



**DEPARTMENT OF JUSTICE**  
OFFICE OF THE ATTORNEY GENERAL

**SB 201: DUII 2-Hour Window and Out-of-State Convictions**

Two recent Oregon Supreme Court cases necessitate an update to our DUII laws. The first, *State v. Hedgpeth*, 365 Or 724 (Or. 2019), blurs the line as to what constitutes impairment when using blood alcohol evidence in a DUII case. The second, *State v. Guzman*, 366 Or 18 (Or. 2019), had the effect of preventing some out-of-state convictions from being treated as statutory counterparts to Oregon's DUII statute due to the variations in DUII laws across the country. SB 201 addresses both of these issues.

First, it creates a bright-line rule that if a person's Blood Alcohol Content (BAC) is .08 or higher within two hours of driving, that will constitute impairment under our DUII laws. Under this prong of the DUII statute, the State will have the burden to prove that the person had nothing to drink after driving. This "time of test" law exists in the majority of the states across the country. Note that these provisions were amended in the Senate Judiciary Committee to address stakeholder concerns. In particular, the bill as originally drafted placed the burden on the defendant to prove that they had consumed a sufficient quantity of alcohol after the time of driving a vehicle and before the BAC to test above 0.08. Amendments shifted this burden to the State.

Second, language has been added to our third-time felony DUII law (codified as ORS 813.011), along with ORS 163.118 (criminally negligent DUII homicide with three priors) and ORS 163.185 (DUII assault with three priors) to ensure that out-of-state convictions for DUII are counted as prior DUII convictions throughout Oregon law. This language matches language that is already included in Oregon's other repeat-DUII statutes. Please note that this section was also amended in the Senate Judiciary Committee to address stakeholder concerns. As a result, this bill faced no opposition as it moved out of committee.

**Contact:**

Kimberly McCullough, Legislative Director, 503-931-0418, [kimberly.mccullough@doj.state.or.us](mailto:kimberly.mccullough@doj.state.or.us)