

ANALYSIS

Item 9: Public Defense Commission Temporary Hourly Increase Program

Analyst: John Borden

Request: Acknowledge receipt of a report on the Temporary Hourly Increase Program, release the reservation of up to \$5,000,000 in the special purpose appropriation made to the Emergency Board for public defense expenses, and acknowledge extension of the Temporary Hourly Increase Program from January 1 to June 30, 2025.

Analysis: The Public Defense Commission (PDC) has submitted a status report on the Temporary Hourly Increase Program (THIP) and is requesting the that the Emergency Board: (1) remove a \$5 million reservation in the \$6.2 million special purpose appropriation (SPA) for public defense contingency that was approved by the Emergency Board in May 2024 to support extension of THIP to December 31, 2024 (Item #9); and (2) acknowledge extension of THIP from January 1 to June 30, 2025 and associated budgetary cost in the current and future biennia. THIP (aka “Enhanced Hourly Rate Program”) was developed in response to the unrepresented defendant/persons crisis. The program serves as a mechanism to increase attorney and investigator capacity through enhanced hourly rates of pay above standard hourly scheduled rates of pay. The program is limited to in-custody defendants and has not been expanded to out-of-custody defendants released under the federal court ruling in *Betschart et al. v. Garrett et al.*, Case No 3:23-cv-01097-CL.

Current State of the Crisis

On September 12, 2024, there were a total of 5,254 unrepresented defendant/persons on the Oregon Judicial Department’s (OJD) Unrepresented Persons dashboard. This includes: 163 defendants in-custody with 19 subject to *Betschart* release and 144 non-*Betschart* cases. There are 5,091 unrepresented defendants out-of-custody, of which 1,606 are on active warrant status and 107 have a non-criminal case. There are an estimated 31 unrepresented juvenile delinquency (16) and juvenile dependency cases (15). The total number of unrepresented individuals has reached a new record high.

According to a OJD’s report on the unrepresented defendant/persons crisis (September 2024 Emergency Board Item #1), the crisis continues to be most severe in Jackson, Marion, Multnomah, Washington, and Douglas counties. Deschutes, Clatsop, Coos, Clackamas, and Malheur counties are seeing increasing numbers of unrepresented defendants/persons. The severe crisis has existed longest in Jackson, Marion, and Multnomah counties, and the number of unrepresented individuals is rising in all three counties.

Temporary Hourly Increase Program History

On July 29, 2022, the Commission administratively approved the establishment of the “Enhanced Hourly Rate Program,” which was later renamed THIP. The program was one of several efforts to address the unrepresented defendant/persons crisis. Initially, the program was limited to in-custody adults and juveniles and to private (non-provider contract) attorneys. The program was an effort to match the \$158 hourly rate paid to private bar members by the federal Office of the Public Defender - District of Oregon. THIP is for in-custody defendants in local jails/jurisdiction. Cases are assigned under the THIP based on data set out in the OJD’s Unrepresented Persons dashboard.

On August 18, 2022, PDC expanded the eligibility of the program to include contract providers who are at less than one Maximum Attorney Caseload (MAC). In March 2023, PDC again authorized the extension of the THIP, but this time to allow all contract providers, regardless of the level of contracted MAC, to participate in the program if the provider affirmed in writing that the attorney had the ethical capacity to exceed their caseload MAC. On October 20, 2022, PDC further expanded the program to include paying investigators an enhanced rate of \$75 per hour, which was \$35 per hour above their standard rate of \$40 at that time. The current rate is \$55 per hour for monolingual investigators and \$60 for bilingual investigators.

On January 19, 2023, the Commission approved a five-tier hourly pay structure for the program beginning with \$200 per hour for the most serious offenses to \$125 per hour for lower-level offenses. PDC's standard rate for hourly attorneys for those not on the unrepresented defendant/persons list was between \$75 to \$105 per hour. The current rate is \$145 for major felonies and juvenile cases and \$130 for all other case types.

PDC initially funded THIP with one-time budgetary savings and no formal request to the Legislature or the Emergency Board for funding up until the time that the Emergency Board in December 2022 allocated \$10 million of General Fund to address the crisis. Of this amount, \$2.9 million was used to continue THIP until the end of the 2021-23 biennium. The program was to sunset on June 30, 2023, at the close of the biennium. The following table summarizes the current hourly rate structure and the change from the 2021-23 biennium.

Temporary Hourly Increase Program Attorney/Investigator	2021-23 Hourly Rate	2023-25 Hourly Rate	\$ Chg.	% Chg.
Murder and Jessica's Law cases	\$200.00	\$200.00	\$0.00	0.0%
Ballot Measure 11 and felony sex offense cases	\$175.00	\$175.00	\$0.00	0.0%
Class A and B felony, juvenile dependency, juvenile delinquency, juvenile probation violations, habeas corpus, post-conviction relief, civil commitment, Psychiatric Security Review Board cases; waiver co-counsel; discretionary co-counsel; material witness representation; fugitive/extradition appeals	\$164.00	\$164.00	\$0.00	0.0%
Class C felony and felony drug possession cases	\$158.00	\$164.00	\$6.00	3.8%
Misdemeanor, contempt, and probation violation cases	\$125.00	\$164.00	\$39.00	31.2%
Investigator	\$75.00	\$75.00	\$0.00	0.0%

The 2023 Legislature also extended the THIP from July 1 to September 30, 2023, or until such time as state employees under the Adult Trial Division pilot program could assume the work of the program (aka "Bridge Funding"). This funding totaled \$2 million General Fund.

In an attempt to continue to meet the demand for hourly public defense services, and in part due to delays in standing up the state employee pilot program, the Commission voted to extend the program from October 1 to November 30, 2023. The Commission then voted again to extend the program from December 1, 2023 to June 30, 2024. Funding for this extension, totaling \$7.9 million General Fund, was approved by the 2024 Legislature (SB 5701). Of this amount, \$5.7 million will be used to pay enhanced hourly rates to attorneys and \$2.1 million will be used to fund related costs such as expert witness and

investigation expenses (“Preauthorized Expenses”) and attorney and investigator travel and other allowable expenses.

