

ANALYSIS

Item 13: Oregon Health Authority Jail Diversion Programs

Analyst: Matt Stayner

Request: Acknowledge receipt of a report on the Oregon Health Authority's Jail Diversion program and the Improving People's Access to Community-Based Treatment, Supports, and Services grant program administered by the Criminal Justice Commission.

Analysis: The Oregon Health Authority (OHA) was directed by a budget note included in the budget report for SB 5525, the agency's primary budget bill, to collaborate with the Criminal Justice Commission (CJC) on a report that compares OHA's Jail Diversion program and CJC's Improving People's Access to Community-Based Treatment, Supports, and Services (IMPACTS) grant program. The agencies were to include overviews of the budgets and funding structures, and any recommendations the agencies had for supporting community-based efforts to help individuals with behavioral health and substance use disorder challenges stay out of the criminal justice system.

The agencies submitted a comprehensive report that succinctly addressed all the components outlined in the budget note. However, the recommendations were limited to the existing programs and did not address or identify additional or new opportunities to bolster the system beyond the existing programs. One significant issue that was highlighted about the OHA Jail Diversion program, which was also addressed in the recommendations section, is that the program exists only as defined in the provisions of the County Financial Assistance Agreements between OHA and county governments. No formal legislative action has codified the program, nor are there administrative rules governing the program. OHA has broad rulemaking authority and could likely undertake rulemaking to formalize the program, but legislative action would communicate the expectations of the Legislature for the program's operation and outcomes and would provide sound basis for administrative rule development.

Recommendation: The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means acknowledge receipt of the report.

Request: Report from the Oregon Health Authority (OHA) and Criminal Justice Commission (CJC) clarifying how funding for jail diversion efforts within OHA’s behavioral health programs overlaps with funding CJC provides through its Improving People’s Access to Community-based Treatment, Supports, and Services (IMPACTS) grants program, as required by a budget note to Senate Bill 5525.

Recommendation: Acknowledge receipt of the report.

Discussion: Senate Bill 5525 (2023), OHA’s main budget bill for the 2023-25 biennium, includes a budget note with the following direction for OHA and CJC:

Budget Note: Jail Diversion and IMPACTS Grants

OHA and CJC shall collaborate on a report that clarifies the shared characteristics and unique elements of their respective programs, an overview of the budgets and funding structure for both, and recommendations for the most efficient way for Oregon to move forward with supporting community-based efforts to keep individuals with behavioral health and SUD challenges to stay out of the criminal justice system. No later than January 1, 2024, both agencies shall report and provide recommendations to the subcommittee of the Joint Committee on Ways and Means with authority over human services agencies’ budgets.

Senate Bill 5506 (2023) provided OHA with \$3.8 million General Fund to expand jail diversion services to all 36 counties in Oregon as well as \$1.1 million General Fund, \$1.6 million Federal Funds and seven positions (5.25 FTE) for a team to provide coordination services for people going through civil commitment proceedings. The investment was provided on a one-time basis. The same bill provided \$10.0 million General Fund on a one-time basis for Improving People’s Access to Community-based Treatment, Supports, and Services (IMPACTS) grants to be deposited into the IMPACTS Account and provided the Criminal Justice Commission with \$10.0 million of Other Funds expenditure limitation for making grant awards from the account.

The report notes areas of similarity and difference between the two funding streams:

	Jail Diversion	IMPACTS Grants
Geography Covered	36 counties and 1 Tribal government	11 counties and 5 Tribal governments
Services Provided	<ul style="list-style-type: none">- Mental Health Treatment- Substance Use Disorder Treatment- Case Management- Medication Management- Benefits Navigation- Housing Supports	<ul style="list-style-type: none">-Mental Health Treatment-Substance Use Disorder Treatment-Reentry and employment support-Peer Mentoring-Benefits Navigation-Transitional and Permanent Housing

Eligibility Criteria	Adults with a mental health diagnosis and an open case for a non-violent criminal charge	Adults with a behavioral health diagnosis and four or more jail bookings in a year or high utilization of the Oregon State Hospital / criminal justice system
Number Served	4,425 (2019)	398 (July 2022 – April 2023)
2023-25 Biennial Investment	\$17.6 million General Fund	\$10 million General Fund
Intervention points	Pre- or post-booking	Various

In summary, the two funding streams support similar services for different populations. IMPACTS grants services reach a higher acuity population and have more flexibility about when and how to reach those populations, while jail diversion funds reach a broader population at fixed points in the pre- and post-booking process. Jail diversion services are available statewide but used more heavily in rural counties throughout the state, while IMPACTS grants are more geographically focused but are more inclusive of tribal governments in providing funding.



