

## DUII Diversion Form 2A EXPLANATION OF RIGHTS AND DUII DIVERSION AGREEMENT

### ADDITIONAL INFORMATION AND WAIVER OF RIGHTS

- a. The diversion agreement applies only to the DUII charge. Prosecution of the DUII charge will be delayed during the diversion period. If you are charged with other offenses arising from the same incident as the DUII, the other charges will be prosecuted separately. By entering into a diversion agreement, you give up the right to have the DUII charge decided at the same time as your other charges (former jeopardy).
- b. If you have a prior DUII conviction, the Interstate Compact for Adult Offender Supervision rules may prohibit you from leaving the state without permission during the diversion period.
- c. If you successfully complete the diversion agreement, the court may automatically dismiss the DUII charge at the end of one year. If the court does not, you must file a motion at the end of the diversion period asking the court to dismiss the DUII charge.
- d. If the court finds that you violated the terms of the diversion agreement or that you were not eligible for diversion, the court will terminate the diversion agreement. The court may hold a hearing where you can “show cause” why the court should not terminate your diversion. **The court will send notice of such hearings by regular mail. If you fail to appear in court, the court can terminate the diversion agreement and may issue a warrant for your arrest.**
- e. If the court terminates your diversion agreement or you fail to fulfill the terms of the agreement by the end of the diversion period, the court will sentence you without a trial.
- f. You may file a motion asking the court to extend the diversion period, **but you must file the motion within the last 30 days of your scheduled diversion period.** The court may grant an extension if the court finds that you have made a good faith effort to complete the diversion program and that you can complete all remaining conditions within the extension period. The court may grant an extension **only once** and for **not more than 180 days.**
- g. The court will find that you have violated the diversion agreement if the court receives notice, at any time during the diversion period, that you committed the offense of DUII or of the open container laws under ORS 811.170.
- h. If the court denies the diversion petition, the state cannot use your guilty or no contest plea (in Form 4) when the state continues the prosecution.

**ADDITIONAL INFORMATION FOR ACTIVE MILITARY PERSONNEL.** The following may apply if you are engaged in active military service:

- a. The court **may not deny** your petition for a driving under the influence of intoxicants diversion agreement because:
  - You are a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard;
  - You have been called to active duty; and
  - The military service will impair your ability to complete the diversion program.
- b. You may request that the court allow you to participate in a comparable treatment program conducted by or authorized by a government entity in another jurisdiction.
- c. You may file a motion asking the court to extend the diversion period. The court may grant an extension if the court finds you have made a good faith effort to complete the diversion program and that you can complete all remaining conditions within the extension period. **If you are serving on active duty, you must file the motion by the end of your scheduled diversion period.** The court may grant an extension **only once** and **may extend the diversion period as necessary** to allow you complete the conditions of the diversion agreement.