

**TESTIMONY IN OPPOSITION TO REDUCING THE 90 DAY MANDATORY
MINIMUM SENTENCE FOR REPEATED DRUNK DRIVING
SB 356 AND SB 357**

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HISTORY

VOTERS DECIDE THIRD TIME DRUNKEN DRIVERS MUST GO TO JAIL FOR 90 DAYS

In November, 2010 voters overwhelmingly decided that third time drunken driving within 10 years should be a felony and required a mandatory minimum sentence of 90 days in jail **"....without reduction for any reason."** This dramatic citizen yes vote was part of Measure 73 which requires mandatory minimum sentences for repeat sex offenders and repeat, repeat, repeat drunken drivers. In fact, Measure 73 passed in 34 of 36 counties, and statewide it passed with 56.88% of the vote.

The actual language of the law from Measure 73 was incorporated into the Oregon Revised Statutes (ORS 813.011) and says in pertinent part:

"Upon conviction for a class C Felony under this section, the person shall be sentenced to a mandatory minimum term of incarceration of 90 days, without reduction for any reason."

MULTNOMAH COUNTY JUDGE INCORRECTLY INTERPRETS THE 90-DAY JAIL REQUIREMENT

In a case named State vs. Urie, (<http://www.publications.ojd.state.or.us/docs/A155076.pdf>) decided December 31, 2014, the Oregon Court of Appeals corrects the incorrect interpretation of a Multnomah County Circuit Court Judge. In short, the Circuit Court Judge decided that she could suspend the execution of the 90-day sentence because the legislature did not say judges could not suspend the execution of a jail sentence as they had specifically done in a related statute.

The Court of Appeals rejected this argument and went on to do a detailed analysis of the words in the statute and what they mean. The Appeals Court resolved the case in favor of 90 days in jail means 90 days in jail by interpreting the text and context of the language quoted above. The Court then went on to look at the legislative history to further illuminate the plain meaning of the words of the statute. The Court quotes the language from the Voters' Pamphlet which includes the statement of Wayne Brady, Jim Thompson, and me, as Chief Petitioners.

The Court sums up the analysis by writing, "The voters' pamphlet demonstrates that the voters who enacted Ballot Measure 73 understood that the measure, if passed, would require a defendant convicted of felony DUII to serve at least 90 days in Jail."

TREATMENT IS IMPORTANT AND SO IS JAIL FOR REPEAT DRUNKEN DRIVERS

Under current law, the **first time** he or she is caught the offender is given the opportunity to go through treatment as part of a diversion program. The **second time** he or she is caught the offender is most likely convicted, placed on court probation, given 2 days in jail or 80 hours of community service, given the opportunity to go through treatment, and fined \$1000. The **third time** he or she is caught, he or she is most likely convicted, placed on probation, given more jail time or community service, and given the opportunity for treatment, and fined \$1500. These **convictions are all misdemeanors**. The **fourth time** he or she is caught the offender is most likely convicted, placed on formal felony probation, given 90 or more days in jail, given the opportunity for treatment and a fine of \$2000. This is the time when the minimum 90 days in jail kicks in - only after the offender has failed treatment multiple times and only after he/she has driven drunk multiple times.

Drunken drivers need to be stopped, and felony consequences at this point should occur. Accountability matters in the criminal justice system. There is a time for repeat DUI offenders to go to jail for a minimum of 90 days. Oregon voters decided this issue in 2010. The Oregon legislature should not circumvent the will of the voters.