

**JOINT LEGISLATIVE FISCAL COMMITTEE - SPECIAL AGENDA**

Legislative Office Building, Rooms 210-211

Concord, NH

Wednesday, August 10, 2022

**MEMBERS PRESENT:**

Representative Karen Umberger, Chair

Representative Tracy Emerick

Representative Robert Lynn

Representative Keith Erf

Representative Mary Jane Wallner

Representative Joseph Pitre (Alt.)

Senator Gary Daniels, Vice-Chair

Senator Jeb Bradley

Senator Lou D'Allesandro

Senator Cindy Rosenwald

Senator 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: Good morning. I'd like to call this Special Meeting of the Fiscal Committee to order. Our purpose today is to go through the claims process that the Attorney General has put together, and I would like him to walk us through the entire process; write your questions or comments or thoughts, and when he's finished with his presentation, then we will ask our questions and go from there. So, General Formella, if you would, please.

JOHN FORMELLA, ESQ., ATTORNEY GENERAL, Department of Justice: Well, thank you, Madam Chair, and good morning to you and the Members of the Committee.

For the record, John Formella, Attorney General, and I am joined once again by Senior Assistant Attorney General Jen Ramsey, who many of you now know very well, especially

if you were involved in the legislative process. So Jen is here with me because she has put lot of work herself into the preparation of this claims process and guidelines package. So she'll be here to help answer questions and -- and take feedback from the Committee.

So I just -- I want to start by giving just a little bit of an overview and some background on how we got here today. Hum -- as you know, this past session the Legislature enacted House Bill 1677, which established the YDC settlement fund. And as part of that bill this office was directed to develop a claims process and guidelines, which includes claims form, process, and rules for how this -- this -- this process would work, and guidelines for how we would value claims and pay out claims. So that is what we have done.

We submitted that to the LBA who's given it to you and the Fiscal Committee is -- has the role under this bill of either approving the process or objecting or giving -- not approving the process and giving us some feedback on concerns that then we would take into account and -- and come back with revisions to address. So that -- that is why we are here today.

The fund that is set up by HB 1677 as we've talked about since January, and the process that this bill sets up, it is intended to provide an alternative option for victims who may have suffered sexual or physical abuse while residents at YDC or a facility that was under another name that's a similar facility.

We felt that it was important to set up a process like this, because as we talked about now a lot, the traditional litigation process can be very difficult for anyone; but it can be especially difficult for those who may have been victims of sexual abuse or physical abuse, especially when that abuse occurred while the victim was a child.

So our goal when we brought this forward to the Legislature, and as we worked through the legislative process, was to establish this as an alternative to traditional litigation.

As I've stated before, and as you all know, there's another part of our office that continues to invest -- conduct a criminal investigation into the allegations of abuse at YDC. To date, we've indicted 11 former State Employees for the allegation or for -- for offenses related to the allegations brought forward by 22 victims. So since the end of the legislative session, we have now brought criminal charges for two additional victims' allegations, and we -- we continue to investigate. We expect that that investigation will continue for some time, probably years.

Most of those trials have now been scheduled. The first trial is scheduled for January of 2023 in the criminal cases, scheduled for January of 2023. They run through May of 2024. There are a couple of cases which have yet to be scheduled for trial; but we expect those to be scheduled for trial soon. So we will have a lot of criminal trials in these cases running through 2023 and 2024.

As required by the -- the statute, we have made what I believe are absolutely good faith efforts to negotiate this package with claimants' counsel. We started by circulating first drafts back in June. We -- we posted those drafts on our website. We sent these drafts to all claimants' counsel that we were aware of. We sent notices out to the entire bar to make sure that -- that every attorney in the state was aware that this was happening so that we could make sure that -- that we were notifying anyone who could potentially have a client that might come through this process, that they had the opportunity to engage with our office in the development of this package.

Part of the benefit of posting the -- the drafts on the website is that that also -- that also gave the ability for the public to see where we were going with this. So we wanted to be very transparent. We wanted everyone to see how this was evolving in real-time up to our final draft that we have submitted to you today.

For the most part, I will say claimants' counsel have chosen not to engage in the process. That's their decision. It's their right to do so. I will say it's somewhat disappointing from my perspective that we haven't gotten more engagement from claimants' counsel, but we have made every effort to -- to facilitate that engagement. We offered in-person meetings. We offered to sit down with anyone who wanted to talk about this process. So -- so I think that we have really made some extensive efforts on that front.

The statute or the bill that was passed also directed our office to consult with our victim/witness advocates and we have done that. A great deal of the difference between the first drafts and the drafts that you see before you today is due to the input from our victim/witness advocates. They've given us great feedback. They've given us great ideas on how to simplify this process as much as we can. And I just want to take the opportunity to publicly acknowledge and thank them for their efforts and their input.

They have a different role in our office. So their role is -- has always been and is today focused on assisting and supporting victims. So -- so they gave us great feedback. They understand that this is a -- this process is a balance between making this as simple and easy for victims as it can be, while also providing for appropriate factual review and verification. So I think they understand that balance, and they understand that we're trying to walk that line, and we have a real needle to thread.

I know that this package as it appears before you today may seem somewhat daunting, especially as we try to view this package from the perspective of an average person or an unrepresented victim who may come through this process. So I just want to -- I want to note a couple things on that front. And I'm sure we're going to have a fair amount of conversation about that today.

First, I think it's important to note that much of this material is not material that a victim or a claimant would need to be going through themselves. Part of the package you have are the claims process and the guidelines. Those serve as sort of the governing rules behind this process, which really will be governing the conduct of the administrator, the conduct of the Attorney General designee, the conduct of claimant's counsel, and governing how the claims are valued. A victim or claimant is not going to be required to sift through all of that. So that's -- that's one important thing to note.

A second important thing to note is that the vast majority of claimants, potential claimants that we are aware of, are represented by counsel. And when I say vast majority, I mean, you know, percentages in the high nineties. We're -- I'm not sure we're aware of anyone beyond one or two individuals who we, as of now, we know of who would come through this process without an attorney. So I just think that's important to be aware of.

We absolutely cannot assume that anyone -- that anyone and everyone who would come through this process will have a lawyer; but I think we can be pretty confident that the vast majority of those who come through this process will.

So from my perspective that -- that has played a role in our thinking in the balance of between trying to keep this simple, streamlined, and digestible, while also

ensuring that we would collect enough information to evaluate a claim.

Something else to keep in mind is that an unrepresented victim who comes through this process is going to experience this process in a different way than -- than we're experiencing -- experiencing it here today as we go through all of these documents for the purpose of this Committee evaluating whether to approve the documents. I think if an unrepresented victim comes to this process, they'll come to it by seeing either an ad or a notice that goes out. They'll hear about it by word of mouth. They'll see it on-line. They'll see the contact information for the administrator's office, and they -- if they're not reaching out to a lawyer to help take them through the process, they'll be reaching out to the administrator's office. And we expect that that office will be set up in such a way that they will give victims not -- they won't just drop a package on a victim or claimant and say here it is. You know, fill it out and send it in and we'll get back to you.

They will not experience this process in a way that you experience other processes where you fill something out and if you leave one thing blank it just gets kicked back to you with a, you know, not complete, please complete, right? They'll get simple, straightforward responses from the administrator's office, and we intend and we expect, and I think it's reflected in these documents that the administrator's office will provide assistance to claimants in filling out this package. The administrator's office will not kick back a claim form because it's incomplete. They will accept the form and they will reach out to the claimant to offer and provide assistance in getting enough information into that claim form so that the claim can be evaluated.

I think this is really important because as I've talked with -- especially with our victim/witness

advocates, we know that any individual victim could have or there is a wide variety of -- of ways in which any potential victim might interact with a process like this. You can have -- you have a spectrum that runs anywhere from someone who is barely able to get -- get a few sentences down on paper to someone who is ready to fill out the entire form, and you have to be ready to -- to assist and work with a wide range of victims on that front.

But we can't -- we also can't assume anything about individual victims. We -- we can't assume that any one victim may not be able to fill this out. We can't assume that any one victim may be able to fill it out. So this is -- this is a challenge for us and one that we are aware of, and we've worked very hard to try to -- to try to accommodate. That we will have a wide range of individuals who might come through this process.

We also expect, and we've had conversations with the Administrative Office of the Courts on this front who will be responsible for helping set up the infrastructure for the administrator's office. We expect that this -- that the claim form and the worksheet will be made available through a website format so that a claimant or victim would have the option of filling this out on a website.

The advantage of that, which you'll see as we walk through the documents, is that the claim form, for instance, that you have before you is especially long because it is intended to lay out all of the potential information you might have to fill out for any situation that you might -- that -- that you might be under as a victim.

So you'll notice in the form it will say things like if you filled out this part, you don't have to fill out that part. If you filled out that part, you don't have to fill out this part. If are you claiming this, then you don't have to fill out that. The paper form has to lay all

of that out, but the web's -- the web option will be much simpler for a claimant -- for a victim, because it will automatically direct them through, depending on what they've put into the fields.

So I think having that option available will be -- will be helpful and will help to streamline this process even more for a claimant who -- who is unrepresented and maybe is accessing this through the website.

Again, we obviously have to have paper forms because we can't assume that any claimant would have access -- would have Internet access or access to a computer; but having that option available, I think, will be helpful.

The last piece I just want to note is that you'll notice in our -- in our request for approval that whether this is approved today or down the line, we've -- we've requested approval to make non-substantive changes going forward that would just enhance readability, you know, enhance readability and make -- make this process easier to follow.

So an example of that would be putting in more places on the form this is where you call for assistance. Or putting -- moving to the front bold lettering that says this is where you go for assistance, and just making clear where people need to go to access assistance with completing this process, if they need it.

So because of all of that, I would -- I would just say that I think what's important for today and what -- what is really the meat of what this Committee needs to be thinking about is the substance of the documents. So how are the claims going to be handled? How are they going to be valued? What processes are being put in place to ensure that claims are being valued fairly and that similar

situated claimants would get similar values for their claims out of this process?

I think that's all consistent with our goal of providing an alternative option to traditional litigation that is easier and more victim-friendly and trauma-informed than traditional litigation, while recognizing that there will still be some level of process that has to come along with this because we do have an obligation, I think, at the end of the day to ensure that we're -- we're conducting enough -- enough of a review to verify facts and verify the information we're getting so that we can be sure we're paying out claims fairly. I think that's not -- that doesn't come just from an obligation to the taxpayer not to pay out money inappropriately. It comes from an obligation to be fair. We want to do everything we can to -- to ensure that people who may have experienced one form of abuse or another are receiving the same compensation as those who experience similar abuse and that we don't have disparities.

So, with that, I will -- I'll turn to the documents specifically but just say one more thing about what -- what -- how we have sort of internalized what we think is the intent of HB 1677 and how that's reflected in these documents.

We've always viewed the intent of HB 1677, again, as providing an alternative to traditional litigation, and we view the directive in this legislation to us as one that asks us to balance, again, the obligation to provide compensation to victims through an accessible process that balances that obligation with the obligation that we have to the taxpayers and the people of this state to make sure that this is fair and that this -- that we pay out money appropriately.

So that, overall, is sort of the exercise that we're going here. It's -- going for here. It's a little bit of a

needle to thread, and as we've said before and I think we all recognize this is -- this is unprecedented. I think that it is great that the State is doing this, but we have never done anything like this before. And to our knowledge no state has ever done anything like this before. So we are treading new ground. I think we're -- I think we're treading new ground in a good way; but because of that, you know, I think this process warrants -- warrants the care and due diligence and work that has been set up in HB 1677.

Sorry. Turned off my microphone. With that, I will turn to the documents specifically.

The package you have is about 89 pages, but it really breaks down into three parts. The first part is the claims process. This part, just high level, it tracks the statute, for the most part, but it also fills in details and gaps that the statute may not have filled in. So this is the piece of the package that provides for the procedures that are to be followed by the claimant, the administrator, and the A.G. designee as the claim moves through the process.

This process is -- or this document is designed to be posted publicly. We expect that there might be updates and additions from time to time, depending on how this goes. HB 1677 does provide that the administrator consulting with claimant's counsel and the A.G. could come back to Fiscal to propose revisions to the process. So we would expect that that -- that may happen once the administrator is appointed and sort of takes control of this.

