

PENDLETON MUNICIPAL COURT
501 SW EMIGRANT
PENDLETON, OR 97801
(541) 966-0209

KEEP THIS SHEET AS A REFERENCE

1. Complete, sign and return the attached diversion petition to the Court. All of the attached pages that apply to you must be completed.
2. Contact the evaluator, make an appointment, and pay the fee. Contact them at:

Eastern Oregon Alcoholism Foundation
216 SW Hailey
Pendleton, OR 97801
(541) 276-3518, extension 204

SUMMARY OF DUII DIVERSION FEES

Court Fees \$490 filing fee and any assessed court-appointed attorney fees

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

Other Fees

Alcohol and Drug Assessment \$150

Alcohol and Drug Treatment You must pay for any treatment recommended by the assessment or ordered by the court. The cost of treatment varies. You must pay treatment costs directly to the agency or organization providing the treatment. If you are unable to pay, the provider may allow payment installments over time.

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

Ignition Interlock Device The court may order you to install and use an approved ignition interlock device in any vehicle you operate during the term of the diversion agreement when you have driving privileges. You must pay the cost of installing, leasing, and maintaining the device to the provider of the device.

IN THE MUNICIPAL COURT FOR THE CITY OF PENDLETON
UMATILLA COUNTY, OREGON

CITY OF PENDLETON,)	DUII DIVERSION PETITION	
Plaintiff,)	AND AGREEMENT	ORS 813.200 et seq.
)		
vs)	Citation No.	_____
)	Case No.	_____
Defendant,)	Date of Arrest	_____

DOB: _____ Driver's License No. _____

Residence Address: STREET _____ CITY _____ STATE _____ ZIP CODE _____

Mailing Address if Different _____ Telephone Number _____

DEFENDANT'S AGREEMENT AND WAIVER

I am the Defendant. I ask the court to grant a diversion under ORS 813.200 to 813.270 for the charge of Driving Under the Influence of Intoxicants (DUII). If the court allows this petition:

1. I have read and understand all of the information in the attached *Explanation of Rights and DUII Diversion Agreement*, and I agree to:
 - a. Pay the required diversion fees and any restitution ordered;
 - b. Complete an alcohol and drug abuse assessment and any recommended treatment;
 - c. Attend a victim impact panel as ordered by the court;
 - d. Not use alcohol or other intoxicants except as allowed in the attached *Explanation of Rights and DUII Diversion Agreement*;
 - e. Install and use an approved Ignition Interlock Device (IID) if ordered by the court;
 - f. Keep the court advised of my current mailing address;
2. I plead guilty or no contest to the DUII charge as showed in the *Petition to Plead Guilty or No Contest* submitted with this petition;
3. I waive (give up) the rights listed in the *Petition to Plead Guilty or No Contest*.
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.

Defendant Signature	Defendant Name	Date
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NOTE: *Declaration of Eligibility* and *Petition to Plead Guilty or No Contest* must be filed with this form

EXPLANATION OF RIGHTS AND DUII DIVERSION AGREEMENT

Read this entire form carefully. You are charged with Driving Under the Influence of Intoxicants (DUII). You can apply for the DUII Diversion program, but you can enter the program only if you meet all the eligibility requirements. The Court will appoint a lawyer to help you if you ask for one and you are eligible.

ELIGIBILITY FOR DIVERSION PROGRAM

You are eligible to participate in the diversion program only if:

- a. You meet all requirements described in the attached *Defendant's Declaration of Eligibility* and
- b. You appeared in court on the date scheduled for your first appearance on the charge (unless the court finds good reason to excuse your failure to appear) and
- c. You file the *Petition and Agreement* 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 *DUII Diversion Petition and Agreement* is your agreement with the court. To have the DUII charge dismissed, you must do all the following (if ordered by the court):

