

Peter Buckley: Good afternoon. This is the meeting of the Legislative Subcommittee of the Public Defense Service Commission for July 10th, 2024, and we're here to discuss the report that is due for the Governor, Governor Kotek, on August 1st. So, with that, I will pass it over to Lisa.

Lisa Taylor: Great, thank you. For the record, Lisa Taylor, government relations manager for Oregon Public Defense Commission. Yeah, we're here to discuss the report that we need to return to the Governor by August 1st. I sent that out kind of late last night. It's gone through a series of edits. A few of the commissioners have seen it already, and we've made some edits based on those conversations. I believe it's also been posted publicly. So, I was just going to share my screen and we could go through it by section. And so, I will go ahead and do that. Zoom is different for sharing. Here we go. Great. Can you all see?

Peter Buckley: Yes.

Lisa Taylor: Okay. So, we formatted this into a letter format. Obviously, it is a letter going back to the Governor. And we start with just our intro paragraph about the commitment to finding defense counsel for all providers. Then we provide a little bit of background about the unrepresented crisis and how we got here. Really focusing, I think, on this idea that before maximum caseloads were introduced, according to our statute about having workload and caseload limits, really, those limits being introduced kind of uncovered the scope of this crisis, of the fact that there weren't enough public defenders in Oregon.

And then we have just a short list of initiatives that we've done to address the crisis, including our state trial offices and better communication, additional MAC that's been funded. This will, in our appendix, include an Excel spreadsheet of all of the initiatives that have been done, broken down by initiative, timeframe that that initiative happened, the costs and the outcomes that we got from that initiative. And we'll have that for the full committee when this is approved.

Then I move into the actual crisis plan, and this crisis plan, it doesn't matter a huge amount, but all of these are linked, so they'll hyperlink down to the actual plan. So, in the next 90 days, with legislative permission, we can redirect 4002 attorneys to prioritize unrepresented in-custody cases. This is definitely something that we should discuss during this meeting because I know not everybody would support this idea, and I think there's pros and cons on both sides of doing that. Work with public safety partners on case resolution dockets, and then we'll request from the Emergency Board to – and this is an either/or, these first two are an either/or, and we'll discuss this later – either extend and increase the Temporary Hourly Increase...THIP, through the end of the biennium, so through June of '25. Or we could ask to stabilize the hourly rate beginning in January through June of 2025. So,

that would be bringing the hourly rate for all cases, regardless of representation or custody status, up to that market match rate.

Then we're also going to be asking to establish a state trial office serving the Southwest. This previously had been referred to South Coast, but since Douglas County isn't on the coast, we changed the name. Add an assignment...or add an assignment of coordinator for OPDC and additional level 1 MAC. Those are the misdemeanor and C felony qualified attorneys. In addition to those initiatives, we'll continue effective existing programs in the intermediate term, so these are the policy option packages we'll be requesting in '25 and '27, which will directly impact the unrepresented numbers. We're going to add additional accounts payable and preauthorized expense staffing, stabilize the hourly attorney rate. This would be for beyond June, if that's what we choose to ask for at the Emergency Board. And then add additional state trial office attorneys and staff. We're having this letter be signed by the chair and the executive director. And then we just move into the crisis plan. Does anybody have any questions or concerns about the actual content of that letter before we move into the plan?

Peter Buckley: Yeah. Lisa, is the six-year plan, is it linked to this document?

Lisa Taylor: Yeah, and I'm not sure where this hyperlink goes to, but yes, it will be in the appendix of this document. And that's what this final paragraph is about, about how while this report is focused on the near- and short-term solutions, the long-term solutions are about stabilizing the system, and that can be found in our long-term plan.

Peter Buckley: And will we be able to, on a spreadsheet as part of this, be able to show here's how the crisis plan fits with the six-year plan, and here's the numbers? Because again, I brought this up last time, I really think the Governor is going to want to see, even with the numbers that we forecast in terms of caseload to the best of our ability for the next six years, this is where we think caseload is going to. This is where we think that these steps that we're taking now, and over the following five years, will address that caseload. So, I'm hoping we can get to that.

Lisa Taylor: Okay, I will make a note and look into what we could produce around that.

Peter Buckley: Jennifer.

Jennifer Nash: Just a couple of minor things. I think we need to define what MAC is because we use that acronym without defining it. And then also, same thing, instead of saying level 1 MAC, I think we just need to say misdemeanor qualified, misdemeanor and lesser qualified, instead of using that term. And then for other POPs, I think we should put something in there about how we're also going to do recruitment and retention

because that is directly related to this crisis as well. So, those are my three comments. Thank you.

Peter Buckley: Tom, you okay so far? Anything from you so far?

Tom Lininger: I agree with the point about recruitment and retention. I did not know if we were going to support rather than sort of make that request ourselves, but I would like to see that mentioned here. And I don't know if we need two categories. Or if we can, I'd probably prefer what Jennifer suggested, we include recruitment and retention as a bullet point. But it seems like at a minimum, we could support the OCDLA request if they are the ones to make that POP proposal. Also, I don't know if it's here. I don't have my document open, but Southwest needs to be capitalized if it's a noun. I know that that's a problem, at least on page seven, I'm not sure if that's a problem here. And then these footnotes struck me as incomplete. I suppose you're going to go back and expand those after we're done.

Lisa Taylor: Yeah, I'll be expanding the footnotes and the appendix, which is at the end. This document was also having some issues with footnotes. So, you'll notice the numbers are out of order. It was just being glitchy.

[Crosstalk 00:08:36]

Tom Lininger: ...Jennifer, that this document is really a big step forward from the last one, and I like how you have tried to identify likely outcomes from some of the changes we're undertaking. I think that's a big improvement from the last version.