PDC’s request funding from the Emergency Board in May of 2024 to extend the program from July 1 to December 31, 2024 at the existing hourly rate structure. PDC originally estimated the cost of the extension at \$5 million General Fund for the 2023-25 biennium. However, the most current report projects \$5.9 million for THIP, including \$3.6 million will be used to pay enhanced hourly rates to attorneys and \$2.3 million will be used to fund investigators and preauthorized expenses. The 2025-27 cost of the requested extension has been estimated by PDC to be \$13 million General Fund, which includes \$7.9 million in hourly rates to attorneys and \$5.2 million in preauthorized expenses. This would bring the total cost of the July 1 to December 31, 2024 extension to \$18.9 million General Fund. The Emergency Board acknowledged extension of the program and approved a reserve of \$5 million in the public defense contingency SPA to cover the estimated cost to extend the program.

PDC is requesting the Emergency Board acknowledge another extension of the THIP program from January 1 to June 30, 2025, which is in part a request to pre-authorize budgetary cost of the extension. The estimated cost to extend the program through the end of the biennium is an additional \$5.9 million General Fund. Of this amount, \$3.6 million will be used to pay enhanced hourly rates to attorneys and \$2.3 million will be used to fund investigators and preauthorized expenses. PDC’s request is viewed as being prudent, as the agency is first seeking funding before extending the program. The 2025-27 cost of the requested extension has been estimated by PDC to be \$13 million General Fund, which includes \$7.9 million in hourly rates and \$5.2 million in preauthorized expenses. This would bring the total cost of the January 1 to June 30, 2025 extension to \$18.9 million General Fund.

As evidenced by the THIP programs out-biennia rollup costs, the program represents a continuing financial obligation to the state until a case assigned under the program is resolved. Thus, expenditures may continue to be incurred, or billings received for payment, beyond the end of the program this biennium and into the 2025-27 biennium.

Temporary Hourly Increase Program Budget

PDC is reporting that the 2023-25 legislative approved budget for THIP totals \$13.2 million General Fund for both Court Mandated Expenses (hourly rates) and Preauthorized Expense (reasonable and necessary" non-attorney public defense-related trial and appellate representation case costs). PDC is projecting expenditures of \$34.1 million leaving the program in a budget deficit of \$20.9 million. The deficit would grow to \$26.8 million General Fund, if the extension from January 1 to June 30, 2025 were to be included in the expenditure estimates. However, the THIP deficit can be entirely offset by an estimated \$48.9 million in non-THIP savings in the Court Mandated Expenses program (\$50.1 million). Non-THIP Preauthorized Expense are projected to also be in deficit (\$1.3 million General Fund). A rebalance action could resolve the THIP and Preauthorized Expense deficits by transferring General Fund saving from the Court Mandated Expenses program, including paying for the estimated cost of the THIP program extension. This would then leave \$22.1 million in net unobligated General Fund savings in Court Mandated Expenses program. General Fund savings could potentially be even higher, if PDC offset THIP costs related to juvenile case with federal Title IV-E reimbursements (received by the agency from the Department of Human Services as Federal as Other Funds).

Analysis

THIP is an imperfect program, but perhaps a needed exigency given the unrepresented defendant/persons crisis. The specific concerns with THIP are that the program is more costly than

provider contract attorneys or investigators, and therefore disenfranchises some providers and standard hourly paid vendors; disincentivizes contract providers from adding Maximum Attorney Capacity under current contract terms; and potentially creates an ethical dilemma by financially incentivizing contract providers to take on cases above their ethical capacity. The higher hourly rates under the program may also be a disincentive to a timely resolution of a case. In addition, PDC has yet-to-develop any performance or other measures to gauge the quality of representation being provided through THIP or the timely resolution of cases. There has been no internal audit of THIP.

THIP was carried forward by the 2023 Legislature until such time as the Regional Pilot Programs became fully operational, which has not turned out to be the case. THIP is also now seen as another type of a “bridge” program to transition the agency’s current hourly rate structure to higher hourly rates for the 2025-27 biennium and beyond.

The THIP extension also cannot be viewed in isolation but within the context of other legislative investments including, but not limited to: (1) added funding to bring Maximum Attorney Capacity to meet available supply of contract providers; (2) state-employed attorneys and staff in a Western Oregon Regional Pilot starting October 1, 2023 (Washington, Multnomah, and Clackamas counties), a Southern Oregon Regional Pilot starting December 1, 2023 (Jackson, Douglas, and Klamath counties), and a Central Oregon Regional Pilot (Willamette Valley/statewide) starting March 1, 2024; (3) Supervised Civil Bar Attorney Program for civil or private bar attorneys to provide uncompensated legal representation in misdemeanor cases; and (4) funding for law schools to provide training and supervision of court certified law students to undertake misdemeanor cases; and among other investments in public defense.

The Legislative Fiscal Office recommends that the THIP extension from January 1 to June 30, 2025 be deferred to the December 2024 meeting of the Emergency Board and that the \$5 million reservation in the public defense contingency SPA remain in place. Before considering an extension of THIP, the budget of the program needs to be reconciled with funding available through a rebalance action advanced by the agency. Deferring extension of THIP can be done without jeopardizing the current implementation of the program, which is currently set to sunset on December 31, 2024. Additional time will also allow for the evaluation of the cost of the program as well as other legislative investments and their impact on the unrepresented defendant/persons crisis.

Recommendation: The Legislative Fiscal Office recommends that the Emergency Board acknowledge receipt of the report, deny the request to remove the reservation in the special purpose appropriation made to the Emergency Board for public defense expenses, and defer the request to extend the Temporary Hourly Increase Program from January 1 to June 30, 2025 to the December 2024 meeting of the Emergency Board.

Request: Report on Temporary Hourly Increase Program extension, including release of the \$5.0 million reservation of the Special Purpose Appropriation for a public defense contingency and approval to extend the program from January 1 to June 30, 2025.

Recommendation: The Oregon Public Defense Commission (OPDC) is not under Executive Branch budgetary authority.

Discussion: OPDC is responsible for maintaining Oregon's public defense system and ensuring the availability of qualified, competent counsel for all those so entitled. In recent years, Oregon's public defense services capacity has experienced challenges in keeping pace with evolving representation needs. On November 2, 2023, the United States District Court for Oregon ruled in a temporary restraining order that Oregon jails must release a person held in custody without legal representation for more than seven days. This order was upheld in the summer of 2024.

