

JOINT LEGISLATIVE FISCAL COMMITTEE

Legislative Office Building, Rooms 210-211

Concord, NH

Tuesday, September 6, 2022

MEMBERS PRESENT:

Rep. Karen Umberger, Chair

Rep. Tracy Emerick

Rep. Bob Lynn

Rep. Keith Erf

Rep. Mary Jane Wallner

Rep. Jess Edwards (Alt.)

Rep. Joseph Pitre (Alt.)

Sen. Gary Daniels

Sen. Jeb Bradley

Sen. Donna Soucy

Sen. Cindy Rosenwald

Sen. James Gray

New Business:

(1) RSA 21-M:11-a, IV, Bureau of Civil Law:

KAREN UMBERGER, State Representative, Carroll County, District #02 and Chairwoman: I'd like to call the Fiscal Committee to order at 10:00 a.m. We have -- this is a Special Meeting. We have one item on the agenda and that is to -- we made several suggestions on the YDC settlement process. And -- um -- I'd like to call General Formella forward and ask him to please identify the things that he's changed, and -- um -- we'll -- we'll go from there. So if I could, General Formella.

JOHN FORMELLA, Attorney General, Office of Attorney General, Department of Justice: Well, thank you, and good morning, Madam Chair, Members of the Committee. For the

record, John Formella, Attorney General, and appreciate the opportunity to be back before you again this morning.

So last time we were here about a month ago -- um -- I -- I went through in quite a bit of detail the documents before you that set up the claims process and -- and settlement guidelines for the YDC settlement fund. I thought it would be helpful this morning is to walk through the changes we've made after our discussion with the Committee on August 10th, and also after our discussions that we've had with claimants' counsel since the last meeting.

Most of the documents are the same, but we've made some -- some key changes that I want to walk through and then I'm happy to -- to take questions, either on the changes or, of course, on any of the substance of the documents.

So what we did after the last meeting, we -- we went back and we first catalogued all of the comments we got from the Committee, just to try to make sure that we had captured all of the feedback that you all had provided to us. And we also have had some pretty extensive conversations with -- with claimants' counsel, not specifically with Nixon Peabody. They've generally chosen not to engage in the process; but we have had some very productive conversations with other claimants' counsel since -- since the last meeting, and I think that we have reached a good compromise on some changes. And I think that, you know, I feel comfortable sitting here today telling you that we have an indication, both from claimants' counsel, who have written letters to the Committee, and also other claimants' counsel who may not have written letters but have indicated that they have clients who they believe will participate in this process.

I think the general feedback from many of the claimants' counsel out there is that this process is not

perfect and we, of course, would never claim it would be. But we believe that many claimants' counsel now feel that this will be workable for many clients who are out there.

So that -- that is generally, I think, where we sit here today; but I will walk through some of the -- some of the specific changes we've made.

Actually, before I do that, one thing I also want to add is that we've had productive discussions with claimants' counsel about who the administrator might be. And while, you know, we're not prepared to name names publicly today, I think that we have a good understanding between our office and claimants' counsel on who would make a good administrator, and I'm confident that if this process is approved, we will be able to come to agreement on who the administrator will be very quickly. And I think that will be important as this process moves forward, if it gets approved. Because once this Committee approves this process, if the Committee approves the process, and once the administrator is appointed, the administrator will sort of take control of this process. And it will be the administrator who can come back to request changes from the Committee.

I think that's an important thing to keep in mind as we walk through the documents today, because the administrator will be, I think, seen by many claimants as a more neutral party, and so -- um -- the fact that the administrator will sort of take control of this process and take control of requesting future changes should give some comfort to those who -- who may still feel that there are some tweaks that can be made as we go forward and as we see how this process is implemented.

So, with that, I'll walk through the changes we've made since the last meeting. The first overall change we made based on, I think, feedback from Representative Emerick, was to split the documents into separate

documents. It was always our intention for these documents to be presented to claimants as separate documents, but I think presenting them to the Committee as separate documents is helpful in seeing what this looks like if each document stands on its own.

So last time we had three documents that were packaged together. You now have four documents in front of you because we added a notice document, based on feedback that we got at the last meeting. I'll walk through that when I get to it; but I thought it would be most helpful to walk through the documents in order.

So the first document that you have in front of you is FIS 22-307. This, as we discussed, last time is the claims process document. As we talked about at the last meeting, the claims process document is really meant to be sort of the governing document for -- for the settlement process. It's the rules of the road, if you will. So the claimant themselves will not have to walk -- go through and digest the claims process document. The claims process document is really for the administrator and the attorneys who are involved, because it's -- it's the rules or, put another way, the law that will govern the settlement process when and if it's approved.

So we made a couple changes to this -- this document, not anything major because most of the feedback was on other documents. But the first change that we made based on feedback at the last meeting is at the top of Page 10. This is the section of the process regarding notice to claimants of what their options are after they get a proposed award from the AG designee.

If the claimant does not agree with the AG designee's position or proposal, or actually I should say when the claimant gets the AG designee's position or proposal, the claimant has the option of accepting that position, of requesting that the -- the process go to the administrator

so that a proceeding be scheduled in front of the administrator. And then the third option the claimant has is to withdraw their claim from further processing, and we just wanted to make clear that if that happens the claimant can then proceed with any pending litigation.

The reason this clarification was important is that if a claimant enters this process and they've already filed a lawsuit, they would have been required to sign an agreement to stay that lawsuit while they go through this process. So we wanted to make clear that as part of option three, as part of withdrawing their claim from this process, they can continue with their litigation. So we just clarified that at the top of Page 10.

Another clarification we made in the claims process document, and we made this clarification throughout the various documents, is found on Page 19. And this is where we defined former YDC resident. We just wanted to make clear that a current resident is considered a former YDC resident for purposes of the statute, because the statute defines a YDC resident as someone who resided at YDC at any time.

So, for example, if someone on a -- say a current YDC resident on a Tuesday claims they suffered abuse either earlier that day or the day before, they -- they fall into this definition and so they -- they could use this process.

Then there's one additional change we made. This was based on discussion with claimants' counsel, and I apologize and I went out of order, but this change is on Page 16. It's about the middle of Page 16, Section 27. This is the language that deals with attorney's fees and costs. We wanted to just simplify this language a bit. Um -- the statute provides that the -- the top attorney fee award can be no more than 33.3%. And rather than have a number of factors that the administrator weighs, we just -- we

figured it would be easier to note that the administrator can take into account a fee agreement that a claimant might have with their lawyer. And that the administrator should just review an attorney fee request to ensure that it complies with New Hampshire Rule of Professional Conduct 1.5. Because that -- that rule already governs attorneys -- governs attorneys on what fee they might take, especially if it's a contingency fee, and that rule is meant to ensure that fees are reasonable. So we thought it would make more sense to tie that type of review to Rule 1.5 than to try to have some, you know, different standard that might be separate from that or have factors that are separate from that.

So those are the changes we made in the claims process document. Again, these were based on feedback from the Committee and also feedback from -- from claimants' counsel.

The next document that you have in front of you is a new document and it's fairly short; but this is FIS 22-308. And this is an additional document we added regarding notice.

At the last meeting of the Fiscal Committee and based on conversations with claimants' counsel, we received feedback that we really needed to beef up the notice section a bit to make sure that we were -- we were going to be doing everything we can. That the administrator would do everything they can to provide notice to any potential claimants that might be out there. So this document -- what this document does is provide guidance to the administrator on providing notice to potential claimants. And it covers mechanisms that were already covered in the statute.

