

A-Engrossed Senate Bill 397

Ordered by the Senate April 30
Including Senate Amendments dated April 30

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Increases fees for driving while under influence of intoxicants screening interview and diagnostic assessment.]
Modifies laws regarding ignition interlock devices.

A BILL FOR AN ACT

1
2 Relating to driving while under influence of intoxicants; creating new provisions; and amending ORS
3 813.021, 813.240 and 813.602.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** Sections 2 to 4 of this 2015 Act are added to and made a part of the Oregon
6 Vehicle Code.

7 **SECTION 2. Notice of ignition interlock device installation and negative reports.** (1)(a)
8 As used in this section, "negative report" includes a report of tampering with an ignition
9 interlock device, unauthorized removal of an ignition interlock device, lockout or a test vio-
10 lation recorded by an ignition interlock device.

11 (b) The Department of Transportation may by rule further define what constitutes a test
12 violation.

13 (2) This section applies only to a person who has had an ignition interlock device installed
14 as a condition of a driving while under the influence of intoxicants diversion agreement un-
15 der ORS 813.602 (3).

16 (3) After an ignition interlock device is installed, the provider that installed the device
17 shall notify:

18 (a) The court that required the device to be installed or the court's designee, including
19 but not limited to an agency or organization certified by the Oregon Health Authority under
20 ORS 813.025; and

21 (b) The district attorney or city prosecutor.

22 (4) Notice of the installation must be given within seven business days of installing the
23 ignition interlock device.

24 (5) Each time a provider has access to an ignition interlock device that the provider in-
25 stalled, the provider shall download all reports recorded on the device. If the provider
26 downloads a negative report, the provider shall submit the negative report, in a form pre-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 scribed by rule by the department, to:

2 (a) The court that required the device to be installed or the court's designee, including
3 but not limited to an agency or organization certified by the Oregon Health Authority under
4 ORS 813.025; and

5 (b) The district attorney or city prosecutor.

6 (6) The provider shall submit a negative report as provided in subsection (5) of this sec-
7 tion within seven business days of downloading the report.

8 **SECTION 3. Consequence for negative reports generated from ignition interlock device.**

9 (1)(a) As used in this section, "negative report" includes a report of tampering with an ig-
10 nition interlock device, unauthorized removal of an ignition interlock device, lockout or a
11 test violation recorded by an ignition interlock device.

12 (b) The Department of Transportation may by rule further define what constitutes a test
13 violation.

14 (2) Notwithstanding ORS 813.602 (1)(b) or (c), (2) or (3), the requirement to have an ig-
15 nition interlock device installed in a vehicle continues until the person submits to the de-
16 partment a certificate from the ignition interlock device provider stating that the device did
17 not record a negative report for the last 90 consecutive days of the required installation pe-
18 riod. The department shall remove the ignition interlock device requirement from the
19 person's driving record as soon as practicable after the department receives the certificate.

20 (3) If there is a negative report during the last 90 consecutive days, the person shall
21 continue to use an ignition interlock device beyond the period required under ORS 813.602
22 (1)(b) or (c), (2) or (3) until the person submits a certificate, in a form prescribed by rule by
23 the department, to the department from the ignition interlock device provider stating that
24 the device has not recorded a negative report for 90 consecutive days, beginning on the date
25 of the most recent negative report.

26 (4) This section does not apply to a defendant who is granted an order to vacate the re-
27 quirement to install an ignition interlock device under section 4 of this 2015 Act.

28 **SECTION 4. Motion to vacate requirement to install and use ignition interlock device.**

29 (1)(a) As used in this section, "negative report" includes a report of tampering with an ig-
30 nition interlock device, unauthorized removal of an ignition interlock device, lockout or a
31 test violation recorded by an ignition interlock device.

32 (b) The Department of Transportation may by rule further define what constitutes a test
33 violation.

34 (2) A defendant may apply by motion to the court in which a driving while under the in-
35 fluence of intoxicants diversion agreement described in ORS 813.230 was entered for an order
36 vacating the requirement to install and use an ignition interlock device if the defendant:

37 (a) Has complied with the condition of the diversion agreement described in ORS 813.602
38 (3) for at least six consecutive months and provides a certificate to the court from the ig-
39 nition interlock device provider stating that the device has not recorded a negative report;
40 and

41 (b) The defendant has entered into and is in compliance with any treatment program that
42 the person is required to participate in as a condition of diversion.