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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:

Nature of Request

The Legislature passed Senate Bill 5525 (2023 Regular Session), requiring the Oregon Health Authority (OHA) and Oregon Criminal Justice Commission (CJC) to collaborate on a report that clarifies the shared characteristics and unique elements of their respective programs, an overview of the budgets and funding structure for both, and recommendations for the most efficient way for Oregon to move forward with supporting community-based efforts to keep individuals with behavioral health and SUD challenges to stay out of the criminal justice system. No later than January 1, 2024, both agencies shall report and provide recommendations to the subcommittee of the Joint Committee on Ways and Means with authority over human services agencies' budgets.

Overview of Report

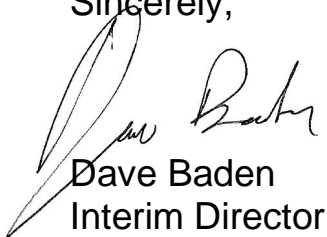
Jail Diversion is accessible to community mental health programs (CMHPs) via a service element in the County Financial Assistance Agreement (CFAA). The program has two intervention points: pre-booking interventions look like crisis management with law enforcement. In pre-booking, law enforcement calls for mental health crisis supports before arresting an individual. In post-booking, jail staff notify a CMHP that a person needs mental health support and the CMHP then supports transition out of jail. Jail Diversion also aims to prevent Oregon State Hospital (OSH) admissions. Only adults over the age of 18 and who live with a mental illness are eligible to participate. Currently OHA sets aside about \$17.75 million per biennium for jail diversion implementation.

Improving People's Access to Community-based Treatment, Supports, and Services (IMPACTS) is a grant-based program that aims to support people who live with behavioral health conditions and frequently utilize local criminal justice systems and healthcare resources (e.g. 4+ jail bookings in a one-year period, multiple ER visits and inpatient stays, admissions history at OSH, or frequent criminal justice and/or emergency services involvement). Eligibility criteria encompasses a "look back" period, so a person does not have to be currently involved with a criminal court process or be actively diverted from one. Services and treatment are provided wherever the client is. This program has received \$10 million in each of the last biennia, or \$30 million total since 2019.

These two programs are similar in that they both aim to reduce involvement with the criminal justice system for individuals in need of mental health treatment accessible in the community. IMPACTS, has a narrower scope in that it adds the layer of high system utilization (multiple jail bookings, overuse of ERs and hospitals, etc.) and serves a smaller population.

OHA will issue the report described above by December 11, 2023. The report includes recommendations to the legislature regarding services available to people whose needs sit at the nexus of behavioral health treatment and the justice system.

Sincerely,



Dave Baden
Interim Director

EC: Matt Stayner, Legislative Fiscal Office
Patrick Heath, Department of Administrative Services
Kate Nass, Department of Administrative Services
Amanda Beitel, Legislative Fiscal Office

Jail Diversion & IMPACTS

Overview of Programs and Recommendations

December 2023

Contents

Acknowledgments 2

Executive Summary..... 3

Introduction..... 4

Jail Diversion 5

IMPACTS..... 7

Programs Comparison..... 10

Recommendations..... 12

Acknowledgments

This report was prepared by the Oregon Health Authority’s Intensive Services Unit in collaboration with the Oregon Criminal Justice Commission.

For questions about this report, please contact Zachary Thornhill, Oregon Health Authority Intensive Services Unit, Zachary.L.Thornhill@oha.oregon.gov, 503-559-4123, or Kaysea Beck, Oregon Criminal Justice Commission, Kaysea.Beck@cjc.oregon.gov, (503) 378-4830.

Executive Summary

In SB 5525 (2023 session), the Oregon Legislature requested a report on the Oregon Health Authority's (OHA) Jail Diversion program and the Improving People's Access to Community-Based Treatments, Supports and Services (IMPACTS) grant program, administered by the Oregon Criminal Justice Commission (CJC), be provided to the Joint Ways and Means Committee by January 1, 2024. This report is in fulfillment of that request.

