



Legislative Fiscal Office
 82nd Oregon Legislative Assembly
 2024 Regular Session

Prepared by: Emily Coates
 Reviewed by: Matt Stayner, Amanda Beitel, John Borden, Gregory Jolivette, Tom MacDonald, Haylee Morse-Miller, Paul Siebert, John Terpening
 Date: February 28, 2024

Bill Title: Relating to the addiction crisis in this state.

Government Unit(s) Affected: Oregon Health Authority, Board of Parole and Post-Prison Supervision, Board of Pharmacy, Burns Paiute Tribe, Cities, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz, Confederated Tribes of Umatilla Indian Reservation, Confederated Tribes of Warm Springs, Coquille Indian Tribe, Counties, Cow Creek Band of Umpqua Indians, Criminal Justice Commission, Department of Consumer and Business Services, Department of Corrections, Department of Human Services, Department of Justice, Department of State Police, District Attorneys, Judicial Department, Klamath Tribes, Legislative Assembly, Legislative Counsel, Legislative Policy and Research Office, Oregon Youth Authority, Public Defense Commission, Task Force/Committee/Workgroup, Secretary of State

Summary of Fiscal Impact

2023-25 Biennium	General Fund	Lottery Funds	Other Funds	Federal Funds	Total Funds	Positions	FTE
Public Defense Commission	\$ 12,191,071	\$ -	\$ -	\$ -	\$ 12,191,071	18	9.00
Oregon Health Authority	\$ 2,059,651	\$ -	\$ -	\$ 1,067,379	\$ 3,127,030	15	7.34
Oregon Judicial Department	\$ 2,959,966	\$ -	\$ -	\$ -	\$ 2,959,966	21	10.00
Criminal Justice Commission	\$ 1,840,092	\$ -	\$ -	\$ -	\$ 1,840,092	5	2.75
Department of State Police	\$ 1,609,904	\$ -	\$ -	\$ -	\$ 1,609,904	15	6.30
Legislative Policy and Research Office	\$ 400,430	\$ -	\$ -	\$ -	\$ 400,430	2	1.26
Department of Justice	\$ -	\$ -	\$ 92,166	\$ -	\$ 92,166	1	0.17
Total Fiscal Impact	\$ 21,061,114	\$ -	\$ 92,166	\$ 1,067,379	\$ 22,220,659	77	36.82

2025-27 Biennium	General Fund	Lottery Funds	Other Funds	Federal Funds	Total Funds	Positions	FTE
Oregon Health Authority	\$ 13,080,016	\$ -	\$ -	\$27,355,015	\$ 40,435,031	15	12.75
Department of Corrections	\$ 27,250,261	\$ -	\$ -	\$ -	\$ 27,250,261	2	1.83
Public Defense Commission	\$ 26,527,769	\$ -	\$ -	\$ -	\$ 26,527,769	18	18.00
Oregon Judicial Department	\$ 5,350,998	\$ -	\$ -	\$ -	\$ 5,350,998	21	19.50
Department of State Police	\$ 3,548,788	\$ -	\$ -	\$ -	\$ 3,548,788	15	15.00
Criminal Justice Commission	\$ 2,604,048	\$ -	\$ -	\$ -	\$ 2,604,048	5	5.00
Legislative Policy and Research Office	\$ 607,862	\$ -	\$ -	\$ -	\$ 607,862	2	2.00
Department of Justice	\$ -	\$ -	\$ 276,632	\$ -	\$ 276,632	1	0.50
Total Fiscal Impact	\$ 78,969,742	\$ -	\$ 276,632	\$27,355,015	\$ 106,601,389	79	74.58

- The fiscal impact on county governments is discussed below.
- Funding is included in HB 5204 for programs established in this measure, including voluntary programs, Improving People’s Access to Community-based Treatment, Supports and Services (IMPACTS) and Oregon Jail-Based Medications for Opioid Use Disorder Grant Programs, established in the measure is included in HB 5204.
- Due to an estimated three-month lag between the measure’s effective date and the timing of first offenders adjudicated through the criminal justice system, the estimated fiscal impact on the Department of Corrections for Community Corrections will be incorporated into future population-related caseload forecasts and any associated budget adjustments. Therefore, it is not included in the table above, but is estimated to be \$1.3 million General Fund in 2023-25.
- The fiscal impact identified in the table for the Oregon Health Authority (OHA) does not include the duplicate Other Funds expenditure limitation necessary to pay for expenses through the OHA and Department of Human Services (DHS) Shared Services budget structure. Should this measure be adopted, the expenditure limitation will need to be established to properly budget for these expenses.

Measure Description

Behavioral Health (Sections 1 - 20)

The following sections of the fiscal impact statement summarize the behavioral health aspects of this measure, which include payments for substance use disorder treatment, regulations for dispensing opioid use disorder medication, and certification of certain behavioral health programs.

Payment for substance use disorder treatment (Sections 1 - 5)

The measure prohibits issuers of group health insurance, or an individual health benefit plan, from requiring prior authorization or any other form of utilization review for the reimbursement of a covered medication prescribed to treat a substance use disorder, including but not limited to opioid addiction and opioid withdrawal. In addition, the measure requires issuers of group health insurance or an individual health benefit plan to reimburse the cost of refills for specified medications if dispensed by a licensed health care professional.