Lisa Taylor: Great. Thank you.

Peter Buckley: Should we identify the counties, the Southwest counties? Would that be helpful?

Addie Smith: This letter is sort of an overview. We're about to dive into the plan that does a lot of the things that are coming up, if that's helpful. So, I think we wanted to give the Governor a big, broad overview, and then where she's ready, she can dive into some of those details. But if you're thinking, Peter, that we should have some details in the letter too, that's definitely feedback we're obviously open to.

Peter Buckley: I think as long as we have it in a document that she can find.

Addie Smith: Great.

Lisa Taylor: Great. So, actually, instead of just diving into the plan itself, I'd like to skip over to the ones that we kind of need more decisions or input on, which actually, I guess, is the first item here. So, this first item about, With legislative permission, redirecting the 4002 attorneys to prioritize unrepresented in-custody cases. I think we had a

fair amount of discussion about this at the last committee meeting, and I think maybe we just need to readdress it, whether or not we want to leave this in as an option, or if we want to take it out entirely. I think that the arguments on both sides were kind of, A, having attorneys to take unrepresented cases is the priority of the unrepresented plan, and it kind of shows that we're narrowing in on a focus of unrepresented people. However, on the other side, we were given these positions very specifically for 4002, and frankly, we've already started working with some courts on their deflection and how state trial employees could be useful there. And if we were to redirect them, we would be, well, not fulfilling the legislative direction. And also, all of those 4002 cases would just be joining the unrepresented out-of-custody list, so we would just be growing a different list. But yeah, I'd love to open that up.

Addie Smith: Peter, jump right in.

Peter Buckley: So, I think later on, doesn't it give a timeline on this? Are we asking for this permission for a specific period of time? If we could ask the Legislature if we can prioritize the in-custody unrepresented for six months. And not totally stop working on the deflection programs, but to allow these positions to focus on the incarcerated unrepresented for a specific time.

Lisa Taylor: Yeah, and we could... The timeline we have in here, it's, again, this is kind of difficult to talk about outcomes because as you all know, the unrepresented list grows while we're taking cases, so there's an influx as we're taking cases out. But we try to look at the model of the C felonies specifically, which are continuing downward. And if that trend continues and we have new lawyers taking cases, that's where we get this timeline of we'd be able to get rid of those C felonies by November. Again, get rid of, they would be taken, the C felonies wouldn't close. I think, I forget the timeline, the 120 days or something, that it takes a C felony to close.

Addie Smith: Jessica, you can just jump in.

Jessica Kampfe: Thank you, Addie. I just wanted to talk about [Distortion 00:12:45] timing, so right now we're recruiting for these positions.

Addie Smith: Jessie, you're a little bit garbled. I'm wondering if leaning in or... At least it's hard for me to hear, it might be just me.

Peter Buckley: Nope.

Addie Smith: Yes, the air traffic controller headset, that will help. Thank you. [Laughter]

Jessica Kampfe: All right. Is that better?

Addie Smith: Much.

Jessica Kampfe: ...and we would expect the lawyers to be starting by September. So, if we were to put them on this purpose and they took C felony cases, that would mean that the lawyers we currently have in Trial Division could stop taking the C felony cases and focus more on the higher cases. We would expect the time to disposition on a C felony case to be about 120 days. So, within 120 days, our current trial lawyers would not be carrying a C felony caseload anymore, they would be doing the A and B higher level felonies, and then these lawyers could be carrying that C felony caseload. I wouldn't want to put a time frame on this that was shorter than a year because of that sort of cycle how long it takes to do those cases. And then additionally, if we were to get more lawyers into our state offices, we wouldn't get position authority until the end of the legislative session, which would be July 1, and then we would have to be recruiting for those positions, so we wouldn't be looking at bringing on more lawyers probably until August of 2025. So, I wouldn't want to short it any more than that.

Addie Smith: I think one of the things, Jessie, that one question and comment I have is here it says elimination of C felony and misdemeanor in-custody cases. I wonder if what you're trying to say is the cases will be gone, or those individuals will be represented because I think those are two different metrics. And I think the metric we're more worried about right now is are they represented, not are the cases gone. So, we might want to clarify that. And I think the way you just explained it is really helpful. I'm not sure that the text here yet captures those details and nuances completely, nor does sort of the timeline portion. And I think it's okay to say both, right? Like we think the misdemeanors and the Cs will be completely represented or eliminated, whatever it is we're saying, and we think then within another six months after that – which I think is what I'm hearing although you'll get the technical details more correct – that the felonies will also be covered because of the shifting in cases. Does that make sense?

Jessica Kampfe: Yeah, and I don't think the felonies will be totally covered because we're continuing to see growth in that part of the list. The reason why the C felonies and the misdemeanors, we are more able to say we could eliminate them from the list, is because we're seeing about a six-individual decrease month over month. So, that part of the list is not continuing to grow, whereas the A and B felonies, we get new people on that list all the time.

Addie Smith: That makes sense. And then is it fair to say though that one of our other solutions, either the MAC or the THIP, could be the other puzzle piece that helps solve it altogether, right? So, not any one of these is the perfect solution, but this plus that plus that should get us within eight months to where we're going. I just want to make sure I'm tracking because if that's what we're saying, I think that's great. And I want to make sure it's really clear in the report because I think that's what the

Governor is sort of looking for is, like, we're using this three-pronged approach and between the three, it's our strong hope and belief that by six to eight months...

