

and Related Charges

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I. Introduction: How to View Traffic Violations and Crimes as Part of the DUII Case

A. Traffic Violations

Traffic violations and misdemeanor crimes are routinely a part of a DUII. In general, it is a traffic violation which gives a police officer cause to pull the vehicle over. It is during the interaction with the driver that the officer usually “develops” the probable cause which they need in order to ask the driver to step out of the vehicle and perform field sobriety tests.

Common traffic violations that occur along with a DUII include speeding, failure to maintain lane, failure to obey a traffic control device (running a red light/stop sign), failure to signal 100 ft prior to making a turn, and careless driving. Other traffic violations can occur once the stop has been made, such as refusing to provide a breath sample and driving without valid insurance.

Traffic violations can present their own problems regarding license suspensions and revocations, and although the suspension/revocation will be concurrent to the DUII suspension/revocation, the prospect of a second suspension is often what drives the strategy in handling a violation case.

B. Crimes

In addition to traffic violations, other crimes often accompany a DUII. These include reckless driving, reckless endangerment, failure to perform the duties of a driver when property is damaged, criminal mischief in the second degree, assault in the fourth degree, and driving while suspended, which can also be a traffic violation.

While felony charges can also be part of a DUII, this chapter will concentrate on the routine misdemeanor offenses which a DUII can lead to.

C. Penalties

Traffic violations are often treated as separate from the DUII, and depending on what court the violation is filed in, and whether it is a prosecutor or a police officer who is handling the violation case, the ticket may be able to be dismissed as part of a diversion or other negotiated agreement.

Misdemeanor crimes carry their own penalties, including possible jail time, license suspensions/revocations, and financial penalties. It is important to remember that for many clients, the worst part of a DUII case is the license suspension. If there are multiple other misdemeanor crimes which accompany the DUII, that can lead to very severe suspensions/revocations, including the habitual offender revocation.

Choosing a strategy that can effectively resolve the other crimes is vital to a successful outcome in a DUII case. If multiple charges are filed, options such as a civil compromise may be available. Given your county and your client's prior DUII history, a district attorney may be willing to dismiss or reduce the other misdemeanor crimes as part of a negotiated settlement or diversion agreement.

II. Traffic Violations: Elements, Defenses, Sentencing (and Possible Suspensions)

“To lawfully stop and detain a person for a traffic infraction, an officer must have probable cause to believe that that infraction has been committed. [State v. Isley, 182 Or App 186, 190, 48 P3d 179 \(2002\)](#). ‘Probable cause exists if, at the time of the stop, the officer subjectively believes that the infraction occurred and if that belief is objectively reasonable under the circumstances.’ [Id.](#) ‘[A]n officer’s subjective belief that a traffic infraction occurred is objectively reasonable if, and only if, the facts as the officer perceived them actually satisfy the elements of a traffic infraction.’ [State v. Tiffin, 202 Or App 199, 204, 121 P3d 9 \(2005\)](#).” [State v. Wentworth, 252 Or App 129, 133, 284 P3d 1250 \(2012\)](#).

A. Speeding

1. [ORS 811.100](#) (Basic Rule Violation)

- a. (1) A person commits the offense of violating the basic speed rule if the person drives a vehicle upon a highway at a speed greater than is reasonable and prudent, having due regard to all of the following:
 - The traffic
 - The surface and width of the highway
 - The hazard at intersections
 - Weather
 - Visibility
 - Any other conditions then existing
- b. Violating the Basic Rule is a Class B traffic violation if the person drives at a speed that is not reasonable and prudent under the circumstances, given the conditions. 811.100(4).
A Class B traffic violation carries the following financial penalties:
 - Maximum Fine: \$1,000; 153.018(2)(b).
 - Presumptive Fine: \$260; 153.019(1)(b).
 - Minimum Fine: \$130; 153.021(1)(b).

- c. Suspension if driving over 100 mph: 30–90 days, presumptive fine is \$1,150. 811.109(5).
- d. 811.109(4): 30-day suspension if speeding more than 30 mph and one prior speeding ticket within the past year.

2. 811.105 (speeds that are evidence of violation, meaning no posted speed)

If a person travels at a higher rate of speed than the following, they are in violation of the Basic Rule:

- 15 mph in an alley or narrow residential roadway. 811.105(2)(a).
- 20 mph in a business district. 811.105(2)(b).
- 25 mph in any public park. 811.105(2)(c).
- 25 mph on a highway in a residential district if:
 - The residence district is not located within a city, and
 - The highway is neither an arterial nor a collector highway. 811.105(2)(d)(A)(B).
- 55 mph in locations not otherwise described. 811.105(2)(e)

3. 811.109 (penalties for violation of a specific speed limit or posted speed, 811.109(1)(3))

- Speed from 1 to 10 mph in excess of speed limit is a Class D traffic violation. 811.109(1)(a).
- Speed from 11 to 120 mph in excess of speed limit is a Class C traffic violation. 811.109(1)(b).
- Speed from 21 to 30 mph in excess of speed limit is a Class B traffic violation. 811.109(1)(c).
- Speeding over 30 mph in excess of speed limit is a Class A traffic violation. 811.109(1)(d).
- If the speed limit is 65 mph or greater and the person exceeds the speed limit by 10 mph or less, the offense is a Class C traffic violation. 811.109(2)(a).
- If the speed limit is 65 mph or greater and the person exceeds the speed limit by 11 mph to 20 mph, the offense is a Class B traffic violation. 811.109(2)(b).
- If the speed limit is 65 mph or greater and the person exceeds the speed limit by more than 20 mph, the offense is a Class A traffic violation. 811.109(2)(c).

