

## ANALYSIS

### Item 30: Department of Justice Traffic Safety Resource Prosecutor

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**Analyst:** John Borden

**Request:** Increase Other Funds expenditure limitation by \$512,931 and authorize the establishment of one limited duration position (0.88 FTE) for a Traffic Safety Resource Prosecutor.

**Analysis:** The Department of Justice (DOJ) - Criminal Justice Division is requesting authorization to establish one limited duration Senior Assistant Attorney General position (0.88 FTE) for a Traffic Safety Resource Prosecutor (TSRP) that would be funded by a Federal as Other Funds grant from the Oregon Department of Transportation (ODOT).

The Criminal Justice Division provides investigation, prosecution, and analysis to a broad spectrum of public safety programs. The Division has a 2023-25 legislatively adopted budget of \$34.5 million and includes 74 positions (73.51 FTE).

The Driving Under the Influence of Intoxicants program was established in 2006. According to DOJ, such a program can be prerequisite for the receipt of federal highway funding. The program has a 2023-25 legislatively adopted budget of \$889,447 Other Funds and one position (1.00 FTE). The program's one TSRP was converted from limited duration to permanent full-time by the 2017 Legislature. A second TSRP was last funded in the 2017-19 biennium, but discontinued as grant funding was no longer available.

The revenue to support the program comes from Federal as Other Funds as subgrant from ODOT and under the U.S. Department of Transportation, National Traffic Safety Administration. For this request, the underlying federal grant period is based on the federal fiscal year 2024 (October 1, 2023 to September 30, 2024). A federal fiscal year 2025 grant extension is possible. The federal grant requires a state match of 20% for which DOJ is responsible for meeting. DOJ meets the match requirement primarily through in-kind support activities (e.g., trainings) and non-program related General Fund budgeted for the Criminal Justice Division.

This request would re-establish, on a limited duration basis, a second TSRP position to assist with providing statewide continuity for law enforcement on Driving Under the Influence of Intoxicants (DUII) prosecutions; however, the position will not undertake prosecutions other than for some complex vehicular homicide cases for which local prosecutors have requested assistance. Instead, the position will serve as a second technical resource to law enforcement and local prosecutors, especially new, less experienced prosecutors assigned DUII cases. The position will "...maintain a clearinghouse of information on the Oregon District Attorney Resource Network (ODARN) on DUII laws, motions, defense experts, emerging legal issues, expert testimony transcripts and provide information on DUII law via the DUII listserv." The position will prepare resources materials, conduct trainings for state, local, and nonprofit entities and participate in various DUII taskforces and workgroups. The position may also be consulted on DUII legislation.

The request was repriced based upon the timing of the hiring of the position (March 2024) rather than the October 1, 2023 date that has been requested. DOJ may need to request the continuation of the position for the 2025-27 biennium, or a portion of the position, dependent upon availability of carryover grant funding and/or the possible renewal of the grant.

**Recommendation:** The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means recommend including an increase of \$396,936 in the Other Funds expenditure limitation and authorizing the establishment of one limited duration position (0.67 FTE) for the Department of Justice, Criminal Justice Division, in a budget reconciliation bill during the 2024 legislative session for a Traffic Safety Resource Prosecutor in the Driving Under the Influence of Intoxicants program.

**Request:** Increase Other Funds expenditure limitation by \$512,931 and establish one Senior Assistant Attorney General limited duration, full-time position (0.88 FTE) for driving under the influence of intoxicants (DUI) prosecutions.

**Recommendation:** Approve the request during the 2024 Legislative Session.

**Discussion:** The Department of Justice (DOJ) is requesting \$0.5 million Other Funds expenditure limitation and position authorization for the establishment of one limited duration Senior Assistant Attorney General position (0.88 FTE). The funding source is a subgrant from the Oregon Department of Transportation (ODOT).

The DOJ Criminal Justice Division receives a Driving Under the Influence of Intoxicants (DUI) Traffic Safety Resource Prosecutor (TSRP) grant funded by the National Highway Traffic Safety Administration (NHTSA) as a subgrant from ODOT. DOJ has been awarded this grant over several biennia and already has position authority and expenditure limitation for one Traffic Safety Resource Prosecutor, which is a resource for prosecutors and law enforcement, to conduct trainings, assist with DUI litigation, and be an expert witness for DUI-related legislation.

For Federal Fiscal Year 2024, the grantor has funded a second Traffic Safety Resource Prosecutor position due to the significant burden placed on a sole, tenured Traffic Safety Resource Prosecutor stemming from the broad scope of the role and extensive number of partners who rely on this advice and assistance. DOJ has tracked a four percent rise in impaired driving cases in Oregon following the COVID-19 pandemic, an upward trend that is also occurring nationally according to the NHTSA. In 2023, the Oregon Legislature also passed House Bill 2316, which amended multiple statutes to expand the definition of what might be considered an impairing substance for a DUI prosecution.