Jessica Kampfe: Yeah, I think that's right. They are targeting different portions of the list. So, the THIP is targeting the most serious crimes. There are state employees that will be freed up if we use these new employees to do the C felonies. We'll be targeting the more serious crimes and then I actually think the MAC expansion targets the out-of-custody population because there, we're looking at potentially using things like the SPPE as a recruitment tool to bring in more misdemeanor qualified MAC across the state. And so that's really looking at your out-of-custody list.

Addie Smith: And Jennifer, I'm going to tap you in because I'm sorry, I think I stepped on your hand raise, but it sounds like what might be really helpful then is a chart in here that says exactly that. MAC, what it's targeting, what the goal date is. Shifting of 4002, what it's targeting, what the date is. THIP, what it's targeting, what the date is, to really illustrate the sort of multifaceted approach, but the hope that collectively within 8 to 12 months or 6 to 8 months, we'll have wiped out the majority of in-custody unrepresented. And also begun to tackle, as you were just describing, which I think is important and shouldn't be ignored, the out of custody. I think like a really simple chart. I don't want to make anything complicated. I think the more clear, the better. Okay, Jennifer. So, sorry.

Jennifer Nash: No, you're totally fine. I think that's a really, really good point. We don't want them to think that they can pick and choose, "Oh, we'll just do this, we like this better than that," because it wouldn't solve the overall issue. But the other thing I was going to say, just I'm in the camp of not redirecting these attorneys, and my thought is we're solving the problem for the Legislature. And by solving one problem, we're creating another problem. When I testified a couple of times about 4002 and basically what we told them is – if you do this, it's going to add people to the unrepresented list. And what we told them is it was going to be 18 months that we estimated before those people would be eligible for counsel. That's what the testimony from the agency was. And there the Legislature's response to that was, "Okay. Well, we're not going to give you lawyers for all of those cases, for whatever reason, but we're going to address your concerns by giving you lawyers so that you can make sure that these people have attorneys."

So, now what we're doing is we're going to go in and we're going to say, "Well, actually, thank you. But now we want to take those lawyers and do something completely different with them," which means we're just going to add people on the back end. So, I really feel like we need to ask for new position authority and let them say back to us, "No. We're not going to fund that. You need to figure it out a different way." And then we come back, and I realize this is the E Board, right? So, the E Board says no. And then if we still need to address this, then maybe we make a request – however it is that we need to do that – to redirect those funds in a

different manner. But I think going to the E Board and saying... Actually, we're not even going to the E Board to ask for redirection. Sorry about that. I kind of conflated two thoughts, but I really do feel like we should go to the E Board and ask for new positions, rather than just redirecting the existing funds. And I mean, do I think they're going to give us that? No, I don't. Honestly. I mean, we heard there's \$40 million at the E Board, and we're going to come in and ask for half of it. Are we going to get that? No way are we going to get that.

But I think that we do need to go in and say this is a crisis, if you want to know how much it costs to solve the crisis, this is how much it costs to solve the crisis. Because even if we don't get the money, we're laying the groundwork. We're continuing to keep that message going, that this is what we need in order to make this happen. I think that there is a real tension between being laughed out of the building because we continue to ask for the money that we need, and engaging in the whack-a-mole where we're just taking the money we already have and trying to solve a problem, and then we solve this problem and another one pops up. So, that's my thought and my input.

Addie Smith: Jessie?

Jessica Kampfe: I just want to talk about timing a little bit. Part of this request in this letter does include asking the E Board to fund a new trial office. So, there is a request for additional funds from the E Board for more lawyers in here. But in terms of timing, we're currently recruiting for the positions that are designated under 4002. So, we would expect those folks to start working and taking cases for the agency August and September. In terms of positions that we request at the E Board, if the E Board allocates funds and then we recruit for people, we're probably closer to the end of the year in terms of having people onboarded and starting to take cases. So, it will be a slower roll-up.

Addie Smith: One of the things I'm thinking at the risk of sort of, I don't know, stating the obvious is I hear everything you're saying, Jennifer, and I really am taking it to heart. I think what I'm torn about is we're sort of getting clear direction from the Governor's office that we need to do something a little bit more emergent. And you're not wrong about the whack-a-mole or sending a message to the Legislature. I wonder though if it doesn't make sense to repurpose these based on the timing that Jessie's talking about.

And then once we're under the Governor's office, it sort of becomes a little bit of a different political landscape when we're talking budget and numbers and working with the Legislature, just because that office works differently than the judicial office works with the Legislature on things like this. And I wonder if what we really need to do is highlight everything you're saying in this Barriers section, making it really crystal clear here that this is not going to solve the problem because we have

this onslaught of cases coming at us at the same time. And so it is likely going to require additional...needing additional folks come December, January, etc., because of exactly what you're saying, the cases that are coming at us. But we are recognizing that there is currently something that we're trying to tackle. So, really forecasting all of those pieces. I'm not sure, Peter or Tom, if that feels like a better solution, different solution, way to manage and balance what we're being asked to balance here. Jump in.

Tom Lininger: I appreciate both your comments, and I can't say that I've figured this out. I wrestled with those issues when I read this draft. I do instinctively kind of side with Jennifer in the sense that diverting the 4002 attorneys seems inconsistent with the legislative purpose and all the momentum behind the effort to sort of fix the problem with Measure 110. And also, it just feels that... I sort of share Jennifer's view that it feels a little, I don't think disingenuous is the right word, but it seems to sort of mask a bit the gravity of the problem at a time when I think we should be exposing the full gravity of the problem. But you know what? I mean, the points Abby made are compelling to me too. So, I can't say I've figured this out. But instinctively, I sort of favor Jennifer's position on this.