Pharmacists prescribing and dispensing opioid use disorder medication refills (Sections 6 - 9)

The measure authorizes a pharmacist to prescribe and dispense an early refill of a medication for treatment of opioid use disorder. The measure requires pharmacists to complete a patient assessment, document the visit, and notify the patient’s primary care provider and licensed health care provider who made the previous

prescription. The measure also defines “prescription drug locker” and does not require prescription drug lockers located at the same physical address as a retail drug outlet to obtain a state license or registration, or federal registration. However, if the prescription drug locker is located at the same physical address as a retail drug outlet and is considered a remote dispensing site pharmacy, the locker is required to obtain a registration from the Drug Enforcement Administration.

The Oregon Board of Pharmacy (OBOP) is required to adopt rules to carry out the provisions related to prescribing and dispensing of opioid use disorder medication refills.

Alcohol and Drug Policy Commission study (Sections 11 - 12)

The measure requires the Alcohol and Drug Policy Commission (ADPC) to conduct a study of barriers and best practices for youth accessing opioid use disorder treatment, and to increase access to opioid use disorder medications. The Commission is required to submit a report to the Legislature on the status of the study and any preliminary recommendations by September 30, 2024, and to submit a second report including strategic plans and recommendations by September 15, 2025.

Certified community behavioral health clinic program (Sections 13 - 15)

The Certified Community Behavioral Health Clinic (CCBHC) program is established within the Oregon Health Authority (OHA) to certify eligible CBHCs that meet specific criteria outlined in the measure to receive prospective fixed cost-based rates for services provided to medical assistance enrollees. The OHA director is required to appoint a 15-member advisory committee to advise on the adoption of rules for CCBHCs. If OHA adopts additional requirements for CCBHCs that are not required by the measure, OHA is required to provide funding to the clinics to reimburse costs of these additional requirements and have a process to grant allowable variances to one or more of the requirements.

OHA is required, prior to January 15, 2025, to start preparing a draft state plan amendment to submit to the Centers for Medicare and Medicaid Services to implement the program and to seek federal approval for an amendment to the Medicaid state plan to allow the state to receive federal financial participation in the costs of the program.

United We Heal Payment Program (Section 20)

The measure establishes the United We Heal Medicaid Payment Program within OHA to increase the available behavioral health care workforce in Oregon. The measure requires OHA to provide supplemental medical assistance payments to employers of behavioral health care providers, enabling providers to offer enhanced apprenticeship and training programs and opportunities by participating in a labor-management training trust.

Public Safety (Sections 24 - 72)

The following sections of the fiscal impact statement summarize the public safety aspects of the measure, which includes modifications to possession of a controlled substance (PCS) crimes, creation of deflection programs, modifications to the expungement process and establishment of certain grant programs.

Delivery of controlled substances (Section 24)

The measure expands the definition of “deliver” or “delivery” under ORS 475.005 to include possession with the intent to transfer and applies to conduct occurring on or after the effective date of the measure.

Delivery in certain locations (Section 25)

The measure classifies the violation of specified controlled substances, constituting delivery with consideration, and the person knows or reasonably should have known that the delivery is occurring within 500 feet of a

treatment facility or a temporary residence shelter, or within 30 feet of a public park, as a crime category seven on the Crime Seriousness Scale used for sentencing guidelines.

The measure classifies the violation of specified controlled substances, constituting delivery, and the person knows, or reasonably should have known, that the delivery is occurring within 500 feet of a treatment facility or temporary residence shelter, or within 30 feet of a public park, as a crime category five of the sentencing guidelines grid of the Criminal Justice Commission (CJC).

The provisions related to delivery in certain locations apply to conduct occurring on or after the effective date of the measure.

Reevaluation of release guidelines (Sections 26 - 27)

The measure requires the Chief Justice of the Supreme Court, with input from the Criminal Justice Advisory Committee, to reevaluate and update the release guidelines for pretrial release orders for persons arrested or charged with delivery or manufacture of a controlled substance, by June 1, 2024.

The provisions related to reevaluation of release guidelines apply to conduct occurring on or after the effective date of the measure and are repealed on January 2, 2025.

Drug Enforcement Misdemeanors (Sections 34 - 35)

The measure creates a new Drug Enforcement Misdemeanor (DEM) for unlawful possession of a controlled substance (PCS). When imposing a DEM, the measure provides options for courts including a sentence of up to 18 months of probation, or a maximum of 180 days in jail upon request of the defendant. However, upon finding out a person has violated a condition of probation, the court may extend the length of probation to a maximum of five years.

Deflection program (Sections 36 - 38)

The measure defines “deflection program” to include a collaborative program between law enforcement agencies and behavioral health entities that work toward providing individuals with substance use disorders or other behavioral health disorders with community-based pathways to treatment, recovery, housing, case management, and other services. The measure encourages law enforcement agencies and District Attorneys (DAs) to refer or divert persons suspected of unlawful PCS constituting a DEM. Under the measure, an unlawful PCS charges that also includes other misdemeanor charges is not eligible for a deflection program. Additionally, the measure requires deflection coordinators to provide notification when a person completes a deflection program to law enforcement agencies, district attorneys, and courts for sealing records.

