

Chapter 484

1981 REPLACEMENT PART

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TRAFFIC OFFENSE PROCEDURES

484.010 Definitions for ORS 484.010 to 484.480. As used in ORS 1.510, 1.520, 153.505 to 153.635, 482.655 and 484.010 to 484.480, unless the context otherwise requires:

(1) "Bail" means money or its equivalent deposited by a defendant to secure the defendant's appearance for a traffic offense.

(2) "City court" means a municipal court, whether or not it is exercising authority under the charter or ordinances of a city or as a justice court under the laws of this state.

(3) "City policeman" includes a city marshal or a member of the police of a city, municipal or quasi-municipal corporation.

(4) "City traffic offense" means any violation of a traffic ordinance of a city, municipal or quasi-municipal corporation, except ordinances governing parking of vehicles.

(5) "Major traffic offense" means a violation of any of the following provisions of law or a city ordinance conforming thereto:

(a) Reckless driving as defined in ORS 487.550.

(b) Driving while under the influence of intoxicants, as defined in ORS 487.540.

(c) Failure to perform the duties of a driver involved in an accident or collision, as defined in ORS 483.602 (1) and (2) and 483.604.

(d) Driving while suspended or revoked, as defined in ORS 487.560.

(e) Fleeing or attempting to elude a police officer, as defined in ORS 487.555.

(f) Driving after being declared to be a habitual offender, as set forth in ORS 484.740.

(6) "Owner" means the person having all the incidents of ownership in a vehicle or where the incidents of ownership are in different persons, the person, other than a security interest holder or lessor, entitled to the possession of a vehicle under a security agreement, or a lease for a term of 10 or more successive days.

(7) "Police officer" includes a member of the Oregon State Police, a sheriff or deputy sheriff and a city policeman.

(8) "State court" means a circuit, district or justice court or magistrate.

(9) "State traffic offense" means a violation of any provision of law for which a criminal or traffic infraction penalty is provided in

ORS 1.510 and ORS chapters 481, 482, 483, ORS 484.740, 485.010 to 485.420, 485.990 and ORS chapter 486, 487 or 767 and includes violation of ORS 390.790.

(10) "Traffic crime" means any traffic offense which is punishable by a jail sentence.

(11) "Traffic offense" includes an offense mentioned in subsections (4), (5) and (9) of this section. [1959 c 664 §1; 1963 c.510 §4, subsection (6) enacted as 1967 c 579 §3, 1969 c.696 §3, 1973 c.798 §2a, 1973 c 836 §353, 1975 c 451 §151, 1977 c 882 §30; 1979 c 819 §5, 1981 c 818 §13]

484.020 Traffic offense proceedings to conform to ORS 484.010 to 484.480. All proceedings concerning traffic offenses shall conform to the provisions of ORS 1.510, 1.520, 153.505 to 153.635, 482.655 and 484.010 to 484.480. [1959 c.664 §2, 1973 c.836 §354; 1981 c 818 §14]

484.030 [1959 c.664 §3(1), (2), (3); 1971 c 743 §395, 1975 c 451 §169; renumbered 153 565]

484.040 [1959 c 664 §6; 1961 c 442 §2, 1973 c 836 §355, renumbered 153.570]

484.100 Authority of police officer to arrest or issue citation for traffic crime. A police officer may arrest or issue a citation to a person for a traffic crime at any place within or outside the jurisdictional authority of the governmental unit by which the police officer is authorized to act as provided by ORS 133.235 and 133.310. [1959 c 664 §7, 1963 c 401 §1; 1981 c 818 §15]

484.105 [1963 c 448 §3, repealed by 1981 c.818 §47]

484.110 Authority of weighmasters. (1) This section applies to any person duly authorized as a weighmaster by the Department of Transportation or any county weighmaster or a police officer.

(2) A weighmaster in whose presence is violated any provision of ORS 481.177, 483.502 to 483.536, 483.545, ORS chapter 767 or any reduction of weight or dimension limits imposed pursuant to ORS 487.905 may arrest or issue a citation as provided in ORS 153.510 to 153.525, 153.535 to 153.560 and 484.120 to 484.140 in the same manner as if the weighmaster were a police officer.

(3) A weighmaster or police officer who issues a citation for a violation of ORS 483.502 to 483.536, 483.545 or 487.905 may accept security for the appearance of the person cited if the violation is not a traffic crime. The weighmaster or police officer shall give

receipt for the security accepted along with the citation to appear before a court having jurisdiction of the offense. The weighmaster or police officer shall promptly cause the security to be delivered to the court. The court may treat the security as bail or may return the security to the person cited when the person is admitted to bail before the court.

(4) A weighmaster may arrest a person cited for violation of ORS 483.502 to 483.536, 483.545 or 487.905 if the person cited fails to appear on the citation in violation of ORS 484.330. [1959 c 664 §17; 1977 c 510 §1; 1977 c 718 §7, 1981 c 818 §16]

484.120 Taking security for appearance of arrested person. (1) A police officer may take security for the appearance of a person arrested for a traffic crime if it appears to the officer that the arrested person might fail to appear in response to a citation and if:

(a) The person is arrested for violation of any provision of ORS 481.177, 483.502 to 483.536, 483.545 and 487.905 for which a jail sentence may be imposed; or

(b) There is no accessible magistrate or clerk or deputy clerk authorized by the magistrate.

(2) The officer may take as security only the arrested person's unexpired card of membership in an organized automobile association qualified as provided in ORS 484.125 or the arrested person's unexpired guaranteed arrest bond certificate, as defined in ORS 743.762, if such card or certificate is acceptable as bail for the offense for which the arrest was made, except that the sum fixed as bail for the offense may be accepted as security for any violation specified in paragraph (a) of subsection (1) of this section by any duly authorized weighmaster.

