



Oregon

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Governor's Advisory Committee on DUII

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TO: House Judiciary Committee

FROM: Multnomah County Judge Kathleen Dailey, Member
Governor's Advisory Committee on DUII

SUBJECT: Senate Bill 69

This testimony is on behalf of the Governor's Advisory Committee (GAC) on DUII and offers our support of Senate Bill 69, which allows for discretion in imposition of the 90 days incarceration mandated by Measure 73 for certain DUII offenders that are actively engaged in treatment court.

The GAC on DUII committee believes that this bill would help in reinforcing the success of active courts that are committed to monitoring recovery of active DUII offenders. This bill also considers the economic issues behind incarceration and the need for offenders being held accountable.

Oregon's economic climate continues to be one of fewer resources, smaller agency budgets and a strained judicial system. By imposing another mandatory minimum sentence, ORS 813.011 is a costly attempt to deter drinking and driving. Due to the strict statutory language in ORS 813.011(3), there is no exception for probationary treatment court programs and alternative custodial programs. Whereas many treatment court programs require defendants to pay for treatment, the financial burden of incarceration is carried wholly by the state. SB 69 will bring a about a cost savings to the state of approximately \$800,200.00, which includes \$200,000.00 to Multnomah County.

The main issue with the 90 day mandatory minimum sentence is that the expense of incarceration further depletes state funds without addressing the future costs associated with repeat drunk drivers. In comparison, treatment court programs are structured to improve community safety by lowering the recidivism rate. In a period of declining state revenue and tight agency budgets, ORS 813.011(3) is an expensive approach to addressing the problem of repeat drunk drivers.

Under ORS 813.011(3), defendants have less incentive to enter into treatment court when they know they are facing a mandatory sentence of 90 days imprisonment. In their minds, participation in a treatment program only requires more work and no reward by avoiding a long jail sentence. If they choose to decline entry into treatment court, the defendant is still faced with the inevitable jail sentence; however, they avoid the demanding requirements of a treatment

program. Unless the defendant is committed to changing behavior and addressing alcoholism, there is no incentive to enter a treatment program.

Additionally, if a defendant's desire to avoid incarceration is the initial motivation to enter treatment court, the success of treatment court programs shows that treatment can change a person's mindset and provide the necessary encouragement and support to overcome an alcohol addiction. Jail is only a short-term solution that creates abstinence, but not real change. By encouraging defendants to enter treatment, the justice system is directly combating the high percentage of repeat DUII offenders while simultaneously promoting community safety.

The strongest argument for mandatory minimum sentences is deterrence. Deterrence is a poor strategy when the goal is reduced crime by addicted individuals. However, alternative treatment programs offer defendants a better path to paying for their crime and deterring future criminal behavior. Court supervised treatment programs place rigorous demands on a defendant and successful completion hinges on the defendant's complete engagement and dedication.

For example, the Multnomah County DUII Intensive Supervision Program (DISP) requires defendants to attend two community-based self-recovery program meetings (typically AA) per week, engage in close to a year of treatment, take random urinalysis tests, wear a bracelet that detects alcohol in the system ("SCRAM"), and work with case managers for three and sometimes, five years. Furthermore, the defendant must pay for all the costs associated with probation. The threat of probation revocation and a return to jail remain ever present if the defendant substantially fails to comply with the program requirements.

Offender-paid treatment programs also require the defendant to enter the work force and remain engaged in the community. In comparison, a defendant sentenced to imprisonment risks losing employment, housing, and support from family and friends. The resulting instability leaves little opportunity for success once the individual is released back into the community. The option of electronic monitoring can ensure the defendant is sober and therefore, not a risk to the community. Moreover, probationers are held responsible for their overall success in addressing their addiction and living a sober life.

The effectiveness of the program is reflected in the impressive results. Successful completion of DISP is at about 80% and the recidivism rate is only 12%. For all practical purposes, this equates to fewer drunk drivers. While the option of jail may appear to be an appropriate punitive response to repeat drunk drivers, it does not change addict behavior and it does not result in long-term community safety. Oftentimes, these defendants will be back driving drunk and seeing the inside of a courtroom, and jail cell, within a short period of time. In contrast, DISP forces defendants to reexamine their drinking habits and ultimately, change their behavior for the better.

Summary

Amending the mandatory minimum sentencing language of ORS 813.011 to allow an exception for treatment court programs serves several important purposes. The proposed amendment would lessen the burden on state resources, provides defendants with the incentive to address their addiction through treatment, and leads to fewer drunk drivers.