Lisa Taylor: I'll also say that later on in the continued programs that are working, we talk about using state employees efficiently and how we're assigning them to the most serious and trying to make sure that they're able to take very short cases if there's going to be a release. I also included a couple of sentences about how we would use any unused 4002 capacity to pick up additional cases. So, should the 110 not be as impactful as we kind of anticipated it, or should in September, it be kind of a slow rollout, it's not like those attorneys would just be sitting around or anything.

Peter Buckley: I like that a lot. I like that. If we can really emphasize unused capacity. Because I'm not sure because I haven't delved into this, whether the direction from the Legislature to use the attorneys for drug cases, was that put in statute? And if so, the Emergency Board can't change that. I'm not sure whether it's in statute or was it in a budget note?

Addie Smith: Is it a budget note?

Jessica Kampfe: It's in a budget note and it's quoted in here. I think in the Barriers section is the language from the budget note. So, it's specifically the legislative direction that the staff added under this measure would need to be assigned to regional offices commensurate with the location of caseloads for felony charges for delivery of controlled substance and drug enforcement misdemeanors. That's the budget note that creates these positions.

Peter Buckley: Okay. But the language doesn't say exclusively, it just says that's what the intention is. So, I still think we have some leeway by saying "unused capacity." I think that's a



very valid request. If we have attorneys who are not fully booked on the work that's assigned to the budget note, can we use their time to address the crisis?

Addie Smith: Lisa, do you feel like you have the direction you need, or do you think we need to get a little more clear with you?

Jessica Kampfe: Addie, I think we have the direction that we need. I will say that I think that we are walking away from our strongest tool to make the biggest immediate impact. And so we need to acknowledge that if we are not putting this in the letter, this is probably the thing that we could do the fastest to make the biggest impact, and we're making a decision to not move forward with that.

Addie Smith: I wonder if there's an intermediate step here, although I understand we have times, meetings, approvals, and all that. I wonder if there needs to be some kind of collective meeting that involves some of the folks at hand to discuss the possibility of this or to talk about the consequences. Meaning some key legislators, John Borden, maybe representatives from the Governor's office. I mean, I want us to send a really strong, thoughtful letter, but I don't want us to get lost in the formalities of the letter instead of sort of tackling the problems head on and seeing if there's room to have that type of meeting or conversation so that we can come to a letter that has already either gotten approval, gotten pushback. Folks have had the opportunity to appreciate the really important risks that Jennifer just described and are very well aware that if this is an action that we're getting permission for doing because of exactly what you said, Jessie, it's going to be effective, that it's kicking the can in a different way. I don't know if that makes sense.

Tom Lininger: Well, I think Peter's idea of being explicit about unused capacity addresses many of my concerns. So, I wonder if that might be a nice middle ground that wouldn't require too much revision of the draft we have.

Lisa Taylor: Yeah. I think we could also write this in a way that it's more of "we could do this with legislative permission" and more focused on the legislative permission. So, if we can't get that table set before this letter has to be turned in, it can be very clear of like, "This is an option, but we need to have support and input before we move forward."

Addie Smith: I like that...

[Crosstalk 00:29:38]

Jessica Kampfe: Oh, sorry.

Addie Smith: ...Jessie, please.

Jessica Kampfe: Would it makes sense to change it to a request to set the table for a conversation about doing this instead of a request to do this? Like with the Governor's support, we could bring together legislators and key people to talk about whether or not they would like us to do this.

Addie Smith: I like that, and I like the idea of... We talked a lot in our last meeting about how can we both identify barriers but also identify how the Governor can be supportive and helpful, and I think her office and her herself are the right people to get those folks to come to the table. And then it sort of really offers the opportunity to say exactly what you said, "This is the key tool that can do something the closest to tomorrow," and the opportunity to say, "But if we do this, you need to know all of these drug cases are going to stack up, and we're going to need new folks to fill that come December," and then have a collective decision. I also like the idea of inviting others to share in this problem with us and share in the problem solving with us.

Peter Buckley: Really, if we can show the data that says if we do this, this is a likely result from doing it. And share that decision that, well, we're going to do that, or we're not going to do that.

Lisa Taylor: Okay. I really appreciate that. I'm going to jump us down to this other probably larger, largest discussion. This is the kind of either-or scenario, and these are for the September Legislative E Boards. We kind of need to decide, or at least have the discussion here so we can decide at the full commission, which path we want to go down. So, our first option would be to extend and increase THIP through the end of the biennium. I think we all recognize that THIP is supposed to end at the end of December, and the POP that we're building that would request hourly rates at the market rate of 205 and 230... Yes, 205 and 230. Those wouldn't be implemented if funded until July, and so we want to make sure we're not having this gap where all of our hourly attorneys that we've been building up, which as this graph shows we've been building a fairly good number of hourly attorneys, we want to make sure that they don't drop away.

And so in this first option, it would be a request to the E Board to both extend THIP through the end of June of '25, and also to increase the THIP rate for in-custody cases to that market rate of 203 and 250. These are kind of the highlights of this. Of course, bring in more hourly attorneys at an increased rate. We've seen pretty clearly you increase a rate, and more people will take cases, which I think nobody will find shocking. It will also maintain the hourly attorneys that we have now, and like I said, bridge that gap. It also allows, I think, the increase to that market rate allows for a smooth transition from this THIP program, which was always intended to be temporary, into the hourly panel. And it kind of is a way for us to wind down THIP without having it being kind of a jarring ending.