(3) The officer shall give a receipt for the security accepted and shall issue the person a citation to appear before a court having jurisdiction of the offense. The officer shall promptly cause the security to be delivered to the court. The security shall be returned to the arrested person when the arrested person is admitted to bail before the court or it may be treated by the court as bail.

(4) A magistrate or clerk or deputy clerk authorized by the magistrate has authority to accept security for the appearance of a person arrested for a traffic offense and brought before the magistrate or clerk or deputy clerk authorized by the magistrate, as provided in

ORS 484.130. If the magistrate does not have jurisdiction of the offense, the magistrate shall promptly forward the security accepted and all documents in connection with the case to the most conveniently located court having jurisdiction of the offense and in which the venue may properly be laid. [1959 c 664 §§(4), 8, 1961 c 569 §6, 1963 c 401 §2, 1977 c 510 §2; 1977 c 718 §8; 1981 c 518 §19]

484.125 When automobile association membership card is acceptable as bail. Any automobile association incorporated under the laws of this state may deposit with the State Treasurer the sum of \$2,000 in cash or in bonds approved by the State Treasurer. When a deposit is made and maintained under this section, the unexpired membership card of any member of the association shall be accepted by any magistrate or officer of this state authorized to take bail when tendered as bail by any member of the association for the violation of any motor vehicle law of this state, or traffic ordinance of any city in this state, if the bail in any individual case does not exceed \$50. The use of an unexpired membership card as bail under this section is subject to the following:

(1) If a person deposits that person's membership card as bail and the person fails or neglects to appear in court at the time and place required, the magistrate or other officer before whom the case is brought, upon declaring a forfeiture of the bail, shall at once notify the association of the forfeiture, and the amount thereof, by mail.

(2) The association, within five days after the receipt of notice, under subsection (1) of this section, shall remit the amount of the bail so forfeited to the magistrate or other officer. If the association fails or refuses to remit the bail within that period, the magistrate or other officer having the matter in charge or the district attorney shall notify the State Treasurer, who shall:

(a) Pay the amount of the bail to the officer or magistrate lawfully entitled to receive it;

(b) Deduct that amount from the amount of deposit with the State Treasurer by the association under this section; and

(c) Immediately notify the association and require it to deposit a like sum with the State Treasurer.

(3) If the association fails or neglects for a period of 10 days to comply with the notice of

the treasurer under subsection (2) of this section, the membership cards of such association shall not thereafter be accepted as bail while the default continues.

(4) Upon the payment of the bail under this section by the association, the membership card so deposited shall be immediately returned to the association by the officer who accepted it as bail. [Formerly 483.620, 1981 c.818 §20]

484.130 Putting up bail, driver's license or other security by defendant. (1) A person brought before a magistrate or clerk or deputy clerk authorized by the magistrate for a traffic offense shall be released on giving adequate undertaking to appear in answer to the offense at such time and place as is fixed by the magistrate or clerk or deputy clerk authorized by the magistrate. The magistrate or clerk or deputy clerk authorized by the magistrate may require the arrested person to give as security for his appearance:

(a) The arrested person's unexpired card of membership in an organized automobile association qualified as provided in ORS 484.125 or the arrested person's unexpired guaranteed arrest bond certificate, as defined in ORS 743.762, if such card or certificate is acceptable as bail for the offense for which the arrest was made; or

(b) If the arrested person has no such automobile association card or certificate, as provided in paragraph (a) of this subsection, or if such card or certificate is not acceptable as bail for the offense for which the arrest was made, such sum as may be required by the magistrate; or

(c) The operator's or chauffeur's license issued by this state to the arrested person.

(2) If the operator's or chauffeur's license of a person is accepted as security, the magistrate, clerk or deputy clerk authorized by the magistrate shall issue the person a receipt therefor and shall promptly notify the Motor Vehicles Division of the fact. The Motor Vehicles Division shall prepare a form of receipt for use in connection with this subsection and all receipts issued pursuant to this subsection shall conform to the form so prepared. Until the time fixed for appearance or the expiration of 30 days from the date the receipt is issued, whichever first occurs, the receipt of the magistrate or clerk or deputy clerk authorized by the magistrate confers on the person to whom it is issued the same privileges as the license which was accepted.

(a) If the arrested person appears at the time fixed, his license shall be returned to him, unless taken up by the court pursuant to ORS 482.470 (3).

(b) If the person fails to appear at the time fixed, his license shall be forwarded to the Motor Vehicles Division. Upon receipt by the division, the license shall be suspended for an indefinite period. If the person thereafter makes his appearance before the court, the court shall advise the division of the fact and the division shall thereupon terminate the suspension ordered pursuant to this subsection. [1959 c 664 §9, 1961 c.569 §7, 1963 c.401 §3]

484.140 Guaranteed arrest bond certificate as security for appearance. When a guaranteed arrest bond certificate with respect to which a surety company has become surety under ORS 743.762 to 743.768 is tendered as bail by the individual whose signature appears thereon as a member of an automobile club or automobile association, if the individual is arrested for a traffic offense other than a felony which is committed before the date of expiration shown on that certificate, the magistrate, clerk or deputy clerk authorized by the magistrate, or officer who may take security for the individual's appearance in court shall accept the certificate in lieu of cash bail or an undertaking on bail as a bail bond in an amount not to exceed \$200 to guarantee the appearance of the individual in a state court or city court. If the individual does not make the appearance, the surety for the certificate is subject on the undertaking of the surety under ORS 743.765 to any forfeiture or enforcement provision of any statute, charter or ordinance that otherwise applies to bail on their undertaking. [1961 c 569 §2; 1963 c 401 §4, 1975 c 451 §151a, 1981 c.818 §21]

484.150 [1959 c 664 §§10, 11; 1963 c 401 §5; 1965 c 588 §2, 1971 c 388 §1; 1973 c.737 §2, 1974 s.s. c.44 §2; 1975 c 451 §152, 1977 c 882 §31, 1977 c 883 §2, 1979 c 477 §4, renumbered 153 515]

