

## Analysis

### Item 12: Department of Justice

#### Criminal Justice Division

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**Analyst:** John Borden

**Request:** Allocate \$209,320 from the Emergency Fund to the Department of Justice, Criminal Justice Division, to supplement funding for Internet Crimes Against Children and election fraud.

**Analysis:** The Department of Justice's Criminal Justice Division provides investigation, prosecution, and analysis to a broad spectrum of public safety and programs and entities across the state. Major programs within the Division include: district attorney assistance; Internet Crimes Against Children (ICAC) ; election fraud; Cooperative Disabilities Investigations; organized crime; public corruption; antiterrorism; High Intensity Drug Trafficking; and Criminal Information Services that facilitates information sharing among law enforcement agencies.

The 2019-21 legislatively approved budget for the Criminal Justice Division totals \$14.4 million General Fund, \$9.6 million Other Funds (Legal Services Fund), and \$1.4 million Federal Funds for a total funds budget of \$25.4 million and 59 positions (59.00 FTE). The budget reflects a one-time reduction of \$263,135 General Fund for prosecutorial support services (Senior Assistance Attorney General position for district attorney assistance/training and the prosecution of some serious violent felonies, complex financial crimes, and public corruption cases) and a one-time General Fund reduction of \$196,619 in (Criminal Investigator for organized crime investigative assistance). The two positions were vacant at the time the reductions were implemented. DOJ retains the position authority and full-time equivalent for both positions and only a portion of each position's funding was disappropriated.

DOJ is requesting a partial backfill of the 2020 2nd Special Session reductions and to restore five months of funding (February to June 2021) for the Senior Assistance Attorney General and Criminal Investigator positions, which would allow for the hiring of the two positions. The Division is reporting a workload increase related to ICAC (79% increase in cybertips from the beginning of 2018 thru mid-November 2020 for over 1,427 additional tips) and an anticipated workload increase related to election fraud (e.g., multi-state voter fraud referrals, false statements, forgery, etc.), but is also generally concerned about managing workload across the entire Division. Of note is that the 2020 2nd Special Session made a conscious effort to not take any General Fund reductions to either ICAC or election fraud. Additionally, DOJ possibly missed the opportunity to request Coronavirus Relief Funding to support ICAC work, if a relationship between the pandemic and the rise in ICAC cybertips could have been established.

This request is complicated by the fact that the Emergency Board has a deference to legislative decision-making, especially those related to reductions. There can be possible exceptions to this stance. For example, when funding can be identified within an agency's approved budget to self-fund a request or when the request is tangential to the original reduction. While DOJ made no request for self-funding, there does exist General Fund within the agency that could be reprioritized to fund the Criminal Justice Division request which does differ from the original reductions.

The 2019-21 legislatively adopted budget for the Office of the Attorney General/Administration Division - Civil Rights Unit totals \$710,680 General Fund and includes two positions (2.00 FTE). One position is a permanent full-time Senior Assistant Attorney General and the other is a permanent full-time vacant Criminal Investigator position (1.00 FTE). The Criminal Investigator is budgeted for \$300,684 personal services and \$34,407 services and supplies for a combined total of \$335,091 General Fund. The position has been vacant for at least since the beginning of the current biennium (17-months). In fact, the Criminal Investigator position likely has never been filled by the agency since this position was authorized by the Legislature and the Senior Assistant Attorney General was only filled last year after a prolonged vacancy. Instead, the agency has used the Criminal Investigator position's funding to support services and supplies expenditures under the rationalization that the Civil Rights Unit has shifted from a litigation approach to a "preventative" approach. DOJ's decision not to fill this position suggests that a portion of the position's funding could be reprioritized in order to fund the Criminal Justice Division's request. The Civil Rights Unit should have sufficient residual funding to operate for the remainder of the biennium, especially if the Emergency Board approves a compensation or "salary pot" increase for agencies at its December meeting.

