clarifies, and it actually changes the way I read this substantially. I mean, we're not asking for \$40 million from the E Board, which on first glance, that's sort of what this looks like, as people have mentioned, I guess. I'm assuming the next letter will reflect the fact that we're alerting them to this. We are recommending that, assuming this is the way it's voted on, we're recommending extension of THIP through the end of the biennium, from January on, at

the current rates, not the enhanced rates that we're going to try and get next biennium approved, and that the additional monies is not 20 or 40 million dollars, it's actually the difference between what we're already paying hourly and these enhanced rates. Is that sort of summarizing what sort of the discussion has been? Do I understand this correctly?

Vice-Chair Susan Mandiberg: I'll let Chair Kampfe answer that.

Jessica Kampfe: Thank you, Commissioner Harris. That is a good summary of the direction we're going with this.

Vice-Chair Susan Mandiberg: Any other questions or comments on item number three here? Okay, we'll move on to number four, and I'll turn the chair back over to Chair Nash.

Chair Jennifer Nash: Thank you. Before we move on to item four, I have a question which is related to the next few items to Mr. Amador. The \$3 million that is in the Trial Division or the criminal contract bucket, are those 4002 positions that we were authorized or is that different money?

Ralph Amador: Chair Nash, members of the commission, Ralph Amador for the record. There's two \$3 million buckets. There was one that we had a \$3 million SPA that was awarded to us, \$3 million of – sorry about that – \$3 million of SPA money that was given to us for MAC increases, and there was \$3 million in additional money that was given for MAC in relation to the recriminalization, plus another \$2 million for case managers in the areas that need it. Hopefully, that answers your question.

Chair Jennifer Nash: Well, no, actually I know how much we were given. What I'm wondering is if your budget presentation, so the way I looked at that originally was, "Oh, that money's available for additional MAC," but is it in fact available for additional MAC or is it earmarked specifically for recriminalization increase in MAC? Is that money that was allocated to us by the Legislature specifically for that purpose that we referred to in the Governor's letter? That's what I'm trying to figure out. I don't want to double dip. That's what I'm...

Ralph Amador: Understood, Commissioner Nash. I'm sorry, Chair Nash. There's \$3 million specifically dedicated for the recriminalization money, and that's set aside from the number you saw on the savings. We pulled those numbers out so that they would not be double spent.

Chair Jennifer Nash: Perfect, thank you. All right, and then moving on to number four then, establishing a state trial office serving the Southwest region, Director Kampfe.

Jessica Kampfe: Thank you. So, our initial proposal was to establish a brand-new office in a new location. We have had an opportunity to have further discussion on this, and one concern that has been raised, it was the same concern really that was raised with the increasing the hourly rates in THIP to start aligning them with the market match rates, is that the Emergency Board really isn't in the business of starting new programs or committing a future Legislature to a new program. So, the proposal as it's currently written is about creating a brand-new office. An alternative that we could do is we have office space available in our Marion County office, and we do not have geographic restrictions on what communities can be served from that office. So, we could modify this request to add three attorneys and appropriate support staff to that office and have those attorneys serve Coos and Douglas through remote appearances or being partially located in those communities for periods of time. And that could be an intermediate step that we could take now as we work towards building out these offices in our next biennium.

Chair Jennifer Nash: Thank you, so would we, because we have the savings already in the Trial Division, would we just basic – or not the Trial Division, yeah, the Trial Division bucket – would we be just asking for position authority then?

Jessica Kampfe: I can work with the budget shop to ensure that we have the money to cover it. We would not ask for money we didn't need in order to cover it. So, if we could fund it internally, then all we would have to do is ask for the position authority. If we can't fund it internally, then we would have to ask for the additional investment.

Chair Jennifer Nash: All right, thank you. I didn't see who had their hand up first, whether it was Tom or Addie. So, whoever, just jump in.

Commissioner Addie Smith: Go ahead, Tom.

Tom Lininger: Addie was first, Addie was first.

Commissioner Addie Smith: I just have a couple of questions, and I'm interested in feedback from fellow commissioners. I think my first question is, are we receiving sort of direct feedback from our LFO friends, that this feels like starting a new program? I think there is a fair argument that this is just continuing the program we have already begun, which is rolling out statewide

offices. And I know, at least in the Legislative Subcommittee, which doesn't have to bind us, but is worth consideration, that there was a lot of thought put into why locating these folks where the Governor's letter describes and this note describes, makes the most importance, it's going to give us the best step up on addressing the unrepresented crisis, etc. So, I'm happy to pivot if that's what we feel is best, and certainly that's better than nothing, but I want to push back a little and get some advice from colleagues on, does this feel too far out of the bounds when part of what it's going to do is directly address this emergent crisis that we continue to be working on?

Chair Jennifer Nash:

Thank you. Tom.

Tom Lininger:

Thank you. When I read the email yesterday, I wondered if just the driving distance from Marion to Coos and Douglas is going to present too much of a problem. Although I know we have one commissioner who drives from Klamath to Lakeview, so I know some people do it. I also wondered if this might sort of reduce momentum for a local office in Coos and Douglas. But then on the other hand, I wondered too, if Coos and Douglas just have this abrupt attrition, and maybe we're overreacting to the abrupt attrition. I think they just had a bunch of departures recently. So, I just wondered if we could talk more about the extent of the need for local attorneys in Coos and Douglas. I think Marion County's awfully far away.

Jessica Kampfe:

Thank you. I can speak a bit to that. So, with regard to Coos, it's been a recurring issue. I think this commission two years ago was looking at a staffing crisis in Coos. They were able to hire, and all of those positions have really turned over again. So, Coos in particular is an underserved community that is very difficult to recruit to. It's also, as you noted, a fairly long drive from basically anywhere else, and so we don't have a lot of hourly attorneys that really serve this area. It's difficult for us to get cases appointed using that hourly panel of folks in Coos.

The courts in Coos have been really good partners with public defense in a lot of ways. They're very allowing of remote appearances, particularly for non-substantive hearings. Their jail and sheriff has also been very accommodating, and they have a program allowing iPads in the jail. So, lawyers can meet virtually via iPad with clients for more procedural type of client meetings. You're not going to want to have the big heavy conversations via virtual meeting, but for sort of touchpoint conversations. So because of the remote options that are available, a Salem-based attorney could serve Coos County as a Band-Aid measure for a short period of time. And we would be looking at options to really

send that lawyer down to Coos for a three- or four-day stretch, have them stay in a hotel that has a government rate, partner with our local providers who have indicated already a willingness to help support if we can help alleviate some of the strain that's happening in that community and use that as a bridge until we're able to set up an office in Coos. So, that's the situation in Coos.

The situation in Douglas, it is an easier drive from Salem to Douglas. It's also a drive that Lane County providers do. So, we have for a long time had support from Lane County to cover the caseload in Douglas. So, there has been an existing shortage of providers in Douglas County for a long time. We've mitigated the harm of that by reaching out to our Lane County providers, and they've been really wonderful partners in helping to subsidize that workforce by driving from Lane to Douglas. It's also possible for Salem-based lawyers to drive to Douglas. It's not a horrible drive.