484.155 [1963 c 401 §9, 1979 c 477 §5, renumbered 153.510]

484.160 [1959 c 664 §15, 1963 c 401 §6, renumbered 153 520]

484.170 [1959 c 664 §16; 1963 c 401 §7, 1979 c 477 §6; renumbered 153.525]

484.175 [1975 c 451 §271b, renumbered 153 530]

484.180 [1959 c 664 §12(1); 1963 c.401 §10; 1965 c 473 §1, 1975 c 451 §152a, 1977 c.882 §32, 1979 c 477 §7; renumbered 153 535]

484.190 [1959 c 664 §12(2), (3); 1975 c 451 §153, 1981 c 818 §22, renumbered 153.540]

484.200 [1959 c 664 §13(2), renumbered 153 545]

484.210 [1959 c 664 §13(1); 1965 c 588 §1, 1981 c 818 §26; renumbered 153 550]

484.220 [1959 c 664 §13(3), 1981 c 818 §27, renumbered 153 555]

484.222 Impounding vehicles upon certain driver convictions; redemption; suspension of registration; rights of security interest holders. (1) When a person is convicted for driving a motor vehicle while the person's license is suspended or revoked or of a second or subsequent charge of driving while under the influence of intoxicants, the court may order impounded for not more than 120 days from judgment any motor vehicle of which the convicted person is the owner and any motor vehicle which the convicted person is operating at the time of arrest. The following apply to this subsection:

(a) The person convicted shall be liable for the expenses incurred in the removal and storage of the vehicle under this subsection, whether or not the vehicle is returned to the person convicted

(b) The vehicle shall be returned to the person convicted or the owner only upon payment of such expenses.

(c) If the vehicle is not reclaimed within 30 days after the time set for the return of the vehicle in the impounding order, the vehicle may be disposed of in accordance with ORS 483.351, 483.353 and 483.382 to 483.396.

(2) When a person is convicted for driving a motor vehicle in violation of ORS 487.560 or of a second or subsequent charge of driving while under the influence of intoxicants, the court shall order the Motor Vehicles Division to suspend for not more than 120 days the registration required under ORS chapter 481 of any vehicle of which the convicted person is the owner or any vehicle which the convicted person is operating at the time of the person's arrest. The following apply to this subsection:

(a) The division shall forthwith suspend the registration and require the owner to return the registration card and plates.

(b) If the vehicle has not been impounded and the owner fails to return the registration card and plates to the division within 10 days after the date notice to do so is mailed to the owner, return receipt requested, the division shall forthwith direct any peace officer to secure possession thereof and return the registration card and plates to the division.

(c) The division shall return the registration card and plates to the owner upon expiration of the period specified by the court in its order under this subsection upon payment by the owner to the division of a restoration fee of \$10.

(3) The court may order that a motor vehicle of which the convicted person is not the owner be impounded or its registration suspended under this section only if the court is satisfied by clear and convincing evidence that the owner knew or had good reason to know that the convicted person:

(a) Did not have a valid operator's license and knowingly consented to the operation of the motor vehicle by the convicted person; or

(b) Was operating the vehicle while under the influence of intoxicants.

(4) The authority of the court under this section to impound any motor vehicle shall be subject to the rights of a holder of a security interest under a security agreement executed before an arrest for violation of ORS 487.540 or 487.560, and the vehicle shall be released for the purpose of satisfying a security interest if:

(a) Request in writing is made to the court; and

(b) If the vehicle has been impounded, the security interest holder pays the expenses incurred in removal and storage of the vehicle; and

(c) If the registration of the vehicle has been suspended, the security interest holder takes possession of the vehicle subject to the suspension of the registration remaining in effect against the registered owner. [1967 c 579 §4, 1971 c 501 §1, 1975 c 451 §154, 1981 c 803 §8]

484.230 [1959 c 664 §14, 1965 c 473 §2, 1975 c 315 §7, 1977 c 746 §13, 1981 c 818 §28, renumbered 153 560]

484.240 [1959 c 664 §18, 1971 c 162 §1; 1981 c 818 §28a, renumbered 153 625]

484.250 [1959 c 664 §§20, 21, 1969 c 616 §2, 1971 c 186 §3, 1977 c 263 §7, renumbered 153 630]

484.260 [1959 c 664 §22, renumbered 153.635]

484.310 [1959 c 664 §23, 1981 c 818 §29, renumbered 153 600]

484.320 [1959 c 664 §§24, 25, 1981 c 818 §30, renumbered 153 605]

484.330 Failure to appear on traffic offense. (1) A person who has been cited to appear on any traffic offense shall not knowingly fail:

(a) To comply with the requirements of ORS 153.540; or

(b) To appear at any time fixed by the court.

(2) A person who violates this section commits the crime of failure to appear on a traffic offense. Violation of this section is a Class A misdemeanor. [1981 c.818 §24]

484.350 [1975 c 451 §131, 1981 c 818 §31, renumbered 153.505]

484.353 Citation for traffic infraction; citation for offense involving traffic accident. (1) A police officer may issue a citation to a person for a traffic infraction at any place within or outside the jurisdictional authority of the governmental unit by which the police officer is authorized to act when the traffic infraction is committed in the police officer's presence.

(2) A police officer:

(a) Shall not arrest a person for a traffic infraction.

(b) May stop and detain a person for a traffic infraction for the purposes of investigation reasonably related to the traffic infraction, identification and issuance of citation.

(c) May make an arrest of a person as authorized by ORS 133.310 (2) if the person is stopped and detained pursuant to the authority of this section.