4. 811.111 (Violating a Speed Limit)/Elements

- a. Violation of posted speed, or if no speed posted, driving faster than:
 - 15 mph in an alley or narrow residential roadway. 811.111(d)(A).
 - 20 mph in a business district. 811.111(d)(B).
 - 25 mph in a public park. 811.111(d)(C).
 - 25 mph on a highway in a residence district if the highway is not an arterial highway. 811.111(d)(D).
 - 65 mph on an interstate highway. 811.111(d)(E).
 - 55 mph in locations not otherwise described. 811.111(d)(F).
- b. Evidence on record as to what the speed limit is:
 - i. The police officer must state on the record what the speed limit was, and how fast the client was traveling. It is not enough for the officer to state that the client was traveling faster than the posted speed limit, without actually stating the speeds.
 - ii. Yes, it can and does happen that no evidence is presented as to what the posted speed was.

5. Defenses

- a. Emergency situation: the speed must be reasonable and prudent under the circumstances.

Although a ticket can be issued, the fact of a pregnancy, medical emergency, family emergency, or other type of emergency may be grounds for a judge to dismiss the ticket.

If the officer is unwilling to dismiss the ticket, given the emergency, ask for a driver-safety class in exchange for dismissal.

If the officer is unwilling to deal, then argue to the judge that the speed was in fact reasonable and prudent under all of the attendant circumstances.

- b. If approaching a solid yellow light, argue that it would have been unsafe for the person to slow down or stop, as they could be hit by another driver who “jumps the gun.”

In addition, other traffic violations can occur if the person stops in the middle of an intersection, such as failure to obey a traffic control device.

In order to avoid an accident and other traffic violations, the person sped. Argue that under the circumstances, speeding was reasonable and prudent.

- c. LIDAR is not infallible, so challenge it.

Although it is admissible as scientific evidence. [*State v. Branch*, 243 Or App 309, 316, 324 \(2011\)](#).

Even though the LIDAR reading is admissible, if the speed is just a few mph over the limit or Basic Rule speeds, argue that LIDAR is uncertain enough to call the reading into question.

Also, if there were multiple cars traveling at the same or similar rate of speed, argue that the LIDAR reading could have been for any number of vehicles, and there is no evidence that the reading is specific to your client. It is the officer or prosecutor’s burden to show that it was in fact your client who sped at the speed listed by LIDAR.

6. Penalties

Financial penalties and violation designation are the same as for violation of the Basic Rule; *see* 811.109. 811.111(2).

B. Failure to Drive within a Lane

1. [ORS 811.370](#) (Violation and Penalty)/Elements

A person fails to drive within a lane if they operate a motor vehicle on a roadway that is divided into two or more clearly marked lanes for traffic and the driver does not operate the vehicle as nearly as practicable entirely within a single lane, and does not refrain from moving from that lane until the driver has first made certain that the movement can be made safely. 811.370(1)(a-b).

Failure to drive within a lane is a Class B traffic violation which carries the following financial penalties:

- Maximum Fine: \$1,000; 153.018(2)(b).
- Presumptive Fine: \$260; 153.019(1)(b).
- Minimum Fine: \$130; 153.021(1)(b).

2. Case Law

The Court of Appeals recognizes that the requirement to stay “entirely within a single lane” is not absolute, and has hinted that if a car’s tires touch the center line only briefly, that would not be enough to be a violation (although they have not expressly stated that to be the case, and the court has dodged that question on several occasions). See [State v. McBroom, 179 Or App 120, 39 P3d 226, 328, 329 n.3 \(2002\)](#).

Failure to drive within a lane is applicable when the person drives on either side of the lane, whether it be the center line or the fog line, as the fog line is in fact a lane divider. See [State v. Wentworth, 252 Or App 129, 134, 284 P3d 1250 \(2012\)](#) (citing [State v. Roberts, 241 Or App 589, 591, 251 P3d 232 \(2011\)](#)).

3. Defenses

- a. The violation was *de minimus*, and constituted a brief touching of the line. One touch for a second versus four to five touches may get traction with some courts that the violation was *de minimus*.
- b. If applicable, the vehicle is too large to stay off the lines of the lane. For example, a client with a dually pickup truck that touches the center line with the outside tires may be able to argue, given the width of the lane, that the truck is too big to stay off the lines and totally within the lane. Argue that it is not “practicable” to stay completely within the lane, given the size of the vehicle.
- c. Argue a legitimate reason to go over the lines, such as an impediment in the road, a pothole or some other reason other than simply bad driving, which caused the vehicle to go over the lines. This argument is valid so long as it was safe to cross the lines.
- d. In the rare case, if an officer is already following a vehicle and the officer’s lights prevent the driver from clearly seeing the lines on either side of the lane, there may be an argument that the officer himself caused the violation. Look into this particularly if the client has lawful driving privileges, but difficulty with visibility at night.

Practice Tip

This violation is very often what gives the officer cause to pull the vehicle over, as it is one of the easiest traffic rules to violate. It is difficult to imagine that anyone, intoxicated or not, does not at some point in their travels touch one line or the other, every time they get into a car. The reality is that not everyone is getting tickets for failure to drive within a lane. This traffic violation is one of the best proxies for getting the vehicle to stop, and then the DUII investigation can begin.

If your client has this violation as part of their DUII case, ask for a diversion class or at the very least, the minimum fine. Especially if the touching was brief and momentary, and was not a full cross-over to another lane. Many officers may be willing to go along with a negotiated settlement or diversion program.

C. Failure to Obey a Traffic Control Device

1. [ORS 811.265](#) (Violation and Penalty)/Elements

- a. 811.265(1)(a): The person must fail to obey a traffic control device (commonly known as a stop sign or light), or
- b. 811.265(1)(b): fail to obey a specific traffic control device.
 - i. A driver facing a steady yellow light or arrow shall stop at a clearly marked stop line, but if none, shall stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, then before entering the intersection. 811.260(4)-(5).