The second piece, and I will go through these in more detail, but I'm just summarizing each piece. The second piece that you have, which really starts on Page 21, are the guidelines. The guidelines are the first appendix to the claims process and the guidelines deal specifically with how to value claims.

So the claims process deals with procedure. The guidelines deal with how to value the claims. So as the statute requires, the guidelines group claims into categories by type. So type of abuse, and they also take into account aggravating factors and mitigating factors.

This is the document or this is the piece of this package that assigns the dollar amounts. There's some discretion for the administrator when it comes to valuation, because at the end of the day the administrator is going to retain a certain amount of discretion as to how to apply mitigating factors. But, for the most part, we've tried to keep the guidelines fairly formulaic, because at the end of the day the bill that was passed directs that the guidelines, the goal of the guidelines is to ensure the fair and uniform valuation of claims so that the claims of similarly situated claimants are valued similarly.

So, basically, that's just a way of saying the goal of the guidelines is to ensure fairness. And the best way to do that, or I should say the way we do that when you have potentially hundreds of claimants coming through a process is to have a process that, frankly, is somewhat formulaic. Because only by having a formula be the base of evaluation process can you ensure fairness. If you leave too much discretion to the administrator, you risk having inconsistencies in how claims are valued.

And then the last piece of this that you have is the claims packet. This consists of a number of items, and this is what a claimant or a victim will really be going through and filling out with either assistance from their attorney or assistance from staff, the administrator's staff.

So that was just an overview of the three documents. I will now proceed into going into some greater detail for each one.

I'm going to keep this somewhat high level only because there is a lot here, and I -- I don't want to spend two hours going through the details of everything here. But -- but I'll keep it high level and then we will be prepared to take any questions you may have.

As a first just housekeeping item you'll notice that at the top left of this package are page numbers and these are meant to be sort of page numbers for the whole packet. So when I refer to a page number, I'm going to be referring to what's in the top left-hand corner where it says JFC Page 1, 2, 3, et cetera.

So, again, the claims process which is found on Pages 1 through 20 of your packet, referencing the top left corner, again, this -- this sort of the rules of the road procedure-wise. So this -- this process governs how the administrator, the A.G. designee, the claimant, claimant's counsel, are to proceed on a procedural basis.

This process basically has three components. It describes how you go about submitting and completing a claim. So filling out the form, interact -- attaching necessary documents, interacting with the administrator and so on.

It also deals with the A.G. designee's review and position. That's the second component of the claims process. So once a form -- once a claim is submitted, once a claim is complete or I should say complete enough, the A.G. designee has a chance to review it and give a position. And then this process outlines and it -- a resolution proceeding before the administrator, if we get that far.

So, again, to summarize, Phase I deals with how a claimant pulls together what they need to submit a claim, deals with how a claimant fills out the claim form.

We provided a claim form for this which we'll go through when we get to the claims packet and a list of items that need to be submitted. Again, if something is submitted that's incomplete, that's fine. We envision that there could be claimants who are not represented by counsel who may submit a form that only has a couple of pieces of information on it. As long as their name and contact information is on the form, we would envision if that happens there -- the form will not or the claim form will not be rejected. It will be accepted and there will be outreach to that claimant to assist them with how to complete the form. At least complete it to enough of a point that we can do an evaluation of the claim.

As part of that, you know, there are details that remain to be worked out with the administrator once the administrator's appointed; but we would envision that the administrator would have staff, but also that the administrator may -- may contract with -- with an organization that provides -- that could provide assistance using -- using trained advocates. We recognize that -- that a secretary while -- or an executive assistant while qualified to do many tasks may not be perfectly positioned to assist a victim of sexual abuse with filling out a claim form. So we envision that the administrator will -- will contract with an appropriate organization to provide that type of assistance, if needed.

Once a claim is submitted, the process provides that it moves to the A.G. designee's review. So a claim is submitted, and then the A.G. designee, who will be somebody in our office, will conduct an initial review of the claim. As part of that review, they will review the information that's submitted on the claim form. They will review any documents that our office might have or have access to, review records, to make a determination as to what -- what our office's position would be on a claim.

We envision that it may very well be that -- that we'll have claims where we review it, we think there's enough information there, we think what's there is credible, and we would take the position that the claim should be paid out in full, depending whatever the amount was that was submitted.

There also could be a situation where we review a claim and we -- we think that more information is needed, and we would request the administrator to appoint an investigator to investigate the claim. So that could be part of that step that our office reviews the claim and requests an investigation.

It's then up to the administrator to either refer the claim to investigation or not. So that decision will not be made by our office. That decision as to whether to refer the claim for an investigation will be made by the administrator. But if a decision is made to refer a claim to an investigator, that will only be to help -- help collect additional information that we think is needed. That's not to put pressure on a victim. It's not to -- to make a victim feel as if they're -- they're being overly scrutinized. It's for information collection. Because at the end of the day, a very important piece of this is collecting sufficient information to review the claims that come in.

We considered and ultimately thought it was not a good idea, but we considered the option of -- of proposing that every claim be referred to an investigator. We ultimately thought that that -- that was not necessary and not a good way to go, because we think some claims may very well be simple enough that no investigation is needed. We think that the A.G. designee should review a claim first before deciding whether to request an investigation. Because, again, an investigation may not be needed. But, also, if the A.G. designee has first reviewed a claim, they'll be in

a good position to focus any investigator on -- on where to go with -- with an investigation into a claim.

Finally, the other reason we didn't think an investigation was needed for every claim is that, again, in most cases claimant's counsel will be represented or claimants will be represented by counsel. And we would expect that, you know, as part of earning the fee that they would get out of this that claimant's counsel will be providing significant assistance to a claimant in filling out the claim form with all of the information that may be needed.

There are mechanisms built in throughout the first phase that -- that provide for extra time, if the administrator feels that there needs to be extra time. So you'll notice through the process there are various deadlines provided. You know, submit a claim. There's a certain amount of time to determine whether a claim is complete. If more information is requested from the claimant, the claimant has certain -- a certain amount of time to -- to provide that information. All of those deadlines that are in here can be extended by the administrator for good cause. We thought that was important because any claim could be different and the administrator should have some discretion to allow for more time to meet these deadlines, if necessary.

Phase two of the claims process involves the A.G. designee reviewing a claim. So once everything is submitted, any investigations have been completed, the A.G. designee reviews a claim and indicates their position. That could be anywhere from the A.G. designee reviews a claim and indicates that the claim should be approved in full. The A.G. designee may say, okay, we think there's sufficient information here, maybe not sufficient information here. So we think only part of the claim should be approved. Or that the claim should be denied entirely.

The process is designed so that that determination or that -- that position of the A.G. designee can be modified if additional information comes in. But the goal is for the A.G. designee to be able to take that first -- take that first step in -- in making a determination as to whether a claim should be approved.

The idea behind this is that -- is that this process is set up in such a way as directed by the bill that it starts out as a negotiation, a negotiation that is -- that comes through facilitation of the collection of information, but it starts out as a negotiation between the A.G. designee and the claimant.

If the A.G. designee ultimately takes a position that the claimant does not agree with, that's when you get to phase three where the -- the claimant will have three options. If the claimant agrees -- has agreed with the A.G. designee's position, then that will be -- that will end the process, and the claimant will -- will get paid out either all of their claim or part of their claim, depending on what the A.G. designee has agreed to.

If the claimant does not agree with the A.G. designee's position, and this is important, at that point the claimant has the option to exit the process entirely and continue to litigate. So that -- that's an issue that's been discussed and I think bandied about a little bit in the discussion of this process.

A claimant is not required to give up their rights to litigate to enter this process. A claimant can go all the way through the submission of the claim form, the review of the A.G. designee, the discussion with the A.G. designee as to what the A.G. designee thinks about their claim, they can go all the way through that, and only if they get to the point where they realize that they're not going to be able to come to agreement with the A.G. designee do they have to face the decision of whether to exit the process

and go to Court or take this process into phase three, which is where the administrator -- which would be the scheduling of a resolution proceeding before the administrator.

So basically at that point a claimant is able to say, okay, I don't have an agreement here on a settlement. I can either take my chances and -- and argue my case in front of the administrator, within the caps provided by the bill, or I can go back to Court. I can exit this process and take my case to Court.

The advantage, obviously, of going before the administrator is that that will -- that will be a much shorter process than going to Court, but the claimant will have that option. So a claimant can go pretty far through this process without ever having waived their right to litigate. I think that's important because I think -- I think it's just important for the Committee to understand that a claimant does not waive their rights to go to Court to enter this process.

So if a claimant does elect to go forward and have a resolution proceeding in front of the administrator, the claims process as we've laid out here, it leaves a fair amount to ultimately be set up by the administrator because we felt that whoever the administrator is is going to need to have some discretion in how they want to set up a resolution proceeding. But the statute does provide that the maximum length of a hearing would be three hours. And the statute does provide that a claimant can have their -- their attorney present and that the claimant can request the opportunity to -- to speak with the -- with the administrator. And then there's a decision within 30 days of the hearing

So we've admittedly left this somewhat open because we think it's a good idea for the administrator to have some

discretion in how they would set up a resolution proceeding.

After a decision by the administrator or I should say a decision by the administrator is binding. It's not appealable. But there is an opportunity for parties to request that the administrator correct any errors. So if there are any mathematical errors made or any other sort of clear errors, there's an opportunity to request that the administrator correct those errors.

So that is -- that's a high level overview of the claims process. Again, it largely tracks the statute, but it's meant to fill in some details that the statute doesn't provide. Because as we -- as we were discussing, as the legislative process went along, it would have been impossible, I think, to provide every detail in the bill. We knew that we were going to have to leave some detail to this process.

So the second piece of this, as I mentioned before, are the valuation guidelines. That begins on Page 21. And, again, this -- this piece of the package really governs how to value claims. So the claims process was the procedure. How you submit claim, how it gets reviewed, how the parties negotiate and have an exchange, how the administrator schedules a resolution proceeding. That was the claims process. The guidelines govern how to -- how to value claim.

So, again, the goal of these guidelines is to ensure that -- that claims are valued fairly and that similarly situated claimants receive a similar amount of compensation. Because of that these guidelines, as you'll see, are pretty formulaic.

You know, it bears noting that -- that there is some difficulty with the idea of a -- of a formula -- of using a formula to try to put a value on harm someone might have

suffered because of sexual abuse or physical abuse. That's -- that's a difficult concept for us. I think that's a difficult concept for anyone to wrap their head around.

I've said this before and I'll say it again today. I think the reality is there -- there is no amount of money that can compensate, truly compensate someone who has suffered some of the horrific abuse we've heard about. There's no amount of money that I think is the right amount of money.

So, with that said, there is an importance, I think, in -- in being fair. And, again, when we have -- when we know we could potentially have hundreds of claimants coming through this process, even if they don't all come through it initially, eventually hundreds of claimants coming through this process, the best way to ensure fairness is -- is using a formula, at least as the -- as the base of how we value claims.

So, with that in mind, the guidelines are kind of organized according to the steps that are taken in the claim worksheet, which we'll talk about when we get to the claim packet. There's a few steps that you go through in these guidelines to value a claim.

The first thing you do in valuing a claim according to this process is you determine a base award. So on Page 23, you'll see listed there the base awards for sexual abuse and physical abuse. A question I think some of you have and it's -- it's a -- it's a natural question is where did these numbers come from, and there's a couple points on that.

First, as we talked about during the legislative process, we in our office have done extensive research to try to determine what the average settlement amounts have been around the country for claims related to sexual abuse and physical abuse. For sexual abuse we continue to update

our research, but -- but broadly speaking, we ultimately pinpointed an average of between 600,000 and \$800,000 per claimant. Our original average was closer to \$500,000; but as we had discussions with claimant's counsel and looked at cases that they suggested we look at, we ultimately included some of the cases they suggested. We didn't include others, depending on our evaluation of how similar those cases were. But, ultimately, our average landed in the 600,000 to \$800,000 range.

So one of the ways we selected these numbers was to take all of the information we know at this time about the population of claimants that is out there and do some very rough modeling based on their allegations to determine what these numbers should be to land this process in the right average range. So that's one of the things we did.

Admittedly, there's no certain way to do this. We only have limited information. And there's no way to model this exactly. So that this is a -- there's a -- there's an estimation exercise that runs through all of this. But that's one of the -- one of the things we did to arrive at these numbers.

