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Background Brief on ...

# Driving Under the Influence of Intoxicants (DUII)

## Background

In Oregon, it is against the law for a person to drive a vehicle if the driver has a certain amount of alcohol in their bloodstream or is under the influence of any combination of alcohol, inhalants, or controlled substances. This is called “driving under the influence of intoxicants” or DUII.<sup>1</sup>

In 2012, there were over 20,000 DUII offenses in Oregon and 17,251 arrests.<sup>2</sup> Of those offenses, 6.5 percent had a blood alcohol content of less than .08 percent, 12.5 percent refused to give a breath or blood sample, and 16 percent were intoxication due to drugs or unknown intoxicant. One hundred of the offenders were under the legal drinking age.

Eighty-six deaths were reported in Oregon during 2012 as the result of drunk driving.<sup>3</sup>

## DUII Conviction

Every DUII conviction carries a mandatory 48-hour imprisonment term or requires community service hours.

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<sup>1</sup> See ORS Chapter 813.

<sup>2</sup> State of Oregon Report of Criminal Offenses and Arrests (2012). Oregon Uniform Crime Reporting Program.  
<http://www.oregon.gov/osp/CJIS/docs/2012/STATE%20OF%20OREGON%202012.pdf>.

<sup>3</sup> National Highway Traffic Safety Administration.  
[http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/STSI/41\\_OR/2012/41\\_OR\\_2012.htm](http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/STSI/41_OR/2012/41_OR_2012.htm)

First or second DUI convictions are class A misdemeanors and may carry a sentence of up to one year in jail. Courts must impose a minimum fine of \$1,000 for first convictions and \$1,500 for second convictions. For third or subsequent convictions, the fine is a minimum of \$2,000 if the person is not sentenced to jail time.

Certain circumstances will result in an increased fine. For example, if a person's Blood Alcohol Concentration (**BAC**) was over 0.15 percent, the minimum fine is \$2,000. In instances where a person drives a motor vehicle and has a passenger who is under the age of 18, and at least three years younger than the driver, the fine may be up to \$10,000.

A third conviction for DUI within a ten-year time period is a class C felony. Any subsequent DUI convictions are treated as a class C felony, punishable by mandatory minimum incarceration of 90 days. However, for an offender with a juvenile record of DUI, the fourth total DUI, including juvenile offenses, will result in felony DUI.

Courts may also impose other requirements on a person convicted of DUI, including a screening interview and treatment program and attendance at victim-impact programs. Proof of completion of a treatment program is required for reinstatement of driving privileges through the Department of Transportation. If unable to complete the program, the person may petition the court to show that the person has taken sufficient steps toward completion. Alternatively, the person can wait 15 years before seeking reinstatement.<sup>4</sup>

### **Suspension**

Sanctions other than jail or fines may be imposed. In Oregon, motorists grant implied consent to have their breath and urine tested for alcohol, controlled substances, or inhalants, upon police officers' reasonable beliefs that motorists were driving while intoxicated. Police officers requesting a urine test must be certified by the Board of Public Safety Standards and

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<sup>4</sup> ORS 813.022(2)

Training and have completed specific training on recognition of drug-impaired driving. Additionally, drivers give implied consent to submit to a field sobriety test.

If a person refuses to take the test, or if the breath test reveals a BAC of over .08 percent, the person's driving privileges are suspended. Suspension of driving privileges is independent of the DUI charge.

- For individuals who refuse to take the test, the base period of suspension is one year, but may be from 3 months to three years, depending on circumstances.<sup>5</sup> Refusal also results in a minimum fine of \$500, with a maximum of \$1,000.
- For individuals who fail the breath test, suspension is for 90 days, unless other circumstances exist. Hardship permits for limited driving privileges may be given after 30 days.
- For a felony conviction of DUI or third misdemeanor conviction of DUI, driving privileges are revoked.

Suspension periods may be increased if the person is actively participating in a diversion program, has had a prior suspension, or has prior convictions for DUI.

### **Diversion**

In Oregon, an offender may be eligible to enter a diversion program for DUI. A diversion program directs an offender away from the traditional criminal prosecution and into an alternative format. Successful completion of a diversion program often results in the charges against the defendant being dismissed. The period of the diversion program must be at least one year from the date the court allowed the petition.

