

**IN THE MUNICIPAL COURT OF THE CITY OF WEST LINN
FOR THE COUNTY OF CLACKAMAS, STATE OF OREGON**

**UNIFORM DUII DIVERSION PETITION & AGREEMENT
DUII Diversion Form 1**

DUII diversion forms 2, 3, and 4 must be filed with this form and served on the city attorney who filed the charge.

Citation # _____			West Linn Police Dept. Case # _____		
Petitioner's Name and Residence:					Date of Birth:
_____	_____	_____	_____ / _____ / _____	_____	_____
First	Middle	Last	Month	Day	Year
Street		City	State	ZIP	License # _____ State _____
Mailing Address (if different)			Phone # _____		
					Date of DUII Offense: _____

Petitioner's Agreement and Waiver

I, the petitioner, request that this court grant a diversion under ORS 813.200 to 813.270 in this case for the charge of driving under the influence of intoxicants (DUII). If the court allows this petition:

- 1) I agree to all of the items listed under the "Agreement with the Court" section of DUII Diversion Form 2 (located on the back of this form unless filed electronically) and have read and understand all of the other information in Form 2 and Form 2A;
- 2) I plead guilty or no contest to the DUII charge as shown in the plea petition (DUII Diversion Form 4) submitted with this diversion petition;
- 3) I waive (give up) the rights listed in the plea petition; and
- 4) I waive my former jeopardy rights under the federal or state constitutions and ORS 131.505 to 131.525 in any future action on the charge or any other offenses based on the same criminal incident.

Petitioner's Signature

Petitioner's Name (typed or printed)

Date

COURT ORDER

The court (allows) (denies) the petition for diversion. The DUII charge is alleged to have occurred on _____, 20____. If "allowed," this court withholds entry of a judgment of conviction pending completion or termination of the diversion, and orders that:

- 1) The diversion period is one year beginning on ____/____/____ and ending on ____/____/____;
- 2) The petitioner must pay fees to the court for the diversion as required by statute unless waived or deferred; **Fees: \$490.00** to be paid immediately or on a payment schedule;
- 3) The petitioner (must) (need not) attend a victim impact panel approved by this court and (must) (need not) pay a participation fee to that program; Petitioner must complete Victim Impact Panel within **90 days**.
- 4) The petitioner must pay court-appointed attorney fees in an amount of \$_____ on a schedule set by the clerk of the court;
- 5) The petitioner need not file a motion at the end of the diversion requesting that the DUII charge be dismissed;
- 6) The petitioner (must) (need not) install and use an ignition interlock device in any vehicle operated by the petitioner during the period of the agreement (beginning on ____/____/____ and ending on ____/____/____) when the petitioner has driving privileges. If the petitioner need not install an ignition interlock device, the petitioner meets the requirements for a medical exemption in accordance with the rules adopted by the Oregon Department of Transportation;
- 7) Report to evaluator within **48 hours**.
- 8) Other: _____

Name of Judge

Signature of Judge

Date

DUII Diversion Form 2 EXPLANATION OF RIGHTS AND DUII DIVERSION AGREEMENT

Read this entire form carefully. You are charged with driving under the influence of intoxicants (DUII). You may apply for the DUII Diversion Program but can enter the program only if you meet all eligibility requirements. The court will appoint a lawyer to help you if you request one and the court finds that you are indigent.

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

- you meet all requirements described in the attached *Petitioner Sworn Statement of Eligibility* (DUII Diversion Form 3); **and**
- you appeared in court on the date scheduled for your first appearance on the charge or the court finds good reason to excuse your failure to do so; **and**
- you file this petition with the court within thirty (30) days of your first appearance in court, unless the court finds there is good cause to allow a later date.