And we don't have the cost of this yet. They're working on it. It's tied to our POPs and things like that. But this would be a lesser cost than option two, that we'll go into, because, again, this would just be for in-custody unrepresented cases. The second option that we have is to stabilize hourly rates prior to July of 2025. So, again, we're coming in for the '25 session with a POP to standardize that hourly rate based on the economic study. However, this request to the E Board would be to basically implement that POP for both attorneys and investigators early. So, it would set those rates for all cases that are taken at an hourly rate, regardless of custody status and regardless of whether or not it's even unrepresented. So, if an hourly attorney were to pick up a case in the courtroom, like assigned by a judge, they would get that new hourly rate too. And therefore, they would prevent that case from joining the unrepresented list in the first place.

The benefits here, of course, are that more attorneys will be willing to take it at the increased rate, it maintains the hourly attorneys we have, and it incentivizes attorneys to take cases before they become unrepresented. Again, it bridges that gap and hopefully provides a smooth transition from THIP to the hourly panel. It would also likely increase the number of hourly attorneys who are going to be part of that panel because we would be increasing the rates early. The drawbacks would be it's going to, of course, cost a lot more to provide that higher hourly rate to all cases, not just the in-custody. And I was talking to our government relation from our partners, and it was brought up that if the hourly rate for all cases is so much higher than those contracted rates, and the contracted rates aren't going up in the meantime, it does create more disparity, whereas right now we just have that disparity in THIP cases.

Peter Buckley: So, I would just weigh in that I don't think option two is an E Board action. Instinctively, the E Board does not want to engage in detailed budget work. They want to address crises. So, option number one is, I think, in line with what the E Board has traditionally done. Option number two is actually, really, since it's going to be in a POP for the 2025 session, I think most members of the E Board would say let's hold that off until we have a chance to analyze the POP in relationship to all the other budget needs that will be coming forward in the 2025 session. So, I would strongly recommend that we go with option number one.

Addie Smith: I agree. The only thing I would add, which is very detail-oriented, is in your chart where you have our old rates and our new rates, we have sort of an average market rate generally that we can put in there so folks who aren't studying this all the time cannot get sticker shock with the 205 to 230. So, if the market rate is 250 or even if it's 200, folks can be like, "Oh, okay, we're just meeting what a private attorney would be getting paid. We're not off the deep end."

Lisa Taylor: Yeah, we could look for... I'm sure the State Bar has an hourly market rate for just general attorneys. We, of course, have this market rate from the economic study.

And then it increases based on the factors that we've discussed. So, yeah, I could look into adding both of those.

Jessica Kampfe: And Lisa, the proposed new THIP rate is the market match rate from the economic study. So, that is a market match rate for this type of work, but it's not matched against the private bar. The private bar was not one of the sources that we surveyed when we did that economic study. So, that would be outside of the market match.

Addie Smith: Well, I'd be really interested in seeing one, if not both, of those boxes, right? Sort of like market rate for this work is spot-on to what we're offering. And if we are able to get some kind of guesstimate around private bar because I assume it's going to be higher, that would be nice to include, I think. Jennifer?

Jennifer Nash: Yes, so what about a middle ground? And the middle ground would be don't increase the THIP rate, keep it at the same rate it is, but increase it to everyone who's on the unrepresented list. Now, I will say that the unintended consequence of that, or I shouldn't say unintended, the collateral consequence of that, we learned from the last time we did this, is it creates a perverse incentive to have people on the unrepresented list to wait instead of taking these cases at the hourly rate. But the reality is nobody's taking cases at the lower hourly rate anyway. Because now what you're doing is we're not asking you to increase rates, we're just asking you to increase the available funds for the existing program to expand it to all people, in or out of custody, on the unrepresented list through the end of the biennium, which is a more practical way to deal with this that probably would get some lawyers maybe. I mean, the problem is we've probably saturated the market, right? So, how many more lawyers are going to take these cases off the unrepresented list, even if they're out of custody? My guess is not a lot. But also raising the hourly rate by \$5 or \$15 or \$30 isn't going to get them off the bench either. So, that's just kind of a thought.

Addie Smith: So, let me just make sure that I'm tracking because I'm new to all of the money stuff. What you're suggesting is we leave the THIP rate the same, but we increase who has access to that rate, as opposed to raising the rate but keeping the access to what it currently is?

Jennifer Nash: Yes, and I'd be interested to know what Jessie's thoughts are about that.

Jessica Kampfe: So, just make the THIP rates the hourly rates. So, our hourly rates are 130 and 145, I think. So, just make the hourly rates...

Lisa Taylor: No. I think the plan would be to open up THIP to all unrepresented cases, kind of like it was pre-October, and extend it through the rest of the biennium. So, the rates would remain at this 164, 200, but instead of just for in-custody, it would be in- and out-of-custody.

Addie Smith: What if we did a further compromise, which is raise the rates on in-custody and extend the rates to out-of-custody? Wait. No, no...

Jessica Kampfe: I will say that it depends on what you're trying to target. So, if you are trying to target the out-of-custody unrepresented population, then it makes sense to expand THIP rates so that you can get coverage for out-of-custody people on the unrepresented list. Because right now, there really is no incentive for people to take the out-of-custody unrepresented hourly. So, that decision would target the out-of-custody population.

If what you're trying to do is to target the in-custody population, then it makes sense to continue to keep the THIP restricted to in-custody and to increase the rate to the market rate because then you might be able to get lawyers that aren't willing to take a case for 164 an hour, but would be willing to take it for 205 an hour or 200 to 230 an hour, depending on the severity of the case. So, if your target for THIP is the in-custody population, it makes sense to keep the narrow definition and raise the rate. If you want to modify THIP, you're probably going to result in targeting the out-of-custody population if you open it up.