So the mechanisms that were already covered in the statute were notice in newspapers, notice on social media, postings at correctional facilities, press releases and web site postings. And based on discussions with claimants'

counsel, and based on discussions -- discussions at the last Fiscal Committee meeting, we talked about how it would also be helpful to post notice in courthouses and in clerk's offices, in Community Mental Health Centers, and where we can in private offices of mental -- private mental health practitioners. So the idea being that we want to try to cover any potential place where someone who -- who might be a potential claimant that would go through this process might go or might pass through.

So we expect that the administrator will also, you know, when -- when that person is appointed will take a look at this and, frankly, may come up with even additional ideas of where we would post notice; but we wanted to give them as much guidance as we could. So we added this document.

This document also helps to just sort of highlight how important notice is. Because at the end of the day, we could have the best process in the world, and if people don't know about it, if potential claimants don't know about it, it's not going to be helpful to them.

We also recognize that, you know, after so many years, and when we're dealing with such a large number of potential claimants that, you know, we can't make any assumptions about the circumstances, the current circumstances of a potential claimant who's out there. Someone could find themselves at this point in any number of life circumstances, and we want to take that into account when we're trying to make sure we cover all our bases with providing notice. So that is document FIS 22-308.

CHAIRWOMAN UMBERGER: Representative Edwards, you have a question?

JESS EDWARDS, State Representative, Rockingham County, District #04: Yes, ma'am. Thank you. So, Mr. Attorney

General, is -- what would be the process in a few years if -- um -- somebody who had wanted to file a claim or had an argument that they should file a claim, if they -- if they find these notices inadequate? Is there -- is this appealable? Is this -- um -- something that they can come back and say that we were negligent on this is probably pretty comprehensive, but I'm just curious what their recourse and what the outstanding risk would be to the state.

ATTORNEY GENERAL FORMELLA: You know, the statute that was passed provides a deadline of December 31st, 2024. I think that if someone didn't get the notice, their recourse really would be to -- to come back and make -- and the deadline had passed, I think their recourse would be to make an appeal to the Legislature to extend the deadline or to -- to bring their claim in Court. I don't see a lot of exposure for the State on a claim that we didn't do a good enough job providing notice of what's essentially an alternative dispute resolution process. But it will absolutely be our goal to -- to make the notice so widespread that if someone doesn't file a claim, it won't be because they didn't know about it. It would be because they decided not to file a claim.

So the next document you have in front of you, again, now is a separate document, is FIS 22-309. This document is the guidelines for valuing claims. So in this document we made a couple of -- of significant changes based on our discussions with claimants' counsel. And I believe that these changes would represent a good compromise on how to value these claims and these changes are sort of key or a key piece of getting a number of these claimants' counsel on board with feeling that this process would work for many of their clients.

So the first -- the first change is one I've already mentioned, but I'll just note that it also appears in the guidelines. It appears in a couple different places. But

this, again, is the definition of former YDC resident. So there are a couple of places in this document on Pages 3 and 7 specifically that we, again, are just clarifying that a current resident who might be in YDC now or in the Sununu -- what's now the Sununu Center now would be considered a former YDC resident for purposes of the statute and purposes of this process.

The next change you'll see on Page 9, and this is near the top of Page 9, but this is in the frequency multiplier table. In the first draft of this process that we brought before you, you'll recall that sort of the -- the range, if you will, of number of incidents spanned all the way from 1 to 25 or more. And the multiplier went from 1 to 15.

Based on discussion that we had at the last Committee meeting, and discussions we had with claimants' counsel, we've had a lot of -- a lot of exchange about the need to recognize that, you know, for someone who suffers sexual or physical abuse, you know, there may be a difference between one incident and two incidents, but once you get beyond one, based on the harm and the trauma that you suffer, it really is necessary to -- to not require so many incidents in order to get to the top -- the top of the range, as far as the value of settlements goes.

Given that the cap in this process is 1.5 million, I think everyone recognized that -- that it's also important to -- to have some recognition that those who may have suffered more incidents of abuse should get more compensation to a point than someone who suffered less incidents of abuse. So those were the two considerations we were trying to balance when coming up with -- with the frequency multiplier table.

When we had -- were initially discussing this process before we even brought the first draft to you, we had a proposal from certain claimants' counsel that the frequency multiplier table go from only one to eight. So with one

incident you got a certain multiplier. Once you hit three incidents you got the next highest multiplier. And then once you -- that it only required eight to get to the highest multiplier.

We had put that out to -- to sort of the full universe of claimants' counsel and we didn't get feedback one way or another on that at the time. And so that was why we decided to bring our original proposal to you, which had the wider range.

Based on the Committee's feedback, and based on the discussions we've had with claimants' counsel since, I think we have arrived at a good compromise that -- that I think many claimants' counsel generally support and -- and that many claimants' counsel see, and it makes them feel that this is -- this is a process that will work for many of their clients and that is the frequency multiplier you see before you now. It spans from -- from one incident is the bottom category, the top category is ten or more, and the multipliers step up 1, 3, 7 and 12.

So I think what this does is balance -- it recognizes the fact that values of settlement should -- should step up quicker, based on a smaller number of incidents. But that there also should be some range between, you know, one incident and ten or more. So that we are -- we're giving recognition, you know, we're recognizing from a value perspective the fact that, you know, say seven or eight incidents are more harmful than one or two.

As I've said repeatedly throughout this process, there really is no perfect way to do something like this. You know, there's no -- there's no amount of money that really compensates someone for -- for experiencing sexual or physical abuse. And there's never going to be a perfect way at which you can arrive at -- at a value -- um -- or a way to -- to value compensation that someone should receive for that type of harm. What we tried to do with this is put a

lot of thought into it, have a lot of conversations, think about all the considerations at play and arrive at -- at a compromise that does the best we can to balance the different considerations that are there. And I -- I think this table does it and I think that is reflected in the letters that you all have received from claimants' counsel, and it's reflected in conversations we've had with other claimants' counsel who, while they were not comfortable sending a public letter -- um -- they -- they indicated that their clients or many of their clients they thought would participate in this process. So that is -- that's probably the most major change made in the -- in the guide -- in the valuation guidelines.

The other thing you'll notice is that we no longer have two separate tables for sexual abuse and physical abuse. This revised frequency multiplier table applies to both sexual abuse and physical abuse.

A couple of other changes we've -- we've made when it comes to valuing settlements were -- were based, again, on discussions with claimants' counsel. The first one I'll point out -- well, they're both on Page 9, but the first one I'll point out is down in Table 4. These are the aggregating -- aggravating factors for claims for sexual abuse. And this -- this first change is on the value of the aggravating factor associated with photographs or video recordings that might have been taken during an incident of abuse.

As we've talked about this with claimants' counsel, we -- we have talked about the fact that for someone who suffers abuse, the fact that -- that photos or video might have been taken is -- is something that can sort of cause continuous trauma because if you have suffered abuse, even if it's years and years ago, if you have reason to think that there are photos or videos that exist of that abuse, you live in constant fear that those photos or videos could -- could resurface and -- and that -- that sort of

causes a continuous trauma, continuous harm from the abuse you've suffered, even if it's decades ago. So we've increased this aggravating factor from \$50,000 to \$125,000.

The other change we made here is in the -- the aggravating factor that is associated with the duration of abuse. So the length of time during which someone might have suffered abuse. This is found on Page 10. It's near the top of the page. But what we've done in the original proposal, the course of conduct would have had to continue for 24 months for this aggravating factor to come into play. We've reduced that period from 24 months to 12 months based on discussions with claimants' counsel, and we've increased the multiplier from .25 to 2.5. So, again, this is -- I think this is another change that came out of what were very thoughtful and productive conversations with claimants' counsel about different things we needed to recognize when it comes to valuation of these settlement amounts.