The public defender's office there has experienced some pretty acute changes. I believe their executive director has just changed over. Last week, they got two new vacancy notices; they had had a number of vacancy notices prior to that. So, that office does appear to be going through an acute period of change that is very concerning when we're looking at sort of the long-term stabilization in that area. I will note that the state trial office that is located in Medford is geographically designated to serve Jackson, Douglas, and Klamath counties. But what we've seen happening is that the need in Jackson County is so great that 85% of the cases that we're taking, we're taking in Jackson County, and the drive from Medford to Douglas, and Medford to Klamath, is pretty treacherous, especially in the winter months. So, driving from Salem to Douglas is better than driving from Medford to Roseburg.

Chair Jennifer Nash:

Thank you. Commissioner Buckley.

Peter Buckley:

Yeah, just a couple points. There's been some interesting information about the number of cases in Jackson County, that there's a relationship to the effort that the city of Medford is doing to decrease the number of homeless campers in Medford, which they've been very successful at with their livability team, which is great but that has put more pressure on the court system. Because many of the people who the livability team work with then are entering into the court system again if they have misdemeanors, etc., that have not been cleared up. So, it's just part of the dynamic here. We're seeing many, many fewer campsites in Medford, but we are seeing more and more misdemeanors in the system. So, just a point I wanted to make.

And I'm wondering on this, Jessie, and I know the Legislature, I'm not sure this is going to how well fly, but we have the legislative direction through the Senate bill that passed to increase the percentage of the workforce to 35% by, is it 2027? I can't remember when it is. And I'm wondering whether that direction that was passed by the Legislature and signed by the Governor is enough to say to the E Board, "This is part of that effort to create the office in Coos and Curry, the Southwest office, it's part of this effort that's already been approved by the Legislature." So, this is just asking the E Board to help us move in that direction. And I know if LFO's already said that they're uncomfortable with that because it's asking the E Board to create policy, we can make the argument back that actually it's not asking the E Board to create a policy, it's following the policy that's been established. And perhaps do it in a way that provides a choice for the E Board. We could look at addressing this issue by establishing the office. If they don't want to establish the office now, they want to wait for the full Legislature, then plan B would be to add the positions in Marion County in order to, the Band-Aid, as you put it, this would be the Band-Aid to hold things together until we can actually establish the office.

Chair Jennifer Nash:

Just a question. Why do we have to tell them what we're going to do with it? Why not just ask for position authority and money, and then when we get it, make sure we build in the overhead, and when we get it, we open up. I mean, do we have to say we're going to do it in this area, in this place, in this? I don't know, I'm asking.

Peter Buckley:

They will want the details. They will want the details. If you're asking position authority, where are these positions going to be? What is the result, the outcome of adding these positions?

Chair Jennifer Nash:

Okay, thank you. Brook and then Rob and then Susan.

Brook Reinhard:

So, I have a few thoughts, but the main thing is I have a lot of concern over the idea of expanding a Marion County office that's somehow going to serve Coos and Douglas. It is a really long drive. I think clients are very poorly served by remote appearances. Not for remote court appearances of a status check, but I don't think you should be visiting clients remotely. I think it should be in person almost every time unless it's a remote appearance to say, "Hey, I'm going to see you this coming week." But I don't think it should be substantive. I worry about the level of service that the agency is providing if we're doing that.

I do think that we should have a robust Trial Division, but in doing that, I do think that Trial Division should be on max so that we are able to adequately stem some of this flow of unrepresented people, instead of the Oregon project numbers, which I wish we could be on, but if we're not going to do it for the state, we shouldn't do it for the Trial Division. And like I said before, I think the Trial Division should be trying to recruit out-of-state. Our office brought a bunch of people from Missouri and the Midwest who really had extremely high caseloads in their state and were very happy to come to Oregon. And with the money the Trial Division pays for salaries, they should be able to have no problem recruiting from out-of-state. With out-of-state comity – that's not comedy, but comity – you can get your bar license in Oregon in a period of about two months. It's not very hard.

And so I really would like some direction from the commission to tell the agency, "You need to be doing this sort of thing and you need to be recruiting out-of-state." And I don't want to hear any more examples of the commission calling up nonprofit PDs offices and recruiting people during the day for poaching jobs. It's a really bad look. So, I just wanted to note that, but my main thing is I don't think Salem makes sense for locating people for these more rural counties. And my office is happy to continue taking people in Douglas, but I think long term having a Trial Division office there is fine and makes sense, or Coquille. Thanks.

Chair Jennifer Nash:

Rob.

Rob Harris:

Thanks. Perhaps the agency could consider, regardless of where you're going to get more, I guess, people for state trial offices, but instead of trying to get authorization for a 6-person off... Basically [Inaudible 02:15:03] 12 or 13 people working in an office, you could establish a single lawyer office with one staff person, for instance, do an office share arrangement. Now you have a body down there that can make in-person court appearances, visit people in jail, even if their primary counsel of record may be in Salem, for instance. You don't have all the costs associated with a long-term lease and all the other expenses. You may have a budget to pay 2,500 bucks a month for an office share arrangement, for instance. In Coos County is what I'm talking about, using that. And not only that, so the person you hire knows that they will be in Coos County or Douglas County. They're not expecting to stay in Salem or some other location.

So, it seems to me the way to get this started, from someone who has started branch offices, is to find a small space with a lawyer who's committed to that geographic location that can do work for other

lawyers who may be in Salem or Medford or wherever they may be for the court appearances, for those in-person jail appearances where that person really needs to talk to somebody in person. And they know that they're an associate of their primary lawyer and they're in good communication. And if you're working remotely, you can also use the resources of the paralegals, the investigators, and other folks that are at the "main office" in Medford or Salem. So, there's a way to do this. Not only that, but that lawyer then could also be potentially the lawyer who would monitor and help doing case assignments or whatever in that county, that we know the admin stuff has to be done.

I proposed this before, I guess, where you have a deputy state trial lawyer in each judicial district who takes the responsibility for doing that sort of leadership meetings. Maybe this is a way to consider doing that by opening an office in Coos, so you sort of do some beta testing of the best way forward on this. But the bottom line is you might have money to pay for a office share arrangement, get the lawyer who's going to commit it to be there and actually do a better job for some of these clients instead of having these clients represented from an office out of Salem or Medford. Thanks.

Chair Jennifer Nash:

I will say that the agency has explored that, and I think that's part of the baked-in idea of opening that office, that those options have been explored, and there is some possibility of doing that and having an office share type situation that may work out. All right, Susan.

Vice-Chair Susan Mandiberg:

This is maybe a little bit redundant, but I'm concerned about recruitment. Even if their time physically in Salem would be relatively brief, correct me if I'm wrong, but you would be recruiting a lawyer to be spending physical time in Salem, knowing that at some point they would have to move themselves and maybe their family to someplace else like Coos Bay. I don't understand. I think that would make recruitment difficult. And I liked Rob's idea of someone being there in an office sharing arrangement, and I also liked Peter's suggestion that this be presented as options. Obviously we need the representation in those counties, and here's one way to do it, and here's another way to do it, and this is what we'd prefer." If that were a possible way of going to the E Board, I think that makes some sense.

Jessica Kampfe:

We did receive some feedback to not give the E Board options. So, ask for what we want. And then if they want to do something different, they have the ability to do it. But they aren't policy experts in this area, and if we give them a host of options, we're asking them to make choices that are beyond their expertise. So, it would be better just to give them the

direction, and then if they have questions or they want to walk it back, they have the flexibility to do that.

