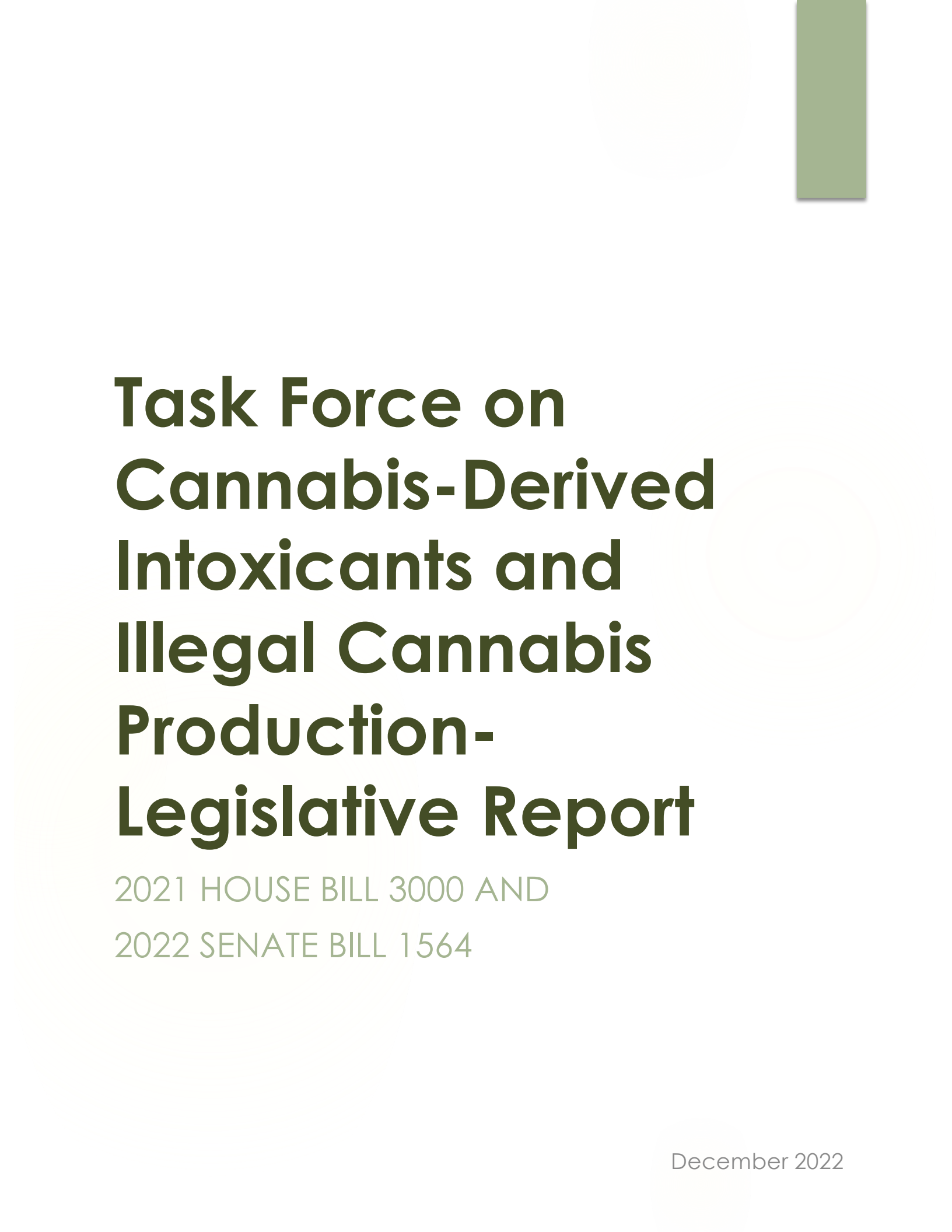




Task Force on Cannabis-Derived Intoxicants and Illegal Cannabis Production- Legislative Report

2021 HOUSE BILL 3000 AND
2022 SENATE BILL 1564

December 2022

Executive Summary

During the 2021 and 2022 legislative sessions, there was a focus on illegal cannabis production in Oregon. Not only is the illicit production harmful to communities and the environment, but it negatively impacts the legal marijuana and hemp industries in our state.

2021 House Bill 3000 (HB 3000) and 2022 Senate Bill 1564 (SB 1564) put in place laws and funding to address many of the issues but recognized the need for further conversations around maintaining a robust, regulated cannabis industry in Oregon. The bills established a bipartisan and bicameral task force to consider specific regulatory issues and to develop a report including final findings and recommendations for legislation to the interim committee of the Legislative Assembly related to economic development no later than December 31, 2022.

