

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. 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.
- c. 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.
- d. Attend a victim impact panel and pay the participation fee as ordered by the court.
- e. Comply with state laws that discourage use of intoxicants in conjunction with motor vehicle operation.
- f. Do not operate a motor vehicle with any intoxicant in your blood system or while using intoxicants.
- g. Keep the court advised at all times of your current mailing and residential addresses.**
- h. Install an approved ignition interlock device in all the vehicles you operate if ordered to do so by the court.

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.