



# SENATE BILL 755 (2021)

LPRO: LEGISLATIVE POLICY AND RESEARCH OFFICE

## ISSUE BRIEF

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Ballot Measure 110 was passed by Oregon voters in 2020. The measure decriminalized possession of small amounts of controlled substances. During the 2021 Legislative Session, Senate Bill [755](#) was crafted as the vehicle to implement and make changes to Ballot Measure 110. This brief provides an overview on the provisions of Senate Bill 755 (“the Bill”).

## SENATE BILL 755 PROVISIONS EXPLAINED

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### Section 1: Findings and Policy

Section 1 of the Bill states that Oregonians have found that drug addiction is a serious public health problem that should be dealt with through a health-based approach rather than through a criminal justice approach. It explains that the purpose of the Bill is to make health assessment, treatment, and recovery services for drug addiction available to all, and to remove criminal penalties for low level drug possession.

### Sections 2-4: Expanding Treatment and Services

Sections 2-4 of the Bill define the Behavioral Health Resource Networks (“BHRNs”), detail a grant funding mechanism for BHRNs and for other entities that apply for grants from the Drug Treatment and Recovery Fund (“DTRF”), create the Oversight and Accountability Council (“OAC”), and specify the Oregon Health Authority’s (“OHA’s”) powers and obligations in administering the Bill.

Section 2 specifies that the OAC, under the wing of the OHA, must oversee and approve grants to implement BHRNs and increase access to care. BHRNs are defined as any entity or collection of entities, whether government or community based, who together or individually provide the seven services specified in Section 2(2)(d)(A-H) and three staff categories specified in Section 2(2)(g)(A-C) as required by the Bill.

Below is a guide to the BHRNs (see next page):

## Guide to the Behavioral Health Resource Networks (“BHRNs”)

- Network of entities or single entity providing specified services and staffing and identified by the OAC as a BHRN entity.
- Can be governmental or community based.
- Can involve cross county collaboration.
- Funded through the OAC using the DTRF.
- One complete BHRN required per county by January 1, 2022.

### Minimum **service** requirements:

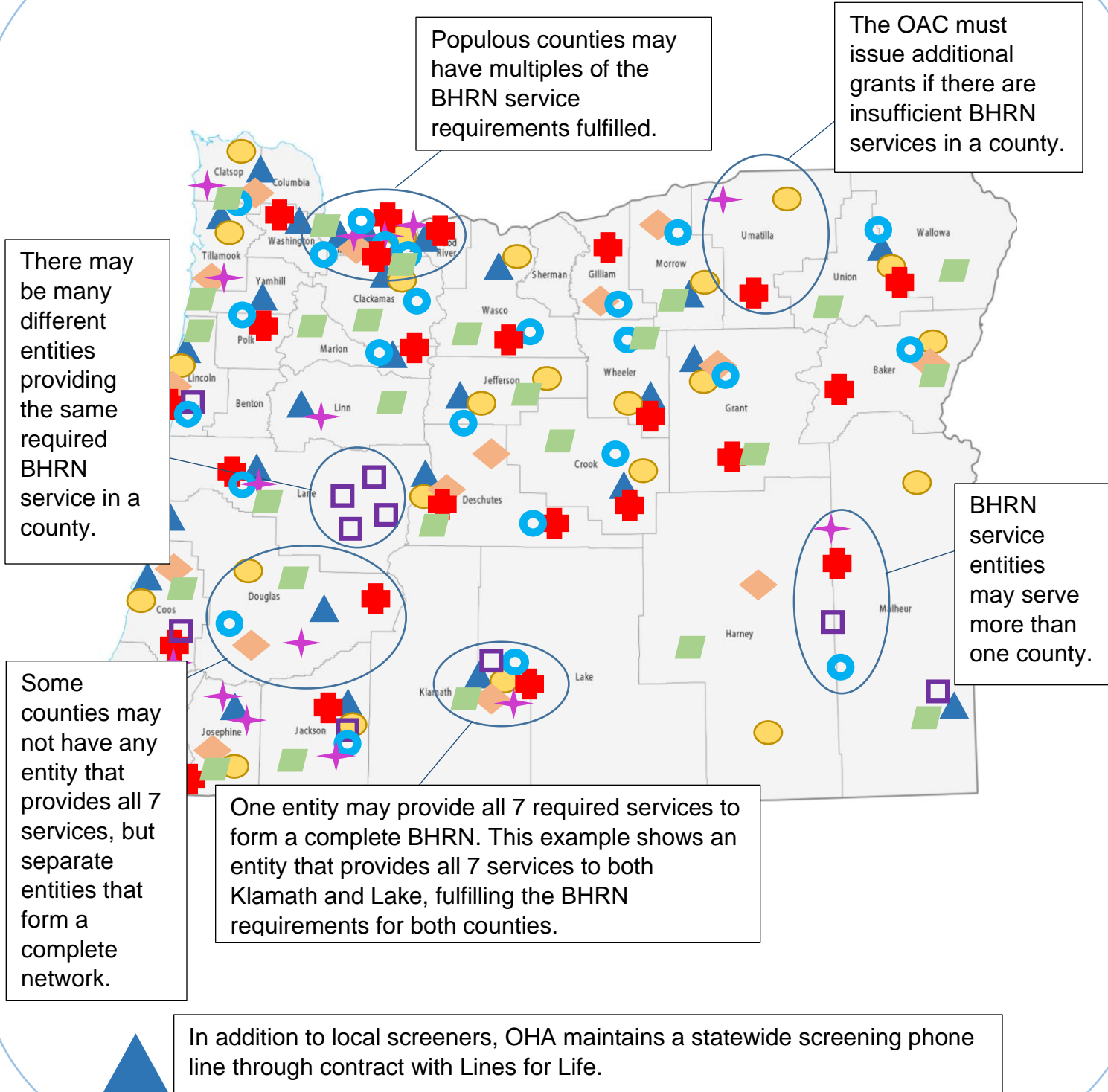
1. Screenings ▲
2. Assessments ●
3. Intervention planning ✚
4. Peer counseling ◆
5. Mobile outreach ▭
6. Low barrier substance use disorder treatment ○
7. Transitional and supportive housing □
8. Harm reduction services ✦

