

Chair Jennifer Nash: Good morning and welcome to the October 16th, 2024, meeting of the Oregon Public Defense Commission. My name is Jennifer Nash, I'm the chair of the commission. We have a number of items on our agenda today as action items, including the approval of our Modernization and Remediation Plan report for the Legislature. Approval of – well, actually, we're going to table that – approval of a 2025 commission meeting calendar are the two action items we have for this morning, plus a briefing, briefings on... Oh, and approval of the six-year plan, and briefings on a number of items. We did not receive any written comment this meeting, which I take as a good thing, probably, and we have two requests for oral comment, one from James Comstock, Defensive Investigators of Oregon and one from Stacey Reding, Multnomah Defenders and Public Defenders of Oregon. We'll start first with Mr. Comstock. Oh, there he is. All right, Mr. Comstock, whenever you're ready.

James Comstock: Good morning. Can you hear me?

Chair Jennifer Nash: Yes.

James Comstock: Thank you. My name is James Comstock, I'm an independent defense investigator and a member of Defense Investigators of Oregon. DIO members are grateful for the improved payment processing time that we're experiencing. Two days ago, we received word that for the first time in years, a DIO member received money in their account 30 days after invoice submission. We'd like to thank OPDC staff for the work that they have done to make this happen, and we hope to see payment times continue to improve. In the packet for this meeting, I noted the accurate and timely payment section of the remediation plan on page 47. DIO members respectfully suggest altering the issue language to say, "Vendor payments must be accurate and timely to match average processing times of exec branch agencies," while also changing the rest of the language to that issue to reflect an ongoing goal toward meeting the average processing time of other executive branch agencies. I would note to the commission that faster payment times have a direct impact on vendor retention and recruitment, and this improvement now is having an immediate impact on mitigating the public defense crisis. And I'd like to thank all the members of the commission who were supportive of our efforts in this regard, as well as the folks who've worked on this at the agency level.

I'd also like to publicly thank Director Kampfe for her rapid response to our request for representation on OPDC committees. Director Kampfe reached out the day after the last commission meeting, inviting DIO to submit names to serve on the payment policy workgroup. DIO is proud to report that three of our members are now on the committee and providing input on behalf of our union. We'd like to thank you for hearing our voices and engaging with us. As we approach the 2025 legislative session, we look forward to working together to

raise the base rate for defense investigators to at least \$75 per hour, the equivalent to what public defense investigators were paid in 1985. We'd like to thank you for your time and your service to Oregon's indigent litigants and to public defense providers. Thank you.

Chair Jennifer Nash: Thank you, Mr. Comstock, for your comments. Stacey Reding, Multnomah Defenders and Public Defenders of Oregon.

Stacey Reding: All right, good morning everyone. Chair Nash and commissioners, I'm Stacey Reding, the executive director of Multnomah Defenders Inc., and member of the Public Defenders of Oregon. The nonprofit member offices of PDO serve as recruiters and trainers for criminal defense lawyers in Oregon. In the last year, nonprofit defenders lost 65 lawyers from our offices. Fifty, five-zero, of those lawyers were felony qualified. We recruited 66 lawyers to join our offices, but attrition still leaves its mark. Every time a lawyer leaves, their cases must be reassigned. They are usually replaced with a less experienced lawyer. This turnover reduces the overall capacity of our offices. Lawyers who departed our offices cited job stress, heavy caseloads, and non-competitive salaries as their reasons for leaving. Skilled trial attorneys in most nonprofit offices can earn far better salaries doing the exact same work at the state Trial Division. My office's lawyers earn a fraction of what their opponents in the district attorney's office make and far less than litigators in the civil bar.

We at PDO are asking the agency and the commission to prioritize funding increases to nonprofit defenders so that nonprofit defenders can pay our attorneys salaries that are competitive with the state Trial Division attorneys. Investments in nonprofit defenders will help us retain our skilled and knowledgeable defenders. This is critical to a long-term solution to the unrepresented persons crisis. I want to thank our commissioners and the agency for your commitment to the difficult work of right-sizing a public defense system that has been underfunded for decades. It's no small task. Thank you for your time.

Chair Jennifer Nash: Thank you very much, Ms. Reding. We appreciate it. All right, that concludes the public comment requests that we received, and we will next move on to our first update regarding the budget. Mr. Amador.

Ralph Amador: Good morning, Chair Nash, Vice Chair Mandiberg. Ralph Amador for the commission. I hope everybody can hear me okay. This is going to be a presentation on the budget for the period ending August 31st, 2024. Go to the next slide, Mara, please. Our first area is Criminal Trial Division, and you'll see that there's a \$12.6 million projected savings. This does exclude the pilot program, and this savings is mainly due to vacancies in contracts and departing attorneys. We will be using this savings for rebalance. Next up is the Juvenile

Division. We're showing approximately a \$900,000 overspend at this current time. We expect that attrition will eventually cover this overspend, and we're working with the Trial Division team to get this handled. Next slide. Parent Child Representation Program, we're showing a \$600,000 savings that's projected. It's performing as expected and we will be using these funds towards rebalance. Not all of them, but some of them.

What we see here now is I'm sharing with you a budget adjustment that will be effective with the rebalance. What is happening here is psychology fees and services are in the, if you look at the very first box, shows that the budget for psychology fees and services is in the court-mandated expense area and the projections and expenses come in PAE in September. We'll be moving \$16 million of expenditures through an accounting exercise to court-mandated expenses. This will allow pre-authorized expenditures to continue to move forward. For the rebalance, we're going to move the budget over from court-mandated expense to pre-authorized expense and then remove the expenditures back. It's not going to show anything different to the organization. It's pretty much a zero-sum thing but it puts expenditures and budget in alignment, and it supports the adjustment that we will be doing for the '25-'27 budget bill.

Pre-authorized expense is showing currently, and this is for August, a savings of \$2.6 million. But the next slide you'll see will show you what happens when we do a six-month revision of projections to catch up with what's happening with the unrepresented defendants crisis, and you'll show that we're projecting, that when we do a six-month rolling average of current expenditures, that it shows that there's going to be an \$8.6 million problem towards the end of the biennium. This is something that we'll be fixing. And again, we've been talking about this for several months, that this was going to happen, a catch up, and we're seeing a catch up now.

Court-mandated expense is currently showing a \$3.3 million problem based on...in court-mandated expenses where the attorney fees come in because of THIP and everything else. Again, we've been signaling this for a number of months, and this is what's coming to fruition, and the next slide will show what happens. The problem that we're producing for our rebalance is going to be about \$7.2 million. Again, that's rolling six-month average expenditures, accommodating everything for THIP and everything else that's happening [Phonetic 00:09:32] going forward. So, this is, again, something we'll be addressing in rebalance.

Pilot project, this is the trial services offices, the state-level defenders. It's showing a \$4.3 million savings at the end of August. If you go to the next slide, Mara, when we do...for rebalance, we're showing a smaller variance, and this is

because we're projecting all of the positions and expenditures to be fully filled throughout the rest of the biennium, and that will leave us about a 1.9. The agency is currently looking to possibly – and we have a request in for rebalance, you'll see that later on – to possibly open a Southwest office in the Coos area to help with the unrepresented problem down there and the attorney shortage problem down there. We're looking to expand Medford or Jackson County because of the caseload there and possibly move and expand into the Northwest office. As you know, Senate Bill 337 has a mandatory expansion of services for state-level defenders and we're trying to get in front of that because you just can't lease offices in one day.

The Appellate Division, there's no issues here. We're showing a \$500,000 savings and we'll be using that money for the rebalance. Compliance, Audit, and Performance, again, there's no issues to report here. They're spending as designed and, again, those savings will be used to help cover our rebalance. Administrative and Executive divisions are combined. This is showing a \$1.2 million savings and we'll be using those savings again to help with the rebalance problem that we're showing in other areas and again, there's no real issues here at all. Financial Case Management System is taken out of that other area and shown separately. We're showing a \$4.3 million savings here. We're not going to be using any of this money for rebalance because the RFP for FCMS was made live yesterday, so we're out there looking for vendors now. So, we're going to probably need some of this money as soon as we get the project rolling, and we don't want to come up short here.

Special programs, contracts, and distributions. This is where our discovery money is to pay for the contractors...discovery requests that come in. And as you know, we were given \$6.23 million in budget for discovery. We've paid about 4 million now, so we have about \$2.16 million left for discovery going forward. And we'll be letting LFO and others know that we only have a certain amount of money to cover for discovery. And this is something that we don't control. We just pay those bills as they come out, so we're concerned that we may run out of money there at some point. And I think that's the end of the budget presentation. One of the things that we're going to have to talk about in the rebalance is that we visited with LFO yesterday, and they want us to redo our rebalance. So, there is a rebalance letter that was submitted to the commission, and we'll be working over the next week to possibly revise that rebalance letter. So, if there's any questions, I'm happy to answer them at this point.

Chair Jennifer Nash: I see two hands up, but I just want to clarify something before we do that. My understanding is that the money for the pilot project is not at all part of the rebalance request, correct? That is going to be used to continue to expand the request expansion of the pilot project, correct?

Ralph Amador: Chair Nash, that is the plan today. We'll have to look at how our rebalance works out, if we can cover the expenditures now. So, there's a whole plan to go forward. But our plan today is to use that money for expansion in accordance with our request that we're putting forward for E-Board.

Chair Jennifer Nash: So, just to put a finer point on it, we're not requesting for the December E-Board that any of that money be used as part of the rebalance, right?

Ralph Amador: We are not at this moment.

Chair Jennifer Nash: Okay. Thank you. All right, Commissioner Smith, your hand was up first.

Addie Smith: I suspect Peter and I have similar questions. What was the feedback we got on the rebalance that we submitted [Laughter] that required us to redo it?

Jessica Kampfe: Chair Nash, can I take that question?

Chair Jennifer Nash: Yes, please.

Jessica Kampfe: We had an opportunity to meet with our Legislative Fiscal Officer yesterday and we have a number of requests pending in front of the December Emergency Board which we're going to get to later. One is for a rebalance, one is for extension of the THIP program, and another is for the buildout of the Southwest offices. When we had first approached this problem, we did the rebalance first and ended up using some of the SPA money as part of the rebalance analysis. And then we looked at, once everything rebalanced, self-funding the extension of the THIP program and self-funding the Southwest office. The feedback that we got was that these actions need to stand independent of each other. And so to rebalance and move everything where it needs to go to do the rebalance as an independent action, and then make the request for SPA funding for the extension of the THIP program as opposed to self-funding it and putting the SPA into the rebalance. Rebalance first, then request access to the SPA for the THIP program.

And then, similar to Chair Nash's point, we may want to request access to the Executive Branch SPA for the Southwest office. So actually taking the money out of our trial pilot program to support the rebalance and then requesting to backfill it out of the Executive Branch SPA for the expansion request. So, the feedback was that we kind of approached it from a different way than the way that LFO wanted. And really, the goal would be that the decision makers in the Legislature could independently decide each action and not have them kind of tied together.

Chair Jennifer Nash: Do you have a follow-up to that, Commissioner Smith?

Addie Smith: I did, if that's okay. Sorry, Peter. My follow-up is just there's sort of no right or wrong answer to this, but that's a lot of work that was done that now has to be redone. Are there things we can do differently that are under our control in the future to sort of avoid having staff have to do the same work twice when it's this much work? I spent some time with the letters and the reports yesterday, and that's hard to put a big package together and then have to redo the package when I know we're already sort of overextended on a lot of our legislative work.

Jessica Kampfe: Yes. Well, we had reached out to our Legislative Fiscal Officer a couple weeks ago when we first started this process and asked for their support and help at that time. And I believe that they were pretty busy with other things, working through budgets for current service level for our agency and other agencies, and they weren't available to participate in supporting us early on. So, we didn't get feedback from the Legislative Fiscal Office until after we had submitted our letters. Certainly in the future, it would be much better to work with them on the front end so that we're building something that's in line with what the Legislature would like. Chair Nash, I do see that Commission Member Evans, I don't think he has his hand up, but he's asked to be able to be heard as well.

Chair Jennifer Nash: All right. Do you mind, Commissioner Buckley, if I have then sort of jumped the line? All right. Commissioner Evans.

Paul Evans: Thank you. I'm sorry I'm driving right now, so the hand gesture is not... I don't know how to do that. Anyway, just a couple of things I'd like to add. One, I want to affirm that the frustration with getting time for LFO, LPRO, and other functions that the Legislature is trying to do is an unfortunate reality. I want to apologize for that. I've not yet been able to convince the Legislature that we need to increase the staff to meet the challenges of what is effectively now an annual legislative session, and our LFO folks are pushed as far as we can push them. And I know that they would like to help more, but we keep assigning them things and not giving them more staff. So, that's not us. Second, I also want to that I am very happy, at least as much as I can be, that we're looking to expand that Southwest office.

I truly believe there are three, at least three access points to fix the problem we're in, and one of them is getting that state Trial Division so that we can hopefully build a base of very mature, very experienced folks to throw at our hardest problems and our more complex cases where it requires multiple attorneys right now, we're hoping we can use one. So, I just want to say thank you to all involved in making that happen. That is a priority for me for December. And I just want to, again, thank the staff for working on that particular issue because I believe at the end of the day, the mix of state Trial

Office Divisions will actually provide a level of community involvement as well as a connection that currently is missing. And I think it will help all of the different entities that are currently providing services. So, I just wanted to put that on the record and say thank you for pushing for that.

Chair Jennifer Nash: Thank you very much, Commissioner Evans. We appreciate your feedback. Commissioner Buckley?

Peter Buckley: I just want to also say I appreciate Representative Evans' comments very much and I'm encouraged by the work that's been done. Ralph, good job working on this, Jessica. The idea of trying to put this together over and over again, we have to keep making the case it is a system we're trying to address. And even though I do understand the desire for the Legislature to be able to take an independent action on each piece, I think it's our responsibility to continue to say this is a system we're trying to make work. So, I appreciate that effort. And Ralph, I just wanted to say I also appreciate the way you presented here. That makes it very easy to follow from the different parts of the agency where each budget is. So, I appreciate the clarity.

Chair Jennifer Nash: Thank you. Does anyone have any questions that have not already been answered about the budget presentation? No, looks like not. But I will also just echo what Commissioner Buckley said, Mr. Amador. We really appreciate the information and also appreciate the through line forecasting what we might see later in the biennium, and then saying, "Yep, here we are, this is what I've been talking about, and this is what to expect coming forward," I think, is really helpful for the commission and really also helpful to other people who are watching the commission meetings to be able to see that kind of continuity and that information. So, thank you very much for staying consistent with that and making sure that we're paying attention to the things that we need to pay attention to. All right, moving on next then to a briefing on CAP. And I will say the timing of this is a little out of order, so to speak, but that's because I know that Ms. Perfecto has a scheduling conflict and that's why she's presenting now. So, Ms. Perfecto.