(3) When a police officer at the scene of a traffic accident has reasonable grounds, based upon the police officer's personal investigation, to believe that a driver of a vehicle involved in the accident has committed a traffic offense in connection with the accident, the police officer may issue to the driver a citation for that offense. The authority under this subsection is in addition to any other authority to issue a citation for a traffic offense. [1981 c 818 §18]

484.355 [1975 c.451 §132, renumbered 153.610]

484.360 [1975 c 451 §133, 1981 c 803 §9, 1981 c 818 §32, renumbered 153 615]

484.365 [1975 c 451 §134, 1977 c 882 §34, repealed by 1981 c 803 §26]

484.370 [1975 c.451 §135, renumbered 153 620]

484.375 [1975 c 451 §137, 1981 c.818 §34; renumbered 153 575]

484.380 [1975 c 451 §137a, repealed by 1981 c 803 §26]

484.385 Plea agreements limited. (1) Notwithstanding ORS 135.405 to 135.445, a person charged with the offense of driving under the influence of intoxicants shall not be allowed to forfeit bail or plead "guilty" or "no contest" to any other offense in exchange for a dismissal of the offense charged. No district attorney or city attorney shall make any motion and no judge shall enter any order in derogation of this section. This section does not prohibit diversion as provided under ORS 484.445.

(2) Notwithstanding ORS 135.881 to 135.901, a person charged with the offense of driving under the influence of intoxicants shall not be allowed to enter into any program of supervised performance or diversion except as provided under ORS 484.445. [1975 c 451 §138; 1981 c 803 §10]

484.390 [1975 c 451 §139, 1977 c 882 §35; renumbered 153 580]

484.395 [1975 c 451 §140, renumbered 153 585]

484.400 [1975 c 451 §140a, 1981 c 818 §36, renumbered 153 590]

484.405 [1975 c 451 §140b; 1981 c 803 §11, renumbered 153 595]

484.410 [1959 c 664 §26, 1967 c 604 §11, 1967 c 620 §15; renumbered 1 520]

484.415 Trial judge's authority to order suspension of license, permit or right to apply. (1) If a defendant is convicted of any traffic offense and fails or refuses to pay a fine imposed by the judge or to comply with any condition upon which payment of the fine or any part of it was suspended, the judge, in addition to or instead of any other method authorized by law for enforcing a court order, may order the defendant's driver's license, permit or right to apply to be suspended or may limit the defendant's driving under conditions fixed by the court until the defendant complies with the conditions of the order.

(2) If a defendant is convicted of a traffic offense, in addition to any fine or imprisonment authorized by law, including probation and suspension of imposition or execution of any sentence upon conditions ordered by the court, the judge may also:

(a) Order the defendant's driver's license, permit or right to apply to be suspended until the defendant successfully completes a defensive driving or other appropriate driver improvement course conducted by the Motor Vehicles Division, or other rehabilitative program;

(b) Order the defendant's driver's license, permit or right to apply to be suspended for not more than one year or for more than one year if the mandatory period of suspension is more than one year and the offense is a traffic crime or a Class A traffic infraction;

(c) Order the defendant's driver's license, permit or right to apply to be suspended for not less than 30 nor more than 180 days if the offense is a Class B, C or D traffic infraction; or

(d) Order the defendant to successfully complete a defensive driving or other appropriate driver improvement course conducted by the Motor Vehicles Division, or other rehabilitative program, within a period of time fixed by the judge, with the penalty for failure to comply with the order being a future suspension of the defendant's driver's license, permit or right to apply, or other future limitation on the defendant's driving.

(3) If the trial judge places any limitations on the defendant's driving under subsection (1) or (2) of this section, the judge shall immediately advise the Motor Vehicles Division in writing. Any limitation ordered by the judge shall be made part of the defendant driver's record and shall remain in effect until the division is notified in writing by the court that the limitation has ended.

(4) If the trial judge orders a suspension under this section, or if the conviction will result in mandatory revocation or suspension of the defendant's license or permit or right to apply under ORS 482.430, the judge shall take possession of any driver's license or permit held by the defendant that was issued by any jurisdiction and issue an order of suspension or revocation. If mandatory revocation or suspension will result from the conviction, the court shall revoke or suspend the license or permit or right to apply for the required period. The judge shall immediately send the license or permit and a copy of any order entered by the court to the Motor Vehicles Division. Any suspension or revocation of the defendant's license or permit or right to apply shall become effective on the date on which the court takes possession or orders suspension or revocation of the license or permit or right to apply.

(5) If the judge ordered the suspension under subsection (1) of this section, upon payment of the fine as ordered, the judge shall immediately send a copy of an order to rein-

state the defendant's license or permit or right to apply to the division.

(6) If the judge ordered the suspension under paragraph (a) of subsection (2) of this section, when the defendant successfully completes a defensive driving course or other rehabilitative program, the division shall reinstate the defendant's license, permit or right to apply, return any license or permit to the defendant and notify the judge in writing that the defendant has complied with the judge's order.

(7) Upon receipt of any order entered by a judge under this section, the division shall immediately make proper entry in its files and records and take other action, as necessary, to implement the judge's order. [1975 c 451 §141, 1977 c 882 §36, 1981 c 718 §5, 1981 c 818 §37]

484.420 [1959 c 664 §27, 1967 c 604 §12, 1967 c 620 §16, renumbered 1 510]

484.425 Court ordered suspension to run concurrently. A suspension or revocation of a license or permit ordered by a court under ORS 482.430, 482.470 or 484.415 shall run concurrently with any mandatory suspension or revocation ordered by the division under ORS 482.430 and arising out of the same conviction. [1975 c 451 §142; 1981 c 718 §9]

484.430 [1963 c 8 §1, 1967 c 604 §13, renumbered 1 530]

484.435 [1975 c 451 §143, repealed by 1981 c 818 §47]

DIVERSION AGREEMENTS

484.445 Notice that diversion agreement may be available. (1) The court shall inform at arraignment a defendant charged with the offense of driving while under the influence of intoxicants as defined in ORS 487.540 or a city ordinance conforming thereto that a diversion agreement may be available if the defendant meets the criteria set out in ORS 484.450 and files with the court a petition for a driving while under the influence of intoxicants diversion agreement.