The task force recommendations are focused on consumer protections, funding and tools for law enforcement to combat the illicit market and needed environmental and humanitarian protections. The recommendations include but are not limited to:

Cannabinoid product registration

Creating a fee-based product registration system administered by the Oregon Liquor and Cannabis Commission for all hemp items for human and animal consumption that contain cannabinoids, excluding topical products and grain or fiber hemp products that do not contain added cannabinoids.

Adult use labeling

Requiring all adult use cannabis items to be labeled “Not for Children” or “For Ages 21 and Over.”

State reference laboratory

Supporting the establishment of a state reference lab to assist Oregon Department of Agriculture, Oregon Health Authority, and Oregon Liquor and Cannabis Commission in enforcement of testing standards and laboratory oversight.

CJC grant funding

Continuing to fund the Criminal Justice Commission Illegal Marijuana Market Enforcement Grant program, including funds to law enforcement, community-based organizations, and Oregon Water Resources Department.

Search warrants

Allowing circuit court judges to issue a search warrant outside the judicial district when the search involves interrelated conduct carried on in more than one county.

Water use

Making unlawful use of water for production of cannabis a Class A misdemeanor.

Law enforcement resources to address labor trafficking

Increasing penalties for large illegal operations, and when felony-level possession or production occurs in conjunction with certain other activities that harm persons or the environment.

The task force anticipates these recommendations will allow businesses to thrive and set a national standard of excellence, by giving consumers peace of mind when purchasing cannabinoid products, while providing much needed resources for public safety to keep our communities and environment safe. The task force thanks you for your time and consideration reviewing our recommendations.

Introduction and Background

Starting in 2014, the legal landscape of cannabis cultivation in Oregon rapidly shifted. Oregon voters approved Ballot Measure 91 in November of 2014, allowing for legal production, sale, and use of marijuana. That same year, the federal Agricultural Act of 2014 (2014 Farm Bill) allowed states to implement pilot programs for the production of industrial hemp. Then the federal Agriculture Improvement Act of 2018 (2018 Farm Bill) went a step further, legalizing hemp more broadly by removing hemp from the federal schedule of controlled substances.

Despite these legal avenues for adult use marijuana and hemp in Oregon, illicit cannabis production remains a significant issue throughout the state. Illegal grow operations have serious effects on Oregon communities and the environment. Communities see clearcutting, bulldozing, openly stealing water, and many other concerning activities. Even though much of the focus was initially on Southern Oregon, it has grown to be a statewide issue.

To combat the illicit production of cannabis, the Oregon legislature passed House Bill 3000 (HB 3000) in 2021. HB 3000 assisted law enforcement by:

- Establishing a Class A misdemeanor for unlawful production of cannabis more than the amount allowed by state law or at a location that is not licensed or registered by Oregon Department of Agriculture (ODA), Oregon Health Authority (OHA), or Oregon Liquor and Cannabis Commission (OLCC).
- Allowing destruction of unlawfully produced cannabis as contraband.
- Increasing the funding for the Criminal Justice Commission (CJC) grant program, allowing more jurisdictions to receive needed resources to combat the illegal operations.

These tools allow law enforcement to better regulate illegal growing operations. At the same time, HB 3000 gave ODA additional authority to check THC levels in licensed hemp crops to identify growers using the hemp program to produce illicit high-THC cannabis with less scrutiny.

At the same time Oregon was facing issues related to illegal cannabis production, the entire nation was facing an oversupply of legal hemp, particularly CBD-rich hemp. While the US Food and Drug Administration (FDA) prohibits CBD in foods and dietary supplements, wellness products like CBD tinctures and gummies remain popular. As the market for CBD products became increasingly competitive, some hemp product manufacturers began taking advantage of the 0.3% federal limit for THC in hemp products by making heavy food items that contained doses of THC comparable with or exceeding the limits for THC in adult use marijuana edibles in Oregon. Other hemp product manufacturers began chemically converting CBD into other cannabinoids; e.g. delta-8-THC. This results in children and adults being sold intoxicating items made from hemp.

To address the issue of intoxicating hemp-derived products, HB 3000 required the OLCC to immediately set limits on THC and other cannabinoids for hemp items that can legally be sold to minors. The bill also directed OLCC, in consultation with ODA and OHA, to establish administrative rules to limit THC and artificially derived cannabinoids in hemp items for sale to adult consumers in Oregon.

Lastly, recognizing the need for further conversations around maintaining a robust, regulated cannabis industry in Oregon, HB 3000 established a bipartisan and bicameral task force including representation from legislators, cities, counties, law enforcement, hemp industry members, marijuana licensees, the Oregon State University (OSU) Global Hemp Innovation Center, ODA, OHA, and OLCC.