Jennifer Nash: What's more likely for the E Board to feel comfortable with though? I mean, it seems like from what Peter's saying, it's more palatable to just expand the qualifications for who's eligible to take THIP cases, as opposed to increasing the rate because then you're getting into more complex budget decisions that are really, in part, policy decisions. But I don't know. I mean, this is not my wheelhouse.

Peter Buckley: And the price tag's going to matter too. I mean, again, the tendency of the E Board is basically how do we hold things together till the next long session, that's just the mindset. How do we hold it together to the next? And solve problems where we can, but how do we hold it together till there's an actual full budget process?

Jessica Kampfe: My thought is it would be the most expensive to expand the list. If we look at this chart that Lisa's got up, you can see that when the list was open to both in- and out-of-custody cases, you had the greatest growth in the number of cases being taken off of the list. So, there you're in the April to October of 2023 range. Then in October of 2023, the list gets limited to in-custody only, and at that point, you see the number of cases every month starting to taper. So, if you expand the list, you're going to get a lot more cases taken at that THIP rate, which just intuitively makes me think it will be more expensive than just raising the hourly rate for the in-custody only.

Jennifer Nash: Except we're trying to solve the problem, right? This is about how to solve the problem. So, I mean, I know, yeah, for sure it's expensive. And I think you're right. I think people are going to take those cases because they're also easier if the client's

out of custody, people might be more willing to do to take those cases. Well, sometimes they're easier. But if what we're putting together is a plan to solve the problem, then I think we want to cast the net as wide as we can, to try to get as many people off the list as possible.

Addie Smith: One, what if there's a differential for taking in-custody cases, right? We're getting into big numbers, so I really want to appreciate what Peter is saying about sort of like the price tag is going to matter. And recognizing exactly what Jessie's saying, which is where our slope is the steepest is when it was open. I wonder if there's a way to split the difference, open it up, only raise the rate for in-custody. So, incentivizing folks to take those in-custody, which are the highest crisis, and getting people into the program at the current rate for those out-of-custody. I don't know, just a thought. We'd have to crunch numbers and see how bananas it's going to look.

Peter Buckley: Yeah.

Lisa Taylor: I think we could provide numbers for the commission meeting, that would be THIP prices if it's for all unrepresented at the current rate. And then we could do prices for if we just extended it for the in-custody at the current rate, we could show a price for in-custody at the enhanced rate, and then we could show a price for all out-of-custody at the current rate, plus in-custody at the market match rate.

Addie Smith: I think I'd like to at least see those numbers...

[Crosstalk 00:45:55]

Addie Smith: ...making a decision because I do think we're doing a really good job of balancing what is the actual best solution versus what can we ask for without looking like we don't know what we're doing. And I think the numbers are going to be key to that balance on this question. But it does sound like we've at least really come to consensus that we're not going with option B, we're going with some version of option A, if that's fair to say.

Lisa Taylor: And I'll also say THIP has been a very successful program and the goals that it initially laid out of bringing people in to take more hourly cases. If you read through here, we've seen a substantial increase in the number of people taking those hourly cases, and I think that it is being a very good path to building that panel attorneys. So, I think all those options would continue to kind of build towards that panel.

Peter Buckley: And if I can just weigh in one more time, and I'm speaking as a former legislator, legislators aren't experts in everything that they have to make decisions on. So, if we take it down to its really basic building blocks, that if we do this action, we will solve this part of the problem, which is people who are in custody without an

attorney. And I think that's what the E Board would love to see. Hey, if you do this, those 100 people that are consistently unrepresented in custody, we're going to end that problem. So, we don't have 100 people there, we might have 1 or 2 as cases. Because if we could show that, then I think we'd have a real good chance of getting the funding, as part of a longer-range plan of then addressing the unrepresented out-of-custody, which is going to take what the POP is suggesting the Legislature consider during 2025, if that makes sense.

Jennifer Nash: That's very helpful. Thank you.

Lisa Taylor: I know folks probably might have to go at 1:00, so I'll just go ahead and start going through the plan that we haven't talked about, unless there's any specific issues somebody would like to jump to? Okay, great. So, we talked about the 4002. Our next is case resolution dockets. I think we just talk about the resolution dockets and how they can be effective. There is some information in here about driving charges. I know Senator Prozanski brought something up about how driving while suspended or without a license, it's criminal driving, I think, is the answer to that. I'm not a lawyer, I'm sure that means something. Also a DUI docket is still a pretty substantial population of that out-of-custody misdemeanor list. Again though, we talk here about how the...

[Crosstalk 00:48:56]

Lisa Taylor: Yeah?

Addie Smith: Real quick, I think on this one, we may want to be a little more clear. I mean, I like that how our Barriers are sort of like there's no one leading the charge on this, and OPDS probably isn't necessarily the right person. I think we maybe want to be a little bit more explicit in terms of what our thoughts or our asks are. Because I think when we had the chance to chat yesterday, we were sort of like someone needs to be pulling people to the table in each county to make this sort of happen. And we don't have capacity at OPDC. I don't know. There are a couple locations that could work for that, but you just may want to be more explicit because it might be an area where the Governor's office could be really helpful.

Lisa Taylor: Right. Yeah, I appreciate that. I'll add more forceful language. Okay. So, the E Board requests, we will... Oh, I can't get up there. Okay, that's fine. Okay, so establish the state trial office serving the Southwest region. Technically, our current Southern office serves Douglas County. However, due to a lot of factors, it really is primarily serving Jackson County. They have the highest number of cases and then, frankly, getting to those other counties, Douglas and Klamath, is pretty difficult. It's a lot of driving. We do, of course... We are taking a number of cases in both of those counties, but an additional office would be really beneficial for both Douglas and Coos.