If the light or arrow is yellow and it is not safe to stop, the driver may proceed with caution through the light. 811.260(4)-(5).
 - ii. A driver facing a steady circular red signal light, or red arrow alone shall stop at a clearly marked stop line, but if none, before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, then before entering the intersection. The driver shall remain stopped until a green light is shown except when the driver is permitted to make a turn under ORS 811.360 (turning right on a red light). 811.260(7)-(8).
 - iii. A driver approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering the marked crosswalk on the near side of the intersection or, if there is no marked crosswalk, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching so closely as to constitute an immediate hazard during the time when the driver is moving across or within the intersection. 811.260(15).
 - iv. A driver approaching a yield sign shall slow the driver's vehicle to a speed reasonable for the existing conditions and if necessary for safety, shall stop at a line as required for stop signs under this section, and shall yield the right of way to any vehicles in the intersection or approaching so closely as to constitute an immediate hazard. 811.260(16).

2. Penalties

Failure to obey a traffic control device is a Class B traffic violation and carries the following financial penalties.

- Maximum Fine: \$1,000; 153.018(2)(b).
- Presumptive Fine: \$260; 153.019(1)(b).
- Minimum Fine: \$130; 153.021(1)(b).

3. Defenses

- a. A person does not fail to obey a traffic control device if they are following the directions of a police officer. 811.265(2)(a).
- b. A person does not fail to obey a traffic control device if they are driving an emergency vehicle or ambulance in a manner consistent with their duties and privileges. 811.265(2)(b).
- c. A person does not fail to obey a traffic control device if they are properly executing a right turn on a red light. 811.265(2)(c).
- d. A person does not fail to obey a traffic control device if they are driving in a funeral procession. 811.265(2)(d).
- e. If the traffic control device is not in a proper position and legible to a reasonably observant person at the time and place of the alleged violation, then there can be no violation. 810.250(1).

This is an affirmative defense for the defendant to prove, rather than an element of the offense. [State v. Boly, 210 Or App 132, 149 P3d 1237, 1240 \(2006\)](#).

- f. If cited for running a red light but the light was yellow prior to or at the time the vehicle enters the intersection, argue that it would have been unsafe to stop under the circumstances. This is applicable particularly if traveling at medium to higher rates of speed, but should also apply to low speeds when under the conditions it would not be safe to stop.

D. Failure to Signal Prior to Turn

1. [ORS 811.335 \(Violation and Penalty\)](#)/Elements

A person commits the offense of making an unlawful or unsignaled turn if the person is operating a vehicle upon a highway and the person turns the vehicle right or left when the movement cannot be made with reasonable safety or the person fails to give an appropriate signal continuously for not less than 100 ft prior to making the turn. 811.335(1)(a)-(b).

This is expressly a distance requirement, and not a duration requirement (signaling for the amount of time required to travel the requisite distance, rather than signaling for the requisite distance).

This violation applies to both stop signs and stop lights. [State v. Arthur, 158 Or App 623, 625-26, 976 P2d 1146 \(1999\)](#).

2. Penalties

Failure to signal prior to making a turn is a Class D traffic violation and carries the following financial penalties:

- Maximum Fine: \$250. 153.018(2)(d).
- Presumptive Fine: \$110. 153.019(1)(d).
- Minimum Fine: \$60. 153.021(1)(d).

3. Defenses

Impossibility: If the client is cited for not having signaled for 100 ft prior to making a turn, argue, if applicable, that it was impossible to signal for 100 ft prior to the turn. While this does not negate probable cause to believe that the violation had been committed, it is a defense in the proper circumstances (none of which have yet to be brought to the appellate courts). See [State v. Chilson, 219 Or App 136, 141-43, 182 P3d 241 \(2008\)](#).

The impossibility argument has been used before when arguing that the 100 ft rule leads to absurd results. However, the courts have made it clear that unless the person has actually signaled for the entire distance that they possibly can, even if that is less than 100 ft, then the violation will stand.

Even Oregon Supreme Court Chief Justice Balmer got a ticket for not signaling for 100 ft when he pulled out of the Supreme Court's parking lot and then made a turn, the turn being less than 100 ft from where he pulled out of the parking lot.

E. Careless Driving

1. [ORS 811.135](#) (Violation and Penalty) Elements

Careless driving is committed if the person drives in a manner that endangers or would be likely to endanger any person or property. 811.135(1).

Careless driving is a Class B traffic violation unless the offense contributes to an accident, in which case it is a Class A traffic violation. 811.135(2).

2. Penalties

a. A Class B traffic violation carries the following financial penalties:

- Maximum Fine: \$1,000; 153.018(2)(b).
- Presumptive Fine: \$260; 153.019(1)(b).
- Minimum Fine: \$130; 153.021(1)(b).

b. A Class A traffic violation carries the following financial penalties:

- Maximum Fine: \$2,000. 153.018(2)(a).
- Presumptive Fine: \$435. 153.019(1)(a).
- Minimum Fine: \$220. 153.021(1)(a).

- c. If the offense contributed to serious physical injury or death of a vulnerable user of a public way, then the court shall require 811.135(3)(a)(A-B):

A traffic safety class and 100 to 200 hours of community service, which must include activities related to driver improvement and providing public education on traffic safety. These requirements must be completed within a year after the judgment. 811.135(3)©,(4).

The court shall also order but suspend (on the condition that the class and community service is done) a fine of \$12,500 and a one-year license suspension. 811.135(3)(b)(A-B).

3. **Some officers believe two infractions equals careless driving.**

There is no basis in the law for this opinion, and every time it has come up, a not guilty verdict has been rendered. If you have an officer who believes this, try the case, unless they are willing to dismiss the ticket in exchange for a driver safety class.

