

UNIFORM DUI DIVERSION PETITION AND AGREEMENT

(The petitioner must cause a copy of this petition to be served on the district attorney of city attorney who filed the charge)

Petitioner is to provide the information required below, as follows: (print or type)

Petitioner's Name	First	MI	Last
Residence Address	Street	City	State Zip
Mailing Address	Street	City	State Zip
Petitioner's Phone #	Home _____ Work _____	DOB _____ Month / Day/ Year	Driver licence
_____	_____	_____	_____
Court Name	Court Location	Court Case Number	Date of DUII offense

Petitioner's Agreement Waiver

I, the undersigned petitioner, ask this court to grant a diversion under ORS 813.200 to 813.270 for the above-indicated case for the charge of driving under the influence of intoxicants (DUII). If this petition is allowed by the court, I agree to waive the rights and to carry out the agreements as listed below and as explained on the reverse side of this form:

1. I waive my right to speedy trial or sentencing in any subsequent action upon the charge.
2. I waive my former jeopardy rights under the federal or state constitutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any other offenses based upon the same criminal episode.
3. I agree to attend a diagnostic assessment to determine the possible existence of an alcohol or drug abuse problem and to pay the cost of the assessment directly to the agency providing the assessment.
4. I agree to pay the court a diversion filing fee, unless the court determines I am indigent and waives all or part of the fee.
5. I agree to complete, at my own expense, or as arranged with the Mental Health Division if qualified as an indigent person, the program of treatment indicated as necessary by the diagnostic assessment.
6. I agree to not use intoxicants in conjunction with the operation of motor vehicle and to comply fully with the laws of this state designed to discourage the use of intoxicants in conjunction with motor vehicle operation.
7. If the court directs that I attend a victim impact treatment session, I agree to attend the session and , if required by the court, to pay to the program the fee for my participation in the session.
8. I agree to keep the court advised of my current mailing address at all times during the diversion period.

Petitioner's Signature

Date

COURT ORDER

Upon consideration required by ORS 813.220, the above petition for diversion in case number _____ is: _____ Allowed or _____ Denied. The date on which the DUII charge is alleged to have occurred is _____. If "allowed," this court orders: 1) the length of the diversion period is one year beginning on _____ and ending on _____; 2)the charge of DUII in the case be stayed pending completion or termination of the diversion ; and, 3) the petitioner to pay fees for the diversion as required by statute unless waived or deferred; and, 4) the defendant _____ is or _____ is not required to attend a victim impact treatment session approved by this court and _____ is or _____ is not to pay a fee to that program.

Name of Judge

Signature of Judge

Date

Petitioner Sworn Statement of Eligibility

(This sworn Statement must be filed with the DUII diversion petition and agreement)

To be filled in by petitioner, please print or type:

Court Name

Court Location

Court Case Number

Being duly sworn to tell the truth, I, the undersigned, do hereby swear that I am eligible to participate in a Driving Under the Influence of Intoxicants (DUII) Diversion Program in the case described about, and that:

1. On the date I file the attached petition for a DUII diversion agreement, there is no other charge for an offense of DUII or its statutory counterpart pending against me in this state or in any other place except the charge for the present DUII offense described in the petition;
2. From the date I file the attached petition for a DUII diversion agreement going back to ten years before the date of the alleged commission of the present offense of DUII, I have not been convicted of and have not forfeited bail or security on a charge for the offense of DUII or its statutory counterpart in this state or in any other place;
3. On the date I file the attached petition for a DUII diversion agreement, I am not participating in a DUII diversion program or in any similar alcohol or drug rehabilitation program in this state or in any other place except a program I may have entered as a result of the charge for the present offense of DUII;
4. From the date I file the attached petition for a DUII diversion agreement going back to ten years before the date of the alleged commission of the present offense of DUII, I have not participated in a DUII diversion program or in any similar alcohol or drug rehabilitation program in this state or in any other place;
5. On the date I file the attached petition for a DUII diversion agreement, there is no charge of an offense pending against me in this state or in any other place for any degree of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle;
6. From the date I file the attached petition for a DUII diversion agreement going back to ten years before the date of the alleged commission of the present offense of DUII, I have not been convicted, in this state or in any other place, on any charge of an offense, in any degree, of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle; and,
7. The DUII offense described in the attached petition for which I am charged did not involve any deaths or any physical injury to any other person ("physical injury" means impairment of physical condition or substantial pain—ORS 161.015).

Petitioner's Signature

Petitioner's Name (Printed)

Today's Date

Subscribed and sworn before me

this _____ day of _____, 20____

Notary Public of Oregon

My Commission expires _____

Explanation of Rights and DUII Diversion Agreement

You have been charged with driving under the influence of intoxicants (DUII). This offense is a Class A misdemeanor under Oregon law. A judge may sentence a person found guilty of this charge to any or all of the following: jail for up to one year; a fine of up to \$5,000; additional statutory assessments of up to \$149; an additional fee of \$130; other costs and assessments that may be added to the fine; an examination and alcohol or drug treatment or information program for which the person must pay; community service work in addition to or instead of a fine or jail time; suspension of driving privileges; and attendance at and payment for a victim impact treatment session.

