In the Matter of Extending Statutory Time Periods and Time Requirements in DUII Diversions	))))))	CHIEF JUSTICE ORDER No. 20-041 ORDER EXTENDING STATUTORY TIME PERIODS AND TIME REQUIREMENTS IN DUII DIVERSIONS

I HEREBY FIND THAT:

1. ORS 1.002 provides that:

   a. The Chief Justice of the Oregon Supreme Court is the administrative head of the judicial department of government in this state; shall exercise administrative authority and supervision over the courts of this state consistent with applicable provisions of law and the Oregon Rules of Civil Procedure (ORCP); and, to facilitate exercise of that administrative authority and supervision, may make rules and issue orders as appropriate or take any other action appropriate to perform the functions of the office of Chief Justice; and

   b. The Chief Justice may delegate the exercise of any powers specified in ORS 1.002 to the Presiding Judge of a court.

2. ORS 1.171(4) provides that a Presiding Judge may delegate the exercise of any of the administrative powers of the Presiding Judge to another judge of the court or to the trial court administrator.

3. On March 8, 2020, Governor Brown signed Executive Order 20-03, which declared a state of emergency because of the threat that the COVID-19 coronavirus posed to public health and safety (hereafter, "COVID-19 state of emergency"). On September 1, 2020, Governor Brown signed Executive Order 20-38, which extended Executive Order 20-03 and the declaration of the COVID-19 state of emergency.

4. On March 23, 2020, Governor Brown signed Executive Order 20-12, which ordered Oregonians to "Stay Home, Save Lives," including, to the maximum extent possible, staying at home or at their place of residence and otherwise observing social distancing. On May 14, 2020, Governor Brown signed Executive Order 20-25, which directed a phased reopening of the State of Oregon.

5. On March 27, 2020, I issued Amended Chief Justice Order 20-006, which imposed amended Level 3 restrictions on operations due to the spread of the COVID-19 virus and Governor Kate Brown's March 8, 2020, declaration of an emergency and her issuance of Executive Order 20-12. On May 15, 2020, I issued Chief Justice Order 20-016, which imposed updated Level 3 restrictions, as well as Level 2 restrictions, on court operations in light of the Governor's Executive Order 20-25 and Oregon's phased reopening.

6. The Oregon Legislative Assembly has enacted Oregon Laws 2020, chapter 12, section 6, which became effective on June 30, 2020. That legislation authorizes the Chief Justice to take certain actions, described in paragraph 7 of my findings below, during the COVID-19 state of emergency and continuing for 60 days after the declaration of that state of emergency or any extension is no longer in effect. Executive Order

20-03, described in paragraph 3 of these findings, declared a COVID-19 state of emergency within the meaning of Oregon Laws 2020, chapter 12, and Executive Order 20-38, also described in paragraph 3, extended that state of emergency.

7. Section 6(1)(a)(A) of Oregon Laws 2020, chapter 12, provides that, during any COVID-19 state of emergency and continuing for 60 days after the declaration of that state of emergency or any extension is no longer in effect, and upon a finding of good cause, the Chief Justice may extend or suspend any time period or time requirement established by statute or rule that applies in any case, action, or proceeding after the case, action or proceeding is initiated in any circuit court. Section 6(1)(b) of Oregon Laws 2020, chapter 12, further provides that the Chief Justice may extend or suspend a time period or time requirement notwithstanding the fact that the date of the time period or time requirement has already passed as of the effective date of Oregon Laws 2020, chapter 12, section 6. Finally, section 6(5) of Oregon Laws 2020, chapter 12, provides that the Chief Justice may delegate the exercise of any of the powers described in section 6 to the Presiding Judge of a court.

8. For the reasons given by Governor Brown in declaring a COVID-19 state of emergency in Executive Order 20-03, and in extending that state of emergency in Executive Order 20-38, and also for the reasons given in Executive Order 20-12, I find that good cause, as that term is used in section 6(1)(a) of Oregon Laws 2020, chapter 12, exists to extend statutory time periods and time requirements in certain criminal proceedings, as provided below.

I HEREBY ORDER THAT, pursuant to ORS 1.002 and Oregon Laws 2020, chapter 12, section 6:

1. This order applies to the criminal cases, actions, and proceedings described in paragraph 2 and extends statutory time periods or time requirements, or provides authority to do so, during the COVID-19 state of emergency and continuing for 60 days after the declaration of that state of emergency or any extension is no longer in effect. In this order, “Presiding Judge” means the presiding judge of a judicial district or any judge to whom the presiding judge has delegated authority under this order.

2. Driving Under the Influence of Intoxicants (DUII), Diversion, ORS 813.210(1)(a) and ORS 813.225(1) and (5)

   a. Eligibility for diversion agreement

      A defendant who was eligible for diversion on March 8, 2020, is eligible for diversion during the COVID-19 state of emergency and continuing for 60 days after the declaration of that state of emergency or any extension is no longer in effect, provided that the defendant is otherwise eligible under ORS 813.215. The COVID-19 state of emergency constitutes existence of good cause for extension of the period of eligibility, and such a defendant need not file a motion for extension of the period of eligibility.

b. Application for extension of diversion period

(1) A defendant who has executed a DUII diversion agreement may apply for an order extending the diversion period by filing an application for diversion at any time prior to the end of the diversion period. The Presiding Judge also may consider an application filed after the end of the diversion period for good cause.

(2) The Presiding Judge may extend the diversion period as necessary to allow the defendant sufficient time to complete the conditions of the diversion agreement.

3. This order takes effect immediately. The authority granted by this order terminates 60 days after the declaration of the COVID-19 state of emergency or any extension is no longer in effect, or on further Chief Justice order, whichever first occurs.

Dated this 16th day of October, 2020.

Martha L. Walters
Chief Justice