Emese Perfecto: Hello, good morning, Chair Nash and Vice Chair Mandiberg and commission members. I'm Emese Perfecto, agency deputy director. And today I'm presenting on CAP, and I think [Inaudible 00:22:29] from Moss Adams is also on, so he'll be co-presenting with me. So, briefly, we had a chance to... So, CAP has been... It's been a legislative directive since 2021. And before we came, we brought it here, we have had a conversation with LFO. So, LFO has reviewed this structure. If we can go to the next slide. Thank you. So, the agency has been trying to build CAP since 2021. Quite frankly, the structure wasn't there to be successful and to address the buildout and the programmatic buildout of CAP while also addressing the daily business needs. And so staff were pulled into the

crisis in other areas of the agency and didn't have the opportunity or the staffing to build out CAP. The agency now is built out a little bit more. We're still understaffed, but we're in a better position to implement CAP and build out what that CAP program is. Can we go to the next slide?

So, the CAP program, this is a functional overview. It is not specific around one area of the CAP program. It is the whole, the holistic approach, and the functionality. So, we have the Compliance section, which will be the complaints and investigation. We have the Performance section, which will be the contractor performance monitoring and the contract compliance, as well as Data, Research, and Policy that will continue to build out the framework for CAP and function...pull out the data that we need so that we can move forward. Now you'll see a dotted line, and I'm guessing Scott's not on, Mara. I will go ahead and cover Scott's part. So, Scott from Moss Adams was going to talk to you about auditing because that's what Moss Adams does, but I will jump in. So, our internal audit section, they report to the commission, and there's a dotted line. And functionally, typically for this type of program, you would have audit kind of as a side business there because they're going to audit and make sure that we're doing what we're supposed to be doing internally. So, let's see if we can go to the next slide.

So, this is the staffing overview, and I did get feedback that there is some confusion as to some of the positions. We tried to go into the slide deck and clarify a little bit, but I'll walk through those. So, the CAP manager report stepped directly to me and there was confusion around the difference between the CAP program manager and the CAP coordinator. The CAP coordinator is a lower position whose sole job is to coordinate all of this information and ensure that wherever that information needs to be documented or there needs to be feedback to a provider, or we're supposed to be getting training or whatever we're supposed to be getting, that it is documented and that the agency knows that these things are happening. And that if there's a further follow-up, that CAP coordinator will ensure that that is documented and that we move forward with that. So, any coordination that we need about any of the compliance issues or any of the audits that have been performed will be documented and coordinated by that position. There's also another auditor and that is a compliance and performance auditor that is different than the internal auditor. They will be doing the work externally and [Inaudible 00:26:24] for the CAP program. So, I'm going to pause if there are any questions here on the structure instead of having to come back later.

Chair Jennifer Nash: I don't see any questions, but if you have questions, just speak up because I can't see everyone now that we have the screen up. So, go ahead, Ms. Perfecto.

Emese Perfecto: All right, thank you. If I could go to the next slide. And this is kind of the oversight on the structure. And the intent, of course, for CAP is that we have checks and balances, both internally and externally, and that we develop programs so that we understand what are our standards of practice, and we're able to hold our providers accountable to those things. And so this is essentially kind of a cycle that it'll go through, and everything will eventually come to the commission as necessary. And I think also as I built out the program and worked with folks, what we're really looking for is a path of escalation, and all of these functions will be able to do that so that it is not an individual that is determining outcomes or solutions. It is a team of folks and that there are checks and balances along the way. All right, I think there's one more slide.

So, as we launch this, we anticipate that it's going to take about seven months to build this out with any recruitments that we need and restructuring as well as moving some of the internal work. And the things that we have to consider is the transition to executive branch, thus we have appointed counsel, and the implementation of FCMS. So, as we transition, all those things will be taken into account as part of the project [Inaudible 00:28:40]. I think there's one more slide, and I think that's it. So, anyway, I think this is from Moss Adams. So, is there any questions or detail that you would like?

Robert Harris: Excuse me. Thank you, Emese, appreciate that. I think this is the best presentation we've had on what this CAP program is and where it's going in two years, three years maybe. At least since I've been a commissioner for a year, but I've been attending these pretty regularly, and this is the best vision of what this CAP program is. And it's a good explanation to us. And I thank you so much for this work that you put into this. This, I think, is very helpful to us, and it's going to be essential that this... I mean, not saying that you're not going to tweak it as things go by, obviously, as the FCMS program goes online, different things happen, policies change, but I really appreciate the work. And I think this is a really great work and you and your staff have done a good job. Thank you very much.

Emese Perfecto: Thank you.

Chair Jennifer Nash: Yes, very, very much appreciated. And this is, I mean, I see this as a huge step toward making this agency look more like an agency, which is something that we've struggled with for – we know all the reasons why – but this is very, very helpful. And of course, this is what the vision of CAP was from the beginning, and we really, really appreciate all the work that you've done. I echo everything that Commissioner Harris said. Does anyone else have any questions or comments? All right. I don't see any. Thank you so much. Thank you for your presentation. All right. Moving, next we have an action item for the approval of the Modernization and Remediation Plan. Ms. Taylor, yes.

Lisa Taylor: Great. Hi. So, today we have our last Modernization and Remediation Plan that we will be submitting to LFO for December Legislative Days. I took... Because we just recently, fairly recently, submitted for the September Legislative Days, there was really only about a month between the last remediation report and the remediation report you're seeing today, which means that there wasn't a ton to be updated. So, what we've done instead is we went back to our original remediation report, which identified the top 25 issues. And then provided a, if you'll remember, there was a 1 through 10 steps to kind of how we can address that issue. And so what this report reflects is going back to those 10 steps and the issues to remediate and just going over whether or not we've completed those action items. And if not, what are the next steps to completing those action items in the timeline? And so that's what you'll see in the report. I know an updated version was posted, I believe, in the packet yesterday. That updated version, there are some edits from the chair and vice chair that are incorporated into that, but the main changes are in the executive summary. The executive summary initially was a little bit more systematic, and we tried to summarize the executive summary to be a little bit more positive and narrative about things we've accomplished. So, with that, I can take questions, or if you want me to go over a specific part, I'm happy to do that as well.

Chair Jennifer Nash: So, two things for Commissioner... Oh, Commissioner Smith.

Addie Smith: I was just going to add a little narrative, it's not a question, so you should probably go first, Chair.

Chair Jennifer Nash: I don't have a question. I was going to add something too, so go ahead.

Addie Smith: I was going to say one of the things we're talking about a lot in the Legislative Subcommittee is both the volume of reports that we're writing and how important they are, but also what we can do to better use them as advocacy tools for the agency. So, that's part of why you're probably thinking, why are we doing an executive summary of an executive summary? But we're really trying to create tools that make this digestible to policymakers and highlight the good work and the positive changes that we've been doing because I think for all of us, a 40-, 50-page report is really daunting, and sometimes even a 4-page executive summary or 2-page executive summary that's not really in that one-page or bulleted format is going to get lost on people's desks. So, we're trying to capitalize on all this work we've been asked to do to create some advocacy tools and really make sure that the message that's sort of embedded in these reports is getting better disseminated as part of a little bit of a sort of educational effort because we're doing all of this work, and so we'd like to make sure that folks feel like it's approachable and understandable.

Chair Jennifer Nash: Thank you. That's very helpful. Commissioner Harris.

Robert Harris: Thank you, Chair Nash. And this may be a question that I should ask later, I guess, in retrospect. But I see in the report, I'm not sure what page this is, page 15 of your report, when you're reporting on the number of attorneys available. I'm focusing on Adult Trial Division. It looks like we have contracted in the last, whatever this is, 10 months, we've lost, I don't know, 12 lawyers, 20 lawyers, something like that. And the question is, is that contract positions or is that filled positions? Do you know, Ms. Taylor? You may not know, you may not be the person to ask, but I apologize if that's... If you know, I'd like to know.

Lisa Taylor: I don't want to guess on that. So, I'm going to pass it up. I can try and get that answer for you.

Jessica Kampfe: Commissioner Harris, I think this might come up more in our unrepresented presentation later in the commission meeting. I will note that our contracts are lower. We have the lowest number I think we've had in about a year of contracted providers in our contract. So, I would suspect that it reflects that we don't have as many contracted providers as we have previously.

Robert Harris: Okay. Thank you.

Chair Jennifer Nash: Commissioner Smith, did you have another comment or just didn't put your hand up? Okay. All right. Are there other comments or questions about this remediation report? All right. Thank you, Ms. Taylor. Thank you very much for the revisions. Thank you for the clear and concise report. I think this is, in your idea of kind of circling back and updating the very first report, I think is really effective and will be very helpful. And I appreciate all of the work with that. Is there a motion to adopt this report to submit to the Legislature?

Jennifer Parrish Taylor: So moved.

Peter Buckley: Second.

Chair Jennifer Nash: All right. I have Commissioner Parrish Taylor, and a second from Commissioner Buckley, and we will need a roll call vote.

Mara Hoaglin: I'll be doing that. Commissioner Nash.

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg.

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Smith.

Addie Smith: Yes.

Mara Hoaglin: Commissioner Parrish Taylor.

Jennifer Parrish Taylor: Yes.

Mara Hoaglin: Commissioner Buckley.

Peter Buckley: Yes.

Mara Hoaglin: Commissioner Selander.

Robert Selander: Yes.

Mara Hoaglin: Commissioner Harris.

Robert Harris: Yes.

Mara Hoaglin: And Commissioner Lininger.

Tom Lininger: Yes.

Mara Hoaglin: Thank you very much. Motion is passed.

Chair Jennifer Nash: Thank you very much. All right. We're not going to have an action item for the E-Board requests, correct, Director Kampfe? We're just going to discuss them and then talk about how to move forward?

Jessica Kampfe: Chair Nash, I do think that we are going to need an action item because we will have to submit the requests prior to our next board meeting. The requests are due on November 4th, and October 25th is Lisa Taylor's last day with us before she goes on family leave. So, we will need to move these today. That being said, as we alluded to earlier – and my apologies to this commission for bringing materials in front of you today that need to be voted on, but also need to be changed – we did have the opportunity to speak with our Legislative Fiscal Officer about the requests for rebalance extension of THIP and the Southwest office. We'd still like to move all of the action items forward, knowing that the math and how we get there is going to change.

And the biggest changes that you'll see will be that we're going to be working to do the rebalance with existing funds. So, that's going to mean scraping money

out of all parts of the agency that have savings associated with them to plug the holes. Which may mean scraping money out of budget buckets that we would use for the things that we're going to ask for SPA money to fill. So, scrape everything to do the rebalance. Have that be a standalone, the whole budget balances. And then looking at what our balanced budget is, how much does it cost for us to extend THIP for the end of the biennium, make a request against the SPA the Legislature had previously earmarked our SPA funding to pay for THIP. So, we'll make the request to backfill that gap out of that SPA. And then looking at what funds are available to make the request for the Southwest office. So, it is going to change the way that the math works out, but the nature of the requests are not changing.

Chair Jennifer Nash: All right. That sounds good. And I wonder if, with that explanation, we need further presentation. [Laughter] Because that's pretty clear about what we're doing. And essentially what you're asking us to just approve conceptually, those three requests, and then the mechanics of how it's done will be further refined. With, I am assuming, feedback from the chair and vice chair, you'd be requesting, or Legislative Subcommittee. How would you want that done?

Jessica Kampfe: I do think we're going to have to move pretty quickly. We want to get this done by the end of next week. So, I would think perhaps... Commission members are welcome to send their feedback directly to the agency via email, and I am also happy to work with the chair and vice chair to make the changes.

Chair Jennifer Nash: All right. With that, do commission – and I'm going to take these one at a time, but just overall – do any commission members have any questions or any concerns or further clarification that they need about these requests?
Commissioner Smith.

Addie Smith: I would just say we voted in concept on this a while back, and I really appreciate that we're doing it. I think looking at the budget presentation from earlier today and sort of hearing the chatter that's out there, we do have an excessive budget and then an agency that is in a crisis. I'm really glad to see that what we're doing with that excess is really putting it toward the crisis that we're trying to solve in a pretty pronounced way. So, I just want to say that I am appreciative. I know this has been the plan all along. I know we're reconfiguring how we are doing it now, but I also think to the extent that we can really capitalize on that message, that we are sort of taking everything we have and now moving it towards the problems at hand. That's going to be something that's going to help us moving forward as conversations around the crisis as well as our future continue.

Chair Jennifer Nash: Thank you. Any other comments or questions? All right. Okay. So, let's start with the rebalance. I need a motion to authorize the agency to seek a rebalance of the existing budget to use agency resources that are in excess in certain budget

buckets and reallocate them specifically to cover deficits in the preauthorized expense category and the court mandated expense. I'm sorry, court mandated expense and, oh my gosh.

Jessica Kampfe: You got it, Chair Nash.

Chair Jennifer Nash: Okay. All right. Thank you.

Jessica Kampfe: Preauthorized and court mandated.

Chair Jennifer Nash: Yes. Thank you. Lost it there for a second. All right. So, I need a motion to that effect.

Susan Mandiberg: So moved.

Chair Jennifer Nash: And a second.

Jennifer Parrish Taylor: Seconded.

Chair Jennifer Nash: Okay. We have Commissioner Mandiberg move, and Commissioner Parrish Taylor second, and we'll need a roll call vote.

Mara Hoaglin: Commissioner Nash?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Smith?

Addie Smith: Yes.

Mara Hoaglin: Commissioner Parrish Taylor?

Jennifer Parrish Taylor: Yes.

Mara Hoaglin: Commissioner Buckley?

Peter Buckley: Yes.

Mara Hoaglin: Commissioner Selander?

Robert Selander: Yes.

Mara Hoaglin: Commissioner Harris?

Robert Harris: Yes.

Mara Hoaglin: And Commissioner Lininger?

Tom Lininger: Yes.

Mara Hoaglin: Thank you. Motion passed.

Chair Jennifer Nash: Thank you. And then moving on to the second item, which is to authorize the extension of the THIP program through the end of the biennium, and as part of that, to request access to the special purpose appropriation that's been withheld for that by the Legislature.

Peter Buckley: So moved.

Chair Jennifer Nash: All right. I have a motion from Commissioner Buckley.

Susan Mandiberg: Second.

Chair Jennifer Nash: And a second from Commissioner Mandiberg. And a vote.

Mara Hoaglin: Commissioner Nash?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Smith?

Addie Smith: Yes.

Mara Hoaglin: Commissioner Parrish Taylor?

Jennifer Parrish Taylor: Yes.

Mara Hoaglin: Commissioner Buckley?

Tom Lininger: Yes.

Mara Hoaglin: Commissioner Selander?

Robert Selander: Yes.

Mara Hoaglin: Commissioner Harris?

Robert Harris: Yes.

Mara Hoaglin: Commissioner Lininger?

Tom Lininger: Yes.

Mara Hoaglin: Thank you. Motion passed.

Chair Jennifer Nash: Thank you. And then finally, authorization to seek approval for position authority to, and potentially access to the SPA, the Executive Branch SPA, to cover the opening of a Southwest Trial Division office. A motion to that effect.

Susan Mandiberg: So moved. We have a motion from Commissioner Mandiberg, and do I have a second?

Jennifer Parrish Taylor: Seconded.

Chair Jennifer Nash: Okay. Second from Commissioner Parrish Taylor. And a vote.

Mara Hoaglin: Commissioner Nash?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Smith?