The Emergency Board operates under limited legal authority and in particular does not have the authority to reduce agency budgets; however, the Emergency Board does have the authority to transfer existing budget, position, and FTE authority within an agency. In this instance, such a one-time transfer of General Fund would allow the Criminal Justice Division to manage current workload for the remainder of the biennium and then allow the Legislature in 2021 to review more closely the activities, budget, and position authority of the Civil Rights Unit, which appears to be much changed since originally being authorized by the Legislature.

**Legislative Fiscal Office Recommendation:** The Legislative Fiscal Office recommends that the Emergency Board authorize the transfer of \$209,000 General Fund from the Department of Justice, Office of the Attorney General/Administration Division and Civil Rights Unit to the Criminal Justice Division, for workload increases related to Internet Crimes Against Children and election fraud.

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**Request:** Allocation of \$209,320 from the State Emergency Fund to restore funding for two positions that were removed during the August 2020 Special Legislative Session.

**Recommendation:** Approve the request with the following modifications: transfer \$209,320 General Fund from the Attorney General Office and Administration Division to the Criminal Justice Division to fund the two vacant support positions for the 2019-21 biennium.

**Discussion:** The Department of Justice Criminal Justice Division has experienced an increased number of cyber tips related to internet crimes against children (ICAC) and an increased number of referrals for voter fraud, all of which require investigations. The Division is requesting to restore funding for two vacant support positions in the Criminal Justice Division. One position provides the research and back up support for the prosecutorial services and the other position assists with research for the investigative services. Both positions would be filled by February 2021.

The August 2020 Special Session included a one-time funding reduction for two long-term vacant positions. However, these positions are needed to assist with the increased demands for support assistance. Due to the limited resources in the State Emergency Fund, the analyst is recommending DOJ internally fund this request for the 2019-21 biennium. The recommendation is a transfer of \$209,320 General Fund from the Attorney General Office and Administration Division to the Criminal Justice Division to cover the expenses associated to the request for additional investigative needs for both ICAC and potential election fraud.

**Legal Reference:** Transfer of \$ 209,320 General Fund appropriation made by chapter 692, section 1(3), Oregon Laws 2019, for the Department of Justice, Criminal Justice Division for the 2019-21 biennium as follows:

Subsection	Amount
(1) Office of the Attorney General and Administration	\$ -209,320
(3) Criminal Justice Division	+\$209,320



## DEPARTMENT OF JUSTICE

November 4, 2020

The Honorable Senator Peter Courtney, Co-Chair  
The Honorable Representative Tina Kotek, Co-Chair  
2019-21 Joint Interim Emergency Board  
900 Court Street NE  
H-178 State Capitol  
Salem, OR 97301-4048

Dear Co-Chairpersons:

### **Nature of the Request**

The Department of Justice – Criminal Justice Division requests \$209,320 in General Fund support to partially restore the funding for two positions that was eliminated during the August 2020 Special Legislative Session.

### **Agency Action**

The division employs 21 special agents, three of whom serve in management positions. Of the remaining 18 special agents, three are assigned to a federally-funded program that investigates social security fraud, two are assigned to the Elder Abuse Unit, two serve as criminal financial investigators, and four are assigned to the Internet Crimes Against Children (ICAC) Task Force (two of which are federally-funded positions). The division employs 14 permanent assistant attorneys general, which include two management positions. Two of the AAG positions are federally funded resource prosecutors whose work is focused on a specific subject matter: DUII and Domestic Violence. Our Elder Abuse Resource Prosecutor is a General Fund position. The division also employs a single Research Analyst 3 position to provide analytical support to law enforcement and prosecutors in complicated investigations, such as human trafficking.

Besides federally funded or other dedicated positions, only seven special agents and nine prosecutors are available to fulfill the division's remaining responsibilities to investigate and prosecute a broad array of serious offenses, including homicide, sexual abuse, public corruption, and racketeering, or to fulfill the division's responsibility to provide training and support to the state's district attorneys and law enforcement agencies regarding those crimes. Because the division's jurisdiction extends statewide, our investigations, prosecutions, trainings, and support functions often require significant travel.

