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Support Recovery: **Apply Treatment and Recovery Philosophies to DUII**

Encourage participation in treatment programs.

A person is prohibited from participating in DUII diversion based upon current or prior (within the last 15 years) participation in a "similar alcohol or drug rehabilitation program." ORS 813.215(d) and (e). These subsections have been interpreted broadly to bar people who participated in any drug or alcohol treatment as part of a juvenile dependency or delinquency proceeding, even when the treatment was not connected to a DUII. For example:

- A mother's participation in treatment during the course of a juvenile dependency proceeding barred her from diversion.¹
- A 16-year-old was ineligible for a DUII diversion program because he had previously participated in a drug treatment program as a result of a juvenile court disposition.²

We know that kids' brains are different than adults brains because they are still developing. We also know that people don't always recover after participation in one treatment program. The more times people are exposed to treatment, the more opportunities they have to be successful. Oregon should encourage alcohol and drug treatment by allowing folks to be eligible for DUII diversion when they participated in non-DUII related treatment during a juvenile proceeding.

Allow judicially-approved hardship permits when a person can demonstrate their recovery track record.

Hardship permits are not available when someone's drivers' license is permanently revoked for a third or subsequent DUII. The current law does not recognize that people can get and stay sober and does not take into account when the prior convictions are distant in time. Take for example, an elderly person whose DUIIs were spaced far apart. The elderly person is now sober and cares for their disabled significant other, but is not allowed to drive the significant other to doctor's appointments, cancer treatment, etc. Not

¹ *State v. Wright*, 204 Or. App. 724 (2006).

² *State v. Tuter*, 259 Or. App. 338 (2013).



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everyone lives in an area with decent or any public transportation, which can be a barrier for maintaining employment.

“[H]ardship permits are restricted to minimally meet the applicant’s needs.” OAR 735-064-0060.

- A hardship permit may be denied if the person has sufficient public or private transportation available to serve the person’s transportation needs.
- In general, a hardship permit is issued for no more than 12 hours a day.
- A hardship permit may be used for employment purposes; transportation to and from a treatment program; to obtain medical treatment on a regular basis for the person or a member of the person’s immediate family; and for necessary services, such as grocery shopping, driving children to and from school, driving to and from medical appointments and caring for elderly family members.

To qualify for a hardship permit, the person must:

- File a SR-22, which is a form that’s filed with the state to prove that the person has car insurance that meets the minimum coverages required by law.
- Install an Ignition Interlock Device (IID).

People should be eligible for a hardship permit after 5 years, which must be judicially approved, and the person must show good cause to be eligible. Currently, a person may petition the court for license reinstatement after 10 years. For a hardship permit, the person must meet the same requirements they would have to meet to have their driving privileges restored. A person would petition the court for a hardship permit. The person must demonstrate a need for the hardship permit. At the hearing to determine whether to grant the petition, the court shall consider:

- (a) The nature of the offense for which driving privileges were revoked.
- (b) The degree of violence involved in the offense.
- (c) Other criminal and relevant noncriminal behavior of the petitioner both before and after the conviction that resulted in the revocation.
- (d) The recommendation of the person’s parole officer, which shall be based in part on a psychological evaluation ordered by the court to determine whether the person is presently a threat to the safety of the public.
- (e) Any other relevant factors.³

³ ORS 809.235(3).



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The court shall order a hardship permit if, after a hearing . . . , the court finds by clear and convincing evidence that the petitioner:

- (a) Is rehabilitated;
- (b) Does not pose a threat to the safety of the public; and
- (c) If required . . . , has completed an alcohol or drug treatment program in a facility approved by the Director of the Oregon Health Authority or a similar program in another jurisdiction.⁴

This hardship permit proposal balances keeping our roads safe, holding offenders accountable, and supporting people to get their lives back on track.

About OCDLA

The Oregon Criminal Defense Lawyers Association (OCDLA) has approximately 1,200 members statewide. We have attorneys, investigators, and law students as members. Our attorneys are public defenders and private bar attorneys. OCDLA members represent people accused of crimes at the trial level, on appeals, civil commitments, and post-conviction relief proceedings. Our members represent young people in the juvenile justice system, parents whose children have been removed, and children in foster care. OCDLA hopes to achieve an equitable and effective criminal justice system by advocating for legislation that ensures the rights of the accused and those involved in the juvenile justice system, and for the attorneys, investigators, and others who do this difficult work.

⁴ ORS 809.235(4).