4. **Defenses**

- a. If the officer does not note on the ticket that the offense contributed to serious physical injury or death of a vulnerable user of a public way, then argue that the enhanced penalties cannot be imposed. 811.135(6).
- b. If the client has yet to complete the requirements set out in 811.135(3)(a)(A-B), ask for an extension of time and argue that good cause exists for failure to complete the requirements within a year. 811.135(4)(b)(A).
- c. Argue that there was no danger to anyone caused by the client. Depending on the circumstances, a series of improper moves may not have any likelihood of endangering any person or property. If that is the case, argue that careless driving is either the wrong infraction, and thus no penalty can be imposed, or that the conduct does not constitute careless driving.

F. **Breath Test Refusal**

1. **ORS 813.095 (violation and penalty)**

A person commits this offense if they refuse to take a breath test as requested by police officers. 813.095(1)(a).

The person must first be arrested for DUII. 813.100(1).

The officer must have reasonable grounds to believe that the arrested person was driving while under the influence of intoxicants. 813.100(1).

Prior to the test, the client must be informed of their rights and consequences under the Implied Consent laws. 813.100(1).

2. Penalties

- a. A refusal to take a breath test is a specific fine violation. The presumptive fine is \$650. 813.095(2).
- b. License suspension from DMV for a person with no prior DUIIs.

Refusal to take a breath test results in a one year license suspension through DMV. 813.420(1)

There is no separate license suspension for the traffic violation itself unless the client holds a commercial driver's license.

3. Defenses

- a. For purposes of the Implied Consent laws, it is *not* a defense that the client is not a native English speaker or could not, due to language, understand to rights and consequences as given to them. [*State v. Cabanilla*, 351 Or 622, 624-25, 273 P3d 125 \(2012\)](#).
- b. Argue that the officer did not have reasonable grounds to believe that the driver was under the influence of intoxicants.
- c. Argue that at the time of the request, the driver had not yet been arrested for DUII.
- d. Argue that the refusal was equivocal or ambiguous. This argument may apply when the driver's response to the officer's request is "I don't know," "I'm not sure," "I don't really want to," etc.

Be careful with this though, as a refusal need not be explicit. [*In re Fitzpatrick v. Oregon Dep't of Transp.*, 236 Or App 113, 235 P3d 701, 703 \(2010\)](#); [*Moore v. Motor Vehicles Division*, 293 Or 715, 722, 652 P2d 794 \(1982\)](#).

If the client remains silent, and is not told that continued silence will constitute a refusal, then an argument of non-refusal may apply.

Argue that the officer should have given an ultimatum regarding the request for a breath sample—i.e.; either take the test, or face the consequences of a refusal. *See In re Fitzpatrick v. Oregon Dep't of Transp.*, 236 Or App 113, 235 P3d 701, 704 (2010) (giving ultimatums may be the best practice).

- e. Argue that the client was not given a reasonable time to consult with counsel prior to making a decision. This issue often comes up when a client has a particular attorney in mind, can't reach the attorney by phone, and says that the don't want to accept or refuse without speaking to that particular attorney. The courts mostly treat this sequence as a refusal, but that is generally because lots of time goes by, such as 45 minutes. If only the required observation period has elapsed, and the client can't reach their attorney, argue that this is a case where a reasonable opportunity to consult with counsel has been denied.

G. Driving Without Insurance

1. [ORS 806.010](#) (Violation and Penalties)/Elements

A person commits the offense if they operate a motor vehicle in Oregon on a highway or premises open to the public without either being insured or proving ODOT with other proof of compliance with the financial responsibility laws. 806.010(1)(a-b).

2. Penalties

- a. Driving without insurance is a Class B traffic violation which carries the following financial penalties:
 - Maximum Fine: \$1,000; 153.018(2)(b).
 - Presumptive Fine: \$260; 153.019(1)(b).
 - Minimum Fine: \$130; 153.021(1)(b).
- b. If an accident resulted during the violation, the person's license shall be suspended for one year, and thereafter until the person complies with the financial responsibility laws. [809.417\(2\)](#).
- c. If the person does not obtain insurance within 30 days of the violation, that itself if a Class A traffic violation, and in addition to the fine amount, the person is subject to a license suspension which will continue until proof of compliance is made. 806.010(3)(b); 806.230; 809.415(3)(a-b).

3. Defenses

- a. Often times, if a person had valid insurance, but does not have their insurance card on them, the officer will be willing to dismiss the ticket so long as the client provides proof of insurance at the time of their court date.
- b. Insurance is not required for any of the following vehicles: an antique issued permanent registration; a farm trailer or tractor; an implement of husbandry; a motor vehicle maintained as a collector's item and used for exhibitions, parades, club activities and similar uses, but not primarily used for transportation; a snowmobile or all-terrain vehicle; a motor vehicle not used on a highway or premises open to the public; a motor assisted scooter; or an electric personal assistive mobility device.
- c. If the person's license has already been suspended, a hearing may be requested. At that hearing, ODOT may rescind the suspension if the person had a reasonable and good faith belief of compliance, or if the Department determines that the person had a reasonable and good faith belief that they were in compliance with the law, and the person is currently in compliance. 809.450(1),(2)(d-e).

H. No Diversion for CDL-holders

A person who holds a valid Commercial Driver's License is not eligible for any diversion program, period. http://www.oregon.gov/ODOT/DMV/pages/driverid/federal_cdl_reqs.aspx

Special suspensions come to CDL holders if they commit multiple serious or major traffic violations.

1. Serious Traffic Violations: [ORS 801.477](#)

DMV will suspend a CDL for 60 days if the client commits two serious violations in a three-year period. The suspension is 120 days if three or more violations are committed.

Serious violations, committed while operating any vehicle include: reckless driving, driving 100 mph or more, and exceeding the speed limit by 30 mph or more when the court imposes a suspension.