Jail Diversion is accessible to Community Mental Health Programs (CMHPs) via the County Financial Assistance Agreement (CFAA) and respective service element. The program has two intervention points: In pre-booking, law enforcement calls for mental health crisis supports before arresting an individual, avoiding an arrest going on a person's criminal record and the inconveniences and trauma of any time in the jail. In post-booking, jail staff may communicate to the CMHP that a person is lacking mental health supports but is in need of support to transition back to community. Only adults over the age of 18 who live with a mental illness are eligible to participate. Currently OHA sets aside about \$17.8M per biennium for Jail Diversion implementation.

IMPACTS is a grant-based program that aims to support people who live with behavioral health conditions and frequently utilize local criminal justice systems and healthcare resources (e.g. 4+ jail bookings in a one-year period, multiple emergency room visits and inpatient stays, admissions history at OSH, or frequent criminal justice and/or emergency services involvement). Eligibility criteria encompasses a "look back" period, so a person does not have to be currently involved with a criminal court process or be actively diverted from one. Services and treatment are provided in a variety of settings including jails, communities, courts, healthcare settings, personal homes, and on Indian reservations.

These two programs are similar in that they both aim to reduce involvement with the criminal justice system for individuals in need of mental health treatment accessible in the community. There are also distinct differences. Jail Diversion is available to all eligible individuals within a CMHP's service area, whereas IMPACTS has a narrower scope in that it adds the layer of high system utilization (multiple jail bookings, overuse of emergency rooms and hospitals, etc.) and thus a smaller population. Jail Diversion maintains fewer service options, keeping them as only direct client services, while IMPACTS expands that to include capacity building and infrastructure.

OHA and CJC recommend that the Legislature continue to fund both Jail Diversion and IMPACTS, at minimum as they currently stand, or increase funding, through the 2025-2027 biennium.

OHA also recommends that Jail Diversion become a formal program of the current OHA Intensive Services Unit, which oversees programs for individuals who enter or access the behavioral health system through the courts. This can be done through OARs under OHA's current authority, with no further legislative action required.

Introduction

In SB 5525 (2023), the Oregon Legislature requested a report on the Oregon Health Authority's (OHA) Jail Diversion program and the Improving People's Access to Community-Based Treatments, Supports and Services (IMPACTS) grant program administered by the Oregon Criminal Justice Commission (CJC), as follows:

[Oregon Health Authority] and [Oregon Criminal Justice Commission] shall collaborate on a report that clarifies the shared characteristics and unique elements of their respective programs, an overview of the budgets and funding structure for both, and recommendations for the most efficient way for Oregon to move forward with supporting community-based efforts to keep individuals with behavioral health and SUD challenges to stay out of the criminal justice system. No later than January 1, 2024, both agencies shall report and provide recommendations to the subcommittee of the Joint Committee on Ways and Means with authority over human services agencies' budgets.

This report is in fulfillment of that request.

Jail Diversion

Overview

“Jail Diversion Services” means community-based services that are designed to keep individuals with behavioral health needs out of the criminal justice system and, instead, supported by other community-based services, such as mental health services, substance abuse services, employment services, and housing. Jail Diversion Services aim to minimize contact with law enforcement, avoid jail time, and/or reduce jail time. These services are intended to result in the reduction of the number of individuals with mental illness in the criminal justice system or the Oregon State Hospital (OSH).

How it works

The program aims to be low barrier and serves people with **mental illness** who also have **non-violent felony or misdemeanor** charges in a criminal court. Services are to be in direct benefit to the participant, and can be delivered essentially anywhere except in jails, unless the service provided in the jail is directly related to transitioning the person out of jail (e.g., assessments for services once released, support with benefits to be activated upon release, etc.).

Jail diversion services can be provided pre-booking and post-booking. **Pre-booking** services generally involve law enforcement, Community Mental Health Programs (CMHPs, operated by or through county governments) and other community mental health providers, and substance use disorder (SUD) treatment providers. Pre-booking interventions happen before a person is arrested and charged with a crime. **Post-booking** services generally involve the courts along with behavioral health providers, as these interventions happen after a person is arrested and charged with a crime and is moving through the court processes. Post-booking jail diversion typically involves identifying people in the jails with behavioral health needs and diverting them from sentencing to treatment.