(2) The petition forms for a driving while under the influence of intoxicants diversion agreement shall be available to a defendant at the court.

(3) The form of the petition for a driving while under the influence of intoxicants diversion agreement and the information and blanks contained therein shall be determined by the Supreme Court under ORS 1.525. The

petition forms made available to a defendant by any city or state court shall conform to the requirements adopted by the Supreme Court.

(4) In addition to any other information required by the Supreme Court to be contained in a petition for a driving while under the influence of intoxicants diversion agreement, the petition shall include:

(a) A waiver by the defendant of the right to speedy trial or sentencing in any subsequent action upon the charge;

(b) An agreement by the defendant to complete at an agency or organization designated by the city or state court a diagnostic assessment to determine the possible existence and degree of an alcohol or drug abuse problem;

(c) An agreement by the defendant to complete, at defendant's own expense based on defendant's ability to pay, the program of treatment indicated as necessary by the diagnostic assessment;

(d) An agreement by the defendant to not use intoxicants in conjunction with the defendant's operation of a motor vehicle and to comply fully with the laws of this state designed to discourage the use of intoxicants in conjunction with motor vehicle operation;

(e) A notice to the defendant that the diversion agreement will be considered to be violated if the court receives notice that the defendant at any time during the diversion period committed the offense of driving while under the influence of intoxicants or committed a violation of ORS 487.839, 487.841 or 487.843;

(f) An agreement by the defendant to keep the court advised of the defendant's current mailing address at all times during the diversion period; and

(g) A waiver by the defendant of any former jeopardy rights under ORS 131.505 to 131.525 in any subsequent action upon the charge or any other offenses based upon the same criminal episode. [1981 c.803 §17]

484.450. Petition for diversion agreement. (1) After an accusatory instrument has been filed charging the defendant with the offense of driving while under the influence of intoxicants, a defendant may file with the court a petition for a driving while under the influence of intoxicants diversion agreement described in ORS 484.445. The petition must be filed within 30 days after the date of the defendant's first appearance on the summons,

unless a later filing date is allowed by the court upon a showing of good cause.

(2) The defendant shall pay to the court, at the time of filing a petition for a driving while under the influence of intoxicants diversion agreement, a filing fee of \$275. The court may make provision for payment of the filing fee by the defendant on an instalment basis. The court may waive all or part of the filing fee in cases involving indigent defendants. The filing fee paid to the court under this subsection shall be retained by the court if the petition is allowed. The filing fee shall be distributed as provided by ORS 484.465.

(3) The defendant shall cause a copy of the petition for a driving while under the influence of intoxicants diversion agreement to be served upon the district attorney or city attorney. The district attorney or city attorney may file with the court, within 10 days after the date of service, a written objection to the petition and a request for a hearing.

(4) After the time for requesting a hearing under subsection (3) of this section has expired and no request has been filed, or after hearing requested under subsection (3) of this section, the court may allow a petition for a driving while under the influence of intoxicants diversion agreement unless:

(a) Within 10 years before the date of commission of the present offense the defendant was convicted of the offense of driving while under the influence of intoxicants or its statutory counterpart in this state or of the statutory counterpart of that offense in any other state;

(b) Within 10 years before the date of commission of the present offense the defendant participated in a driving while under the influence of intoxicants diversion program or in any similar alcohol or drug rehabilitation program in this state or in any other state;

(c) Within 10 years before the date of commission of the present offense the defendant was convicted of any degree of murder, manslaughter, criminally negligent homicide or assault which resulted from the operation of a motor vehicle in this state or of the statutory counterpart of any of those offenses in any other state;

(d) The present driving while under the influence of intoxicants offense involved an accident required to be reported under ORS 483.606; or

(e) The date of the offense for which the agreement is petitioned is earlier than November 1, 1981. [1981 c 803 §18]

484.455 Matters to be considered by court in determining to allow diversion agreement. In making a determination of whether to allow or deny a petition for a driving while under the influence of intoxicants diversion agreement under ORS 484.450, a court:

(1) Shall consider whether the diversion will be of benefit to the defendant and the community.

(2) May take into consideration whether there was an early recognition by the defendant during the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug dependency would be beneficial.

(3) May take into consideration whether there is a probability that the defendant will cooperate with the diagnostic assessment and treatment agencies.

(4) May take into consideration whether the defendant will observe the restrictions contained in the diversion agreement. [1981 c 803 §19]

484.460 Fixing length of diversion period; diversion agreement part of record; effect of denial of petition. (1) When the court allows a petition for a driving while under the influence of intoxicants diversion agreement filed as provided in ORS 484.450, the judge taking that action shall sign the petition and indicate thereon the date of allowance and the length of the diversion period. The court may require that there be added to the allowed petition an agreement by the defendant to reimburse a public body required to pay compensation for counsel appointed to represent the defendant or expenses of the defendant in the proceeding. The petition when signed and dated becomes the diversion agreement between the defendant and the court. The court shall make the agreement a part of the record of the case. The court shall send to the Motor Vehicles Division, within 48 hours after allowing the petition, a certified copy of the diversion agreement. The Motor Vehicles Division shall make the diversion agreement a part of the defendant's operating record.

(2) A driving while under the influence of intoxicants diversion agreement shall be for a period of not less than 180 days and not longer

than one year after the date the court allows the petition. During the diversion period the court shall stay the driving while under the influence of intoxicants offense proceeding pending completion of the diversion agreement or its termination.