Chair Jennifer Nash:

And I'm hearing consensus really from the commission around the idea that no, we don't want to house people in Marion County. We want to open an office. We want to do exactly what's on the E Board request here. So, I'm hearing that that's pretty much the direction the commission wants to go. So, that's how I'm going to frame the vote when it comes up. So, with that, let's move on to the next items, which should be pretty quick. Number five, additional assignment coordination staff within the agency.

Jessica Kampfe:

So, currently we have two policy analysts that are helping to connect panel attorneys to unrepresented persons cases all across the state. And we saw with one policy analyst doing it, what we could facilitate. Then the agency made some improvements in terms of an automated form that Harry Noone talked with you all about a few commission meetings ago. We also added a policy analyst. And once we took those steps, we're seeing increase in the number of lawyers that we can bring in on THIP cases. We're able to contact more people and more people say yes to us.

Here we would be looking at adding two more policy analysts to help support that panel. That would allow the agency to break the state into regions and have each policy analyst working up a region on trying to get those hourly appointments. We do think that this would allow us to increase the use of THIP and that we would get more lawyers coming in and accepting cases through that program because we'd have a broader outreach effort. I will note that this does tie to some of the comments that Mr. Amador made earlier about if THIP appointments hold steady, then we would expect the budget to work out a particular way. If the commission does adopt this, we would expect that part of the result would be that THIP appointments would increase, and that's going to have budget impacts.

Chair Jennifer Nash:

Thank you. And then moving on to the last item, which is 25 additional MAC.

Jessica Kampfe:

And this is really geared at... I believe you all heard from one of our contractors earlier today about how they would like to be able to bring in SPPE folks, but they don't have any positions to put them in. We've actually heard that type of comment from a number of providers, not only with the SPPE, but also with the folks that are going to be barred in the fall. And that there is capacity within existing public defender law

firms to be able to bring in new lawyers in the fall, to be able to bring in SPPE. We've been informed that there's about 25 MAC out there that people think they could bring in that don't exist within our system. So, this would be asking for the funding in order to support providers to bring in those new lawyers. You also heard from Mr. Amador about savings that currently exist within our criminal contracts. This number could be offset by those savings.

Chair Jennifer Nash:

And if we did offset, it would be about two-thirds that would be offset, right? So, we wouldn't be asking for 25; it would be a lot less than that because we could already fund within the existing money that we have. Or, I mean, what's the conservative amount that you would want to recommend?

Jessica Kampfe:

I would actually, I would leave the number, the 25, because the Legislature cares how many MAC there are. So, if we have a number now, we want to let them know we're increasing that number by 25, but where the reduction would occur would actually be in the cost because we would put some agency funds towards it, and then we'd be asking for the remainder of the cost.

Chair Jennifer Nash:

All right, perfect. All right, thank you. Are there any questions or discussion about that? Being very mindful of the time, please. All right. So, here's what I want to do next. I'm going to move to a vote on the E Board items and then the Governor's letter. And then we're going to talk about the POPs, which I think will go very quickly because we've covered a lot of these things already in prior meetings and we've all reviewed the materials. And the way I want to frame the vote is the notion, as Commissioner Smith already brought up, that the Governor's letter is going to mirror the E Board request. Those two things go hand in hand. And so whatever we vote for in the E Board request, the Governor's letter will be adjusted to reflect those changes or modifications or inclusions.

So, first we'll do the E Board and then we'll circle back to the Governor's letter and have a brief discussion on that again, vote on that, and then we'll move to the POPs unless anyone has any objection to that plan. Okay. So, let's move through these things one by one. Let me flip back to my notes. Okay. The first... Well, I will also say, I think that I'm not going to be able to, even though there's a... Well, okay. I'll start all over again. Just pretend I didn't say anything. All right. So, item number one, OPDC organizational structure. I'm not going to ask for votes on the cost estimates because the agency is going to come back to us with that. We're just going to vote on the concepts. So, the OPDC organizational

structure, creating the budget, creating the positions that the agency outlined, and creating some new positions, switching things around. So, I'm going to ask for a roll call vote on approval for asking the E Board to ask for those positions as outlined in item number one of the memo dated July 24th, 2024, that we've discussed today.

Peter Buckley: Do you need a motion for that?

Chair Jennifer Nash: I do need a motion.

Peter Buckley: So moved.

Chair Jennifer Nash: Thank you. And a second.

Vice-Chair Susan Mandiberg: Second.

Chair Jennifer Nash: And I need a roll call vote.

Eric Deitrick: Commissioner Nash.

Chair Jennifer Nash: Yes.

Eric Deitrick: Commissioner Mandiberg.

Vice-Chair Susan Mandiberg: Yes.

Eric Deitrick: Commissioner Lininger.

Tom Lininger: Yes.

Eric Deitrick: Commissioner Harris.

Rob Harris: Yes.

Eric Deitrick: Commissioner Selander.

Bob Selander: Yes.

Eric Deitrick: Commissioner Buckley.

Peter Buckley: Yes.

Eric Deitrick: Commissioner Harvey.

Rob Harris: Yes.

Eric Deitrick: Commissioner Smith.

Chair Jennifer Nash: Yes.

Eric Deitrick: With that, eight votes, it passes.

Chair Jennifer Nash: Thank you. Moving on to item number two. This is to update the E Board about the extension of the Temporary Hourly Increase Program from June 2024 to December 2024, including what we believe the ultimate cost will be for the extension, but probably not asking for any additional funding from the E Board to pay bills during this legislative session. I'm sorry, this legislative budget. Does that work for the agency for authorization?

Jessica Kampfe: Yes, I think that works for us.

Jessica Kampfe: All right, thank you.

Chair Jennifer Nash: I need a motion to that effect.

Alton Harvey Jr.: So moved.

Commissioner Addie Smith: So moved.

Chair Jennifer Nash: I have a motion and a second and we need a vote.

Eric Deitrick: Commissioner Nash.

Chair Jennifer Nash: Yes.

Eric Deitrick: Commissioner Mandiberg.

Vice-Chair Susan Mandiberg: Yes.

Eric Deitrick: Commissioner Lininger.

Tom Lininger: Yes.

Eric Deitrick: Commissioner Harris.

Rob Harris: Yes.

Eric Deitrick: Commissioner Selander.

Bob Selander: Yes.

Eric Deitrick: Commissioner Buckley.

Peter Buckley: Yes.

Eric Deitrick: Commissioner Harvey.

Alton Harvey Jr.: Yes.

Eric Deitrick: Commissioner Smith.

Commissioner Addie Smith: Yes.

Chair Jennifer Nash: All right, now for number three, I'm going to break this out into two different items. I believe what I have heard is that the agency is not asking for an hourly rate increase. I am going to ask whether there is a motion from a commissioner to increase the hourly rate for the THIP program from January 1st, 2025, to June 30th, 2025, understanding that the agency is not recommending that. All right, having heard no motion, we'll move on to the second portion, which I do not have a conflict for because we already have an appointment. So, the motion is to ask for authorization from the E Board to continue the Temporary Hourly Increase Program from January, 2025, to June, 2025, to give the E Board an estimate about the total cost of the program, but not to request the funding at this time, to come back in December with what we believe we will need to fund that program through the end of the biennium. Is there a motion to that effect?

Peter Buckley: So moved.

Chair Jennifer Nash: Is there a second?

