

DUII Diversion Form 1

UNIFORM DUII DIVERSION PETITION AND AGREEMENT

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

Petitioner is to provide the information required in this box as follows (print or type):
Petitioner's Name and Residence:
Court where charge was filed and petition is to be submitted:
Malheur Circuit Court
Court Name
Date of Birth:
Phone #:
Driver License:
Number State
Date of DUII Offense

For Court File Stamp

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

For Court File Stamp

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: \$458
[ ] Due immediately, or [ ] Payment schedule: \$\_\_\_ per month due by the \_\_\_ day of each month beginning \_\_\_/\_\_\_/\_\_\_
3) The petitioner [ ] (must) [x] (need not) attend a victim impact panel approved by this court and [ ] (must) [x] (need not) pay a participation fee to that program; Victim Impact Panel Date: \_\_\_\_\_
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 [ ] (must) [x] (need not) file a motion at the end of the diversion requesting that the DUII charge be dismissed;
6) [ ] Pursuant to ORS 813.602, Petitioner is to have an interlock device installed in any vehicle he/she is operating for a 6 month period. (BAC.16 & higher; refused BAC)

Name of Judge
Signature of Judge
Date

**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 prohibit the use of intoxicants.
- f. 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; a non-prescription drug that contains alcohol so long as taken in accordance with the directions for use that are printed on the label.
- g. Do not operate a motor vehicle with any intoxicant in your blood system or while using intoxicants.
- h. Keep the court advised at all times of your current mailing and residential addresses.**
- i. 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 DUI charge. Prosecution of the DUI charge will be delayed during the diversion period. If you are charged with other offenses arising from the same incident as the DUI, the other charges will be prosecuted separately. By entering into a diversion agreement, you give up the right to have the DUI charge decided at the same time as your other charges (former jeopardy).
- b. If you have a prior DUI 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 DUI 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 DUI 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 DUI 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 or 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 made 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 complete the conditions of the diversion agreement.

**DUII Diversion Form 3**

**PETITIONER SWORN STATEMENT OF ELIGIBILITY**

(This sworn statement must be filed with DUII diversion forms 1, 2, and 4)

(To be filled in by petitioner, please print or type)

MALHEUR CIRCUIT COURT  
Court Name

Vale, Oregon  
Court Location

\_\_\_\_\_  
Court Case Number

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; 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;
  - 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)

\_\_\_\_/\_\_\_\_/20\_\_\_\_  
Today's Date

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon/Court Clerk/Circuit Court Judge

My commission expires: \_\_\_\_\_.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MALHEUR

STATE OF OREGON, ) Case No. \_\_\_\_\_
Plaintiff, )
vs. )
) PETITION FOR ENTRY OF PLEA, WAIVER
) OF JURY TRIAL, AND ORDER
\_\_\_\_\_ )
Defendant )