Diversion is not available to all DUI defendants. Disqualifications for diversion include:

- Pending DUI charges in Oregon or in another jurisdiction,
- DUI conviction in the past 15 years,

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<sup>5</sup> See ORS 813.130(2)(e)

- Conviction of felony DUII at any time,
- Current participation in a diversion program or drug rehabilitation program,
- Conviction within the last 15 years for aggravated vehicular homicide, murder, manslaughter, criminally negligent homicide, or assault that resulted from operating a motor vehicle,
- Holding a commercial driver's license,
- Operating a commercial vehicle at the time of the offense,
- Killing or physically injuring another in a motor vehicle accident involving the DUII offense, or
- Failing to appear at arraignment.

In order to participate in diversion, the defendant must agree to several stipulations and adhere to certain requirements.<sup>6</sup> The defendant must:

- Plead guilty or no contest,
- Agree to undergo a complete drug and alcohol evaluation,
- Agree to complete a program of treatment,
- Refrain from using intoxicants and comply with laws designed to discourage use of intoxicants,
- Keep court advised on defendant's current mailing address,
- Pay all fees and restitution, if ordered,
- Waive all former jeopardy rights in any subsequent action based on the same criminal episode, and
- Swear that the defendant meets all of the eligibility criteria.

The defendant must also install and use an ignition interlock device on any vehicle the defendant operates during diversion.<sup>7</sup>

Diversion program fees include a \$490 filing fee (as of January 2014), a \$150 fee to be paid to the agency or organization providing the evaluation, and any court-appointed attorney fees. Courts may also require defendants to attend a victim-impact treatment session, and may charge a fee for such program. Fees may be waived or

deferred for indigent defendants. Courts may require the defendant in diversion to pay restitution for damage caused by the offense.

If the defendant is eligible for the diversion program and has filed for diversion, the court must determine whether to allow or deny the petition. The court must consider whether the diversion will be of benefit to the defendant and community.<sup>8</sup> Other factors the court may take into consideration are whether:

- The defendant had early recognition that drug or alcohol treatment would be beneficial,
- It is likely that the defendant will cooperate with the evaluation and treatment program,
- The defendant will observe the restrictions of the program (refraining from use of intoxicants, installation of IID, etc.), and
- There were passengers in the vehicle who were under 18 years of age and three or more years younger than the defendant.

If the defendant is not eligible for diversion or the court denies the petition, the offense proceedings against the defendant will continue, but the guilty plea or no contest plea will not be used in the proceeding.

If the court allows the petition, the court will accept the guilty or no contest plea but will withhold entry of judgment of conviction until the defendant either completes diversion or the agreement is terminated. The defendant is responsible for requesting an extension of the diversion period.

Should the defendant fail to comply with the terms of the diversion agreement, the court will enter the guilty or no contest plea, enter a judgment of conviction, and sentence the defendant.

A defendant who successfully adheres to the agreement and completes diversion may petition to dismiss the charge of DUII with prejudice. The court may dismiss the matter if the

<sup>6</sup> See ORS 813.200(4)

<sup>7</sup> See ORS 813.602(3)

<sup>8</sup> See ORS 813.200(1)

defendant has not filed the motion after six months of completing diversion.

### **Ignition Interlock Device**

An ignition interlock device (**IID**) is required to be installed on any vehicle operated by a person in diversion for DUII or convicted of DUII and driving with a hardship license. An IID is an electronic device that is fitted to a vehicle. The driver of the vehicle blows into a tube connected to the device, which analyzes the contents of the breath for alcohol. The alcohol content is recorded. If the result is over a set amount, often 0.02 percent, the vehicle will record a “failure” and will not start. Some devices require the driver to breath into the device while the vehicle is running but stopped. Some devices are equipped with cameras and anti-tampering measures. The Oregon Department of Transportation maintains a list of approved IID devices.<sup>9</sup> The driver is responsible for all fees and payment associated with installing and maintaining the IID.

For a defendant in diversion, the IID must be equipped for the period of the diversion agreement. For a first-time offender, the IID must be installed before a hardship permit is granted and it must be equipped for one year after the end of the suspension or revocation. For second and subsequent offenders, the IID must be equipped for two years after the ending date of the license suspension. In instances where an offender has been convicted of DUII and another crime that results in the death or severe injury to another, the IID must be installed for five years after the end of the suspension or revocation.

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<sup>9</sup> List of approved devices:  
[http://www.oregon.gov/ODOT/DMV/docs/iid\\_approved\\_devices.pdf](http://www.oregon.gov/ODOT/DMV/docs/iid_approved_devices.pdf).