43 (3) The defendant shall cause to be served on the district attorney or city prosecutor a
44 copy of the motion for an order vacating the requirement to install and use an ignition
45 interlock device under ORS 813.602 (3). The copy of the motion shall be served on the district

1 attorney or city prosecutor at the time the motion is filed with the court. The district at-
 2 torney or city prosecutor may contest the motion.

3 (4) The court shall hold a hearing on a petition filed in accordance with subsection (2)
 4 of this section. In determining whether to grant the petition, the court shall consider:

- 5 (a) The nature of the underlying crime for which driving privileges were suspended.
- 6 (b) The blood alcohol content of the defendant at the time of the arrest.
- 7 (c) Any other relevant factors.

8 (5) The court may vacate a defendant's requirement to install and use an ignition inter-
 9 lock device under ORS 813.602 (3) if, after a hearing described in subsection (4) of this sec-
 10 tion, the court finds by a preponderance of the evidence that the petitioner:

- 11 (a) Has complied with the condition of the diversion agreement described in ORS 813.602
- 12 (3) for at least six consecutive months with no negative reports; and
- 13 (b) Has entered into and is in compliance with any treatment program required as a
- 14 condition of diversion.

15 (6) When a court vacates a defendant's requirement to install and use an ignition inter-
 16 lock device under ORS 813.602 (3), the court shall notify the department.

17 **SECTION 5.** ORS 813.602 is amended to read:

18 813.602. (1) Except as provided in subsection (2) of this section, when a person is convicted of
 19 driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordi-
 20 nance, the Department of Transportation, in addition to any other requirement, shall require that
 21 the person [*install*] **have installed** and [*use*] **be using** an approved ignition interlock device in any
 22 vehicle operated by the person:

23 (a) Before the person is eligible for a hardship permit. The requirement is a condition of the
 24 hardship permit for the duration of the hardship permit.

25 (b) For a first conviction, for one year after [*the ending date of*] the suspension or revocation
 26 caused by the conviction **ends**. Violation of the condition imposed under this paragraph is a Class
 27 A traffic violation.

28 (c) For a second or subsequent conviction, for two years after [*the ending date of*] the suspension
 29 or revocation caused by the conviction **ends**. Violation of the condition imposed under this para-
 30 graph is a Class A traffic violation.

31 (2) When a person is convicted of a crime or multiple crimes as described in this subsection, the
 32 department, in addition to any other requirement, shall require that the person [*install*] **have in-**
 33 **stalled** and [*use*] **be using** an approved ignition interlock device in any vehicle operated by the
 34 person for five years after the [*ending date of the*] longest running suspension or revocation caused
 35 by any of the convictions **ends**. Violation of the condition imposed under this subsection is a Class
 36 A traffic violation. A person is subject to this subsection when the person is convicted of:

37 (a) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal
 38 ordinance and any of the following crimes as part of the same criminal episode:

- 39 (A) Any degree of murder.
- 40 (B) Manslaughter in the first or second degree.
- 41 (C) Criminally negligent homicide.
- 42 (D) Assault in the first degree.
- 43 (b) Aggravated vehicular homicide.

44 (c) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal
 45 ordinance and the person's driving privileges are revoked under ORS 809.235 (1)(b) and later ordered

1 restored under ORS 809.235 (4).

2 (3)(a) Except as provided in paragraph (b) of this subsection **and section 4 of this 2015 Act**, the
3 court shall require as a condition of a driving while under the influence of intoxicants diversion
4 agreement that an approved ignition interlock device be installed and used in any vehicle operated
5 by the person during the period of the agreement when the person has driving privileges. In addition
6 to any action taken under ORS 813.255, violation of the condition imposed under this subsection is
7 a Class A traffic violation.