Addie Smith: Yes.

Mara Hoaglin: Commissioner Parrish Taylor?

Jennifer Parrish Taylor: Yes.

Mara Hoaglin: Commissioner Buckley?

Peter Buckley: Yes.

Mara Hoaglin: Commissioner Selander?

Robert Selander: Yes.

Mara Hoaglin: Commissioner Harris?

Robert Harris: Yes.

Mara Hoaglin: Commissioner Lininger?

Tom Lininger: Yes.

Mara Hoaglin: Thank you. Motion passed.

Chair Jennifer Nash: Thank you. All right. Moving on, next... Wow. Sorry. I just looked at the time allotment and I'm like we're really an hour ahead? [Laughter] But apparently we're an hour ahead. I know, right?

Jennifer Parrish Taylor: Don't jinx us!

Chair Jennifer Nash: I'm not! I'm not! Everybody be quiet now. [Laughter] Moving on next to the approval of the 2025 commission calendar, which is essentially the same commission schedule that we have now, which is the third Wednesday of each month from 9:00 to 1:00. And I realize that there was a poll taken and that is problematic, I know, for some people. But we have 13 commission members, so we had to do the best we could do with the 13 commission members we have, and so this maintains the status quo. I will note two things. One, we are tentatively scheduled for four in-person, and they'll be hybrid. So, you can go if you can. If not, it'll be hybrid, in-person meetings in 2025, similar to 2024, but we've added a couple. So, the March meeting is scheduled to be in Jackson County in person. And that's really because we have – and Commissioner Buckley will be there in person – that's really because that's one of our biggest crisis counties. So, we thought that that was important to have an in-person meeting there.

And then June, as we have been, that will be in Deschutes County to coincide with the summer OCDLA conference. The fall meeting will be in person sometime in the fall, to be determined where and which particular month, but probably September would be my guess. And then December in Multnomah County to coincide with the OCDLA winter conference as it will be this year as well. I will note something else to put on everyone's radar, and that is that when we move to the Executive Branch on January 1st, 2025, meeting attendance is

even more mandatory than it is now. If you need to miss a meeting, you will have to seek an excuse for that, an official excuse for that because we will be limited by statute actually to two absences. And if you are absent for more than two meetings, you can be removed by the Governor for cause, so it's very important that we pay attention to that. I see a question from Commissioner Lininger.

Tom Lininger: Thank you. Does that rule apply also to subcommittee meetings?

Chair Jennifer Nash: It does not apply to subcommittee meetings. But to that extent, I will say there has been a frustration that has been kind of percolating for a while about subcommittee participation. This is a working commission, and we need the participation and the work of as many commissioners, really all of you, to do the work that needs to be done. And so we understand. I mean, this is a volunteer position. We all have things to do. But what's been happening is there are a few people, and this happens in a lot of groups, but a few people that are spending a lot of time, and many people who are not spending very much time. So, we'd really like to get a lot of participation from all of the commission members because that will overall help us do the work that we need to do, and then eventually reduce the amount of time we all need to spend doing this work. Because in theory, we'll be a highly functioning commission, and we'll not need to do as much work as we have been. So, questions about that? Comments? Concerns? Okay. I lost my train of thought about what I was going to say about the other parts of the meeting, but that's fine. It seems to be a theme today for me. It's a cumulative sleep deprivation issue, I suspect.

But with that, are there any questions about the meeting calendar in particular before I ask for approval? Ah, I know what I was going to say. I remembered. This isn't exactly the perfect time, and there will be another opportunity to do this, but I wanted to call out that Commissioner Selander had a one-year term, and his one-year term is up at the end of the year, and he will not be continuing on the commission. And that's unfortunate, but I certainly understand the decision, and we are seeking to fill that position, which is very specific to be geared toward, has to be, a retired circuit court judge. Which, as you recall, has been a traditionally difficult position to fill. So, if anyone has any ideas; Commissioner Selander, if you have any ideas; of who might be willing to do work on the commission, we would really appreciate that. Commissioner Harvey's position is also subject to reappointment.

And I will say that I suspect, after having recently been through an Executive Branch training about commissions and boards, which you were all invited to attend, and I encourage you to do, I think the next round is in November, and it was really helpful, it's not an easy thing to get people appointed to the commission. Even if you're being reappointed, you have to reapply and go

through a whole Executive Branch process. So, I suspect we're going to have difficulty at the beginning of the year with a quorum, and if you can pay special attention to, if you're a voting member, to making sure that you can make those early 2025 meetings, if you have to miss any, please don't miss those. Because I think it's going to take a little bit of time before we have those two voting positions filled. Even if we're reappointing Commissioner Harvey, it's going to take some time to get him reappointed, I suspect, given the process that I learned about. So, with that, moving on to approval of the 2025 commission meeting calendar. Can I have a motion to approve that calendar?

[Crosstalk 00:51:56]

Susan Mandiberg: So moved.

Jennifer Parrish Taylor: So moved.

Tom Lininger: Second.

Susan Mandiberg: Second.

[Laughter]

Chair Jennifer Nash: We have a bunch of motions and seconds, so I'll just pick Commissioner Mandiberg and Commissioner Lininger, and we need a vote.

Mara Hoaglin: Commissioner Nash?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Smith?

Addie Smith: Yes.

Mara Hoaglin: Commissioner Parrish Taylor?

Jennifer Parrish Taylor: Yes.

Mara Hoaglin: Commissioner Buckley?

Peter Buckley: Yes.

Mara Hoaglin: Commissioner Selander?

Robert Selander: Abstain.

Mara Hoaglin: Thank you. Commissioner Harris?

Robert Harris: Yes.

Mara Hoaglin: Commissioner Lininger?

Tom Lininger: Yes.

Mara Hoaglin: Thank you. Motion passed.

Chair Jennifer Nash: Thank you very much. All right. Moving on to update and then action item for the final report for the six-year plan. Mr. Simpson?

Scott Simpson: Thank you. So, for the record, Scott Simpson with Moss Adams, and pleased to be here today with you to talk through the update to the six-year plan. We have a slight presentation here. I think the six-year plan was sent out in the commission materials. So, if we go to the next slide. So, just a brief recap. We started the six-year plan about a year ago. At that point, we were focusing on using the numbers from the Oregon Project, the Delphi numbers from the Oregon Project. We got quite a way through that process. And in working with the commission, there were a couple updates that the commission wanted. One of which was to move the hours, the expected hours worked by public defenders to 1578, I believe, was the number. And then to also move from the Oregon Project to adopt the National Public Defense Workloads Standards. So, we've spent the last few months doing that, case mapping updates, and then updating the plan. And we've got that completed, and those numbers are included in the final report. We can go to the next slide.

So, here's where a lot of work occurred. Current case charges, there's currently, there's approximately I should say, about just slightly shy of 900 unique entries, different entries of case charges. We had to map those to the National Public Defender Workload study. Some of that mapping was super easy. Some of that mapping took a little more work. And so we had to have discussions with people within the agency. A huge shout out to Eric Deitrick, K.O. Berger, and Gabe Dougherty, just for helping us do that mapping. Jessica also was in just oversight of that. And once we got that mapping done, we were able to sit back, look at it. Does the mapping make sense? We went back, had a few more work sessions, adjusted some things, and were able to really finalize things and conclude on the numbers. So, like the slide says here, we did conduct many different work

sessions reviewing and refining assignments and resolving outstanding items. And updated report reflects those new adopted standards for staffing plan, budget plan, interventions, and all of that. So, if we move to the next slide.

So, just a little bit of a comparison because a lot of you saw and commented on that first report, that six-year plan report, using the Oregon numbers. So, when we moved from Oregon to National Public Defender Workload Standards, there was some slight changes in the budget. Not as much as we thought there might be, but there were some changes. It actually reduced the overall funding by a few million dollars, pretty minor in the grand scheme of things. But again, this slide is just that brief comparison. Doesn't really change the FY23-25 numbers. It alters the next few buy-ins, the '25, '27, the '29, and '31 bienniums. And then the next slide shows the staffing impact. So, originally, using the Oregon numbers, it was anticipated there would be a need of 480. That was reduced down to 474. So, again, not huge changes, but we got to the numbers. And then if we go to the next slide.

This gets just a little more detailed on some of the interventions that can take place to actually reduce the numbers even more. The one that I'll really focus on that is in really the realm of the commission and the agency is that, I guess it's the fifth or sixth line, case support personnel. That's something that the commission and the agency have the ability to control – the hiring of case support personnel. Some of the other items – decriminalization, repealing of certain Measure 11 crimes – that's more of a legislative action. So, certainly could help significantly on some of these items, but is a little bit out of the ability to significantly influence from the commission. It's going to take legislative action. So, really it's that case support personnel that has the ability to really be impacted on your decisions.

And I would really encourage everyone to read through the section in our report talking about case support personnel. It is pretty detailed and offers some really good ideas. And you'll just have to take those and determine which ones are able to be implemented and which ones may not be possible at this time. So, originally with the Oregon report, we thought we'd get to about 400 in reduction through these actions. That's reduced using the National Public Defender Workload Study numbers, but again, that's a significant reduction if some of these things can be accomplished. Next slide. Okay.

Just a few last things. There were a couple people that worked on this project early on, didn't need the numbers to be updated from their section. That was Jim Austin, who does a lot of work on decriminalization, prison population, things like that. He's one of the experts across the country in this. So, huge thanks to Jim Austin. Steve Hanlon, who many of you know, Steve was instrumental in helping us review, provide different thoughts, suggestions,

oversight. And then one of the people who really did a huge amount of work, Malia Brink. Malia was so instrumental in helping navigate this, provide ideas, do data analysis and review. And then members of my team as well, which include Jessie Lenhart [Phonetic 01:00:35], Emily Hayes, and Annie... I'm dropping Annie's last name at the moment. And then Jessica and her team at the agency, huge thanks to them for helping get this done. I think the final product turned out really well. And I'm happy to answer any questions that commissioners have at this point on the updated project.

Chair Jennifer Nash: Thank you. Do any commissioners have any comments or questions? Okay. Commissioner Harris.

Robert Harris: Thank you, Scott. I think this is a really helpful update using the numbers that we requested that you use, and I'm glad to see that there's no increase certainly in the number of lawyers by changing the hours and the caseloads. But I do have a couple of questions in the report. I'm just using the executive summary because it's easier for me. But it says the cost needed to fund additional FTT was calculated. No, I'm sorry. The first one is, I think you're saying that we only have 45% of the lawyers needed under this study, but it looks like it might be we have 55%, maybe we need 45% more. And I'm looking at, is that right?

Scott Simpson: You have 45%, and so the deficiency is 55%. So, you need 55%.

Robert Harris: Well, in the executive summary, it says in 2023 OPDC contracts for employees, 506 attorney FTEs, we need an additional 416 FTEs. In other words, we only have 45% of the FTE, but it seems like 506 is 55% of the number we need, or am I misreading that? It says we need 922 FTEs.

Chair Jennifer Nash: I see that. It's on page two of the Executive Summary page.

Scott Simpson: Yeah. I'll look at that. We maybe had those numbers, that percentage flipped.

Robert Harris: I think it is because when I did the math, 506 is almost exactly 55% of 920.

Scott Simpson: Yeah.

Robert Harris: I thought that was it, but I just want to double-check on that.

Scott Simpson: Yeah. Let me go back. I think you might be right, looking at how this reads, but I do want to double-check, but we may have flipped those numbers.

Robert Harris: Okay.

Scott Simpson: It may have been that it should be 55%.

Robert Harris: Yeah. I mean, I think the raw numbers are correct, but maybe it's just the percentage. Anyway, regardless, on page three of the Executive Summary, second paragraph from the bottom, the cost needed to fund the additional FTEs, which I'm assuming is the 400-and-some-number, was calculated taking the average FTE cost of 241,218. Is 241,218 what the average cost of the lawyer is, excluding training, supervision, and the other things that go into this? I mean, I'm assuming this is the contract rate that the state has offered to most nonprofit and private bar. Is that correct? Or did you adjust that up to take into account extra expenses and costs that are paid to some firms? How did you calculate the 241?

Scott Simpson: So, we used the average funding across attorney one, two, three, and four categories as established by the OPDC 2023 contract.

Robert Harris: So, it does not include supervision, training, other expenses. Is that correct?

Scott Simpson: Correct.

Robert Harris: All right.

Scott Simpson: Yeah.

Robert Harris: So, that may be an under-count on that actual cost of adding that many lawyers is my point, I guess. Sentencing reform, and I'm glad to see that you worked with some national experts on this because that sort of probably answered my question. We don't know what reforms they may be exactly, but when you calculated savings, I guess I wanted to know how you calculated that, based on just some sort of nebulous sentencing reform? And maybe you've answered that, you referred to the national experts. Is that what happened?

Scott Simpson: Yeah. So, so this is where we pulled in Jim Austin because that really is his area of expertise. So, sentencing reforms, what can happen there and the thought process that we move through, I'll say I'm paraphrasing some of the things that he might say, but he would say it probably in a much better and clearer because of his role in this. If a charge... There are certain sentencing reforms, then the charges that are levied against individuals may be reduced, which could drive less time for public defenders because part of the time that is driven is based on the type of charge that there is and the severity of that charge. And so if a sentencing reform happens and a low-level felony goes to a high-level misdemeanor, for instance, that's going to require less time for a public defender, in theory, and based on the NPDWS numbers. That's how we looked at that. So, what are the potential sentencing reforms and what could, if those charges were to be able to be reduced, what would be the impact on moving X

number of charges from, again, for instance, low-level felonies to high-level misdemeanors? And that difference results in savings and reduced hours. And so that was the thought process. Did that answer your question, Commissioner Harris?

Robert Harris:

Yeah. Yeah, I figured it was something like that. I just don't know exactly how comfortable I am believing... Relying, I won't say believing, I believe what they did, relying on these numbers, just knowing how the Washington County District Attorney's operates. Maybe I'm jaded on that. But I think that if you're charged with a kidnapping II, for instance, even if it's no longer a Measure 11 charge and you don't have a mandatory prison term, you probably still have significantly the same work you're going to be doing on this. I mean, that's my only comment, I guess. I'll leave it at that. I think I had one more question. Oh, the support staff. This is, as you say, a critical thing here on the support staff. So, if I read this correctly because support staff can do approximately 20%, let's call it 20% of the work that the Oregon Delphi study indicated could potentially be shifted to legal staff. That does, for every, I guess, individual support staff you hire, maybe you save 20%, which means five lawyers can now do...you only need four lawyers, I guess. But that would only apply to firms that have more than a certain number of lawyers.

Many of our sole practitioners or two- or three-person offices that are doing this work now may not be able to fully utilize that, number one. Number two, I guess, my other point on this. So, anyway, I'm not sure it's a one-for-one, maybe in the larger law firms. So, maybe it is in those larger law firms where they have a reduced lawyer count and a higher head count for support staff. But my next question is did you look – and this would be beyond the scope of this report, but I'm just curious – did you look at the actual staffing of different providers to determine which have a higher staff-to-attorney ratio and then potentially compare that to their utilization or caseload rates to see if in fact this theory that adding staff increases the ability of lawyers to do caseloads, if in fact that was confirmed?