(3) When the court denies a petition for a driving while under the influence of intoxicants diversion agreement, it shall continue the offense proceeding against the defendant. [1981 c.803 §20]

484.465 Disposition of filing fee. (1) The filing fee paid by a defendant at the time of filing a petition for a driving while under the influence of intoxicants diversion agreement as provided in ORS 484.450 shall be distributed by the court as follows if the petition is allowed:

(a) \$70 to the agency or organization providing the diagnostic assessment;

(b) \$5 to the Department of Revenue to be credited to the Police Standards and Training Account;

(c) \$100 to the Mental Health Division for deposit in the fund created under ORS 484.480 to be used for purposes of that fund; and

(d) \$100 to be distributed as provided for the disposition of costs under ORS 153.630.

(2) If less than the \$275 filing fee is paid to the court by the defendant under subsection (1) of this section, the money actually received shall be allocated in the amounts provided first to the agency or organization providing the diagnostic assessment, second to the Department of Revenue for credit to the Police Standards and Training Account, third to the fund created under ORS 484.480 and the remainder as provided for the disposition of costs under ORS 153.630. [1981 c.803 §21]

484.470 Motion to dismiss charge; notice to district attorney; effect of failure to fulfill agreement; admissibility of statements made in program. (1) At any time after the conclusion of the period of a driving while under the influence of intoxicants diversion agreement described in ORS 484.460, a defendant who has fully complied with and performed the conditions of the diversion agreement may apply by motion to the court wherein the diversion agreement was entered for an order dismissing the charge with prejudice.

(2) The defendant shall cause to be served on the district attorney or city attorney a copy

of the motion for entry of an order dismissing with prejudice the charge of driving while under the influence of intoxicants. The motion shall be served on the district attorney or city attorney at the time it is filed with the court. The district attorney or city attorney may contest the motion.

(3) If the court finds at any time prior to dismissing with prejudice the charge of driving while under the influence of intoxicants that the defendant failed to fulfill the terms of the diversion agreement, it may require the defendant to appear in court, terminate the agreement and continue the offense proceeding. The court may take into account at the time of sentencing any partial fulfillment by the defendant of the terms of the diversion agreement.

(4) If the defendant does not appear as provided by subsection (1) of this section within six months after the conclusion of the diversion period, and if the court finds that the defendant fully complied with and performed the conditions of the diversion agreement, and if it gives notice of that finding to the district attorney or city attorney the court may on its own motion enter an order dismissing the charge of driving while under the influence of intoxicants with prejudice.

(5) No statement made by the defendant about the offense with which the defendant is charged shall be offered or received in evidence in any criminal or civil action or proceeding arising out of the same conduct which is the basis of the charge of driving while under the influence of intoxicants, if the statement was made during the course of the rehabilitation program and to a person employed by the program. [1981 c 803 §22]

484.475 Designation of agencies to perform diagnostic assessments; duties of agency. (1) Courts having jurisdiction over driving while under the influence of intoxicants offenses shall designate agencies or organizations to perform the diagnostic assessment and treatment required under driving while under the influence of intoxicants diversion agreements described in ORS 484.445. The designated agencies or organizations must meet the standards set by the Mental Health Division to perform the diagnostic assessment and treatment of problem drinking, alcoholism and drug dependency and must be certified by the Mental Health Division. Wherever possible a court shall designate agencies or organizations to perform

the diagnostic assessment that are separate from those that may be designated to carry out a program of treatment for problem drinking, alcoholism or drug dependency.

(2) Monitoring of a defendant's progress under a diversion agreement shall be the responsibility of the diagnostic assessment agency or organization. It shall make a report to the court stating the defendant's successful completion or failure to complete all or any part of the treatment program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the court and the diagnostic assessment agency or organization. The court shall make the report of the diagnostic assessment agency or organization that is required by this subsection a part of the record of the case. [1981 c 803 §23]

484.480 Intoxicated Driver Program Fund. The Intoxicated Driver Program Fund is created to consist of moneys placed in the fund under ORS 484.465 or as otherwise provided by law. The moneys in the fund may be used only for the following purposes:

(1) To pay for providing treatment for individuals who enter driving under the influence of intoxicants diversion agreements under ORS 484.445 and who are found to be indigent. Payment for treatment under this subsection may include treatment for problem drinking, alcoholism or drug dependency. Payment shall be made as provided by the Mental Health Division by rule to agencies or organizations providing treatment.

(2) To pay for evaluation of driving while under the influence of intoxicants diversion agreement programs as provided by law.

(3) To pay the cost of administration of the fund by the Mental Health Division. [1981 c 803 §24]

TRAFFIC SAFETY COMMISSION

484.510 "Commission" defined. As used in ORS 484.510 to 484.600, "commission" means the Traffic Safety Commission created by ORS 484.520. [1967 c 499 §1]

484.520 Traffic Safety Commission; appointment of members; compensation and expenses. (1) There is created within the executive office of the Governor the Traffic Safety Commission. The commission shall consist of five members appointed by the

Governor and to serve at the pleasure of the Governor.

(2) The Governor shall appoint one member of the commission as chairman and another member as vice chairman.

(3) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [1967 c.499 §2, 1969 c 469 §1]

484.530 [1967 c 499 §3; repealed by 1969 c 469 §5]

484.540 [1967 c 499 §4, 1969 c 314 §56, repealed by 1969 c 469 §5]

484.550 Executive secretary; staff. (1) The Governor shall appoint a person to serve as executive secretary of the commission. The executive secretary is the chief administrative officer of the commission. He shall keep a complete record of all meetings of the commission.

(2) Subject to the approval of the Governor, the executive secretary shall appoint assistants, consultants, clerical staff and other employes needed to carry out the purposes of ORS 484.510 to 484.600. [1967 c.499 §5, 1969 c 469 §3]

484.560 Governor's authority to carry out ORS 484.510 to 484.600. Subject to ORS 484.550 (2), the Governor is authorized to incur the expenses he considers necessary to carry out ORS 484.510 to 484.600. [1967 c 499 §6]

484.570 Duties of commission. The commission shall:

(1) Organize, plan and conduct a state-wide highway safety program.