- a. **Pay the required diversion fees to the court.** 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 required.**
- c. **Complete an alcohol and drug abuse assessment.** The court will assign you to an agency for assessment. You must give the agency accurate and truthful information about your use of drugs and alcohol. You must pay fees to the agency. The agency will recommend a treatment program if they find 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. They may be able to waive certain costs or let you make payments over time. In addition to any other requirement to participate in an alcohol or drug treatment program, the court may order you to complete an alcohol or drug treatment program if the court receives two or more negative IID reports.
- e. **Attend a victim impact panel** and pay the participation fee.
- f. **Do not use ANY alcohol or other intoxicants (includes marijuana)** during the term of the diversion agreement. You must comply with state laws that prohibit the use of intoxicants. You CAN use:
 - Sacramental wine given or provided as part of a religious rite or service
 - Alcohol or controlled substance taken *as directed* with a valid prescription
 - A non-prescription drug that contains alcohol if you follow the directions for use that are printed on the label
- g. **Keep the court advised of your current mailing address**

- h. **Install and use an approved ignition interlock device (IID)** in all the vehicles you operate during the term of the diversion agreement when you have driving privileges, if ordered by the court.

REQUIRED BOOKING

If the court grants your petition, you will have to be booked and fingerprinted on the DUII charge, if you have not already been booked and fingerprinted.

INFORMATION ON IGNITION INTERLOCK DEVICES (IIDs)

- a. You must install and use an approved ignition interlock device (IID) in all vehicles you operate during the term of the diversion period when you have driving privileges if:
- Your blood alcohol content (BAC) was .08 or above;
 - You refused a breath/blood test when requested by the arresting officer;
 - Your BAC was greater than 0.00 and less than 0.08 and your blood test showed the presence of cannabis, a controlled substance, or an inhalant, or
 - Your BAC was less than a .08 and your blood test did not show the presence of cannabis, a controlled substance, or an inhalant, when ordered by the court to do so.
- b. The IID requirement applies in all cases and to all vehicles you operate during the term of the diversion agreement when you have driving privileges, except:
- If the court finds that you meet requirements for a medical exemption under the rules of the Oregon Department of Transportation;
 - While operating an employer's vehicle in the course and scope of your employment (contact DMV for more information) or
 - If your BAC was less than .08 and your blood test did not show the presence of cannabis, a controlled substance, or an inhalant, and the court does not order the installation and use of the IID.
- c. The IID requirements continue until you submit a certificate to the DMV from the IID provider. The certificate must state that the device did not record a negative report for the last 90 consecutive days for the required installation period.
- d. After 6 months, you can apply for an order vacating (ending) the IID requirement as a condition of diversion if:
- You provide the court with a certificate from the IID service provider stating that the device has not recorded a negative report for at least 6 consecutive months, **and**
 - You have been in compliance with any treatment program you were ordered to participate in as a condition of your diversion agreement.

ADDITIONAL INFORMATION AND WAIVER OF RIGHTS

- a. The diversion agreement applies only to the DUII charge. If you are charged with other offenses arising from the same incident, 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 - which means the right not to be prosecuted twice for the same offense.)

- 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. Prosecution of the DUII charge will be delayed during the diversion period.
- d. If you successfully complete the diversion agreement, the court may automatically dismiss the DUII charge at the end of the one year. If you do not receive notice of dismissal, you must file a motion at the end of the diversion period asking the court to dismiss the DUII charge.
- e. 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 agreement. **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.**
- f. The court will terminate the diversion agreement if at any time during the diversion period the court finds that you failed to fulfill all of the terms of the agreement. Among other things, a new DUII or breaking open container laws will violate the agreement.
- g. 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.
- h. 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 not for more than 180 days.**
- i. If the court denies the diversion petition, the state cannot use your guilty or no contest plea (in the *Petition to Plead Guilty or No Contest*) when the state conditions 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 DUII diversion agreement solely because military service will impair your ability to complete the diversion program **if:**
 - 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 **and**
 - You have been called to active duty
- b. You may ask the court to 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 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. If you are serving on active duty, you must file the motion by the end of the diversion period. The court may extend the diversion period as necessary to allow you to complete the conditions of the diversion agreement.

IN THE PENDLETON MUNICIPAL COURT
UMATILLA COUNTY, OREGON

City of Pendleton,

Citation No.

vs.

