

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2651

By COMMITTEE ON JUDICIARY

June 6

1 On page 1 of the printed A-engrossed bill, line 2, after the semicolon delete the rest of the line
2 and insert “amending ORS 165.540, 165.542, 809.235, 809.730, 813.010, 813.215, 813.220 and 813.430”.

3 On page 2, line 14, delete “or”.

4 In line 15, delete “, as defined in ORS 133.726”.

5 In line 18, delete the period and insert “; or”.

6 After line 18, insert:

7 “(c) A law enforcement officer who, acting in the officer’s official capacity, deploys an Electro-
8 Muscular Disruption Technology device that contains a built-in monitoring system capable of re-
9 cording audio or video, for the duration of that deployment.”.

10 After line 34, insert:

11 “(9) As used in this section:

12 “(a) ‘Electro-Muscular Disruption Technology device’ means a device that uses a high-voltage,
13 low power charge of electricity to induce involuntary muscle contractions intended to cause tem-
14 porary incapacitation. ‘Electro-Muscular Disruption Technology device’ includes devices commonly
15 known as tasers.

16 “(b) ‘Law enforcement officer’ has the meaning given that term in ORS 133.726.”.

17 On page 3, after line 12, insert:

18 “**SECTION 3.** ORS 813.010 is amended to read:

19 “813.010. (1) A person commits the offense of driving while under the influence of intoxicants if
20 the person drives a vehicle while the person:

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

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

24 “(c) Is under the influence of any combination of intoxicating liquor, an inhalant and a con-
25 trolled substance.

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

30 “(3) A person convicted of the offense described in this section is subject to ORS 813.020 in
31 addition to this section.

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

35 “(5)(a) Driving while under the influence of intoxicants is a Class C felony if **the current of-**

1 **fense was committed in a motor vehicle and** the defendant has been convicted [of], **at least**
2 **three times in the 10 years prior to the date of the current offense, of any of the following**
3 **offenses in any combination:**

4 “(A) Driving while under the influence of intoxicants in violation of:

5 “(i) This section; or

6 “(ii) [Its] **The statutory counterpart to this section** in another jurisdiction.

7 “(B) **A driving under the influence of intoxicants offense in another jurisdiction that in-**
8 **volved the impaired driving or operation of a vehicle, an aircraft or a boat due to the use**
9 **of intoxicating liquor, a controlled substance, an inhalant or any combination thereof.**

10 “(C) **A driving offense in another jurisdiction that involved operating a vehicle, an air-**
11 **craft or a boat while having a blood alcohol content above that jurisdiction’s permissible**
12 **blood alcohol content.** [at least three times in the 10 years prior to the date of the current offense
13 and the current offense was committed in a motor vehicle. For purposes of this subsection, a prior
14 conviction for boating while under the influence of intoxicants in violation of ORS 830.325 or its stat-
15 utory counterpart in another jurisdiction, or for prohibited operation of an aircraft in violation of ORS
16 837.080 (1)(a) or its statutory counterpart in another jurisdiction, shall be considered a prior conviction
17 of driving while under the influence of intoxicants.]

18 “(b) **For the purposes of paragraph (a) of this subsection, a conviction for a driving of-**
19 **fense in another jurisdiction based solely on a person under 21 years of age having a blood**
20 **alcohol content that is lower than the permissible blood alcohol content in that jurisdiction**
21 **for a person 21 years of age or older does not constitute a prior conviction.**

22 “(6) In addition to any other sentence that may be imposed, the court shall impose a fine on a
23 person convicted of driving while under the influence of intoxicants as follows:

24 “(a) For a person’s first conviction, a minimum of \$1,000.

25 “(b) For a person’s second conviction, a minimum of \$1,500.

26 “(c) For a person’s third or subsequent conviction, a minimum of \$2,000 if the person is not
27 sentenced to a term of imprisonment.

28 “(7) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on a
29 person convicted of driving while under the influence of intoxicants if:

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

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

33 “**SECTION 4.** ORS 809.235 is amended to read:

34 “809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person’s driving
35 privileges be permanently revoked if the person is convicted of any degree of murder or of
36 manslaughter in the first degree and the court finds that the person intentionally used a motor ve-
37 hicle as a dangerous weapon resulting in the death of the victim.

38 “(b) The court shall order that a person’s driving privileges be permanently revoked if the per-
39 son is convicted of felony driving while under the influence of intoxicants in violation of ORS
40 813.010 or if the person is convicted [of misdemeanor] **for a third or subsequent time of any of**
41 **the following offenses in any combination:**

42 “(A) Driving while under the influence of intoxicants in violation of:

43 “(i) ORS 813.010; or

44 “(ii) [Its] **The statutory counterpart to ORS 813.010** in **another** [any other] jurisdiction. [for a
45 third or subsequent time.]