Unlike some similar programs, there are no statutes or administrative rules that outline to what jail diversion is supposed to be. Instead, this outline appears only in the contract between OHA and county governments, known as the County Financial Assistance Award (CFAA), and providers are expected to comply with this parameters in

JAIL DIVERSION RUN-DOWN

Agency oversight OHA

Service areas

All 36 counties can provide the service through the county-based Community Mental Health Programs

Funding source

County Financial Assistance Award service element

Eligibility criteria

- Age 18+
- Mental health diagnosis
- Open case for non-violent criminal charge

Intervention points

- Pre-booking
- Post-booking

Available services

- Mental health treatment
- Substance use disorder treatment
- Case management
- Medication management
- Benefits navigation
- Housing supports

that contract. The CFAA calls for jail diversion services to include mental health treatment, SUD treatment, case management, crisis services, medication management, benefits navigation, and housing supports.

Funding

CMHPs are allotted funds to provide jail diversion services via the CFAA as entitled funds; that is, there is not a competitive process necessary to obtain them. For a CMHP to be paid for providing these services, jail diversion services must be direct services to the client. OAR 943-060-0010(3) defines client services as supports with direct benefit to the client in housing, clothing, food, employment, medical care, substance use, legal services, and education, among others.

Jail diversion is Service Element 09 within the CFAA. Up until July 1, 2023, 29 counties had access to funds for jail diversion services, with \$14.0m allotted for the 2021-2023 biennium. Starting with the budget passed in 2023, all 36 counties, in addition to Warm Springs CMHP, have access to funds for jail diversion services, with \$17.8m allotted (\$14m in base funding from prior biennium and \$3.8m provided through POP 41) in the 2023-2025 biennium.

Outcomes

The most recent reports received about jail diversion services was in 2019, as reporting requirements were suspended during the pandemic. In 2019, the program as a whole served 4,225 unique individuals. Roughly 71% of these individuals were provided services post-booking, which means nearly three-quarters of those served were enrolled in the program after being arrested. An overwhelming majority of this service is provided in rural Oregon, with 50% of all jail diversion services being provided in Josephine, Polk, Linn, and Malheur counties. At least 40% of those served had a serious and persistent mental illness (SPMI)¹ diagnosis and 63% of individuals served were already on Medicaid, though for some individuals this data was not available.

Reporting requirements for all service element funding has been reinstated effective October 1, 2023, with the first reports due in Spring of 2024 for the first quarter of 2024. More outcomes data will become available over the next biennium.

¹ The County Financial Assistance Agreements define mental illness as the current Diagnostic and Statistical Manual, Fifth Edition (DSM V) of the American Psychiatric Association diagnostic criteria for a primary diagnosis for an adult 18 years of age or older.

IMPACTS

Overview

The IMPACTS – Improving People’s Access to Community-based Treatment, Supports, and Services – grant was established by SB 973 in the 2019 legislative session. Its program operations and parameters are statutorily defined and guided by Oregon Administrative Rule (OAR) Chapter 213 and Division 30.²

The IMPACTS grants fund programs operated by Oregon’s counties and federally recognized tribal governments that provide supports and services to a target population of individuals with behavioral health conditions and frequent criminal justice and/or emergency services involvement. The goal of IMPACTS programs is to increase the availability of community-based supports and services for the target population and reduce the frequency with which persons served by the program are involved with the criminal justice system and rely on emergency healthcare services, including institutional placements at the OSH.

How it works

SB 973 established the IMPACTS Grant Review Committee (GRC), which is a 19-member group with 17 voting members, as the decision-making body tasked with reviewing applications, awarding grant funds, and monitoring program implementation. Grant funds may be awarded to programs operated by federally recognized tribal governments, county governments, or regional consortia. Applicants respond to a Request for Grant Proposals.

The GRC reviews submissions to determine how well their proposed program is designed to identify the target population and reduce criminal justice involvement, including jail bookings, as well as reliance on emergency healthcare services, such as

² Oregon Administrative Rules 213-030-0011 – 213-030-0131, available at <https://secure.sos.state.or.us>.