Vice-Chair Susan Mandiberg: Second.

Chair Jennifer Nash: And we need a vote.

Eric Deitrick: Commissioner Nash?

Chair Jennifer Nash: Yes.

Eric Deitrick: Commissioner Mandiberg?

Vice-Chair Susan Mandiberg: Yes.

Eric Deitrick: Commissioner Lininger?

Tom Lininger: Yes.

Eric Deitrick: Commissioner Harris?

Rob Harris: Yes.

Eric Deitrick: Commissioner Selander?

Bob Selander: Yes.

Eric Deitrick: Commissioner Buckley?

Peter Buckley: Yes.

Eric Deitrick: Commissioner Harvey?

Alton Harvey Jr.: Yes.

Eric Deitrick: Commissioner Smith?

Commissioner Addie Smith: Yes.

Chair Jennifer Nash: Thank you. The motion passes. So, moving on to number four, which I also meant to say, in the materials, there's a typo. We called it a trail office instead of a trial office, and that's really hard, I do that all the time, so FYI. Establish, and I'm going to ask for a motion based on what I've heard the discussion and the consensus of the commission to be, which is as reflected in the written materials, to ask for authorization to establish a state trial office serving the Southwest division, which would serve Coos and Douglas County. Is there a motion to that effect?

Alton Harvey Jr.: So moved.

Chair Jennifer Nash: And is there a second?

Vice-Chair Susan Mandiberg: Second.

Chair Jennifer Nash: And we all need a vote.

Eric Deitrick: Commissioner Nash?

Chair Jennifer Nash: Yes.

Eric Deitrick: Commissioner Mandiberg?

Vice-Chair Susan Mandiberg: Yes.

Eric Deitrick: Commissioner Lininger?

Tom Lininger: Yes.

Eric Deitrick: Commissioner Harris?

Rob Harris: Yes.

Eric Deitrick: Commissioner Selander?

Bob Selander: Yes.

Eric Deitrick: Commissioner Buckley?

Peter Buckley: Yes.

Eric Deitrick: Commissioner Harvey?

Alton Harvey Jr.: Yes.

Eric Deitrick: Commissioner Smith?

Commissioner Addie Smith: Yes.

Chair Jennifer Nash: All right, thank you. Moving on to number five, additional assignment coordination staff within the agency for the remainder of the biennium. Is there a motion to ask for position authority and funding for that?

Vice-Chair Susan Mandiberg: So moved.

Chair Jennifer Nash: Is there a second?

Tom Lininger: Second.

Chair Jennifer Nash: All right, we need a vote.

Eric Deitrick: Commissioner Nash?

Chair Jennifer Nash: Yes.

Eric Deitrick: Commissioner Mandiberg?

Vice-Chair Susan Mandiberg: Yes.

Eric Deitrick: Commissioner Lininger?

Tom Lininger: Yes.

Eric Deitrick: Commissioner Harris?

Rob Harris: Yes.

Eric Deitrick: Commissioner Selander?

Bob Selander: No.

Eric Deitrick: Commissioner Buckley?

Peter Buckley: Yes.

Eric Deitrick: Commissioner Harvey?

Alton Harvey Jr.: Yes.

Eric Deitrick: Commissioner Smith?

Commissioner Addie Smith: Yes.

Chair Jennifer Nash: All right. And then moving on to the final item, which is to ask for funding for 25 additional C felony qualified MAC for criminal contracts. This is for criminal, yes, for criminal contracts. Is there a motion to that effect?

Alton Harvey Jr.: So moved.

Chair Jennifer Nash: And a second?

Vice-Chair Susan Mandiberg: Second.

Chair Jennifer Nash: All right, and a vote.

Eric Deitrick: Commissioner Nash?

Chair Jennifer Nash: Yes.

Eric Deitrick: Commissioner Mandiberg?

Vice-Chair Susan Mandiberg: Yes.

Eric Deitrick: Commissioner Lininger?

Tom Lininger: Yes.

Eric Deitrick: Commissioner Harris?

Rob Harris: Yes.

Eric Deitrick: Commissioner Selander?

Bob Selander: Yes.

Eric Deitrick: Commissioner Buckley?

Peter Buckley: Yes.

Eric Deitrick: Commissioner Harvey?

Alton Harvey Jr.: Yes. Double yes. Triple yes.

Eric Deitrick: Commissioner Smith?

Commissioner Addie Smith: Exactly what he said.

[Laughter]

Chair Jennifer Nash: All right, thank you. Thank you for working through those so quickly. Circling back to talk about the Governor's letter. I think where we've ended up is for the 90-day plan and the Governor's letter, we're going to request or we're going to propose that somehow we're going to ask for the – and by "somehow," I mean we're going to figure out how to ask – to shift the funding from the 4002 capacity to additional non-4002. We're going to redirect those funds and utilize that capacity. We're going to try to work with counties to have docket resolution courts. We're going to make some internal changes to ensure that the

list is correct for unrepresented, who's actually appearing on the unrepresented list. We're going to incorporate the E Board request that we just voted on and update the charts accordingly. Yes, that's my notes. And then there's the policy option packages, which we've not yet discussed. Before I take a vote on approving the letter with some scrivener changes, and Commissioner Smith and Ms. Taylor will work those out, and then Director Kampfe and I will sign the letter. Are there any other comments, suggestions, concerns about the Governor's letter?

Commissioner Addie Smith: I think the only thing I would add, which is my own scrivener's type edit is, especially after today's conversation, I know we end the letter with sort of a request that the Governor help convene stakeholders and begin to have these conversations more informally. So, I think letters back and forth are important and records are very important, but I think having more stakeholder engaged conversations, and she's so well-positioned to get those folks to the table. So, perhaps an additional sentence, really highlighting the leadership that she can help take so that some of these adjustments that we're making and sort of the narrative that Senator Prozanski brought up around sort of there's a big cost or there are system changes. Let's see those side by side and begin to work on them. I'd like to highlight that a little bit more in the letter. I don't want people to be surprised by that change or adjustment.

Chair Jennifer Nash: Any questions or comments about that? Okay, I'm seeing some applause. All right, so with that, I will ask for a motion to approve the letter with the discussion that we've had today to the Governor in response to her letter sent to us in May of 2024.

Tom Lininger: I move to approve.

Chair Jennifer Nash: And is there a second?

Alton Harvey Jr.: Second.

Chair Jennifer Nash: All right. We need a vote.

Eric Deitrick: Commissioner Nash?

Chair Jennifer Nash: Yes.

Eric Deitrick: Commissioner Mandiberg?

Vice-Chair Susan Mandiberg: Yes.

Eric Deitrick: Commissioner Lininger?

Tom Lininger: Yes.

Eric Deitrick: Commissioner Harris?

Rob Harris: Yes.

Eric Deitrick: Commissioner Selander?

Bob Selander: Yes.

Eric Deitrick: Commissioner Buckley?

Peter Buckley: Yes.

Eric Deitrick: Commissioner Harvey?

Alton Harvey Jr.: Yes.

Eric Deitrick: Commissioner Smith?

Commissioner Addie Smith: Yes, with a massive thank you to the Legislative Subcommittee and their engagement on this.