The OAC may prescribe additional service or staffing requirements by rule.

### Minimum **staffing** requirements:

1. Certified alcohol and drug counselor
2. Case manager
3. Certified addiction peer support or wellness specialist

### Example BHRN Map



This section of the Bill also specifies a grant system for funding entities other than BHRNs. The OAC is empowered to provide grants to entities, whether government or community based, so long as the entity increases access to any of the following: low barrier substance use treatment, peer support and recovery services, housing for persons with substance use disorder, harm reduction interventions, or behavioral healthcare workforce supports.

The Bill further requires that the OAC must distribute funding to ensure access to historically underserved populations and to culturally specific and linguistically responsive services. The OAC must consider data about the availability of behavioral health services to the extent that data is available. They may consult the statewide Strategic Plan developed by the Alcohol and Drug Policy Commission or other sources of expertise.

All services provided by grantees within and outside of BHRNs must be free of charge to the person receiving the services, and grant recipients must make commitments not to supplant other funding. Finally, the OAC must require any government entity recipient to detail their subgrantees and how the government recipient is increasing access to culturally specific and linguistically responsive services.

Sections 3 and 4 of the Bill describe the rules surrounding the OAC, and the administrative role of OHA. They detail the OAC's membership requirements and operational rules like quorum, terms, compensation, and ethical obligations. They vest in the OAC the power to adopt and establish rules and requirements pertaining to grantees. These sections require OHA to provide implementation support, and publicly post information about grants. The section creates an attorney-client relationship between the OAC and the Department of Justice.

### **Sections 5-10: Funding**

Sections 5-10 create the DTRF and describe funding sources. The major source of funding is money allocated from the Oregon Marijuana Account. The Bill requires that each quarter, the first \$11.25 million dollars in the Marijuana Fund be distributed to its traditional recipients. Any amount in excess of that amount is required to be transferred to the DTRF. In the first year, the Bill requires that the amount transferred to the DTRF be at least \$57 million. Savings as a result of implementation of the Bill, and E violation fine revenue must also be transferred into the DTRF. DTRF monies must be distributed first to pay for OHA administrative costs not to exceed 4% of the moneys deposited per biennium, and then to the grants programs administered by the OAC.

### **Sections 11-20: E Violation Procedures**

Sections 11-22 of the Bill contain details surrounding the newly created Class E violation. They state that the penalty for a Class E violation is a presumptive \$100 fine, with a maximum fine of \$100 and a minimum fine of \$45. If an individual completes a screening through the statewide phone screening hotline run by the OHA or through

another BHRN screener within 45 days of receiving a ticket, and submits verification, the E violation is dismissed by the court. A person can also complete any equivalent or more intensive treatment contact and provide proof to the court to get their ticket dismissed. The Bill specifies that failure to pay the fine or failing to appear for a violation hearing cannot be a basis for incarceration.

Officers who issue an E violation citation are required by the Bill to provide the cited person with information on how to complete a treatment screening—for example—by providing the person with the statewide screening hotline phone number.