DEFENDANT'S DECLARATION
OF ELIGIBILITY

Defendant

I am eligible to participate in a driving under the influence of intoxicants (DUII) diversion program because:

1. I have never been convicted of a felony DUII offense in Oregon or any other place.
2. On the date I signed the attached petition for a DUII diversion agreement:
 - a. Except for the DUII charge in this case, there is no charge pending against me in Oregon or any other place for an offense involving operation of a vehicle while:
 - Under the influence of alcohol, cannabis, a controlled substance, an inhalant, or any combination of the four, 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 DUII charge in this case, or
 - A charge for minor in possession of alcohol under ORS 471.430.
 - c. There is no charge of an offense pending against me in Oregon or in 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 alleged DUII offense in this case and from the time between the alleged DUII offense and the date I signed 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, cannabis, a controlled substance, an inhalant, or any combination of the four, 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.
 - 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 did not involve any deaths or any physical injury to any other person (*“physical injury” means impairment of physical condition or substantial pain.*)
5. At the time of the alleged offense, I did not have commercial driving privileges.
6. At the time of the alleged offense, I was not operating a commercial motor vehicle.

I hereby declare that the above statement is true to the best of my knowledge and belief. I understand it is made for use as evidence in court, and I am subject to penalty for perjury.

Defendant's Signature

Defendant Name (print)

Date

NOTE: this declaration must be completed by Defendant and filed with the DUII Diversion *Petition and Agreement, Order re: DUII Diversion, Petition to Plead Guilty or No Contest, and Order on Petition to Plead Guilty or No Contest.*

IN THE MUNICIPAL COURT FOR THE CITY OF PENDLETON

UMATILLA COUNTY, OREGON

CITY OF PENDLETON)
)
 Plaintiff,) PETITION TO ENTER A PLEA OF
) GUILTY OR NO CONTEST
 vs.)
) Citation No.
)
)
)
)
 Defendant.)

THE DEFENDANT REPRESENTS THE FOLLOWING TO THE COURT:

1. My full and true name is _____ . I am
also known as _____ .
2. I am _____ years of age. The highest grade level of school I have completed is _____ .
3. My physical and mental health are satisfactory. At this time, I am not under the influence of any drugs or intoxicants, except _____ .
4. I understand that I may plead NOT GUILTY to any offense charged against me. If I choose to plead NOT GUILTY, the Constitution of Oregon and the United States guarantees me:
 - a. the right to a speedy and public trial by jury;
 - b. the right to see, hear and face in open Court all witnesses called to testify against me;
 - c. the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witness in my favor;
 - d. the right to have the assistance of a lawyer at all stages of the proceedings;
 - e. the right to take the witness stand, and if I do not take the witness stand, I understand that the jury will be told that this may not be held against me.
5. I understand when I give up the rights listed in paragraph 3 when I plead GUILTY or NO CONTEST. I give up the right to any defenses I may have to the charge, objections to the evidence, and challenges to the accusatory instrument.
6. I know that if I plead GUILTY or NO CONTEST, the Court may impose the same punishment as if I had plead NOT GUILTY, stood trial and been convicted.
7. I understand that I am pleading _____ GUILTY _____ NO CONTEST to the charge of DUII which is a Class A Misdemeanor under Oregon law. The maximum penalties are: 364 days jail and a fine of \$6,250. I understand that if I had a passenger who was 18 or younger and at least 3 (three) years younger than me, I may be subject to a maximum fine of \$10,000.