Scott Simpson:

So, we did not do any kind of an analysis reaching out to a broad spectrum of different firms doing this. Part of this came from participating in running the Oregon Delphi study for the Oregon Project, where we heard time and again where public defenders were saying, "I'm having to spend time doing investigations because I didn't have access to investigator," for whatever reason. And in those discussions, we heard that come up a lot. And so that theory was then explored with the management team at the agency, as well as others, and we were able to come up with a chart at the very back. So, if you look at Appendix 4, I think it's Table 21 in the back of the report, it really dives into case type and case tasks and where those case tasks can be...the time can be reduced by using case support personnel. So, long answer to your question

of did we do some kind of a reaching out or a survey to providers to find out what the different levels of support personnel was. We didn't do a formal survey of that.

Robert Harris: All right. Thank you. That's all the questions I have for now.

Chair Jennifer Nash: Thank you. Commissioner Buckley.

Peter Buckley: Thank you. I'm following kind of same line that Commissioner Harris was on. I'm very interested in the case support personnel option for the commission to pursue, again, as a workforce issue. We have to really keep looking at this. This is a workforce issue. How do we develop the workforce that's going to effectively provide public defense in our state? So, I'm very interested, and I'm not sure whether even when we make a motion on this, whether the commission can actually weigh in and say, "The commission approves this report as planned and with a priority on the case support personnel." Senator Prozanski can testify the idea of decriminalizing different crimes is a challenge, a huge challenge in the Legislature. It's a huge, huge, huge challenge in the Legislature. Let me just emphasize that again. It's a huge challenge. So, if I can just kind of point out, I'm wondering, Scott, if there's any look at the diversion programs we have in the state and how diversion programs for first offender misdemeanor crimes, are they being accessed? Is that an area that we've looked at? Is there a way that we can reduce at least caseload or at least the length of cases by increasing diversion programs in our state?

Scott Simpson: Commissioner Buckley, great question. We did not dive into the diversion path that is available at times. So, that wasn't something that we looked at. Is that an option to further explore for the commission and the agency? Absolutely. I think that's a brilliant idea. And going back to some of my introductory comments, there are things that you can control and things you can't. One of them you can't, the Legislature, obviously. But the things that you can control and have the ability to influence all should be on the table. And so I think that's a great idea of something to look at, but it was not something that we included in the report.

Peter Buckley: Thank you.

Chair Jennifer Nash: Thank you. Commissioner Selander.

Robert Selander: I appreciate the report. I think it's very well done. And I also appreciate the Executive Summary. And I'd like to go to page one and what I think is a mathematical formula in how to determine what caseload is. And as I understand it, that is based on the number of charges filed. So, your forecast is,

if you know the number of cases filed, you can pretty well tell how many attorneys were going to be needed.

Scott Simpson: Correct. The way we went about this was we looked at the highest charge filed to an individual. So, if an individual is charged with four different crimes, we looked at the highest charge is how we sorted the data to be put in the report.

Robert Selander: So, in that situation, there was only one charge you considered rather than four charges.

Scott Simpson: Correct.

Robert Selander: And in that – we're talking about attorney availability time – in that, we have a number of people that don't appear in court that would have a charge pending, and it would be a tie-up on the attorney's time when in fact it's not because the person's not there. Did you calculate that in the formula?

Scott Simpson: The individuals that are charged that don't appear?

Robert Selander: Yes.

Scott Simpson: Is that your question? What we included was charges filed and that are assigned to a public defender.

Robert Selander: Whether or not that amounted to an active case or did not amount to an active case?

Scott Simpson: I guess what do you mean by an active case versus an inactive case?

Robert Selander: A person's charged, he appears in court, he's appointed an attorney, the attorney opens a file. First appearance, the defendant does not appear and does not appear for some period of time. So, the attorney has an open file where the attorney, I think, is essentially twiddling their thumbs. That's not a criticism. I think that's just an appraisal of what you do when your client hasn't appeared.

Scott Simpson: We included that. We did not look at situations where a client, I'll just say for lack of a better term, disappears, doesn't show. What we're looking at is active cases.

Robert Selander: Thank you.

Chair Jennifer Nash: Cases where a person's eligible for a public defender, right? I mean, that's what you looked at? Or did you look at... You looked at the caseload forecast overall

and didn't take into account what the lawyer's particular involvement was, is that right?

Scott Simpson: We looked at the cases that are filed and assigned to a public defender, and then we took the highest, like I said, the highest case charge, the highest charge, and that's what we counted as essentially a case.

Chair Jennifer Nash: Well, what about cases where people don't have lawyers because there aren't enough lawyers? I mean, those cases are included in here, right? So, these are all cases, not just cases that were assigned to public defenders, right?

Scott Simpson: Correct.

Chair Jennifer Nash: Okay.

Scott Simpson: Yeah, I apologize.

Chair Jennifer Nash: Okay.

Scott Simpson: Yeah. We got a listing. The data that we got included all cases charged.

Chair Jennifer Nash: You got the caseload forecast that was generated by the Department of Administrative Services. Is that right?

Scott Simpson: We have it in the report here. I believe that is correct, but I would have to go back and read through. But we do disclose where we got the information, where we got the data from.

Chair Jennifer Nash: All right. Thank you.

Robert Selander: Chair, may I ask one more question?

Chair Jennifer Nash: Yeah.

Robert Selander: In a follow-up on yours, do you know what percentage of criminal cases are handled by private attorneys, non-court-appointed attorneys?

Scott Simpson: I don't have that information off the top of my head.

Robert Selander: Were those cases calculated?

Scott Simpson: No. I believe we scoped out those that are handled by private attorneys, where someone goes out and pays for their own defense lawyer.

Robert Selander: Accurately or inaccurately, I don't want to put words in your mouth, there's an assumption that every criminal charge filed is going to be a public defense case in your report.

Scott Simpson: No. I think that... Go ahead, Jessica.

Jessica Kampfe: Sure. Commission Selander, when we worked with DAS to do our caseload forecasting, they received the case filing data from the Oregon Judicial Department, and they did ask that specific question about the percentage of cases that were eligible for public defender. So, our DAS caseload forecasting is based only on the percentage of cases eligible for a public defender and not the total number of criminal or juvenile cases filed.

Robert Selander: Thank you.

Chair Jennifer Nash: Thank you. Commissioner Prozanski.

Floyd Prozanski: This is really a follow-up to what Commissioner Buckley was talking about. The issues around the diversion is something he and I briefly talked about prior to this meeting. This is one of those areas that would take a lot of partnerships within the legal community to really make that occur. The way the statutes are currently written, the district attorneys or their subordinates are the ones that make the determination as to who might be offered a diversion program. And so what we would have to be looking at, and maybe through the Governor's roundtable meetings that we're having, that we can have some conversations as to the partners and the situation about how that could be facilitated. Because clearly, if we actually had, and this would be...

I think the only way you could do this for equal protection, a requirement that everyone in the state who is charged with whatever the offense is, so long as meets certain criteria such as not having prior convictions, whatever it may be, that they would automatically be allowed to go into a diversion program. That would be the ability to curb some of the cost. And when you look at House Bill 4002, the language that's in there and the goal there was actually using deflection, and I define deflection means prior to someone actually going into the criminal justice system. So, there may be some other ways that we could cut the need for representation, but it will clearly take some time, and it will be somewhat difficult to actually reach that type of resolution with the various stakeholders at the table. Thank you.

Chair Jennifer Nash: Thank you. Commissioner Mandiberg.

Susan Mandiberg: This is a follow-up to questions that Commissioner Harris was asking because I hadn't actually thought about this before his really good questions. Thank you,

Rob. If sentences are reduced to turn felonies into misdemeanors, that would mean we would need an increase in misdemeanor lawyers, right? It wouldn't necessarily decrease the number of lawyers we need. It would just change whether they needed to be felony qualified. We would still need the same number of lawyers. They would just have to be only misdemeanor qualified. Am I right about that?

Scott Simpson: I would say partially, and I'm getting a little bit out of my realm when I start talking about legal qualifications, so please know that. But what we were looking at is if a... And, again, hypothetical, a low-level felony, the estimated number of hours to spend on a case like that is 43, and a high-level misdemeanor is 33, and decriminalization takes that low-level felony to a high-level misdemeanor, that 10-hour savings accumulates across the number of cases that are impacted over the course of the year. We're doing just straight math, so we're not taking into account the different qualifications needed.

Susan Mandiberg: Right. I guess the reason I'm asking is that when we hear from providers, public defender contractors, one of the things we hear is that the lawyers who are leaving are the more experienced lawyers who are qualified to take on felony cases, and the new lawyers who are coming in tend to be recent law school graduates who can handle misdemeanor cases. So, if I'm correct that a reduction in sentencing would move cases from felonies to misdemeanors, and that would mean more misdemeanor lawyers were needed to even handle those reduced hours, assuming you're correct that people work less on misdemeanors than on felonies, which I agree with Rob, I'm not sure that's a correct assumption, that might be helpful to us in that we can more easily recruit misdemeanor-qualified lawyers than felony-qualified lawyers. So, that may be an advantage that's not mentioned in the report. That's all.

Scott Simpson: Good point.

Chair Jennifer Nash: Does anyone else have any other questions?

Robert Harris: I actually had one more, if I may, and this also goes to the funding or the number, the cost of this program. When looking at the added non-lawyer support staff increase and the cost of that, it looks like you're using a number of whatever that is, \$78,000 or something per head count on that. And I think you said you calculated that by using the average salary of these various different staff levels from probably reception, clericals, filing up to investigator and paralegal. But that number that you came up with, did it include all costs of employment such as healthcare, payroll taxes that the employer pays, retirement, and the overhead necessary to house and staff that lawyer? Because you're going to have to have bigger office space, more IT work, more

computer stuff. Did you roll all those costs in there or was that just a salary cost used?

Scott Simpson: I would say it's a combination of both. So, we rolled some of those costs in, some of those, we didn't necessarily factor in overhead, but we did factor in things like the...I'll say the full cost of employment, which is healthcare and benefits, but not the incremental costs of overhead. So, a little bit of each.

Robert Harris: Okay, that number still seems a little low to me, honestly. But I mean, healthcare alone is going to be, depending on whether you're doing an entire family or whatever, 2,000 bucks a month. So, anyway. All right. Thank you.

Chair Jennifer Nash: Thank you. I have a question. My question is really an economies of scale kind of question. And I understand the staffing ratio numbers and I understand why they're there and they make sense, but when you're talking about solo practitioners or small firms, my question is really about how you can't hire a 25% staff person if you're a solo practitioner, right? So, you have to hire a person who spends more than probably 25% if you're doing, let's just assume for the sake of this discussion, that you're doing full-time public defense work only. So, that person is actually spending a lot more time than 25% of their time. They're spending, in theory, 100% of their time doing public defense work. So, how does that impact these numbers? And is there a way to capture that? Because obviously that would increase the cost of staff.

Scott Simpson: Yeah, good question. And to be upfront, we didn't look at it at the level that you're talking, where a sole practitioner may need... What I would say we looked at, we thought about it more in a macro level. So, can there be a way where you can hire a pool of people that are available to be accessed by the sole practitioner, the two-, the three-person office, that would allow them to utilize those services? And so that was, I would say, the thought process behind it, rather than this being something that each office would have or hire a group of people. So, for instance, one of the things that we heard during the Delphi study several years ago is the amount of time that it takes to, say, review bodycam footage can be huge. And is that the highest and best use of an attorney's time to be doing that? If you could hire a group of people that are trained in it, that can do it efficiently and at a much lower cost, and then you could utilize that pool of resources to more effectively do that review. And again, on a macro level, would that save time for public defenders? And I think the answer is yes, on a macro level.

Where all of this gets a lot more tricky is when you start getting down into those very specific details of, "I'm a sole practitioner, how can I utilize that?" We've got to think pretty broad on is there an opportunity to hire a pool of people that can do things like this at the agency level, possibly. I don't know all the ins and

outs of that, but I would say that's the thought process. Think are there broad ways we can accomplish some of these and have them be able to be available for access by the public defenders? Not sure that totally answers your question, but hopefully...

Chair Jennifer Nash: No, it does. I was thinking about it from a conceptual level in terms of what our public defender service provider model will look like in the future, which is nonprofit public defenders, which obviously could take advantage of the staffing ratio, state employees which could take advantage of that, and then hourly panel attorneys which would not be able to take advantage of that model. However, I do think that there would be opportunities through the contracting model. So, that preauthorized expense model, basically. Get authorization for a certain number of hours for your support staff or something. I mean, I was thinking of also macro and micro, like how from a system perspective could we as a commission address that issue? And I think that your answers actually have helped me think about that. So, thank you. Commissioner Harris.

Robert Harris: Thanks. I'm probably going to actually restate or reinforce what this discussion has just been between Chair Nash and Mr. Simpson in this case. Because I think that this report would be valuable if we had one law firm of 510 lawyers located in Portland and all the crime occurred in Portland, right? Regardless what some people nationally think, that's not the case. It occurs all over the state. It occurs in different counties that have different delivery system models today, whether it's 100% consortia or a mix of state offices, nonprofits, and panel lawyers. So, I think it's valuable from the conceptual stage, but it's certainly beyond the scope of Scott's work to be asked to do all this extra work county by county. So, I think from the conceptual stage, it makes sense to say if we add more support staff that can do some of the stuff lawyers do, we're going to have a reduction in the need for lawyers.

I just don't know if we can put a decimal point on that calculation because it's going to be different in each county. It's difficult also because obviously conflicts of interest, you also have client confidentiality. So, two lawyers that are unassociated really have a hard time sharing the same paralegal support person or investigator because there's confidences that you need to be careful of. You cannot share those confidences with the investigator who might work for someone who is also the assigned investigator for someone else who may be a co-defendant or a witness. Anyway, it's very complicated. It changes county by county.

In fact, some ways it's difficult in smaller counties because there's more conflicts in the smaller counties sometimes because there's family members, they know each other. And it can be very difficult to apply this particular lesson or the mitigation strategy statewide or even in a county. It's just very difficult to put a

number on this. So, I would say that this is val... Also, what's a law firm going to do? Are they going to get paralegals and say, "Hey, great." Are they really going to increase their caseload by 20%? I don't know. I mean, you can ask them that, but right now the agency's having a hard time with some providers who are well below their MAC rate, at least, or the FTE rate. And there may be reasons for that, but I'm saying it's difficult.

And so what's going to be the outcome of adding staff? I think it's a big unknown how it's going to be utilized, how fairly it's going to be distributed across the county, across the state, even within a county, for instance. For instance, in Washington County, we have a nonprofit that might be able to utilize it, but the consortia probably wouldn't be able to utilize that. And so having a pool doesn't really help because you've got the conflict issues. And as Jennifer points out because she and I both did small practices and consortia and managed consortia and law firms, it's really more complicated than... There's a lot of factors that go into it. So, that's my comments on this. I think it's a valuable tool; it's a valuable thing to explore. I just don't know if it's going to be as widely available statewide as we would like it to be given the structure that we have.

Chair Jennifer Nash: Thank you. Did you not want to say something, Senator Prozanski?