Chair Jennifer Nash: All right, wonderful. All right, so let's move to a discussion of the POPs, and here's how I'd like to do that. Again, we've discussed these repeatedly in the last several months. We have the materials that lay them out very thoroughly. The late inclusion and very much appreciated inclusion of the spreadsheet, I think, is fantastic. That appears on page 141 of your materials that Mona sent out yesterday. I think it makes sense for us to just do a quick summary based on that spreadsheet, and then if there are specific questions that commissioners have about any of the policy option packages, we can ask them, but I'd like to get a vote before noon, if humanly possible. But if not, that's okay too. I mean, we want to have as much time as possible to discuss these. So, with that, I'll turn it over to Director Kampfe and Mr. Amador.

Jessica Kampfe: Thank you. And I just want to talk procedurally about where we are at. So, can you hear me? You're not hearing me? You can hear me? Okay. I've been having all sorts of audio problems for the past few days. So, in terms of procedure, so you all discussed concepts for policy option packages in June and gave the direction to the agency about what we

should go forth and build out for you for this meeting today. At this point, we are looking for your go-ahead to continue to finalize the agency requested budget with these policy option packages in it. We will be back in August for you to authorize the agency requested budget.

Our agency requested budget is due to the Legislature at the end of August. So, at that point, we are out of time to change the agency requested budget. So, when we come back in August, we are going to really need that to just be an authorization of the budget. So, today is the day for the commission to let us know, "Yes, you're on track. These are the things that we want you to add as the policy option packages for the agency's requested budget." And that's what we're going to be asking for your direction on today. Chair Nash, do you want me to walk through the different policy option packages that are outlined on page 141 of the materials? Or does the commission just... Do you want to lead that discussion?

Chair Jennifer Nash: Let me start and we'll see if we have to backtrack a little bit. Before we talk about these, I think it would be helpful if Mr. Amador explained to the commission what our current legislatively adopted budget with the additions that we've received is, so that we have some context for these.

Ralph Amador: Chair Nash, members of the commission, Ralph Amador for the record again. So, you want to know what our current budget is. Our total funded budget is, I believe, \$602 million with other funds of about \$20 million. So, \$592 million, I believe. And I can look it up, get you the direct number, but I believe that's approximately what our general fund budget is currently right now.

Chair Jennifer Nash: Okay, that's good enough. I mean, that just gives us some context for what we're asking for. I just think it's helpful for people to know that because I think it helps inform the discussion. Okay, Commissioner Buckley.

Peter Buckley: Just a comment here, and I really appreciate the spreadsheet and the summary. I'm hoping that in all of our materials, whenever we summarize 102 and 105, we make it clear that this is part of a six-year plan of building, that this is the first of three, basically, to be transparent about it. We need to build the system up to the level, and this is the first part of a six-year plan.

Chair Jennifer Nash:

Agreed. I mean, what everybody's hearing already is, "I can't believe you're coming in and going to ask us for this." You're going to be laughed out of the building. But this is how much it costs, and this is what we need to talk about. So, with that, let's have the discussion. So, FCMS, this is the financial/case management system. We've received money for it. We haven't spent all of the money. That money is going to go back, whatever we haven't spent. This is the money we need in the next biennium to continue the implementation and the creation of that system, which is absolutely critical, has to happen. It's the only thing that's going to save us from the PAE AP problem, and it's going to make things much more efficient to be able to have an integrated case management system for the state Trial Division, and also the agency to be able to do all the work that it needs to do.

Just so you know, until very recently, it was still a paper system. And by recently, I mean a couple of months ago. So, this will integrate all of the internal operations for payment as well as being able to have the trial lawyers themselves use a case management system. So, anybody have any questions or concerns about that POP 101? I think I'm a fan of primacy and recency, you know those concepts? And I wonder if we really do want our very first POP to be the case management system. That's the only question I have, and I'll just leave that for other consideration. It might be too late because it's already been kind of out there. But next time, maybe we put that at the end or in the middle somewhere. But any questions or concerns or comments?

I think what I'll do is I'll ask for a vote for all of them at the end, the way we did after a big discussion. Okay, so POP 102, this is the big-ticket item, obviously. This is how much it's going to cost to convert from the current method, where we count cases and pay contractors by case, to a workload and caseload model that also includes adding additional attorneys, increasing funding to the market match level that we talked about when the POP was built, that the commission talked about, and including support staff that decreased the number of needed lawyers by transferring non-lawyer work to non-lawyers. Does anyone have any questions or concerns or discussion about POP 102?

Okay, 103, self-explanatory. This is the next iteration of the Trial Division build that's in compliance with Senate Bill 337, including the needed staff. Because one of the things, that we built this whole new program, and there's not very many managers and not very many middle-level support staff to help build the program, and those are baked into this POP as well, 111 positions, 64 FTE. Any questions about that or concerns?

Okay, hourly rates. This is implementation of the hourly rates that we've already discussed and voted on. This is how much it's going to cost for the hourly equivalent of 40 new panel attorneys at the increased rates, which would be 230/205. That's the market match rate. And then increasing investigators and mitigators to 75/85 an hour through the PAE process. Anyone have any questions or concerns about that or discussion? All right.

Juvenile, same as adult, but it's juvenile. So, this is just breaking out the workload caseload model across the board for all juvenile practitioners. That mirrors the criminal caseload; it's just the juvenile caseload. Questions or concerns? All right. And then, oh, Rob. You're muted. Yeah.

Rob Harris: There we go, sorry. On the juvenile caseload, do we know the cost, Jessica? Director Kampfe, do you know the cost of what if we just expanded PCRP statewide? Without expanding, but just say we made PCRP available statewide. What would the cost of that be?

Jessica Kampfe: We, I believe, at some point in time, have priced that out. I don't have those costs handy.

Chair Jennifer Nash: I will say that the difference between PCRP statewide and this statewide is the juvenile, this POP 105, adopts the new workload, which is lower than PCRP. We've heard lots of feedback that the caseload standards for even under PCRP are too high, and it's difficult for contractors to meet their obligations. And I think that the key performance measures that are measured under PCRP really reflect that. There's a real, I mean, if you take a look at those that we got, I don't know, like six months ago or something, PCRP contractors are not meeting those because they are reporting that their caseloads are too high, so they can't meet with clients as much as they're supposed to be. They can't do those kinds of work because their caseload is really high. So, this is really rolling out a PCRP sort of statewide, but at a lower workload.

Rob Harris: I guess that was my question. That was sort of my question, is that what this really would provide? Like a PCRP type of service, but at a lower workload caseload model? Is that what this is?

Jessica Kampfe: This would improve on PCRP. So, through the Parent Child Representation Program, we really realized a lot of the benefits of having a workload standard and incorporating case managers as part of the defense team. So, instead of PCRP as an open workload standard,

this would be an annual workload standard, but it would be the annual workload standard that is in the Oregon study because the Oregon study looked specifically at Oregon juvenile, whereas the national study did not. But it also includes the funding to have those other core staff members, those other subject matter expertise, as part of the defense team, which is something we do see in PCRCP. So, it has funding for the social worker/case managers, as well as for administrative support and investigation within those programs. So, it is building along a lot of the lessons that we learned in PCRCP and moving into a next phase, and it would be statewide.

Rob Harris: Okay, so for someone who's doing PCRCP right now, what additional resources would they see from this POP? Would they see the same team, but just lower caseloads, or would they see more people? So, really, I mean, my question is what additional services would a PCRCP attorney see from this funding?