8. I understand that the minimum fine is \$1,000 if this is my first conviction, \$1,500 if this is my second conviction, \$2,000 if this is my third conviction or \$2,000 if my blood alcohol level was .15% or greater for this offense. I understand that there will be other fees and assessments in addition to this fine. There will also be a mandatory jail sentence, a mandatory suspension of my driving privileges, and other requirements. I understand that the sentence is up to the Court.
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 my diversion petition, the Court will accept this plea but will not enter a judgment of conviction at this time. If the Court denies my diversion petition, nothing in this petition will be used against me.
10. I understand that:
- If I fully comply with the conditions of the diversion agreement within the period authorized by law and by the court, 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.
 - 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 for failing to comply with the diversion agreement, it is the same as a conviction. This court can find me guilty of the crime of DUII based on this plea alone, without receiving any evidence.
12. I understand that a conviction of this offense may be grounds for deportation if I am not a US citizen, exclusion from admission to the United States, or denial of naturalization.
13. I am represented by an attorney. I have told my attorney all the facts I know about the charge, and my attorney 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 attorney has given me.
OR
I am not represented by an attorney. I choose to waive my right to an attorney.
14. No promises or suggestions have been made to me by an attorney or officer of any kind that I will receive a particular sentence, specific form of treatment or any other form of leniency from this Court if I plead GUILTY or NO CONTEST other than what has been set forth in this petition, except:

15. I understand the charge against me. I am signing this petition and entering this plea of
GUILTY NO CONTEST voluntarily, intelligently, and knowingly.

Signed

Date:

Address

City

Attorney

Bar #

ORDER

The court finds:

That the defendant's plea of GUILTY NO CONTEST is knowingly, intelligently,
and voluntarily made.

ORDER:

The court **accepts** **denies** the plea petition for the purposes of ORS 813.200 to
813.270.

DONE in open Court [] via remote [].

Dated:

Municipal Judge

IN THE MUNICIPAL COURT FOR THE CITY OF PENDETON

STATE OF OREGON

CITY OF PENDLETON,)	
)	
vs.)	ATTORNEY WAIVER
)	
)	No.
)	
)	

Defendant.

I understand that I have been charged with the offense(s) of

I understand that I have a constitutional right to have an attorney represent me at all stages of the case, including arraignment. If I financially qualify, I understand that I may have an attorney appointed by the Court.

I understand that an attorney could help me in the following ways:

1. Review the facts of my case to determine what defenses I may have;
2. Gather evidence and information from the prosecutor such as police reports and statements from witnesses;
3. Enter pleas and review plea offers;
4. File motions;
5. Evaluate and challenge potential jurors;
6. Present evidence and object to evidence;
7. Make legal arguments and opening and closing statements to a judge or jury;
8. Advise about potential sentences and make arguments about sentencing;

I understand that if I waive my right to an attorney, I cannot use the fact that I waived my right to legal counsel in this case as a defense in future charges.

As indicated by my signature below, I am knowingly, voluntarily, and intentionally waiving my right to an attorney.

Date:

Name

Municipal Judge

Note: You must file *either the Attorney Waiver or Certificate of Counsel with the Diversion Petition and Agreement*

CERTIFICATE OF COUNSEL

I am the attorney for the defendant in this proceeding, and I certify that:

1. I have fully explained to my client the charge and possible defenses that may apply in this case.
2. I have personally examined this plea petition, explained all of its provisions to my client and discussed it fully with my client all matters described and referred to in the petition.
3. I have explained to my client the maximum penalty and other consequences of entering a guilty or no contest plea.
4. To the best of my knowledge and belief, my client's decision to enter this plea is made voluntarily, intelligently, and knowingly.

Signature of Attorney

Attorney Name (typed or printed)

Bar Number

RELEASE OF INFORMATION

I, _____, authorize Pendleton Municipal Court, the treatment provider to which I am assigned, and Eastern Oregon Alcoholism Foundation to exchange and release information to each of the other agencies. I consent to release of information concerning my alcohol assessment, evaluation, and treatment for the purposes of my diversion agreement.

I understand that I may revoke this consent by written notice at any time, except to the extent that action has been taken in reliance upon this consent before notice of revocation.

I authorize this release of information to be in effect for the length of my treatment and to remain in effect for 30 days following my release from treatment.

I understand that the information received from any of the agencies may not be released without written consent. This authorization conforms with regulations under Section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 and Section 408 of the Drug Abuse Office and Treatment Act of 1972. I also understand that records obtained as authorized by this release of information will be maintained in accordance with federal confidentiality regulations (Title 42 of the Federal Register) which prohibits further disclosure.

Signature

Date