- 1. My true name is \_\_\_\_\_, but I also am known as \_\_\_\_\_.
2. I am \_\_\_\_\_ years old. I have gone to school through \_\_\_\_\_. My physical and mental health are satisfactory. I am not under the influence of any drugs or intoxicants, except \_\_\_\_\_.
3. I have checked the following that describes me:
[ ] I am able to read, write, and understand the English language, and I have read this petition completely;
[ ] I am able to read, write, and understand the English language, and this petition has been read aloud to me completely;
[ ] I am unable to read the English language, and this petition has been read aloud to me completely;
[ ] I am unable to read, write, or understand the English language, and this petition has been read aloud to me in the \_\_\_\_\_ language by \_\_\_\_\_, a person qualified to interpret the English language into the \_\_\_\_\_ language.
4. I [ ] (am) [ ] (am not) represented by a lawyer. I understand that I have the right to hire a lawyer or have the court appoint a lawyer to represent me, if the court finds that I cannot afford to hire a lawyer. I choose to give up my right to a lawyer. I will represent myself. (\_\_\_\_\_) [Defendant initial if giving up right to a lawyer.]
5. If represented by a lawyer, I have told my lawyer all the facts I know about the charge against me. My lawyer has advised me of the nature of the charge and the defenses, if any, that I have in this case. I am satisfied with the advice and help my lawyer has given me.
6. I understand that I have the following rights: a) the right to jury trial; b) the right to see, hear, and cross-examine or question all witnesses who testify against me at trial; c) the right to remain silent about all facts of the case; d) the right to subpoena witnesses and evidence in my favor; e) the right to have my lawyer assist me at trial; f) the right to testify at trial; g) the right to have the jury told, if I decided not to testify at trial, that they cannot hold that decision against me; and h) the right to require the prosecutor to prove my guilt beyond a reasonable doubt.
7. I understand that I give up all of the rights listed in paragraph 6 when I plead guilty or no contest. I understand I give up: a) any defenses I may have to the charge; b) objections to evidence; and c) challenges to the accusatory instrument.
8. By this petition, I am pleading [ ] (guilty) [ ] (no contest) to the crime of driving under the influence of intoxicants (DUI) which is a Class A misdemeanor under Oregon law. The maximum penalties are one year in jail and a fine of \$6,250 or \$10,000 if the offense was committed in a motor vehicle and there was a passenger younger than 18 and at least three years younger than me. The minimum penalties are 48 hours of imprisonment or 80 hours of community service; and a fine of \$1,000 if this is my first conviction, \$1,500 if this is my second conviction, or \$2,000 if this is my third conviction and I am not sentenced to a term of imprisonment. I will be required to pay a filing fee, unitary assessment fee, and additional fee unless the court finds me indigent and waives all or part of these fees. I will also be required to complete and pay for an alcohol or drug abuse assessment and any recommended treatment. There will be a mandatory suspension of my driving privileges for \_\_\_\_\_ year(s), and the court may order me to attend a victim impact panel and pay a participation fee.
9. I am submitting this plea along with a petition to enter the diversion program under ORS 813.200 to 813.270. I understand that, if the court grants the petition, the court will accept this plea but will not enter a judgment of conviction at this time.
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 DUI 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.



## 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:

- \$261 filing fee
- \$97 unitary assessment fee
- \$100 program administration 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.

### **Section 2: Other Fees**

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

- The cost of the assessment is \$150. 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 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 may order the defendant to install an approved ignition interlock device in any vehicle operated by the defendant. 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.



Oregon Judicial Department  
Malheur Circuit Court  
P O Box 670  
Vale, OR 97918  
541-473-5171

**DRIVING UNDER THE INFLUENCE OF INTOXICANTS (DUII) EVALUATION REFERRAL**

(\$150 evaluation fee due at time of evaluation)

Reason for Referral: DUII Diversion

Petitioner's Name and Residence:

Interpreter Requested

\_\_\_\_\_  
First Middle Last

\_\_\_\_\_  
Court Case Number

\_\_\_\_\_  
Street City State ZIP

BAC Reading: \_\_\_\_\_

\_\_\_\_\_  
Mailing Address (if different)

\_\_\_\_\_/\_\_\_\_\_/20\_\_\_\_\_  
Date of DUII Offense

Date of Birth: Phone #: Driver License:

\_\_\_\_\_/\_\_\_\_\_/20\_\_\_\_\_  
Diversion Date

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month Day Year (\_\_\_\_)\_\_\_\_\_  
Number State

\_\_\_\_\_  
Name of Judge

\_\_\_\_\_  
Signature of Judge

\_\_\_\_\_/\_\_\_\_\_/20\_\_\_\_\_  
Date

\*\*\*\*\*

The following providers perform DUII evaluations in our area. Please chose one evaluator and contact their office immediately to set up an appointment time.

**Eagle View Evaluations**

Roy Lara  
702 Sunset Drive  
Ontario, OR 97914  
208-739-2425  
*Spanish-speaking Evaluator*

**First Step Evaluations**

Ismael Hernandez  
P O Box 132  
Nampa, ID 83653  
541-212-3697  
*Spanish speaking evaluator*