The measure requires CJC to establish a statewide system for tracking deflection program outcomes and to conduct a study within one year of the measure’s effective date, on deflection program best practices and recommendations for funding the Oregon Behavioral Health Deflection Program established by the measure. No later than 18 months after the effective date of the measure, CJC is required to develop standards and best practices for deflection programs in the state based on information received from the programs. The measure requires CJC to maintain a list of deflection programs operating within Oregon and to make the list publicly available on the Commission’s website.

The provisions related to deflection programs are operative September 1, 2024.

Conditional discharges for DEMs (Sections 51 - 53)

The measure creates provisions for a new conditional discharge program for persons convicted of unlawful PCS constituting a DEM. The measure permits an eligible person to request to enter a probation agreement within 30 days after the person’s first court appearance unless the court authorizes a later date. Additionally, the

measure specifies the terms of the probation agreement and authorizes courts to impose specific extensions or impose sanctions of up to 30 days of imprisonment if a person violates a probation agreement.

These provisions are operative September 1, 2024.

Expungements related to DEMs (Sections 54 - 56)

The measure creates new expungement provisions for persons who are referred to a deflection program for unlawful PCS constituting a DEM and successfully complete the deflection program. The measure requires that when law enforcement agencies receive written verification of completion of a deflection program, they are to provide verification to DAs and courts. After two years from a DEM conviction, and if no further action is taken, law enforcement agencies, DAs, and courts are required to seal any relatable electronic records within 60 days.

When a person successfully completes a probation agreement and the court discharges and dismisses the proceedings against the person, the court is required to enter an order sealing all related records within 90 days. When courts are notified that a person successfully completed a term of probation for a DEM, the court is required to enter an order sealing all related records within 90 days after the notification. Finally, after three years from when a person is convicted of a DEM, the court is required to enter an order sealing all related records, within 60 days after the three-year period has concluded. The measure requires the State Court Administrator to develop a standardized form to obtain necessary information for the Oregon Judicial Department (OJD) to seal records.

The measure modifies ORS 135.050 to prohibit courts from entering an order when the defendant is charged with only a PCS constituting a DEM. Provisions related to expungements of DEMs are operative September 1, 2024, and apply to conduct constituting an offense occurring or alleged to have occurred on or after September 1, 2024.

Repealing Class E violation provisions (Sections 57 - 72)

Under current law, monies deposited into the Criminal Fine Account (CFA) as a payment of fines on Class E violations are allocated to the Drug Treatment and Recovery Services (DTRS) Fund within OHA. The Department of Administrative Services Office of Economic Analysis (March 2024 forecast) includes \$31,200 of Class E violation revenue for the CFA, which is unchanged from the 2023 close-of-session forecast. The 2023 Legislature allocated this amount to the DTRS Fund in HB 5029 (2023). This measure removes the Class E violation from statute and any resulting revenue to the CFA that would have been transferred to the DTRS Fund.

Data tracking (Section 75)

The measure requires CJC to collect and analyze specific data concerning deflections, arrests, charges, and convictions for unlawful PCS and delivery of a controlled substance offenses for purpose of tracking racial and other demographic disparities in enforcement. CJC is required to report on this data to the legislature each year starting on August 31, 2025. The measure authorizes CJC to adopt rules to carry out these provisions.

Oregon Behavioral Health Deflection Program (Sections 76 - 79)

The measure establishes the Oregon Behavioral Health Deflection Program within the Improving People's Access to Community-based Treatment, Supports and Services (IMPACTS) Grant Review Committee, which is a committee overseen by CJC. The program consists of grants awarded by the committee to counties and federally recognized tribal governments to fund deflection programs. The program is required to address the need for deflection programs and track and report data concerning deflection program outcomes to determine the best practices for deflection programs in Oregon. The measure requires the Committee to develop an application process for awarding grants and specifies that the maximum amount awarded to an applicant other than a tribal government is to be determined based on the county formula share employed by the Oversight and Accountability Council but cannot be less than \$150,000. Grant funds can be used for specified deflection

program expenses, behavioral health workforce development, capital construction of behavioral health treatment infrastructure, deflection program planning grants, and up to 3% of program funds may be allocated to support grantee data collection, analysis, or evaluation of program outcomes. The measure requires CJC to provide staff support to the grant program.

The measure requires the IMPACTS Committee, in collaboration with CJC and OHA, to monitor the progress of, and evaluate program outcomes for, applicants that have received grant funding. The Committee is required to report to the Legislature by September 30, 2025 on the findings of the evaluation.

The measure establishes the Oregon Behavioral Health Deflection Program Account with monies continuously appropriated to CJC to provide Oregon Behavioral Health Deflection Program grants.

Expansion of welfare holds (Section 80)

The measure modifies ORS 430.399 to expand welfare hold time from 48 to 72 hours.

Opioid Use Medication Grant Program (Sections 81 - 89)

The measure establishes the Oregon Jail-Based Medications for Opioid Use Disorder Grant Program within CJC to provide opioid use disorder treatment and transition planning services to persons in custody in local correctional facilities and tribal correctional facilities. The measure outlines the eligible uses for the grants and requires CJC, in collaboration with OHA, to administer the grant program and provide grant recipients with technical assistance and best practices support. Grant awards are required to be distributed to cities and counties in Oregon that operate a local correctional facility, and to federally recognized tribes in Oregon that operate a tribal correctional facility, with 10% of grant awards to local correctional facilities in rural areas or tribal correctional facilities. The measure permits CJC to contract with a third party to provide statewide technical assistance to grant applicants and adopt necessary rules to administer the program. CJC is required to convene an advisory committee to evaluate applications and make recommendations to the commission for awarding grants.