Floyd Prozanski: I'm going to pass now. Thanks.

Chair Jennifer Nash: Okay. All right. Commissioner Reinhard.

Brook Reinhard: I just wanted to briefly chime in to say that it seems like the biggest obvious benefits of support staff are better client outcomes and reduced burnout from attorneys because their quality of life is better when support staffers are helping them. When we did surveys, when I was in the public defender's office, the biggest thing that kept people was support staff. That was the biggest thing that kept attorneys at the nonprofit offices. And when you have a support staffer that can regularly help with client visits and discovery management, etc., it means the attorney's able to do more complete work. So, I think it's a very valuable investment. But I agree with Commissioner Harris that I don't think there's necessarily a good 20% reduction. I don't think I agree either that a 20% reduction is obvious or likely if you add more support staff. It's going to lead to better outcomes, lower turnover, and all those things are going to help. I just want to be careful what we're messaging to the Legislature because I don't think it's going to be an increased caseload ability for most purposes.

Chair Jennifer Nash: Senator Prozanski.

Floyd Prozanski: Yeah, I guess I'm going to go ahead and put this thought out there. My understanding from other discussions is that depending on how an individual is charged, clearly for murder, you have a set number of attorneys that are assigned. I believe I've heard that when you have mandatory minimum sentencing, you also see a formula that could be different than if it wasn't mandatory minimum sentencing. And so to me, I understand what we're attempting to do is see where we can shave the need to have that type of defense team to be able to represent and still be able to represent fairly and appropriately. So, to me, it is a lot of pieces here that have to come together as to what the Legislature could potentially assist in getting a different need for how many attorneys for a particular case, clearly based on what the charge is and what are the ramifications from that charge, in the sense of what the potential sentence is.

Chair Jennifer Nash: Thank you. I think that's right. I mean, the way I read this is we're quantifying things that are hard to quantify, right? So, there's a formula, there's a standard practice and a standard way to do this. Are there flaws? Sure. I mean, because we're trying again to quantify something that's extremely difficult to quantify. So, as long as we're using the right methodology and the consistent appropriate methodology, it's the best that we can do in Oregon to compare it to numbers that the federal government and everyone else uses. And the way I read this report is this is a value choice by the State of Oregon.

So, using that formula and that ability to quantify the Legislature, and it is the Legislature ultimately, right, has some options, and their options are, well, if you want to save X, you can decriminalize or you can have sentencing reform. All right, so you can't do that for whatever reason? Here's another option – another option is you can hire additional support staff. And is that going to reduce caseloads? We don't know, but what we do know and what we're going to hear about in a little while is that the single biggest factor that the commission and its data has determined is contributing to the unrepresented crisis is the high turnover, the attrition. That's the thing that is driving this crisis is we can't keep lawyers. And what we've heard is, even if we don't reduce caseloads, we are reducing caseloads because we're reducing attrition by having support staff. And so we fund...what we make people or people choose to have support staff now because we all know that it makes sense to have support staff.

As I talked to Brook about when he decided to go into private practice and was thinking about not having support staff, I'm like, "Listen, you need to have support staff because you're a lawyer and you need to only be doing lawyer work, and your support staff needs to be doing support staff work." And that's what we're talking about here is not having lawyers do support staff work anymore. And we make them do that, or they choose to do that now, and they don't get compensated for it. So, the support staff is paid out of the money that

we pay contractors. We don't pay for support staff. So, we know how much it costs for support staff now. We have numbers, we have the data.

I really appreciate the appendix that kind of quantified, well, these are the kinds of things that you can have your support staff be doing that helps us also develop performance standards and staff standard...or performance standards for staff. And I think ultimately, this is the, okay, if we want to reduce the cost of representation, here are some ways that you can do that. Here are the ways that you can increase the number of lawyers in the system. That's the purpose of the six-year plan. I think the report did a wonderful job of laying that out for us. The difference, and I mean, this is always the case, but the difference between the draft and the final plan is night and day.

And I want to convey my deep appreciation on behalf of the commission for the work that Moss Adams has done and the pivot that you made when we threw a couple of curveballs at you, first with the number of hours and then switching to the National Workload Standards. And I know Ms. Brink was particularly involved in doing that mapping, and I deeply appreciate her work and her pivot. Especially given her right of ownership in the Oregon study, I appreciate her pivoting to the national study. And I just really want to thank you for your work. And I think that this is very helpful information for the commission to be able to move forward and really be able to message this is what the cost of public defense is, and if you want to reduce the cost, here are some ways you can do it, and you get to decide how you want to do that. Does anyone have any other questions or comments before we move this to a vote? All right. With that, I will ask for a motion to approve the six-year plan as presented. Commissioner Buckley makes the motion. Is there a second?

Jennifer Parrish Taylor: I'll second.

Chair Jennifer Nash: Commissioner Parrish Taylor, and we need a vote.

Mara Hoaglin: Commissioner Nash?

Chair Jennifer Nash: Yes.

Mara Hoaglin: Commissioner Mandiberg?

Susan Mandiberg: Yes.

Mara Hoaglin: Commissioner Smith?

Addie Smith: Yes.

Mara Hoaglin: Commissioner Parrish Taylor?

Jennifer Parrish Taylor: Yes.

Mara Hoaglin: Commissioner Buckley?

Peter Buckley: Yes.

Mara Hoaglin: Commissioner Selander?

Robert Selander: Yes.

Mara Hoaglin: Commissioner Harris?

Robert Harris: I vote yes on the condition or the provision of the request, I guess, that if it's actually the 45% or 55% number, if they would look at that and consider that not a substantive change, but administrative or technical error or glitch. I would ask them to correct that if that is in fact the case. On that condition, I would vote yes.

Chair Jennifer Nash: And I don't think we need to change the motion for that. I think there's an acknowledgement that that's going to be looked at.

Robert Harris: Thank you.

Mara Hoaglin: Thank you. And Commissioner Lininger?

Tom Lininger: Yes.

Mara Hoaglin: Thank you very much. The motion has passed.

Chair Jennifer Nash: Thank you. And thank you again, Mr. Simpson, to you and to your team. We appreciate your work very much.

Scott Simpson: Thank you. Have a great day.

Chair Jennifer Nash: Thank you. All right. So, we're scheduled for a break, and I'll ask people what they want to do. At 11:55, which is like an hour from now, we have to, no matter what we're doing, have the presiding judge from Coos County talk with us. So, we can take a little break if we feel like we need to do that, or we can keep going to try to get a lot of these things done before 11:55 and do a scheduled break at the time that we have it scheduled for, which is 11:40. So, I would prefer to do that. Does anyone object to that? All right, then let's move on to the briefing on the Assigned Counsel Program, Director Kampfe?

Jessica Kampfe: Thank you. I think Mara is going to pull up some slides for us. Thank you, Mara. So, this is a preliminary briefing for the commission on the Assigned Counsel Program. You all are going to hear a lot more in depth about this in November, and that is because for December Legislative Days, we will be presenting to the Judiciary on our Comprehensive Public Defense Plan, and a big portion of that presentation and that report is going to be about the Assigned Counsel Program. So, you're going to hear a much more detailed conversation in November that accompanies the report that the commission will be voting on in November and would be presented to the Judiciary in December. With that said, we wanted to just tee up the issue for you all so that you can see where the agency is at on this work. Next slide, please.

The formation of the Assigned Counsel Program is statutorily required. So, in 2023, we had major reform legislation that was passed for public defense, and that reform legislation required the agency to create an Assigned Counsel Program, a panel of hourly attorneys, and that panel must be set [Phonetic 01:45:32] up by July 1st of 2025. During this time period, we can still continue to contract with any entity type. So, this panel does not replace existing entities, but it is supplementing the contract and the state trial lawyers. In July of 2025, we are also prohibited from entering contracts that pay a flat fee per case, and we can't enter contracts with disincentives or incentives that impair the ability of appointed counsel to provide effective assistance of counsel. So, we have to look at the interplay between hourly work and contracted work. We have to establish, supervise, and maintain a panel of qualified counsel who contract with the commission, and employ attorneys who accept appointments at the trial level.

Some background work has already been done to pilot what could be an Assigned Counsel Program through the Temporary Hourly Increase Program. So, we have seen a shift in the way that public defense is delivered in the state of Oregon. Through that program, the agency used to do about 1% of public defense hourly. It was mostly death penalty work that was done hourly in the state. As the Temporary Hourly Increase Program has launched, we have seen providers shifting organically to take more cases hourly. And so that has been some people that were already doing public defense shifting to that hourly model. It's also been an ability to tap into the private bar and more part-time folks to take a handful of public defense cases. The hourly program that we have right now for THIP, while it's a good start and a pilot, it's still missing a lot of the supervision and qualification pieces that are needed for an Assigned Counsel Program. Next slide, Mara.

So, we have been working with stakeholder groups to identify what a robust Assigned Counsel Program looks like. We're talking with you all about that.

We're working with our internal agency staff. We're doing outreach in the form of workgroups to provider groups. We've been working with Moss Adams for project management support. We've been tapping into national expertise with the Sixth Amendment Center and working with other agencies to really build out this program. Through that work, next slide please, we have created a timeline for when we need to be delivering on particular aspects of this program in order to meet our deadline. So, the first things that we need to do are create qualification standards and performance standards. Some of this work has already been started, and last spring you received a report out on workgroup work that the agency had done on the qualification and performance standards for core staff. That work will be integrated into the development of those qualification standards and performance standards.

I would note that while this work is a key component of creating a functioning Assigned Counsel Program, some of it also overlaps with the work that we need for our contracts for the next biennium. So, the agency is looking to move to the Executive branch where we will procure really standardized state agency contracts, and a lot of the special requirements that we see for public defense are going to live in our standards. And so those will be standards that are brought before this commission to be adopted, and you can see in our timeline that we're looking at bringing the qualification standards to the commission in December and in January, the performance standards also in December and January. We're also working to build out our online billing system through the Financial and Case Management System. I know you'll hear from David Martin later in our presentation, but we reached a really important milestone this week, which is that we cleared Stage Gate 1 and Stage Gate 2 and have posted our Request for Proposal. So, that's a big step for the agency. It's taken us a long time to get there and very, very promising to be able to actually deliver on these timelines.

So, looking through here, you can see all of the big bodies of work that we need to accomplish in order to set up the panel. We did put some of the things like hourly rate determination in May and June, and that aligns with the legislative schedule. So, this commission has asked for an economic survey to set new hourly rates. You told the agency how to build our policy option packages to be able to request the money to fund those hourly rates, but we are still waiting on the Legislature to make decisions about what kind of funding and investment we could expect next biennium, and so some of those components happen later. Next slide, please. And that's it. I will be back next month to talk to you all in more detail as we look to flesh out our report on the Comprehensive Public Defense Plan, of which this is a major component.

Chair Jennifer Nash: Do any commissioners have any questions about... Okay, Commissioner Harris?

Robert Harris:

Of course. A couple things. One, I think I heard you say, maybe at our last commission meeting, I know it's not addressed here, but it is relevant to formulating or establishing this program – hourly rates. And you indicated you were going to adopt one hourly rate. I would strongly, strongly suggest you develop at least three hourly rates based not upon the case type but based upon the experience of the lawyer, and here's why. I know there's a shortage. I know one of the rationales for establishing a single rate was, well, we need more lawyers to do misdemeanors, and therefore these experienced lawyers don't want to do misdemeanors because they get paid more money for the serious cases, but we want to nudge them towards misdemeanors. That's fine. The problem is this, is if you have a lawyer that has 20 years' experience and you want them to do misdemeanor, and then you have a lawyer with two years' experience and they're doing misdemeanors, and they're all being paid the same rate, that lawyer with all that experience will probably end up sending an hourly bill that's lower than the lawyer with two years' experience. So, you're basically paying this lawyer because they're going to do it more efficient, likely. They're likely to do it more efficiently and quickly based on their experience because that's how law firms work.

And maybe that's a good thing for the state, you pay less money for a more experienced lawyer, but it's demoralizing for that lawyer to be paid the same rate as the lawyer with two years' experience. And it doesn't encourage the younger lawyers to continue to work and gain experience. And so I think having three-, maybe even four-tiered system, like zero to 5 years, 5 to 10, 10 to 20, or 20-plus, something like that based on years of experience, it would be helpful in retention and morale. And it's probably the right and fair thing to do to pay lawyers with more experience more money because that encourages them to continue in the practice.

The second thing is when you contract, I know there's been a lot of discussion. We had this discussion in the workgroup that ended up developing 337. And I advised at that time that when you contract with lawyers, be very open to the idea that you contract with a law firm that has lawyers working for it, not with the lawyers directly. Because if you contract with the lawyers directly and you have a law firm that brings in people who want to do the work, particularly in the small rural counties, honestly, but in Washington County too, we have these law firms. They hire people and they train them up and they're good lawyers and they're doing good work. And you can have key performance measures, and they have supervision because you have the managing lawyer managing these younger lawyers.

But if the state contracts directly with that lawyer who's right out of law school, honestly, your supervision and training is going to go down because that lawyer is going to think they can take that contract and walk right out and try and open

an office down the hallway, and they're not going to be able to do a good job. The work is going to suffer. They're not going to have training and supervision. So, be open to the idea of contracting with a law firm who hires qualified people and let that qualified lawyer go ahead and bill by the hour, but the contract is with the law firm. Because we have three law firms here in Washington County, and I've talked to them, and they don't know what they're going to do if the state actually contracts directly with their lawyers. And you may think you're empowering those young lawyers, but what you're doing... And you are in a way. You're empowering them to ignore their supervisors [Laughter] because who's the boss? I mean, that supervising lawyer who in the law firm is going to become an office manager. And I think that's really, really more important than this agency thinks it is. So, I really encourage you as a panel attorney to consider contracting with law firms who meet certain requirements that the agency comes up with, but think about this from a structural standpoint, and I would really encourage you to do that. Thanks.

[Crosstalk 01:55:43]

Jessica Kampfe: If I can just respond on the hourly rate piece of it. I would note that this commission accepted an economic survey that was part of the legislative mandate under Senate Bill 337. We completed that work in the spring. Based on the economic survey, the commission adopted a market match hourly rate for hourly providers. The commission made the decision to set two different hourly rates, I believe it was 205 and 230 an hour. One was for minor felony and misdemeanor crimes, and the other was for major felony and murder crimes. The commission directed the agency to build our policy option packages based on those criteria, and also adopted those policy option packages and directed us to submit them to the Legislature. Those were submitted as part of the agency requested budget in August. And so at this time, the agency is moving forward with the policy option packages that the commission directed for the two hourly rates of 205 and 230 an hour. Ultimately, these are decisions that lie with the Legislature in deciding how they are going to fund public defense moving forward, but we have requested not one but two hourly rates.

Robert Harris: Okay. I apologize, I didn't remember that, but I think this is going to be a moving target going forward as well, I guess. So, I would just ask that you continue to do tiered rates. Thank you.

Chair Jennifer Nash: So, I'll just pipe in here because I think that we've conflated. So, the Legislature has told us what public defense needs to look like going forward. And that is either you're a nonprofit public defender, you're a state employee, or you're an hourly lawyer. It's starting in 2027. I mean, I realize there's like that two year between now and what happens in 2027, but that's it. There's not going to be individual contracts with individual lawyers. So, if you're not a nonprofit public...