Serious violations committed while operating a commercial vehicle include: exceeding the speed limit by 15 mph or more, operating the vehicle without driving privileges, failure to carry a license or present a license to a police officer, driving on the left side of a curve/grade/intersection/ or rail crossing, failure to drive within a lane, unsafe passing on the left or right, following too closely, any traffic violation when the violation is connected to a fatal accident, violating the law of a different state that corresponds to the above.

2. Major Traffic Violations

- a. DMV will suspend a CDL for one year for conviction of any of the following if the client was operating a commercial vehicle or their personal vehicle while holding a CDL:

Being under the influence of alcohol or controlled substances, operating a commercial vehicle with a BAC of .04% or greater, refusing a breath or blood test, hit and run, using the vehicle to commit a felony, driving a commercial vehicle while the CDL is suspended/revoked/cancelled, causing a fatality through negligent operation of the commercial vehicle.

- b. The suspension is for life if convicted of multiple major violations.

After 10 years, the client can petition for reinstatement. If reinstated and then convicted of another major violation, the suspension is for life without potential reinstatement. A lifetime suspension is also imposed if the client used any vehicle to commit a felony involving manufacturing, distributing, or dispensing of controlled substances. There is no possibility of reinstatement.

I. Financial Penalties

1. Max Fines: [ORS 153.018](#)

- Class A traffic violation: \$2,000. 153.018(2)(a).
- Class B traffic violation: \$1,000. 153.018(2)(b).
- Class C traffic violation: \$500. 153.018(2)(c).
- Class D traffic violation: \$250. 153.018(2)(d).

- If the violation is a specific fine violation, then the maximum is \$2,000 or that which is prescribed by the violation statute. 153.018(2)(e).

2. Presumptive Fine: 153.019

- Class A traffic violation: \$435. 153.019(1)(a).
- Class B traffic violation: \$260. 153.019(1)(b).
- Class C traffic violation: \$160. 153.019(1)(c).
- Class D traffic violation: \$110. 153.019(1)(d).
- If the violation is a specific fine violation, then the presumptive fine is that which is prescribed by the violation statute or an amount equal to the greater of 20% of the maximum fine, or the minimum fine. 153.018(2)(a-b).

3. Minimum Fine: 153.021

- Class A traffic violation: \$220. 153.021(1)(a).
- Class B traffic violation: \$130. 153.021(1)(b).
- Class C traffic violation: \$80. 153.021(1)(c).
- Class D traffic violation: \$60. 153.021(1)(d).
- For a specific fine violation, the court may not reduce the fine more than 20% of the presumptive fine. 153.021(2).

Seek minimum fine as courtesy due to DUII plea and accepting of consequences for DUII.

J. Habitual Offender Revocation

[809.600\(1\)](#): Three or more criminal convictions results in habitual offender designation—DUII included.

Reckless endangerment, criminal mischief, criminal DWS, reckless driving, failure to perform duties of a driver are all common crimes that accompany a DUII which can lead to a revocation under this section. Civil compromise and plea bargains are essential to prevent designation as a habitual offender.

Revocation is for at least five years; 809.650(2).

- Probationary permit may be available. [807.270\(1\)](#).
- Pay applicable fees, which is \$50. 807.270(5); 807.370(21).
- Complete driver improvement course approved by DMV. 807.270(6)(a).
- Submit report of diagnostic exam done by private physician showing person is physically/mentally competent to drive. 807.270(6)(b).
- A probationary permit is not available for commercial motor vehicles. 807.270(4).

Restoration of privileges is available; 809.660.

- Application shall be made to ODOT, which shall grant the application upon good cause shown, with terms and conditions, as decided in ODOT’s discretion. 809.660(1)-(2).

DMV will revoke driving privileges if a person is convicted of 20 or more traffic violations within a five year period, and the revocation is for at least five years. 809.600(4)(a); 809.650(2). Same provisions for a probationary permit and restoration apply. Administrative review allowed. 809.640.

K. Driver Improvement Program

If a person has three traffic violations in 18 months, DMV will impose a 30-day midnight to 5 a.m. license restriction, unless the person is driving to or from work or for work-related purposes. [OAR 735-072-0027\(2\),\(3\)\(b\)](#).

If a person has four infractions in 24 months, DMV will impose a 30-day suspension/revocation. [OAR 735-072-0027\(4\)\(a\),\(6\)](#).

L. Highway Work Zones

The fines double for a highway work zone. The officer must note on the ticket that the violation occurred in a work zone. [153.020\(1\)](#). “Highway work zone” means an area identified by advance warning where road construction, repair or maintenance work is being done by highway workers on or adjacent to a highway, regardless of whether or not highway workers are actually present. [811.230\(1\)\(b\)](#).

No plea bargaining? Anecdotally, police officers say that they are not allowed to negotiate for a reduction of offense or fine, or for a diversion program, if the offense occurred in a highway work zone. If the officer insists this to be policy, argue for some leniency or diversion if there were no actual highway workers present.

Financial penalties: presumptive fines [153.020](#):

- Class A traffic violation: \$870. [153.019\(1\)\(a\)](#).
- Class B traffic violation: \$520. [153.019\(1\)\(b\)](#).
- Class C traffic violation: \$320. [153.019\(1\)\(c\)](#).
- Class D traffic violation: \$220. [153.019\(1\)\(d\)](#).
- For specific fine violations, the presumptive fine is double the amount prescribed by the violation. [153.020\(2\)](#).

M. How long do traffic tickets stay on a DMV record for purposes of Insurance?

DMV will purge a traffic record after three years. Thus, once the three years is complete, and assuming no new violations within that time, a person’s insurance rates will go down.