OPDC is providing an update to the Legislature regarding the Temporary Hourly Increase Program (THIP). OPDC first initiated THIP on July 29, 2022, in response to the number of persons who are in custody and entitled to but currently without a court-appointed lawyer. The program has enabled OPDC to purchase attorney and investigator time on an ad-hoc basis to represent persons who are on the Oregon Judicial Department's unrepresented list. OPDC reports that THIP has been highly effective, averaging the assignment of 200 cases per month and involving 345 attorneys who have taken 6,392 total cases since August 2022. It has significantly increased the number of hourly cases taken by defenders. From January 1, 2024, to June 30, 2024, the program has cost \$16,980,219 in THIP expenses.

OPDC also requests acknowledgement of their request to extend THIP from January 1, 2025, through June 30, 2025. The extension from July 2024 to December 2024 is projected to cost \$18,920,249. For cases taken from January 2025 to June 2025, the projected costs are \$13,024,101, for an additional \$26,048,202 for the remainder of the biennium.

Finally, OPDC also requests that a discussion around funding for these extensions be deferred to the December 2024 meeting of the Emergency Board, where they plan to request a rebalance of Court Mandated Expenses to cover the costs of the THIP program. In a related action, OPDC also asks the Emergency Board no longer hold in reserve \$5.0 million of the \$6.2 million Special Purpose Appropriation (SPA) for public defense to fund these extensions.



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August 26, 2024

Senate President Rob Wagner, Co-Chair
House Speaker Julie Fahey, Co-Chair
Joint Emergency Board
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Dear Co-Chairs:

Nature of the Request

OPDC requests that the Emergency Board acknowledge the provided report on the status of the Legislatively approved the extension of the Temporary Hourly Increase Program (THIP) from July 1, 2024, through December 31, 2024, and acknowledge the request to extend THIP from January 1, 2025, through June 30, 2025. OPDC requests that funding be deferred for these extensions to the December 2024 meeting of the Emergency Board, at which time OPDC will request a rebalance of Court Mandated Expenses (CME) to fund the cost of the extensions. OPDC further requests that the Emergency Board no longer hold in reserve \$5 million of the \$6.2 million special purpose appropriation (SPA) for public defense to fund these extensions.

On May 23, 2024 Governor Kotek requested that the Oregon Public Defense Commission (OPDC) submit a plan by August 1, 2024 to “eliminate Oregon’s unrepresented client crisis in both the near and long term, and that plan should be based in the realities of the current fiscal and legislative environment.” OPDC submitted that plan to the Governor. The plan included interventions OPDC was taking or planned to take within existing resources, as well as interventions that would require Legislative approval, funding through the Emergency Board, or both. This request is in line with that crisis plan.

Agency Action

Temporary Hourly Increase Program

When it comes to assigning counsel to a person eligible for public defense, OPDC contractors are first in line. Under normal circumstances, the court will assign an available attorney upon arraignment. However, when no attorney is available due to lack of capacity or conflicts of interest, the court will assign OPDC as a placeholder. This puts the defendant on the unrepresented list and notifies OPDC of the need to locate counsel. OPDC’s most effective tool for locating counsel is the Temporary Hourly Increase Program (THIP). Beginning in August 2022, THIP pays attorneys an enhanced hourly rate for taking on unrepresented cases. THIP has successfully brought in new attorneys who would otherwise not take OPDC cases and has been an essential part of the unrepresented response.

THIP was always intended to be a temporary program. Initially, it was intended as an emergency program, then later extended as a bridge until state employees started taking cases. In that time, it has been an incredibly successful program. Through THIP, OPDC is assigning an average of 200 cases per month directly off of the in-custody unrepresented list. Since its inception, 345 attorneys have taken 6,392 cases representing 4,453 clients through THIP. Since narrowing to only in-custody unrepresented cases, THIP has taken 1,442 cases representing 947 clients directly off of the in-custody unrepresented list.

THIP has also brought in new lawyers into the system. Before 2022, when the hourly rate was \$75 and \$105/hour, about 1% of OPDC-assigned cases were taken hourly. Today, hourly cases account for nearly 10% of all OPDC-assigned cases. Of the 214 currently active THIP attorneys, 140 are not contracted providers with OPDC. Additionally, attorneys under contract have to have reached their monthly MAC before they are able to take on a THIP case, ensuring that OPDC is utilizing contracted capacity before paying hourly.

Types of unrepresented cases taken through THIP since August 2022, both by number of clients and by number of cases.

Case Category	THIP Distinct Client Count	THIP Distinct Case Count
Misdemeanor	1,866	2,482
Minor Felony	1,414	1,773
Measure 11	504	522
Probation Violations-Criminal	376	464
Major Felony	404	438
Dependency/Termination	209	248
Murder	166	165
Delinquency	101	126
PCR/Habeas	79	80
Civil Commitment	72	74
Jessica Law	58	58
Probation Violations-Juvenile	6	14
Other	3	3
Total	4,453	6,392

July-December 2024 Update

Though THIP will expire, higher hourly rates and case-related expenses apply throughout the duration of the case, and many of those cases will continue even after the program concludes. When an attorney takes on a case under THIP, for example, on December 28, 2024, they will likely work on it for a year and up to three on complex cases, and the agency will continue to incur costs that will have to be paid.

The extension of THIP from July 2024 to December 2024 is projected to take 1663 cases at a total cost of \$18,920,249 over the life of the cases. Of which \$13,024,101 will be billed in the 25-27 biennium and included in POP 107 in 2025. Of the remaining \$5,896,147 billed in the 23-25 biennium, \$2,981,278 will be paid for with the remaining THIP budget. Rather than accessing the SPA to cover the remaining \$2,914,869 expected to be billed in 2025, OPDC could use existing resources within the non-THIP CME budget through a rebalance in December 2024.

The charts below show these numbers broken down by CME, which include attorney costs and costs mandated by the court, such as court-ordered psychological evaluations, and Preauthorized Expenses (PAE), which include investigation, professional services, expert witnesses, and psychological evaluations not ordered by the court.