Let's just assume the current legislation continues. If you're an individual lawyer, whether you're in a law firm, whether you're a for-profit law firm, whether you hung out a shingle, whether whatever, you're not getting a contract. If you want to work for and do public defense work, you're billing hourly under the current legislative structure. And so if you're in a law firm and you're supervised by a lawyer and you want to do public defense work, I imagine that's going to look the same way as it does as if you're working for a private client. And that is that you're submitting your hourly work, and your firm administrator's billing the agency for the work you're doing at the hourly rate that's reimbursed by the state. Or if you're an individual lawyer, that's what you're doing.

So, to say we need four contract rates because it provides a disincentive for people to do work, I think that's the model that exists now. That's not the model that exists in the future. So, if the Legislature does something different with 337 and amends it and changes it, then this commission is going to have to make some decisions about how we move forward. So it's a contract reimbursement rate, the one, the single rate. So, if it's – let's make it up – it's \$250,000 a year, you have seven lawyers in a small public defender law firm, you get seven times \$250,000. And then you decide how you're going to pay your employees based on your level of experience and your incentives that you have as an employer. I mean, that's the way I envision the statute going forward. I don't think we need to have four different reimbursement rates. And what has happened with the agency by having four reimbursement rates is that we have had staff who have lawyers who have done nothing but process contract amendments. And you want to talk about overpaying people for work? I mean, they're doing good work. I'm not saying anything about them. I'm just saying the structure that we have, we have lawyers that are doing contract amendments constantly because people are qualifying up, and it's also really difficult to do budget projections based on that as well. Go ahead, Commissioner Harris.

Robert Harris:

So, perhaps I didn't explain myself very well. When I said contracts with law firms, I'm not meaning flat fee contracts where they're sending you \$100,000 a month for 10 lawyers or whatever. What I'm talking about it... And you're going to have a contract, but you're going to have... In a way, you have a contract with panel attorneys. But what I'm saying is you have, maybe it's a relationship. Well, it's a contract. It says the state's contracting with this law firm, and this law firm will house three lawyers who qualify under our standards, and this is the hourly rate. And therefore the firm bills for these lawyers and the state pays the firm the money, just like a law firm is. That's exactly how law firms work all over the world, all over the country. You do not... If I work for Stoel Rives, I don't bill clients, and then they don't send me the check. They send the check to Stoel Rives, and their contract is with Stoel Rives, not with me personally. And that's the way it works because that's how law firms work. And I'm saying there's

nothing wrong with that, and it will make sure that these firms can have the supervision and the training for young lawyers who come in.

If the state says, "Well, we're contracting with Heather Jones, who is a new associate at Nash Law Firm." And Heather sends the bills and that's fine. Who do they make the check out... Do they make a check out to Nash Law Firm, or do they make it out to Heather Jones? This is what I'm saying. Who is the agreement or the arrangement with? It has always been told to me over the last seven or eight years, since this concept came into the idea of not contract with the law firms and contracting directly with associates, which was exactly told to me by several people at OPDC that that was their intent, is that they were going to send the checks to the associates. And that's who the agreements were going to be with, whether you call them a con... I think when we think of contract, we think of flat fees, right? I'm talking about just an agreement, right? Who is the agreement with? And it should be with the law firms who are agreeing to provide certain things. That does not violate 337, in my opinion, in any way, because it still says these are panel [Inaudible 02:02:34]. We're paying them by the hour. It's just the employment structure of this lawyer with the law firm.

Chair Jennifer Nash: All right. I have an idea.

Robert Harris: I don't think that's a problem.

Chair Jennifer Nash: And you can tell me if you think it's a bad idea. That's a good point, and it is something that we have come up against a couple of times, and perhaps the commission needs to ask for a legal opinion. So, let's ask for a legal opinion from the Department of Justice, whether or not that structure would be inconsistent with 337. And I don't know if we have to put that as an action item on next month's... I mean, we don't need to do this in a rush, right? So, maybe we put that on next month's commission meeting so that we can have some public comment if we need to. But let's ask whether or not we think that structure would be consistent with – because a lot of people have asked this question – whether or not it would be consistent with 337. Do other commissioners have thoughts about that? Commissioner Smith, I saw your hand pop up.

Addie Smith: I think that's a great idea since there's some differences in interpretation so that we know. I would just say to the extent that we get an answer that's yes, I'd be really interested in sort of what research is out there that tells us that a tiered system promotes retention. I think it makes logical sense. I would assume it promotes retention and that it's going to be helpful with some of our core problems. I would also just love to see if there's been any research done in this realm, specifically public defense or any adjacent areas, that can tell us that this is a good idea. I think it'll be helpful when we advocate moving forward, and I'm glad we're thinking about how building things to promote retention.

Chair Jennifer Nash: So, maybe what we can do is between now and November's meeting, I can work with Commissioner Harris or anyone else to formulate exactly what the legal opinion we're going to ask DOJ to provide, and then that will be a specific action item on the November commission meeting. What do you think about that, Rob?

Robert Harris: Thank you. I just want to also address the other issue raised, Chair Nash, and that is the administration issues with leveling up or leveling down in tiers. That's why I specifically said hours...or years of experience, not case type, because I think the problem is where it's case type. And if you said it's years of experience and you will get a certain rate every year or every two years so that... And if you said zero to five, you're only going to have to level up every five years. So, you will have a rate. It's plugged into your FMSC formula for Jennifer Nash. She's a 20-plus years' experience. She's \$208 an hour. And that's going to just apply. So, I think it actually relieves a ton of administrative expenses. In fact, it's better when you look at years of experience. And so I think that actually is a way to solve the problem, not make it worse.

Chair Jennifer Nash: And retention-wise.

Robert Harris: Yes.

Chair Jennifer Nash: Yeah. Yeah. Yeah.

Jessica Kampfe: If I could, just for a moment, just for anybody that's watching this so that we don't confuse our current providers. The questions that Commissioner Harris has raised around hourly work being paid to a law firm are not new today. They're questions that this commission has asked previously, and particularly that Commissioner Harris has asked previously. And in response to those questions about a year ago, the agency did start doing exactly what Commissioner Harris has expressed. And so we have our hourly contracts with law firms now where the hourly bill is paid to the law firm, and the lawyers doing the work under that law firm are able to do hourly work with the agency.

So, that is our current practice. And I do think that the conversation that the commission's having right now is very valuable, and really underlies the need for stakeholder engagement and working with people who are in the private sector and understanding how this is going to intersect with their existing business practices. Because it is our goal to promote people doing public defense, to keep great public defenders doing the work, to be able to facilitate them staying in this field, and to bring more people to the practice. So, we definitely want to set up systems that are going to be able to accomplish those goals.

Chair Jennifer Nash: That's very helpful information. Thank you. Are there other comments or questions or thoughts about this now or moving forward? Okay, so I think where we've landed is that I'm going to work with Commissioner Harris. We're going to put together the legal question to be answered, and then we'll bring it back to the commission for discussion and a vote in November. Commissioner Buckley.

Peter Buckley: Yeah, just to comment, the last thing that Jessica mentioned. I really hope that does happen, that we do have stakeholders engaged in this discussion because we have to have a system that works.

Chair Jennifer Nash: Agreed. That was kind of my thought about having it. I mean, we could even wait till December, right, for a vote, so we could brief it... Whatever we need to do to make sure we get as much stakeholder involvement as possible because I agree. I mean, we need to have some input about this, so thank you. Okay, moving on to the briefing regarding the unrepresented persons crisis in Oregon.

Jessica Kampfe: I think that's me again. We do have with us today Maddie, our research analyst, and so while I'm going to be walking through the presentation, she's here to help support and answer any detailed questions that you all might have about the data. And a huge thank you to Maddie and to Harry for putting in the work to pull together not only the standard slides that you all see, but also we're going to talk about a special report that they built that was based on some comments and input from Commissioner Harris asking to do a deeper dive into the unrepresented crisis. All right, with that, next slide please.

These are the overall trend lines that we're seeing for unrepresented persons, and I will note that they're not that different from last month. We're seeing that the in-custody unrepresented individuals' numbers are holding pretty steady, and we're seeing an uptick in the out-of-custody unrepresented individuals. I will just flag for you all that we expect the out-of-custody pre-trial unrepresented individuals to continue to rise and to accelerate.

We are starting to see the impacts of 4002. And so prior to 4002 going into effect in September, counties statewide were charging about 200 PCS cases a month. We've looked at the Criminal Justice Commission's data, and we're now seeing that 200... Sorry, not charges, but arrests. It was about 200 arrests a month on possession of a controlled substance. We're now seeing that it's nearly a thousand arrests a month statewide on possession of a controlled substance. So, arrests doesn't necessarily mean charging. We don't know exactly what prosecutors are going to do with those charges and how they're going to hit the court system, but it's definitely a red flag. And since the legislation went into effect September 1st, most people who are cited with a ticket to appear in court are cited about 35 days out from their police contact.

So, we expect that in October, November, we're going to start seeing that arrest data move into case filing data.

This is particularly alarming for us because of its impact in some of our counties that have the highest unrepresented populations. In Jackson County so far, we've seen 202 PCS arrests; in Multnomah County, 101 PCS arrests; and in Washington County, 99 PCS arrests. So, some of our counties that already have existing unrepresented populations are the counties that are the highest arrest rate for PCS so far. So, we will see in the months to follow what deflection looks like, what diversion looks like in these counties, and how this actually impacts the unrepresented population, but it's definitely something that is a concern and something that we're watching. And we are anticipating that what we will see is a continued increase or accelerated increase in the out-of-custody unrepresented members. Next slide, please.

This is a report out on the THIP program. This continues to be an effective program in assigning counsel to in-custody unrepresented persons. This program is narrowly tailored to in-custody unrepresented persons, so for folks who are in jail at the time that their lawyer is appointed. We have served 4,869 clients on 7,070 cases through the THIP program thus far. So, that's a lot of folks that we've been able to find lawyers through using this program. And it really is part of the reason why we're seeing a stabilization on those in-custody unrepresented numbers. The program does not apply to the out-of-custody caseload. And so that is where we're seeing growth in our caseload. We don't have a targeted program of this nature that addresses that issue. Next slide, please.

And we are seeing that THIP spending is increasing. And so there's a few different reasons why our THIP spending is increasing. One is that we went from having one THIP coordinator who was assigning cases all over the state to having two THIP coordinators, and so we're seeing a higher rate of cases being assigned with more agency to staff to help facilitate that process. In September, the Emergency Board authorized us to add two additional THIP coordinators. So, we do think that we are going to continue to see more cases assigned through this program as the agency becomes more efficient at assigning cases. The other reason that we're seeing the costs increase is because cases are open in this program six months to two years, typically. And so as more cases come online, the entry into the program is exceeding the exit out of the program, and so the costs are cumulative. Next slide, please.

All right. Thank you. That is the review that I have for you all of our standard unrepresented persons report. As I mentioned earlier, Commissioner Harris had asked some really detailed questions about our unrepresented population, and he worked with our data team to be able to think about ways in which we could

look at our unrepresented data to answer some of those questions. And so included in your material is a report that is called – let's see, scrolling down to it now in my materials – the OPDC Data Report for October 2024. And there are some things that I really wanted to highlight in this report for you all. One goes to Commissioner Harris's question earlier about contracted MAC. The agency had the highest number of criminal contracted MAC in October of 2023, and now we are actually seeing a decrease in the contracted MAC. So, we have a lot more vacancies in our contracts than we have historically.

That's something that you also saw reflected in Mr. Amador's budget presentation where we had a savings in our contracted MAC budget bucket. And we're looking to rebalance that savings in order to fully fund the court mandated and preauthorized expense budgets, which is where our THIP program is heading. So, we're seeing less people in our contracted MAC, and we're seeing an uptick in the expenses that are hitting the agency in different budget buckets through the hourly rate program.

In looking at our contracted MAC, one of the things that we've seen is that retention has been a big issue for public defense. It's been a big issue for public defense for a long time. Our historic data is not great on this issue. So, before people ask me, "Can we look at retention numbers over the past five years?" the answer's "Probably not," just because of the way that our contracting works, and it wasn't until a couple of years ago that we actually started adding attorney names to our contracts. So, we don't have the historic data on retention, but we can talk about what retention looks like right now and how it's impacting public defense and the unrepresented persons crisis.

So, since July of 2023, we've seen about a hundred lawyers statewide leave public defense. That's a pretty big number. The thing that really jumps out about that number though, is that of the 100 that left, 80 of them left from the top counties that have unrepresented populations. So, we're seeing a really high correlation between attrition, attorney attrition, and entrenched unrepresented populations. So, looking at the 80 attorneys that left, we see Clatsop, Coos, Deschutes, Douglas, Jackson, Marion, Multnomah, and Washington counties. These are the same counties that are at the top of our unrepresented persons list. So, very high correlation between attorney attrition and unrepresented population.

We've also seen that in these counties, providers have been working really hard to recruit lawyers. They hired 71 lawyers in these counties, but they lost 80 lawyers out of these counties, so the net loss was 9 lawyers, despite all of the efforts to bring in new lawyers. Where are the lawyers going? Well, we know some of the answer to that question, but not the full answer of that question. So, we know that of the 80 lawyers that left these counties, 6 of them ended up

in our state trial level offices. We know that 21 of them have hourly agreements. So, that means they moved to the THIP program. So, we are seeing some migration from contracts to an hourly panel.

But we also think that about 53 of them left public defense altogether. We need to do more research to understand the reasons why attorneys are leaving public defense. Right now, we have a vacancy tracker that the agency uses where contract administrators can give us some high-level reasons why people are leaving public defense. We also know that OCDLA did a recent survey of their community, looking at things that impact attrition. And so we are working with them to see if we can get some more information on why these folks are leaving public defense. It feels like it's very critical for us to address this attrition issue if we're going to get out of the unrepresented crisis, especially when we see that the top attrition counties are the same counties as the top unrepresented counties.

I wanted to talk a bit about MAC utilization. That's been something...

Chair Jennifer Nash: Direct Kampfe, can you also just generally remind people what happens when an attorney with an active caseload leaves public defense? What happens to that caseload?

Jessica Kampfe: Sure. So, if they leave public defense altogether, then their caseload has to get distributed among other public defenders. So, if they're in a law firm, typically that law firm would distribute that caseload among other criminal law practitioners in that firm, and what that means is that those lawyers then can't take new cases because they're absorbing the caseload of their colleague that left. So, we frequently see that reflected as reduced MAC, right, because MAC is all about the new appointments that the lawyers are getting. So, if I keep getting handed my colleague's cases, then I'm not going to be able to take newly appointed cases, and it's going to look like my MAC is low, even though my caseload is high. If the lawyer leaves and stays in public defense, they either change public defense providers, they move from a nonprofit to a consortium, or from one nonprofit to another nonprofit, we try to keep the caseload with the lawyer to the extent possible, mindful of conflicts of interest, and needing to work around that. Also, if they move from contracted to hourly, we try to keep the caseload with them and pay them hourly on their cases.