III. Tracking

Tracking of Traffic Violations to DUII (Circuit Court and Muni Courts)

A. Dual Jurisdiction

A circuit court, justice court, and municipal court all have concurrent jurisdiction over traffic violations. [221.339\(1\)](#); [153.036\(2\)\(a\)](#). The violation proceeding may be brought in any of the three courts due to the fact that almost every time a person commits a violation in a county, they are also committing a violation in a city. Justice courts only hear violations committed in counties, and municipal courts only hear violations committed in cities, generally.

An example is if a person commits a violation in Clackamas, the case can be brought in the Clackamas County Circuit Court or the Clackamas County Justice Court.

If a person commits a violation in Milwaukie, the case can be brought in the Milwaukie Municipal Court, Clackamas County Justice Court, or the Clackamas County Circuit Court.

It often depends on what police agency is alleging the violation that determines where the case goes. A Milwaukie police officer will usually file the case in the municipal court, whereas a Clackamas County Sheriff will usually file the case in the justice court or circuit court.

B. Waiver to Circuit Court?

No, a defendant may not waive into a circuit court from a municipal court. 153.036(3)(b). There is no procedure to get the case into a circuit court, unless the defendant has lost and files an appeal for a trial de novo in the circuit court pursuant to 221.359, which applies only to municipal and justice courts that are *not* courts of record.

IV. Related Misdemeanor Charges

A. Reckless Driving

This is probably the most common misdemeanor to accompany a DUII charge.

1. [ORS 811.140](#) (Violation and Penalty)

A person commits the offense of reckless driving if the person recklessly drives a vehicle upon a highway or other premises described in this section in a manner that endangers the safety of persons or property. 811.140(1).

Proof of driving that is endangering need not be proved by direct evidence of that person's driving. [State v. Smith, 218 Or App 568, 572-73, 180 P3d 148 \(2008\)](#).

2. Penalties

- a. 811.140(3): Reckless driving is a Class A Misdemeanor which carries the following penalties:
 - Maximum Fine: \$6,250 161.635(1)(a).
 - Maximum Jail: 1 year. 161.615(1).
- b. 809.411(3); 809.423(1)(a-b): There is a 90-day license suspension for a first offense, and a 1 year suspension for a second offense, if the second offense occurs within a five-year period from the first.

3. Hardship Permit

A hardship permit may be available under 807.240 so long as the sentencing judge recommends to DMV that the permit be issued. 807.250(1)(a).

4. Reckless driving merges with DUII at sentencing. [State v. Cloutier, 286 Or 579, 597-98, 596 P2d 1278 \(1979\)](#).

5. Reckless Setover Deals (Multnomah County-specific)

Plead to the reckless or other charge, but setover sentencing for dismissal upon completion of certain requirements.

- a. If the client's BAC is .18% or less, and there was no property damage, then the defendant can plead to Careless Driving, pay a \$350 fine and other fees.

The plea must be done at the time of entry into diversion. Instead of pleading to Careless Driving, the client may opt for the Reckless Driving setover deal described below.

- b. If the client's BAC is between .18% and .24%, then the client can plead to reckless driving, but setover sentencing for one year to coincide with diversion completion dates.

The defendant must successfully complete diversion, have no major traffic offenses, no driving without a valid license and insurance, and must pay any applicable restitution. If those requirements are met, then both the DUII and reckless driving will be dismissed.

This policy applies to other related charges as well, such as hit and run, criminal mischief in the second degree, or reckless endangerment.

If the requirements are not met, then there would be open sentencing on both charges.

- c. If the client's BAC is .24% or greater, then the client must plead to reckless driving (or other related charge), and there must be no physical injury to persons outside the client's vehicle (unless they are minors), there must be no minors in any vehicle involved, and there must be no bad driving, meaning intoxication plus three traffic violations.

6. Plead to the DUII and try the reckless to a judge (since the state will introduce evidence of DUII and any priors as evidence of recklessness).

7. Defenses

- a. A skateboard is not a "vehicle" for purposes of Reckless Driving. [*State v. Smith*, 184 Or App 118, 55 P3d 553 \(2002\)](#).
- b. A defendant's mental disease or defect can be used to negate the reckless mental state. [*State v. Nebert*, 244 Or App 80, 86 P3d 559 \(2011\)](#).

B. Reckless Endangering

This offense normally accompanies a DUII when the person is involved in an accident, or when they have other people in the vehicle with them.

1. [ORS 163.195](#) (Violation and Penalty)

A person commits the crime of recklessly endangering another person if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person. 163.195(1).

2. Penalties

- a. Recklessly endangering another person is a Class A misdemeanor, which carries the following maximum penalties:
 - Maximum Fine: \$6,250 161.635(1)(a).
 - Maximum Jail: 1 year. 161.615(1).
- b. 809.411(2): There is a 90-day license suspension for a first offense.
- c. Plea Deals (Multnomah County):
 - i. If the client has limited criminal history and no prior reckless endangering convictions, then the client may plead guilty and receive 30 to 90 days of jail and a \$400 fine, or 80 hours of community service with 10–20 days jail.
 - ii. If the client is a repeat offender, then the deal is 90 to 120 days in jail and a \$500 fine, or 104 hours of community service with 30 to 60 days jail.

3. Defenses

- a. Evidence of DUII is not itself evidence that a person has committed reckless endangering, and it violates ORCP 59E for a court to instruct to that effect. [*State v. Maciel-Cortes*, 231 Or App 302, 304, 218 P3d 900 \(2009\)](#).

This is a very difficult situation though, as most trial courts will find that if a person has been drinking, that creates the *risk* required by the statute, especially if other people are in the vehicle, particularly children.

- b. If the probable cause for the initial stop of the vehicle was based on a low level traffic violation, such as failure to maintain lane or not signaling for a full 100 ft prior to a turn, argue that the driving in and of itself did not constitute reckless endangering because the so-called “bad driving” was minimal, and did not create a substantial risk of serious physical injury.