Jennifer Nash: I think we need to spell that out a little more because we have specifically designated money for an office that was opened in Douglas County. And if we have found barriers to make that difficult or impossible, we need to tell them that – tell her that, the Governor – and then also the E Board, and explain why we're asking for additional funding for Douglas because the commute between Douglas and Coos County isn't really any better. So, I think we need to really be careful about this because we already have money for Douglas County. So, we're going to have to decide that in a way that... I don't think this document brings that out as well as it needs to be.

Lisa Taylor: Yeah, we can add that. We also talk a little bit about the fact that we anticipate that these staffing challenges are going to get worse, especially in Coos County. So, opening an office in that region would kind of set us up to take on those challenges as they grow. So, we're requesting an office. The timeline, we think it would take about six months to hire the attorneys, get the office set up and things. And then it would likely take another three to six months to take all the cases that are currently on that unrepresented list. And actually, we expanded that to that higher six months because we anticipate their unrepresented in-custody list to continue to grow with the staffing challenges they're having. So, realistically we're looking at kind of a year's timeline to get those cases kind of in hand with this new office.

Our next thing is to add additional assignment coordination staff within OPDC. We currently have two dedicated staffers who are doing the daily outreach to attorneys. They're literally calling attorneys and saying, "Hey, do you have capacity to pick up a case based on our unrepresented list?" and that goes into that prioritization we're doing with the Betschart cases and the in-custody list. So, we're taking the highest severity cases and prioritizing those types of things. We've seen since January, compared to June, a 71% increase in monthly assignments. They're doing 6 cases... Well, 6 clients and 10 attorneys on a 7-day rolling average for working days. So, I mean, they're assigning quite a few cases through this THIP program, and through these coordinators. And so we anticipate that for every staffer that we add, we're going to see 50% more monthly assignments of counsel through those programs. And maybe we could add something around here about how that will play in with the saturation of the market. So, if hourly rates don't increase, at some point you're going to hit that ceiling where there's just not more attorneys to take cases.

And again, I think we could get these people on fairly quickly, we'd probably have them onboarded and trained by the end of December, and so we'd see that increase in assignments happening by January. These new positions will also allow us to better break up the state. Right now, the state's pretty much just being divided in half, and this would allow us to kind of quarter up the state. So, hopefully, every assignment coordinator would only have one or two really problematic counties instead of having multiple jurisdictions which are facing similar-size problems.



Then we have the adding additional MAC level 1, I'll change that to the misdemeanor. This was originally our SPPE program, and then we kind of recognized the fact that we should actually make this more general, and so it's a more broad ask to just add additional MAC. Some of which can definitely be filled by the Oregon State Bar Supervised Program, but that won't be a necessary thing. We're seeing a slightly slower, I think, rollout, and the application process through the bar is taking a little bit longer, so we don't want to be dependent on that process to get this MAC. We do have a number of contractors who think that they could bring on board MAC. And then, again, that would be six months' worth of funded MAC, so that's a caseload of up to 150 misdemeanors or 82 felonies.

And then we're going to continue our effective programs, which again is our THIP. We're going to strategically utilize the state attorneys for the most serious cases. This is already happening. We're really trying to make sure that we're... Not holding back, because they're working at near capacity, but we're making sure that we're using the state employees as kind of that last resort. So, when we're looking at that Betschart case, when we see a case that's at six days, we talk to the Trial Division and say, "Okay, can you take that if we can't find anyone else?" So, somebody was there to kind of step in on day seven if somebody is going to be released.

Then just a little bit of talk about our ongoing communication and data collection. This has been really beneficial in getting these assignments. We're also now having weekly meetings with OJD and the Oregon District Attorney Associations to review that Betschart list just to make sure nothing's popping out at anyone or there's any concerns. Then we go into our POP asks for the '25-'27 biennium. We moved this order, so our top request here is the additional accounts payable and preauthorized expense staffing. This was really just because we're hearing from our providers that this is their primary issue, and we want to make sure that we're addressing that. We also talk in here about if the word is that OPDC doesn't pay their bills on time, people aren't going to be taking our cases, right? So, we want to make sure that that's not the message that's being shared. Then we talk about our stabilizing the hourly rate. I will expand this with some of the information from the part we're cutting, but this is just about the benefits of stabilizing those rates.

And then adding additional trial office attorneys and staff. This includes regional managers, which I think will help build the Trial Division in a lot more sustainable rates. Right now we have one manager for, I don't know, 40 employees or something. It's getting to the point where we need some additional management staff. So, that's it. Then we're going to have an appendix that I will be filling out. The six-year plan, our economic study, the CJC crisis report, the SPPE program, and our policy. And then just some relevant documents like the original letter and then this Pub Sub meeting from November of '23, which I think has a lot to play in here.

Addie Smith: I think, Lisa, we'll add, I know this has already been said, but just to cross T's and dot I's, the training and recruitment piece to the top section.

Lisa Taylor: Do you have a preference in order?

Addie Smith: Maybe right after the addition or the – scroll up, so I use the right word, sorry, making me dizzy, but I'm doing it to myself – "Add additional accounts payable," right under that. Let's talk about recruitment and retention because I think those words alone signal that we're taking this seriously. We're working on improvement, etc., is my suggestion. Others should feel free to push back.

Peter Buckley: It's very important.

Addie Smith: I think too, based on the conversation we've had today, and I know we're at time, but I can't remember off the top of my head how the initial letter closes, but I think we may want to close the letter, in addition to sort of the 4002 conversation, with sort of like an invitation to begin some regular convenings of the folks who are all worried about this crisis from the Leg, the Gov's office, and us, so we can step away from sort of letters back and forth and move towards coordinated thinking, problem-solving conversations, if that makes sense, and if others agree.