AGREEMENT WITH THE COURT. The Uniform DUII Diversion Petition and Agreement (DUII Diversion Form 1) is your agreement with the court. **To have the DUII charge dismissed, you must do all the following:**

- a. Pay to the court the required diversion fees identified in Section 1 of the *Summary of DUII Diversion Fees* (DUII Diversion Form 5). If you cannot afford to pay these fees, tell the judge. The court may waive some of the fees or allow you to make payments over time, depending on your financial situation.
- b. Pay restitution if ordered by the court as identified in Section 1 of the *Summary of DUII Diversion Fees* (DUII Diversion Form 5).
- c. Complete an alcohol and drug abuse assessment as directed by the court. You must pay the assessment fee directly to the assessment agency. You must also give the agency accurate and truthful information about your use of drugs and alcohol. The agency will recommend a treatment program if the court finds that you need treatment.
- d. Complete the recommended treatment program. You must pay the treatment provider directly. If you cannot pay the cost of treatment, tell the treatment provider. The provider may be able to waive certain costs or allow you to make payments over time.
- e. Attend a victim impact panel and pay the participation fee as ordered by the court.
- f. Comply with state laws that prohibit the use of intoxicants.
- g. Do not use **any** alcohol or other intoxicant during the term of the diversion agreement, except for:
 - sacramental wine given or provided as part of a religious rite or service;
 - alcohol or a controlled substance taken as directed pursuant to a valid prescription; or
 - a non-prescription drug that contains alcohol so long as taken in accordance with the directions for use that are printed on the label.
- h. Keep the court advised at all times of your current mailing and residential addresses.**
- i. Install and use an approved ignition interlock device in all the vehicles you operate during the term of the diversion agreement when you have driving privileges, except:
 - if the court determines that you meet the requirements for a medical exemption in accordance with the rules adopted by the Oregon Department of Transportation; or
 - while operating an employer's vehicle in the course and scope of your employment.

DUII Diversion Form 2A EXPLANATION OF RIGHTS AND DUII DIVERSION AGREEMENT

ADDITIONAL INFORMATION AND WAIVER OF RIGHTS

- a. The diversion agreement applies only to the DUII charge. Prosecution of the DUII charge will be delayed during the diversion period. If you are charged with other offenses arising from the same incident as the DUII, the other charges will be prosecuted separately. By entering into a diversion agreement, you give up the right to have the DUII charge decided at the same time as your other charges (former jeopardy).
- b. If you have a prior DUII conviction, the Interstate Compact for Adult Offender Supervision rules may prohibit you from leaving the state without permission during the diversion period.
- c. If you successfully complete the diversion agreement, the court may automatically dismiss the DUII charge at the end of one year. If the court does not, you must file a motion at the end of the diversion period asking the court to dismiss the DUII charge.
- d. If the court finds that you violated the terms of the diversion agreement or that you were not eligible for diversion, the court will terminate the diversion agreement. The court may hold a hearing where you can “show cause” why the court should not terminate your diversion. **The court will send notice of such hearings by regular mail. If you fail to appear in court, the court can terminate the diversion agreement and may issue a warrant for your arrest.**
- e. If the court terminates your diversion agreement or you fail to fulfill the terms of the agreement by the end of the diversion period, the court will sentence you without a trial.
- f. You may file a motion asking the court to extend the diversion period, **but you must file the motion within the last 30 days of your scheduled diversion period.** The court may grant an extension if the court finds that you have made a good faith effort to complete the diversion program and that you can complete all remaining conditions within the extension period. The court may grant an extension **only once** and for **not more than 180 days.**
- g. The court will find that you have violated the diversion agreement 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.
- h. If the court denies the diversion petition, the state cannot use your guilty or no contest plea (in Form 4) when the state continues the prosecution.

ADDITIONAL INFORMATION FOR ACTIVE MILITARY PERSONNEL. The following may apply if you are engaged in active military service:

- a. The court **may not deny** your petition for a driving under the influence of intoxicants diversion agreement because:
 - You are a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States of the National Guard;
 - You have been called to active duty; and
 - The military service will impair your ability to complete the diversion program.
- b. You may request that the court allow you to participate in a comparable treatment program conducted by or authorized by a government entity in another jurisdiction.
- c. You may file a motion asking the court to extend the diversion period. The court may grant an extension if the court finds you have a good faith effort to complete the diversion program and that you can complete all remaining conditions within the extension period. **If you are serving on active duty, you must file the motion by the end of your scheduled diversion period.** The court may grant an extension **only once** and **may extend the diversion period as necessary** to allow you to complete the conditions of the diversion agreement