The measure creates the Oregon Jail-Based Medications for Opioid Use Disorder Fund with monies continuously appropriated to CJC to provide grants through the Opioid Use Disorder Medication Grant Program. CJC is required to submit a report to the Legislature on specific opioid use disorder issues by December 1, 2024. This section is repealed on January 2, 2025.

Task Forces

The measure establishes two task forces and requires the Legislative Policy and Research Office (LPRO) to provide staff support for both.

Joint Task Force on Regional Behavioral Health Accountability (Sections 16 - 17)

The measure creates the 26-member Joint Task Force on Regional Behavioral Health Accountability. The task force is required to develop recommendations to improve collaboration and accountability across federal, state, and local behavioral health and substance use disorder treatment programs and funding, ensure equitable outcomes in publicly supported treatment settings across Oregon communities, provide greater cost efficiencies in Oregon's behavioral health system continuum of care, and establish broad access to methadone and other opioid use disorder medications. The bill directs LPRO to provide staff support for the task force. Members of the task force, who are not members of the Legislative Assembly or Governor appointees, are not entitled to compensation and reimbursement for expenses.

The task force is to report to the Legislature on draft recommendations by September 15, 2025, and final recommendations by December 15, 2025. This task force sunsets January 2, 2026

Task Force on Improving the Safety of Behavioral Health Workers (Sections 18 - 19)

The measure creates the 17-member Task Force on Improving the Safety of Behavioral Health Workers which is to produce a set of recommendations to improve the safety of behavioral health workers. The bill directs LPRO to provide staff support for the task force and Legislative Counsel to provide legal support for the drafting of legislative proposals. Members of the task force who are not members of the Legislative Assembly or appointed by the Governor are to be paid compensation and reimbursed for actual and necessary travel and other expenses.

The task force is to report to the Legislature on preliminary draft policy recommendations for improving worker safety by September 1, 2024, and final recommendations to address the specified safety concerns that are prevalent in the behavioral health industry by December 1, 2024. This task force sunsets January 2, 2026.

Fiscal Analysis

The fiscal impact of the measure is \$21.1 million General Fund, \$92,166 Other Funds, and \$1.1 million Federal Funds and 77 positions (36.82 FTE) for the 2023-25 biennium and \$79 million General Fund, \$276,632 Other Funds, and \$27.4 million Federal Funds and 79 positions (74.58 FTE) for the 2025-27 biennium.

An additional \$1.3 million General Fund impact is anticipated through increases to the community corrections caseload in 2023-25. As noted earlier, this estimated impact will be incorporated into future population-related caseload forecasts and any associated budget adjustments. The Legislative Fiscal Office notes that other budgetary adjustments necessary to implement this measure will be included in HB 5204.

Public Defense Commission

The fiscal impact for the Public Defense Commission (PDC) is estimated at either \$11.7 million General Fund for provider contracting (“community-based public defense”) or \$28 million General Fund for non-contract hourly paid to attorneys. Both estimates include funding for related costs such as expert witness and investigation expenses. The 2025-27 biennium cost is estimated to be either \$26.5 million General Fund or \$61.4 million General Fund. Costs for each biennium are for professional service payments with no associated positions or full-time equivalents.

PDC’s costs are based upon the following caseload estimates for financially eligible defendants: (a) felony charges for delivery of controlled substances (1,448 cases) including an estimate for parole violations (43 cases), which is based on 15 months of the 2023-25 biennium; and (b) DEM charges for PCS (10,640 cases), as well as collateral charges arising from arrests and charging of DEM (i.e., making the person ineligible for diversion) (530 cases), which are based on 10 months of the 2023-25 biennium. The DEM estimates are premised on the following assumptions: 50% of counties will opt to establish deflection programs, and of those 50% of DEM cases that are offered deflection, 50% will successfully complete the deflection program (i.e., not be charged by district attorneys), which means 25% of all DEM cases will be successfully deflected and 75% will be arraigned on charges and adjudicated.

The measure exempts a defendant charged with a DEM charge from paying an application fee, currently set by PDC at \$20, for determination of financial eligibility. This fee is normally collected by the courts and distributed to PDC for deposit into the Public Defense Services Account and used to pay for circuit court (income) verification staff and to offset the cost of public defense.

The 2024 Legislature has under consideration a funding request from PDC to increase contract attorney capacity by 10 Maximum Attorney Capacity for the remainder of the biennium (7.5 equivalent) at a cost of \$3 million, which is thought to capture most known outstanding contract provider capacity in the state.

PDC does not believe that even if either fiscal impact option were to be funded that the agency would be able to acquire the associated level of provider contract attorney capacity or hourly attorney capacity, as neither capacity is thought to currently exist within the state at those levels. In addition, acquisition of hourly attorney capacity at standard rates may prove difficult given the Temporary Hourly Increase Program (THIP) which funds hourly attorneys at enhanced rates to address the unrepresented defendant/persons crisis. The 2024 Legislature has under consideration a funding request from PDC for the THIP of \$7.9 million General Fund.