The last significant change that I'll point out is on Page 12, a little over halfway down the page. But this was the section related to issues of credibility. In -- in the last version of -- of this document we had a sentence that said that, you know, statements made by a claimant made under oath and notarized would be -- would -- we would presume them to be credible, unless shown otherwise.

With that statement we were just trying -- we were trying to reflect that, you know, we would not assume any claimant who comes to this process is not telling the truth. We would treat every claimant with respect and dignity. But based on discussions with the Committee and looking back at the legislative history, we ultimately determined that we -- we did not need to have that sentence in there and really should not have it in there because it would lead to a concern that we were, say, shifting the burden of proof from the claimant to -- to the state. And, you know, also in looking back at the legislative history

there were specific discussions about that issue and the language regarding treating every claimant with respect and dignity was -- was put in there, I think, specifically as a -- as a way to reflect that value without having language that sounded like it would be burden shifting. And so we, ultimately, determined based on feedback from the -- from the Committee and looking back at the legislative history that that sentence really should come out. So we've pulled that sentence out of this section.

I think, you know, these documents still absolutely reflect the value that we will treat every claimant that comes to this process with respect, with dignity. We'll listen to their stories, take in their information. Certainly not assume anyone is not telling the truth; but at the same time, it's important not to -- not to have language in there that looks like it's a burden -- a language that would be shifting the burden of proof. So that is the -- kind of the -- the final major change that we made to the settlement guidelines.

The last document that you have in front of you is FIS 22-310, and this is the -- the claim packet, which includes the claim form and the worksheet. Um -- we've tried to make a number of changes here to -- to make this more accessible to victims/claimants and to -- to make it more user friendly and to make it even clearer that, you know, we recognize that any victim or claimant will come to this process in a different situation, in different circumstances, with perhaps different capacity to really grapple with a document that no matter how we try to simplify it is going to be somewhat complicated just because we are dealing with -- with, frankly, complicated issues; but we have tried to make it as simple as we can.

The first thing we've done, based on feedback at the last Committee meeting, was just to improve the line spacing. So where -- you'll just notice where that there's a section for writing in content, we've tried to improve

that line spacing. I do think that, you know, it's important to remember that in many cases someone might just attach additional sheets. So they may not rely on what's here to -- to write in what they want to write in. They may have a separate piece of paper where they write -- they write additional information. But we've at least tried to widen that spacing out so it looks a little more -- it just is easier to get the writing in.

We have also throughout this document based on feedback from the Committee, and again, we've had some discussions about the -- the deadline for submitting claims, we've just tried to add and highlight the notice about what the deadline is to submit your claim in various places. So you'll see that throughout this document.

I won't, you know, turn to every place where that appears; but we've tried to put a black box around it, tried to put it in more places so that it is very clear what the deadline is. It's December 31st, 2024.

At the last Committee meeting and in discussions with claimants' counsel and our victim/witness advocates, victim/witness specialists, we had a lot of discussion about the, you know, this issue of what -- what is required versus what is optional. And, ultimately, the way we've tried to address that here is to set this up so that -- that no information is required. That we make it clear to claimants that the more information they submit, the better. That -- that certain information may eventually be required. Obviously, we will need to know someone's name. We'll need to have sufficient identifying information. But that -- that a claimant should just put into this form as much information as they can and that not only is assistance available, but also once a form is submitted, if the administrator determines that additional information is needed, the administrator will contact the claimant and work to -- to get that information.

What we've really done here is -- is put this in the hands of the administrator who will be the third party neutral. It will, ultimately, be up to the administrator to take a look at what's submitted and make determinations as to what additional information is needed to process these claims.

I think that is a good way to balance the need to collect information with the need to make this accessible to victims. Ultimately, in my mind, it is -- it is actually helpful to a claimant or a victim to ask for certain information, even if we're not going to require it. Because what we're doing when we do that is that we're providing -- we are providing sort of the guideposts and the direction as to what information will make their claim stronger, will strengthen their ability to get a higher award.

I think that asking for that information is -- is, I would submit, is helpful to claimants and actually makes this victim-friendly. But we do recognize that we need to provide a fair amount of flexibility in what we would require to be submitted. And so while we -- I think what we've achieved here by making this information generally optional is we have given sort of some guideposts and a roadmap for a claimant on what is helpful and what will help them strengthen their claim, without requiring them to submit it to have their claim processed. And so it really -- it gives the claimant options as to how much they want to bring forward and it puts the discretion in the hands of the administrator who will be the neutral party in this process to determine, you know, what might be missing and what they need to go back and ask for.

So that -- that's reflected in a couple different places in this document. You first see it on Page 2 where we take out any reference to required information and just ask that a claimant do their best to provide as much requested information as they can. And that can also be

seen on Page 4 where even for some of the required identifying information, we note that that might eventually be required, but it's not going to be required in order for their -- a claim to be taken in and for the review to begin and for the administrator to take a look at it and begin the process of reaching back out to the claimant, if necessary, to collect identifying information.

Again, there -- there's -- there's some basic things that we will need eventually for a claimant if they submit a claim and money's going to be paid out on that claim. We'll need to make sure that we know who that person is. We'll need to make sure that we can confirm it. But we want to make this as user-friendly as possible and we want to make it clear that this process will be set up in such a way that everything possible will be done to assist someone in providing the necessary information. So giving them guidance on what information is helpful and also giving them assistance on collecting it. We certainly don't want the collection -- the need to collect information to be set up as a burden or an obstacle.

So those are really the -- and these changes just kind of appear throughout the packet. But those are really the -- the major -- the major change made to the claim packet is setting it up so that it's -- the information is optional.

In the worksheet which, again, is an optional tool for a claimant, I'll just note that we have, again, made the changes necessary to -- to align with the fact that the multiplier is now going to look different and made the changes necessary to align with the fact that the aggravating factor for photographs or video is now up to \$125,000. And the duration, the change to sort of the aggravating factor for the conduct occurring over the -- over a period of time has been -- we've reduced that time period from 24 months to 12 months and increased the multiplier from .25 to .5.

You'll see those two changes on Pages 8 and 9 of the claim worksheet. So, again, they're just identical changes that -- they're identical to the same changes we made in the valuation guidelines.

In addition to the -- or I should just say just to kind of sum up with the changes to these documents, I would say, you know, there aren't a large number of changes to what we presented last time, but I think the changes that were made were some very key changes. The multiplier table was -- was a very, I think, fundamental change made to the valuation guidelines that -- that I think addressed, perhaps, the most significant concern we heard from many claimants' counsel out there regarding -- requiring less incidents to get to the top value. And then shifting the -- the packet and the worksheet from required information to information that's all optional, I think, really goes a long way to addressing the concern that the claim form and the worksheet is too complicated.

Again, there was no -- I think there was no way to really put together the claim packet and the form without having a number of questions and requests for information. And then the reason, again, for that is that by asking those questions and showing claimants what information will be helpful to them, we're actually giving them a roadmap to what can lead them to a potentially higher settlement value. But by making that optional, we're not requiring that all that information be submitted and we're not ending up in a situation where having to answer a large number of questions, submit a large number of information at the outset, ends up discouraging someone from participating in the process or coming into the process in the first place.

So I think the changes we've made here, again, while they're not -- they're not a large number of changes, they're -- they're significant changes that make this process both more accessible and also address the most

fundamental concerns, I think, we heard from many claimants' counsel about how we're -- we're valuing these claims.

We also had submitted to you a letter from the Department of Corrections and Commissioner Hanks was kind enough to take the time to appear before you today to answer questions with regard to how -- how a resident at one of our -- one of our facilities might interact with this process.