Oregon's smaller counties are most likely to depend on our office for support in serious cases, such as homicide and sexual abuse, but even the largest counties rely on our support for cases involving organized crime or that otherwise require subject matter expertise, such as human

trafficking and white collar crimes. If we lose the resources we need to assist, many cases will go uninvestigated or will resolve in a manner that does not serve justice. Additionally, we are responsible for taking charge of vacant district attorney offices when requested to do so by the governor. We have served in that capacity in 10 counties since the fall of 2016.

Another one of our core functions is investigating allegations of public corruption, which includes allegations involving the unlawful use of force by police. We are often the only resource in the state equipped to handle those investigations, especially in cases that involve elected officials. Public corruption investigations require expending significant investigative resources even when cases do not culminate in criminal charges. Moreover, the state's interest in conducting timely investigations of public officials is just as compelling as its interest in conducting thorough investigations; protracted investigations can lead to the loss of evidence, public distrust in the results, and unnecessary disruption to the involved community.

The Internet Crimes Against Children (ICAC) unit's caseload is more than 84% higher than it was two years ago (the ICAC has already received nearly 3,000 leads this year), which means that other special agents in the division must be available to assist by investigating cases and assisting with surveillance and search warrants. In just the first six months of this year, the ICAC has executed search warrants in over a dozen counties across the state. The division's AAGs are also involved in the legal oversight of ICAC investigations and handle related prosecutions when requested by the local DA. ICAC cases are extremely time sensitive; in several instances, we have rescued a child from being actively abused during an investigation.

The division also assumed the responsibility for investigating election law violations near the end of 2017. In total, the division has received 182 election law violation referrals from the secretary of state in the following categories:

- 134 - voted in same election from two states
- 19 - false statement/misleading the public by a circular
- 13 - false statement on a recall petition
- 5 - false statement by a candidate
- 5 - forgery/stolen ID
- 4 - undue influence
- 1 - contribution in a false name
- 1 - voting when not entitled

Investigations of election law violations can be extremely time consuming. For example, locating and interviewing signature gatherers suspected of forgery is very challenging, because they are often transitory independent contractors who do not permanently reside in Oregon. The investigations can also be time sensitive, such as when there are serious questions about the authenticity of signatures for a ballot measure that is about to be ratified. And, notably, some of the investigations involve public officials, such as allegations that a candidate made a false statement in the voter's pamphlet.

Eliminating prosecutor or special agent positions would mean that all but the most serious election law violation referrals from the secretary of state would go uninvestigated. Division personnel are responsible for investigating and prosecuting serious violent felonies, complex financial crimes, and public corruption cases. Given the need to prioritize the investigation and prosecution of crimes in our division based on the seriousness of the charges involved, we would be unable to prosecute most of the election law violation complaints we receive from the secretary of state.

The August 2020 Special Legislative Session eliminated the funding for two vacant positions – Prosecution Support Services position and the Investigative Assistance position. Both positions had been on the verge of being filled but the candidates were not hired due to concerns about budget reductions related to projections for pandemic related state budget shortfalls. The division needs to fill these positions to avoid a significant decline in our ability to support law enforcement across the state. If this funding request is approved, the division expects to have both positions filled effective February 1, 2021.

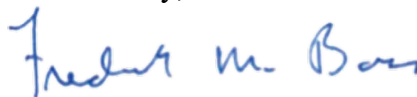
#### **Action Requested**

The Department of Justice – Criminal Justice Division requests \$209,320 in General Fund support to fund the Prosecution Support Services position and the Investigative Assistance position for the remainder of the biennium.

#### **Legislation Affected**

Oregon Laws 2019, chapter 692, sections 1(3); Oregon Laws 2020 Second Special Session, chapter 9, section 21.

Sincerely,

A handwritten signature in blue ink that reads "Frederick M. Boss".

FREDERICK M. BOSS  
Deputy Attorney General

cc: Michael Slauson, Chief Counsel, DOJ Criminal Justice Division  
William O'Donnell, DOJ Chief Financial Officer  
Jennifer Friesen, DOJ Senior Budget Analyst  
Emily Windedahl, DOJ Budget Analyst  
John Borden, Principal Legislative Analyst, LFO  
Michelle Lisper, Policy and Budget Analyst, BAM