DUII Diversion Form 3

**IN THE MUNICIPAL COURT OF THE CITY OF WEST LINN
FOR THE COUNTY OF CLACKAMAS, STATE OF OREGON**

**PETITIONER’S SWORN STATEMENT OF ELIGIBILITY
CASE NO. _____**

By signing this document, I swear that I am eligible to participate in a driving under the influence of intoxicants (DUII) diversion program in the case described above, and that all of the following are true:

1. I have never been convicted of a felony DUII offense in Oregon or any other place.
2. On the date I sign the attached petition for a DUII diversion agreement:
 - a. There is no charge pending against me in Oregon or any other place, except for the DUII charge in this case, for an offense involving operation of a vehicle while:
 - under the influence of alcohol, a controlled substance, an inhalant, or any combination of the three; or
 - having a blood alcohol content above the allowable blood alcohol content;
 - b. I am not participating in a DUII diversion program or any similar alcohol or drug rehabilitation program in Oregon or any other place except a program I may have entered as a result of the charge for the present offense of DUII, a charge for minor in possession of alcohol under ORS 471.430, or a charge for possession of less than one ounce of marijuana under ORS 475.864(3); and
 - c. There is no charge of an offense pending against me in Oregon or any other place for any degree of aggravated vehicular homicide, murder, manslaughter, criminally negligent homicide, or assault that resulted from the operation of a motor vehicle.
3. During the fifteen (15) years before the date of the presently alleged DUII offense and during the time between the presently alleged DUII offense and the date I sign the attached petition:
 - a. I have not been convicted in Oregon or any other place for an offense involving the operation of a vehicle while:
 - under the influence of alcohol, a controlled substance, an inhalant, or any combination of the three; or
 - having a blood alcohol content above the allowable blood alcohol content;
 - b. I have not participated in a DUII diversion program or any similar alcohol or drug rehabilitation program in Oregon or any other place except a program I may have entered as a result of a charge for minor in possession of alcohol under ORS 471.430 or a charge for possession of less than one ounce of marijuana under ORS 475.864(3);
 - c. I have not been convicted, in Oregon or any other place, on any charge of an offense in any degree for aggravated vehicular homicide, murder, manslaughter, criminally negligent homicide, or assault that resulted from the operation of a motor vehicle; and
 - d. If this is my second or subsequent diversion, I have not been convicted of any criminal offenses involving a motor vehicle.
4. 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).
5. At the time of the alleged offense, I did not have a commercial driver’s license.
6. At the time of the alleged offense, I was not operating a commercial motor vehicle.

Petitioner’s Signature

Petitioner’s Name (typed or printed)

Today’s Date

Subscribed and sworn before me this _____ day of _____, 20_____.

Notary Public for Oregon / Municipal Court Judge

My commission expires _____.

DUII Diversion Form 4 – Page 2

10. I understand that:

- a. If I fully comply with the conditions of the diversion agreement within the diversion period requested in the attached petition, the court will dismiss the charge with prejudice under ORS 813.250. If the court does not have a policy of automatically dismissing the DUII charge at the end of one year, I will have to file a motion at the end of the diversion period requesting that the charge be dismissed.
- b. If I fail to comply with the diversion agreement within the diversion period, the court will enter a judgment of conviction on the charge and will sentence me.

11. I understand that if the court enters judgment on this plea, it is equivalent to conviction and that on this plea alone, without receiving any evidence, this court can find me guilty of the crime of DUII.

12. I understand that, if the court denies the diversion petition and I go to trial, nothing in this petition will be used against me.

13. I understand that if I am not a citizen and the court enters judgment on this plea, it may result in my removal from this country, exclusion from admission to the United States, or denial of naturalization.

14. This plea is based only on what is written on this petition. No promises have been made to me by my lawyer or any officer or agent of any branch of government (federal, state, or local) that I will receive a particular sentence or form of treatment from this or any other court, on these or any other charges, other than is set forth in this petition.