8 (b) A court may exempt a person from the condition in a diversion agreement to *[install]* **have**
9 **installed** and *[use]* **be using** an ignition interlock device if the court determines that the person
10 meets the requirements for a medical exemption in accordance with rules adopted by the department
11 under this section. A person granted a medical exemption under this paragraph shall carry proof
12 of the medical exemption with the person while operating any vehicle.

13 *[(4) Except as provided in subsection (5) of this section, if an ignition interlock system is ordered*
14 *or required under subsection (1), (2) or (3) of this section, the person so ordered or required shall pay*
15 *to the provider the reasonable costs of leasing, installing and maintaining the device. A payment*
16 *schedule may be established for the person by the department.]*

17 *[(5) The department may waive, in whole or in part, or defer the defendant's responsibility to pay*
18 *all or part of the costs under subsection (4) of this section if the defendant meets the criteria for*
19 *indigence established for waiving or deferring such costs under subsection (6) of this section. If the*
20 *defendant's responsibility for costs is waived, then notwithstanding ORS 813.270, the costs described*
21 *in subsection (4) of this section must be paid from the Intoxicated Driver Program Fund.]*

22 *[(6) The department, by rule, shall establish criteria and procedures it will use for qualification to*
23 *wave or defer costs described under subsection (4) of this section for indigence. The criteria must be*
24 *consistent with the standards for indigence adopted by the federal government for purposes of the*
25 *Supplemental Nutrition Assistance Program.]*

26 *[(7) At the end of the suspension or revocation resulting from the conviction, the department shall*
27 *suspend the driving privileges or right to apply for driving privileges of a person who has not sub-*
28 *mitted proof to the department that an ignition interlock device has been installed or who tampers with*
29 *an ignition interlock device after it has been installed.]*

30 *[(8) If the department imposes a suspension under subsection (7) of this section for failing to submit*
31 *proof of installation, the suspension continues until the department receives proof that the ignition*
32 *interlock device has been installed. If the department does not receive proof that the ignition interlock*
33 *device has been installed, the suspension shall continue for:]*

34 *[(a) One year after the ending date of the suspension resulting from the first conviction;]*

35 *[(b) Except as provided in paragraph (c) of this subsection, two years after the ending date of the*
36 *suspension resulting from a second or subsequent conviction; or]*

37 *[(c) Five years after the ending date of the longest running suspension or revocation resulting from*
38 *a conviction described in subsection (2) of this section.]*

39 *[(9) If the department imposes a suspension under subsection (7) of this section for tampering with*
40 *an ignition interlock device, the suspension continues until:]*

41 *[(a) One year after the ending date of the suspension resulting from the first conviction;]*

42 *[(b) Except as provided in paragraph (c) of this subsection, two years after the ending date of the*
43 *suspension resulting from a second or subsequent conviction; or]*

44 *[(c) Five years after the ending date of the longest running suspension or revocation resulting from*
45 *a conviction described in subsection (2) of this section.]*

1 [(10) A person whose driving privileges or right to apply for privileges is suspended under sub-
 2 section (7) of this section is entitled to administrative review, as described in ORS 809.440, of the
 3 action.]

4 [(11)] (4) The department shall adopt rules permitting medical exemptions from the requirements
 5 of installation and use of an ignition interlock device under [subsections (1), (2) and (3) of] this sec-
 6 tion.

7 [(12)] (5) When a person is required to install an ignition interlock device under subsection (2)
 8 [or (3)] of this section, the provider of the device shall provide notice of any installation or removal
 9 of the device or any tampering with the device to:

10 (a) The supervising court [that ordered installation of the device] or to the court's designee, in-
 11 cluding but not limited to an agency or organization certified by the Oregon Health Authority under
 12 ORS 813.025[.]; and

13 (b) The district attorney or the city prosecutor.

14 **SECTION 6.** Sections 7 and 8 of this 2015 Act are added to and made a part of ORS
 15 chapter 813.

16 **SECTION 7. Fee Waiver.** (1) Except as provided in subsection (2) of this section, if an
 17 ignition interlock device is ordered or required under ORS 813.602, the person so ordered or
 18 required shall pay to the provider the reasonable costs of leasing, installing and maintaining
 19 the device. A payment schedule may be established for the person by the Department of
 20 Transportation.