Total Cost of THIP Extension from July 2024-December 2024 over the life of the cases:

July 2024 thru December 2024 Caseload: THIP Expected Costs Summary						
Case Category	Projected Caseload	Cost Per Case	Expected Attorney Cost	Expected Investigator Cost	Expected PAE Costs	6 Month Pickup Expected Cost
Civil Commitment	14	\$851	\$11,316	\$0	\$428	\$11,744
Delinquency	14	\$7,217	\$70,159	\$9,315	\$20,120	\$99,595
Dependency/Termination	7	\$9,377	\$57,712	\$1,553	\$5,437	\$64,701
Jessica Law	28	\$40,916	\$678,960	\$198,720	\$251,602	\$1,129,282
Major Felony	117	\$9,639	\$841,628	\$140,760	\$148,267	\$1,130,655
Measure 11	221	\$20,966	\$2,782,080	\$828,000	\$1,019,213	\$4,629,293
Minor Felony	407	\$4,992	\$1,535,581	\$213,728	\$282,935	\$2,032,243
Misdemeanor	656	\$2,810	\$1,612,530	\$98,325	\$131,100	\$1,841,955
Murder	48	\$151,199	\$3,477,600	\$1,141,088	\$2,684,224	\$7,302,912
PCR/Habeas	14	\$34,391	\$169,740	\$33,120	\$271,736	\$474,596
Probation Violations-Criminal	138	\$1,473	\$181,056	\$10,350	\$11,868	\$203,274
Total	1663	\$11,378	\$11,418,362	\$2,674,958	\$4,826,930	\$18,920,249

2023-2025 Biennium

Projected costs of billing for THIP cases taken July 2024-December 2024 during the 2023-2025 Biennium:

July 2024 thru Dec 2024 Caseload: THIP Expected Costs during FY 25				
Case Category	Expected Attorney Cost	Expected Investigator Cost	Expected PAE Cost	Expected Total Cost (during FY25)
Civil Commitment	\$9,176	\$0	\$347	\$9,523
Delinquency	\$66,280	\$8,800	\$19,008	\$94,088
Dependency/Termination	\$175,511	\$4,721	\$16,535	\$196,768
Jessica Law	\$129,126	\$37,793	\$47,850	\$214,770
Major Felony	\$559,767	\$93,620	\$98,613	\$752,000
Measure 11	\$554,609	\$165,062	\$203,181	\$922,852
Minor Felony	\$536,578	\$74,683	\$98,866	\$710,127
Misdemeanor	\$374,640	\$22,844	\$30,459	\$427,942
Murder	\$1,154,483	\$378,815	\$891,101	\$2,424,399
PCR/Habeas	\$34,752	\$6,781	\$55,634	\$97,167
Probation Violations-Criminal	\$41,428	\$2,368	\$2,716	\$46,511
Total	\$3,558,322	\$833,601	\$1,504,224	\$5,896,147

THIP Budget, Actuals, and Projections for the 2023-2025 Biennium:

	CME	PAE	Total
THIP Budget 23-25	\$ 9,935,850	\$ 3,277,524	\$ 13,213,374
THIP Actuals July 23-June 24	\$ 15,477,198	\$ 1,503,021	\$ 16,980,219
THIP Remaining Budget	\$ (5,541,348)	\$ 1,774,503	\$ (3,766,845)
Ongoing Projected THIP Expenses July 23-June 24 (Assuming 1/3 Resolution)	\$ 10,214,951	\$ 991,994	\$ 11,206,945

THIP Projected Expenses July-Dec 24	\$ 3,558,322	\$ 2,337,825	\$ 5,896,147
Variance Between Remaining THIP Budget and Projected Expenses	\$ (19,314,621)	\$ (1,555,316)	\$ (20,869,937)

At this time, OPDC has a Legislatively approved budget for THIP of \$13,213,374. This comes from investments in SB 5532 (2023) which provided \$2 million for PAE and CME for the unrepresented crisis, and \$3.4 million, which was disappropriated from the 2021-23 biennium and repurposed to provide funding for package 083 SB 5532, and SB 5701 (2024) which invested \$7.9 million for the THIP extension and backfill of THIP from October 2023-June 2024.

From January 1, 2024, to June 30, 2024, OPDC has paid \$16,980,219 in THIP expenses; this number represents all CME and PAE costs billed this biennium related to unrepresented cases taken under what is now THIP dating back to August 2022. Based on these numbers, THIP is already over budget before factoring in the ongoing projected expenses from cases assigned prior to July 2024- \$11,206,945, which assumes a 1/3 case deterioration rate; and the THIP extension from July-December 2024- 5,896,147 for the remainder of the biennium.

However, OPDC is looking at existing resources within CME and PAE overall. THIP is a sub-type of hourly attorney and, as such, is paid through the a sub-type of the CME budget, THIP-CME. THIP cases also use the normal PAE process, besides getting an enhanced rate for investigators. It should also be noted that OPDC would pay the standard hourly rate and all PAE expenses in the normal course of business if it weren't for the unrepresented crisis, so many of these costs were already factored into the PAE and CME budgets. THIP has significantly increased the number of hourly cases taken while decreasing the cases taken at the standard hourly rate. This has led to savings within non-THIP CME and PAE, which allowed OPDC to fund the initial portion of the THIP extension in 2022.

OPDC's CME and PAE budgets are based on historic trends. These trends saw the majority of psychological evaluations ordered by the courts and, therefore, coming from the CME budget. However, recent trends have seen a move towards evidence-based sentencing. This has led to most psychological evaluations initiated by the defense counsel and, therefore, coming from the PAE budget. This trend has caused a significant imbalance in OPDC's PAE and CME budgets.

When non-THIP resources are factored in, OPDC would be able to cover all projected expenses from the June-December 2024 THIP extension through savings in the non-THIP CME budget, which would require a rebalance in December. This rebalance would also allow OPDC to correct the imbalance within non-THIP PAE.