15. I plead no contest – OR –
 I plead guilty because in _____ County, Oregon, I did the following: _____

16. I (am) (am not) currently on probation, parole, or post-prison supervision. I know that if I am and the court enters judgment on the plea in this case, it may cause revocation of my probation, parole, or post-prison supervision and I may be required to serve jail or prison time in that case in addition to any sentence imposed on me in this case.

17. I understand that charge against me and the information in this petition. I am signing this petition and entering this plea voluntarily, intelligently, and knowingly.

18. I understand that if I fail to comply with the terms of the diversion and the court enters a judgment of conviction, I have the right to appeal the conviction by complying with the rights to appeal explained or provided to me at the time the court enters the judgment of conviction.

Date

Defendant’s Signature

Defendant’s Name (printed or typed)

ORDER

The court finds the defendant’s plea of (no contest) (guilty) to be knowingly, intelligently, and voluntarily made. The court accepts this plea for purposes of ORS 813.200 to 813.270.

Date

Judge’s Signature

Judge’s Name (printed or typed)

DUII Diversion Form 5

SUMMARY OF DUII DIVERSION FEES

A defendant allowed into a driving under the influence of intoxicants (DUII) diversion program will be required to pay the fees listed below.

Section 1: Fees to the Court

A. The defendant must pay the following fees to the court:

- \$490 filing fee
- Court-appointed attorney fees

The court may waive all or part of these fees if it finds the defendant is indigent. The court may also allow the defendant to pay in installments over time.

B. The defendant must pay restitution to the court if ordered by the court. The court may order restitution in cases where a victim suffered economic damages. The court may not terminate a defendant's diversion agreement for failure to pay restitution if the defendant otherwise complied with and performed all of the conditions of the diversion agreement. After the end of the diversion period, the defendant must continue making payments if the defendant has not paid the full amount of restitution ordered by the court.

Section 2: Other Fees

A. The defendant must complete an alcohol and drug abuse assessment.

- The cost of the assessment is \$225. The defendant must pay this fee directly to the agency or organization conducting the assessment.
- The defendant must pay for any treatment recommended by the assessment. The cost of the treatment varies. The defendant must pay treatment costs directly to the agency or organization providing the treatment. If the defendant is unable to pay, the agency or organization providing the treatment may allow payment in installments over time.

B. The court may order the defendant to attend a victim impact panel and pay a participation fee. The fee can range from \$5 to \$50. The defendant must pay this fee directly to the panel coordinator on the day of the panel.

C. The court will order the defendant to install and use an approved ignition interlock device in any vehicle operated by the defendant during the term of the diversion agreement when the defendant has driving privileges, unless the court determines the defendant qualifies for a medical exemption or the defendant is operating an employer's vehicle during the scope and course of his or her employment. The defendant must pay to the provider installing the device any costs associated with leasing, installing, and maintaining the device, unless the Department of Transportation finds that the defendant is indigent and waives all or part of these fees. The department may also defer the costs or allow payment in installments over time.



Pioneer Alcohol and Drug Evaluation Services, Inc.

To begin your Diversion program you must report to:

PIONEER ALCOHOL AND DRUG EVALUATION SERVICES
511 Main St., Suite 203
Oregon City, OR 97045
(503) 722-5250

You must report within the time limit the Court has ordered. You may report any time between the hours of 9:30 a.m. to 11:00 a.m. or 1:30 p.m. to 4:00 p.m. Monday through Thursday. On Mondays and Tuesdays only, you may report as late as 5:00 p.m. We will be closed on Fridays and all major holidays.

When you report, you will be required to complete questionnaires, which will take approximately one hour. You do not need to have any money at the time that you report. You will be scheduled for an evaluation appointment and a DUII Impact Panel. You will be required to pay a \$225 fee at the time of your evaluation appointment and a \$50 fee at the DUII Impact Panel. The evaluation fee can be pre-paid. A reduced fee is available if you are Food Stamp Eligible at the time of your evaluation. You must inquire about the Food Stamp fee reduction when you first report.

Should you fail to report within the time frame given by the Court, they will be notified immediately.

At the time of your evaluation, you will be referred to a treatment program and the requirements of Diversion will be explained to you. If you late cancel or fail to appear for your evaluation, you will be charged an additional \$50 reset fee and the Court may be notified of your failure to comply.