Chair Jennifer Nash: So, lower cases. So, same that they have now, fewer cases.

Rob Harris: Right. Well, that was my question. And I think at one point, we discussed whether or not this be framed as rolling out PCRCP statewide to make equity between all the kids and the families. And this is a real equitable policy, I think, that could really be sold as an equity policy, not a change, but just rolling out PCRCP and improving that program. It's a proven program. It does well. I'm just wondering more of a framing standard than anything else, I guess.

Chair Jennifer Nash: That's great feedback. Commissioner Smith.

Commissioner Addie Smith: I think that's exactly what I was going to say. As we talked a little bit about before, I think all of Rob's questions we're going to get from the Legislature, and so we should begin to work now on getting ahead of how we're talking about this. I don't think that affects their vote today, but I want to discuss how we start talking about a couple of these so that we're creating a glide path and we're keeping things consistent. And if those of us on the commission who track this pretty closely are a little confused, we can be guaranteed that others are going to have even more confusion that we want to try and avoid, especially because I think this is a win-win-win all around.

Chair Jennifer Nash: Sorry, Judge, I skipped over you, and I didn't mean to.

Bob Selander: Excuse me.

Chair Jennifer Nash: That's okay.

Bob Selander: I don't want to talk about PCR, but I want to talk about the caseload model. Under this system, what are we basing the maximum caseload for the attorney? And I'm going back to my criminal episode. I'm not talking about... Well, five cases in a single criminal episode, what does the caseload model do for the attorney in saying they've reached their maximum capacity?

Chair Jennifer Nash: So, under this model, this is what we discussed in the retreat in March. So, under this model, we would take the national workload and caseload standard, which is really based on the number of hours that it takes to do the work. And of course, how many cases there are, that is directly tied to the funding we get from the Legislature. But the model that's being proposed... This is the funding for the model we've already adopted, which is based on the national workload standard, which is number of hours, not cases.

Bob Selander: But the hours are based on the case.

Chair Jennifer Nash: Correct.

Bob Selander: But we're not going back to an hourly model where the attorney is going to keep track of every hour.

Chair Jennifer Nash: Oh, they are. The attorneys are going to have to keep track of their time.

Bob Selander: Is that what their pay is going to be based on? Their case load?

Chair Jennifer Nash: Their pay's going to be based on their level of qualification. The same thing... Well, I'll let...

[Crosstalk 02:52:11]

Bob Selander: I misspoke myself. I don't want to talk about pay. I want to talk about the number of hours they can take. Is it going to be based on the case type, or are we going to ignore the case type and let them keep track of the hours?

Chair Jennifer Nash: Well, we're doing both. It's not a combination.

Bob Selander: But that doesn't answer my question. The maximum case load, the maximum number of hours that attorney can take, is based on what?

Chair Jennifer Nash: Eric, do you want to jump in?

Eric Deitrick: Yeah, Commissioner Nash and Commissioner Selander, I expect we will start to have this service delivery model conversation at the August meeting, at least teeing off that conversation. We've been given pretty strong direction from the Legislature about what that future is going to look like. We're going to have our own employees who will be compensated with a salary, then we'll have nonprofit organizations down the road that we will have to have some reimbursement mechanism so that they can presumably continue paying their employees a salary, and moving to a panel of attorneys who get paid at an hourly rate. Regardless of which component you're in in that system, I'm fairly confident we're going to have a timekeeping mandate for each of those service delivery models going forward. But to answer your question, Judge Selander, I don't think that is going to be the way people are compensated in each of those three service delivery areas. Certainly, the hourly panel, that'll be the basis for their compensation.

Bob Selander: What will be the basis, the number of hours they actually work?
R:Yes.

Bob Selander: As opposed to five cases that each have 10 hours each?

Eric Deitrick: Correct. For those hourly panel folks, they will be compensated based on the time they put in. They can't multiply that time times each of the case that's open. If you're working five hours, you'll work five hours.

Bob Selander: So, when we are approaching the Legislature, we are basing our ask based on the number of cases and the hours that we're forecasting for each case. When we're paying the attorneys, that's not how we're paying them. We're paying the attorneys on the hours they've worked. So, aren't we over-asking the Legislature?

Eric Deitrick: Yeah, I think I hear what you're saying, Commissioner Selander. We have to make assumptions, and our budget shop has to make assumptions and projections about how much funding we believe we're going to need. And so I believe those hours anticipated is the foundation upon which, the estimate upon which, the budget ask is made. Over time, we'll actually see how many hours attorneys are billing per case, and we'll have more information about that, if that helps.

Bob Selander: Our ask of the Legislature is hours anticipated based on each case type.

Jessica Kampfe: That's correct.

Bob Selander: Thank you.

Chair Jennifer Nash: All right. I'm going to try to move through the rest of these pretty quick. Well, I am going to, very quickly. So, POP 106 administration, it's agency staff-related funding. Does anyone have any questions or concerns about that? All right. The continuation, that's just the roll-up of the payment of whatever bills that come in in the next biennium. I know nobody has any concerns about that. And then 108 is recruitment and retention. Does anyone have any concerns or questions about the proposals regarding recruitment and retention with the discussion we've had today about focusing on out-of-state recruitment? All right. So, here's how we're going to do this. We're going to do this as one big package because nobody has had any concerns or questions that cause any need to think we need to break this out. So, with that, is there a motion to adopt the draft policy option package narratives, when we know we're coming back in August with the final approval? Do we have a motion to that effect for 101 through 108?

Peter Buckley: So moved.

Chair Jennifer Nash: Is there a second?

Rob Harris: Second.

Chair Jennifer Nash: And we need a vote.

Eric Deitrick: Sorry. Commissioner Nash?

Chair Jennifer Nash: Yes.

Eric Deitrick: Commissioner Mandiberg?

Vice-Chair Susan Mandiberg: Yes.

Eric Deitrick: Commissioner Lininger?

Tom Lininger: Yes.

Eric Deitrick: Commissioner Harris?

Rob Harris: Yes.

Eric Deitrick: Commissioner Selander?

Bob Selander: No.

Eric Deitrick: Commissioner Buckley?

Peter Buckley: Yes.

Eric Deitrick: Commissioner Harvey?

Alton Harvey Jr.: Yes.

Eric Deitrick: Commissioner Smith?

Commissioner Addie Smith: Yes.

Chair Jennifer Nash: All right. Motion passes. All right, I saw Judge Greenlick come on. He is scheduled for 12 o'clock. And Judge Greenlick, oh, there. I'm sure you can hear me. I blew through our time slightly by 15 minutes, and I know everybody needs to go to the bathroom. So, if you just give us 5, to give us until 5 after 12, I would appreciate it. And I'm sorry to eat into your time. But we'll take a quick break, and we'll be back at 12:05. Thank you very much.

Judge Michael Greenlick: Thank you, Commissioner Nash. I'll be here.

Chair Jennifer Nash: Thank you.

[No dialogue]

Chair Jennifer Nash: We're waiting for one more voting member to appear, and then I can start the meeting because we'll have a quorum. And there we go, all right, we can get started.

Judge Michael Greenlick: All right, should I just jump in then, Commissioner Nash?