So the Department of Corrections did submit a letter to you that just outlined the process they would use for providing notice of something like this to residents and that letter discusses the -- the tablet method. Residents do have access to tablets and also closed circuit television and that letter noted that notice could be published even on a weekly -- notice of this process could be published even on a weekly basis. And that the Department of Corrections would work with the administrator once that person is appointed on the language of that notice.

The Department of Corrections' letter also noted that residents have access to facility libraries and it's through those facilities that they usually -- or they usually use those facilities to contact counsel. And the Department noted in their letter that they could make the list of available attorneys or the published list of attorneys, they could make that available through the tablet system.

The Department also noted in their letter that residents who litigate have access to notaries through assigned counselors and case managers. And that notary services would continue to be available to residents. And that residents have access to a phone system. The Department did note that the administrator would need to be

able to take -- accept collect calls, but I'm sure we can work with the administrator to make that happen.

The one thing the Department did note is that residents do not have access to -- to the Internet. And I -- and that's something that would not change with this process. But I think as the Department notes in their letter there are a number of other tools that can be made available to ensure that residents will -- will have access to getting their claim forms in. And it -- we may be able to work with the Department of Corrections to -- to find some way to allow some type of electronic interaction with -- with this -- with this process. But we'd have to have further discussion about that with the Department and we'd have to, of course, balance the need to make this accessible to residents while not -- not making any fundamental changes to current restrictions the Department of Corrections has in place, because I -- I'm confident that there are very good reasons for -- for why the Department of Corrections has things set up the way they have it currently set up.

So the Commissioner of Corrections is here again to answer any further questions on that if the Committee has questions; but I just wanted to outline what the Department had provided in their letter.

In addition to the changes I've just noted here, we did, you know, also try to go through these documents and make any typographical errors. I'm hoping we caught all of them. If we -- I think there were a couple that we missed that Representative Lynn has already pointed out. But we will make sure that those are, if the Committee would permit us, to make only typo type corrections, not anything else. So we have not asked for permission to make, you know, non-substantive changes or anything like that. I would propose that the Committee give the Department of Justice -- um -- the authority only to make what would be -- what would be typographical corrections so that we

can address any typos that we might find. But we can also bootstrap that with the administrator if the administrator finds anymore significant tweaks that are needed, the administrator, once that person is appointed, will have the authority to come back to Fiscal and ask for those changes.

And as I mentioned earlier, I think that the administrator coming back to ask for those changes probably gives even more comfort to claimants, because the administrator will be -- will be the objective third party in this process.

With that, those are -- those are the changes we've made. I just want to say I really appreciate the conversation we had at the last meeting. I think we got a lot of good feedback. We had some really good discussion on how to make this process better. I really appreciate the conversations we've had with claimants' counsel, especially since the last meeting. I think we had very thoughtful and productive discussions.

I want to particularly recognize Senior Assistant Attorney General Jenn Ramsey whom you all know who is here today. I think she has done an excellent job in really taking the lead in facilitating those discussions. She spent hours -- hours with these guys really trying to -- to find solutions where we can to, again, make this process one that is not perfect. It will not work for every claimant. But I think what you have before you is a process that can work for many claimants, many victims, and -- and give them at least an option that is far more victim-centered and trauma-informed than traditional litigation.

I think that's reflected in the letters that you've received from some claimants' counsel. I think that's also reflected in the indications we've gotten from claimant's counsel whom while they haven't submitted a letter, do

believe they have many clients who can use this process. So, with that, I'm happy to take any questions.

CHAIRWOMAN UMBERGER: Are there any questions from the Committee? Representative Lynn.

ROBERT LYNN, State Representative, Rockingham County, District #07: Thank you, Madam Chair. Um -- yes, I -- first of all, I want to say I think -- I think you've done an outstanding job in this. The -- I -- I have no -- I have really no substantive issues. And with regard to the typo kind of things, I mean, that's just -- that -- that -- that -- it's entirely -- it's -- it's very easy to see how that kind of thing can happen. And I personally, I don't know about the rest of the Committee, I have no problem at all with saying that non-substantive typo corrections kind of things should be able to be done.

If I could, though, I'd like to ask just a couple of questions and I refer specifically to FIS 309, which is the guidelines. And, in particular, my understanding, I base my -- this question on a discussion I had with Attorney Sculimbrene who I see in the back of the room, and I think you probably discussed it with him, also.

One of the things that he points out, and I think it's a fair point to make, although I'm not quite sure what the -- I'm not suggesting that necessary that changes have to be made. I'm not suggesting that; but I do think it's something that ought to be sort of on the record, so to speak, and something that the administrator ought to take into account is that in the categorization of the levels of abuse --

CHAIRWOMAN UMBERGER: What page are you on?

CHIEF JUSTICE LYNN: I'm on Page 5 of 309. In the categorization of -- of abuse -- um -- well, and actually,

I should say maybe also it goes back to Page 2, the -- the point -- Attorney Sculimbrene points out I think correctly that there, at least, arguably could be situations in which the abuse -- in which sort of a similar level of abuse of a male victim versus a female victim might be treated differently. And, particularly, what he points out is that in terms of digital abuse of a female, it's almost any touching of female genitalia, is very likely to involve some kind of penetration which would bring it into category A. Whereas, with a male victim, a touching of, let's say, a touching of a male penis would not involve -- would not involve penetration which would therefore mean it would be in category C. And depending on the circumstances, those could -- there could be -- it's easy to imagine situations in which the -- that the same sort of level of abuse would be treated differently.

I'm not sure there's a good answer to that, but I think it's something that the administrator, you know, ought to take in mind, perhaps in evaluating -- in evaluating individual claims. I don't know if you have any comment on that.

ATTORNEY GENERAL FORMELLA: Yeah. I think I would -- I would agree that that -- that is something the administrator could take into account. And to the extent, you know, I don't have any changes that I feel like I could sit here and comfortably say I think would address that that would be appropriate. But I would say -- I would again kind of say that the administrator, once that person is appointed, would have the ability to come back to this Committee and request changes and there may through further discussion be something that could be developed on that front. But we did discuss that issue with Attorney Sculimbrene and we were not able to arrive at any changes that we thought could address that issue. But -- but I -- I certainly -- the point was -- was taken and I think it's something that deserves potential future or further consideration.

REP. LYNN: May I ask one final question? Then the other thing, and it's a little bit different but somewhat related, you may recall that I had asked a question the last time about whether there was -- there was really any difference with regard to -- I'm back on Page 2 -- between category C, intimate sexual touching, parentheses masturbation, and then D, other touchings. And I think Miss Ramsey very correctly pointed out that there is a difference in the definitions in the guidelines. And I -- and I completely agree with the definition distinction she's pointed out; but what that -- what that does -- that doesn't completely address is that they're now -- there are overlaps between Category C and D.

In other words, there's some things that could be categorized either as falling into D or falling into C and I, again, assume that the add -- that, you know, whether it falls into D or C in some sense would involve the administrator determining how -- how significant was this particular incident of abuse. And, I mean, is that your understanding, also?

ATTORNEY GENERAL FORMELLA: Yes. I think that's -- you know, yes. I think that's an area where the administrator will -- will just have to make some determinations based on the specific facts of a case.

REP. LYNN: Thank you. And then -- I'm sorry. Just the only thing I want to point out was just the -- the -- I saw the typos if that's okay.

So I guess I would say -- um -- in terms of on, again, on Document 22-309, the -- the typos that I think need to be corrected, and I'm -- oh, no, I'm sorry. Should be on 310. I'm sorry. FS -- FIS 22-310. I think the typos that need to be corrected are on Page 17 -- uh -- in the -- in the number three. Um -- it says how old were -- how old you were you. I think the last you should go.

