

## Legislative Concept to Continue the Reduction in Jail Populations to Prevent Harms Caused by Unnecessary Incarceration

### The Problem

When the COVID-19 pandemic hit the Northwest, sheriffs and jail commanders in Oregon quickly realized that a safe environment could not be maintained in jails without dramatically reducing the jail population. Jails, courts, and law enforcement were able to quickly reduce jail populations by limiting admissions unless the defendant posed a risk to public safety, ending unnecessary pre-trial incarceration, and issuing citations for nuisance crimes instead of making arrests.

Disability Rights Oregon's report, "[Oregon Jails during COVID-19: A Look Inside 29 County Jails](#)" found that on average, jails have nearly 50% fewer people in custody as compared to their pre-pandemic population. This is true in both urban and rural settings.

Given the drastic over-incarceration of people experiencing homelessness,<sup>1</sup> racial disparities in the criminal justice system,<sup>2</sup> and the disproportionate number of people with mental illness found in county jails,<sup>3</sup> this was welcome news. Criminal justice diversion has been touted as a concept by courts, law enforcement, district attorneys, and advocates. But, without a statutory mandate or a state of emergency, these efforts have previously failed.

### Legislative Concept

Amend ORS 133.310 to narrow an officer's authority to make a warrantless arrest if the alleged conduct is a non-person misdemeanor, which was not committed in the officer's presence. An arrest could still be made in these circumstances with a warrant. This change would prevent arrests from serving as the default tool to resolve situations relating to homelessness and behavioral health crisis.

Amend ORS 169.105 to prevent admission to jail for people who show symptoms of a contagious virus, or who are in acute need of medical or psychiatric care. Jails should not be used as a drop off location for people with serious medical or behavioral health conditions who are in need of treatment.

**Possible Statutes Affected:** ORS 133.310; ORS 169.105

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<sup>1</sup> "Oregon mental hospital is 'world's most expensive homeless shelter,' state health director says" OregonLive, May 1, 2019, <https://www.oregonlive.com/pacific-northwest-news/2019/05/oregon-mental-hospital-is-worlds-most-expensive-homeless-shelter-state-health-director-says.html>

<sup>2</sup> Racial and Ethnic Disparities in Multnomah County, 2019, MacArthur Safety + Justice Challenge, W. Haywood Burns Institute, <https://multco.us/file/84525/download>

<sup>3</sup> Bureau of Justice Statistics, <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5946>