DOJ is requesting the position authority for an additional, limited duration Senior Assistant Attorney General position and the expenditure limitation for the additional position funded by this TSRP grant.

**Legal Reference:** Increase the Other Funds expenditure limitation established by chapter 382, section 2(5), Oregon Laws 2023, for the Department of Justice, Criminal Justice Division, by \$512,931 for the 2023-25 biennium.



DEPARTMENT OF JUSTICE

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December 4, 2023

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

Dear Co-Chairs Steiner and Sanchez:

**Nature of the Request**

The Department of Justice – Criminal Justice Division requests \$512,931 in Other Funds expenditure limitation and position authorization for the establishment of one limited duration Senior Assistant Attorney General position (0.88 FTE). This position will be funded through a subgrant from the Oregon Department of Transportation.

**Agency Action**

The Department of Justice – Criminal Justice Division receives a Driving Under the Influence of Intoxicants (DUII) – Traffic Safety Resource Prosecutor (TSRP) grant funded by the National Highway Traffic Safety Administration as a subgrant from the State of Oregon Department of Transportation - Transportation Safety Office.

DOJ has had this grant renewed and possesses the position authority and expenditure limitation for the grant except with this grant renewal, the grantor has funded a second Traffic Safety Resource Prosecutor position which is a Senior Assistant Attorney General position classification at DOJ. Therefore, DOJ is requesting the position authority for the new additional position and the expenditure limitation for the additional position funded by this TSRP grant.

Among other factors, the recent legislation making Oregon an “any impairing substance state” for the purposes of DUII prosecution has increased the demands for assistance with DUII cases and the need for resource materials. The TSRP’s will maintain a clearinghouse of information on the Oregon District Attorney Resource Network (ODARN) on DUII laws, motions, defense experts,

emerging legal issues, expert testimony transcripts and provide information on DUII law via the DUII listserv. The TSRP will frequently update the Oregon DUII Case Law Manual and/or DUII case law material and other DUII material in order for prosecutors in the state to have fast access to DUII law while in trial and throughout the litigation process.

TSRP's will assess the types of assistance requests received and will use that information to determine the needs for additional resource materials, trainings and other needs for successful investigations and prosecution. TSRP's will handle complex DUII cases including vehicular homicides.

TSRP's will also work to identify prosecutorial practices and policies that work or that need improvement throughout the state as one of the partners in the overall DUII prosecution process. By providing the resources and fielding technical questions at all stages of investigations and litigation, TSRP's will prevent more work for prosecutors and help create a good trial record in court to prevent bad case law. In addition, the TSRP's will help law enforcement improve their investigations which will lead to more successful prosecutions.

There has been a rise in impaired driving cases in Oregon as well as nationwide over the last several years. Since the 2020 pandemic, there has been a steady increase in DUII cases in Oregon. In 2020, there was a reported 9,802 DUII cases in Oregon counties (this does not include the number of misdemeanor DUI cases filed in city prosecutors' offices – including in some of the larger cities in Oregon). In 2021, there were 10,074 DUII cases filed and in 2022, there were 10,227. In Portland, Oregon's largest city, traffic fatalities have skyrocketed in the last three years. From 2017-2020, the average number of fatalities was 46. In 2021 and 2022, traffic fatalities jumped to 63 which is the highest number in three decades. Portland is set to exceed that number this year. Speed and impaired driving are the main attributable factors for the deaths.

DUII prosecutions are usually handled by junior prosecutors, who are new and often lack trial skills and experience. As they grow in ability, they often move out of the DUII prosecution arena, especially in the larger counties. As a result, there is continuing need for ongoing training and technical assistance in the area of trial skills as well as specific DUII related law.

### **Action Requested**

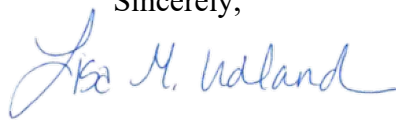
The Department of Justice - Criminal Justice Division requests \$512,931 in Other Funds expenditure limitation and position authorization for the establishment of one limited duration Senior Assistant Attorney General position (0.88 FTE).

Senator Elizabeth Steiner, Co-Chair  
Representative Tawna Sanchez, Co-Chair  
December 4, 2023  
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**Legislation Affected**

Oregon Laws 2023, Chapter 382, section 2(5).

Sincerely,

A handwritten signature in blue ink that reads "Lisa M. Udland". 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 DOJ  
William O'Donnell, Chief Financial Officer, DOJ  
Emily Windedahl, Budget Analyst, DOJ  
John Borden, Principal Legislative Analyst, LFO  
Zachary Gehringer, Policy and Budget Analyst, DAS Chief Financial Office