The second thing we did is we considered the numbers that were used in negotiations we had had with claimants' counsel before the legislative process ever began. So as I noted during the legislative process, we had many -- we had many exchanges with claimants' counsel regarding a potential way to develop a settlement mechanism for these cases, and that included this type of matrix, I'll call it a matrix that you see before you.

For the categories of sexual abuse, the numbers are within the range of those numbers that were being discussed. So I'm limited in what I can tell you on that because we -- we had agreed to confidentiality in those settlement discussions; but I do think it's important for this Committee to know that the per incident numbers that

were discussed were -- were -- or I should say these numbers here are within the range of the per incident numbers that we had discussed with claimants' counsel in our discussions before we ever got to the legislative process.

So those are really the two -- kind of the two major things we considered in arriving at these numbers. For physical abuse, the average award or settlement that we were able to pinpoint through our research was roughly \$60,000. That's what helped us arrive at a cap of \$150,000 during the legislative process.

So, again, we went through the same exercise when -- when developing these per incident numbers. We tried to use the information that we do know about the population and do some very rough modeling to arrive at numbers that would land the claims within the averages.

So I just want -- I wanted to give you a little bit of an explanation there on how we arrived at the numbers we arrived at. That explanation sort of flows through this entire process. So when we go through the -- the aggravating factors and the multipliers associated that that all ties back to what I just talked about. Trying to kind of base it on the rough modeling, using the information we know about this population in order to land at the averages that we feel are -- are -- are appropriate given our research.

So back to the process. The first step is to determine a base award. The second step is to determine what we're calling a frequency multiplier. So that -- that is, and I will explain that, but the frequency multiplier is intended to account for the fact that some claimants will have experienced more than one incident of abuse.

The second step in valuing a claim is to apply any aggravating factors. So as we -- as we know, based on our

knowledge of the allegations, and as we know in talking with victim advocates and others, not all incidents of sexual or physical abuse are created equal. There can be aggravating factors that -- that create more trauma. For instance, was a deadly weapon used? Was -- was -- were there more than one person involved? There are other factors like that, aggravating factors that -- that really would lead to the conclusion that a claim should -- for a particular incident of abuse should be valued higher. So applying aggravating factors is the third step.

And then the fourth step is applying any -- any mitigating factors which can reduce the amount of the claim. So you go through the first three steps to get a number based on the allegations, and then you apply mitigating factors which -- which can be -- which can reduce the amount of claim. Mitigating factors may be problems of proof or -- or other issues that the administrator feels necessitate reducing the amount of the claim.

ATTORNEY GENERAL FORMELLA: So, again, Page 23 were the -- were sort of the values of the base award.

The next few pages are just definitions of the various categories of abuse. So I'm not going to go through those in detail. Those are in many -- in many part provided already in the -- in the statute that was passed. There's some additional detail in there. Happy to take questions on those, but I'm not -- I'm not going to go through those in detail here.

Step two, applying a frequency multiplier starts at the bottom of Page 29. So we've set -- we have tried to set this up as a way of recognizing that -- that someone who experiences abuse can experience different combinations of abuse, and it can happen in different ways. And so we sort of need to think about this as a mix between classifying something purely as one type of abuse and also

accounting for the fact that other types of abuse are -- are experienced.

The way we do that to the frequency multipliers are that you start by taking the number of times that someone might have experienced the worst category of abuse they experienced. So if that is, for instance, five, if they experienced five incidents of the worst category of abuse that they experienced, you start with the number five.

For the next two categories of abuse that they may have experienced by severity, you take the number of those combined, let's just say that's six, and you divide that by two. And so you'd end up with five plus three for a frequency multiplier of eight. And then you look at the frequency multiplier, which is in Table 3 at the bottom of Page 29 and Table 4.

That frequency multiplier is used -- is applied to the amount of money that's associated with the worst category of abuse that someone suffered. So if they suffered the worst category of abuse that's listed here, say \$200,000, and you have a frequency multiplier of eight, and we're talking about sexual abuse, you look at the table and you'll see on the table that for frequency multiplier between 6 and 9 you would multiply the claim by seven. So that would put you at \$1.4 million. I'm just kind of giving a hypothetical example here.

So then you have that 1.4 million dollar number and you go to aggregate -- aggravating factors. For the aggravating factors you basically you would look through this table, and this provides various elements that may, you know, cause an abuse to be -- be more traumatic. And I don't need to read through each of them, but I think you see the examples. Any one of these could add an amount to -- to the base claim that you've gotten through the frequency multiplier. So you would just go through this exercise and add the appropriate amounts for any -- any aggravating factor that is present.

If you go over \$1.5 million per the statute, that -- that number is capped at 1.5 million. So -- so you might go through this exercise and end up at a number that's above 1.5 million, but it would be capped at 1.5 million.

The last step in the process -- that's how you sort of go through the process of valuing the claim from a formula standpoint.

The last step in the process which is laid out - I'm just going to skip through the pages here - is laid out on Page 33. It's Step 4. So taking into account any mitigating or exceptional factors.

So this -- this is where the -- this is where the -- the application of any questions of proof or issues of credibility or potential legal defenses come in. So you could have a situation where you have -- you have a base value. Let's just say it's 1.4 million, but there's a lot of proof lacking. There are credibility issues, maybe inconsistent statements, other -- other issues with the claim that might lead the A.G. designee or the administrator to say, okay, if we just use the formula to value what's been submitted on the claim form, your number would be this. It would be 1.4 million. But because of these other issues, our inability to get records or the fact that the records don't substantiate the claim, we need to apply mitigating factors, and so we think the value should be, you know, what -- what the payout should be is -- let's just say half, so seven hundred thousand.

That -- that application of mitigating factors is designed to be somewhat discretionary first in the A.G. designee's review and then for the administrator, if it goes to the administrator, because of a recognition that we really need to look at each of these claims on a case-by-case basis. And for cases like this and claims like this where we're talking about events that happened a long time ago, there could be a wide variation in the records that are now available, in the witnesses that were present at the time and said something and that are available now, in the -- in the memories of a victim in what the victim may have said to someone else at the time. There's just a wide variety in the facts that could be present.

So -- so there's some discretion there in the application of mitigating factors, but that is really where -- that's where you consider the issues of proof and other types of issues for a claim.

Again, I think this -- this is -- we recognize that this -- that is a difficult exercise. You know, everything about what we're trying to do here is difficult. We recognize that there is no -- there's no one standard by which to measure what a victim should be able to show to substantiate their claims. There just isn't.

So that this is -- I also think -- I think this recognizes a key concept, which I've talked about before, but which I think is worth remembering that there's a major difference between a victim who simply doesn't remember with specificity what happened to them but knows for sure that they were harmed. Twenty years later, 30 years later, more years later, it's difficult to expect any victim to be able to say yes, I was -- I suffered six incidents of this type of abuse, two incidents of that type of abuse, and three incidents of that type of abuse. We expect that -- we expect that -- that most victims are not going to be able to recall what happened to them with that specificity; but we have seen through, especially our criminal investigation, that they will -- they will have a memory now of a certain number of incidents.

So what I'm saying is that -- that just because -- what a victim is saying now with regard to the number of incidents that happened to them, it may -- it may ultimately not be accurate as to what really happened 30 or 40 years ago, but that is a lot different than saying a victim is lying, not telling the truth. A victim could be telling us what they absolutely believed happened to them as they sit here today, and it may actually not be what happened to them 30 or 40 years ago.

I just go through that because that's part of what this process is designed to address when we talk about mitigating factors. It's meant to account for the fact that -- that a victim may remember things a certain way and believe certain things happened to them and that we should -- we should not -- we should not question them in

such that we would accuse them of lying to us. But we have an obligation to -- to look at all the information to determine whether there may be information that would tell us that perhaps what they remember is not -- is not exactly what happened. And that's part of what the mitigating factors are meant to get at.

So I may not have explained that as clearly as I could, but what I'm just trying to get at is this concept that we may feel a victim is telling us the truth in that they were abused, but there are -- when -- when events are decades old, there are many, many factors that could lead that account to not be -- not be exact enough to know exactly how many incidents occurred and things like that.

So that just all sort of speaks to the difficulty of trying to value claims through a process like this. And we have wrestled with that. We have -- we put a lot of hours into that. We've had a lot of conversation with our victim advocates on that front and we've -- we've sort of arrived at these valuation guidelines using a lot of -- or based on a lot of thought around those concepts. That's in addition to what I talked about earlier with regard to how we tried to pinpoint the average -- average claim numbers.

So a lot has gone into this. It is not -- it is not an exact science by any means. And there is no -- no way to, I think, to construct a process like this and be able to say with 100% certainty that -- that -- that everything about it will get us exactly where we need to be. We're trying to balance, again, the obligation of providing fair compensation and treating people equally and fairly while also meeting our obligation to -- to -- to respect the dignity of every victim or claimant that comes to us and listen to their -- listen to their stories.

So that -- those are the guidelines, and that's basically how they work. We'll be happy to answer any more questions about the other detail in there. But I just tried -- wanted to try to give an overview -- overview of how the valuation guidelines work.

The last piece of this package is the longest one. But, again, as I'll explain, you know, there are -- there's a lot of detail in here that -- that a victim may not actually have to interact with.

So this is the claim packet. The claim packet begins on Page 40 of the packet you have before you. So the page number up in the left corner, Page 40.

The first part of the claim packet is -- is just the notice. We think it's a -- this -- this is what a victim, again, will receive so -- or a claimant will receive. So when someone comes to this process, they will not be asked to sift through the claims process and the guidelines that we just went through. Those are governing documents for the administrator and for any counsel, whether it's the A.G. designee or claimant's counsel that are involved to review and understand. Those are the governing documents. This claim packet is what a claimant would receive.

So the first page of a claim packet, as you'll see, is just a notice and trying to acknowledge that even just going through this packet, if you're a victim of abuse, can be difficult, and to provide -- to provide right up front resources that someone may want to access, if they're even thinking about going through this process.

We think that's important because we think there could be claimants or victims who come through this process that -- that have not been following everything that's going on, that had something happen to them many years ago, and the first time they really see any acknowledgement of it is in the notice that this process is happening. So when they get this claim form, we think it's important that right upfront there be just an acknowledgement that there could be difficulties and that there are resources available if they just want to talk to someone. So that's what we've tried to do with this notice.

We've listed New Hampshire 211. We will list additional resources once we have the opportunity to -- to have conversations with relevant organizations and get their agreement to be listed

here as just a resource to contact if someone even just gets this packet and that causes them to want to have a conversation before they start to -- to work their way through it.

The second part of the packet is the instructions. This is just meant to -- to give basic instructions on how to fill out the packet. And it also provides right up front, as you'll see at the bottom of Page 41, how to request assistance. And, again, this is an important concept because, you know, we -- we know that we have to recognize that there may be some claimants who would come through this process that don't have a lawyer. And as much as we want to try to make this process as simple as possible, and, you know, as much as this process will be much simpler than litigating, there's really no way to construct a process like this that -- that doesn't contain some level of detail, isn't somewhat complicated, and requires some level of work to go through. So we -- we want to acknowledge in here that we need to provide assistance for claimants who may not have an attorney and make clear that that assistance is available.

That theme runs throughout the packet as you'll see at the top of every page. We try to just reiterate if you need assistance, this is who you would contact. And, obviously, we will fill in the contact, the exact contact information once we -- we know what that is.

So the next part of the packet is just the instructions. Just gives basic instructions on -- on what to fill out. We also, again, look to make clear, as you'll see in the second piece of the instructions on Page 42, make very clear that we want a claimant to do their best to provide all of the required information, but that you can submit an incomplete form and it will be accepted, and you will be contacted with someone who would assist you on how to get through the process.

So, again, our goal was to reiterate that at every stage that this is not intended to be a process in which your claim gets kicked back because you missed one field or many fields. This is intended to be a process in which you take your first shot at getting as much information as there is you can, and that that will begin the

process -- a process in which you'll be contacted with assistance to collect more information.

That concept of -- of not -- not requiring someone to necessarily fill out everything or even most -- most of the form in the first instance, is what we arrived at after a lot of thought and a lot of kind of agonizing over the worry that this process is too complicated. That's the concept that we arrived at as the best way to balance the need to collect the information we would need and the administrator would need to evaluate a claim, with the need to make this accessible to victims of abuse, is that we have to ask for the information. We need to ultimately try to collect it, but we don't want to put -- we don't want to make the victim themselves do all of that work with no help. We want to provide sufficient assistance to get any unrepresented claimant through the process.

