

DUI UPDATE

Inns of Court

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Oregon's 2011/12 DUII Legislation

Hospital Reporting

HB 3085

- Amends ORS 676.260
 - Adds to hospital reporting requirement in motor vehicle crashes
 - Hospitals must notify if:
 - Suspect in motor vehicle crash has a BAC of .08 or higher
 - or
 - If a suspect received a blood test that reveals that the blood contained a controlled substance.
- Effective January 1, 2012

Sober Diversion

HB 2103

- Amends ORS 813.200
 - A person who enters diversion is not allowed to use intoxicants as a condition of diversion except:
 - Sacramental wine
 - Valid prescription if taken as directed
 - No prescription drug if taken as label directs
- Effective June 23, 2011

Measure 73

SB 395

1. Ballot Measure 73 (as it relates to Felony DUIIs) is codified in ORS 813.011 (new section).
2. SB 395 deals with the crime seriousness ranking for felony DUIIs
 - In effect creates two types of DUIIs:
 - CSR 6 = Felony DUII based on 3 or more priors in 10 years
 - Unranked = Felony DUII based on 2 priors in 10 years
 - OAR 213-004-0004 "... when a person is convicted of any other felony which is omitted from the Crime Seriousness Scale, the sentencing judge shall determine the appropriate crime category for the current crime of conviction and shall state on the record the reasons for the offense classification."

Measure 73

SB 395

- No matter what the rank for M73 DUII, minimum sentence is 90 days:
 OAR 213-009-0001(1) "If a mandatory prison sentence is required or authorized by statute, the sentence imposed shall be that determinate sentence or the sentence under these rules whichever is longer."
- The unranked status should apply to DUII's committed, not sentenced after June 30, 2011 *See, State v. Isom*, 313 Or 391, 395 (1992)
- CSR for M73 DUII is now a "4" pursuant to CJC action
- Effective June 30, 2011

Reinstatement of Driver's License after Permanent Revocation

SB 406

- Amends ORS 809.235
 - Person must petition for reinstatement in the county where license revoked
 - If during the revocation period the petitioner is convicted of a criminal offense involving a motor vehicle, they cannot petition for reinstatement for 10 years from the last conviction
 - If the criminal offense that caused the revocation required drug and alcohol treatment, petitioner must show proof of completion in order to get reinstatement
- Effective January 1, 2012

Breath Alcohol

SB 65

- Amends ORS 813.300
 - Clarifies the conversion factor between blood and breath by defining a breath alcohol concentration in g/210L as equivalent to a blood alcohol concentration in g/100 mL.
 - Counters the 2100/1 conversion ratio arguments by the defense and creates a per se ratio to determine alcohol in the breath
- Effective January 1, 2012

Diversion - Military

HB 2702

- Amends ORS 813.220
 - A diversion petition cannot be denied solely because someone is a member of the military and is called to serve
- Amends ORS 813.225
 - If a person wants to extend diversion, petition must be filed within 30 days prior to the end of the diversion period except if the person is active military or reserve then any time prior to the end of the diversion period
 - Only one extension and extension must begin from ending date of diversion period unless the person is military then court can extend for sufficient amount of time necessary to complete
- **Effective June 1, 2011**

Diversion - Military

HB 2702

- Amends ORS 813.225
 - Allows a member of the military to appear by phone for a diversion termination proceeding or allow the court to stay the hearing if person cannot appear nor aid attorney in appearing on their behalf
 - Allows member of the military to complete a comparable treatment program if out of state
- **Effective June 1, 2011**

Diversion - Ignition Interlock

HB 3075

- Amends ORS 813.602
 - Requires individuals on diversion to install an ignition interlock device if the person has driving privileges
 - IID provider must notify court that ordered IID of installation, removal or tampering with device (reporting can be to court designee)
- **Applies to DUII Offenses Committed on or after January 1, 2012**

Ignition Interlock

HB 4017 (2012)

- Requires an ignition interlock for 5 years after the ending date of the longest suspension/revocation period for the following convictions (associated with a DUII conviction):
 - Manslaughter I and II
 - Criminal Negligent Homicide
 - Assault I
 - Aggravated Vehicular Homicide
 - Permanent revocation pursuant to ORS 809.235
- **Pending Governor's Signature**

DUII Fines

HB 2712

- Increases DUII conviction fee from \$130 to \$255
- ORS 813.095 - Refusal to Take Breath or Urine Test
 - Changes penalty from an unclassified violation subject to a special minimum and maximum fine to a specific fine traffic violation with a presumptive fine of \$650
- **Effective, January 1, 2012**

Treatment Certificate

HB 4011 (2012)

- Treatment Completion Certificate
 - Proof of completion of an approved treatment program must be shown in order for a person to get their driving privileges reinstated
 - The requirement may be waived upon showing of good cause
 - Good cause will be established by rule
- **Effective March 5, 2012**

Basic DUII Case Law

Admissibility of Intoxilyzer

- **ORS 813.160**
 - Defines a valid chemical analysis
 - Gives the Oregon State Police the authority to:
 - Approve the instrument used
 - Approve the methods of performing the test
 - Test and certify the accuracy of equipment
 - Prepare manuals and conduct training
 - Ascertain the qualifications of those conducting the test
 - Requires a valid permit for use

Field Sobriety Tests

- **ORS 813.135**
 - A person impliedly consents to field sobriety tests when an officer "reasonably suspects" that the person has committed a DUII
- **State v. Nagel, 320 Or 24 (1994)**
 - Field sobriety tests are a search that are justified if the officer has:
 - probable cause and exigent circumstances to conduct the search OR
 - Consent

Field Sobriety Tests

- **State v. Fish, 321 Or 48 (1995)**
 - Sobriety tests involving verbal statements regarding an individual's state of mind are testimonial, and could be self-incriminatory
- **State v. Rohrs, 157 Or App 494 (1998)**
 - If a person refuses to perform field sobriety tests, and an officer has probable cause and exigent circumstances, the officer must
 - Explain which tests the officer would like the person to perform AND
 - Exclude the speaking portions of FSTs in the instructions

Admissibility of HGN

State v. O'Key, 321 Or 285 (1995)

- If the officer is **trained** correctly and
- the tests were **administered** correctly and
- the tests were **recorded accurately** then:

HGN is admissible.

Implied Consent

- **State v. Cabanilla, 241 Or App 351 (2011)**
- **Affirmed without Opinion:**
 - Defendant's refusal to submit to a breath test was admissible despite defendant's claims that he did not understand the implied consent warnings
- **Oregon Supreme Court: ___ Or ___, (March 1, 2011)**
 - The state does not have to prove that the defendant understood the ICRC just that the rights were read to him
 - Law enforcement is not required to read ICRC in the defendant's native language.

CONTACT INFORMATION

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