During the 2022 legislative session, Senate Bill 1564 (SB 1564) continued to address issues related to illegal cannabis production by allowing counties to declare a state of emergency and prohibit new hemp growing licenses within their jurisdiction until June of 2023.

SB 1564 also expanded the task force membership to include representatives from sheriffs, district attorneys, Bureau of Labor and Industries (BOLI), Oregon Water Resources Department (OWRD), Oregon Department of Justice (DOJ), and Oregon State Police (OSP). In addition to adding members, SB 1564 expanded the scope of the task force to include consideration of law enforcement funding, human trafficking prevention, processing of search warrants, and unauthorized use of water.

The purpose of the task force is to consider the items listed in 2021 HB 3000 and 2022 SB 1564 and to develop a report including final findings and recommendations for legislation to the interim committee of the Legislative Assembly related to economic development no later than December 31, 2022.

Structure

The task force convened monthly, with the first meeting in May 2022 and the last in November 2022. At the first meeting, it was determined subcommittees would be necessary to fully research all of the legislative considerations. The task force established three subcommittees:

- Law enforcement
- Water and natural resources
- Cannabinoids

Specific considerations were divided among the subcommittees, with the broad overarching issues being discussed at the full task force. All subcommittee recommendations came to the full task force for discussion and inclusion in this report. All full task force meetings and subcommittee materials can be found on the OLCC [website](#).

The full task force met seven times and discussed the regulation of cannabis (both marijuana and hemp) in Oregon and ongoing funding for law enforcement to combat illegal cannabis operations, including funding to community-based organizations (CBOs) to help people brought to the illegal operations for work.

The meetings included an examination of Oregon's current model of cannabis regulation, as well as presentations from Michigan and California to discuss how they are regulating cannabis. A presentation from the National Industrial Hemp Council gave the task force insight into how hemp is viewed federally. ODA and OLCC also presented on the Oregon wine industry and related regulations to give an example of an analogous crop that is processed into a regulated substance. The CJC presented information to the task force on past and current grants and options for ongoing funding levels. The task force also had a dedicated meeting to hear from CBOs about the ways they are using CJC grant funds to help those in need.

Law Enforcement Subcommittee

Met six times. The subcommittee discussed options to:

- Increase efficiency in the search warrant process to reach a greater number of illegal cannabis operations and facilitate the response to large or multi-district operations.
- Increase deterrence and accountability for illegal operations.

Discussion focused on increasing judicial availability to authorize search warrants and specifying persons who may accompany law enforcement during execution of the warrant. Possible changes in state law were also discussed to facilitate cleanup of illegal cannabis sites and increase penalties for large operations and those that involve labor trafficking, unlawful working conditions, environmental endangerment, or unlawful use of water for production of cannabis.

Water and Natural Resources Subcommittee

Met four times. The subcommittee looked at the role of natural resource agencies relating to illegal cannabis production and discussed possible gaps including:

- The potential need for regulations allowing well drillers to be held to the same standards as water delivery companies.
- Additional mechanisms to know when law enforcement is done with a site to maintain natural resource agencies safety while accessing properties where illegal cannabis production took place.
- Further research on how the Oregon DOJ Environmental Crimes and Cultural Resources unit provides assistance to county district attorneys around the state.

Cannabinoid Subcommittee

Met six times. The subcommittee focused on:

- Cannabis testing.
- Tracking requirements.
- Ways to ensure children are not able to purchase intoxicating cannabis products.
- Current regulations regarding artificially derived cannabinoids.

An emphasis was placed on balancing regulations to avoid disadvantaging Oregon manufacturers in the national market, while still recognizing the importance of centering public health and safety in finished product regulations.

Recommendations

Administrative functions related to the regulation of cannabis

- Create a fee-based annual product registration administered by the OLCC for all hemp items for human and animal consumption that contain cannabinoids, excluding topical products and grain or fiber hemp products that do not contain added cannabinoids. At a minimum, the registration would include:



- Require label review as part of product registration. Labeling requirements for the product registration would include:



- Cost to design and start the registration system are estimated at \$256,000. The registration system and fees will need to be scalable based on the actual number of products registered.

Optimal funding sources and structure in combatting illegal cannabis production

- Continue to fund the CJC Illegal Marijuana Market Enforcement Grant Program (IMMEGP) at enhanced levels, including support to local law and code enforcement, and support to CBOs to provide victim services. Further, add an additional category of funding to IMMEGP to support OSP.
- Continue direct funding to OWRD for additional watermasters and add additional funding for DOJ for resource prosecutors.
- Consider making the funding sustained so that organizations receiving the grant funding can retain staff and have budget certainty.
- Optimal IMMEGP grant funding would include:
 - \$40M to law and code enforcement.
 - \$6M to CBOs to provide victim services.
 - \$5M to OSP for equipment, contract services, and personnel.
- Optimal direct allocation funding would include:
 - \$5M to OWRD for ongoing staffing needs.
 - \$750K to DOJ for resource prosecutors to focus on labor trafficking.