### **Sections 21-24: Oversight and Administration**

Section 21 requires OHA to establish a statewide phone hotline to provide screenings as described in Section 2(2)(d)(A), and to send verification of a completed screening to the Judicial Department if authorized by the caller in situations where the caller is obtaining a screening to get their ticket dismissed.

Section 22 requires the Oregon Secretary of State (“SOS”) to conduct audits. It details that the SOS must perform a real time audit and financial review, and a traditional longer scale audit and financial review. The real time audits and reviews assess the structures created by the Bill at their formative stages. They must examine items like how well the grants process works and whether the rules created by the OAC are clear. The traditional audits and reviews require assessment of aggregate data on E violation citations including demographic breakdowns, and data on whether access to behavioral healthcare has increased since passage of the Bill.

Section 23 requires members of the OAC to fill out statements of economic interest.

Section 24 directs OHA to report to the legislature about quarterly spending of funds from the DTRF. It also requires reporting on grant applications, and grant awards at various increments.

### **Sections 25-30: Courts**

Sections 25, 26, and 27 detail that juveniles cited with an E violation shall be directed through the juvenile system and be permitted to enter into formal accountability agreements.

Sections 28, 29, and 30 restrict jurisdiction over E violations to circuit courts and exclude them from the jurisdiction of justice and municipal courts, except for E violations already within their jurisdiction.

### **Sections 32-42: Controlled Substances Changes**

The Bill describes that the unlawful possession of each controlled substance qualifies as a Class E violation, Class A misdemeanor, or felony if the possession is in a

substantial quantity (“SQ”) or a Commercial Drug Offense (“CDO”). The Bill does not change crime designations for drug offenses involving delivery or manufacturing. The chart below contains the designations for each drug and substance schedule as stated by the Bill. The penalty designations do not take into account purity, such that the weight of any mixture or substance containing a detectable amount of the drug is equivalent to the total weight of the entire substance (e.g. possession of a substance that weighs 2 grams and that consists of 80% heroin would constitute possession of 2 grams of heroin).

<b>Substance</b>	<b>Designation under the Bill</b>
Hydrocodone	<40 pills, tablets, or capsules= Class E violation  ≥40 pills, tablets, or capsules= Class A misdemeanor  CDO= Class A misdemeanor
Methadone	<40 user units= Class E violation  ≥40 user units= Class A misdemeanor  CDO= Class C Felony
Oxycodone	<40 pills, tablets, or capsules= Class E violation  ≥40 pills, tablets, or capsules= Class A misdemeanor  CDO= Class C Felony
Heroin	<1 gram= Class E violation  ≥1 gram= Class A misdemeanor  SQ or CDO= Class B Felony
3,4-methylenedioxymethamphetamine	<1 gram or 5 pills, tablets, capsules= Class E violation  ≥1 gram or 5 pills, tablets, capsules= Class A misdemeanor  SQ or CDO= Class B felony

Cocaine	<p>&lt;2 grams= Class E violation</p> <p>≥2 grams= Class A misdemeanor</p> <p>SQ or CDO= Class C felony</p>
Methamphetamine	<p>&lt;2 grams= Class E violation</p> <p>≥2 grams= Class A misdemeanor</p> <p>SQ or CDO= Class C felony</p>
Fentanyl	<p>&lt;1 gram= Class E violation</p> <p>≥1 gram= Class A misdemeanor</p> <p>SQ or CDO= Class C Felony</p>
Remaining Schedule I Substances	<p>Class E violation unless:</p> <p>40+ units of lysergic acid diethylamide= Class A misdemeanor</p> <p>12 grams+ psilocybin or psilocin= Class A misdemeanor</p> <p>SQ or CDO=Class B Felony</p>
Remaining Schedule II Substances	<p>Class E violation unless:</p> <p>SQ or CDO=Class C Felony</p>
Remaining Schedule III Substances	Class E violation
Remaining Schedule IV Substances	Class E violation
Remaining Schedule V Substances	Class E violation

**Section 46: Pending charges**

Section 46 details a procedure by which prosecuting attorneys can elect to treat certain charges as Class E violations. If a charge pending would have been an E violation if committed on or after February 1, 2021, a prosecuting attorney can—with the consent

of the defendant in the case—dismiss the case and simultaneously initiate an E violation proceeding. At the same hearing, if the court has received verification of a screening through a BHRN or any other equivalent or more intensive treatment contact completed by the defendant, the court shall dismiss the E violation at the hearing. Otherwise, the court may impose the presumptive \$100 E violation fine.

## STAFF CONTACT

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