21 (2) The department may waive, in whole or in part, or defer the person's responsibility
 22 to pay all or part of the costs under subsection (1) of this section if the person meets the
 23 criteria for indigence established for waiving or deferring such costs under subsection (3) of
 24 this section. If the person's responsibility for costs is waived, then notwithstanding ORS
 25 813.270, the costs described in subsection (1) of this section must be paid from the
 26 Intoxicated Driver Program Fund.

27 (3) The department, by rule, shall establish criteria and procedures for qualification to
 28 waive or defer costs described under subsection (1) of this section for indigence. The criteria
 29 must be consistent with the standards for indigence adopted by the federal government for
 30 purposes of the Supplemental Nutrition Assistance Program.

31 **SECTION 8. Suspension of driving privileges.** (1) At the end of a suspension or revocation
 32 resulting from a conviction as described in ORS 813.602, the Department of Transportation
 33 shall suspend the driving privileges or right to apply for driving privileges of a person who
 34 has not submitted proof to the department that an ignition interlock device has been in-
 35 stalled or who tampers with an ignition interlock device after it has been installed.

36 (2) Subject to section 3 of this 2015 Act, if the department imposes a suspension under
 37 subsection (1) of this section for failing to submit proof of installation, the suspension con-
 38 tinues until the department receives proof that the ignition interlock device has been in-
 39 stalled. If the department does not receive proof that the ignition interlock device has been
 40 installed, the suspension shall continue for:

41 (a) One year after the ending date of the suspension resulting from a first conviction;

42 (b) Except as provided in paragraph (c) of this subsection, two years after the ending date
 43 of the suspension resulting from a second or subsequent conviction; or

44 (c) Five years after the ending date of the longest running suspension or revocation re-
 45 sulting from a conviction described in ORS 813.602 (2).

1 (3) Subject to section 3 of this 2015 Act, if the department imposes a suspension under
2 subsection (1) of this section for tampering with an ignition interlock device, the suspension
3 continues until:

4 (a) One year after the ending date of the suspension resulting from the first conviction;

5 (b) Except as provided in paragraph (c) of this subsection, two years after the ending date
6 of the suspension resulting from a second or subsequent conviction; or

7 (c) Five years after the ending date of the longest running suspension or revocation re-
8 sulting from a conviction described in ORS 813.602 (2).

9 (4) A person whose driving privileges or right to apply for privileges is suspended under
10 subsection (1) of this section is entitled to administrative review, as described in ORS 809.440.

11 **SECTION 9.** ORS 813.021 is amended to read:

12 813.021. (1) When a court, in accordance with ORS 813.020, requires a person to complete a
13 screening interview and a treatment program, the court shall require the person to do all of the
14 following:

15 (a) Complete a screening interview for the purpose of determining appropriate placement of the
16 person in a program for treatment for alcoholism, drug dependency or dependency on inhalants.

17 (b) Pay directly to the agency or organization conducting the screening interview a fee of \$150.

18 (c) Complete the treatment program to which the person is referred.

19 (d) Pay for the treatment program to which the person is referred.

20 (2) The screening interview required by this section shall be conducted by an agency or organ-
21 ization designated by the court. The designated agency or organization must meet the standards set
22 by the Director of the Oregon Health Authority to conduct the screening interviews. Wherever
23 possible a court shall designate agencies or organizations to perform the screening interview that
24 are separate from those that may be designated to carry out a treatment program.

25 (3) An agency or organization doing a screening interview under this section may not refer a
26 person to a treatment program that has not been approved by the Director of the Oregon Health
27 Authority.

28 (4) The agency or organization conducting a screening interview under this section shall moni-
29 tor the progress of the person referred to the agency or organization. The agency or organization
30 shall make a report to the referring court stating the person's successful completion or failure to
31 complete all or any part of the screening interview or of the treatment program to which the person
32 was referred by the agency or organization. The report shall be in a form determined by agreement
33 between the court and the agency or organization.

34 (5) A court or an agency or organization may not charge a person an additional fee to
35 pay the costs incurred by the agency or organization in carrying out the duties of the agency
36 or organization.