The only other way to address that would have been to just cut down, I think, on what we're asking for. And while that's an option, that would make it more difficult to ensure that we are -- we're collecting all the information we need and we're really -- we're treating every victim fairly by trying to pay similar claims similar amounts.

So the next piece of the -- the claim packet, and I'm spending a little more time on this part just because this is what the -- this is what a victim or claimant would really interact with.

The next piece is just the instructions on Page 44 for collecting and providing additional documents. Again, we tried to put a lot of thought into what documentation we wanted to ask for from a claimant, and we're really just asking for -- for the basics here, I think. In addition to the form, just something that -- that, you know, verifies their identification.

We do provide here though that if someone doesn't have one of these, that they can contact the administrator to try to work to find another -- another acceptable form of identification. And we're very aware that -- that, you know, there could be folks who have -- just don't have forms of identification available to them. I

think our attempt with this is to reflect that we want to -- we would want the administrator to work with those individuals, not just cut someone off because they don't have a driver's license or a passport or a government issued ID.

The next thing is the signed notice of filing of claim and partial stay. That is just what someone would have to file because the -- the legislation provides that if you enter this process you're not giving up your rights to litigate, but you are agreeing to pause your litigation while you go through this process. We think that just makes sense from a logistical standpoint and an administrative standpoint so that we're not -- we don't have people coming through this at the same time that we're, you know, doing motion practice or conducting discovery in the litigation process. Those two things aren't necessarily consistent.

So there are some additional documents that -- that some claimants may need to submit, but there's also a lot of -- there are a lot of optional documents listed on Page 45. So there -- there are a lot of documents that a claimant may be able to submit that would be very helpful in helping us review their claim, but we did not -- we did not want to require claimants to submit this type of info because many claimants may not have this type of info. So medical records, mental health records, diaries, notebooks, photographs, those might all be things that a claimant has that they want to submit, but we also want to recognize that many claimants may not have that. So our goal was -- was to make those optional so that we don't make people feel like if they don't have those documents they can't go through this process and they're not going to be able to -- to successfully make a claim. But this type of information is always helpful. So we did want to list it. Something they could provide -- provide on an optional basis.

Starting on Page 46, we just have the -- we start in with the basic form of information that a claimant would fill out. Actually, that's starting on Page 47. Sorry.

Again, we -- we spent a lot of time trying to -- wrestling with how to keep this as simple as possible while collecting the

information we thought was basic information that would be needed in a process like this. So I won't read through every section of the claim form, but I would just note that, you know, we try to keep the language very straightforward as much as we can. We tried to really structure these questions so that where they can be they're yes or no questions with options to provide additional information, if you can, but not required to provide a lot of detail if you don't have it.

Again, if some of these or even most of these fields are left empty, that's okay, because the form can still be submitted and someone from the administrator's office would contact a claimant to help them -- help them provide at least the basic minimum information that would be needed to process a claim.

Again, I just think it's important to remember, as I said before, that we expect that almost everyone who would come to this process would have an attorney. So -- so I think an attorney would be more than capable of assisting a claimant with filling out -- filling out these forms.

You know, with that, I -- again, I'm not going to go through each question that's asked. Happy to take questions on any specific piece of information we ask for. But I will just note that on Page 50, if you look at Page 50, one of the pieces that will come in this claim packet is a worksheet that I'm sure you've all seen, and I will acknowledge right up front that that worksheet could look very complicated, not just to a potential claimant but to anyone who looks at it. That worksheet is optional. It's an optional way for a claimant to go through and try to calculate their claim value if they would like. But the basic claim form we tried to limit to just the -- the basic information that someone might be able to tell us about any abuse they suffered.

So you'll see on Page 50 here in the description of the abuse you suffered section, we try to limit this to sort of yes or no questions and number and -- and a field where someone can list the number of times they might have been abused to try to make it as simple as possible for someone to articulate that. We know in

talking to our victim/witness advocates that a victim of abuse is not always able to articulate what happened. You don't always get what you might expect to get in a situation where you just ask someone what did you do last weekend. It could be -- it could just be a lot of stream of consciousness thoughts, which is understandable when someone has experienced trauma and especially understandable when someone has experienced trauma that is decades old and they may remember differently now.

So we've tried to boil this down into very basic information to start. And then, again, ask for -- ask a claimant to provide as much information in other fields as they can. So we ask for pages to be attached and we -- you go to Page 51, you know, you can see we -- we -- we would ask for just as much information as someone can remember or can articulate about what happened to them. But this is not -- this isn't required. It doesn't all have to be listed out. It's -- it's optional. And it's an attempt to recognize that -- that every victim will be different in what they're able to articulate about what happened to them.

So that theme sort of runs throughout the forms. So, again, I'm not going to go through question by question; but I did want to note that piece because it's those basic questions and the basic number of times piece that we ask for to be filled out in the claim form and the claims worksheet, which we'll talk about, is an optional tool. We think that's an important tool because it -- it helps a victim or their counsel just really go through the calculation to get a sense of what they would get under this process. But it is not something that a victim has to fill out in order to go through this process. It's something the administrator will certainly use to or the A.G. designee will use to arrive at a position or arrive at a value for the claim; but it's not something a victim has to work through.

So I think the next important point on this -- on this claim form is on Page 59. And this -- this reemphasizes what I was just talking about. This is where, you know, after a claimant has gone through the form they come up with their amount. This is where you can see that, you know, they have the option of -- of having gone

through the worksheet and -- and made a calculation based on that or just an option of making an estimate. Because at the end of the day, what's most important for -- for -- for the process is to collect information about what a victim may have suffered. And it will, ultimately, be for -- while we want a victim, a claimant to -- we want them to have the ability to go through the calculation themselves in putting the number in their claim, that's not necessary for the process because if the A.G. designee and the administrator has the information, they can go through that calculation and essentially tell a victim what their claim -- what they could be paid out on their claim based on the process. So this page reflects that.

A claimant, a victim, has the option of going through that calculation or they can just put an estimated amount down at the bottom. And that amount will be accepted. It will be reviewed and reviewed against the calculations. But from the claimant and the victim standpoint that -- that's all the minimum we'll ask them to do is put some amount down. And whether they used the -- whether they go through the worksheet and calculate the amount, whether they go through the guidelines themselves and try to estimate the amount, or whether they just estimate the amount based on they know the cap is 1.5 million and they -- they think that -- that they should get something -- they have an idea of what they should be entitled to they can put that amount in there. Because we will have collected necessary information or we will have the administrator staff work with the victim to collect the necessary information, we'll be able to work through -- work through that and get to the right number, and it will not all be on the claimant to have to do that. So that -- that is the form at a high level.

Again, starting on -- and I'm not going to go through this in detail because it's pretty detailed, but starting on Page 62 you then have just the claim worksheet. I think it appears complicated at first blush and it, you know, it is somewhat complicated; but after you've read through this and in thinking about it, I think it actually does provide a pretty good tool by which to go through and calculate a claim amount. I think that will especially be the case once this is put into electronic format and a web-based format so we

try to make it, you know, it's kind of simple, sort of in the same layout as a Turbo tax type system, right, where you're just -- you're plugging in information and numbers and based on the formulas a claim -- a claim amount is determined. But when it's down here on paper, I know it looks like a lot.

You'll also notice that there are pages where, you know, we'll say if you completed the prior page you do not need to complete this page. If you -- and that's -- that's on a lot of pages, especially starting at, let's say, Page 65 and running through Page 68. There will be other parts of here where there are fields you really don't need to complete, you can leave blank.

Again, when this is put into a -- into an electronic format in a website, I think it will be even more digestible, because you will just be directed past or directed around the fields that you don't need to complete. You won't be staring at a bunch of empty fields that may not be relevant to you that -- that make it seem so complicated that you then just don't even -- don't even go through the exercise.

So that is the worksheet. Again, you know, we recognize there's some information there, and it can look like a lot. But we have worked very hard to try to make the language as digestible as possible and to try to make this as straightforward as we think it can be while balancing the need to collect the information that we need to collect.

That is, you know, that is really -- that is the package at a high level. I know I spent some time on it and I could of -- I could probably if I went through everything line by line like we sometimes do with pieces of legislation, we could spend a lot more time. But I thought with that what I would do is just pause and -- and I'm sure -- sure there will be questions. But that is the overview I have for you.

Again, we've put a lot of time into this, but we do understand that the Committee may have feedback and we're looking forward to hearing that, to answering questions, and to working to ultimately

get this process approved either today or down the line so that we can stand this up for victims and provide this option.

Again, I think we've always thought of this as an alternative option to litigation but presenting it as an option. If -- if someone does not believe this process is sufficient, if a claimant doesn't believe this process provides enough compensation, they always have the option of continuing to litigate their case in Court and we will respect that and we will -- we will conduct ourselves in the litigation process with -- with respect and dignity, with having respect and dignity for the claimant and in a civil manner, and we will do that, and we are prepared to do that. We're prepared to litigate the cases that we need to litigate.

So that -- that is my presentation for you. I hope that was helpful. But we are happy to answer any and all questions you have. And, of course, to stay here as long as we need to stay, which is always our obligation in any meeting of the Legislature. So thank you.

CHAIRWOMAN UMBERGER: Thank you very much. That was, I thought, a good presentation, excellent presentation to walk us through. I'd like to kind of go around the room and anybody that has comments, questions, or whatever, but I'd like to sort of do it in an orderly fashion if we could. So is there someone that would like to volunteer to go first? Senator Daniels.

GARY DANIELS, State Senator, Senate District #11: Thank you. On Page 4 when you state who may file a claim, it's stated as any living former YDC resident. Does that mean that a current resident could not file a claim?

ATTORNEY GENERAL FORMELLA: So I know that that looks somewhat confusing; but the way we've defined former YDC resident is someone who resided at YDC at any time. So if someone is residing there now, they would still fall under the -- under the definition.

SEN. DANIELS: But I believe in the definition you used the word resided as past tense, not residing.

ATTORNEY GENERAL FORMELLA: Yep. I would read it as allowing someone to -- to file a claim, even if they're currently at YDC.

We have not -- hum -- I don't think we're aware of anyone who is alleging current abuse at YDC that would want to come through this process. That does not mean there aren't some -- I mean, there could be some allegations of current abuse, but that's not -- at the time we constructed the legislation and at the time we began this process, we weren't thinking -- like that was not on our minds; but this is intended to cover anyone at YDC. So the way I read the definition it says resided, I mean, they res -- I think -- I think they would qualify.

SEN. DANIELS: Okay. And, Madam Chair, did you just want me to go through --

CHAIRWOMAN UMBERGER: Yes, just please continue on.

SEN. DANIELS: As I look at this by the definition and such, there is no statute of limitations on how far back you can go; is that correct?

ATTORNEY GENERAL FORMELLA: That's correct.

SEN. DANIELS: Okay. And then I guess my final question is is there any recognition given to the abuse as -- and as to whether the State was knowledgeable and negligent in that or just an individual case without the State knowledge?

ATTORNEY GENERAL FORMELLA: So I think where that recognition would come in is in the mitigating factors. And 'cause the mitigating factors deal with what defenses the State might have for a particular claim, any legal defenses the State might have. So that -- that is where that recognition would be given. That you could have a claim that you go through the formula and it's valued at -- at a certain number and the issue is not necessarily that we don't -- or there are issues with proof as to whether the events happened, but there may be particular facts applicable to that claim

that show that the State would have particularly strong legal defenses. That could be part of the mitigating factors that cause you to reduce the claim amount.

So I think the answer is yes, that that could be recognized. The important distinction though is that the mitigating factors make clear that defenses that just might be generally applicable to claims that come through this process. So, for instance, a statute of limitations defense that just could be generally applicable to any claim coming through this process that is older than three years ago, those types of defenses would not be -- we wouldn't -- would not be considered the mitigating factors, but more fact specific defenses which you seem to be describing as to whether -- whether the State really was negligent or whether really would have known about it, those could be applied, depending on the case, I think, in the mitigating factors.

SEN. DANIELS: Okay. Thank you, Madam Chair.

CHAIRWOMAN UMBERGER: Senator Bradley, do you want to go next or --

JEB BRADLEY, State Senator, Senate District #03: Sure.

CHAIRWOMAN UMBERGER: Okay. Turn your mic on, please.