CHAIRWOMAN UMBERGER: Uh -- I think the first you should go.

REP. LYNN: Maybe the first you should go.

CHAIRWOMAN UMBERGER: Yeah.

REP. LYNN: Then on Page 5 of the -- the worksheet one. Yeah, the worksheet one, yeah. I think there it -- it says we're talking about category C, but the lines say right in category A, and it really -- really in the first line it should be write the number of incidents of category C. The second line should say write the number of incidents of category D, rather than B. The third, one write the number of incidents of category E, rather than C. And then the next line down and incidents of D and E. I think that's -- I think that's right. That's simple. And I think there was one more that I pointed out to Miss Ramsey. But just -- oh, in the -- on page -- the next to last page in the notice of filing.

Again, I think there's just a typo on the second line there where it says I have filed a claim. The word "for" is there but shouldn't be there. I have filed a claim with the administrator I think. So there's just an extra word there.

Other than that, as I say, I think this is -- I think you guys have done an extraordinary amount of work and it's -- it looks -- it looks very good to me, and I plan to vote yes to accept it.

CHAIRWOMAN UMBERGER: Are there any further questions? Senator Rosenwald.

CINDY ROSENWALD, State Senator, Senate District #13: Thank you, Madam Chair. I do have a few questions. Um -- good morning. Thanks for being back here.

ATTORNEY GENERAL FORMELLA: Good morning.

SEN. ROSENWALD: First, I'd like to ask how much you expect to pay both the administrator and the private law firm that you've hired out of the fund? I'm wondering how much money will actually be available after those expenses to settle claims?

ATTORNEY GENERAL FORMELLA: So, the -- the administrator is -- can be a part-time or full-time employee and paid at the same salary or no more than a Superior Court Judge, I believe, is what the statute says. So -- and so if -- if the administrator's full-time, they'll probably be paid around the same salary as a Superior Court Judge. If they're part-time, they'll be paid at whatever that same rate would be. So calculate that out to be an hourly rate. They'll be paid around that rate.

The Judicial Branch may need to hire additional staff to help the administrator, which would come out of the fund. So, you know, Superior Court Judge, I believe, makes around 170, \$180,000 a year. Then if you add in benefits, I think it would be a few \$100,000 for administrator and their staff. I don't expect to be more than a million a year, but probably in the hundreds of thousands per year.

And then as far as the outside counsel we've retained for the -- the settlement process, I don't expect that that would be more than a million dollars a year. Um -- it's gonna sort of depend on how many -- how many claims we get in and what this really looks like as we ramp up. But we have not -- I don't expect that we would spend more than a million dollars a year on outside assistance. And even that is -- I'm not saying that we think it would approach a million a year, but to give you an estimate that with some certainty I just want to be very --

SEN. ROSENWALD: So total of up to 4 million between the administrator and the law firm because it's a two-year process.

ATTORNEY GENERAL FORMELLA: Yes.

SEN. ROSENWALD: Okay. Thank you. Can I -- thank you.

CHAIRWOMAN UMBERGER: Let me just -- let me just say one thing on that. It may go longer than two years, because two years is the application process.

SEN. ROSENWALD: Hm-hum.

CHAIRWOMAN UMBERGER: And so if someone applies in December of '24, that may, in fact, run a little bit longer.

SEN. ROSENWALD: Another year.

CHAIRWOMAN UMBERGER: Yeah or, you know, some amount of time. So I think that the Attorney General is -- is correct that we're probably looking at 4 million even though it may --

SEN. ROSENWALD: It could be more than two years.

CHAIRWOMAN UMBERGER: Right.

ATTORNEY GENERAL FORMELLA: And we'll, of course, try to keep that number as low as we can.

SEN. ROSENWALD: Of course. So the last time you were here you told us that you had in mind an average maximum award of between six and \$700,000 or, in other words, less than 50% of the statutory cap. Um -- and that you made the multipliers and aggravating factors work to achieve that. Are you still imagining that average maximum award of

700,000 with your revision or do you have a new number in mind?

ATTORNEY GENERAL FORMELLA: I think what I would say to that is that's always been a very rough calculation. So, you know, when we were going through the legislative process, as part of figuring out what the caps and the legislation would be, we did -- we did the research to try to determine an average settlement award amount for similar claims around the country. And that's -- that ended up around 700,000. That was just one factor in the -- in the original document we submitted to you is trying to stay roughly within that range, give or take, even 100,000 or maybe even a little more. I don't think the changes we've made will -- will fundamentally alter that. But that's also, again, because it was based on some pretty rough calculations and based on only some information about some claimants. It's certainly not -- not an exact science.

SEN. ROSENWALD: Can I continue?

CHAIRWOMAN UMBERGER: Yes, you may, please.

SEN. ROSENWALD: Thank you.

CHAIRWOMAN UMBERGER: Go ahead and ask all your questions.

SEN. ROSENWALD: So based on all the information you've reviewed internally, what do you think the median award will be and what do you think the most frequent award will be?

ATTORNEY GENERAL FORMELLA: It's -- I apologize, Senator, but I really don't think that's an estimate I can give you, because even the estimates we can give would be based on just looking at, say, a spreadsheet list of numbers of incidents that -- that claimants might allege. But it's really not going to be until we -- until we have

individuals who -- who tell their stories and really tell us more details about what happened to them, and we have more details about the information they have surrounding what happened to them, it's not going to be until we get that that we could start to determine what -- what those numbers might look like.

There's still just a lot we -- we don't know. Again, because, you know, this is an opportunity to remind everyone of the parallel process we've got going on the criminal side while we're doing the criminal investigation. You know, we have looked deeply into allegations on the criminal side that are within the statute of limitations and where we think we might be able to bring criminal charges with many, many people who would be outside of that statute of limitations. And so we haven't -- we haven't conducted a full criminal investigation. So we just have less details for that -- that population.

We also only have -- we have some details about some of the claimants on the civil side, less details about others. So there's -- there's enough left that we don't know that I'm just not able to give you a good answer to that. These are very -- what we've been able to give so far are very rough estimates when it comes to averages. But when it comes to median and what would be the most common number, it's just -- it's, unfortunately, not something I can estimate.

SEN. ROSENWALD: I just wonder because we need to think how far this hundred million dollars or ninety -- 96 million is actually going to go. It seems like --

ATTORNEY GENERAL FORMELLA: Absolutely.

SEN. ROSENWALD: -- your Department would have been able to look at all of the alleged crimes and come up with these numbers based on where you think it's going to land.

But in another area, I know that you've changed the frequency multipliers, and it looks when I see your spreadsheet that it would take ten genital, anal, or oral rapes to hit the cap. There's a big jump between 9 and 10 rapes. It's still a lot of rape. Um -- and under your new duration multiplier going from 24 months to 12, victims would hit that cap sooner if the rapes occur over a longer period of time. But even going back ten years, which was all the information I could get out of the Child Protection Division, the average length of stay for a committed youth was only seven months. So the short duration looks good on paper, but it's not likely to be applicable to the majority of claimants.

So I'm -- I'm really wondering and struggling with why you would award more money to someone who had been repeatedly raped over a longer period of time than over a shorter period of time. Because it seems counterintuitive, and I'm wondering what the Department's rationale is.

ATTORNEY GENERAL FORMELLA: Yeah, I think there's a -- there's a couple issues in there. So I'm going the try to hit all of them. And if I miss any, please just feel --

SEN. ROSENWALD: Thank you.

ATTORNEY GENERAL FORMELLA: -- free to follow-up.

SEN. ROSENWALD: Thank you.