You have four choices on how you may handle the charge. If you have questions about these choices, ask your attorney, if you have one, or the judge. The following briefly explains these choices and their possible consequences.

1. You may plead "not guilty." This will result in a trial at a later date or you may later change your plea to "guilty." At trial, a jury or judge will listen to the state's evidence against you and to any relevant information or witnesses you wish to present. The jury or judge will decide if you are "guilty" or "not guilty."
2. You may plead "guilty." This plea will result in your conviction for the offense. If you wish, you may also give the judge an explanation and information you think will help the judge decide what your sentence should be.
3. You may plead "no contest." This means you do not want to contest the charge by having a trial but do not admit you are guilty. The judge will review the police officer's report to determine if there is enough evidence to find you "guilty." If you plead "no contest," you cannot give evidence to the judge to show your innocence.
4. You may apply for the DUII Diversion Program. You must be eligible (explained below) to be allowed in the Diversion Program. If eligible, you may file the petition on the other side of this document with the court. The petition is an agreement between you and the court that you will complete the diversion program. If you complete the one-year program, the charge will be dismissed. The rest of this document describes the diversion program. Before you choose this option, read this entire document.

If you choose option 1, 2, or 3 above, you may apply for a court-appointed attorney to represent you if you cannot afford to hire one. The court will determine if you are financially eligible for a court-appointed attorney.

ELIGIBILITY FOR DIVERSION PROGRAM. You are eligible to participate in the "diversion program," if:

- a. You meet all of the requirements described in the attached "Petitioner Sworn Statement of Eligibility;
- b. You have not already pled "guilty" or "no contest" to the present DUII charge, or if you already pled "not guilty" to the charge, no trial on the DUII charge has yet begun;
- c. You appeared in court on the date scheduled for your first appearance on the charge or the court finds good reason for your failure to do so;
- d. You file this petition with the court within thirty (30) days of your first appearance in court, unless the court finds you have a good reason for the delay.

LEGAL RIGHTS WAIVED. To enter the diversion program, you must waive the following rights:

- a. You have a right to have the DUII charge decided without unnecessary delay. You must agree to give up this right in order to enter into a diversion agreement with the court. If you are allowed to enter the diversion program, the court will stop the prosecution of the charge against you. If you fail to complete the program the prosecution will continue.
- b. This paragraph applies to you only if you are charged with other offenses in addition to DUII and the additional charges are from the same alleged episode. All offenses alleged to have been committed at the same time must be prosecuted at the same time. The diversion agreement between you and the court applies only to the DUII charge. Prosecution of this charge only will be delayed during the diversion program period. Other charges will be prosecuted separately from the DUII charge and will not be delayed by the diversion agreement. By requesting to enter into a diversion agreement, you are giving up the right to have the DUII charge decided at the same time as your other charges ("former jeopardy").

AGREEMENT WITH THE COURT. In order to have the DUII charge dismissed by completing the diversion program, you agree to do the following:

- a. Pay the court a filing fee in the amount of \$422. If you cannot afford to pay this fee, tell the judge. Some or all of this fee may be waived, depending on your financial situation. Also, the court may allow you to make payments over time.
- b.
- c. The court will give you the name and address of a diagnostic agency. You agree to contact this agency and undergo an evaluation to determine the extent of any alcohol or drug abuse problem you may have. You will be referred to a treatment program if the agency finds treatment to be necessary.
- d. The diagnosis of any alcohol or drug abuse problem you may have will be followed by a treatment program. You agree to complete this treatment. This treatment program must be completed at your own expense. If you cannot pay the cost of treatment, be sure to tell the counselor at your first meeting. The treatment facility may find that you are qualified to have some portion or all of the cost of treatment waived and may allow payments over time.
- e. If required by the court, you agree to attend a victim impact treatment session approved by the court and, if required by the court, to pay the cost of your participation in that session. The cost for the treatment session will be between \$5 and \$50.
- f. You agree not to use any intoxicants in conjunction with the operation of a motor vehicle and to comply with all the laws of this state that are designed to discourage the use of intoxicants in conjunction with the operation of a motor vehicle.
- g. You agree to keep the court advised at all times of your current mailing and residential addresses. This is extremely important, since notices will be mailed to you by the court and by the treatment program to the address you provide.
- h. If the court allows you to enter into the diversion program, and if you keep these agreements, the court will dismiss the DUII charge at the end of one year. It is up to you to ask the court to dismiss the charge at the end of the diversion period by filing a motion to dismiss with the court.
- i. The court will terminate this diversion agreement if the court finds you have violated the terms of the diversion agreement or that you were not eligible for diversion to begin with. The court will make this determination at a hearing where you can "show cause" why you should not be removed from the diversion program. To "show cause" means that if you can show the judge why you should not be removed from the program, the judge will allow you to continue to participate in the program. Notice of such hearings will be sent to you by regular mail. If you fail to appear in court as directed by the mailed notice, the court can terminate the diversion agreement and prosecution of the offense will be resumed.

NOTICE TO DEFENDANT: If the court grants a diversion agreement, the agreement will be considered violated if the court receives notice, at any time during the diversion period, that you committed the offense of DUII or open container laws under ORS 811.170.