SEN. BRADLEY: Thank you. So a couple of concerns. I think queuing off of what Senator Daniels said, I think there has to be absolute clarification on current residents. So if in, you know, the possibility of allegations of current abuse --

CHAIRWOMAN UMBERGER: Could you move your mic forward.

SEN. BRADLEY: Oh, I'm sorry.

CHAIRWOMAN UMBERGER: Yeah, that's okay.

SEN. BRADLEY: I'll start again. I think following up on what Senator Daniels said, I think there has to be clarification on the

current resident being able to come forward and just to ensure that there are no allegations of current abuse that are not covered. I think that's really important.

So this second one is a question. I think we were looking at Page 50, and I thought I heard you say that the description of the abuse you suffered is optional to fill out the form, but it says required. What am I missing or what did I misunderstand?

ATTORNEY GENERAL FORMELLA: Yeah. So what I meant by that, Senator, is that the -- again, you know, if someone left this blank, we wouldn't reject the claim, but we would follow-up to get this information. But I think the basics that are required are the yes or no questions and what's -- what's in the table here in the number. What's not required, I think, is all of the detail. So that -- that's -- to the extent I wasn't clear I apologize, but that's what I was talking about by what's not really required. We need -- we would need kind of some -- we would need the yes or no questions answered and the basic information about how many times.

SEN. BRADLEY: So I would think that that hopefully would be clarified. So a couple more things, if I might, Madam Chair?

CHAIRWOMAN UMBERGER: Oh, absolutely. Just continue until you say you're done.

SEN. BRADLEY: I -- I really appreciate, you know, all the work that's gone into this. I was a co-sponsor of 1677 with Representative UMBERGER. I think, you know, you have really worked hard to try to bring a process forward to resolve some of these claims and balance the needs of the State versus the needs of victims. I mean, that's your job and I -- you know, I commend you for it.

I appreciate what you said about the fact that you have not had many claimants' counsel come and interact with you. I think you said they have not engaged. So -- hum -- I would hope that if we don't move forward today, which I think we should wait and have all of the concerns outlined and then have you back in and have those concerns

addressed, I would hope that the claimants' counsel, in fact, do engage with you because I think if this is going to work, there needs to be a process that at least some of the claimants' counsel feel is workable. And while they may not have engaged with you, they have engaged with us. And so a couple of things that I think need some further discussion with claimants' counsel. And, you know, one of them is the multiplier, that it is potentially difficult to get to the maximum amount because of the discounting factor. I think that, you know, what has been said to us is that, you know, one, whether it's sexual abuse or physical abuse is devastating; but multiple become exponentially more devastating. And so that sort of flies in the face of a discount. So I would hope that gets addressed.

Another issue that has been brought to us is the overall complexity. I think you've tried to, you know, outline how something that is complex is made easy and, hopefully, with more discussions that can to a certain extent be resolved. I hope that there can be more notification in places, you know, like prisons and things like that so that people are advised of their rights if abuse happened. So I think that's something that should be taken into account.

And another concern that has been raised are -- well, I think the way it was described by changes after the fact of this document as being very technical in nature and not substantive in nature. I -- I -- I think that there has been a concern raised that they could become substantive in nature and that that is something that, you know, should be resolved.

So I think, Madam Chair, those are, you know, some of the issues that people have brought to us or to me, at least. And I think, you know, the process allows, you know, counsel for the claimants to come and, you know, further discuss this with you. I think from the beginning of the process, you know, you've been open to that. You know, whether it was through the hearing process on 1677 or again today. So, hopefully, you know, those folks that are, you know, listening to us remotely will, you know, recognize that you're willing to do that. I hope that that happens, and that at

least some of the claimants' counsel will find this a workable process. So thank you, Madam Chair.

CHAIRWOMAN UMBERGER: You're quite welcome. Senator D'Allesandro.

LOU D'ALLESANDRO, State Senator, Senate District #20: Thank you. Thank you, Madam Chair. Mr. Attorney General, first of all, thank you for appearing before us. I think your articulation was pretty complete. Hum --

CHAIRWOMAN UMBERGER: Excuse me.

SEN. D'ALLESANDRO: I've got two real concerns and I think let's follow-up on one of the things that Senator Bradley said. The cumbersome nature of this document, it's very, very difficult to go through this. And you went through it with us and the number of things that are required or not required, I -- I -- they're just unanimous in my opinion. And no one's ever tried this before; is that correct? Has there ever been a settlement of this nature given this kind of a -- of a -- of a methodology to solve it?

ATTORNEY GENERAL FORMELLA: To our knowledge there's never been a process like this set up through legislation. I think there have been similar process -- processes agreed to in the context of -- of litigation but not set up through legislation like this.

SEN. D'ALLESANDRO: And how many people have identified themselves to this point to the best of your knowledge who were abused in some way, shape, or form at the -- at the YDC and the other entities?

ATTORNEY GENERAL FORMELLA: It -- it's between five and 600. There -- they're -- I see news reports now of claimants' counsel saying they have maybe up to 800 clients; but there's a fairly significant number of those clients whose claims stem from suffering abuse in the foster care system, not while at YDC. So what we're directly aware of, and I'm kind of -- I'm estimating here, but I think it's between five and 600. And then there are additional

claimants out there who have been brought into the discussion but really are making claims based on what abuse they may have suffered in the foster care system.

SEN. D'ALLESANDRO: And, again, to follow-up on what Senator Bradley said. Your interaction with the lawyers that are representing these -- these clients and I -- I believe you said during the iteration that almost all of these people have -- have secured legal representation.

Now, if you ever try to handle this document pro se, you're out of your mind. I just don't think you could do it. That's just my -- my opinion. You can't -- you -- and there are people who will fall into that category, because I -- because I think of the time that has -- that has gone by.

So -- so I think the interaction with their representation is -- I think it's of maximum importance. We want to solve a problem here and we -- we want to -- we want to give justice, you know. Justice -- justice delayed is -- is justice denied. Some of these people have waited a long, long period of time.

So I think those are -- those are my points, Madam Chair. And I -- I think that coming back with an update is probably, from my standpoint, is the way to go. Thank you. Thank you, Mr. A.G..

CHAIRWOMAN UMBERGER: Senator Rosenwald.

CINDY ROSENWALD, State Senator, Senate District #13: Thank you, Madam Chair. Thank you, General Formella, for your thorough explanation. I do have a few questions.

So if there are about five or 600 victims, and you think the average award might be as high as \$700,000, that would allow us to -- to settle 142 cases. Does that mean you're expecting to litigate four or -- 400 or so cases out of the Department?

ATTORNEY GENERAL FORMELLA: Yes, thank you for the question. So I think the first point on that is that the average -- the average

we're trying to pinpoint, kind of the 700,000, that is the average that the formula would -- would -- would result in. That comes before applying mitigating factors. So, I mean, it could be that the overall average ends up less, depending on what we see when people start to come through this process as to whether you would apply the mitigating factors in such a way and that would make that average come down. We just don't know that. And that's -- that's one discussion we had as we went through the legislative process. You know, until we -- until folks were to start coming through the process, we're not -- we won't know exactly what the average will be. So that would be the first point.

The second point is that I think I would just answer your question are we expecting to litigate 400 cases or more. We also don't know that. We just don't know how many people are going to come through -- are going to come through the process. But I will say we're prepared to litigate and defend every case that we need to litigate and defend.

I've always viewed this process as an alternative option which the State should provide, but not a process that we're putting forward because we are afraid to litigate and defend these cases if we need to. So we're prepared to litigate any cases we need to.

SEN. ROSENWALD: I can't wait to see your budget request. Maybe I can. If I could follow-up?

CHAIRWOMAN UMBERGER: Oh, yes, please. Just continue --

SEN. ROSENWALD: So --

CHAIRWOMAN UMBERGER: -- with all of your questions until you're done.

SEN. ROSENWALD: You described your -- your process to us as you have this appropriate number in mind of six or 700,000 and so as -- per claimant and so essentially you -- you backed into those frequency and multiplier factors to get to that average award. I have a concern that that's not victim-centered, but it's really more

about the Department, what -- what the Department needed to do to get to that number. So I hope you'll take a look at how those factors are really -- are they victim-centered.

ATTORNEY GENERAL FORMELLA: Yeah. I would just respond to that by saying that -- that was one factor we looked at in trying to get to those numbers. Again, it's -- it was -- it's not an exact science. So it was -- we -- we -- we used that because we're being guided by the -- we used the averages because we are trying to be guided by those to stay within the numbers set by the legislation. But we also try to think about what -- what aggravating factors were more serious than others. So I wouldn't want to give the impression that the only thing we did was this formulaic calculation. It's a rough -- sort of a -- we -- we used some modeling. We tried to use -- be guided by the averages, and we also tried to evaluate looking at other cases around the country, like what different aggravating factors should be valued at. So I would just -- I would just note that.

I -- I understand that -- that any time you use a formula, again, as I said before, it doesn't feel as victim-centered and trauma-informed as it could be. And -- and that's just because we're, again, we're balancing -- we're balancing the need to make this victim-centered and trauma-informed while balancing the need to have -- to have some type of standard that make sure we pay the claims, pay the claims out fairly, and treat everybody fairly and equally that comes through the process.

SEN. ROSENWALD: Thank you. And in our sexual assault statute, sexual assault doesn't make a distinction between genital or anal rape and oral rape. So I'm wondering what the justification is for paying less for an oral rape than an anal or genital rape?

ATTORNEY GENERAL FORMELLA: That, again, is based on a couple different factors. One is -- is what we've been able to glean from -- from what settlement payments or what settlement numbers have been around the country for various types of abuse. Also based on, again, some of the discussions we had with claimants' counsel

prior to the legislative process and what numbers we were talking about for different categories of abuse.

But, yes, I do recognize that you don't see that same distinction in the criminal code. And I -- I think the best answer I can give to that, Senator, is, again, it -- we use a number of factors to try to make sure that we're -- or to try to place values on different types of abuse that account for the different levels of trauma and it's not -- there is no exact science to it. And -- and there's no -- I think there's no way to do that perfectly. And, again, there's no amount of money that really adequately compensates someone for that type of abuse, that type of abuse that they might have suffered, and everyone is impacted differently, too.

So I certainly hear -- I hear your concern, but that's how we did it is to look at other cases around the country and, also, was based on some of the discussions we had had and that were, frankly, had even before I arrived at the Department of Justice with claimants' counsel before the legislative process.

SEN. ROSENWALD: 'Cause it's all rape, right, and it's rape of children.

Hum -- I have two more specific questions. One is the claimant can provide -- has the option to provide medical and behavioral health records. What is the process going to be for how long somebody maintains those records and what is going to be the process for confirming that they've been destroyed at some point? And I'm especially concerned about that since there's going to be a website access for this information as well. What is the security and the privacy protection?

ATTORNEY GENERAL FORMELLA: So I can't speak to -- from a technical standpoint, like the data security and privacy. What I can tell you is that, you know, the administrator is housed within the Court system. And -- and the Court system will be working with the Department of Justice. The State deals with a lot of sensitive, private information, and I would anticipate that we would -- we would utilize all the same protections we utilize for the other

sensitive and private records and information that we -- that we keep. We would utilize all those protections for these records.

As to a retention period, I'm forgetting. I don't think there was a retention period in the statute, right?

SEN. ROSENWALD: No.

ATTORNEY GENERAL FORMELLA: So that --

SEN. ROSENWALD: And you're not covered by HIPAA.

ATTORNEY GENERAL FORMELLA: We're not covered by HIPAA? Well, but we're -- I think we're covered by a -- I'll just say this. I think the Department of Justice knows how to keep documents confidential and protect them, and I'm confident that we will do that.

SEN. ROSENWALD: I'd love to know more. My last question, if I could. I see that the claimant has to have their application notarized. Within the prison, the state prisons and the county jails, do they all have notaries on staff, and what is the access like for inmates, including those who are on the units, you know, especially units for bad behavior? How -- how quickly can an inmate realistically get to a notary?

ATTORNEY GENERAL FORMELLA: I don't have an answer for you on that off the top of my head. I think they have access because, I mean, inmates are entitled to file claims and file lawsuits and -- but I don't know the exact process by which they access notaries and how quickly it can happen. But I do know that residents in our -- in our prisons and in our county jails, they do have -- they do have access to those types of resources because they -- they file lawsuits, they file claims in various processes, and so I'm confident we could work to make sure that access is provided.