PDC has developed a more practicable fiscal impact estimate than the one discussed above and that takes into account for the current constraint of “available” qualified attorney capacity, which is acknowledged cannot be readily quantified. With this qualification, PDC’s fiscal impact includes a mixture of funding for provider contract increase (\$3 million), hourly attorneys (\$3 million), state trial-level attorneys and staff (\$2.5 million), provider-contracted case managers and/or paralegals, with the later used to increase existing provider contract attorney capacity (\$2 million), and expert witness and investigation expenses (\$1.7 million).

The 2023-25 fiscal impact is estimated to total \$12.2 million General Fund and 18 positions (9.00 FTE) with a 2025-27 biennium cost of \$26.5 million and 18 positions (18.00 FTE). Supplemental funding for the THIP may be needed in the second year of the biennium, as the program is slated to end on June 30, 2024, if special purpose Emergency Board funding for public defense proves insufficient.

Any financially eligible indigent defendant who could not be provided legal counsel would exacerbate the state’s current unrepresented defendant crisis until such time as legal counsel could be provided. Denial of counsel and delay in a criminal defendant’s right to speedy trial would lead to the violation of the constitutional rights of a defendant under the Sixth and Fourteenth Amendments to the United States Constitution, and places both the defendant and the state in legal jeopardy. In absence of a public defender, a defendant may avoid prosecution by having their case postponed or dismissed by a circuit court.

Oregon Health Authority

The fiscal impact on OHA is \$2.1 million General Fund, \$1.1 million Federal Funds, and 15 positions (7.34 FTE) for the 2023-25 biennium and \$13.1 million General Fund, \$27.4 million Federal Funds, and 15 positions (12.75 FTE) for the 2025-27 biennium. OHA’s Other Funds expenditure limitation will need to increase by \$81,704 in the 2023-25 biennium to support a shared services position established in the agency’s Office of Information Services.

To manage the required study on barriers and best practices for youth accessing opioid use disorder treatment and increasing access to opioid use disorder medications, OHA anticipates the need for one Program Analyst 4 (0.50 FTE) to plan and manage the workload, one Public Affairs Specialist (0.50 FTE) to develop strategic communication plans and draft recommendations, and one Research Analyst 3 (0.50 FTE) to plan, manage, and coordinate data collection and analysis for the 2023-25 biennium. These positions are limited duration and, for the purpose of the estimated fiscal impact, are assumed to be phased out January 2, 2026, when the study is repealed.

To implement the CCBHC Program, OHA anticipates needing seven permanent full-time positions (3.50 FTE) for the 2023-25 biennium and seven positions (7.00 FTE) in the 2025-27 biennium. These positions include the following:

- One Health Policy and Program Manager 2 (0.50 FTE) to oversee program operations.
- One Operations and Policy Analyst 3 (0.50 FTE) to provide Medicare support and policy development.
- One Research Analyst 3 (0.50 FTE) to review and analyze clinic data associated with Medicaid, and to research, recommend, and implement ways to improve the wraparound payment process.

- One Project Manager (0.50 FTE) to coordinate and manage expansion of CCBHC work and ensure timely deliverables. This position will facilitate and organize communications with internal and external partners.
- One Fiscal Analyst 3 (0.50 FTE) to lead work on review of CCBHC rates and assist in processing the increase in wraparound claims.
- One Actuary (0.50 FTE) to lead the review process of all CCBHC cost reporting and review federal rate methodology while providing technical assistance and financial reporting.
- One Operations and Policy Analyst 3 (0.50 FTE) to coordinate CCBHC data integrations, manage and coordinate data modifications, and ensure data quality and compliance.

OHA reports the cost to operate the 15-member advisory committee established under this measure are estimated at \$54,435 General Fund and \$54,435 Federal Funds to integrate the program across the state. CCBHC payments to 15 clinics in the 2025-27 biennium are estimated at \$36 million, which includes \$10.6 million General Fund and \$25.5 million Federal Funds.

OHA reports the agency will need one permanent full-time Operations and Policy Analyst 3 (0.50 FTE) and one permanent full-time Compliance Specialist 3 (0.50 FTE) for the 2023-25 biennium to monitor the progress and evaluate program outcomes for applicants that have received IMPACTS grant funding.

To implement the United We Heal Medicaid Payment Program, for the 2023-25 biennium, OHA anticipates needing one permanent full-time Operations and Policy Analyst 1 (0.38 FTE) to coordinate applications and provide technical and administrative support to the program, and one permanent full-time Operations and Policy Analyst 3 (0.38 FTE) to ensure compliance with regulations, collaborate with federal partners, and provide program guidance to partners.

An Operations and Policy Analyst 4 position (0.58 FTE) is needed in the Office of Information Service at OHA to support coordination of data resources and access CJC.

Oregon Judicial Department

The fiscal impact on OJD is \$3 million General Fund and 16 permanent full-time positions (8.75 FTE) and five permanent part-time positions (1.25 FTE) in the 2023-25 biennium; and \$5.4 million General Fund and 21 positions (19.50 FTE) for the 2025-27 biennium. Court staff are needed to process increased case filings, set asides, conditional discharges, and expungements related to PCS case filings.