ATTORNEY GENERAL FORMELLA: The first thing I would just note on the frequency multiplier is that, you know, a claimant could end up hitting the cap with -- with only five or six of the -- of the worst incidents or even four or -- four of the worst incidents, because they might also have additional incidents of -- um -- I hesitate to use the word less severe abuse, but let's just say abuse that falls in a different place on different facts that a claimant or

victim would bring to this process. So that's just the first thing I would note. You know, you certainly don't have to get to ten and have a multiplier of 12 to hit the cap, depending on what -- what incidents or what types of abuse you're alleging.

I -- we have some information on the average length of stay, I think, which would show that, say, prior to ten years ago the average length was a lot higher than seven months. I might even ask Senior Assistant Attorney General Ramsey to come up to talk about that a little bit because I do think we have -- we have some of that info.

So I do think that that longer duration would come into play, given that many of these claimants were from long enough ago when the average length of stay was longer. We've seen that length of stay come down over time. And in recent years, especially the last ten, the average length is -- is a lot lower. But if you start to go back in time, you'd see that the average lengths of stay at YDC were a lot longer.

SEN. ROSENWALD: If you could share that with us, because --

ATTORNEY GENERAL FORMELLA: Absolutely.

SEN. ROSENWALD: -- Director Ribsam told me that his information only went back to 2011.

ATTORNEY GENERAL FORMELLA: Yeah. We can absolutely share that. And then on, you know, a higher value for a longer duration, again, there's no -- there's no, what I would say, is a correct way to value these things. You know, we try to take into account the research that's available. We take into account our discussions with claimants' counsel. But I think the reasoning for valuing incidents at a higher level or at least having the aggravating factor if they occur over a longer period of

time is just that there -- I think there's research to show that if, especially a child, if they suffer -- even if they suffer the same kinds of abuse, if that occurs over a longer period of time, so it doesn't occur say within two months and then it's done, it occurs once, and then it occurs again a couple months later. Again, a couple months later. Again, a couple months later. That that -- that often is -- is more harmful and causes longer lasting trauma or a different type and a more significant type of trauma.

Again, there's no though perfect -- there's no exact science to this, because every person is different, and every victim is impacted differently by the harm they suffer.

So I wish I could tell you that we made that change and it would work perfectly and it perfectly fits every single victim. I think on the whole it's a change that is warranted because on the whole, if you play this out over -- over an entire population of victims, there is research to show that the trauma is worse if it occurs repeatedly over a longer period of time.

So that -- that was the reasoning for that. But I do acknowledge that -- um -- there's no exact science to this. And that every, you know, it -- every victim the harm plays out in different ways for that victim and the impact is -- is different.

SEN. ROSENWALD: But 12 months is the -- the magic line?

ATTORNEY GENERAL FORMELLA: I -- I wouldn't say it's a magic line. I would say it's our best attempt at -- at drawing a line. But I would never sit here and tell you I think that's -- that's a magic line.

SEN. ROSENWALD: Thank you. And, finally, I share Representative Lynn's concern about the -- this process and the way it contemplates gender and anatomy. So -- because boys' anatomy makes it more likely that the assault would be category C for masturbation, rather than -- um -- the anal or genital rape or oral rape. There's so many more boys at the Sununu Center that -- um -- the A and B awards for boys are less likely to occur, and the higher awards for girls are less likely to occur. But I'm not sure that the victim's experience of trauma is different and matches up with the distinctions on monetary award, and I wonder if you could just comment on that.

ATTORNEY GENERAL FORMELLA: I think, again, the best response I can give to that is, you know, we just arrived at these distinctions based on the various research that's available and the conversations we've -- we've had with all involved. I think, as I said to Representative Lynn, you know, I think there's room for the administrator to take that into account, and there is certainly room for the administrator who will be an even more objective third party neutral in this process to take a look at that, listen to what claimants' counsel may have to say on that front, and if the administrator determines that they should come back and request a change to that, the administrator will be able to do that.

SEN. ROSENWALD: Thank you. Thank you, Madam Chair.

CHAIRWOMAN UMBERGER: Are there any further -- yes, Senator Soucy.

DONNA SOUCY, State Senator, Senate District #18: Thank you, Madam Chair. Good morning.

ATTORNEY GENERAL FORMELLA: Good morning.

SEN. SOUCY: I apologize. I'm sitting in for Senator D'Allesandro. So I wasn't at the previous meeting,

although I did refer to the handouts and certainly have reviewed them. But I did have two questions. One was about your characterization of trauma-informed and a victim-centered process. And I wondered if in designing the program you had consulted anyone beyond those advocacy groups or victim advocates that are not employed by your office? Have you gone beyond just the office?

ATTORNEY GENERAL FORMELLA: So, certainly, as the legislation was going -- was going through the process, we consulted with -- with a number of outside advocacy groups. The legislation contemplates really negotiating and discussing this process with claimants' counsel and -- and our victim/witness advocates within the Department of Justice.

You know, I will say our -- our victim/witness advocates work with -- with all of these outside groups and they do -- they do an enormous amount of amazing work with all these groups, and I think they -- they're in a very good position to -- to provide feedback that takes into account the feedback that many of these groups would provide.

We also -- um -- again, looked at outside research and -- and other sources. We did not, you know, have extensive discussions with -- with -- with outside groups beyond our victim/witness advocates. Again, because they were -- they work with all these groups. They're in a great position to -- to take that type of information into account and also because that's what was contemplated by the legislation.

SEN. SOUCY: Okay. And then I just have one additional question, if I may, and this one is about sort of the -- I think I would view as a challenge but within the Department of Justice the role of having to defend the state on the criminal side in these cases, and then also prosecuting on

the civil side, and my question is about how you segregate information.

So you've gleaned information at this point, I'm sure, through discovery on the criminal side that's informed the process. I'm wondering how you would protect claimant information that might be involved in other cases, even if it's unrelated to this process, and if you've contemplated going forward any segregation for that information of the claimants.

ATTORNEY GENERAL FORMELLA: Yeah. So within the Department of Justice we have very strict walls that are -- that are in place between the criminal side of this process and the civil side of this process. And, generally, obviously, I as the Attorney General have access to both and I try -- and it's just a challenge every Attorney General has had to confront over the years. You know, I have to be very disciplined and do my best not to let that information cross the walls.

The determination has been made and it's always been the office's practice that, ultimately, the Attorney General is the one who has to make the decisions at the top level and resolve conflicts. So -- so they have to have access to both sides. But -- but the information really is segregated and neither side has access to the other side's information.

The caveat to that is that defendants in a criminal case have -- have, of course, certain rights to access information that may be exculpatory and relevant to their case. So, you know, we -- I wish I could sit here and tell you that I know exactly how that's going to play out in cases where we've charged -- we've brought criminal charges. I don't. I don't know exactly what information may ultimately have to make its way into a criminal case. But -- but we will certainly do everything we can to keep any sensitive information that -- that could cause harm to

a claimant if it became public to keep it -- keep it private. We'll do everything we can within the confines of a defendant's constitutional rights on the criminal side.

At the end of the day, we'll have many, many claimants for whom we cannot bring criminal charges, and so we won't have that dynamic in which there's a criminal case that's relevant to their allegations going on at the same time that they might be either bringing a claim through this process or -- or pursuing their claims in court. But the best answer I can give is that we have strict walls within the Department to segregate the information. And that while some of that information may have to cross over in a criminal case based on the requirements that -- that exculpatory information be provided to a criminal defendant, we'll do everything we possibly can to keep sensitive information private.

SEN. SOUCY: And could I just ask one follow-up to that point --

CHAIRWOMAN UMBERGER: Certainly.

SEN. SOUCY: -- General Formella? Would you see a scenario where, perhaps, the administrator once appointed and into their responsibility might come before this Committee or recommend additional legislation to try to further ensure privacy for claimants so that that line is a little bit brighter?