Our data team looked at attorney MAC utilization and really focused on those crisis counties and looking what the MAC utilization was in those crisis counties. And what they found was that it varied pretty greatly in the crisis counties. So, we had some crisis counties where MAC utilization is really high. Clatsop, Coos, Deschutes, and Washington County were all at or above 100% MAC utilization. Jackson County's at 94% MAC utilization. So, those are all really high MAC

utilization numbers in crisis counties. We did see other crisis counties where MAC utilization is lower, like Douglas County, Marion County, and Multnomah County. So, there's actually quite a bit of county-by-county difference between unrepresented and MAC utilization. The correlation is not nearly as high as the correlation between attrition and unrepresented populations.

I think those are the points that I wanted to make sure that we hit in talking about the data report. And like I said, I do have Maddie here with me today. There's a lot more information in this data report. So, if there are things that jumped out to commissioners that you wanted to make sure that we discussed, happy to do that. Also, as we move forward, we can make this type of reporting a more regular part of our presentation to the commission. And so if there are data sets that you would like us to include that are not included, let us know so that we can work with our data team to refine this so that it gives you all the information that you need to be making informed decisions about how to address the crisis.

Chair Jennifer Nash: Thank you. This is really, really helpful information.

Jessica Kampfe: And I just also want to thank Commissioner Harris because he really asked the agency to do this and then worked with our data team to make sure that we were pulling together information that was helpful. So, shout out and appreciation to Commissioner Harris for his effort.

Chair Jennifer Nash: Thank you, Commissioner Harris.

Robert Harris: Thank you. And it's enjoyable working with the data team, being a bit of a data wonk, I myself, I really enjoyed those conversations. So, I'd like to thank them. The one thing that jumps out at me, I guess, is Marion County. Marion seems to have the highest number of unrepresented people, if I was reading that correctly, and the lowest utilization rate. It had a lot of vacancies for a while, so possibly that is why, partially explains both of those numbers I see. I hope the agency is working with the providers in those counties. There's only two main providers in Marion, it's the consortia and the public defender's office. I don't know for sure what those utilization rates...comparison, but I would point out it's probably helpful for the commissioner level for us to just have these gross numbers by county.

I hope the agency is looking at it by provider as well, and providing resources, help, support, and a little bit of discipline to these, if necessary, whatever combination of those three or four things that the agency would be most effective in making sure that we get people represented. But that stands out. Obviously, it pops up pretty high. And I'd ask the agency this – this is a high-level discussion, I'm not here to call anybody out specifically, but I really hope you're

working on Marion County, looking at that, what the challenges are in that county, and I'll leave it there. The other thing is...

Chair Jennifer Nash: If I can chime in about that. In the Governor's kind of big workgroup meeting, Shannon Wilson was there, and she talked about her agency's MAC utilization and why those numbers appear to be rather low. And one of them is they've had significant turnover. If I recall correctly, more than 100% turnover just by numbers-wise, which, of course, causes a big problem because every time someone leaves, they have to absorb that caseload. And then the other thing she said is that they have a very high – I think she said 35 to 40 percent, if I remember correctly – of their clients are Spanish speaking and none of their lawyers are Spanish speaking. And so those cases take a lot longer to resolve because of the need for the use of interpreters. So, those are two things. That's where the workload would more accurately reflect what was happening rather than the MAC, but those are the two things that I remember stand out about the public defender, anyways, MAC numbers for that county. Just wanted to chime in on that.

Robert Harris: Which brings up my, excuse me, my second point, which is I would ask the agency to consider spending more resources or time actually contacting or surveying the people who have left public defense altogether because I don't know you can necessarily rely on the... It would be more objective if the agency reached out to these people and had some specific questions about why they left because it could be a provider situation. It may not be caseloads. It may, but I mean, it could be a situation where maybe some supervision training of providers needs to occur too. But I think it would be valuable to spend some agency resources talking to these, whatever it was, 70 or 80 people who left public defense altogether. Thanks.

Chair Jennifer Nash: Commissioner Smith.

Addie Smith: I think an exit survey is a really interesting idea, so to speak, to get some of that detailed information. I think we're getting a lot of questions about retention. I really appreciate these numbers. I think they provide a much more full picture of what's going on, and until we can kind of get our heads wrapped around what the problem is, it's hard to come up with a solution. I think they also really highlight – and I know there's conversations happening around this in different circles, but just to plant the seed here as well – there has to be sort of a statewide solution, but it's also very clear and having Judge McAlpin last commission meeting join us and be like, "We've kind of got everything under control," versus some of the other, just not to overstate what he said, but there are such unique circumstances in each county, as Commissioner Harris just pointed out.

So, I think continuing to think statewide, but then also starting to really target counties like we've been doing and working closely. And not just working closely with our public defense providers, but just to echo sort of Peter's comments earlier, Senator Prozanski's comments earlier, some of Commissioner Harris's comments, this is a system-wide issue in addition to being a public defense issue. And so getting folks to the table at a county level to have conversations around solutions continues to be really important in addition to having statewide solutions. So, I just appreciate getting this data, which helps us both continue to think about what we're doing statewide but helps us as commissioners better understand some of the areas that need more attention perhaps, and the differences that are happening. And it also offers us the opportunity to look at where are things going well, and how do we want to gather information about what's working, in addition to sort of gathering information about how to better support the areas where we're seeing some outliers.

Chair Jennifer Nash: Thank you for that. I know that Director Kampfe is working with the data team to come up with a methodology to collect that information. And of course, you heard there's two data people. So, there's that too. So, there's a staffing issue. So, it's how to collect the data, what data to collect to make sure we're actually getting the information that we want, to show what it is that we're trying to show, and so that is in process to figure that out. Because I mean, everybody's right, it's critically important information. And it's information that lots of people have asked for. So, all right. Are there other questions or comments in the next minute before we take our break?

Jennifer Parrish Taylor: The only other question I would have is to what extent, once we get a handle on the data, can we actually have it be a tool for some of these sites that are struggling to really see, okay, what are they doing that in another place that's similar in size and makeup, where they're being successful, whereas we aren't, and how do we implement some of what they've done here?

Chair Jennifer Nash: Very, very helpful. Okay, so with that, here's the plan. We'll take a break now. We'll be back at 11:00... Oh, yeah, let's do that. We'll be back at 11:40, and then we'll hear the FCMS report, and probably also the director's report. And then the plan is at 12:15, we're going to... I'm sorry, that's not right, 11:55. So, we'll take a break. Let me start over again, sorry, 11:40 we'll be back. We'll hear the FCMS report, which should put us right at the time for the local spotlight for Coos and Curry County. And then after that, we'll do the director's report, and we'll adjourn. So, with that, we'll be back at 11:40. Thank you.

[No dialogue]

Chair Jennifer Nash: All right, it is 11:40. I see one, two, three, four, five. Okay, we have a quorum. So, with that, we will turn it over to Mr. Martin for the FCMS update.

David Martin: Good morning. My name is David Martin. I'm the chief information officer here to present on the Financial Case Management System. Mara, next slide, and next slide. So, accomplishments. We have Moss Adams finishing up end of month for an organizational change management perspective, those discovery interviews. As Director Kampfe spilled the beans earlier this morning, we did indeed get our endorsement from Terrence Woods, our state's CIO on the 14th. On the 15th, so yesterday, we went out to OregonBuys. So, we are out for RFP right now. Day two, right? So, a little bit of a victory lap. This is one of those critical measurements in this project, so this moment right here can't be understated enough. Again, I want to thank the team, our procurement contractor, as well as our partnership and engagement with EIS to help us make sure that we're in alignment and moving unified together to be successful.

So, that third one, again, we posted actually on the 15th, not the 16th, but yesterday. And then no rest for the weary, Stage Gate 3, we're now on to the next phase of the project, where we begin working on budget scope and schedule to make sure that we have that 10% diff alignment. And that's currently in process. And the last one there, we had a procurement kickoff meeting yesterday, our contractor...and actually, we brought on a new procurement specialist to the agency under state service, so we have now two people with procurement specialties here. So, that's another huge win from a resourcing standpoint. But we engaged our scoring committee and kind of discussed rules of the road as far as how state agencies engage vendors, how we do the scoring, and just understanding how to work through the templates, and just understanding what the responsibility is there. So, that was yesterday. Next slide.

Our next steps, three bullet points, but essentially, I would say that this top bullet is the one that gets the play here in this venue here. There's a lot of procurement activities that are...actually, they're already underway. There's a significant lift this winter, between now and I would say probably the end of February, and I'll have a slide later on in this deck that shows the schedule a little bit more. But right now, this is going to be, again, one of those critical moments in this project where we get our fingers, our arms around technologies to really get a clear idea of how we modernize the work we do here at this agency to be more effective in the work we do. So, more to come on that. Change management, as I mentioned on the previous slide, that's finishing up this month. And then Stage Gate 3 work. This is the last stage of this process. This is [Inaudible 02:43:49] at a high level, this is a big lift. It's about six months' worth body of work, but we have the right staff and the right alignment to be successful. So, I won't really break out this bullet into much more detail other

than that I feel comfortable that we are on the right trajectory on Stage Gate 3. Next slide.

EIS Stage Gate approvals. This is one another one of those examples of things are moving so quickly in this project that when you submit slides for the commission meeting, something changes by the time you get to present. So, this is a completed item for us for Stage Gate 2. Probably next time we present, it'll be Stage Gate 3 and status on that. But we are on the critical path timeline. I suppose we could underline that part. Bond funding – I think I actually gave wrong information last time I presented. I think I submitted that our bond funding was one of the critical path items to be able to go out to RFP, and that was not true. We have later learned as we've gone in through this process that bond funding is part of the Governor's budget and is not a critical path. So, what we've done is we've set the table to make sure that our bond funding is part of that budget when that gets submitted.

Our schedule, there's a lot of moving parts right now. There's just a lot of things in play. I'll call out specifically, of all these things that we're doing, call out our SMEs, our subject matter experts, and their availability. We essentially were calling on people with full-time jobs that are doing already a job, and they are adding on to that burden additional responsibilities in regards to evaluating and reviewing and scoring and engaging our vendors through this process. So, one of the things that I'll be personally watching and managing is making sure that those people in this process are supported so that we have successful outcomes along those project milestones. And then the last one there, I think that's just been there for the previous slides. This is just to call out that we continue to make sure that as we complete project artifacts and documentation, that we are not doing it in a buffer or a silo by ourselves, that we're communicating that out to LFO. Next slide.

Schedule – we are on the critical path. I would say just also kind of a little, not off topic, but off slide, our schedule's very aggressive. There's not a lot of buffer between activities, and so it leaves for a few sleepless nights as we're trying to make sure we're meeting the various milestones and timelines. I think I'll just circle here on this slide just the Round 1 or Round 2 there at the bottom. So, there's going to be, again, significant activities as we receive those vendor demo RFP documentation, and that's going to be needed to be completed by the end of January. And then we'll then shift to the demo portion of this phase of the project, and that will conclude on the 24th. Next slide.

Oh, there's a question around the alphabet soup, I see in the chat. So, I'll just pause real quick. So, EIS, and I'm sorry, I should know better by now. So, EIS is Enterprise Information Systems. They are in the state of Oregon, so we're an agency within the state of Oregon, but EIS is that umbrella IT organization that

we have kind of a dotted line to, that we take our standards by, that we have, in this case, in this project, they provide that project governance for. So, as we submit Stage Gate, I've talked about Stage Gate 1 and 2 and 3, EIS is that body of... There's a subgroup within EIS that is our, I think the acronym is SIPM, S-I-P-M, so State IT Portfolio Management. So, SIPM is that team that we engage to go through the formal process of engagement to make sure that we have our project artifacts approved before we move forward. SME, that's IT speak for subject matter expert. Again, I'm sorry there. And IQMS, that's our quality management vendor.

And so when we produce these documents from a project standpoint, before they get sent over to EIS or Enterprise Information Systems for their Stage Gate document approval, it actually filters through our QA or our IQMS vendor so that there's fewer mistakes or it's basically been there's been a sniff test applied to the document to make sure that we are more prepared to have success. Because what we want to avoid is we submit these documents to Stage Gate for review and then there's just a long laundry list of problems, and so there's all this back and forth as we resubmit and then we resubmit. So, our IQMS or our quality management system vendor provides a lot of that additional review before it gets submitted on through the Stage Gate process.

Our procurement timeline, I think the main takeaway here is we are out of the red. We're done. In fact, I'm going to ask that this next time I present, we move forward in time as we are now in the green. We're beginning our Stage Gate 3 or have begun our Stage Gate 3 work. But now, since we're out into OregonBuys, we are now ready to receive vendor proposals. So, we've got, as I said in the previous slide, a significant amount of procurement work to do as we manage those requests, as we start scheduling vendors, and move through that process.

[Crosstalk 02:50:12]

David Martin: Next slide. This, so project status, I think this top item just remains yellow simply just due to the fact that we have an aggressive project cadence, and we're tracking those milestones. Budget status, until we have the bond funding, as I mentioned, that's going to be part of the Governor's budget as we are trying to get aligned. Once we have that, well, that'll change to green. Schedule status, much like our project status, it's going to remain yellow for the foreseeable future. Just, again, due to the aggressive nature of how we're trying to accomplish this project.

Resource status, again, this is a little bit of a repeat from previous comments, but there's just a lot of people in place here. I do want to call out that we have hired an additional, under state service, a new procurement specialist, and I

have been able to move... We had one business analyst that was under contract that we have also brought into state service. So, we have an additional person under OPDC, so it helps us manage our resources a little more effectively that way. And this last item, again, it's the difference between when we submitted to when I talk to you today, that's actually a green item. We have reached our approvals for Stage Gate 2. So, next slide. Oh, and that's it. I think I did this last time. So, any questions from the commission?

Chair Jennifer Nash: Commissioner Harris. Rob, you're muted.

Robert Harris: Yeah, I saw that. Sorry. Great presentation, thank you. I just had one question, it's probably premature at this point, but who's on the evaluation team or what roles are going to be the evaluation team? I know that's not going to occur till whenever – January, February, March timeframe – but have you filled those roles or thought about who should be on the evaluation team?

David Martin: The evaluation team has been identified. I don't have that document handy here. We have nine people. It's an odd number, so there's not ties. And I believe we have three people from IT, and then we have six different folks from the different lines of business within OPDC. I can provide that documentation to you offline.

Robert Harris: Thank you.

David Martin: Just need to find it.

Robert Harris: All right, I would like to see that. Thank you.

David Martin: Sure.

Chair Jennifer Nash: Great. Thank you. Any other questions? All right. Thank you very much, Mr. Martin. Great work. Thank you for keeping us updated. Thank you for adhering to the aggressive timeline and paying attention to your people who are working on the project. We really appreciate it.

David Martin: Thank you, Chair Nash.

Chair Jennifer Nash: All right. And we'll now turn to, I see Judge Stone is logged in and is on video. So, welcome, Judge Stone. Thank you for taking the time to meet with us today. And we would turn it over to you to give us a briefing on what's happening in Coos and Curry County.

Martin Stone: Very well. Can you hear me this morning?

Chair Jennifer Nash: Yes. Thank you.