THE IMPACTS RUN-DOWN

Agency oversight CJC

Current grantees

Clackamas County; Cow Creek Band of Umpqua Tribe of Indians; Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians; Deschutes County; Douglas County; Confederated Tribes of Grand Ronde; Hood River County; Klamath Tribes; Lane County; Lincoln County; Multnomah County; Union County; Confederated Tribes of Warm Springs; Wasco County; and one consortium: Morrow & Umatilla Counties

Funding source

Legislative appropriations

Eligibility criteria

Behavioral health condition and 4+ jail bookings in one year, or behavioral health condition and high utilization of, OSH, and/or criminal justice system

Intervention points

Variable

Available services

MH & SUD treatment
Case management
Reentry & employment support
Peer mentoring
Benefits navigation
Transitional and permanent housing

Additional uses

System improvements and capacity building

emergency department visits and institutional placements. These programs may, for example, divert individuals to community-based treatment and services, collaborate with Coordinated Care Organizations, and complement current programs and services in their communities. As such, each program funded through IMPACTS looks a little different from the next, regarding who administers the grant program for a county or a tribe or regarding what services the program offers identified individuals.

IMPACTS funds can be used for many things in addition to direct client services. For example, the GRC may, at its own discretion, use unawarded funds from a grant cycle to support expansions to existing programs. Also, the GRC may use up to 20% of the funds allocated to provide training and technical assistance across the state, invest in technology infrastructure, increase effectiveness and efficacy of data collection methods and program evaluations, and other related options. Grantees can also use awarded funds to, for example, increase their own capacity, including with technology collaborations; increase their own program staffing or support other service providers with funds to do so; provide client supports such as cell phones, bus passes, housing vouchers, and childcare; expand structural components of housing/treatment; or provide training for program staff.

Funding

The original 2019 legislation, SB 973, appropriated \$10 million to the IMPACTS grant program. IMPACTS received additional \$10 million appropriations in the 2021 and 2023 sessions. There have been two grant cycles to date (July 1, 2020 – June 30, 2022, and July 1, 2022 – June 30, 2024). Currently 11 counties and five federally recognized tribal governments operate IMPACT programs in Oregon. Once award decisions are made, grantees receive equal quarterly installments throughout the grant cycle.

Outcomes

Outcomes from local IMPACTS programs are captured both proximally and distally. More proximally, local programs report de-identified, client-level data on a monthly basis using the Research Electronic Data Capture (REDCap) system hosted by the Oregon Health and Science University-Portland State University School of Public Health. Analysis completed by the CJC for the period July 2022 – April 2023 demonstrated an average of 398 clients served, an average of 82 law enforcement diversions, and an average of 931 community hospital diversion services provided across local programs each quarter.

Distally, the CJC contracted with the Center for Health Systems Effectiveness at Oregon Health and Sciences University to conduct a baseline analysis which demonstrated the high needs of the target population statewide. The

baseline data³ revealed that 90% of the target population has two or more comorbid behavioral health conditions (e.g., major depressive disorder and opioid use disorder). Also, 94% had at least one criminal conviction and 72% had at least two. Compared to the general Medicaid population, the target population had generally higher levels of need and generally lower rates of engagement, which could indicate a need for enhanced service provision to move closer to program goals.

The CJC has contracted with CHSE to complete additional evaluations for Grant Cycle 1 and Grant Cycle 2, to identify whether and how the cumulative effects of local program's efforts affect statewide rates of public safety and health resources utilization among the target population of high utilizers with behavioral health needs.

³ Renfro, S and Simeon, E. IMPACTS Statewide Evaluation: Baseline Report. Center for Health Systems Effectiveness, Oregon Health & Science University; 2023.

Programs Comparison

Jail Diversion and IMPACTS both aim to reduce the number of individuals in the criminal justice system and associated institutional settings who are also living with behavioral health conditions. However, they approach that intended outcome in different ways. Both have the capacity to offer direct services to clients including counseling, case management, and crisis services.

There are a few key differences to highlight. Jail Diversion is currently offered as an entitlement program to CMHPs, and funds must be used as safety net funding, meaning low barrier access to anyone eligible within the service area. In contrast, IMPACTS programs are awarded through a competitive grant process with specific eligibility requirements. As such, IMPACTS has a smaller footprint than Jail Diversion and thus a smaller number of people served.