ATTORNEY GENERAL FORMELLA: Sure, I could envision that, especially as this process begins to get set up and implemented and the administrator gets their arms around it. That could be the type of thing the administrator comes back to this Committee or -- or brings forward recommendations to the Legislature on.

SEN. SOUCY: Thank you.

CHAIRWOMAN UMBERGER: Or this Committee requests his presence or her presence.

ATTORNEY GENERAL FORMELLA: Right.

CHAIRWOMAN UMBERGER: I don't want to make an assumption. Uh -- Representative Edwards, you had a question?

REP. EDWARDS: Thank you, Madam Chair. And I'm gonna -- I'm gonna basically leapfrog off of what Senator Soucy just said and take this in a little bit different direction than the rest of the questions have been. But as I -- as I look at Section 310, the Document 310, Page 6, at the bottom of that there's a very nice concise executive summary of the legal notice-privacy and confidentiality. And I -- I -- I view this -- this write-up as being necessary but perhaps not sufficient.

And so I'm -- I'm -- I'm curious, particularly listening to the response to Senator Soucy's questions, about the sharing of information within the Department. Whether or not there should be an explicit written privacy policy, which is the way we did it in the corporate world, we would write a privacy policy that was probably multiple pages in length. And one of the things that we would touch upon in a privacy policy is the -- the extent to which sharing would -- uh -- of the data within the company between third party agencies could be done or had to be protected and stopped; right? So there's a sharing component of it that I think doc or doctor -- excuse me -- Senator Soucy has touched on.

Then there are two other parts that just jump out at me as things that you might find in a privacy policy. Um -- one would be the individual who's filed a claim. What rights do they have to request the termination of their claim and the deletion and destruction of any information that they had provided to the State? It's basically in

Europe it's referred to as the right to be forgotten. And I'm just curious if we've anticipated that we might ever have a claimant want to just withdraw and have any state knowledge of what they've provided destroyed. So that -- that's the second aspect.

And then the third, typically in a privacy policy it will state specifically what a retention period might be. How long will this information be retained by the State? You know, ten years after the settlement? Twenty years after the settlement? At some point we should be able to put a stake in the ground and say after this date this information -- this is the type of information that shall be destroyed.

Now, certainly, there's probably always going to be some component of the information that needs to be retained, but parts of it that can be expunged and destroyed ought to be as a matter of programmatic policy.

So -- so, again, I want to come back and I want to say this is a really nice Executive Summary of the privacy and confidentiality limits or rules of engagement. And I'm just curious the extent that there's maybe a supplemental privacy policy that's broader and deeper than -- than what -- what this does.

ATTORNEY GENERAL FORMELLA: So I think to the extent that we're talking about, you know, the sharing of information within the Department of Justice, we -- we have very routine just sort of procedures on how we handle -- how we handle that when someone is --

REP. EDWARDS: Okay. In the interest of time, I just want to keep the question simpler, which is do you -- do you see that there's a need for another document around the privacy issues that are broader and deeper than this statement on Page 6. And kind of more of a yes or no. And then there's plenty of time to talk details, but.

ATTORNEY GENERAL FORMELLA: Yes. I think there certainly could be room for that. I would just note without taking up too much time, I promise, that we discussed this in the legislative process and I know there's -- there was a balance between the need to main privacy and also maintain generally the access to records of all of this that the public may have an interest in. And I think this -- this is based on that balance we, ultimately, arrived at the legislation. But -- but I think, yes, this will warrant further and I think continuing conversation as this process plays out as to whether we need to beef this up.

CHAIRWOMAN UMBERGER: Representative Wallner.

MARY JANE WALLNER, State Representative, Merrimack County, District #10: Thank you. Um -- Mr. Attorney General, while I was sitting here we received a letter from Commissioner Hanks. And in her letter - I've been trying to skim it really quickly - in her letter she brings up a couple of concerns. One about the -- at the prison they cannot use Internet for filing these claims and the other being around the phone system used by the residents at the prisons and that they would only be able to make collect -- collect calls. And I wondered if you had discussed with her how you will proceed with those two issues?

ATTORNEY GENERAL FORMELLA: Yes. So -- so the collect calls piece I think we can certainly work with the administrator on that to -- to -- um -- and charge the administrator with working with the Department of Corrections to -- to facilitate -- um -- facilitate a resident's ability to make calls to the administrator. So I think we certainly will -- we can work with both the administrator and Department of Corrections on that.

On the access to the Internet piece, I think I mentioned earlier in my remarks, you know, I'm not sure there's a way to -- to alter that policy on residents not having access to the Internet. But, you know, we certainly are willing to and will, you know, discuss with the Department of Corrections, discuss with the administrator once that person is appointed, whether there's some other way to enable a resident to interact with this process electronically. I don't know if there will be. But if there is a way to do it that doesn't raise concerns with the Department of Corrections and that is possible, we'll certainly do it. So I -- I'm committed to working on that.

REP. WALLNER: Thank you.

CHAIRWOMAN UMBERGER: Yes, go ahead.

REP. WALLNER: Thank you. I wondered if Commissioner Hanks has -- would want to say anything about these two areas of concern or any other area of concern.

HELEN HANKS, Commissioner, Department of Corrections: I don't know if it's morning. So maybe good afternoon or good morning. Thank you for that opportunity. For the record, Helen Hanks, Commissioner of the Department of Corrections, and thank you for those -- um -- two specific questions.

The Internet will be a challenge because of our requirement to meet what's called CJIS, Criminal Justice Information System requirements, and not allowing people who are incarcerated onto our Internet. We do not have a separate resident network. And then we have a significant number of individuals incarcerated for offenses, aggra -- excuse me -- sexual offenses who have computer access prohibited as part of their sentencing document.

Um -- we can find a path forward, I'm sure. I'm not sure it will be through the Internet. And we do have

individuals who, obviously, are filing claims on a daily basis and we do have notaries and we are still helping them process paper. And so that is the fastest, most efficient way. But to ask correctional staff, for example, to then be a steward to file E-claims would put, I think, both the claimant and the employee in an awkward situation.

So I think -- do think access to the Internet will be a challenge. If there was a hypothetical conversation around a legal liaison, we could set up an office space and give that person as a steward to the administrator access to the Internet. But we want to make sure that the person facilitating Internet access has control of the Internet and is an impartial third party to the process. So that's the first response I would make with regard to the Internet.

The phone system, I've been trying to contemplate a solution to that. Because, certainly, we do not want to create an impediment to contacting the administrator. And as we allow individuals to have attorney calls, I'm working with our current vendor on what that might look like to create a here is the phone number, here's a point-to-point access on the phone system that does not allow for a charge on either party. So I think that is something that we can overcome and establish a plan with the DOJ and the administrator on that point.

So I hope that provides some additional information and certainly willing to answer any other questions or follow-up.

CHAIRWOMAN UMBERGER: Senator Rosenwald, you have a question for Commissioner Hanks?

SEN. ROSENWALD: I do. Thank you, Commissioner Hanks or General Formella, you had discussion with the county houses of corrections to see if they would have the

same -- um -- good access to notaries and telephones, even collect, as the State facilities?

MS. HANKS: Certainly I have not. I know some information about who has similar systems and who do not, but I would refer to General Formella on that.

ATTORNEY GENERAL FORMELLA: We have not, but we could certainly do that.

CHAIRWOMAN UMBERGER: Thank you, Senator Rosenwald. That was one of my questions as well. Because, yeah, we -- we did not discuss at all the county correctional facilities. And I think that we need to make sure that -- uh -- that that's included.