For the increase in possession case filings, OJD needs nine permanent full-time Court Operations Specialist positions (4.50 FTE) in the 2023-25 biennium, with an estimated additional 14,995 staff hours to process full and partial set asides.

OJD estimates that 2,215 to 4,837 cases will be eligible for expungement. The agency reports that the Office of the State Court Administrator (OSCA) will need to expand the current centralized process to automate set asides to assist courts in the increased workload and required timelines. OSCA anticipates needing one permanent Senior Staff Counsel position (0.58 FTE), one permanent Analyst 4 position (0.58 FTE), and increase two existing positions from half-time to full-time; and one Analyst 4 position (0.29 FTE) and one Information Technology Developer position (0.29 FTE) to expand the current automated set aside process.

For management of possession cases for conditional discharge, OJD anticipates needing five permanent full-time Program Coordinators (2.50 FTE) and five permanent part-time Program Coordinators (1.25 FTE) for the 2023-25 biennium. OJD staff will monitor the implementation and track case filings.

Once actual caseload is identified, the agency may need to return during a subsequent legislative session or a meeting of the Emergency Board to request additional resources. Additionally, the overall fiscal impact is dependent on budget requests that are under consideration for the 2024 Legislative Session (e.g., for setting aside and sealing criminal records).

Criminal Justice Commission

The fiscal impact on CJC is \$1.8 million General Fund and five permanent positions (2.75 FTE) for the 2023-25 biennium and \$2.6 million General Fund and five positions (5.00 FTE) for the 2025-27 biennium as the positions are fully phased in.

CJC currently contracts with a third-party, the Research Electronic Data Capture (REDCap) data system, to capture data for existing IMPACTS grants. The REDCap data system is managed by Oregon Health and Science University (OHSU) and CJC reports the agency would need to expand its current engagement to implement the statewide data tracking provisions included in the measure. The estimated cost for the REDCap software and associated technical assistance and data analyses by OHSU is \$700,709 General Fund for the 2023-25 biennium.

CJC anticipates needing one permanent Research Analyst position (0.50 FTE) to lead the development and implementation of the statewide data tracking system and one Program Analyst 2 (0.63 FTE) to coordinate the administrative duties, compliance tracking, and outreach associated with the statewide data tracking system. In addition, these positions will provide research and administrative support to the IMPACTS Grant Review Committee. CJC will contract with OHSU to perform the required study to determine best practices for deflection programs. The estimated cost to contract out the study is \$350,000 General Fund in the 2023-25 biennium.

To lead the new Behavioral Health Deflection Program, Oregon Jail-Based Medications for Opioid Use Disorder Grant Program, and the IMPACTS Grant Review Committee, CJC anticipates needing one permanent Operations and Policy Analyst 4 position (0.50 FTE). To provide planning, management, and evaluation for the new programs, CJC would also need two permanent Program Analyst 3 positions (1.13 FTE).

The total personal services and position-related services and supplies costs are estimated at \$789,383 General Fund in the 2023-25 biennium.

Department of State Police

The fiscal impact on the Oregon State Police (OSP) is \$1.6 million General Fund and 15 positions (6.30 FTE) for the 2023-25 biennium and \$3.5 million General Fund and 15 positions (15.00 FTE) for the 2025-27 biennium.

With the anticipated increase in drug chemistry evidence analysis due to changes in PCS, and the processing of drug chemistry evidence needed in court proceedings, OSP anticipates needing four Forensic Scientists (1.68 FTE) and two Administrative Specialist 2 positions (0.84 FTE) for its crime lab. OSP reviewed data from 2019 to estimate the number of hours needed for the forensic lab workload. OSP reports that in 2019 the agency spent 11,000 hours working on PCS cases which dropped to approximately 5,000 hours in 2023. With the decrease in PCS cases from 2019 to 2023, OSP administratively moved its existing staff in the lab from drug chemistry to toxicology, where workload has progressively increased over that same period. As a result, OSP does not have the capacity to return existing staff back to the drug chemistry processes.

OSP also anticipates needing one Records Management Supervisor 1 position (0.42 FTE) and eight Administrative Specialist 2 positions (3.36 FTE) to address the increased workload in the Criminal Justice Information Services Division due to expungement provisions in Section 54.

Department of Corrections

The estimated fiscal impact on the Department of Corrections (DOC) is \$1.3 million General Fund in the 2023-25 biennium and \$27.6 million General Fund and two positions (1.83 FTE) in the 2025-27 biennium. These costs will increase to an estimated \$41.8 million General Fund in 2027-29, \$43 million General Fund in 2029-31, and \$43.1 million General Fund in 2031-33.

These estimated costs are from the anticipated increase in misdemeanor PCS convictions due to modifications to sentencing for drug delivery, drug delivery within a specified distance of certain locations, and the creation of a new DEM.

To determine the potential sentencing for modifications to drug delivery, CJC utilized sentencing data on PCS convictions from 2021 prior to the court decisions on *State v. Boyd*. Based on that data, CJC anticipates the measure will result in an additional 70 misdemeanor convictions a year, or 140 misdemeanor convictions per biennium. CJC estimates 36% of the new convictions will be sentenced to local control, with an average sentence length of 1.5 months, and 64% of new convictions will be sentenced to probation, with an average sentence of 24 months. CJC also anticipates an additional 15 felony convictions per year, or 30 additional felony convictions per biennium. Of that total, approximately 55% of new convictions will be sentenced to a DOC facility, with an average sentence length of 24.2 months, 6% of new convictions sentenced to local control, with an average sentence length of 1.7 months, and 39% of new convictions will be sentenced to probation, with an average sentence length of 36 months.

