

ANALYSIS

Item 22: Department of Justice High Intensity Drug Trafficking Area Program Withdrawal

Analyst: John Borden

Request: Decrease Other Funds expenditure limitation by \$940,753, increase General Fund by \$1,157,838, fund shift five permanent full-time positions from Other Funds to General Fund, and authorize the establishment of one permanent full-time position (0.58 FTE).

Analysis: The Department of Justice - Criminal Justice Division provides investigation, prosecution, and analysis to a broad spectrum of state and local public safety programs. The Division has a 2021-23 legislatively adopted budget of \$29.5 million and includes 65 positions (64.34 FTE).

DOJ's Criminal Justice Division is requesting to withdraw its participation from the High Intensity Drug Trafficking Area (HIDTA) program beginning May 1, 2022, as one of the program's funded agencies. DOJ states that Oregon's 12 counties would continue to be designated HIDTA counties and would continue to receive federal support; however, that operational support would be provided by another yet-to-be-determined federal or state entity. DOJ's 2021-23 legislatively adopted HIDTA budget totals \$1.6 million Federal as Other Funds and includes five positions (5.00 FTE).

The HIDTA is a federal program that was created by the U.S. Congress in 1988 to aid federal, state, local, and tribal law enforcement agencies operating in identified critical drug-trafficking regions. The program's purpose is to enhance and improve the collective efforts of local, state, and federal law enforcement to interdict, investigate, and prosecute those who traffic in drugs. HIDTA is administered by the Office of National Drug Control Policy (ONDCP). There are currently 33 designed HIDTA across the United States with an annual federal budget of an estimated \$290 million. Locally, each HIDTA is governed by an executive board composed of an equal number of regional Federal and non-Federal (state, local, and tribal) law enforcement leaders. The board is responsible for appointing an executive director who manages the day-to-day operations of the program.

The Oregon-Idaho HIDTA program, which initially began in Oregon in 1999, and was later expanded to include Idaho in 2015, covers 12 Oregon counties (Multnomah, Washington, Clackamas, Marion, Linn, Lane, Douglas, Jackson, Josephine, Deschutes, Umatilla, Malheur) plus three counties in Idaho. The HIDTA budget is set annually each calendar year for the following calendar year. The Oregon-Idaho HIDTA program budget totals an estimated \$4.4 million each federal fiscal year.

Beginning with the 2011-13 biennium, the Department of Public Safety Standards and Training (DPSST) took over the Oregon HIDTA Training Initiative grant from the Oregon State Police. At that time, the fiduciary grant remained with Oregon's DOJ. Beginning with the 2015-17 biennium, the Oregon-Idaho HIDTA Board, in coordination with federal ONDCP, moved the fiduciary grant responsibilities, as well as the executive director and two support staff positions, from DOJ to DPSST.

DOJ continued to provide HIDTA with analytical services, which included the Investigative Support Center (ISC) and the Watch Center. The ISC is a co-located multiagency program, which includes state and federal personnel, and whose primary mission is to facilitate and coordinate the exchange of

criminal intelligence information and provides analytical case support and strategic analysis for the 12 Oregon HIDTA counties. ONDCP policy requires the HIDTA Board to ensure appropriate supervision over the ISC and requires the ISC manager, who is a DOJ employee, to report the HIDTA executive director. The Watch Center's primary mission is to enhance officer safety through deconfliction for the designated HIDTA counties. Watch Center analysts also provide tactical analytical support to law enforcement officers throughout Oregon.

On May 21, 2020, the HIDTA Board voted to eliminate funding for the Watch Center beginning in calendar year 2021. The Legislature in 2021 fund shifted \$956,379 Other Funds expenditure limitation used to fund the Watch Center to General Fund to continue support for four existing permanent full-time positions (4.00 FTE) that staff the Watch Center.

The DOJ request also includes retroactive approval for one unbudgeted Principal Executive Manager E position (0.58 FTE) that manages the Investigative Service Center, the Oregon Watch Center, the Titan Fusion Center, and the Oregon Critical Infrastructure Program. The 2021-23 cost of the position is \$196,353 personal services and \$53,720 services and supplies for a total cost of \$250,073. The position is currently funded from General Fund and HIDTA budgetary savings. The 2023-25 biennial cost of the position would be \$440,557 General Fund. The budgeted start date for this position is May 1, 2022.