Address water theft and other unauthorized uses of water

- Make unlawful use of water for production of cannabis a Class A misdemeanor.
- Expand current regulation on hauled water for cannabis production and include use of water from any source.

Methods to prevent sales to minors of industrial hemp commodities or products that contain intoxicating cannabinoids

- Require adult use cannabis items to be in an area of a store separate from general food and beverage items (similar to tobacco).
- Require all adult use cannabis items to be labeled “Not for Children” or “For Ages 21 and Over.”
- Focus sales of cannabinoid hemp items for human consumption or inhalation to stores that sell general food items.

Testing requirements and methods of enforcement of testing requirements for cannabinoids to protect the public health and safety

- Support the establishment of a state reference lab to assist ODA, OHA, and OLCC in enforcement of testing standards and laboratory oversight.
- Require minimum labeling standards for hemp products for human consumption and inhalation, for products made in state and out of state.
- Support expansion of ODA handler licensing to enforce current testing standards.

Regulation of intoxicating cannabis-derived products and artificially derived cannabinoids

- Require OLCC to report every odd numbered year to the legislature on federal and other state regulations for artificially derived cannabinoid products for human consumption and inhalation.
- Direct OLCC to reevaluate the current levels of THC allowed in hemp items on the general market and work with partner agencies and stakeholders to determine if the current levels can be reduced.
- Recommend the State of Oregon continue to advocate for federal streamlining or changes regarding intoxicating cannabis-derived products and artificially derived cannabinoids.

Increase efficiency of search warrant processing

- Allow circuit court judges to issue a search warrant outside the judicial district when the search involves interrelated conduct carried on in more than one county.
- Specify additional persons who may accompany law enforcement for successful execution of a search warrant.

Law enforcement resources to address labor trafficking

- Increase penalties for large illegal operations, and when felony-level possession or production occurs in conjunction with certain other activities that harm persons or the environment, such as:
 - Abusing the law or legal process.
 - Destroying or interfering with the person's possession of a passport, immigration document, or government identification document.
 - Threatening to report the person to a government agency for the purpose of arrest or deportation.
 - Threatening to collect an unlawful debt.
 - Withholding wages earned without lawful justification.
 - Instilling fear in another that the actor will withhold necessities of life.
 - Violating occupational safety standards or minimum standards for agricultural labor housing.
- Continued funding to CBOs to assist people who have been trafficked.
- Direct allocation of \$750K to DOJ to hire resource prosecutors to focus on labor trafficking prevention.

Continue evaluating as federal laws are modified

- Policy changes related to interstate commerce and transportation of cannabis.
- Changes to state regulation of cannabis as a result of federal laws.
- Regulation to address genetic engineering of cannabis.

Conclusion

The task force believes the recommendations listed in this report will help Oregon better regulate legal and illegal cannabis. The recommendations provide environmental and consumer protections within the regulated marketplace while giving law enforcement needed tools to regulate the illicit market. The task force realizes state law will continue to need modifications as the cannabis industry matures and federal laws change, but the recommendations listed above will help legitimate businesses thrive while increasing consumer confidence in regulated cannabis products.

The task force would like to thank the legislators who developed the legislation to convene the task force, so that these important conversations could be held in a public and transparent manner.

Appendix - Task Force Membership

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Legislative appointments	
President of the Senate appointment	Senator Prozanski
Senate Minority Leader appointment	Senator Hansell
Speaker of the House of Representatives appointment	Representative Marsh (chair)
House Minority Leader appointment	Representative Morgan (co-chair)

Governor appointments	
Represents counties	Rob Bovett
Represents cities	Scott Winkels
Represents sheriffs	Sheriff Nathan Sickler
Represents hemp growers	Courtney Moran
Represents hemp handlers	Matt Cyrus
Director of the OSU Global Hemp Innovation Center	Jay Noller
Two representatives for OLCC licensees	Amanda Metzler, Brent Kenyon
Director of ODA/designee	Lauren Henderson
Directors of OHA Public Health Division/designee	Andre Ourso
Administrator of OLCC/designee	Steve Marks
Represents district attorneys	Josh Eastman
Commissioner of BOLI/designee	Emily Sitton
Director of OWRD/designee	Justin Dillon
Represents OR DOJ	Amanda Swanson
Represents OSP	Sergeant Tyler Bechtel