To determine the potential sentencing for modifications to drug delivery that occur within a specified distance of a treatment facility, temporary residence shelter, or public park, CJC utilized sentencing data on drug delivery convictions within 1,000 feet of a school from 2018 and 2019. Based on that data, CJC anticipates the measure will result in an additional 13 crime category five felony convictions a year, or 26 felony convictions per biennium. CJC estimates 28% of new convictions will be sentenced to a DOC facility, with an average sentence length of 16 months, 18% of new convictions will be sentenced to local control, with an average sentence of 1.1 months, and 54% of new convictions will be sentenced to probation, with an average sentence length of 24 months. CJC also anticipates an additional 13 crime level seven felony convictions per year, or 26 additional felony convictions per biennium. CJC estimates 39% of new convictions will be sentenced to a DOC facility, with an average sentence length of 22 months, 8% of new convictions will be sentenced to local control, with an average sentence length of 1.3 months, and 53% of new convictions will be sentenced to probation, with an average sentence length of 36 months.

To determine the potential sentencing for DEM's, CJC utilized sentencing data on PCS convictions from 2019 that totaled 1,115 cases, 100% of which were sentenced to probation, with an average sentence length of 18 months. For the Class A drug possession convictions being modified by the measure, CJC estimates 242 additional cases will receive a probation sentence of 18 months; formerly, these cases received court probation sentences. The measure also modifies felony Commercial Drug Offenses, which was 1% of all PCS convictions in 2019. CJC estimates 32 additional convictions for this offense. Of these new convictions, 8% will be sentenced to a DOC facility, with an average sentence length of 16.5 months, 6% will be sentenced to local control, with an average sentence length of 1.5 months, and 86% will be sentenced to probation, with an average sentence length of 36 months.

To determine the eligible population for deflection, CJC utilized PCS arrest data from 2019 and removed individuals with accompanying charges and persons already on active supervision. This resulted in an estimate of 3,187 cases eligible for deflection. CJC anticipates 23 counties will implement a deflection program by September 1, 2024, and of the eligible population in these counties, 50% will successfully complete the deflection. CJC estimates the remaining cases will either not be offered deflection in that county or the person will not successfully complete the available deflection program. Of these remaining cases, CJC estimates 25%

will receive a conditional discharge sentence of 12 months. In total, using the total cases in 2019 that would have been eligible for deflection as a proxy, this assumes 1,269 successful deflection cases, 1,523 unsuccessful cases, and 381 cases that will receive conditional discharge.

The fiscal impact assumes a three-month lag between the measure's effective date and the date first offenders may be received through the criminal justice system. The cost estimates include funds that would be distributed to county community corrections departments for the costs of probation, post-prison supervision, and local control. As part of the cost calculations, the estimated marginal cost per day for a DOC facility is \$26.05 per offender and the estimated cost per day for probation is \$13.83 per offender.

Should this measure become law, any deviation between the estimates assumed in this fiscal analysis and the actual number of criminal cases, convictions, and length of sentences issued would be incorporated in the Department of Administrative Services Office of Economic Analysis' corrections population forecast. These forecasts are issued twice per year and used to determine any necessary budget modifications for the agency.

DOC distributes General Fund to community corrections for the portion of costs associated with probation, post-prison supervision, and local control. If this measure becomes law, the estimated increased distribution from DOC for the 2023-25 biennium is \$1.3 million, and \$27.3 million for the 2025-27 biennium as the measure's provisions are fully implemented and the anticipated population increases.

DOC anticipates needing two permanent full-time Administrative Specialist 1 positions (1.83 FTE) beginning September 1, 2025, to provide administrative support to its Offender Information and Sentence Computation Unit. With the measure's process for the sealing of records, and utilizing CJC projections, DOC anticipates 3,000 set asides in the 2025-27 biennium and 4,000 set asides for the 2027-29 biennium to be processed.

Counties

The fiscal impact on counties to establish deflection programs is estimated to be \$42.5 million annually, assuming every county opted to operate a program. The estimated cost for the 23 counties that have indicated they intend to establish a deflection program totals \$30.2 million. Counties report that these new deflection programs would operate similarly to Marion County's Law Enforcement Assisted Diversion (LEAD) programs. Based on the LEAD program, counties anticipate needing Deputy District Attorneys, sworn law enforcement officer positions, community mental health providers to coordinate programs across the state, and establishment of two new positions, a Peer Support staff and County Coordinator position.

Based on data from 2019, counties anticipate approximately 4,000 eligible cases for deflection, or about 813 more than CJC's projection. Partial funding for county costs are assumed to be covered through the Oregon Behavioral Health Deflection Program grant formula outlined in the measure, which provides for a maximum grant based on the Oversight and Accountability Council distribution formula and a minimum of \$150,000 per county. HB 5204 includes \$20.7 million for Oregon Behavioral Health Deflection Program and \$9.8 million for Community Mental Health Programs to support deflection program coordination and services.

Counties could not provide specific estimates but indicated that there could be costs associated with the sentencing changes to delivery of controlled substances.