What DOJ's request proposes is for the agency to continue to actively participate with the Oregon-Idaho HIDTA program, and local county drug taskforces; however, DOJ would no longer operate the HIDTA ISC and it would transition to another yet-to-be determined public safety entity on May 1, 2022. Oregon and DOJ would continue to benefit from a HIDTA ISC, but just not one managed by DOJ. There should be no impact to DPSST from this change, according to DOJ.

In lieu of HIDTA funding, DOJ is requesting to fund shift the agency's five permanent full-time positions from HIDTA funding to General Fund and then redeploy the positions into the Analytical and Criminal and Investigative Support Section, which is responsible for gathering, analysis, and sharing of criminal information with local, state, and national law enforcement agencies.

DOJ asserts the proposed transition will have no adverse impact on the state's public safety system but would enhance public safety. DOJ states that "...there is a clear need for comprehensive statewide analytical support for threat analysis and mitigation, and for investigations and prosecutions in Oregon."

DOJ's proposal is based on several overriding considerations: (1) the scope of responsibilities of HIDTA's Investigative Support Center is too narrowly focused to provide sufficient value to the state to justify its retention; (2) DOJ has had to provide indirect and unbudgeted General Fund subsidy to the HIDTA program, as the HIDTA Board has chosen to underfund certain DOJ expenses; and (3) DOJ believes that the state would be better served by dedicated state staff who could provide a statewide, all-crimes, all counties analytical support service, as opposed to a the current one limited to the 12 HIDTA counties in Oregon and the three HIDTA counties in Idaho. DOJ also states that the agency's Criminal Justice Division has at present only one General Funded position to provide such statewide services.

In concept, DOJ's proposed withdrawal from the HIDTA has merit, especially given the history of HIDTA's declining support for DOJ-provided services and what appears to be the limited benefit received from DOJ hosting the Investigative Support Center. Additionally, adding five times (i.e., positions) the current statewide criminal analytical support also has perceived value; however, what is missing from DOJ's

request is a specific plan for how these positions will be effectively deployed and their resulting impact on public safety.

Recommendation: The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means recommend including a decrease of \$940,753 in the Other Funds expenditure limitation, an increase of \$1,157,838 General Fund, and authorizing establishment of one permanent full-time position (0.58 FTE), for the Department of Justice, Criminal Justice Division, in a budget reconciliation bill during the 2022 legislative session to support fund shifting five permanent full-time positions from Other Funds to General Fund and to increase statewide criminal analytical support.

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Department of Justice
Gibson

Request: Appropriate \$1.2 million General Fund and reduce \$0.9 million Other Funds expenditure limitation to fund shift five permanent positions from Other Funds to General Fund and establish one management position due to DOJ's discontinuation of providing analytical services to the Federal High Intensity Drug Trafficking Areas (HIDTA) program.

Recommendation: Approve the request during the February 2022 Legislative Session.

Discussion: The Department of Justice (DOJ), Criminal Justice Division is requesting a \$1.2 million General Fund appropriation to shift funding for five current research analyst positions and establish one new permanent management position.

The Criminal Justice Division provides analytical and investigative support to state law enforcement and prosecutors. These services are provided through a team of analysts comprised of six research analysts and one manager. Only one of the research analysts is funded through General Fund and the remaining five are partially funded with High-Intensity Drug Trafficking Area (HIDTA) funding. The manager position is currently unbudgeted but partially paid for with HIDTA funding.

One of the HIDTA-funded analysts is restricted to supporting only the United States Drug Enforcement Administration while the remaining four HIDTA-funded analysts are restricted to analytical and investigative services on drug-enforcement investigations within the 12 HIDTA identified Oregon counties and four Idaho state counties. This represents approximately 2% of the crimes in the state of Oregon yet utilizes 83% of the analytic resources. Funding the five HIDTA analyst positions with General Fund allows the Criminal Justice Division to provide additional statewide support to the remaining 24 counties and expand the analytic capacity beyond drug-related crimes.

The Department recognizes the complexity of threats within Oregon extend statewide and beyond the limits of drug trafficking. These threats include public safety threats to critical infrastructure, cyber security, bias crimes, gun violence, domestic terrorism, violent extremists, and organized theft rings. DOJ cites several examples of recent threats including, but not limited to:

- Threats made against school officials across the state,
- Domestic terrorism threats, and
- Threats made to critical infrastructure.