37 **SECTION 10.** ORS 813.240 is amended to read:

38 813.240. (1) The filing fee paid by a defendant at the time of filing a petition for a driving while
39 under the influence of intoxicants diversion agreement as provided in ORS 813.210 is \$490. A fee
40 collected under this subsection in the circuit court shall be deposited by the clerk of the court in
41 the Criminal Fine Account. If the fee is collected in a municipal or justice court, \$290 of the fee
42 shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine Ac-
43 count, and the remainder of the fee shall be paid to the city or county treasurer.

44 (2) If less than the full filing fee is collected under subsection (1) of this section in a municipal
45 or justice court, the money received shall be allocated first to the Department of Revenue for de-

1 posit in the Criminal Fine Account.

2 (3) In addition to the filing fee under subsection (1) of this section, the court shall order the
3 defendant to pay \$150 directly to the agency or organization providing the diagnostic assessment.
4 **A court or an agency or organization may not charge a defendant an additional fee to pay
5 the costs incurred by the agency or organization in carrying out the duties of the agency or
6 organization.**

7 **SECTION 11. Applicability.** (1) Sections 2 to 4, 7 and 8 of this 2015 Act and the amend-
8 ments to ORS 813.602 by section 5 of this 2015 Act apply to offenses committed on or after
9 the effective date of this 2015 Act.

10 (2) The amendments to ORS 813.021 and 813.240 by sections 9 and 10 of this 2015 Act apply
11 to offenses committed before, on or after the effective date of this 2015 Act.

12 **SECTION 12. Captions.** The section captions used in this 2015 Act are provided only for
13 the convenience of the reader and do not become part of the statutory law of this state or
14 express any legislative intent in the enactment of this 2015 Act.
15

Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session
STAFF MEASURE SUMMARY
Senate Committee On Judiciary

MEASURE: SB 397 A
CARRIER: Sen. Thatcher

B

Fiscal: Has minimal fiscal impact
Revenue: Has minimal revenue impact
Action Date: 04/21/15
Action: Do Pass With Amendments And Requesting Subsequent Referral To
Finance And Revenue Be Rescinded. (Printed A-Eng.)
Meeting Dates: 02/18, 04/09, 04/21
Vote:
Yeas: 5 - Burdick, Gelser, Kruse, Prozanski, Thatcher
Prepared By: Jeff Rhoades, Counsel

WHAT THE MEASURE DOES:

Establishes that when defendant participating in driving under the influence of intoxicants (DUII) diversion, provider who installed ignition interlock device (IID) must notify court or court's designee and district attorney or city prosecutor of negative report within seven business days. Defines "negative report" and allows Department of Transportation to further define "test violations" by rule. Requires that negative report notification must be in format prescribed by Department of Transportation. Provides that people may not have IID device removed unless they demonstrate ninety days without negative report. Allows person participating in diversion to petition court for removal of IID after six consecutive months without negative report. Provides that court or agency may not charge defendant additional fee to pay cost incurred by agency or organization in carrying out their duties. Allows department to remove ignition interlock device requirement from person's driving record as soon as practicable after receiving certificate memorialized ninety days without negative report.

ISSUES DISCUSSED:

- The Department of Transportation's antiquated computer system
- Problems with Oregon's current IID process
- New rules promulgated by the Department of Transportation regarding fuel cell IIDs
- Formation of the IID workgroup
- Oregon's Alcohol and Drug Evaluation and Screening (ADES) fees

EFFECT OF COMMITTEE AMENDMENT:

Replaces measure.

BACKGROUND:

ORS 813.602 currently requires that all persons participating in a DUII diversion install an IID to lawfully drive a motor vehicle. Failure to comply with this requirement constitutes a Class A traffic violation. Courts have the power to exempt a person from this requirement under a medical exception. The rules and guidelines for such an exemption are promulgated by the Department of Transportation. Additionally, ORS 813.602 requires all persons convicted of DUII to install an IID device. The required period for the device is dependent upon the person's number of DUII convictions.