Only CMHPs are eligible for Jail Diversion funding, and only one tribal entity is currently a CMHP. Alternatively, eligible applicants for IMPACTS funding include any county government's Local Public Safety Coordinating Council (programs may be administratively housed in law enforcement, behavioral health departments, etc.) as well as any of the Nine Federally Recognized Tribes in Oregon.

IMPACTS funds can use a look-back period of 12 months to determine eligibility. While ultimately the requirements are higher (one or more behavioral health conditions and 4+ jail bookings in a one-year period or a high utilizer of the criminal justice or emergency healthcare systems as defined by the grantee), the look-back period allows for eligibility to be determined not only by a currently open criminal case or current contact with law enforcement (that could lead to a criminal case). Jail Diversion, conversely, requires that the person be in current crisis with law enforcement and vulnerable to receiving a criminal charge (pre-booking) or that a person has already been charged with a crime and is in need of services (post-booking).

Funding from the IMPACTS grant can be used more extensively than funds from Jail Diversion. Most notably, IMPACTS funds can go beyond direct services to clients; they can also be used for program development, capacity building, and overall infrastructure. Jail Diversion funds must be used for direct client services.

The table below indicates the type of service provided and how both Jail Diversion and IMPACTS, as unique programs, address individuals' service needs.

	Jail Diversion	IMPACTS
Mental health	Must be living with a mental health condition; treatment may be provided	Must be living with behavioral health condition ⁴ ; treatment may be provided as a program service
Substance use	Cannot alone be reason driving need for services; treatment may be provided	Must be living with behavioral health condition ⁵ ; treatment may be provided as a program service
Criminal justice system	Must be pre- or post-booking in relation to a crime or alleged crime; current open case generally required	At least four jail bookings in one year or other frequent system involvement as defined by grantee; current case not required
Institutionalization	Can be used as a diversion to OSH	History not required, though eligible with high utilization
Healthcare	Not included as eligibility criteria	Historical or present high utilization of hospital and emergency services
Tribal entities	Must be a CMHP to be eligible; only one tribe currently qualifies	Any government among the Nine Federally Recognized Tribes in Oregon is eligible to apply; at least one grant award must be made to a federally recognized tribal government
County entities	Must be a community mental health program (CMHP) serving one or more counties; CMHPs are entitled to this funding	Any county government is eligible to apply through their Local Public Safety Coordinating Council; program may be administratively housed in any relevant area
Funding	Entitlement funding	Competitive grant
Eligible expenses	Direct client services, mental health and SUD counseling, skill building, social supports	Direct client services, hiring staff, staff training, program operation needs such as cars and technology equipment, program evaluation services, transportation needs, housing supports, hygienic supplies, clothing, etc.
Community support	Not required	Letters of support from other providers within service area required

⁴ Oregon Administrative Rule 213-030-0031(3), available at <https://secure.sos.state.or.us>

⁵ *Id.*

Recommendations

Maintain or Increase Current Funding

OHA and CJC recommend that the Legislature continue to fund both Jail Diversion and IMPACTS, at minimum as they currently stand, or increase funding, through the 2025-2027 biennium.

Jail Diversion and IMPACTS both serve the people of Oregon in substantial ways. As a safety net mental health program provided by CMHPs, Jail Diversion can serve adults living with mental illness should they face a criminal charge for a non-violent offense. On the other hand, IMPACTS has identified a smaller subgroup that has high financial and resource impact on the system and seeks to mitigate that impact through individualized programs. Because these two programs uniquely serve individuals, and they both impact the behavioral health and criminal justice systems in distinct ways that the other cannot accommodate

Formalize the Jail Diversion Program via OAR

OHA recommends that Jail Diversion become a formal program of the current OHA Intensive Services Unit, which oversees programs for individuals who enter or access the behavioral health system through the courts.

Jail Diversion currently is without formal structure. It is a set of services that CMHPs can fund through the service element, but those funds can be and are utilized to support the needs of clients often enrolled in other programs or those who are unwilling or unable to access treatment and services otherwise.

Formalizing these services into a program would require establishing Oregon Administrative Rules that guide the work of CMHPs doing this work; providing technical assistance to CMHPs; increasing community engagement, including with law enforcement agencies, to better understand what needs Jail Diversion in Oregon addresses; and reviewing the utilization and outcomes associated with the offered services.

OHA can formalize the Jail Diversion program under its current authority. No further legislative action on this matter is required.