

EXPLANATION OF RIGHTS AND DIVERSION AGREEMENT

You have the right to hire an attorney to represent you. You do not have the right to have an attorney appointed to represent you at state expense.

You have been charged with the offense of Minor in Possession of Alcohol (MIP). Oregon law classifies this offense as a "violation" which means that the court cannot sentence a person convicted of this charge to a term of imprisonment (i.e. jail). The maximum penalty for MIP is a fine of up to \$1,000, except if the MIP was committed while operating a motor vehicle, the maximum fine amount is \$2,000. The court can also order you to attend an alcohol education class and/or an assessment and treatment program. A conviction for MIP carries with it a mandatory driver's license suspension.

You have three choices on how to handle this charge. If you have questions about these choices, ask your attorney, if you have one, or the judge. Here are the choices and their possible consequences:

1. **You may plead "Not Guilty" and request a trial.** You do not have the right to a jury trial so the case will be tried by a judge. The court clerk will schedule the trial for a later date and will notify you in advance when it will be held. You must appear on time and be prepared for your trial. If you fail to appear for your trial, in your absence, the court can find you guilty and convict you of the offense, can impose the maximum penalty and will order your driver's license be suspended for an indefinite period due to your failure to appear.
2. **You may plead "No Contest" and choose not to apply for the MIP diversion program.** This plea will result in your being convicted of the offense and you will be sentenced. **If this is your first MIP**, your fine will be no more than \$265 and the court will enter an order suspending your license for one year, though you may petition the court to withdraw that suspension early, at any time after 90 days from when it was imposed. **If this is your second or a subsequent MIP**, your case will be continued for you to appear before a judge to enter your "No Contest" plea. At that appearance, the judge will convict you of the offense and sentence you to: a fine of no more than \$520; you will be ordered to undergo an alcohol assessment, complete any recommended treatment and provide proof of completion to the court; and, the court will enter an order suspending your license for one year, and the court is not allowed to withdraw that suspension early.
3. **You may plead "No Contest" and choose to apply for the MIP diversion program.** You must be eligible (explained below) to be allowed into the MIP diversion program. If eligible, you may file the petition on the other side of this document with the court. If the court grants the petition, the court will accept your plea but will not enter a judgment of conviction at this time. The petition is an agreement between you and the court that you will complete the one-year MIP diversion program. If you complete the program, the court will dismiss the MIP charge at the end of the diversion period. If you fail to fulfill the agreement, the court will enter a judgment of conviction for the MIP based upon the plea you will have already entered. The rest of this document describes the diversion program. Before you choose this option, read the entire document.

ELIGIBILITY FOR MIP DIVERSION PROGRAM. You are eligible to participate in the MIP diversion program if:

- a. You meet **all** the requirements described in the attached "Petitioner's Declaration of Eligibility"; **and**
- b. You appeared in court on or before the date scheduled for your first appearance on the charge or the court finds you had good reason for not appearing; **and**
- c. You file this petition with the court within thirty (30) days of your first appearance in court, unless the court finds you have a good reason for the delay.

LEGAL RIGHTS WAIVED. To enter the MIP diversion program, you must waive the following rights:

- a. The right to trial; the right to see, hear, and cross-examine or question all witnesses who testify against me at trial; the right to remain silent about all facts of the case; the right to subpoena witnesses and evidence in my favor; the right to have my lawyer assist me at trial; the right to testify at trial; and the right to require the prosecutor to prove my guilt by a preponderance of the evidence.
- b. The right to speedy trial and sentencing, should the court terminate the diversion agreement.
- c. Former jeopardy rights under the federal and state constitutions and ORS 131.505 to 131.525 in any subsequent action on the charge or on any other offenses based on the same criminal episode.
- d. The right to have the MIP charge decided at the same time as certain other charges (former jeopardy). **This paragraph applies to you only if you are charged with other offenses in addition to MIP and the additional charges are from the same alleged episode.** All offenses alleged to have been committed at the same time must be prosecuted at the same time. The diversion agreement between you and the court applies only to the MIP charge. Prosecution of this charge **only** will be delayed during the diversion program period. Other charges will be prosecuted separately from the MIP charge and will not be delayed by the diversion agreement.
- e. For purposes of ORS 813.200 to 813.270, participating in the MIP diversion program may render you ineligible for a Driving Under the Influence of Intoxicants (DUII) diversion program because the MIP diversion program may be considered a similar prior alcohol rehabilitation program which enabled you to avoid a substantial, judicially imposed adverse consequence (i.e. a conviction).