Chair Jennifer Nash: Let me make sure. Are we recording? We are. So, we are back after a break. Thank you very much for accommodating our very short break. I apologize to commissioners for cutting the break short, and I apologize to Judge Greenlick for starting late. And with that, I'll turn it over to Judge Greenlick, who's going to talk with us about life in Multnomah County these days. Thank you.

Judge Michael Greenlick: Thank you, Commissioner. Thanks, everyone, for cutting your break short, I appreciate that. My name is Michael Greenlick. I'm the chief criminal judge in Multnomah County here; I've been doing it for about a half a year. I've been a judge for about 10 years, and in one way or another, I've been involved in the criminal justice system for upwards of 40 years, like Commissioner Selander.

Alton Harvey Jr.: Judge! What's up, Judge Greenlick? What's up?

Judge Michael Greenlick: Yeah. And Mr. Harvey was an integral part of our STAR Court program for the years I was involved in it several years ago, probably the most valuable player in our drug court program at the time. Anyway, I do know many of you, and I just appreciate the opportunity to talk a little bit about how this crisis is impacting us here in Multnomah County. When I say us, it's not just the court system it's impacting, but it's impacting the community in a broader way and having significant impacts in many situations on defendants. And so I'd like to kind of get to that at the end of my presentation. Barb Marcille is on the call with us today as well, and she's, as you know, our trial court administrator. If you have any questions about numbers and that sort of thing, she might be able to answer those. The next slide, I'm not really following it. Oh, let's see. There it is.

The next slide gives you some idea of the number of unrepresented cases and clients or individuals in the county here. It's stayed relatively stable since June of 2022 when things sort of exploded, but there's definitely been an uptick, and we expect that to continue because we're having more cases and more filings in the system. We said as of July 1st, there were 659 unrepresented cases. Now it's 688. So, just in the last couple, three weeks, we have a significant increase from there, and there are 589 defendants who are unrepresented.

Quite frankly, we would have many more people unrepresented in Multnomah County except for the fact that I think we might be the only county in the state where judges are dismissing cases after a defendant has had to come back to court three or four times without counsel. So, if somebody comes back the first time, no lawyer. Comes back a second time, no lawyer. Third or fourth time, defendants are making motions to dismiss. They're being prompted by the arraignment lawyer there that's usually someone from the public defender's office. And they're making motions to dismiss. They're talking about the prejudice they've suffered having to come back many times. And oftentimes, our judges are dismissing cases based on the sort of the prejudice that's shown to the defendant.

But at that point, usually the cases are in the information stage. And so at that point, the district attorneys are taking many of those cases to the grand jury and getting an indictment. Then the person might be arrested on the indictment warrant. Then they might be right back in the no lawyer, come back to court, no lawyer, come back to court, no lawyer, come back to court. Often, defendants are struggling in the community. They're houseless, they have substance use disorder issues, fentanyl use every day, so they're not coming back to court. So, when they're supposed to come back to court to see if we have a lawyer for them, they don't. A bench warrant gets issued. They get arrested on the bench warrant. They get released, arrested again. And so somebody can be bouncing around back and forth multiple times, and this obviously can have quite an impact on people. Next slide, please.

So, I just wanted to get you an idea of sort of the percentage of cases unrepresented. I think I understand many counties around the state, most of the unrepresented numbers are in misdemeanors. For ours, the majority of unrepresented cases, defendants are minor felons, about 60%. There are some unrepresented major felonies. The most serious of those are folks in custody when their lawyers had to get off the case because there was a breakdown in the attorney-client relationship, or the lawyer had to conflict off for some reason that developed during the case. And usually we've been pretty good about getting lawyers for the folks who are in custody pretty quickly. Next slide, please.

This might not be totally accurate, this might've been tweaked at some point, but Judge Albrecht, our prior chief criminal judge, and Grant Hartley at the Public Defenders, and I'm pretty sure Multnomah Defenders might've been involved in this as well, I wasn't there at the time, came up with sort of a priority list. And one of the difficult things that happens in our counties is that we're in this situation, it must be happening everywhere, where it's like, okay, who gets a lawyer and who doesn't? And who decides that? And so we came up with this priority list, I think it kind of makes sense. I think guns, people with gun offenses, felonies, are kind of up on the priority list as well. And I don't see that here.

We've been lucky in the sense that most of the folks charged with the most serious offenses have been getting lawyers. That hasn't been our problem. Sometimes it's a little bit of a problem finding substitute counsel when a lawyer withdraws halfway through the case, but we've been pretty good at that. There's been availability after sometimes a matter of just a few days, if not a couple of weeks. But it's the sort of

the priority seven, eight, and nine folks that a really significant percentage of those folks don't have lawyers. We refer to these as minor felonies. A lot of these aren't really minor. They're C felonies, but they're not really minor. A lot of them are pretty significant and serious cases. Also cases in which the community is at significant risk.

And so that's where we have most of our unrepresented folks. The unauthorized use of a vehicle cases, the felony elude cases, those are the most common. They usually come together. And the problem is that, and really frustrating for our judges, is there's not much of a priority in that. And so the way it works in our system is Metropolitan Public Defenders have done a pretty good job sort of scoping things out as the week goes on. And they tell us, "Okay, we have this many lawyers for felony cases, minor felony, major felonies." And of course, they always take back cases, big cases where it's an additional charge of somebody they already represent. And so we never quite know how much capacity and how many people are going to go without lawyers from week to week.

But what happens a lot of times is somebody will come in custody. It'll look like a significant case, a lot of fentanyl or some other drug or maybe a dangerous elude where the person was driving a hundred miles an hour the wrong way on the freeway to try and get the police to stop the pursuit, and they have a long record, and it seems like a dangerous person. And then it'll just be sort of announced that they don't have a lawyer, no lawyer available. And judges sometimes are just like, "What? That person really needs a lawyer because this is a significant community safety risk." Then somebody else will come in on another case and it will just be sort of a first offender standalone C felony and they will get a lawyer. And so this has caused judges in our court to just be very frustrated about this at times, and it raises one of the really problematic issues that we're dealing with, which is who decides who gets a lawyer and who doesn't? Really nobody should be deciding that. Everyone should be getting a lawyer obviously. Next slide.

So, this shows us a little bit about just a day in the life of a Multnomah County, which I think is interesting. This is a typical Monday. We just randomly took this day. We didn't find the days with the worst statistics. We just decided, "Let's just take this Monday," when we were putting the slideshow together, Monday, June 24th. And you'll see there that our AM appearances are mostly folks kind of coming back for lawyers. It can be other things too, but oftentimes it's people coming back to see if we have a lawyer available. And there were nine cases that morning where there was no lawyer available. That oftentimes is folks coming

back for a second or third or fourth time. And then there were eight cases where we did have a lawyer available.

Our afternoon docket is mostly folks appearing on new charges. So, they've been either cited to come to court for the first time... It's the arraignment basically, where they've been arrested and they're in custody. And you see there that 7 cases, no attorney available and 11 cases attorneys were assigned. I venture the vast majority of those 11 cases where attorneys were assigned were major felony cases where we do have more availability. And that we oftentimes have situations where most of the C felony cases on a given day, we don't have lawyers. Sometimes almost all of them, we don't have lawyers available. Let's see, we have most of our capacity on Monday. The public defenders do try and kind of hold back lawyers in case, so we can have some as the weeks go by. But today, I get a report of how much availability the lawyers have, and today I got a report from Metropolitan Public Defender that they could only take one case on our misdemeanor docket. And we oftentimes have many, many cases that need lawyers on our misdemeanor docket. So, sometimes we run out of capacity, especially lately, very early in the week. So, this day we added 16 felony cases to the unrepresented list. And it's been our experience that sometimes we're adding 24, 30 cases to our unrepresented list. This, our numbers would be a lot higher, as I mentioned before, if cases weren't also being dismissed periodically when we didn't have a lawyer. All right, let's go to the next slide, please.

