

2011 LEGISLATION ALERT

CRIMINAL LAW

OFFENSES INVOLVING MOTOR VEHICLES

DUII DIVERSION FOR SERVICEMEMBERS ORS 813.220, 813.225, 813.255 2011 OR LAWS CH 197 (HB 2702)

Under HB 2702, the court may not deny a petition for diversion to a defendant who is otherwise eligible due to the fact that the person is on active duty. The bill also permits the extension of the diversion period for any length of time the court deems necessary, rather than for the maximum 180 days permitted to most defendants. Additionally, the bill permits servicemembers to participate in a treatment program that is outside the jurisdiction in which they are charged.

Effective date: June 1, 2011.

The amendments apply to petitions for diversion filed before, on, or after the effective date.

MOBILE COMMUNICATION DEVICES ORS 811.507

2011 OR LAWS CH 530 (HB 3186)

HB 3186 eliminates one of the exceptions to the general prohibition on using a mobile communication device while driving. Under the bill, a driver is no longer exempt from the prohibition because he or she is operating a motor vehicle in the scope of that person's employment.

Effective date: January 1, 2012.

FEES AND FINES

NEW FINES FOR VIOLATIONS 2011 OR LAWS CH 597 (HB 2712)

HB 2712 updates and simplifies the current statutory revenue and distribution structure related to criminal fines, assessments, and other financial penalties imposed on violations (other than parking infractions).

- It establishes a presumptive fine for violations, thereby eliminating the need for calculation of a foundation amount, base fine amount, and the minimum fine amount.
- It applies this presumptive fine statewide, and eliminates variability in fine amounts based on the court in which a person is cited.
- It eliminates the unitary assessment and the county assessment by consolidating them into the presumptive fine.

HB 2712 provides for judicial discretion to reduce the presumptive fine by up to 50% and increases the judicial discretion in school, construction, and safety corridor zone fines to 75% of the presumptive fine, but eliminates judicial discretion when fines fall below designated monetary thresholds.

This bill does not have any effect on fine amounts for misdemeanors or felonies.

Effective date: July 1, 2011.

Most individual changes in the bill do not take effect until January 1, 2012. However, the bill extended the duration of criminal surcharges imposed as part of HB 2287 (2009) from July 1, 2011, to January 1, 2012.

DISCLAIMER

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OTHER OFFENSES

CIVIL FORFEITURE IN HUMAN TRAFFICKING CASES

ORS 131A.005, 131A.360

2011 OR LAWS CH 335 (SB 430)

SB 430 adds several crimes to the list of offenses that are subject to civil forfeiture. Under the bill, crimes of involuntary servitude, trafficking in persons, and compelling prostitution are now subject to civil forfeiture.

Effective date: June 14, 2011.

The amendments apply to conduct occurring on or after the effective date.

OFFENSE OF ASSISTING A SUICIDE

ORS 131.602

2011 OR LAWS CH 552 (SB 376)

SB 376 creates the new crime of assisting another person to commit suicide. A person commits the crime of assisting another person to commit suicide if the person intentionally sells or transfers any substance or object capable of causing death to another person for the purpose of assisting the other person's usage of the substance or object to commit suicide.

This bill does not apply to individuals acting pursuant to an advance directive or health care decision per ORS 127.505 through 127.660 or a person withholding or withdrawing life-sustaining procedures or artificially administered hydration or nutrition per ORS 127.505 through 127.660 (pertaining to the requirements imposed on health care organizations relating to the rights of individuals to make health care decisions), or ORS 127.800 through 127.897 (The Oregon Death With Dignity Act). This crime is a Class B felony.

The crime seriousness level of Senate Bill 376 has not yet been determined and it presently remains an unclassified offense.

Effective date: June 28, 2011.

SENTENCING AND EXPUNGEMENTS

EXPUNGEMENTS OF CLASS B FELONIES

ORS 137.225

2011 OR LAWS CH 533 (HB 3376)

HB 3376 allows a court to enter an order setting aside a conviction for a Class B felony if at least 20 years have elapsed from the date of the conviction sought to be set

aside or of the release of the person from imprisonment for the conviction sought to be set aside, whichever is later, and the person has not been convicted of or arrested for any other offense, excluding motor vehicle violations, after the date of the conviction to be set aside.

HB 3376 does not apply to crimes designated as "person felonies," as that term is defined by the Oregon Criminal Justice Commission, or to the crime of furnishing a firearm used in a felony under ORS 166.429.

Effective date: January 1, 2012.

The amendments apply to motions filed on or after the effective date.

PLEADING AND NOTICE OF ENHANCEMENT FACTORS

ORS 136.765

2011 OR LAWS CH 267 (SB 378)

SB 378 requires notice be given to a charged defendant of the State's intention to seek an upward departure from the presumptive sentence no later than 60 days after arraignment on the indictment or 14 days before trial, whichever is sooner, unless a later time is agreed upon by the parties or upon a showing and finding of good cause.

Effective date: June 7, 2011.

The amendments apply to criminal prosecutions commenced on or after the effective date.

EARNED TIME CREDIT

UPDATE ON 2009 OR LAWS (HB 3508)

Generally speaking, the 2009 Legislature raised the earned time rate to 30% for most crimes. This increase will sunset on July 1, 2013. During the 2010 short session, the Legislature reduced the earned time rate back to 20% effective February 17, 2010. This was allowed to sunset on July 1, 2011. The 2011 Legislature session did not address the issue. Because of the above sunset, effective July 1, 2011, through July 1, 2013, the earned time rate is again 30% for certain (but not all) crimes. On July 1, 2013, the HB 3508 modification of good time will in turn sunset. Absent further legislative action, the earned time rate will return to 20% on July 1, 2013.

Both the 2011 and 2012 modifications contained a range of specific statutory exemptions, including Ballot Measure 11 offenses and most sex crimes.