



Legislative Testimony

Oregon Criminal Defense Lawyers Association

February 25, 2013

The Honorable Jeff Barker, Co-Chair
The Honorable Chris Garrett, Vice-Chair
The Honorable Wayne Krieger, Vice-Chair
House Judiciary Committee, Members

RE: House Bill 2117

Dear Chair Barker, Vice-Chairs 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 regarding House Bill HB 2117.

1. OCDLA would be remiss if it did not inform the Committee of the difficulty its clients have experienced with ignition interlock devices (IID) and installers. As the Committee is aware, 2011 HB 3075 mandated the use of IID's for all DUUI diversion participants, regardless of the level of treatment recommended by the evaluator and regardless whether the underlying offense was even related to alcohol.
2. Since then, DUUI participants have been forced to interface with an industry that has escaped standards, oversight or accountability. For each instance of negligence or dishonest conduct, the DUUI participant has paid the price by way of a towed vehicle, the cost of a rental car, time loss at work, and possibly a hearing before the DUUI court for revocation. The examples are many:
 - Installation contracts are replete with hidden costs and extra fees. In rural communities, there is the absence of competition that would otherwise keep down the excessive fees and contract terms.
 - Some of the smaller service centers have limited, or no consistent days of operation. In one instance, a service center was open only two days a week which conflicted with the participant's work schedule. In another instance, the participant continually returned to the service center to find it empty, with no indication of how to contact the owner or the installer.

- Some installation contracts have an \$800 cancellation fee; others require an additional \$20 fee for service done at a franchise location other than that of original installation.
- Installers have repeatedly acknowledged to clients that malfunctioning of the machine was due to a faulty device, or improper installation. In fact, there are reports where installers have instructed the client how to by-pass the machine roadside when it was malfunctioning and would not recalibrate. I know of no instance where a client has been reimbursed the cost of a tow, a rental car, or lost work in these instances of equipment or installation error.
- In one instance, an installer damaged a participant's vehicle in attempting to install the device. In another, the device caused the participant's vehicle to fail to start, requiring the installation of a new unit at additional expense.
- Instances of false negative reports are legion. IID's have registered false positives with flavored coffee, sugarless gum, mouthwash (which usually contain up to 30% alcohol), cough drops, hand sanitizer, and in one instance, cold weather. These have been instances when installers conceded to OCDLA's clients that the negative reports were a false positive.

3. HB 2117 is an attempt to bring some oversight and accountability to IID manufacturers and installers. OCDLA is pleased for this belated effort, but fears that this oversight will inevitably drive up costs of the entire IID program because the service centers will undoubtedly pass along the additional fees and costs to the participants.

4. Additionally, HB 2117 is likely to result in excessive paperwork for evaluators, district attorneys and courts. HB 2117 mandates that "all" instances of a negative report "shall" be reported by the service center to the evaluator, who "shall" forward the report to the treatment program and the district attorney. This mandatory language does not allow for installer acknowledgement of equipment malfunctioning, or installation error.

5. HB 2117 requires that the driver bring the IID to the installer every 45 days. It is unclear why 45 days was selected, as a 60 day period is the standard in other states. This 45 day period can be onerous in rural communities, where a service center can be hundreds of miles from one's home.

6. HB 2117 increases the fee a DUII participant must pay a treatment evaluator from \$150 to \$275. This additional fee is due to the increased work-load required of the treatment evaluator under the IID program. OCDLA acknowledges that independent contractors such as treatment evaluators (and, parenthetically, court appointed lawyers) deserve to be fairly compensated for their work. OCDLA notes, however, that the increase is due to the IID program which, in OCDLA's judgment, is unnecessarily over-inflated and imposed on all, rather than on those who need it.

7. OCDLA requests that the \$275 fee increase be subject to waiver, in whole or in part, or upon installment payments in order to not burden the indigent or barely-solvent DUII participant.

7. In sum, it is difficult for OCDLA to say it opposes or supports HB 2117. Oversight and accountability of IID manufacturers, installers and technicians is grossly overdue;

treatment evaluators deserve to be fairly compensated for their work. In the final analysis, however, these changes will increase the cost of all DUII diversions; for some participants, to the breaking point. OCDLA hopes that at some point the Legislature will engage in a thoughtful discussion of the IID's utility, its outcomes, and its efficacy when mandated upon all DUII participants, rather than only upon those who need them.

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

Respectfully submitted,

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