C. Failure to Perform the Duties of a Driver (Hit and Run)

1. [ORS 811.700](#) (Violation and Penalty)/Elements

- a. A hit and run is committed if a driver does not (after an accident with an occupied vehicle):
 - Immediately stop at the scene, or as close as possible;
 - Remain at the scene until fulfilling all required activities;
 - Give the other driver or passenger their name and address, any occupants’ name and address, and their vehicle registration, or
 - Upon request, and if available, provide evidence of driving privileges.
- b. If the accident is with an unattended vehicle, the driver must:
 - Immediately stop, locate and notify the driver of the unattended vehicle and provide

- their name and address, or
 - Leave a written notice of their name and address in a conspicuous place on the struck vehicle, with a statement of the circumstances.
- c. If the accident is to fixtures or property legally upon or adjacent to the highway, the driver must:
- Take reasonable steps to notify the owner of the accident, and provide their name, address, and vehicle registration number
 - Upon request and if available, the driver must present evidence of their driving privileges.

2. If there is no injury, and only property damage, then the offense is a misdemeanor.

a. Civil Compromise

i. [ORS 135.703](#) (crimes to be compromised)

When the client is charged with a misdemeanor for which the person injured has a remedy by civil action, then the crime may be compromised. 135.703(1). Exceptions: no civil compromise is available when the crime was committed (DUII context):

- Against a police officer
- Riotously
- With the intent to commit a felony, or
- By one family or household member against another family or household member, or against a disabled elderly person, and the crime was Assault 4; or reckless endangerment. 135.703(1)(a)-(d)(A,D).

ii. 135.705 (satisfaction and dismissal)

If the injured party signs an acknowledgement of satisfaction at any time prior to trial, then the court may grant a civil compromise, which results in dismissal of the criminal charge. 135.705(1)(a).

b. Partial Expungement after 10 years. [137.225](#).

While the DUII cannot be expunged, after ten years, if no other crimes have been committed, and no arrests have occurred in the previous three years, then the hit and run conviction can be expunged. 137.225(6)(b),(9)(a). Hit and run is expungeable because the criminal act is not having driven, but rather failing to exchange information or call the police after an accident.

3. Penalties

- a. Hit and run when property is damaged is a Class A misdemeanor which carries the following maximum penalties:
- Maximum Fine: \$6,250 161.635(1)(a).
 - Maximum Jail: 1 year. 161.615(1).

- b. [809.411\(4\)](#): A license suspension of 90 days is applicable for a first offense.
- c. Restitution: 811.706.

Restitution may be ordered as part of a judgment. If the case has been civilly compromised, there will in all likelihood be no restitution ordered, as the injured party has already been satisfied. Restitution can be ordered if the damage resulted out of the incident which caused the duties to be imposed. [State v. Bassett, 243 Or App 289, 294, 259 P3d 953 \(2011\)](#).

4. Plea Deal Best Case Scenario (Multnomah County)

If the client has no major traffic offenses within the last three years, and the accident caused minor damage due to minimal bad driving, then the client may plead guilty in exchange for violation treatment and a \$250 fine. Client must also have a valid license and insurance, and the victim must have been compensated for any damage. A setover deal may also be available.

5. Defenses

- a. Choice of evils: if a person is going to be beat up, do they fight or flee?

In cases in which the other motorist is angry and threatens the client with imminent harm, the client may choose to leave the scene instead of getting harmed. This creates a choice of evils defense under [161.200](#).

- b. Who is to be called? If the person calls the police and gets nowhere, are they required to stay for hours?

If the client called the police, but no officer arrived on the scene, argue that after a reasonable amount of time has passed, the client has met their obligation by calling the police. The client is not required to stay all day or night for an officer to show up.

- c. PPB says 50% of all hit and runs in Portland remain unsolved.

This presents a potential ethical dilemma if the person has yet to be charged. If the person wants to get their car fixed, but the car is evidence, what do you advise? There are potential additional charges of tampering with physical evidence. Be careful to advance the legitimate interests of the client while protecting yourself. If seeking a civil compromise, there is no need to reveal the name of the client, just offer the funds to the victim and have them sign the acknowledgement of satisfaction.

- d. If the person says they didn't do it, have them take a polygraph examination and provide any positive result to the DA for dismissal.

D. Criminal Mischief II

1. [ORS 164.354](#)

A person commits the crime of criminal mischief in the second degree if (in the DUII context)

having no right to do so nor reasonable ground to believe that the person has such right, the person recklessly damages property of another in an amount exceeding \$500. 164.354(1)(b).

2. Penalties

- a. Criminal Mischief in the Second Degree is a Class A misdemeanor which carries the following maximum penalties:
 - Maximum Fine: \$6,250 161.635(1)(a).
 - Maximum Jail: 1 year. 161.615(1).
- b. [809.428\(1\)/809.411\(2\)](#)

There is a mandatory license suspension for 90 days. There is hardship-permit eligibility.

3. Plea offers (Multnomah County)

- a. Best case scenario is that it will be charged as a violation with the option to enter community court for a dismissal.
- b. Another offer is 10 days of jail and a \$200 fine, or 18 months bench probation and 40 hours community service and a \$200 fine, along with restitution and no contact with the victim, plus any counseling that may be required. To be eligible for this deal, the client must have no priors, and the damage must be over \$250 or the client has rejected community court.

4. Civil Compromise

Criminal mischief in the second degree is eligible for civil compromise in accordance with 135.703-705.

5. Partial Expungement After 10 Years

Criminal mischief in the second degree is eligible for expungement pursuant to 137.225(6)(b),(9)(a).

6. Evidence of prior DUII convictions is admissible to prove recklessness. [State v. Wyant, 217 Or App 199, 203, 175 P3d 988 \(2007\)](#).