Non-THIP CME and PAE Budgeted, Actuals, and Projections for the 2023-2025 Biennium:

	CME	PAE	Total
Non-THIP CME/PAE Budget 23-25	\$ 65,897,147	\$ 55,340,161	\$ 121,237,308
Non-THIP CME/PAE Actuals July 23-June 24	\$ 9,511,048	\$ 34,100,956	\$ 43,612,004
Non-THIP CME/PAE Remaining Budget	\$ 56,386,099	\$ 21,239,205	\$ 77,625,304

Non-THIP CME/PAE Projected Expenses July 24-June 25	\$ 6,277,292	\$ 22,506,631	\$ 28,783,923
Variance Between Remaining Budget and Projected Expenses	\$ 50,108,807	\$ (1,267,425)	\$ 48,841,382

Balance of Non-THIP and THIP Projections:

	CME	PAE	Total
Variance Between Remaining Budget and Projected Expenses	\$50,108,807	\$(1,267,425)	\$48,841,382
Variance Between Remaining THIP Budget and Projected Expenses	\$(19,314,621)	\$(1,555,316)	\$(20,869,937)
Variance of THIP and Non-THIP CME/PAE	\$30,794,186	\$(2,822,741)	\$27,971,445
Non-THIP CME after covering THIP CME Variance	\$30,794,186		
Non-THIP CME after covering Non-THIP PAE Variance	\$29,526,761		
Non-THIP CME after covering THIP PAE Variance	\$27,971,445		

2025-2027 Biennium

As LFO acknowledged in their recommendation in May, THIP represents a continuing financial obligation to the state until a case assigned under the program is resolved. Expenditures continue into the second year of the biennium and into the 2025-27 biennium for adjudicated cases. In addition, THIP costs include payment for not just hourly attorneys (CME) but related costs such as expert witness and investigation expenses (PAE), which can be material. THIP attorneys and investigators may also be reimbursed for travel and other allowable expenses. These cases also come with roll-up costs for future biennium. OPDC has calculated those costs to provide full transparency to the Emergency Board. OPDC's Policy Option Package 107 THIP Funding Continuation will include these roll-up costs in the 2025 session. That POP is not a request to continue THIP but rather a request to fund the bills that will come in from cases previously assigned under THIP.

Projected costs of billing for THIP cases taken July 2024-December 2024 during the 2025-2027 biennium:

July 2024 thru Dec 2024 Caseload: THIP Expected Cost Remainder after FY 25				
Case Category	Expected Attorney Cost	Expected Investigator Cost	Expected PAE Cost	Expected Total Cost (After FY 25)
Civil Commitment	\$2,140	\$0	\$81	\$2,221
Delinquency	\$3,879	\$515	\$1,112	\$5,506
Dependency/Termination	(\$117,799)	(\$3,169)	(\$11,098)	(\$132,066)
Jessica Law	\$549,834	\$160,927	\$203,751	\$914,512
Major Felony	\$281,860	\$47,140	\$49,655	\$378,655
Measure 11	\$2,227,471	\$662,938	\$816,032	\$3,706,440
Minor Felony	\$999,003	\$139,045	\$184,069	\$1,322,117
Misdemeanor	\$1,237,890	\$75,481	\$100,641	\$1,414,013
Murder	\$2,323,117	\$762,273	\$1,793,123	\$4,878,513
PCR/Habeas	\$134,988	\$26,339	\$216,102	\$377,429
Probation Violations-Criminal	\$139,628	\$7,982	\$9,152	\$156,763
Total	\$7,860,039	\$1,841,356	\$3,322,706	\$13,024,101

	CME	PAE	Total
THIP Projected Expenses in 25-27 Biennium	\$ 7,860,039	\$5,164,062	\$13,024,101

Extention Request: January-June 2025

THIP is set to expire on December 31, 2024. During the 2025 session, OPDC will request funding to stabilize hourly attorney rates for all attorneys at a two-tiered rate of \$205 and \$230/hour beginning July 2025. This creates a gap in the hourly program where THIP rates would end before the market rates took over. To bridge that gap, OPDC requests an THIP extension from January 1, 2025 to June 30, 2025. This extension will allow OPDC to:

- Maintain the hourly attorneys we have now;
- Bridge the gap between the end of THIP in December 2024 and the new hourly rates anticipated in July 2025;
- Allow for a smooth transition from THIP to an hourly panel of attorneys come July 2025.

Should THIP end before the stabilized hourly rates go into effect, OPDC could lose up to 200 cases per month currently being assigned under this program. That would result in those cases remaining unrepresented in-custody and cause the list to grow rapidly.

The extension of THIP from January to June 2025 is projected to take 1663 cases at a total cost of \$18,920,249 over the life of the cases. Of which, OPDC projects \$13,024,101 will be billed in the 25-27 biennium and included in POP 107 in 2025. OPDC requests to return in to the December Emergency Board to request a rebalance of CME to cover the projected \$5,896,147 that will be billed in the 23-25 biennium.

The charts below show these numbers broken down by CME which include attorney costs and costs mandated by the court, such as court-ordered psychological evaluations and PAE, which include investigation, professional services, expert witnesses, and psychological evaluations not ordered by the

court. OPDC does not believe they will need to access the \$5 million of the SPA being held for this purpose.

Total Cost of THIP Extention from January-June 2025 over the life of the cases:

January 2025 thru June 2025 Caseload: THIP Expected Costs Summary						
Case Category	Projected Caseload	Cost Per Case	Expected Attorney Cost	Expected Investigator Cost	Expected PAE Costs	6 Month Pickup Expected Cost
Civil Commitment	14	\$851	\$11,316	\$0	\$428	\$11,744
Delinquency	14	\$7,217	\$70,159	\$9,315	\$20,120	\$99,595
Dependency/Termination	7	\$9,377	\$57,712	\$1,553	\$5,437	\$64,701
Jessica Law	28	\$40,916	\$678,960	\$198,720	\$251,602	\$1,129,282
Major Felony	117	\$9,639	\$841,628	\$140,760	\$148,267	\$1,130,655
Measure 11	221	\$20,966	\$2,782,080	\$828,000	\$1,019,213	\$4,629,293
Minor Felony	407	\$4,992	\$1,535,581	\$213,728	\$282,935	\$2,032,243
Misdemeanor	656	\$2,810	\$1,612,530	\$98,325	\$131,100	\$1,841,955
Murder	48	\$151,199	\$3,477,600	\$1,141,088	\$2,684,224	\$7,302,912
PCR/Habeas	14	\$34,391	\$169,740	\$33,120	\$271,736	\$474,596
Probation Violations-Criminal	138	\$1,473	\$181,056	\$10,350	\$11,868	\$203,274
Total	1663	\$11,378	\$11,418,362	\$2,674,958	\$4,826,930	\$18,920,249

2023-2025 Biennium

Projected costs of billing for THIP cases taken January-June 2025 during the 2025 fiscal year (July 2024-June 2025):