Now, the prior slide was our Justice Center Courtroom 3 docket, which is felonies. This is our Justice Center Courtroom 4 docket, which is misdemeanors. We've been having more trouble with misdemeanor appointments lately because Metropolitan Public Defender hired a bunch of misdemeanor lawyers with money they got last year, and those folks have been slowly working their way up into felony caseloads. So, I get the feeling from the reports there are fewer lawyers now, but you can see 38% of our morning appearances, we didn't have a lawyer available. Let's see. Oh, it looks like we had lawyers available for most of our cases there, but in the afternoon, 29% of our cases, we did not have a lawyer. All right, next slide.

I want to talk just briefly about Betschart versus Garrett. So, Judge McShane's order, which was affirmed by the Ninth Circuit in its preliminary injunction, I don't think it's a permanent injunction yet, but his order basically focused, his amended order anyway, focused on getting representation for folks in those first seven days. And if you didn't have a lawyer by day seven after your first appearance, a new

case or whatever, you have to release the person, or the sheriff has to release them. I think it's a combination of our most serious cases, we're getting lawyers in Multnomah County, but also our judges have consistently ruled, almost universally ruled, that if somebody's in custody on a felony case and there's no lawyer at arraignment, we release them. Judges have interpreted their constitutional...their obligation at that point is to release people.

And so we really aren't holding people in violation of Betschart. Sometimes it can be confused because people kind of generally think it applies to anyone in custody more than seven days, which it does not. So, for example, if somebody had a lawyer for the first six months and then that defendant fired their lawyer or the lawyer had a conflict, Betschart doesn't apply to that situation. And Judge McShane made that pretty clear in his hearing, and I think the amended order makes that as clear as well. But just because we're releasing people doesn't mean this doesn't create significant angst for judges because we do have a fair amount of information at that arraignment stage. We know their prior record, we have a probable cause statement that's oftentimes very detailed outlining the crime. We know the number of failures that they've had in the community. We know a variety of other factors that go into release decisions. And all things being equal, many folks would be in a situation where a judge may not release them or would release them on significant conditions. And in Multnomah County anyway, judges have been taking the position they should just release people. And you'll find out in a minute that oftentimes has a very negative impact on the community and on defendants. All right. And I think the rest of that slide, I think it's pretty self-explanatory. Let's go to the next slide, please.

I understand today, I've been in trial these last two weeks, but Barb sent me a note that you had approved of '25 new lawyers on C felonies. That's great. Can we put those all in Multnomah County, please? Because I actually think that would be the number we need. Of course, I'm not somebody that knows how to do all the figuring and understand how many lawyers we'll need to handle how many cases, but that's kind of what I figured we would need based on the shortage we have every week that we need about 25. I don't know if Mr. Macpherson would agree, but I think we need something like that.

Chair Jennifer Nash: Just to clarify, Judge, we authorized asking the Legislature to fund that.

Judge Michael Greenlick: Yes, yes, yes. I understand. Yeah, no, I got that. Sorry if I said that wrong, I was getting ahead of myself. We did look through the

Governor's letter and OPDC's proposal, and a lot of that stuff makes sense, but I think the only thing that we need in this county, the thing that would impact us the most, is more lawyers, more men. Our person crimes have increased. They increased 26% in 2023. Our DUII crimes increased a lot because Portland Police had sort of shut down their traffic division for a long time. Now it's up and running and they're arresting people on DUIIs again. We see that a lot because we have to do the warrants for them. Drug crimes have increased a lot. In 2023, we expect increases a lot given the unclassified misdemeanors that will now be a crime starting on September 1st. We also have a camping ordinance. I don't know what impact that will have, but there are various things that are leading to us believing that we're going to need more attorney capacity, even more than we already need.

We really are urging OPDC to, and you may have done this, but I think it's just really important to say, okay, we anticipate this many cases, these types of cases, and we need this many lawyers to handle those cases. I mean, it's your job, obviously, to figure out what lawyers and law firms can handle ethically and have some standards around that, have some sense for that. But I really wish we had an answer, and the Legislature knew that answer. We need X number of lawyers to handle the projected caseload in Multnomah County, what we need now, what we will need in the coming months and during the next legislative session. We also, at the urging of the chief justice and based on some statutory requirement, a new law, we've just redone our new pretrial release guidelines. This will result in fewer defendants being released on recognizance, probably. Certainly initially it will. And this will impact things as well, and will, I think, impact the nature of the attorney caseloads. Okay, next slide.

Other things that I think are helpful, but maybe not as helpful in Multnomah County, I think it is somewhat helpful because we're getting help on the attorneys taking the conflict cases. It's easier to find folks taking conflicts because of the increased attorney hourly rates and the T-H-I-P, I don't know if you call it T-H-I-P or THIP. But I think that's helpful, but it's not hugely helpful, any little bit helps, but only about 2% of our cases in Multnomah County are taken by hourly attorneys, I understand. I love early resolution dockets. They haven't helped much in Multnomah County. We've tried them for these cases, these C felony cases where we don't have lawyers, but the district attorney's office is only agreeing to offer early resolution in a fairly limited circumstances, basically presumptive probation cases, people that would presumably get probation rather than prison based on usually lack of criminal record or lack of repeat property offender status, and so not very many cases

get identified. The DA's office just isn't doing a great job sometimes even screening their cases. We don't have any control over that obviously, but very few cases actually end up resolving.

I think a lot of clients are getting the message, hey, if you go back into no attorney status, your case might get dismissed after three or four times of coming to court. But for whatever reason, I understand the offers are reasonable, but very few cases are resolving, and many cases are failing to appear because we're releasing some people so that they can appear on that docket, and they might be a bad risk for returning to court because of their difficulties in the community. So, we'd love to have a functioning early resolution docket. We've tried. I have a feeling with our new DA, he may be reevaluating those things, and I don't know whether it'll be more likely or less likely that we'll have a early resolution docket that will take much of a dent out of this. Can we change slides?

Okay, that says thank you, but this is the part I really want to talk to you about. I did not make a slide because I just decided it was better just to talk to you about this. So, we have, like I said, many examples of defendants being arrested on serious non-person felony crimes. And they are released many times, even though if a judge was weighing the statutory factors we're supposed to weigh in terms of making a release decision, it boils down to a variety of factors that impact safety to the community and risk of failing to appear in court. And so we're releasing a lot of folks that we might not otherwise release because they're struggling so much. They really can't or won't, oftentimes they just can't come back to court in my view. And until you've stood there in our arraignment courts, and I would really encourage our commissioners to come watch our arraignment courts one day, I think it's something you don't see anywhere else in the state, the level of acuity with our citizens that are being charged with crimes. And this is what makes it so difficult on our judges. You stand there, someone comes into a box, into the arraignment court, and they're having 24 or 48 or 36 hours if it's been a weekend of all of a sudden being cut off from fentanyl, and they're so sick.