DOJ is intending to discontinue their HIDTA contract effective May 1, 2022. For the Department to continue this work statewide, these positions require a new revenue source. Additionally, the HIDTA funding source doesn't cover salary increases, indirect costs, or Oregon state government service charges. These position costs, associated with all state positions, have become an unbudgeted expense for DOJ along with the unbudgeted manager position. The manager position provides oversight to this group of analysts in addition to 10 other employees and has been filled for the past two years, unbudgeted. Shifting the funding source from HIDTA to General Fund and establishing one permanent management position will re-align the Criminal Justice Division budget and expand the statewide analytic capacity.

Legal Reference: Appropriate \$1,157,838 from the General Fund to supplement the appropriation made by chapter 427, section 1(3), Oregon Laws 2021, for the Department of Justice, Criminal Justice Division for the 2021-23 biennium.

Decrease the Other Funds expenditure limitation established by chapter 427, section 2(4), Oregon Laws 2021, for the Department of Justice, Criminal Justice Division, by \$940,753 for the 2021-23 biennium.



DEPARTMENT OF JUSTICE

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December 10, 2021

Senator Elizabeth Steiner Hayward, Co-Chair
Representative Dan Rayfield, Co-Chair
Interim Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairpersons:

Nature of the Request

The Department of Justice – Criminal Justice Division requests a fund shift that would be a \$940,753 decrease in Other Funds expenditure limitation for 5 HIDTA positions and an increase of \$907,765 in General Fund support for 5 positions / 2.90 FTE for the Criminal Justice Division to convert HIDTA positions to statewide positions effective May 1, 2022 and to request position authority and \$250,073 General Fund support for one permanent PEM-E position (0.58 FTE) to manage these research analysts and other staff effective May 1, 2022.

Agency Action

The Department of Justice – Criminal Justice Division has long lacked a core team to provide research analysis to support law enforcement issues across the state of Oregon. Currently, the division has only one General Fund Research Analyst (RA3) who provides case support statewide. Meanwhile, the division has five research analysts solely for the HIDTA program.

According to uniform crime reporting statistics, only about 2% of all crimes reported in Oregon over the last year were drug cases in the twelve Oregon HIDTA counties, which leaves roughly 98% of the criminal offenses reported statewide as ineligible for analytical support from the HIDTA funded positions.¹ The graph below illustrates the difference in support levels between statewide analysts and HIDTA-funded analysts:

¹ <https://www.oregon.gov/osp/pages/uniform-crime-reporting-data.aspx>

	HIDTA	Statewide
Counties Supported	12 Oregon / 3 Idaho	All Oregon Counties
Investigations Supported	Drug Crimes	All Crimes
Agencies Supported	Drug Task Forces	All Agencies
Percentage of Reported Crime	Up to 2%	Up to 100%

Therefore, the division has five positions that are restricted by the HIDTA program to only work on the 2% of the crimes reported in Oregon and only one position available to work on the remaining 98% of the crimes reported in the state.

Oregon, like the rest of the nation, is facing evolving and complex threats statewide that extend well beyond drug trafficking and the current staffing capacity of the Oregon DOJ analytical resources. Threats to public safety in Oregon include gun violence, election interference, bias crimes, organized theft rings, threats to critical infrastructure, and domestic terrorism and violent extremism. Specific examples include:

Threats to School Officials

There is a national increase in threats of violence against school boards and education personnel. Attorney General Merrick Garland recently noted this trend in a memo directing the FBI to conduct meetings with school boards across the country to discuss strategies for addressing these threats: “In recent months, there has been a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation’s public schools. While spirited debate about policy matters is protected under our Constitution, that protection does not extend to threats of violence or efforts to intimidate individuals based on their views.”² Oregon has seen that same increase, including the following reported incidents: a North Bend school board meeting forced to move on-line because of potential crowd-related thefts;³ Bend-LaPine school board members of color who were subjected to online intimidation and harassment;⁴ Oregon school superintendents accosted in parking lots, followed home, and harassed with notes saying, “now we know where you live, where you work”;⁵ and a Corvallis school board chair of color who received text of one of his lawn signs riddled with bullet holes and was told a neighbor was looking for him and threatening to kill him.⁶