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

CHAIRWOMAN UMBERGER: Thank you. Senator Gray.

JAMES GRAY, State Senator, Senate District #06: Thank you. Page 9, Section 4, 14 where you give the three options. When I first read this two days ago, you know, the third option says to withdraw the claim from further processing, but it doesn't go on to say, and continue litigation, nor does the b, c, d, or e talk about that. I understand that probably an attorney wouldn't have any problem with that, but someone who isn't an attorney says okay, you know, I'm withdrawing. You know, having something in there that says and continue litigation or follow the format that you had in b and c where you talk about selection Option 1 and Option 2, you know, Option 3, you know, what is your rights at that point seems to me that it would be clarifying in that section. And I've got one more. And if you have a comment on that, I'll wait.

ATTORNEY GENERAL FORMELLA: Yeah, so I -- I think that that's provided in -- in c, in 14 c where it talks about the notice. I see your point.

SEN. GRAY: Well, in 14 c you talk about the --

ATTORNEY GENERAL FORMELLA: The second option.

SEN. GRAY: You go second option, okay.

ATTORNEY GENERAL FORMELLA: Yep.

SEN. GRAY: So either add third option in there somewhere. You know, again, I'm not worried about the attorneys that are reading this. And even though the good Senator who's taken leave of us right now says, you know, be a fool to do this pro se, somebody's going to try it and the more we can help them out, the better off I think we are.

ATTORNEY GENERAL FORMELLA: Yep. Yeah, I understand that point, Senator. Yeah, it is provided for in the statute, but I -- yeah, we could work to make it clearer in this document.

SEN. GRAY: The other question I had was on Page 31 where you go into the aggravating factors, whether or not those are you pick the highest one or they're cumulative or whatever. And I know that the multipliers was to pick the highest one, but the aggravating factors I don't think in your -- your talk you told me whether that is cumulative or pick the highest.

ATTORNEY GENERAL FORMELLA: These are cumulative. So you would -- for each aggravating factor you just add up the value that would be associated with each one, and then it's a total amount added for aggravated -- aggravating factors. So they're cumulative.

SEN. GRAY: Thank you.

ATTORNEY GENERAL FORMELLA: Yeah.

CHAIRWOMAN UMBERGER: Yeah. Representative Emerick, I thought --

TRACY EMERICK, State Representative, Rockingham County, District #21: A moment.

CHAIRWOMAN UMBERGER: A moment? Worse than that.

REP. EMERICK: Thank you, Madam Chair. I, too, got involved in -- in the forest of trees trying to calculate some of this stuff and that's why I asked the question what's the low and the high. And your response is right on. You're in the forest, don't look at the trees. So I was looking at the trees. Much like has been mentioned, this is so complicated that I got lost in the formulas.

So my suggestion to that end is to divide this document, which I assume you might going to be doing at some point, into different sections. You know, separate documents. One document is the process, one document is the required, one document is optional worksheets. So it doesn't look like you have to do the whole darn thing. Because right now, you know, you're eating an elephant. So my suggestion just to -- for simple people like me, is take the worksheets that they could do and make them a separate document.

It's also you're going to have a hell of a time if you keep it one big document with revision management. You're going to have -- revision management is going to be a nightmare. So if you have three different documents you got a little better chance of keeping track of it.

I did have a process question, a procedure question. You mentioned the administrative hearing. Can a claimant go through the administrative hearing and still go to Court or once they get to the administrative hearing, that's it?

ATTORNEY GENERAL FORMELLA: Yeah. If a claimant elects to go to the administrative -- the proceeding before the administrator, then they would be waiving their rights to go to court at that point.

REP. EMERICK: Good. Thank you. I spent 25 years in direct mail -- direct mail business and one of the things we had always was how -- how little can people write. If you look on -- I just took Page 55, I wrote it down as an example. Those lines that are on Page 55, humans can't write in those lines. They're too close together. So if you -- if you have fewer lines with bigger spacing, because they're never going to be able to make those lines.

Let me see. Line spacing. The other thing is a few years ago I went to the Department of Justice and had a -- we had a presentation of on-line filings, and I don't remember what it was for. But the biggest problem that they had was with attorneys using the on-line system, and I'm just throwing that out there, if you might want to talk to somebody from Justice about, you know, what happened back in the days when we started going on-line. Because they had more problems with attorneys using the on-line system than citizens. So I'm just saying that if history repeats itself, you're going to have more attorney problems than -- than people problems.

Madam Chair, I think that concludes my comments. Thank you.

CHAIRWOMAN UMBERGER: Thank you, Representative Emerick. I am sitting here reading your name. Representative Lynn.

BOB LYNN, State Representative, Rockingham County, District #07: Thank you, Madam Chair. I have a number of questions. May I just --

CHAIRWOMAN UMBERGER: Yeah, just -- just continue until you're done.

REP. LYNN: Thank you. First, I want to say I really commend both of you. I mean, I think -- I really think that this -- I agree with the comments that have been made by -- by many of my colleagues that this is complicated; but I think, as you point out, this is really -- this is kind of a complicated thing, and I'm not sure that you could -- I think some of the suggestions are really good ones, and I hope you'll take those into account. But I'm not sure that in the end you're going to be able to make this considerably less complicated than it is, because that's just sort of the nature of it, so. But I do -- I commend both of you for your work on this. It's -- I think it's -- I think it's a fine job.

I have a couple of questions. The first question is you mentioned very early in your remarks that you anticipated that some of the criminal trials may be beginning in early 2023.

ATTORNEY GENERAL FORMELLA: Yes.

REP. LYNN: So I guess my question is just is there any danger that in connection with those criminal trials if there are claimants who are also, you know, the subject of -- of the criminal -- of the -- of the allegations of abuse -- of abuse against them are the basis for the criminal charges that there would be -- that someone in the Criminal Division of your office is going to be moving to stay some proceedings like this until after those criminal cases are over?

ATTORNEY GENERAL FORMELLA: I don't -- I'll start by saying that, you know, throughout this entire process, and by process I don't just mean this claims process, I mean the criminal investigation of the allegations at YDC and dealing with the -- the civil litigation that's arisen out of those allegations. There's

always been a tension there or a potential that the civil -- what's happening on the civil side could impact the criminal side or vice-versa. So we've always been dealing with that tension.

I don't have a concern that the Criminal Justice Bureau will move to stay this proceeding, because we've talked about that internally as to whether we were generally going to do that in the civil proceedings. And the decision up to this point has been made not to do that and that decision would ultimately rest with me. So if that does happen, you know, we can anticipate it and deal with it. But at this point I -- I don't have a concern that that's going to happen.

REP. LYNN: The next thing I want to ask you about is, and I know you and I talked a little bit about this yesterday, but the -- you had suggested that there might be a possibility that the administrator would contract with someone to be sort of an advocate or an assistant for people who are -- are filing claims. And -- and I guess my only question there is if -- I think from what you said if that were to be done, the cost of doing that would be borne by the State. And I -- I guess what I'm really wondering is is there -- is there the potential for some conflict between that and simply, you know, instead of -- instead of -- instead of having -- using that process just saying to people who seem to be having trouble, well, you know, here are -- here are attorneys. Here are a group of attorneys that are willing to do this or are available to assist you. You know, why don't you go get an attorney. And I guess what I'm thinking there is if they do that then the cost of that attorney would be on -- would be on their shoulders. And so, you know, is there some unfairness between those two processes?

ATTORNEY GENERAL FORMELLA: Yeah, thank you for the question. So I understand that concern. I -- I -- I don't -- I don't think there's a big concern there and -- and this is why. When we're thinking about an advocate that might assist a claimant, what we mean by that is -- is someone who works for the administrator or who the administrator contracts with that could provide basic assistance in the process that has advocate training so that they know how

to -- to interact with and assist victims of crime, but particularly victims of sexual or physical abuse.

The reason we think we'd want the administrator to have that resource at least at hand, if necessary, is that while we anticipate the administrator will have administrative resources to assist with the completion of applications, victims of crime typically may -- that or someone with that type of training, just kind of more administrative training, may not have the training that an advocate would have in the criminal justice context, an advocate who knows how to interact with and assist victims of crime. And we don't anticipate that that advocate would sort of be advocating for the -- the claimant through the process, but just helping talk with the claimant, maybe helping talk with the claimant about whether they would like to retain a lawyer. Claimant may come to this process not wanting to retain an attorney, but part of what a victim advocate does, in general, for a victim of crime would be to help them think about anything they're doing related to what happened to them, including bringing a civil case. And an advocate might help talk them through whether they want to hire an attorney to bring them through the process. But that advocate could also just help them -- help them navigate the forms themselves. But then once the claim is submitted, it's not that the advocate is -- is going through the process with them and -- and advocating for them in the process.

So I -- I see the concern that the State would be paying for that; but I think our thought is that we think it's the right thing for the State to be providing just the basic resources to make this process accessible. And for some claimants who aren't represented and who have not been able to access the help of an advocate, we think we should have someone with advocate training, you know, on standby that the administrator could contract with.

But I don't -- I don't think there'd be a conflict there because that would be to help get the forms filled out and get started in the process. It's not -- the State isn't paying for someone who is -- who is promoting the claimant's position or trying to -- or arguing to the administrator in any way that the claimant

should be paid. They're just helping the claimant fill out the forms.

REP. LYNN: Thank you. I appreciate that. The next question I have is on Page 23 in the categories of base awards for sexual -- sexual -- for claims of sexual abuse. The -- am I correct in understanding that under sub -- sub letter E that the violations of privacy are -- would not -- would only be a basis for -- for bringing subdivision e into play if it was the violation of privacy created a reasonable apprehension of imminent sexual assault; is that correct?

ATTORNEY GENERAL FORMELLA: Yes.

REP. LYNN: So, in other words, if somebody -- if somebody -- let me try to give an example. If -- if -- let's say a guard somehow put an unauthorized camera in, you know, in a -- in the room of an inmate and was watching the inmate, you know, all the time, including presumably some intimate things that the inmate might be doing, that would not in itself be a basis -- that might be a violation of privacy. It might be a basis for criminal or some other civil action. But without more to suggest that that was being -- that that gave the person the basis to believe that they were -- I mean, for example, if the person never knew about that while it was going on, then presumably that could not have been the basis, you know, been the basis for the person to reasonably believe that they were about to be sexually assaulted. So that even though it might be a violation of privacy, would not be a -- would not be something subject to section e. Am I correct in that?

ATTORNEY GENERAL FORMELLA: I think the way I would answer that -- yeah, I think -- I was gonna say I think that's correct. I always just reserve based on the fact there could be a set of facts right where there's a gray area there. Like whether a person reasonably -- whether they ever knew and when they found out and all that; but yes, as a basic matter, that's correct.

REP. LYNN: Okay. Because, in other words, I just want to be sure that we're not -- we haven't -- by the inclusion of violations

of privacy we are not sort of a -- this process is not expanding the reach of the statute to cover --

ATTORNEY GENERAL FORMELLA: Right.

REP. LYNN: -- violations of privacy.

ATTORNEY GENERAL FORMELLA: Yes. And we thought long and hard about that before we put that in.

REP. LYNN: Okay. All right. Next question is on page -- same Page 23. I'm not -- when I see the -- the category C and category D, if you go -- if you look about in the -- on the subsequent pages of the intimate sexual touching and other touching, it -- it sort of seems like they're the same, the definitions are kind of the same. It still goes back to touching for the -- touching of certain, you know, intimate areas for the purpose of sexual gratification. So I'm not -- I'm not quite clear if there's -- what is the distinction between C and D?

In other words maybe, you know, it's just helpful. But I know that in C you give the example of masturbation. You put in parentheses as an example of what would violate C, masturbation. And then -- but that would -- I mean, I think that would be under the definitions that you then give later, that that could fit within either C or D. Hum -- and I -- I guess I'm not -- that's what kind of confused me. Is it -- hum -- I mean, is it -- it may be -- perhaps it was the view that, and -- and I -- I wouldn't disagree with this, perhaps it would be the view that masturbation might be a more serious kind of offensive touching than other kinds of offensive touches. I -- I -- I -- I don't know if that's what you had in mind or -

ATTORNEY GENERAL FORMELLA: Yeah, I think that that is the general -- generally what we had in mind. But I think the best answer probably to give at this moment is that if we are going to be making other tweaks, maybe we'll just work to clarify that.

