

House Bill 2560

Sponsored by Representative BARKER; Representatives BERGER, BONAMICI, BOONE, CAMERON, CLEM, C EDWARDS, D EDWARDS, FLORES, GALIZIO, HUNT, KRIEGER, OLSON, RILEY, ROBLAN, SCHAUFLEER, SCOTT, P SMITH, WITT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies elements of felony driving while under influence of intoxicants to include prior participation in diversion program.

A BILL FOR AN ACT

1
2 Relating to felony driving while under the influence of intoxicants; creating new provisions; and
3 amending ORS 813.010, 813.326 and 813.328.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 813.010 is amended to read:

6 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if
7 the person drives a vehicle while the person:

8 (a) Has 0.08 percent or more by weight of alcohol in the blood of the person as shown by
9 chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;

10 (b) Is under the influence of intoxicating liquor, a controlled substance or an inhalant; or

11 (c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled
12 substance.

13 (2) A person may not be convicted of driving while under the influence of intoxicants on the
14 basis of being under the influence of a controlled substance or an inhalant unless the fact that the
15 person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory
16 instrument and is either proved at trial or is admitted by the person through a guilty plea.

17 (3) A person convicted of the offense described in this section is subject to ORS 813.020 in ad-
18 dition to this section.

19 (4) Except as provided in subsection (5) of this section, the offense described in this section,
20 driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable upon
21 any premises open to the public.

22 (5) Driving while under the influence of intoxicants is a Class C felony if **the current offense**
23 **was committed in a motor vehicle and if, in the 10 years prior to the date of the current**
24 **offense, [*the defendant has been*] the person was** convicted of driving while under the influence of
25 intoxicants in violation of this section or its statutory counterpart in another jurisdiction at least:

26 (a) Three times [*in the 10 years prior to the date of the current offense and the current offense*
27 *was committed in a motor vehicle.*]; or

28 (b) Two times, if:

29 (A) **The person participated in a driving while under the influence of intoxicants diversion**
30 **program or in any similar driving while under the influence of intoxicants alcohol or drug**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 **rehabilitation program in this state or in another jurisdiction;**

2 **(B) The person began participation in a program described in subparagraph (A) of this**
 3 **paragraph in the 10 years prior to the date of the current offense; and**

4 **(C) A court dismissed a charge of driving while under the influence of intoxicants because**
 5 **the person completed a program described in subparagraph (A) of this paragraph.**

6 **(6)** For purposes of *[this]* subsection **(5) of this section**, a prior conviction for boating while
 7 under the influence of intoxicants in violation of ORS 830.325 or its statutory counterpart in another
 8 jurisdiction, or for prohibited operation of an aircraft in violation of ORS 837.080 (1)(a) or its stat-
 9 utory counterpart in another jurisdiction, shall be considered a prior conviction of driving while
 10 under the influence of intoxicants.

11 **[(6)] (7)** In addition to any other sentence that may be imposed, the court shall impose a fine
 12 on a person convicted of driving while under the influence of intoxicants as follows:

13 (a) For a person's first conviction, a minimum of \$1,000.

14 (b) For a person's second conviction, a minimum of \$1,500.

15 (c) For a person's third or subsequent conviction, a minimum of \$2,000 if the person is not sen-
 16 tenced to a term of imprisonment.

17 **[(7)] (8)** Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on
 18 a person convicted of driving while under the influence of intoxicants if:

19 (a) The current offense was committed in a motor vehicle; and

20 (b) There was a passenger in the motor vehicle who was under 18 years of age and was at least
 21 three years younger than the person driving the motor vehicle.

22 **SECTION 2. The amendments to ORS 813.010 by section 1 of this 2007 Act apply to second**
 23 **and subsequent offenses committed on or after the effective date of this 2007 Act.**

24 **SECTION 3.** ORS 813.326 is amended to read:

25 813.326. (1) In a prosecution for felony driving while under the influence of intoxicants under
 26 ORS 813.010, the state shall plead the prior convictions **or participation in a diversion program**
 27 and shall prove the prior convictions **or program participation** unless the defendant stipulates to
 28 *[that fact]* **those facts** prior to trial. If the defendant so stipulates and the trial is by jury:

29 (a) The court shall accept the stipulation regardless of whether or not the state agrees to it;

30 (b) The defendant's stipulation to the prior convictions **or program participation** constitutes
 31 a judicial admission to that element of the accusatory instrument. The stipulation shall be made a
 32 part of the record of the case, but shall not be offered or received in the presence of the jury;

33 (c) For the purpose of establishing the prior convictions **or program participation** solely as an
 34 element of the crime under ORS 813.010, neither the court nor the state shall reveal to the jury the
 35 prior convictions **or program participation**, but the prior convictions **or program participation**
 36 are established in the record by the defendant's stipulation; and

37 (d) The court shall not submit the accusatory instrument or evidence of the prior convictions
 38 **or program participation** to the jury.

39 (2) In a proceeding under ORS 813.010, the state may offer, and the court may receive and sub-
 40 mit to the jury, evidence of the prior convictions **or program participation** for impeachment of the
 41 defendant or another purpose, other than establishing the prior convictions **or program partic-**
 42 **ipation** as an element of the offense, when the evidence of the prior convictions **or program par-**
 43 **ticipation** is otherwise admissible for that purpose. When evidence of the prior convictions **or**
 44 **program participation** has been admitted by the court, the state may comment upon, and the court
 45 may give instructions about, the evidence of the prior convictions **or program participation** only

1 to the extent that the comments or instructions relate to the purpose for which the evidence was
2 admitted.

3 (3) When the defendant stipulates to the prior convictions **or program participation** required
4 as an element of felony driving while under the influence of intoxicants under ORS 813.010, if the
5 jury finds the defendant guilty upon instruction regarding the balance of the elements of the crime,
6 the court shall enter a judgment of guilty of felony driving while under the influence of intoxicants.

7 **SECTION 4.** ORS 813.328 is amended to read:

8 813.328. A defendant who challenges the validity of prior convictions **or participation in a di-**
9 **version program** alleged by the state as an element of felony driving while under the influence of
10 intoxicants must give notice of the intent to challenge the validity of the prior convictions **or pro-**
11 **gram participation** at least seven days prior to the first date set for trial on the felony charge. The
12 validity of the prior convictions **or program participation** shall be determined prior to trial by the
13 court.

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