January 2025 thru June 2025 Caseload: THIP Expected Costs During FY 25				
Case Category	Expected Attorney Cost	Expected Investigator Cost	Expected PAE Cost	Expected Total Cost (during FY25)
Civil Commitment	\$9,176	\$0	\$347	\$9,523
Delinquency	\$66,280	\$8,800	\$19,008	\$94,088
Dependency/Termination	\$175,511	\$4,721	\$16,535	\$196,768
Jessica Law	\$129,126	\$37,793	\$47,850	\$214,770
Major Felony	\$559,767	\$93,620	\$98,613	\$752,000
Measure 11	\$554,609	\$165,062	\$203,181	\$922,852
Minor Felony	\$536,578	\$74,683	\$98,866	\$710,127
Misdemeanor	\$374,640	\$22,844	\$30,459	\$427,942
Murder	\$1,154,483	\$378,815	\$891,101	\$2,424,399
PCR/Habeas	\$34,752	\$6,781	\$55,634	\$97,167
Probation Violations-Criminal	\$41,428	\$2,368	\$2,716	\$46,511
Total	\$3,558,322	\$833,601	\$1,504,224	\$5,896,147

THIP Budget, Actuals, and Projections for the 2023-2025 Biennium*

	CME	PAE	Total
THIP Budget 23-25	\$9,935,850	\$3,277,524	\$13,213,374
THIP Actuals July 23-June 24	\$15,477,198	\$1,503,021	\$16,980,219

THIP Remaining Budget	\$(5,541,348)	\$1,774,503	\$ (3,766,845)
Ongoing Projected THIP Expenses July 23-June 24 (Assuming 1/3 Resolution)	\$10,214,951	\$991,994	\$11,206,945
THIP Projected Expenses Jan-June 2025	\$3,558,322	\$2,337,825	\$5,896,147
Variance Between Remaining THIP Budget and Projected Expenses	\$(19,314,621)	\$(1,555,316)	\$(20,869,937)

*These numbers do not factor in the July-December 2024 projected expenditure. These requests are combined at the end of this letter.

At this time, OPDC has a Legislatively approved budget for THIP of \$13,213,374. From January 1, 2024 to June 30, 2024, OPDC has paid \$16,980,219 in THIP expenses. OPDC projects paying \$11,206,945 for ongoing expenses from cases assigned prior to July 2024, which assumes a 1/3 case deterioration rate. Based on these numbers, it would seem that the THIP extension from January-June 2025 would be over budget.

However, OPDC is looking at the overall existing resources within CME and PAE. When non-THIP resources are factored in, OPDC could cover all projected expenses from the proposed January-June 2025 extension through savings in the non-THIP Court Mandated Expenses budget.

Non-THIP CME and PAE Budgeted, Actuals, and Projections for the 2023-2025 Biennium

	CME	PAE	Total
Non-THIP CME/PAE Budget 23-25	\$65,897,147	\$55,340,161	\$121,237,308
Non-THIP CME/PAE Actuals July 23-June 24	\$9,511,048	\$34,100,956	\$43,612,004
Non-THIP CME/PAE Remaining Budget	\$56,386,099	\$21,239,205	\$77,625,304
Non-THIP CME/PAE Projected Expenses July 24-June 25	\$6,277,292	\$22,506,631	\$28,783,923
Variance Between Remaining Budget and Projected Expenses	\$50,108,807	\$(1,267,425)	\$48,841,382

Balance of Non-THIP and THIP Projections*

	CME	PAE	Total
Variance Between Remaining Budget and Projected Expenses	\$50,108,807	\$(1,267,425)	\$48,841,382
Variance Between Remaining THIP Budget and Projected Expenses	\$(19,314,621)	\$(1,555,316)	\$(20,869,937)
Variance of THIP and Non-THIP CME/PAE	\$30,794,186	\$(2,822,741)	\$27,971,445
Non-THIP CME after covering THIP CME Variance	\$30,794,186		
Non-THIP CME after covering Non-THIP PAE Variance	\$29,526,761		
Non-THIP CME after covering THIP PAE Variance	\$27,971,445		

*These numbers do not factor in the July-December 2024 projected expenditure. These requests are combined at the end of this letter.

2025-2027 Biennium

As LFO acknowledged in their recommendation in May, THIP represents a continuing financial obligation to the state until a case assigned under the program is resolved. Expenditures continue into the second year of the biennium and into the 2025-27 biennium for unadjudicated cases. In addition, THIP costs include payment for not just hourly attorneys (Court Mandated Expenses or CME) but related costs such as expert witness and investigation expenses (Preauthorized Expenses or PAE), which can be material. THIP attorneys and investigators may also be reimbursed for travel and other allowable expenses. These cases also come with roll-up costs into future biennium. OPDC has calculated those costs to provide full transparency to the Emergency Board. These roll-up costs will be included in OPDC's Policy Option Package 107 THIP Funding Continuation in the 2025 session. That POP is not a request to continue THIP but rather a request to fund the bills that will come in from cases previously assigned under THIP.

Projected costs of billing for THIP cases taken January-June 2025 during the 2025-2027 biennium:

January 2025 thru June 2025 Caseload: THIP Expected Costs Remainder after FY 25				
Case Category	Expected Attorney Cost	Expected Investigator Cost	Expected PAE Cost	Expected Total Cost (After FY 25)
Civil Commitment	\$2,140	\$0	\$81	\$2,221
Delinquency	\$3,879	\$515	\$1,112	\$5,506
Dependency/Termination	(\$117,799)	(\$3,169)	(\$11,098)	(\$132,066)
Jessica Law	\$549,834	\$160,927	\$203,751	\$914,512
Major Felony	\$281,860	\$47,140	\$49,655	\$378,655
Measure 11	\$2,227,471	\$662,938	\$816,032	\$3,706,440
Minor Felony	\$999,003	\$139,045	\$184,069	\$1,322,117
Misdemeanor	\$1,237,890	\$75,481	\$100,641	\$1,414,013
Murder	\$2,323,117	\$762,273	\$1,793,123	\$4,878,513
PCR/Habeas	\$134,988	\$26,339	\$216,102	\$377,429
Probation Violations-Criminal	\$139,628	\$7,982	\$9,152	\$156,763
Total	\$7,860,039	\$1,841,356	\$3,322,706	\$13,024,101

	CME	PAE	Total
THIP Projected Expenses in 25-27 Biennium	\$ 7,860,039	\$5,164,062	\$13,024,101

Combined Request: THIP Funding for July 2024-June 2025

OPDC felt it was important to report on the two THIP extensions separately to keep the expenses garnered by both distinct. However, these extensions are interdependent, especially the proposed extension from January to June 2025. The charts below combine these two extensions to show how they affect the OPDC budget. This gives the Emergency Board a full picture of what a CME rebalance would likely look like in December.