Okay. I do have two questions, besides that one. First of all, I notice that you are identifying One Granite Place as the place for the administrator. Are you going to be in that building by then or is the administrator going to live there all by him or herself?

ATTORNEY GENERAL FORMELLA: Well, I think right now the courts are over there.

CHAIRWOMAN UMBERGER: Okay.

ATTORNEY GENERAL FORMELLA: So that -- yeah. So I don't know if we'll be in there by then, but we'll be in there eventually. But given the Administrative Office of the Courts is over there, that's why the administrator is going to be there because they're working in the Judicial Branch.

CHAIRWOMAN UMBERGER: Okay. Fine. I just -- that was good news to me actually. Thank you. And my other question is, is that we had talked about -- um -- putting the claim form up on the web with a fill-in the blank kind of thing. Is that progressing?

ATTORNEY GENERAL FORMELLA: It will be progressing, yes.

CHAIRWOMAN UMBERGER: Okay.

ATTORNEY GENERAL FORMELLA: We've had discussions with -- with the court system about that.

CHAIRWOMAN UMBERGER: Okay. So you're hoping to have that done by the first of December or before?

ATTORNEY GENERAL FORMELLA: Certainly, I think, January 1 is when the claims window opens. So, certainly, by the time the claims window opens on January 1, yes.

CHAIRWOMAN UMBERGER: Okay. All right. Okay. Seeing no further questions I would entertain a motion to approve FIS 307, 308, 309, 310, and add the comment that the AG can correct typos in the document without coming back to the Fiscal Committee.

****** GARY DANIELS, State Senator, Senate District #11: So move.

CHAIRWOMAN UMBERGER: Thank you.

REP. LYNN: Seconded.

JAMES GRAY, State Senator, Senate District #06: Madam Chair.

CHAIRWOMAN UMBERGER: Yes.

SEN. GRAY: To that motion about correcting the typos, it would seem prudent that they should either get reviewed by the Chair or approved by the Chair -- um -- as a matter of course just so that there is a connection with -- with

this Committee. I was wondering if that modification in the motion can be made.

CHAIRWOMAN UMBERGER: It certainly can.

SEN. GRAY: And a decision made between approval or notification.

CHAIRWOMAN UMBERGER: Okay. I have -- I have no problem with that. I love this document. I've read it so many times. I, obviously, can't see typos in it, so. Is there any further discussion? Senator Bradley.

JEB BRADLEY, State Senator, Senate District #03: Thank you very much, Madam Chair. I think that this is a very reasonable way to move forward. I appreciate, in particular, the changes to the multiplier as I think that really solidifies the process in the document. I think it's also important, we haven't really discussed the letters that we've received, but going back to when Representative UMBERGER filed the legislation, I don't think it ever was envisioned that this was going to work for absolutely everybody. That there were still some claims that were going to go forward through the court system.

And so I go back to the letters that we've received and I think it bears note that the letters talk about the fact that, and these are from the attorneys that represent some of the claimants, that some of the issues have been resolved by the process and so that's, you know, obviously, to your credit and to the credit of the attorneys, some of whom are here today. But they also talk about that it's a fair way, and I'm going from Tony Sculimbrene's letter, a fair way to resolve liability for many but not all of the children that were abused by the State authority.

That is consistent, I think, with the process that was outlined in the Legislature, and then also Mr. Rainboth's letter says something very similar. We strongly believe

that if the administered is efficiently and equitably, a large majority of the claimants will strongly favor the program for two main factors; time and process.

So I think while no legislation, this included, is ever perfect for everybody, it's -- it's a very reasonable way of proceeding. I think it's also important that we've heard from not only yourself, but in the conversations that you've had with some of the claimant attorneys a process for choosing the administrator. That's going to be very important, and I think the commitment that's been made today that the administrator can come forward, either to the Fiscal Committee or potential even the full Legislature -- um -- with possible changes based on, you know, what happens, I think is also effective.

So, I think, you know, you've done a really good job. I think, you know, I want to give a shout out to Tony Sculimbrene and a couple of other the attorneys that worked long and hard with your office, with Miss Ramsey. So I think it's a reasonable way to proceed and, hopefully, bring closure for a number of people that just having to rely on the court system is -- is not going to work for them, because of what was outlined in terms of time and process. So I am pleased to second Senator Daniel's motion.

CHAIRWOMAN UMBERGER: Okay. I think you have to third it.

SEN. BRADLEY: Okay.

CHAIRWOMAN UMBERGER: Representative Lynn, I think I heard that in my ear but that's okay. Okay. Are there any further discussions? Seeing none, will the Clerk call the roll.

TRACY EMERICK, State Representative, Rockingham County, District #21: Emerick votes yes. Representative Erf.

KEITH ERF, State Representative, Hillsborough County, District #02: Yes.

REP. EMERICK: Representative Lynn.

REP. LYNN: Yes.

REP. EMERICK: Representative Wallner.

REP. WALLNER: (Inaudible).

REP. EMERICK: Representative Daniels.

SEN. DANIELS: Yes.

REP. EMERICK: Representative -- Senator Bradley.

SEN. BRADLEY: Yes.

REP. EMERICK: Senator Gray.

SEN. GRAY: Yes.

REP. EMERICK: Senator Rosenwald.

SEN. ROSENWALD: No.

REP. EMERICK: Senator Soucy.

SEN. SOUCY: No.

REP. EMERICK: Representative Umberger.

CHAIRWOMAN UMBERGER: Yes.

REP. EMERICK: Madam Chair, the vote is seven yes, three no.

CHAIRWOMAN UMBERGER: With the vote of seven in favor and three opposed, FIS 307, 8, 9 and 10 pass.

***** {MOTION ADOPTED}**

CHAIRWOMAN UMBERGER: So I would -- I would like to just say that -- um -- I know and I think we all know that -- uh -- if we had a million years to try to get this process absolutely perfect we might make it. Uh -- we've had roughly three months. And I do want to stress that the person that is appointed as administrator will relook at this, see if there are things that he or she thinks need to be adjusted, and -- um -- and we're open at any time on the Fiscal Committee for the administrator to return.

But I truly thank the AG's Office for all of the hard work and -- uh -- both in preparing the legislation, as well as preparing the process. And I know that -- uh -- you and Jennifer have spent untold hours in trying to -- to get this to the point where it is today. So I -- I truly thank you.

And -- um -- I guess that as far as people in YDC that have been abused, this is another step forward without spending time and money trying to go through the court. And as I think we all understand, if the people go through the court, we're looking at probably years and years before that process can be completed. But for those that feel very strongly that this process -- this alternative process is not going to work for them, then, yes, they should, in fact, go to court. But I thank you and I thank all of the folks on the Fiscal Committee, and I will see you Friday for our --

SEN. ROSENWALD: You'll see us.

CHAIRWOMAN UMBERGER: Yeah.

SEN. ROSENWALD: Some of us on pre-Fiscal.

CHAIRWOMAN UMBERGER: For our regular Fiscal Committee meeting, and I know that General Formella will be back and I know that Commissioner Hanks will be back. So I look forward to seeing you all on Friday and Fiscal is adjourned.

ATTORNEY GENERAL FORMELLA: Thank you.

(The Fiscal Committee meeting adjourned.)

C E R T I F I C A T E

I, Cecelia A. Trask, a Licensed Court Reporter, do hereby certify that the foregoing is a correct transcript from the YouTube video/audio recording of the Fiscal Committee meeting on Tuesday, September 6, 2022, and has been transcribed to the best of my professional skill and ability.

Cecelia A. Trask, RMR, CRR
NH Licensed Court Reporter #00047

**JOINT LEGISLATIVE FISCAL COMMITTEE
Special Meeting
September 6, 2022**