(2) Coordinate generally activities and programs of the several departments, divisions or agencies of the state engaged in promoting highway safety.

(3) Provide highway safety information and publicity to all appropriate media of information and develop other means of public information.

(4) Cooperate fully with all national, local, public and private agencies and organizations interested in the promotion of highway safety.

(5) Serve as a clearinghouse for all highway safety materials and information used throughout the state.

(6) Cooperate in promoting research, special studies and analysis of problems concerning highway safety.

(7) Make studies and suitable recommendations to the legislature concerning safety regulations and laws. [1967 c 499 §7, 1969 c 469 §4, 1975 c.605 §25]

484.580 City and county highway safety programs authorized. Any city or county may participate in the highway safety program and do all things necessary to secure the benefits available under ORS 484 510 to 484.600 and under the Federal Highway Safety Act of 1966 and any amendments thereto. [1967 c 499 §8]

484.590 Review of city and county highway safety programs; function of Governor. (1) The commission shall review plans and applications for participation by counties and cities in the Federal Government highway safety programs conducted under the Federal Highway Safety Act of 1966 and any amendments thereto. It shall make recommendations to the Governor regarding the approval of such plans and applications. The Governor shall, considering the recommendations of the commission, approve such plans or applications for funds in accordance with the uniform standards of the Federal Government regarding such programs. Subject to any conditions of the grant, the Governor shall disburse any funds received from the Federal Government or any of its agencies for county and city highway safety programs.

(2) The Governor, with the advice of the commission, may apply for, accept, receive and disburse grants available from the Federal Government or any of its agencies to carry out approved state highway safety programs conducted under the Federal Highway Safety Act of 1966 and the amendments thereto.

(3) The Governor may accept funds from other sources and enter into such contracts or agreements and do all things necessary to receive such funds for the purpose of carrying out the provisions of ORS 484.510 to 484.600. However, funds shall not be accepted which are subject to a restriction or a condition that is in conflict with any law of this state. [1967 c 499 §9]

484.595 Traffic Safety Commission Account. There hereby is established in the General Fund of the State Treasury an account to be known as the Traffic Safety Commission Account. All money credited to the account hereby is appropriated continuously for and shall be used to carry out the purposes of ORS 484.510 to 484.600. [1969 c 474 §5]

484.600 Highway Safety Trust Account. There hereby is established in the General Fund of the State Treasury an account to be known as the Highway Safety Trust Account. All money received by the Governor pursuant to ORS 484.590 shall be paid into the State Treasury and credited to the Highway Safety Trust Account. All money in such account hereby is appropriated continuously for and shall be used by the Governor in carrying out the purposes for which the funds were received. [1967 c 499 §10]

HABITUAL OFFENDERS

484.700 Short title. ORS 484.700 to 484.750 may be cited as the "Habitual Traffic Offenders Act." [1973 c 301 §12]

484.705 Definitions for ORS 484.700 to 484.750. (1) As used in ORS 484.700 to 484.750, unless the context requires otherwise, "habitual offender" means any person, resident or nonresident, who within a five-year period, has been convicted of or forfeited bail for the number and kinds of traffic offenses described by paragraph (a) or (b) of this subsection, as evidenced by the records maintained by the division.

(a) Three or more of any one or more of the following offenses:

(A) Any degree of murder, manslaughter, criminally negligent homicide, assault, recklessly endangering another person, menacing or criminal mischief resulting from the operation of a motor vehicle;

(B) Driving while under the influence of intoxicants as defined by ORS 487.540;

(C) Driving a motor vehicle while suspended or revoked as defined by ORS 487.560;

(D) Reckless driving as defined in ORS 487.550;

(E) Failure of the driver of a motor vehicle involved in an accident resulting in the death of or injury to any person or damage to any vehicle or property to perform the duties required by ORS 483.602 (1) and (2) and 483.604; or

(F) Fleeing or attempting to elude a police officer as provided in ORS 487.555.

(b) Twenty or more of any one or more offenses involving the operation of a motor vehicle which violations are required to be reported to the division, including offenses enumerated in paragraph (a) of this subsection; however, no person shall be considered a

habitual offender under this paragraph until the person's 21st conviction or bail forfeiture within a five-year period when the 20th conviction or bail forfeiture occurs after a lapse of two years or more from the last preceding conviction or bail forfeiture.

(2) The offenses included in paragraphs (a) and (b) of subsection (1) of this section include city traffic offenses, as defined by ORS 484.010, and offenses under any federal law, or any law of another state, including subdivisions thereof, substantially conforming thereto but do not include nonmoving offenses as defined in ORS 483.351, 483.353, 483.382 to 483.545, 487.095, 487.155, 487.575, 487.580, 487.605, 487.615, 487.630, 487.650, 487.710, 487.730, 487.839, 487.841, 487.843, 487.895, 487.900, 487.905, 487.915 to 487.940 and licensing violations provided in ORS chapters 481 and 482.

(3) As used in ORS 484.700 to 484.750, "division" means the Motor Vehicles Division of the Department of Transportation or a similar agency of another state. [1973 c.301 §2, 3, 1975 c 451 §155, 1977 c 882 §37, 1981 c 818 §38]

484.710 Policy. It is hereby declared to be the policy of this state:

(1) To provide maximum safety for all persons who travel or otherwise use the public highways of this state;

(2) To deny the privilege of operating motor vehicles on the public highways to persons who by their conduct and record have demonstrated their indifference for the safety and welfare of others and their disrespect for the laws of the state, the orders of her courts and the statutorily required acts of her administrative agencies; and

(3) To discourage repetition of criminal acts by individuals against the peace and dignity of the state and her political subdivisions and to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual offenders who have been convicted repeatedly of violations of traffic laws. [1973 c 301 §1]

484.715 Division to provide opportunity of advisory meeting with licensee after certain convictions or bail forfeiture; notice to licensee. (1) When the division receives an abstract of the conviction or bail forfeiture, under ORS 153.625, and the conviction or bail forfeiture is the second one of those described by ORS 484.705 (1)(a) for the convicted person, the division immediately

shall notify the licensee and offer the licensee an opportunity of an advisory meeting with a representative of the division.