Martin Stone: Very well. First thing I want to do is to thank the commission for giving me a few minutes to give you an update and some comments regarding our situation in Coos and Curry counties. And by way of introduction, let me tell you about myself. I'm Judge Stone. I am one of the circuit judges in our judicial district. I've been a judge for 24 years. I serve as the presiding judge in our district, which covers both Coos and Curry counties, Southwestern Oregon. It extends from the California border up to the border of Douglas County. So, a fairly broad geographical area. I have six judges working in my district, four of us here in Coos County and two in Curry County. And I'm not here today to complain or criticize the commission on what's going on. Instead, what I'd like to do is to offer a few updates and a few comments on what we're experiencing in my district, and maybe a few suggestions on what the commission might consider.

I want to say at the outset that the number of unrepresented in my two counties, Coos and Curry, for an area our size, quite frankly, is staggering. And unfortunately, those numbers continue to grow, most significantly the last couple of months. I read the other day that Coos County has the sixth highest unrepresented person count in the state. We trail only Multnomah County, Washington County, Marion County, Douglas County, Jackson County. So, we're close to the top in terms of unrepresented numbers. As of this morning, we have 147 individuals waiting for lawyers, plus another 22 that are on warrant status, for a total of about 169 waiting for lawyers to be assigned. Most of these folks have been waiting for 120 days, up to 120 days. We have many more that have been waiting for up to 180 days. I saw that we have one that's been waiting for over 480 days, one that's been waiting for over 585 days, and one who I see regularly back in the courtroom has been waiting for over 685 days for a lawyer, which is just embarrassing.

Our numbers have continued to increase since June, and I read the other day that since the first of the year, we've experienced in my district about a 360% increase of unrepresented individuals. So, those numbers are staggering for our district. In particular, we are finding an increase in civil commitment cases being filed in our district. It's so critical in those cases to get lawyers assigned as quick as possible. I was told that we had 71 civil commitment proceedings in 2023. But as of today in 2024, that number has increased to 133 filings, and we're projecting about 177 by the end of the year. So, there's a real need to have lawyers available to handle those types of cases as well as the other types of cases.

Now, the increase we're experiencing in my district is due in large part to the circumstances of our current contract provider. Our contract provider is the Southwestern Oregon Public Defenders. They've recently lost three or four

lawyers, and they're having difficulty at filling those vacant positions. And that means the remaining providers, the five or so that are left, are simply unable to handle these cases as they come in on a daily basis, and that creates the crisis, the need for OPDS to get us lawyers. Now, these cases, quite frankly, are not all the most serious cases. These cases can include cases that have misdemeanors, cases that involve some lower-level charges, cases that, quite frankly, can be resolved fairly quickly once we get a lawyer on board. My experience is our district attorney has offers already in the files. It's just a matter of getting lawyers on board that can review the file, review the offer, talk to the client, and resolve the matter. So, again, those numbers are increasing over the last year.

Now, my staff and I are monitoring these cases on a daily and a weekly basis. We schedule the individuals, the unrepresented, to return to court every four or six weeks for status hearings. If we have lawyers available at that time, we get a lawyer for them, set a future plea date, but we try to monitor these cases to get them back into the court to stay on top of their cases. It's stressful to the defendants. It clearly is stressful to them. They've basically put their life on hold waiting for a lawyer to be assigned. Many of them have work responsibilities. They have to come back every four or six weeks. It's causing some work-related problems. Many of them are limited in leaving the state, for example. They'd like to be able to travel. They can't. So, this whole process is impacting them. They simply have to wait and wait and wait for a lawyer to be assigned for them.

It's embarrassing to me, quite frankly. As a judge, I see these people day after day. I apologize to them. I tell them that the commission is doing the best they can, that I'm doing the best that I can. I've had people this last Monday ask me, "Judge Stone, can you help us? Can you get us a lawyer?" and I assure them that we're doing all that we can, but it's clearly embarrassing to me to have to explain that day after day. We have been doing some things to assist lawyers from out of the area. We've tried to accommodate lawyers to appear remotely on these cases. We've adjusted our time-to-disposition standards so that we're not rushing lawyers to resolve cases once they're assigned. Lawyers in the Valley, again, we accommodate remote appearances. We're working on video conferencing so lawyers from out of the area can conference with their clients in jail, not having to return to Coos County to see the clients in jail. We've reached out to private lawyers to try to get them on board, but the bottom line is our numbers are still increasing.

I do have a short-term solution that I want to throw out to the commission. I think it is short term, but I would strongly encourage the commission to do all that they can to establish an office in our county, in Coos County, and to staff that office with maybe two or three lawyers, trial lawyers from OPDC. Once we have that office established here in Coos County, I'm satisfied the lawyers can

start cutting back on the number of unrepresented defendants that we have outstanding, and also take some of these cases that are coming in. So, that's a short-term solution.

And I would also offer another thought. Our public defenders, Southwestern Oregon Public Defenders, as I indicated, they've lost three or four lawyers, so I'm assuming they have some office space available. And I would think since they're having difficulty filling that office space, they might be willing to work with the commission on some type of office sharing formula that would allow you to have your trial lawyers come down and fill those offices, at least short-term, so it might lessen some of the expense you'd have to incur on the front end.

The other thought that I've always had is I'd like the commission to reach out to our local providers and assist them on their recruitment efforts. I think you've been doing that, but I would really encourage you to continue to do that. They need to recruit folks to fill those spots. They're having some difficulty doing that, but anything the commission could do to get the word out that they need help at our local provider's office. So, that's a lot of things going on in Coos County. I probably talked too quick and too fast. I have a trial going on right now, so my mind is kind of associated with my jury trial going on. But Commissioner, that's what I wanted to offer from Coos County. Anything from you or the commissioners to ask?

Chair Jennifer Nash: Yes, thank you. It looks like we have a couple of questions. Senator Prozanski.

Floyd Prozanski: Thank you, Judge Stone. Thank you very much for taking time out of your day and with your trial to give us this sobering report. What I'd like to know is the examples that you gave us of people who have not received representation, you had a couple that were many, many days, 500-and-some days and something 600. First is, are either of those actually in custody? Second, I'm assuming these must be very high-profile charges such as murder as compared to some other felony?

Martin Stone: Right, that's a great question. Answer to the question is, right, first of all, they are not in custody. Secondly, these charges are not necessarily the most serious charges. The gentleman that comes back every six weeks has one count called burglary in the first degree. I mean, it's serious, but it's nothing that necessarily goes to prison. Another, the gentleman that's coming back or been back or ongoing for about 580-some days, a charge of interfering with a peace officer, a misdemeanor, not a very serious charge. Serious, but not the most serious charge. And the other gentleman or woman, I'm not so sure who it is, felon in possession of a firearm. So, we're not talking about murder cases. We're not talking about Measure 11 charges. These are charges that I think should be

resolved fairly quickly once a lawyer's on board. Why we don't have a lawyer, I don't know. I just don't know.

Floyd Prozanski: Thank you.

Martin Stone: You're welcome.

Chair Jennifer Nash: Thank you. Commissioner Lininger.

Tom Lininger: Judge Stone, thank you very much for your presentation. I know you're busy and I appreciate your insight. So, I have two questions, please. They're fairly short. One is I wonder if you could just explain why we've seen this dramatic rise in civil commitment proceedings in a small rural county or two counties. And then also, I just wondered why there's so much difficulty attracting people to the Southwest Oregon Public Defender Office. Stacey Lowe is my former student, I know there are good attorneys there now, but it is striking that for some reason, that setting is just a difficult one to attract counsel to, whereas other more remote and smaller counties don't seem to have the same staffing problems. I just wondered from your vantage point, is there something uniquely difficult? I just wonder why we see such an aberrant pattern in Coos.

Martin Stone: That's a great question. I'll take that second question first. I'm not so sure I have an answer that makes a whole lot of sense. I can share with you a couple comments. I was the attorney for the hospital district locally a while back when I practiced law in private practice, and they had difficult times getting doctors down here for a long time. A couple reasons, one was housing. Housing is such a major issue down here, and that still probably is more acute these days. It's difficult to get housing.

The other thing, it was difficult to entice or attract the spouse to come along with the lawyer. The lawyer is probably anxious to come down and get involved legally, but the spouse is not, the significant other is not obviously excited about coming to Coos County. We don't offer social and those types of things that spouses would like to do. So, that was a problem we had with doctors. We turned the corner on that. I don't know how we turned the corner on that, but I think it's the same type of problems with lawyers – lack of housing, and also significant other not wanting to come down. It's a beautiful area. I mean, we have things to do if you like to hunt and fish and play golf, things like that, you're good to go. Your first question, I'm not so sure I can answer the question. I have my TCA here who's actually Thomas Lankford, and maybe Thomas could just scoot over and see if I could address your issue about the rise in the civil commitment proceedings.

Thomas Lankford: Thank you, Commissioner. Thomas Lankford, I'm the trial court administrator for Coos and Curry Counties. I've been here for approximately eight years, and I came from the state of Ohio to this wonderful South Coast region. So, I think some of the things that Judge Stone mentioned in referencing the difficulties with recruiting professionals are true. I can attest from a spouse that had a rough couple first years, it took some convincing and lots of conversations to understand the benefits that the South Coast has to offer individuals and a family. And we thoroughly enjoy living in Coos County, and I would be more than willing to talk to anyone that wants to move here about the benefits of being in Coos County. Or Curry County, for that matter.

Civil commitments is a tricky topic to really kind of dive into to understand what's really going on. Coos Bay has beds to house these individuals, and it's one of the only hospitals on the South Coast that has the beds to house them. So, we see, one, an increase in that because we have the facility, right? So, if you have the facility, you're going to see the cases filed. We're also seeing from our public health director a number of these cases that are claiming residency in Coos County. So, they may have a civil commitment issue and they're up in Portland, they're over in Salem, or they have residency declared in Coos County. And so the filing is occurring in Coos County, which is then requiring us to then work with those adjoining jurisdictions and the hospitals for the hearing and the appearance. Which also adds a layer of complexity to appointment if you need to seek appointment externally from the community because placement is external from the community as well. So, we're seeing a large number of those that are occurring as well in our population for civil commitment. So, I hope that provides you with some texture to that question.

Tom Lininger: Thanks so much.

Martin Stone: I'm glad Thomas was here to answer your question, Commissioner.

Chair Jennifer Nash: Thank you. Commissioner Buckley?

Peter Buckley: Thank you. Judge Stone, thank you for your time. I'm just wondering if your district attorney makes proactive use of diversion programs. What's the situation with diversion programs in your counties?

Martin Stone: Well, they offer diversions on all DUII cases. And my understanding is, given the recent legislation regarding drug crimes, he's going to be offering conditional discharge on those low-level drug charges. I'm not seeing him using a lot of diversions on or conditional discharges on other types of cases, but the drug cases, yes, and the DUII cases, yes, they do that.

Peter Buckley: Thank you.

Martin Stone: You're welcome.

Chair Jennifer Nash: Are there any other questions? I have a question and a comment. I can't remember, I was driving home from work on Monday, and I can't remember whether it was the Congressional District debate or whether it was a City Club of Eugene conversation I heard, but I heard about the ongoing housing issue in Coos County now, particularly related to your local hospital because they can't attract the chief of surgery or something. They can't get a doctor in that position because there's no professional housing. So, I know that they were talking about creating professional housing specifically to try to attract high-level professionals to the area. I mean, are you seeing that in other areas as well as lawyer and doctor? I mean, is that a common issue is that there just isn't the type of housing that's needed to house the kind of professionals that you need for the area?

Martin Stone: I've not seen that, Commissioner. I'm not surprised that they're trying to do that to attract folks here. I would hope that they could, it would be a wonderful resource for lawyers also, but I'll keep my ears open about that. Thank you.

Chair Jennifer Nash: And then the second question, the question I had really is given the docket of essentially lower-level offenses that you have of people who do not have lawyers, do you see an opportunity for some sort of one-time docket where you could bring attorneys in to try to resolve those open cases? Is there a mechanism that could be created or a process that might be able to accommodate something like that?

Martin Stone: Yeah, we'd be very open to that. In fact, we've talked to the district attorney about that, and I think the DA would be interested in something like that. If we could get several lawyers from OPDC down here on a given day, we would schedule some time to have some of these folks back on cases that we could identify as low-level crimes and see if we could clear them out that way. So, that's a possibility. I've not put together any particular process yet, but I'm certainly open to that, Commissioner.

Chair Jennifer Nash: Thank you. And just so you know, this commission earlier in the meeting today authorized asking for a second time the Legislative Emergency Board to fund an opening for a Southwest Oregon Trial Division. So, we've had this on our radar for a few months, and we are doing the work that we need to do with the Legislature to get position authority to try to open that office. So, we are really trying to mitigate the problem there and doing what we can, and we'll keep working on that.

Martin Stone: I appreciate that so very much. That's great news to hear. So, I'll share that with my other judges too.

Chair Jennifer Nash: Great. And I see that Commissioner Reinhard has a question for you.

Brook Reinhard: Yes. Thank you. Hello, Judge Stone. Thank you for the presentation. My question, if you'll bear with me, is basically a past county reputation question. I've only been a lawyer for 15 years, but I've met many prosecutors and defense attorneys from Coos County who said the way it used to be was a rocket docket, where there was an expectation of things moving very quickly without enough time to prepare. And I think you did address that this morning. But the other thing I'd heard repeatedly is that in the past, judges would not allow deals after a certain point, even if new information came to light, or there was some changed circumstance, or a defendant decided to change their mind and say yes to a deal. Are deals allowed after certain points, and has the docket expectation changed?

Martin Stone: I don't think anymore we're... Well, we used to be called the rocket docket. You're absolutely correct. Judge Barron kept the string pretty tight here. I've relaxed that somewhat, and I've been handling the matters this way. We give the lawyers plenty of time after the arraignment and the assignment of a lawyer to negotiate some type of a plea bargain, and I've extended that out for seven weeks, and I've even gone further than that. It's not unusual to have a lawyer come back and say, "Give us three more weeks to negotiate this case."

Once that date arrives, whether it's 7 weeks or 10 weeks or whatever, we set a firm trial date, and we make sure that they understand that that will be a firm trial date. And I tell them at that time that no more negotiations, with one exception, and this is something that I've been doing. If circumstances change, if there's a discovery, some additional discovery, if witnesses have come and gone, if the state has problems with putting on their case, I allow late pleas. I will do that if there's been a change of circumstances. And I've seen that happen more and more these days, where they'll come back to me and say, "Judge, something has changed, and we want you to take a late deal." So, to answer your question, I've relaxed the rocket docket somewhat, but I like to try to keep these cases on track as best I can.

Brook Reinhard: Thank you, Judge.

Martin Stone: You're welcome. Anything else, Commissioner, before I get back to my jury trial?

Chair Jennifer Nash: Is there anyone else who has any other questions or comments? It doesn't look like it. Thank you very much for your time. We really appreciate the information that you provided, and we will do everything we can to help you.

Martin Stone: All right. Thank you. Have a nice day, everybody.

Chair Jennifer Nash: Thank you. All right. The last thing we have on our agenda is Director Kampfe's update.

Jessica Kampfe: Thank you.