² <https://www.justice.gov/ag/page/file/1438986/download>

³ <https://oregoncapitalchronicle.com/2021/10/14/facing-threats-superintendents-and-school-boards-turn-to-legislature-law-enforcement/>

⁴ *Id.*

⁵ *Id.*

⁶ <https://www.pressreader.com/usa/dayton-daily-news/20211107/281659668273919>

Violent Extremist Groups

Oregon is not immune from the national threat of domestic terrorism.⁷ In fact, domestic terrorism cases are on the rise in Oregon according to the FBI.⁸ Incidents in Oregon range from the armed taking and occupation of the Malheur Wildlife Refuge in 2016 to more recent clashes between ideologically opposed groups. One incident involving the latter prompted members from Oregon’s congressional delegation to request assistance from US DOJ, stating that “we fear that it is only a matter of time before violence in Oregon escalates with deadly consequences unless we take the threat of domestic violent extremism seriously.”⁹

Critical Infrastructure/Cybersecurity

The breach of Oregon’s capitol on December 20, 2020, may be a stark example of the potential risks to Oregon’s critical infrastructure, but threats to our infrastructure go beyond buildings and includes all the systems, facilities, and networks necessary to maintain our economy, protect our health and safety, and preserve our way of life. Recently, representatives from local governments testified regarding concerns related to the growing trend of cyber-attacks against local entities, asking for state support for funding, technical assistance, and education.¹⁰ Not all threats to Oregon’s infrastructure come from malicious actors, however; damage from natural or accidental disasters, such as earthquakes, wildfires, or oil spills, have the potential to be equally disruptive to our infrastructure.

Policy Proposal to the Legislature

The HIDTA analysts are **restricted** to providing analytical support for drug-enforcement investigations in only 12 of Oregon’s 36 counties. As a result, the HIDTA funded analysts are unable to provide support for the remaining 24 counties or assist HIDTA counties with crimes that do not involve drug trafficking. That limitation means that the five analysts can only work on 2% of the total crimes reported in Oregon and only in 12 counties and, therefore, are unable to provide support for the vast majority of crimes committed in Oregon.

Again, the division has only **one position available to work on the remaining 98% of the crimes reported in the state.** The Criminal Justice Division needs state funded research analysts to be able to support law enforcement agencies and district attorneys across the entire state in addressing these types of threats and criminal activity.

CJD has been over-reliant on HIDTA funding, which has become problematic for several reasons. First, the funding is unstable; the HIDTA Executive Board can unilaterally decide to limit funding and eliminate positions—even after a budget has been approved. On December 2, 2021, the HIDTA Executive Board reduced the DOJ 2021 HIDTA award by \$145,000 from a budget approved in May 2020.

⁷ <https://www.washingtonpost.com/investigations/interactive/2021/domestic-terrorism-data/>

⁸ <https://www.kdrv.com/content/news/FBI-agent-says-domestic-terrorist-cases-are-rising-in-Oregon--574076881.html>

⁹ <https://www.merkley.senate.gov/imo/media/doc/21.08.30%20Letter%20to%20DOJ%20on%20Extremism%20Final.pdf>

¹⁰ <https://olis.oregonlegislature.gov/liz/202111/Downloads/CommitteeMeetingDocument/250324>

Second, the HIDTA Executive Board has denied full funding of the HIDTA program for DOJ. Specifically, HIDTA will not fund State of Oregon state government service charges and will not fund DOJ indirect costs. Further, HIDTA will no longer fund salary increases for these five positions which means that CJD must subsidize those costs for the program to continue. Third, the HIDTA-funded analysts are restricted to supporting only drug-related investigations in only 12 Oregon counties. In fact, one of the positions does not provide any assistance to Oregon law enforcement, but instead is required to be assigned fulltime to support only the United States Drug Enforcement Administration. Given the instability and inadequacy of HIDTA funding, and the restrictive nature of the program, continuing the program at CJD is not sustainable. At the same time, in light of the emerging threats facing all Oregonians, there is a clear need for analysts that can provide state-wide support for threat analysis and mitigation, and for investigations and prosecutions.

As a result of the HIDTA executive board's refusal to fully fund the Oregon HIDTA program, DOJ would need to seek General Fund support to backfill and subsidize the HIDTA program. As a policy matter, DOJ does **not** believe it is cost effective to subsidize the HIDTA program when the division lacks the staffing to address 98% of the crimes reported in the state.