REP. LYNN: Okay. No, no, that's fine. That's fine.

And then the last thing, and this is the one that really is -- I talked to you about. This is the one that is really -- I'm very, very concerned about, and that is the language on Page 33 at the bottom on issues of credibility. That says a claimant statements make -- oh, I'm sorry. That says a claimant's statements -- statements made under oath shall be presumed credible unless called into question as described below. And that I guess -- I mean, I had, you know, one thing that I -- I didn't mention in our discussion yesterday but it occurred to me since then is I think that this language or language very close to this was originally in a version of the statute, and it was removed. Okay. I know I objected and I think there were some other. There may have been at least one other person who had concerns about it, but it was taken out of the statute.

And I guess, as I said to you yesterday, the thing that really concerns me about this is this -- this effectively, it seems to me, places the burden of proof on the State. It says that if a claimant comes in and makes a claim and there's no -- that, you know, that there's no evidence against the claim, it has to be accepted. So the default position is the claim, you know, the claim has to be accepted and that seems to me to be really contrary to the law in any other area that I'm aware of. And it just -- that that really concerns me. I don't quite see why you need that. And -- and it's -- it's -- it's very concerning to me.

ATTORNEY GENERAL FORMELLA: Yeah. Thank you for the question. I know we -- we discussed this yesterday. A couple points I would make in response to that. You know, the first is that I think it's important to remember, you know, this isn't an adjudicatory process as much as it's more like an alternative dispute resolution process. So it -- you know, we -- there's an initial stage in which a claim is made and the A.G. designee can -- can review it and form a position based on the factors laid out. And then if that -- there's no agreement, it would go to the administrator, which sort of functions as -- as an arbitration. So that's the first -- I think that's the first point. So when it comes to the burden of proof in

arbitration, there is no burden of proof many times. I mean, both parties sort of start out on equal footing.

But the second point I would make, which I think is more important, is that the way the language reads and the subsequent language effectively really just says that I think it's effectively trying to state what was stated in the statute that we're trying to treat each victim with respect and dignity, and that their statements will be presumed to have credibility unless there's something to indicate that -- that they aren't credible or that there's a question around -- around the truth of what they're saying, and that can include lack of proof or problems of proof.

So I think the scope of factors that could cause the credibility of a statement to be questioned, and maybe the value of claim can go down -- to go down is wide enough that -- that -- that I don't think you end up with a problem where -- where in order to dispute a claim or reduce the value of a claim, either the A.G. designee or the administrator has to prove a claimant is not -- is not credible. There just has to be something that would cause that credibility to be called into question, and that something can include a lack of proof.

So I guess that's -- I know we talked about this yesterday. We had a back and forth on it. That's the response I would give. But I think that, you know, I understand the concern that it feels like maybe we're shifting the burden of proof; but -- but because this is really meant to be an alternative dispute resolution process in which you start out with a claim and a negotiation, and then potentially a proceeding in front of the administrator that is functionally a lot like arbitration, it -- I think that mitigates -- I think that would mitigate that concern.

REP. LYNN: Okay. I guess I'm, you know, I'm not quite -- I -- I -- I'm not quite clear why you need it. If you took that -- if you took that sentence out and left all the rest in there, don't you get -- don't you get to the same place without the -- because I guess what I'm really kind of concerned about here is this -- we have a statute that this is based on. The statute

doesn't have that kind of language. This, it seems to me, is kind of a substantive modification of the statute. And the thing that bothers me, really, is that, you know, the implications of this for the future. I mean, is this -- have we started down a road that says people who make claims don't have their -- don't have the burden of proving the claims. And even though I agree with you, we want this to be a very friendly, you know, claimant-oriented process, that's -- that's -- that's saying one thing. To say that they, you know, that the burden now sort of shifts to the -- that all have you to do is make the claim and if there's nothing else that the default position is you win, boy, that's -- that goes pretty far.

CHAIRWOMAN UMBERGER: Representative Lynn, if I could ask the LBA to go back through all the changes that we made to this and let us know if, in fact, this particular sentence was taken out.

CHRISTOPHER SHEA, Deputy Legislative Budget Assistant, Office of Legislative Budget Assistant: We can do that.

REP. LYNN: You know, just a minute. I don't know if -- I'm not saying -- I don't want to say that, you know, it -- that this was unwanted; but I mean, there was -

CHAIRWOMAN UMBERGER: I understand.

REP. LYNN: -- discussion about the burden of --

ATTORNEY GENERAL FORMELLA: And I do -- I remember that concept was in one of the drafts of the legislation.

CHAIRWOMAN UMBERGER: We'll just -- we'll ask the LBA to find it.

REP. LYNN: That be great.

CHAIRWOMAN UMBERGER: Okay? So, I mean, we can argue this all afternoon.

REP. LYNN: Yeah, no, no, no. That's really -- that was really -- I understand your position and I hope you understand mine. I'm just very troubled by that.

I think other than that, that -- those were my questions. And as I say, on -- on -- on balance I think the way, you know, overall I think this was really a -- a really excellent job and with this one caveat of that one area I'm -- I think it's -- I'm very satisfied with it.

ATTORNEY GENERAL FORMELLA: Thank you.

CHAIRWOMAN UMBERGER: Okay. Thank you. Representative Erf.

KEITH ERF, State Representative, Hillsborough County, District #02: You want me to say that I went through the whole thing? I did find a proofing error. I did actually file a claim and found it reasonably easy to do in terms of putting in numbers and doing the calculations and following through the whole process.

As far as the beginning, the questions I think were valid; but I think most of what they did was -- was -- was quite good and, quite honestly, I think it's really they're the experts. I don't consider myself an expert in terms of what numbers you put in regarding particular types of incidents and that sort of thing.

CHAIRWOMAN UMBERGER: Representative Wallner.

MARY JANE WALLNER, State Representative, Merrimack County, District #10: Thank you. And thank you, Attorney General, for what I'm sure was an incredible amount of work putting this altogether. Hum -- and I agree with a lot of the things that have already been said. Certainly, I was disappointed to hear that the claimants' counsel had not engaged in this and had not worked with you around developing this. And I wondered at what point were they provided? Was it only after it was published that we waited for them to engage or were they provided materials along the way?

ATTORNEY GENERAL FORMELLA: They -- all claimants' counsel were provided the initial drafts that we came up with in June. I forget the exact date. But we tried to -- we worked very hard to get some initial drafts together quickly, because we felt that there was enough here. That the best way to work with this was to get something down as an initial draft and send it out to see what folks thought. And then -- so they were provided the initial drafts in June. We continued to follow-up and we did provide up -- an up -- at least one updated draft before we submitted it to the Fiscal Committee. So an updated draft to, again, solicit feedback.

The one thing I do want to clarify just on -- we've gotten, you know, very -- really no engagement from claimants' counsel, but I should also say that with the exception of Nixon Peabody and with some back and forth we had with the Association of Trial Lawyers, we also didn't receive a lot of opposition. So I just -- I just want to note that. So that when I say lack of engagement, I kind of mean lack of engagement in that just not -- for most of them it's not as if they said we don't like this at all so we're not working with you. We just didn't get a lot of feedback.

I say that only to note that for some of the claimants' counsel out there it's just as likely that indicates they think it's okay as -- as it indicates they think it's not okay. We just don't know.

REP. WALLNER: Okay. Thank you. Thank you for that. I'm -- I'm -- I'm also concerned about how complicated this is. It feels to me like someone taking a look at this process and thinking this might be something they want to do will by necessity really have to have a lawyer to do it. So the chance that people would be able to really go through this process without a lawyer is probably -- probably not a good idea, but also probably not something that's really within the scope of possibility for most people.

I did have just really a couple of really technical questions. On Page 49 there are a couple of questions. This is -- this is the claim form. The last two questions, I wondered how the answers to

these last two questions play into all of this. How -- how is this factored in the answers to these questions?

ATTORNEY GENERAL FORMELLA: Are we talking about f and g --

REP. WALLNER: Yes, f and g.

ATTORNEY GENERAL FORMELLA: -- on Page 49?

REP. WALLNER: Yes.

ATTORNEY GENERAL FORMELLA: So for f, you know, the first -- the first thing we're looking to know is just -- and -- and in many cases we might know this once we have the person's name or some of the info, but we want to know whether there is a current lawsuit against the State, because that will factor into whether, depending on where we go with the process, that there needs to be a -- either a temporary stay or, ultimately, a release of the -- or a dismissal of the current claims if there's a settlement through this process. But I think what we're getting at with f is that if someone's already been compensated for -- through some other proceeding for the abuse they've suffered, then -- then they would not be eligible to come through -- come through this process.

And then similar -- I think similar concept in g. Have you already received any settlements from the State? I mean, f and g I think are related; but have you already received any settlements.

The other key point with f is if someone filed a lawsuit and ultimately -- for that abuse and ultimately was dismissed so that there was some sort of finding that there wasn't enough there, that they would not be able to come through -- come through this process. And we want to know -- we want to know that.

REP. WALLNER: So on these two questions if the answers were yes they might be disqualified from going through the process; is that right?

ATTORNEY GENERAL FORMELLA: They may be; but it's also possible that we wouldn't need more detail. I mean, if the answer is yes, we'd have to get more detail behind that answer to know whether they'd be disqualified.

REP. WALLNER: Great. Thank you. And I do hope that the counsel for the claimants will -- that you will be able to reach out to them and that there will be some engagement with them. Thank you.

CHAIRWOMAN UMBERGER: As you know, I have this propensity to ask questions. I will go through my list here.

My first question is will the A.G. designee be required to stay in that position until all the cases are completed so that we have consistency? As you said, we needed the formula so we could have consistency. So how are we going to guarantee consistency out of the A.G. designee?

ATTORNEY GENERAL FORMELLA: I think the -- I -- I understand the question and appreciate the concern. I think the best answer I can give to that is we would make best efforts to ensure consistency in the person who's occupying that position. You know, for starters, we can never guarantee that someone may not leave the office. And we also can't -- can't guarantee that that person may not have something come up or some other matter they just need to be involved in on a given day; but we would make -- I think we would make best efforts. We -- we -- we understand the need and the advantage of having consistency in that position.

CHAIRWOMAN UMBERGER: I -- I'm mostly talking about, you know, putting them in a new position. You know, going -- you know, right now they're the A.G. designee, and you really want them to be something else. You know, I would -- look, I would frown upon that. I would think or ask that you give them the raise or whatever it is. And, you know, because I -- I just think that consistency in this is going to be as important as how you do whatever you do.

ATTORNEY GENERAL FORMELLA: Yep. And that would be -- I mean, as with any position in the office, that that's always my approach. If

someone's going to take a position, we -- we ask for commitment to follow that position through and that would certainly be the approach here. We'd have that discussion with whoever -- whoever might end up taking that position.

CHAIRWOMAN UMBERGER: Okay. Thank you. Hum -- I guess that I'm not understanding why the A.G. designee has any role in how we pay the claimant. I mean, we provided several options. Isn't it just the claimant's option which one they want?

ATTORNEY GENERAL FORMELLA: Just -- just to clarify, what -- what specific role are you referring to that the A.G. designee would have?

CHAIRWOMAN UMBERGER: Well, you said that the A.G. designee will advise the client on how to receive the money, I believe is what you said. It was -- and it -- it's in the written text and I don't remember where it is, but I will find that --

ATTORNEY GENERAL FORMELLA: Okay.

CHAIRWOMAN UMBERGER: -- and get back to you because it was my understanding that the A.G. designee determined what the amount was. It went to the administrator who then -- uh -- agreed or disagreed or did whatever. And then they were paid as in whatever manner they chose. But, anyhow, I'll -- I'll go back and -- and find that.

ATTORNEY GENERAL FORMELLA: Okay.

CHAIRWOMAN UMBERGER: Wherever -- yeah, it's -- it's here someplace.

ATTORNEY GENERAL FORMELLA: Okay.

CHAIRWOMAN UMBERGER: Okay. Um -- I think you answered that on Page 23 which is the -- uh -- designated amounts or whatever it was, that those are additives. So I -- I don't have a problem with that.

I know that the legislation, etcetera, has focused on employees; but I saw nothing in here that, either as a mitigating circumstance or whatever, if children to children abuse occurred would that be considered? I'm just --

ATTORNEY GENERAL FORMELLA: Only if that happened at, say, at the urging or because of a staff member, right, of an employee. If -- if an employee did something to encourage that or cause that to happen. If -- if a resident just abused another resident, that -- and there was no involvement in that by staff, then that would not be covered.