Additionally, ORS 813.602 allows for the department to defer or waive all or part of a defendant's responsibility to pay for the cost of IID lease, installation and maintenance. The rules for such a deferment or waiver are set by the department. Finally, ORS 813.602 sets out the penalty for failing to submit proof of IID installation to the department. Should an individual fail to do so, the department continues the suspension for: 1) one year after the ending date of the suspension resulting from the first DUII conviction; 2) two years after the ending date of the

suspension resulting from a second or subsequent conviction; or 3) five years after the ending date of the longest running suspension or revocation resulting from a DUII conviction.

Senate Bill 397 A is the product of the Ignition Interlock Device workgroup. There are a number of concepts included, all aimed at streamlining the IID process for defendants, the court and the prosecution. The bill defines "negative report" and allows the Department of Transportation to further define "test violations" by rule. It requires that, when a defendant is participating in DUII diversion, the provider who installed the IID notify the court or court's designee, and the district attorney or city prosecutor of the negative report within seven business days. Currently negative reports are contained within the entire packet of downloaded information from the device, which records every blow into the machine. Such packets are extremely difficult for the supervising court and treatment agency to decipher. Senate Bill 397 A aims to correct this issue by introducing a more uniform and accessible report. Under the bill, the negative report notification must be in a format prescribed by the Department of Transportation.

The bill additionally provides that a person may not have their IID removed until they demonstrate ninety days without a negative report. This requirement applies regardless of whether the person is a diversion participant or has been convicted of DUII. The department is permitted to remove the IID requirement from a person's license as soon as practicable, in order to allow for their more antiquated computer system to process the data. A person participating in diversion, however, may petition the court for removal of the IID after six consecutive months without a negative report. In making the decision, the court will consider the nature of the underlying crime, the blood alcohol content of the defendant at the time of the arrest and any other relevant factors. Lastly, the bill provides that a court or agency may not charge a defendant an additional fee to pay costs incurred by the agency or organization in carrying out their duties.

C

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2015 Regular Session

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Overview

At the request of: (at the request of Senate Interim Committee on Judiciary)

Chief Sponsors:

Regular Sponsors: (Pre-session Filed)

Bill Title: Relating to driving while under influence of intoxicants.

Catchline/Summary: Modifies laws regarding ignition interlock devices. 

Fiscal Impact: Has Minimal Fiscal Impact

Revenue Impact: Has Minimal Revenue Impact

Measure Analysis: Staff Measure Summary / Impact Statements (/liz/2015R1/Measures/Analysis/SB397)

Measure History 

Current Status 

Scheduled Events 

Oregon State Legislature
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2015 Regular Session

SB 397 A (/liz/2015R1/Downloads/MeasureDocument/SB397)

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Current Status ➤

Scheduled Events ➤

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Weekly Legislative Update – May 19, 2015

Addictions and Mental Health Division

News of the Week

HB 2420, AMH's bill to divert Aid and Assist restorations to the community, was approved by the full Senate 27-3. It now moves to the desk of Governor Brown for signature.

Tuesday, May 19

- HB 2660: Court discretion in ordering diversion agreements for Ignition Interlock Devices (IIDs). Senate Judiciary, 8:30am, HR 343
- SB 397: Defines "negative report" and provides for petition for IID removal after 6 months of no negative reports. House Judiciary, 3:00pm, HR 343

Wednesday, May 20

- HB 2557: Conviction set-aside for people found Guilty Except for Insanity, if certain conditions are met. Senate Judiciary, 8:30am, HR 343

- HB 3347: Civil Commitment requirements. Senate Judiciary, 8:30am, HR 343
- SB 229: AMH's bill to provide a stipend and reimbursement for AMH's Consumer Advisory Council members -- House Floor, 11:00am
- HB 2024: Traditional Health Workers definition and dentistry. Public Health is the lead. Senate Health Care, 3:00pm, HR A
- HB 2936: Sobering Facilities. House Rules, 3:00pm, HR 50

Thursday, May 21

- Sarah's Legislative Update Call-in, 12:30pm: 1-877-402-9753; participant code: 9320809# DAY CHANGE: Will be on Thursdays from now on.

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Best regards,

Sarah Lochner

Legislative Coordinator Addictions and Mental Health Division Desk:
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