Instead, the Department of Justice believes it is a **greater benefit and more cost effective** to invest state resources in addressing 98% of the reported crime. Therefore, DOJ is requesting to convert the five HIDTA positions to state General Fund support. Converting these positions to state funding would allow the positions to provide criminal case support on **all crimes** in all 36 Oregon counties, including creating link charts, timelines and other analytical resources that can be the key to proving criminal cases. The research analysts would also testify in court and before grand juries. Additionally, the analysts would support the department's statutory duties to conduct comprehensive factual studies of criminal activity in all of Oregon and to coordinate the information sharing, training, and outreach that is necessary to counter those criminal activities. That work is also vital to fulfilling the department's responsibility to support the Oregon Homeland Security Council in its efforts to assess and mitigate risks to Oregonians related to domestic terrorism. (*See* HB 2927 (2021)).

Our DOJ request also includes position authorization and funding for one PEM series E manager with responsibilities that include serving as a direct-line supervisor for the analysts. Given the variety and sensitive nature of the work these analysts conduct, it is important that they have an analyst supervisor to provide management of the unit and coordination with other Criminal Justice Division units. Overall, this supervisory position manages 16 positions, plus coordinates 5 - 10 federal duty stationed analysts as assigned. The position is responsible for the development and presentation of various grants, which include Homeland Security and UASI.

The position is also responsible for the direction of major state programs, including the Oregon TITAN Fusion Center, Oregon Critical Infrastructure Program, and the Oregon Watch Center. The position acts as a liaison with high level officials such as the State Homeland Security Advisor (HSA), Secretary of State, US DHS Intelligence & Analysis Regional Directors, and US DHS CISA Regional Directors.

The position also represents DOJ on the Oregon Emergency Response Council (OERS) and the Oregon Homeland Security Council – with direct briefing to agency heads and Legislative officials and serves as the Co-Chair of the Law Enforcement Working Group for the Portland UASI Region and acts as the Director in the absence of the Special Agent in Charge.

As for the Oregon HIDTA program, the funding would most likely be provided to another entity that is willing to subsidize the program and CJD will certainly assist that program as much as possible.

In summary, **there is a clear need for comprehensive statewide analytical support for threat analysis and mitigation, and for investigations and prosecutions in Oregon.** This request would provide permanent state funding for existing research analyst positions and funding to achieve budget alignment for an existing but unbudgeted management position in the Criminal Justice Division (CJD) to ensure CJD will be able to provide analytical and investigative support services for all of state law enforcement and prosecutors.

Action Requested

The Department of Justice - Criminal Justice Division requests a fund shift that would be a \$940,753 decrease in Other Funds expenditure limitation for 5 HIDTA positions and an increase of \$907,765 in General Fund support for 5 positions / 2.90 FTE for the Criminal Justice Division to convert HIDTA positions to statewide positions effective May 1, 2022 and to request position authority and \$250,073 General Fund support for one permanent PEM-E position (0.58 FTE) to manage these research analysts and other staff effective May 1, 2022.

The requested General Fund increase amount does not match the Other Funds decrease amount due to one position being an underfill. The position is actually budgeted as an Information Systems Specialist 8 but has been filled for several biennia at a lower classification of Research Analyst 4 based on the program's actual needs. The General Fund request amount includes this position as a Research Analyst 4 to appropriately align the budget with the program's operations going forward.

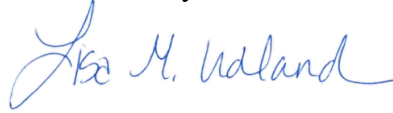
In summary, the total requested Other Funds decrease is \$940,753 and the total requested General Fund increase is \$1,157,838 including one PEM-E position (0.58 FTE).

Senator Elizabeth Steiner Hayward, Co-Chair
Representative Dan Rayfield, Co-Chair
December 10, 2021
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Legislation Affected

Oregon Laws 2021, chapter 427, section 2(4) (- \$940,753) and section 1(3) (+ \$1,157,838).

Sincerely,

A handwritten signature in blue ink that reads "Lisa M. Udlund". The signature is fluid and cursive, with the first name "Lisa" being particularly prominent.

LISA M. UDLAND
Deputy Attorney General

cc: Michael Slauson, Chief Counsel, 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