CHAIRWOMAN UMBERGER: Okay. I just --

ATTORNEY GENERAL FORMELLA: Yeah.

CHAIRWOMAN UMBERGER: I know we didn't put it in the legislation. I just didn't know if it would be considered one of the mitigating factors. And I guess the answer is no if it's just child to child.

ATTORNEY GENERAL FORMELLA: Right.

CHAIRWOMAN UMBERGER: Okay. Thank you. Hum -- do we have any idea the approximate length of time in detention of people? You know, in other words, if I was in detention for six months, you know, in order to get to the number 15, I would have to have been abused quite frequently, like every other day almost. But if I was in detention for two years, you know, what occurred, you know, could possibly occur and I -- I saw nothing in here that related to length of time of either whether they call it detention or incarceration.

ATTORNEY GENERAL FORMELLA: So we -- we don't have, say, a -- we don't have a lot of detailed information on that or we don't -- we've not calculated an average, say, time of detention. We will -- we -- we could probably put together some sense of how long each person has been in YDC if we -- depending on how much information we have about them. But we don't -- we have not put that as a factor in here in any way. It seems like what you're getting at

is have we factored -- factored in anything around, you know, if you had, say, two incidents but they were a year part. I suppose if you had two incidents and they were a day apart, that -- that isn't a factor as in the guidelines as we've developed them. But off the top of my head I do not -- I do not know, say, what the average amount of time is that someone's been -- someone has been in YDC across the spectrum of all of the claimants.

CHAIRWOMAN UMBERGER: Yeah, I got that. Okay. Well, it was -- it was just a concern --

ATTORNEY GENERAL FORMELLA: Yeah.

CHAIRWOMAN UMBERGER: -- you know, I have. I think someone else mentioned something about the non-substantive changes and I would like to recommend that those come back to Fiscal, at least as an information item. Okay. So that -- hum -- what may be non-substantial to you may be of concern to us. So I would just like that added.

And -- hum -- you talked or, well, people that are currently incarcerated, I believe Senator Rosenwald asked about notaries and -- uh -- and you answered that. So -- hum -- that was -- that was part of my concern. But my -- my other concern is -- hum -- how do they find a lawyer? You know, do they walk up and say, you know, Commissioner Hanks, I really need a lawyer or, you know, because I was abused in YDC. Or how do they -- how do they get to the point of filing a claim? And that's a -- I mean, I have no idea if there's even anyone currently incarcerated but there may be. But I -- I didn't really see a good procedure in here or the exception of incarcerated people. So I, you know, I don't know.

ATTORNEY GENERAL FORMELLA: I can tell you there are significant number of these individuals who are currently incarcerated. And they, for the most part, have -- have the same attorney. Um -- I think in those cases, you know, the attorneys they -- they were connected with their attorneys through other -- other residents, so -- so kind of through word of mouth. But to your question of for someone who is not already -- does not already have an attorney,

I -- I don't know what that exact process would be as to how someone might come to get a lawyer and that's something we could talk to -- talk to the Department of Corrections about. But I -- but I do know that residents often get lawyers. So this happens. And they --

CHAIRWOMAN UMBERGER: Well, I just -- I just think we need to say something in here that takes care of that. It's not -- it doesn't have to be lengthy or anything, but that we are recognizing that we have incarcerated people.

And the last thing -- last question I have is how many public defenders are we going to have to use in this process?

ATTORNEY GENERAL FORMELLA: Well, we have -- we've indicted 11 individuals. So I think they're all --

CHAIRWOMAN UMBERGER: I'm not talking about the indictments. I'm talking about the claimants.

ATTORNEY GENERAL FORMELLA: Why -- I -- I'm not sure why we would need to use public defenders for this process. Yeah.

CHAIRWOMAN UMBERGER: If the guy says or the gal says I don't have any money, but I want a lawyer.

ATTORNEY GENERAL FORMELLA: Oh, I see. So okay.

CHAIRWOMAN UMBERGER: And -- and doesn't know whether they're going to get a settlement or not, so.

ATTORNEY GENERAL FORMELLA: Yep.

CHAIRWOMAN UMBERGER: And it would appear to me that if you go through the public defender role in this, you wouldn't have to pay attorney fees.

ATTORNEY GENERAL FORMELLA: So I think in that instance what someone would be looking to use is New Hampshire Legal Assistance or 603 Legal Aid or one of those organizations who may be able to

provide free -- free legal assistance. But that -- I don't have -- I don't have an estimate on that. I will say for these type of cases it would be very typical for an attorney to take it on a contingency fee basis and so that does help a claimant who doesn't have means access an attorney.

I think most of the claimants we've seen are -- are claimants who would not be able to pay for an attorney on an hourly basis. They can -- they can retain an attorney because it's on a contingency fee basis. But --

CHAIRWOMAN UMBERGER: Well, should we say public defenders aren't allowed? You know, if you want a lawyer, you have to get one from -- on a contingency basis or something?

ATTORNEY GENERAL FORMELLA: Well, so the public defenders would only be used for criminal cases.

CHAIRWOMAN UMBERGER: Only criminal?

ATTORNEY GENERAL FORMELLA: Yes.

CHAIRWOMAN UMBERGER: Not for civil?

ATTORNEY GENERAL FORMELLA: No.

CHAIRWOMAN UMBERGER: No civil?

ATTORNEY GENERAL FORMELLA: No. But what we do -- what we have provided in here is that the administrator should maintain a list of -- of attorneys who might be willing to consult with a claimant --

CHAIRWOMAN UMBERGER: Okay.

ATTORNEY GENERAL FORMELLA: -- on a free basis.

CHAIRWOMAN UMBERGER: So I don't have to worry about the public defenders.

ATTORNEY GENERAL FORMELLA: No. Well, not in this context.

CHAIRWOMAN UMBERGER: Right. I'm just talking about this because I --

ATTORNEY GENERAL FORMELLA: Yeah.

CHAIRWOMAN UMBERGER: I get concerned that that might occur, you know, and you know where we stand on public defenders, so.

ATTORNEY GENERAL FORMELLA: Oh, yes.

CHAIRWOMAN UMBERGER: I'll just -- okay. So that is all that I have. Is there anyone that has anything else? Represent -- Senator Rosenwald.

SEN. ROSENWALD: Can we follow-up with other questions directly to the Attorney General?

CHAIRWOMAN UMBERGER: Absolutely.

SEN. ROSENWALD: Thank you.

CHAIRWOMAN UMBERGER: Hm-hum. What I would -- uh -- if -- I think we are probably not ready to vote on this. That I think you probably recognize that there are a few things that you need to change and fix, and I particularly liked -- uh -- Representative Emerick's idea of actually making it into three separate documents so that, you know, for whatever reason. And I also liked expanding the lines, but that's something that -- that you can -- you can do.

So if I read the legislation correctly -- hum -- we have 30 days from submission to either approve or reject. So we received this on the 1<sup>st</sup> of August. Okay. So our 30 days are up on August 30<sup>th</sup>. So I guess that if I could get some kind of a motion for us to -- to meet on the 30<sup>th</sup> to go over the changes that we have suggested, that would give you 20 days to make the adjustments and

that would, you know, give other people an opportunity to ask some other questions. So -- hum -- could I have a motion to that effect?

ATTORNEY GENERAL FORMELLA: Madam Chair, I hate to --

CHAIRWOMAN UMBERGER: Yeah.

ATTORNEY GENERAL FORMELLA: I hate to be difficult, but I'm not going to be in town on the 30<sup>th</sup>.

CHAIRWOMAN UMBERGER: Oh, that's a very good reason to have it on the 30<sup>th</sup>.

ATTORNEY GENERAL FORMELLA: And, unfortunately, it's something I -- I don't think I could cancel.

CHAIRWOMAN UMBERGER: When -- when -- uh -- when are you gonna --

ATTORNEY GENERAL FORMELLA: So I will be -- I will be out of town on the 29<sup>th</sup>, 30<sup>th</sup>, and the 31<sup>st</sup>.

CHAIRWOMAN UMBERGER: Oh, okay. Well, then, what's the 28<sup>th</sup>?

ATTORNEY GENERAL FORMELLA: I think the 28<sup>th</sup> is a Sunday.

CHAIRWOMAN UMBERGER: Oh, good day for a meeting. How about --

ATTORNEY GENERAL FORMELLA: The 26<sup>th</sup>?

CHAIRWOMAN UMBERGER: Yeah, whatever that Friday is. Okay.

SEN. D'ALLESANDRO: When -- is there a possibility to do it early in September?

CHAIRWOMAN UMBERGER: Well, the problem is is the 30 days. And if we don't do it within 30 days, then we have to give him a written reason why.

ATTORNEY GENERAL FORMELLA: We could always withdraw it and resubmit. I think if we did that, then that would -- this clock would start again whenever we submit.

SEN. D'ALLESANDRO: I think that's a -- that's an excellent statement. Because the -- the time limit between now and the 26<sup>th</sup> is de minimus. So this gives you more time and it also gives the Board more time to address queries to you.

CHAIRWOMAN UMBERGER: Okay.

SEN. D'ALLESANDRO: I think to get answers.

CHAIRWOMAN UMBERGER: So you will send me a letter. Can we do that, Chris, at this point? Okay. All right.

MR. SHEA: The Committee's made no action on the item. The Attorney General could withdraw it at any point.

CHAIRWOMAN UMBERGER: Okay. Okay.

ATTORNEY GENERAL FORMELLA: So I guess maybe a suggestion would be if you tabled it at your meeting here, and we can get you a letter later today withdrawing it, that way it gives us a chance to get you something in writing as opposed to just me sort of saying it here. That might be -- and then we will resubmit a revised package that addresses the feedback we've heard here today. That that would be my suggestion.

\*\* SEN. DANIELS: Move to table.

CHAIRWOMAN UMBERGER: Okay. All in favor? Okay. So I think -- guess what we have agreed to is to table the item. You will come back with a --

SEN. D'ALLESANDRO: Resubmittal.

CHAIRWOMAN UMBERGER: -- a resubmittal. And then we have now until the 9<sup>th</sup> of September if you do it today. You wait till Monday, then we have a few more days.

ATTORNEY GENERAL FORMELLA: Yeah. Well, we won't be -- yeah, it'll be a bit before we actually resubmit. So I think -- I think you've got even more than 30 days from today.

CHAIRWOMAN UMBERGER: Okay.

ATTORNEY GENERAL FORMELLA: Yeah.

CHAIRWOMAN UMBERGER: Okay. So we'll -- we'll figure that out, Mr. Shea, when we get the -- the thing in.

MR. SHEA: So your intention would be to schedule a special meeting when it's appropriate --

CHAIRWOMAN UMBERGER: Right.

MR. SHEA: -- to review the item once again.

CHAIRWOMAN UMBERGER: Right. Yeah. Because I'm -- I'm getting concerned that our deadlines are approaching, and that, you know, we can't --

MR. SHEA: When you say deadlines, you mean the September 9<sup>th</sup> meeting or do you mean --

CHAIRWOMAN UMBERGER: No, I mean the appointment of the administrator. That's --

MR. SHEA: Got it.

CHAIRWOMAN UMBERGER: You know, because cases or claimants can start filing 1 January.

ATTORNEY GENERAL FORMELLA: Yeah, and notice has to go out November 1<sup>st</sup>. So we'll be under a pretty tight timeline.

**JOINT LEGISLATIVE FISCAL COMMITTEE – SPECIAL AGENDA**

**August 10, 2022**

CHAIRWOMAN UMBERGER: Yeah. Okay. Well, that solved that problem. So we'll -- we'll meet again and either we will be on the ballot for November or we won't, but we're still going to meet. Okay. Adjourned.

ATTORNEY GENERAL FORMELLA: Thank you.

CHAIRWOMAN UMBERGER: Thank you.

(The meeting adjourned.)

#### **CERTIFICATION**

I, Cecelia A. Trask, a Licensed Shorthand Court Reporter in the State of New Hampshire, do hereby certify that the foregoing transcript was transcribed by me from a YouTube recording of said meeting. I was not physically present at this meeting, and I have transcribed the recording to the best of my ability, skill, knowledge, and judgment.

Cecelia A. Trask, RMR, CSR  
NH Licensed Shorthand Reporter #00047