Total Cost of THIP Extension from July 2024-June 2025 over the life of the cases:

July 2024 thru June 2025 Caseload: THIP Expected Costs Summary						
Case Category	Projected Caseload	Cost Per Case	Expected Attorney Cost	Expected Investigator Cost	Expected PAE Cost	Expected Total Cost
Civil Commitment	28	\$851	\$22,632	\$0	\$856	\$23,488
Delinquency	28	\$7,217	\$140,318	\$18,630	\$40,241	\$199,189
Dependency/Termination	14	\$9,377	\$115,423	\$3,105	\$10,874	\$129,403
Jessica Law	55	\$40,916	\$1,357,920	\$397,440	\$503,203	\$2,258,563
Major Felony	235	\$9,639	\$1,683,255	\$281,520	\$296,534	\$2,261,309
Measure 11	442	\$20,966	\$5,564,160	\$1,656,000	\$2,038,426	\$9,258,586
Minor Felony	814	\$4,992	\$3,071,162	\$427,455	\$565,869	\$4,064,486
Misdemeanor	1311	\$2,810	\$3,225,060	\$196,650	\$262,200	\$3,683,910
Murder	97	\$151,199	\$6,955,200	\$2,282,175	\$5,368,448	\$14,605,823
PCR/Habeas	28	\$34,391	\$339,480	\$66,240	\$543,472	\$949,192
Probation Violations-Criminal	276	\$1,473	\$362,112	\$20,700	\$23,736	\$406,548
Total	3326	\$11,378	\$22,836,723	\$5,349,915	\$9,653,859	\$37,840,497

2023-2025 Biennium

Projected costs of billing for THIP cases taken July 2024-June 2025 during the 2025 fiscal year (July 2024-June 2025):

July 2024 thru June 2025 Caseload: THIP Expected Costs during FY 25				
Case Category	Expected Attorney Cost	Expected Investigator Cost	Expected PAE Cost	Expected Total Cost (during FY 25)
Civil Commitment	\$18,251	\$0	\$690	\$18,941
Delinquency	\$131,836	\$17,504	\$37,808	\$187,148
Dependency/Termination	\$349,103	\$9,391	\$32,890	\$391,385
Jessica Law	\$256,842	\$75,173	\$95,178	\$427,193
Major Felony	\$1,113,417	\$186,216	\$196,148	\$1,495,781
Measure 11	\$1,103,157	\$328,321	\$404,141	\$1,835,619
Minor Felony	\$1,067,292	\$148,549	\$196,651	\$1,412,492
Misdemeanor	\$745,185	\$45,438	\$60,584	\$851,208
Murder	\$2,296,350	\$753,490	\$1,772,463	\$4,822,302
PCR/Habeas	\$69,124	\$13,488	\$110,660	\$193,272
Probation Violations-Criminal	\$82,402	\$4,711	\$5,401	\$92,514
Total	\$7,077,756	\$1,658,092	\$2,992,008	\$11,727,856

THIP Budget, Actuals, and Projections for the 2023-2025 Biennium:

	CME	PAE	Total
THIP Budget 23-25	\$ 9,935,850	\$ 3,277,524	\$ 13,213,374
THIP Actuals July 23-June 24	\$ 15,477,198	\$1,503,021	\$ 16,980,219
Ongoing THIP Expenses July 23-June 24 (Assuming 1/3 resolution)	\$ 10,214,951	\$ 991,994	\$ 11,206,945
THIP Projected Expenses July-December 2024	\$ 3,558,322	\$ 2,337,825	\$ 5,896,147
THIP Projected Expenses January-June 2025	\$ 3,558,322	\$ 2,337,825	\$ 5,896,147
Variance Between THIP Budget and Actuals +	\$ (22,872,943)	\$ (3,893,141)	\$ (26,766,084)

Projected Expenses			
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At this time, OPDC has a Legislatively approved budget for THIP of \$13,213,374. From January 1, 2024 to June 30, 2024, OPDC has paid \$16,980,219 in THIP expenses. OPDC projects paying \$11,206,945 for ongoing expenses from cases assigned prior to July 2024, which assumes a 1/3 case deterioration rate. Based on these numbers, it would seem that the THIP extension from July 2024-June 2025 would be over budget.

When non-THIP resources are factored in, OPDC would be able to cover all projected expenses from both the current extension and the proposed January-June 2025 extension through savings in the non-THIP Court Mandated Expenses budget. As well as correct the imbalance within the non-THIP PAE.

Non-THIP CME and PAE Budgeted, Actuals, and Projections for the 2023-2025 Biennium

	CME	PAE	Total
Non-THIP CME/PAE Budget 23-25	\$65,897,147	\$55,340,161	\$121,237,308
Non-THIP CME/PAE Actuals July 23-June 24	\$9,511,048	\$34,100,956	\$43,612,004
Non-THIP CME/PAE Remaining Budget	\$56,386,099	\$21,239,205	\$77,625,304
Non-THIP CME/PAE Projected Expenses July 24-June 25	\$6,277,292	\$22,506,631	\$28,783,923
Variance Between Remaining Budget and Projected Expenses	\$50,108,807	\$(1,267,425)	\$48,841,382

Balance of Non-THIP and THIP Projections

	CME	PAE	Total
Variance Between Remaining Non-THIP Budget and Projected Expenses	\$50,108,807	\$(1,267,425)	\$48,841,382
Variance Between Remaining THIP Budget and Projected Expenses	\$(22,872,943)	\$(3,893,141)	\$(26,766,084)
Variance of THIP and Non-THIP CME/PAE	\$27,235,864	\$(5,160,566)	\$22,075,298
Non-THIP CME after covering THIP CME Variance	\$27,235,864		
Non-THIP CME after covering Non-THIP PAE Variance	\$25,968,439		
Non-THIP CME after covering THIP PAE Variance	\$22,075,298		

OPDC does not at this time anticipate needing to access the SPA due to the \$22 million in savings within the non-THIP Court Mandate Expenses and is requesting that \$5 million of the SPA no longer be held for this potential use at the December 2024 Emergency Board. This would allow OPDC to access that SPA for other September Emergency Board requests rather than requesting non-SPA General Funds. However, OPDC would like to clarify that if the Commission cannot rebalance non-THIP CME in December to cover these costs, or should costs increase significantly beyond projections, OPDC will need to request general fund dollars in December. That cost is currently projected to be \$26,766,084.

