

WHY DON'T WE ALREADY KNOW
"WHAT WORKS"
FOR REDUCING DUII RECIDIVISM?

TESTIMONY ABOUT SB 387

Testimony by Judge Edward Jones
Multnomah County Circuit Court
February 26, 2015

SB 387 is a good idea turned into a bad bill. I want to talk to you briefly about both the good idea and the reasons I believe this is a bad bill.

Getting every DUII defendant booked is a good idea. I say that based on being a trial court judge for over 15 years, running a public defender office for 14 years, and spending nine years as a criminal defense lawyer. I've been litigating DUII cases for almost 40 years.

Every year for decades Oregon has sent 20,000 people to treatment after an arrest for a DUII. If we assume each offender spends something like a \$1,000 on treatment, we are sending 20 million dollars a year to the treatment programs. Yet today, despite all those treatment events, and all that money, and the time that has passed, and all the offenders who have, or have not, re-offended, no one can tell you which treatment programs, or what kind of treatment, works best. We won't make progress on reducing DUII recidivism until we start collecting the data we need to hold treatment programs, and others, accountable. It is worth remembering that recidivism is a polite word for new victims.

When I send offenders to treatment, my goal is to reduce crime, I don't really care if they become better people, I just want them to get arrested less often. So, my measure of success for treatment programs is fewer alcohol related arrests for those they treat. So some years ago I started asking, which of our local treatment programs have been the best at reducing new arrests? Everyone

had an opinion about which programs were “better” no one had any data about reductions in arrests. But then I discovered that OHA evaluates treatment programs. That seemed very promising.

But it turns out that when OHA evaluates treatment programs there isn't any consideration of their success at reducing recidivism. It boils down to having the right paper in the right files. OHA does collect data about who is sent to treatment and who completes but there is a problem when you want to take the next step and link the treatment data to the client's criminal record. OHA doesn't collect any identifiers that would allow that linkage. The gold standard in criminal justice identifiers is the SID numbers. You get one when you are booked, which is precisely why booking them all matters. If OHA collected SID numbers for each of those who were ordered into treatment, it would be relatively easy to use those numbers to connect their criminal records to their treatment records

I suspect many of you are as surprised as I was to discover that many arrested for DUII never get booked. The problem starts with the arrest, in many jurisdictions officers cite DUII offenders into court rather than take them to jail. So they don't get booked. I'm a big fan of immediate booking for everyone arrested for DUII but I know it isn't always practical for officers to transport DUII offenders to jail for booking. So cite and release will always be with us. But not booked at arrest shouldn't mean never booked. The first thing that needs to be done to reduce the number of new victims is make sure that everyone who is convicted of DUII, or enters a diversion program, does get booked. If it doesn't happen at the time of arrest, then at the arraignment or before entry into diversion or sentencing.

This is where we get to the “bad bill” discussion. There is no reason for the five day limit, or for the penalty of not allowing entry into diversion. We don't need the booking within five days and we certainly don't need to further limit entry into diversion. The focus of the bill shouldn't be the punishment of defendants who officers failed to book; the focus should on

the courts, and having judges make sure that all defendants are booked prior to be sent to treatment, regardless of whether they go because they have diverted or because they have been sentenced.

When it comes to DUII, as with other crimes, as legislators and as judges, we preach accountability. We have to hold ourselves to that same standard. I hope you fashion some legislation that focuses not on sentencing, despite the curb appeal of that issue, but on data collection. We don't have the answers we need; we don't know what works and what doesn't. There may be some unpopular lessons in the data, but we can't be afraid to look at it.

Attached to this testimony are some proposed amendments to SB 387. They take the issue beyond the booking problem and include direction to OHA about collecting and tracking criminal justice data.

Thanks for your time.

Proposed Amendments to SB 387
Prepared by Judge Edward Jones
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When a defendant is arraigned on a charge of DUII the court shall enquire whether the defendant has been booked. If the defendant was not booked the court shall order it done.

If a defendant charged with DUII seeks entry into diversion, the court shall determine whether the defendant has been booked on the DUII charge, and, if that has not occurred, the court shall order it done prior to the court's approval of the entry into diversion. The SID number assigned to the defendant in the booking process shall be included in the order authorizing the entry into diversion and in any document used to refer the defendant to treatment.

If a defendant charged with DUII is convicted, by plea or after trial, the court shall determine whether the defendant has been booked on the DUII charge, and, if that has not occurred, the court shall order it done prior to the imposition of sentence. The SID number assigned to the defendant in the booking process shall be included in the judgment order and in any document used to refer the defendant to treatment.

The Oregon Health Authority shall require all individuals, agencies or programs which provide services to individuals participating in alcohol or drug treatment because they have been diverted from or sentenced in a DUII case to include the treating individual's SID number in all reports made to the OHA.

The Oregon Health Authority shall incorporate SID numbers into the treatment data kept in the Measurements and Outcomes Tracking System.