DUII Diversion Program

DUII (Driving Under the Influence of Intoxicants) Diversion Program

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; assessed fines, fees and additional statutory assessments; 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; suspension of driving privileges; and attendance at and payment for a victim impact treatment program.

You have four choices on how you may handle this 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 evidence against you and to any relevant information or witnesses you wish to present or hear. 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 you choose options 1, 2, or 3 above, you may apply for a Court Appointed Attorney 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 DUII Diversion Program if:
1. You meet all of the requirements described in the Petitioner Sworn Statement of Eligibility; and
2. 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;

3. 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; and
4. You file this petition with the Court within 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 DUII Diversion Program, you must waive the following rights:
1. 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.
2. 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:
1. Pay the Court the filing fee in addition to the unitary assessment fee. If you cannot afford to pay these fees, tell the judge. Some or all of these fees may be waived, depending on your financial situation. Also, the Court may allow you to make payments over time.
2. 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. You must pay the cost of the evaluation directly to the agency that performs the diagnostic assessment.
3. 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 often may allow payments over time.
4. 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.
5. You agree to not use intoxicants in conjunction with your operation of a 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.
6. 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.
7. 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.
8. The Court will terminate this diversion agreement if the Court finds that 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 hearing will be sent to you by regular mail. If you fail to appear in court as direct 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 of the open container laws under ORS 811.170.

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