Legislative Policy and Research Office

The fiscal impact on LPRO is \$400,340 General Fund and two permanent full-time positions (1.26 FTE) for the 2023-25 biennium and \$607,862 General Fund and two positions (2.00 FTE) for the 2025-27 biennium. The measure requires LPRO to provide staff support to both task forces established under this measure.

Two permanent full-time positions would staff the Joint Task Force on Regional Behavioral Health Accountability given the scope of work and level of required subject matter expertise. Assuming monthly meetings over 14 months, this includes one permanent Senior Legislative Analyst (0.63 FTE) and one permanent Research Analyst (0.63 FTE), at a total cost of \$379,440 General Fund for the 2023-25 biennium.

LPRO will use existing staff to provide support to the Task Force on Improving the Safety of Behavioral Health Workers, assuming monthly meetings over seven months. The total fiscal impact for the 2023-25 biennium includes \$20,900 for members of the task force who are not members of the Legislative Assembly for compensation and reimbursement of actual and necessary travel and other expenses.

Although LPRO's current service level budget supports interim committees and task forces, if the work required by these task forces, or if the cumulative enactment of other legislation with interim committees and task forces exceeds expenditure levels beyond those assumed in the 2023-25 budget, additional General Fund resources may be required.

Department of Justice

The fiscal impact on the Department of Justice (DOJ) is \$92,166 Other Funds and one permanent part-time position (0.17 FTE) for the 2023-25 biennium and \$276,632 Other Funds and one permanent part-time position (0.50 FTE) for the 2025-27 biennium. The General Counsel Division within DOJ anticipates needing one permanent part-time Senior Assistant Attorney General position in the 2023-25 biennium to provide legal support to OHA while establishing the CCBHC Program. The billable rate DOJ will charge OHA is a legislatively approved hourly legal services rate.

The Appellate Division reports the fiscal impact of the measure is indeterminate. While the Appellate Division is unable to estimate the impact of the measure at this time, the measure is anticipated to increase costs once actual workload is identified.

Legislative Assembly

The overall fiscal impact on the Legislative Assembly is minimal for the 2023-25 biennium, based on legislator participation in two task forces. The below estimates include the Federal Insurance Contribution Act (FICA) tax, assumes the per diem remains at \$166 per day, and estimates an average mileage of 80 miles at the current rate of \$0.67 per mile. These estimates could change based on the number of meetings held. The task forces would not incur additional costs to the Legislative Assembly budget if the meetings were held at the Capitol building during the Legislative Session, or Task Force or Legislative Days.

Joint Task Force on Regional Behavioral Health Accountability

Four members of the task force will be legislative members who are entitled to per diem and travel reimbursement. Meetings are set by the chairperson, and it is unknown how often the task force would meet; however, assuming that the task force meets 15 times, the estimated per diem and travel reimbursement costs will total \$17,900.

Task Force on Improving the Safety of Behavioral Health Workers

Four members of the task force will be legislative members who are entitled to per diem and travel reimbursement. Meetings are set by the chairperson, and it is unknown how often the task force would meet; however, assuming that the task force meets nine times, the estimated per diem and travel reimbursement costs will total \$13,100.

Although the 2023-25 Legislative Assembly budget contains funds allocated for interim committees and task forces, if the work required by this task force, or if the cumulative enactment of other legislation with interim

committees and task forces exceeds expenditure levels beyond those assumed in the 2023-25 budget, additional General Fund resources may be required.

Department of Human Services

The fiscal impact on the Department of Human Services (DHS) is minimal for the 2023-25 biennium. Within current resources, DHS has positions that provide administrative support to CCBHC programs; however, in the 2025-27 biennium when CCHBC payments to providers for expanded services increases, the agency may need to return during a subsequent legislative session or a meeting of the Emergency Board to request additional resources.

Oregon Board of Pharmacy

The fiscal impact on the Oregon Board of Pharmacy is indeterminate. The agency reports that the measure defines prescription drug lockers that are not co-located with a retail drug outlet as a “remote dispensing site pharmacy”; however, the Board uses “remote dispensing site pharmacy” to mean telepharmacy, and this definition would not apply as there are not pharmacy technicians staffing the remote locations as required in ORS 689.700. If the measure becomes law, the provisions could have a substantial fiscal impact on OBOP due to additional rulemaking and enforcement procedures that would likely need to be adopted, as well as potential changes to the agency fee structure. This work could require additional resources.

There are currently three pharmacy prescription lockers registered with the agency. The Board collects an annual registration fee of \$225 from each. The provisions under Section 8 would reduce fee revenue due to the measure not requiring retail drug outlets to obtain a license or registration for lockers, and the Board would adopt rules to modify their fee structure, which can be absorbed within current resources.

District Attorneys

There is no fiscal impact on District Attorneys. The state funds elected official District Attorney positions and associated costs. The measure does not have a fiscal impact on District Attorney salaries or associated costs.

Other entities

There is a minimal fiscal impact on the Department of Consumer and Business Services, Oregon Youth Authority, Legislative Counsel, and cities. There is no fiscal impact on the Secretary of State, Board of Parole and Post-Prison Supervision and Oregon’s federally recognized Tribes.

Relevant Dates

The measure declares an emergency and takes effect on passage.