Since the calculations and the assumptions in the charts above are based on past performance, estimates could change should more cases be taken by THIP, contractors, or state employees. The Commission is implementing, or requesting authority to implement, several changes that could increase the rate of bills paid from THIP and non-THIP PAE and CME accounts.

- Emergency Board request for two additional assignment coordinators. These positions will increase OPDC’s administrative ability to assign THIP cases. If more THIP cases are assigned, both CME and PAE costs will increase.
- Emergency Board request for additional MAC. More attorneys accepting cases under contract will result in an increased utilization of PAE for experts and investigators.
- THIP process improvements coming online. OPDC has seen a marked increase in the number of THIP cases being assigned since implementing various process improvements May-July. July saw the highest number of THIP cases assigned yet. If these numbers continue to grow, THIP will utilize more PAE and CME than currently predicted.
- Bill processing changes. OPDC is seeing an increase in bills being processed each month. This is due to a series of factors, including:
 - As THIP cases age, they have more bills to submit to the agency;
 - OPDC has eliminated its backlog of preauthorized expense requests, which has increased the volume of bills paid through accounts payable;
 - The Commission has updated policies to encourage providers to bill the agency monthly and for vendors to submit their invoices when completed rather than at the end of each case.
 - To compensate providers more fairly for their time, the commission changed the policy on mileage and travel time, which has substantially increased the number of billings for those areas,
 - Aside from the current investments, the biennial budgets for PAE and CME are built on a historical basis, which did not consider the increased caseload, which has substantially changed from when the 2023-25 budgets were established.
 - OPDC has seen a spike in the number of requests for psychological evaluations, which was not anticipated, and is watching this trend.

Due to the projected non-THIP CME savings, and OPDC’s commitment to using available resources before requesting General Fund, OPDC is requesting that the Emergency Board no longer hold part of the SPA in reserve. However, should expenses increase significantly, the projected savings of \$22 million could diminish, requiring OPDC to request General Funds in December. Should billings remain closer to anticipated costs, agency savings would revert to the Legislature and could be used to cover ongoing THIP expenses in the 25-27 biennium.

The charts below provide the same budget information as above for the July 2024-June 2025 combined THIP extensions, but in a different format.

	CME	PAE	Total
Budgets			
THIP	\$ 9,935,850	\$ 3,277,524	\$ 13,213,374
Non-THIP	\$ 65,897,147	\$ 55,340,161	\$ 121,237,308
Total	\$ 75,832,997	\$ 58,617,685	\$ 134,450,682
Actuals July 23-June 24			
THIP	\$ 15,477,198	\$ 1,503,021	\$ 16,980,219

Non-THIP	\$ 9,511,048	\$ 34,100,956	\$ 43,612,004
Total	\$ 24,988,246	\$ 35,603,977	\$ 60,592,223
Ongoing Projected Expenses			
THIP	\$ 10,214,951	\$ 991,994	\$ 11,206,945
Non-THIP	\$ 6,277,292	\$ 22,506,631	\$ 28,783,923
Total	\$ 16,492,242	\$ 23,498,625	\$ 39,990,867
THIP Extention Projections			
July-Dec 24	\$ 3,558,322	\$ 2,337,825	\$ 5,896,147
Jan-June 25	\$ 3,558,322	\$ 2,337,825	\$ 5,896,147
Total	\$ 7,116,644	\$ 4,675,650	\$ 11,792,294
Remaining Budget Balance			
THIP	\$ (22,872,943)	\$ (3,893,141)	\$ (26,766,084)
Non-THIP	\$ 50,108,807	\$ (1,267,425)	\$ 48,841,382
Total	\$ 27,235,864	\$ (5,160,566)	\$ 22,075,298

2025-2027 Biennium

July 2024 thru June 2025 Caseload: THIP Expected Costs Remaining after FY 25				
Case Category	Expected Attorney Cost	Expected Investigator Cost	Expected PAE Cost	Expected Total Cost (After FY 25)
Civil Commitment	\$4,381	\$0	\$166	\$4,546
Delinquency	\$8,482	\$1,126	\$2,433	\$12,041
Dependency/Termination	(\$233,680)	(\$6,286)	(\$22,016)	(\$261,982)
Jessica Law	\$1,101,078	\$322,267	\$408,026	\$1,831,371
Major Felony	\$569,838	\$95,304	\$100,387	\$765,528
Measure 11	\$4,461,003	\$1,327,679	\$1,634,285	\$7,422,967
Minor Felony	\$2,003,870	\$278,906	\$369,218	\$2,651,994
Misdemeanor	\$2,479,875	\$151,212	\$201,616	\$2,832,702
Murder	\$4,658,850	\$1,528,685	\$3,595,985	\$9,783,521
PCR/Habeas	\$270,356	\$52,752	\$432,811	\$755,919
Probation Violations-Criminal	\$279,710	\$15,989	\$18,335	\$314,034
Total	\$15,758,967	\$3,691,823	\$6,661,851	\$26,112,641

	CME	PAE	Total
THIP Projected Expenses in 25-27 Biennium	\$ 15,758,967	\$10,353,674	\$26,112,641

Action Requested

OPDC requests that the Emergency Board acknowledge the provided report on the status of the Legislatively approved the extension of the Temporary Hourly Increase Program (THIP) from July 1, 2024, through December 31, 2024, and acknowledge the request to extend THIP from January 1, 2025, through June 30, 2025. OPDC requests that funding be deferred for these extensions to the December 2024 meeting of the Emergency Board, at which time OPDC will request a rebalance of Court Mandated Expenses (CME) to fund the cost of the extensions. OPDC further requests that the Emergency Board no longer hold in reserve \$5 million of the \$6.2 million special purpose appropriation (SPA) for public defense to fund these extensions.

Legislation Affected

None

Sincerely,



Jessica Kampfe
Executive Director

cc:

Amanda Beitel, Legislative Fiscal Officer
John Borden, Principal Legislative Analyst, LFO
Kate Nass, Chief Financial Officer
Zack Gehringer, Policy and Budget Analyst, CFO