Jennifer Nash: I hate to say these words because I have a feeling I know what they mean, but a task force?

Addie Smith: [Laughter]

Jennifer Nash: I know, right? We're all like, "No."

Addie Smith: I love a task force, but I'm the odd one out when it comes to that.

Jennifer Nash: But getting all these people from all these disparate entities all in a room together to talk about... Because no one's an island, although everyone thinks we are. Everyone thinks that we have the capacity and the ability to fix all of this, but we can't.

Addie Smith: What if we frame it as like a transition team? Or something.

Jennifer Nash: Something.

Peter Buckley: Or a summit.

Addie Smith: Oh, that's fun. I like that. That's more discreet.

Jennifer Nash: Yeah. I mean, she can do that.

Peter Buckley: Yep.

Jennifer Nash: But it doesn't cost anything.

Addie Smith: Yeah, I think we may want to put something in there to start to increase the people at the table having open communication on not just the 4002, but some of these... The same thing goes for the dockets that we want to be creating and all of those puzzle pieces. I don't know.

Lisa Taylor: Yeah.

[Crosstalk 01:01:55]

Jessica Kampfe: I think that makes a lot of sense. September Leg Days, the courts are having to report out on the 337 implementation plans too, which was created with a series of local public stakeholder sort of task force, so it would align well to have a summit following those Leg Day presentations to sort of see about what the next steps are.

Addie Smith: That's a nice way to frame it.

[Crosstalk 01:02:27]

Addie Smith: Oh, go ahead, Peter. I'm so sorry.

Peter Buckley: I said I know I'm sounding like a broken record on this, my apologies, but I really think we need more clarity with this in regard to short term and longer term. And the six-year plan, at least the last time we discussed it, still had things in it that were not decided on. And I think that the Governor is asking us to say, "What is the six-year plan?" And the six-year plan are things like changes of sentencing laws. Are we recommending that? I don't know whether we are. So, my concern is can we have a document with as much charts as we can, that says here's our response to the crisis that we're in right now. Here's how we're going to get people who are currently in custody without representation, here's how we're going to get them representation – through that extension of THIP, through the Southwestern Oregon office, through the possible 402 capacity, to the assignment coordinator. Those are the specific ways that we're going to end that crisis of having people in custody without representation. And it's going to happen in this period of time. If we can be that clear in this document, I think that's what we need to be.

And then we have to say, and over the next six years, in order to keep people from being in custody without representation, and to have a sustainable system that offers representation at the level we need, here's how that's going to build over the next six years. And it's going to be through the steps that are in the Moss Adams

report, except for I think we have to be clear and say, "This is how much it's going to cost to add the number of attorneys each year to build the system. Here's how we're going to do that and build the support teams as well." I don't think we're there yet. I got from her letter she was saying what's the plan to resolve this, and I think we really need to be able to say, "Here's the plan to resolve the immediate crisis, and here's the plan to resolve the long-term need to establish a sustainable, constitutionally supported system."

Addie Smith: I like that idea, and I like the idea of charts. And I'm wondering if the other way we can do it, Lisa, is the way the letter is structured, that mirrors the way the plan is structured, is we've got sort of the 90 day, and then we've got sort of the year, with the E Board and then the POPs. It sounds like maybe we need a fourth section that is a very high overview of the six-year plan, like very high-level couple bullets in the letter and then some similar language to what we've been doing, which is, "Here's the concept, here's the cost, here's the outcomes, here are the barriers, etc." So, that the whole plan runs from 90 days all the way to six years, the way that it reads, is what I'm sort of hearing Peter say. In addition to having the overview chart that I know you're working on.

Jennifer Nash: Yeah, and I mean when we talk about caseload and workloads and the long-range plan, one of the things I was thinking about is her thing really is homelessness and mental health, right? So, I think one of the things that we can really talk about in the longer-range plan in the context of caseload and workload is just one of the intangible things that nobody talks about really explicitly for the recruiting and retention, particularly retention piece, is just the incredible mental health toll on lawyers that do this work. The vicarious trauma and the level of stress just with dealing with the complex issues that our clients present, and the fast-paced nature of the cases themselves, and that the lawyers themselves are trying to solve these really difficult problems that the clients have that have brought them into the criminal justice system, I think really needs to be called out.

We don't talk about that a whole lot, and I think we need to put a really fine point on that because we get all this pushback all the time about you're going to reduce caseloads and workloads, this is going to cost a tremendous amount of money. And it's always that tension between the short-term wanting to buy something for as cheap as possible and the long term of you have to solve this problem and pay what it really costs, including reducing caseloads and workloads. And I think we should talk about that in that context too because I think it's really important and it goes right into her priorities overall and her administration.

Peter Buckley: Good points.

Addie Smith: Anything we've missed? I do want to say that it feels like you really took our feedback to heart from the last meeting. This letter looks very different, and it really

does reflect a lot of the exact things we asked for in terms of specific crisis interventions, directive language, clear sort of costs, estimates on the time, some numbers that we've been asking for. So, I don't want that to be missed in sort of all of the other things we'd like to see. I really do feel like this was a huge, thoughtful response to our direct feedback at the last meeting. So, I appreciate that, Lisa. I know it was a lot of work.

Lisa Taylor: No, not at all. I'll say that just setting up for our next Legislative Committee, which is on August 1st, we will have four more reports for you all. [Laughter] So, we'll do it all again.

Addie Smith: Sounds good. Thanks, everyone.

Lisa Taylor: Thank you.

Peter Buckley: Thanks, everybody. Take care.