



# Legislative Testimony

Oregon Criminal Defense Lawyers Association

May 20, 2013

The Honorable Floyd Prozanski, Chair  
The Honorable Betsy Close, Vice-Chair  
Senate Judiciary Committee, Members

**RE: House Bill 2116-A – testimony in support**

Dear Chair Prozanski and Members,

The Oregon Criminal Defense Lawyers Association is an organization of attorneys who represent juveniles and adults in delinquency, dependency, and criminal prosecutions and appeals throughout the state of Oregon. Thank you for the opportunity to submit the following comments in support of House Bill 2116-A.

**What does HB 2116-A do?** HB 2116-A is a technical “clean-up” to the requirement imposed in 2011 HB 3075 that all persons participating in a DUII diversion program must install an ignition interlock device (IID). The adjustment creates two exemptions that otherwise exist on the “conviction” side of the IID requirement: the medical condition exemption, and the employer-vehicle exemption.

**What problem does HB 2116-A fix?** Prior to 2011, there was no *per se* requirement that persons participating in a DUII diversion program must install an IID; rather, the diversion court had discretion to impose the requirement when appropriate. For those *convicted* of DUII, however, the IID requirement was mandatory before the person could obtain a hardship permit, or before their license could be reinstated following a suspension or revocation. ORS 813.602.

Those persons who were required to install an IID as a result of a *conviction* under ORS 813.602 were eligible for two exemptions:

- **Medical exemption:** OAR 735-070-0080 recognized that some persons suffer from a medical condition that prevents them from sustaining the exhaled and inhaled breath sample requirements of an IID. If the installer and the person’s medical provider submitted proof of the medical condition, DMV was authorized to award an exemption.

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- Employer-owned vehicle exemption: ORS 813.606 recognized that some persons were required to operate a motor vehicle owned by the person employer in the course and scope of their employment. ORS 813.606 allowed DMV to authorize an exemption for that person to operate an employer-owned vehicle without an IID if the employer was notified of the IID requirement and requested an exemption.

2011 HB 3075 failed to recognize either of these two exemptions when it mandated the IID requirement for all DUII diversion participants. This has resulted in extreme inconvenience and consternation to employers of persons with a diversion IID requirement, as they either must install the device, forbid the employee to operate their vehicle, terminate employment of the employee, or, at worse, ignore the requirement altogether.

Absent recognizing these two exemptions in HB 2116, the anomaly exists that persons with the worse driving record (i.e., the "conviction" population) has greater opportunity to avoid the IID requirement than do persons who ostensibly have the better driving record (i.e., the diversion drivers.)

**How does HB 2116-A work?** HB 2116-A grants authority to the diversion court to grant either exemption. HB 2116 incorporates the same conditions, limitations and requirements as currently exist for either exemption to be granted by DMV.

HB2116-A makes it expressly clear that the driver must carry proof of the exemption while operating any vehicle.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions.

*Respectfully submitted,*

Gail L. Meyer, JD  
Legislative Representative  
Oregon Criminal Defense Lawyers Association  
glmlobby@nwlk.com