(2) If the licensee requests a meeting under subsection (1) of this section, the meeting shall be held in the county wherein the licensee resides. At the meeting, the division shall advise the licensee of the provisions of ORS 484.700 to 484.750 and of the availability of educational programs for driver improvement.

(3) Service of the notice required under subsection (1) of this section is accomplished either:

(a) By mailing the notice by certified mail restricted delivery, return receipt requested, to the person's address as shown by division records; or

(b) By personal service in the same manner as a summons is served in an action at law.

(4) A finding under ORS 484.730 that the person is a habitual traffic offender shall not be prevented if:

(a) The licensee refuses to sign a receipt for certified mail containing the notice, or fails to pick up certified mail after proper notification of attempted delivery is made; or

(b) The notice cannot be delivered to the licensee because the licensee has not notified the division of a change in address or residence in accordance with ORS 482.290. [1973 c.301 §4, 1981 c 207 §1]

484.720 Administrator to certify to district attorneys operating records of habitual offenders; proceedings against habitual offenders. (1) The administrator of the division shall certify in triplicate an abstract of the operating record as maintained by the division, of a habitual offender to the district attorney of the county in which the person resides, as his residence is shown by the records of the division. If the person is not a resident of this state, the record shall be certified to the Attorney General. The certified abstract may be admitted in evidence and shall be prima facie evidence that the person named therein was duly convicted of each offense shown by the abstract. If such person denies any of the facts as stated therein, he shall have the burden of proving that the fact is untrue.

(2) The district attorney upon receiving the abstract shall forthwith file a complaint against the person named therein in the cir-

cuit court for the county in which such person resides, charging him with being a habitual offender. If the person is a nonresident of this state, the Attorney General shall file such complaint in the Circuit Court for Marion County. [1973 c 301 §5]

484.725 Order to show cause why habitual offender should not be barred from vehicle operation; service of order; procedure for review of convictions. (1) The court in which the complaint is filed shall enter an order, which incorporates the abstract and is directed to the person named therein, to show cause why the person should not be barred as a habitual offender from operating a motor vehicle on the highways of this state. A copy of the show cause order shall be served on the person named therein in the manner prescribed for the service of summons in a civil action.

(2) If the person denies having been convicted of any offense necessary for a holding that the person is a habitual offender, and if the court cannot, on the evidence available to it, make a determination of the issue, the court may certify the issue to the court in which the conviction was made. The court to which the certification is made shall forthwith conduct a hearing to determine the issue and send a certified copy of its final order determining the issue to the court in which the complaint was filed. [1973 c.301 §6; 1979 c 284 §159]

484.730 Dismissal of proceedings brought against innocent persons; order to habitual offender not to operate vehicles and to surrender operating licenses and permits. If the court finds that the person before the court is not the person named in the abstract, or that he is not a habitual offender, the proceeding shall be dismissed; but if the court finds that the person before the court is the person named in the abstract and that the person is a habitual offender, the court shall so find and by appropriate order direct the person not to operate a motor vehicle on the highways of this state and to surrender to the court all licenses or permits to operate a motor vehicle on the highways of this state for disposal in accordance with ORS 482.470. The clerk of the court shall file with the division a copy of the order whereupon the division shall forthwith revoke the license of the person to operate motor vehicles. [1973 c.301 §7]

484.735 Limitation on issuance of operating license to habitual offenders. (1) Except as provided in subsection (2) of this section, a license to operate motor vehicles in this state shall not be issued to a habitual offender:

(a) For a period of 10 years after the date of the order of the court finding a person to be a habitual offender; and

(b) Until the privilege of the person to operate a motor vehicle in this state has been restored by order of a court of record entered in a proceeding as provided by ORS 484.745.

(2) A one-year, renewable probationary license may be issued to a habitual offender if he:

(a) Successfully completes a defensive driving course conducted by the division;

(b) Continually satisfies the conditions of the probationary license; and

(c) Submits a report of a diagnostic examination conducted by a private physician showing to the satisfaction of the State Health Officer that he is physically and mentally competent to drive.

(3) The conditions of a probationary license shall include that if a habitual offender is convicted of more than one moving violation within any 12-month period the probationary license shall be revoked and may not be reinstated for one year from the date of last conviction.

(4) The division may establish by rule additional conditions of a probationary license. [1973 c.301 §8]

484.740 Effect of operating vehicle by person under court order to refrain from vehicle operation. Except as provided in ORS 484.735 (2), it shall be unlawful for any

person to operate a motor vehicle in this state while the order of the court prohibiting such operation remains in effect. A person who violates this section commits a Class C felony. [1973 c 301 §9; 1977 c 800 §2]

484.745 Petition for restoration of privilege to operate vehicle by habitual offender; terms and conditions of restoring privilege. At the expiration of 10 years after the date of any final order finding a person to be a habitual offender the person may petition any court of record in the county in which he then resides, for restoration of his privilege to operate a motor vehicle in this state. Upon such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to operate a motor vehicle in this state upon such terms and conditions as the court may prescribe, subject to other provisions of law relating to the issuance of operators' or chauffeurs' licenses. [1973 c 301 §10]

484.750 Appeal of order barring vehicle operation. An appeal may be taken from any final action or order of a court entered under ORS 484.700 to 484.750 as provided in civil cases. [1973 c 301 §11]

PENALTIES

484.990 Penalties. Any person who in connection with the issuance of a citation, or the filing of a complaint, for a traffic offense, as defined in ORS 484.010, knowingly certifies falsely to the matters set forth therein commits a Class A misdemeanor. [1959 c.664 §19, 1975 c 451 §156, 1981 c 818 §39]