AGREEMENT WITH THE COURT. To have the court dismiss the MIP charge after you complete the MIP diversion program, you agree to do **all** of the following:

- a. Pay the court a filing fee of \$65 within 10 days. If you cannot afford to pay this fee, tell the judge. Some or all of the fee may be waived, depending on your financial situation. The court may allow you to make payments over time.
- b. Attend and complete an alcohol education program as designated by the court and pay the related fees (usually between \$55 and \$85) directly to that program. **You must contact the program within 24 hours to register and return to the court proof that you completed the program within the time directed by the court.**
- c. Comply fully with the laws of this state relating to alcohol and controlled substances. You must advise the court in writing within 10 days if you are charged anywhere with an alcohol or controlled substance related offense.
- d. **Keep the court advised at all times of your current mailing address during the diversion period.** This is extremely important, because the court will send notices to the mailing address you provide.
- e. Attend any "show cause" hearing that the court orders you to attend. If the court believes you have violated this agreement or that you were not eligible for diversion when you filed your petition, the court will require you to attend a hearing to "show cause" why the court should not terminate you from the diversion program. If you are able to show the court why you should be allowed to continue the diversion program, the court may allow you to continue. The court will send notice of the "show cause" hearing by regular mail. If you fail to appear for your "show cause" hearing, in your absence, the court can terminate you from the diversion program, find you guilty and convict you of the offense, can impose the maximum penalty and will order your driver's license be suspended for an indefinite period due to your failure to appear.

PETITIONER'S DECLARATION OF ELIGIBILITY

(NOTE: Petitioner must file this declaration with the MIP Diversion Petition and Agreement.)



Petitioner's Name (typed or printed)

Benton County Circuit Court Case Number

By signing this document, I hereby declare that I am eligible to participate in the Minor in Possession of Alcohol (MIP) diversion program in the case described above, and that all of the following are true:

1. On the date of the offense charged in this case, no other charge relating to alcohol or controlled substances was pending against me in Oregon or elsewhere, and I had not been previously convicted of an MIP or other alcohol or controlled substance related offense, nor had I ever admitted to an MIP or other alcohol or controlled substance related offense as a juvenile, in Oregon or elsewhere;
2. I have never participated in an MIP diversion program in Oregon or elsewhere;
3. On the date of the offense charged in this case, I was between the ages of 18 and 21; and
4. With regard to the facts and circumstances surrounding the offense charged in this case:
 - I did not run from the scene;
 - I did not hide from law enforcement officer(s);
 - I did not provide a false name or date of birth to law enforcement officer(s);
 - I did not refuse to open the door when law enforcement officer(s) knocked and announced their presence;
 - I did not use profanity or become argumentative with law enforcement officer(s);
 - I did not attempt to interfere, or interfere, physically, verbally, or through deception, with law enforcement officer(s);
 - I was not in a state of extreme intoxication (i.e. vomiting, passed out, incoherent, etc.);
 - I was not in charge of a party where alcohol was made available to minors or where the noise level was not abated after a reasonable request from neighbors or law enforcement officer(s);
 - I was not driving a motor vehicle during the commission of the offense;
 - I was not fighting, engaging in violent conduct, or other crimes resulting in personal injury or property damage; and
 - I did not engage in any other behavior similar in nature to that listed above.

I hereby declare that the above statements are true to the best of my knowledge and belief. I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Petitioner's Signature

Date