7. Defenses

- a. Depending on the circumstances, there may be an argument that, if an accident occurred, it was not your client's fault. If the bad driving of the other motorist caused the accident, and then evidence of DUII is found during the police encounter, argue that your client was not the one who recklessly caused damage.

This may be particularly appropriate when there is nothing written in the police reports about the client's bad driving or that the other motorist was more at fault, but then the DA charges criminal mischief anyway.

- b. Argue that the damage is less than \$500, and bring in a forensic expert to challenge the estimate given.

If the damage is estimated at just over the \$500 threshold, you may be able to challenge that estimate with an expert or mechanic of your own.

E. Assault IV

1. [ORS 163.160](#)

A person commits the crime of assault in the fourth degree if the person (in the DUII context): intentionally, knowingly or recklessly causes physical injury to another. 163.160(1)(a).

2. Civil Compromise

Assault IV is generally eligible for civil compromise in accordance with 135.703-705.

3. Expungement

Assault IV is eligible for Expungement pursuant to 137.225(6)(b),(9)(a).

4. Penalties

- a. Assault in the fourth degree is a Class A misdemeanor which carries the following maximum penalties:
 - Maximum Fine: \$6,250 161.635(1)(a).
 - Maximum Jail: 1 year. 161.615(1).
- b. There is a one-year license suspension with a six-month hardship permit wait if the client is not incarcerated for the assault IV conviction. 809.411(10)(d); 807.252(3)(e).
 - i. The 6-month waiting period begins from the date of release if the person was incarcerated for the conviction. 807.252(3)(f).
 - ii. If the client has been convicted of certain other convictions within the previous 10 years, then a hardship permit cannot be issued at all. 807.252(1). Those convictions include (but not limited to) criminal DWS/R; reckless driving; DUII; and attempting to elude.

5. Plea Offers (Multnomah County)

Best case scenario is two years' bench probation, a \$300 fine, 64 hours community service, restitution and no contact with the victim, any applicable counseling or classes, and \$500 in statutory fees.

The client is eligible for this offer if they have a limited criminal history, no prior assault conviction, no history of violent or threatening behavior, no felony convictions, and there were only minor injuries.

6. Defenses

- a. Minor scrapes and scratches that a victim does not notice or that do not cause pain are not physical injuries within the assault context.
- b. If the other motorist was already injured in some way prior to an accident, and that injury is slightly exacerbated as a result of the accident, argue that the client was not the cause of such pain, but rather it was the pre-existing condition that caused the harm, especially if no injury would have occurred but for the pre-existing injury.
- c. A stinging feeling or sensation is not a physical injury. [*State v. Capwell*, 52 Or App 43, 46-47, 627 P2D 905 \(1981\)](#).

F. Driving While Suspended

1. [ORS 811.175](#) (Violation DWS)

A person commits the offense of violation driving while suspended or revoked if the person:

- Drives a motor vehicle during a period of license suspension or revocation;
- Drives a motor vehicle outside of the limitations of a probationary or hardship permit; or
- Drives a commercial motor vehicle during a period of any license suspension or revocation.

2. [811.182](#) (Criminal DWS)

A person commits the crime of driving while suspended or revoked if they violate [811.175](#) (violation DWS), and the suspension or revocation resulted from a criminal conviction. [811.182\(1\)](#).

3. Penalties

- a. Violation driving while suspended or revoked is a Class A traffic violation which carries the following financial penalties:
 - Maximum Fine: \$2,000. [153.018\(2\)\(a\)](#).
 - Presumptive Fine: \$435. [153.019\(1\)\(a\)](#).
 - Minimum Fine: \$220. [153.021\(1\)\(a\)](#).
- b. Criminal driving while suspended or revoked is a Class B felony if the underlying offense causing the suspension or revocation was any degree of homicide or assault resulting from operation of a motor vehicle, felony DUII, aggravated vehicular homicide or aggravated DWS/R. [811.182\(3\)](#).
 - i. A Class B felony carries the following maximum penalties:
 - 10 years in prison. [161.605\(2\)](#).
 - Fine of \$250,000. [161.625\(1\)\(c\)](#).
 - Felony DWS/R is a crime category 6 on the sentencing guidelines.

- ii. Criminal driving while suspended or revoked is a Class A misdemeanor if the offense resulted from a suspension or revocation for:
 - Recklessly endangering another person, menacing, or criminal mischief resulting from operation of a motor vehicle. 811.182(4)(a).
 - Perjury. 811.182(4)(b).
 - A breath or blood test refusal or failure. 811.182(4)(c).
 - Hit and Run while driving a commercial motor vehicle or refusing to submit to or failing a breath or blood test in another jurisdiction while driving a commercial vehicle. 811.182(4)(d)-(e).
 - Suspension of a commercial license. 811.182(4)(f).
 - Revocation under the habitual offender laws. 811.182(4)(g).
 - A crime punishable as a felony, except for homicide or assault crimes. 811.182(4)(h).
 - Hit and Run, Reckless Driving, or attempting to elude. 811.182(4)(i-k).
 - DUII. 811.182(4)(L).
 - Use of a commercial vehicle in the commission of a felony. 811.182(4)(m).
- iii. A Class A misdemeanor carries the following maximum penalties:
 - Maximum Fine: \$6,250 161.635(1)(a).
 - Maximum Jail: 1 year. 161.615(1)

4. Defenses

- a. 811.180 (affirmative defenses to both criminal and violation DWS/R)
 - i. Driving due to an emergency, namely an injury or immediate threat of injury to a human or animal, is a defense. 811.180(1)(a).
 - ii. It is a defense if the defendant had not received notice of the suspension/revocation, or had not been informed of the suspension/revocation by a trial judge who ordered the suspension/revocation. 811.180(1)(b).
- b. The defense of guilty except for insanity applies. [*State v. Olmstead*, 310 Or. 455, 470, 800 P2d 277 \(1990\)](#).