

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action: Do Pass as Amended and Be Printed Engrossed

Vote: 5 - 0 - 0

Yeas: Beyer, Kruse, Prozanski, Walker, Burdick

Nays: 0

Exc.: 0

Prepared By: Darian Stanford, Counsel

Meeting Dates: 4/24, 4/30

WHAT THE MEASURE DOES: Makes defendant ineligible for driving under the influence of intoxicants (DUII) diversion program if defendant has prior felony DUII in Oregon or “statutory counterpart” in other jurisdiction. Clarifies language in terms of determining whether DUII conviction from other state counts in Oregon. Establishes that DUII is felony DUII for any defendant with prior felony DUII in Oregon or elsewhere (regardless of number of intervening years).

ISSUES DISCUSSED:

- Meaning of amendment provision relating to felony DUII
- Need for alternative to “statutory counterpart” language

EFFECT OF COMMITTEE AMENDMENT: Clarifies that any prior felony DUII makes a defendant ineligible for the diversion program. Establishes that a DUII is a felony if the defendant has a prior felony DUII from Oregon or elsewhere. Specifies criteria for determining when an out of state DUII or DUII-like conviction counts in Oregon.

BACKGROUND: ORS 813.010 establishes the elements for DUII law in Oregon. Most DUIIs are Class A misdemeanors. If eligible, persons may participate in a DUII diversion program that, if successfully completed, enables the person to avoid a conviction. ORS 813.525 discusses diversion eligibility. In part, ineligible persons include those who have a DUII or diversion in the 10 years prior and those whose DUII incidents involved injury or death to another person.

SB 536 A adds a new condition that makes a defendant ineligible for diversion—if the defendant has a previous felony DUII conviction in Oregon or a statutory counterpart to felony DUII in another state. For a DUII to rise to the felony level in Oregon, ORS 813.010(5) requires that the person have three prior DUII convictions in Oregon or the “statutory counterpart in another jurisdiction” within 10 years prior to the date of the current offense.

In addition, SB 536 A also relates to the issue of statutory counterparts in other jurisdictions. The issue, put simply, is that while all states have DUII laws, in some cases those laws are insufficiently similar to Oregon’s such that a DUII in the other state does not count as a “statutory counterpart” in Oregon. Interpretation of this provision has led to some judges refusing to count Washington or California convictions in Oregon in determining a person’s priors.

SB 536 A supplements the “statutory counterpart” language with, in relevant part, language referring to “a driving offense in another jurisdiction that involves the impaired driving of a vehicle, an aircraft or a boat due to the use of intoxicating liquor, a controlled substance, an inhalant, or any combination thereof” or “a driving offense in another jurisdiction that involves operating a vehicle, an aircraft or a boat while having a blood alcohol content above that jurisdiction’s permissible blood alcohol content.” There is a specific exception for states that allows DUII convictions for underage persons at extremely low blood alcohol content levels. Those convictions would not count in Oregon.