1 “(B) A driving under the influence of intoxicants offense in another jurisdiction that in-
2 volved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled
3 substance, an inhalant or any combination thereof.

4 “(C) A driving offense in another jurisdiction that involved operating a vehicle while
5 having a blood alcohol content above that jurisdiction’s permissible blood alcohol content.

6 “(e) For the purposes of paragraph (b) of this subsection, a conviction for a driving of-
7 fense in another jurisdiction based solely on a person under 21 years of age having a blood
8 alcohol content that is lower than the permissible blood alcohol content in that jurisdiction
9 for a person 21 years of age or older does not constitute a prior conviction.

10 “(2)(a) A person whose driving privileges are revoked as described in subsection (1) of this sec-
11 tion may file a petition in the circuit court of the county in which the person resides for an order
12 restoring the person’s driving privileges. A petition may be filed under this subsection no sooner
13 than 10 years after the person is:

14 “(A) Released on parole or post-prison supervision; or

15 “(B) Sentenced to probation if the probation is not revoked and the person is thereafter dis-
16 charged without the imposition of a sentence of imprisonment.

17 “(b) The district attorney of the county in which the person resides shall be named and served
18 as the respondent in the petition.

19 “(3) The court shall hold a hearing on a petition filed in accordance with subsection (2) of this
20 section. In determining whether to grant the petition, the court shall consider:

21 “(a) The nature of the offense for which driving privileges were revoked.

22 “(b) The degree of violence involved in the offense.

23 “(c) Other criminal and relevant noncriminal behavior of the petitioner both before and after the
24 conviction that resulted in the revocation.

25 “(d) The recommendation of the person’s parole officer, which shall be based in part on a psy-
26 chological evaluation ordered by the court to determine whether the person is presently a threat to
27 the safety of the public.

28 “(e) Any other relevant factors.

29 “(4) If, after a hearing described in subsection (3) of this section, the court is satisfied by clear
30 and convincing evidence that the petitioner is rehabilitated and that the petitioner does not pose a
31 threat to the safety of the public, the court shall order the petitioner’s driving privileges restored.

32 “**SECTION 5.** ORS 809.730 is amended to read:

33 “809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is
34 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS
35 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been
36 convicted of:

37 “(a) Driving while under the influence of intoxicants in violation of:

38 “(A) ORS 813.010[.]; or

39 “(B) [*Its*] **The** statutory counterpart to **ORS 813.010** in another jurisdiction; [*or*]

40 “(b) **A driving under the influence of intoxicants offense in another jurisdiction that in-**
41 **involved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled**
42 **substance, an inhalant or any combination thereof;**

43 “(c) **A driving offense in another jurisdiction that involved operating a vehicle while**
44 **having a blood alcohol content above that jurisdiction’s permissible blood alcohol content;**
45 **or**

1 “(b) (d) Murder, manslaughter, criminally negligent homicide or assault that resulted from the
2 operation of a motor vehicle in this state or in another jurisdiction.

3 “(2) For the purposes of subsection (1) of this section, a conviction for a driving offense
4 in another jurisdiction based solely on a person under 21 years of age having a blood alcohol
5 content that is lower than the permissible blood alcohol content in that jurisdiction for a
6 person 21 years of age or older does not constitute a prior conviction.

7 “[(2)] (3) All seizure and forfeiture proceedings under this section shall be conducted in ac-
8 cordance with ORS chapter 475A.

9 “**SECTION 6.** ORS 813.215 is amended to read:

10 “813.215. (1) A defendant is eligible for diversion if:

11 “[(1)] (a) On the date the defendant filed the petition for a driving while under the influ-
12 ence of intoxicants diversion agreement, the defendant had no charge [of], other than the
13 charge for the present offense, pending for:

14 “(A) An offense of driving while under the influence of intoxicants in violation of:

15 “(i) ORS 813.010; or

16 “(ii) [Its] The statutory counterpart to ORS 813.010 in [any] another jurisdiction[, other than
17 the charge for the present offense, pending on the date the defendant filed the petition for a driving
18 while under the influence of intoxicants diversion agreement];

19 “(B) A driving under the influence of intoxicants offense in another jurisdiction that in-
20 volved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled
21 substance, an inhalant or any combination thereof; or

22 “(C) A driving offense in another jurisdiction that involved operating a vehicle while
23 having a blood alcohol content above that jurisdiction’s permissible blood alcohol content;

24 “[(2)] (b) The defendant has not been convicted of an offense described in paragraph (a) of this
25 subsection [(1) of this section] within the period beginning 10 years before the date of the commission
26 of the present offense and ending on the date the defendant filed the petition for a driving while
27 under the influence of intoxicants diversion agreement;

28 “(c) The defendant has not been convicted of a felony offense described in ORS 813.010
29 (5)(a);

30 “[(3)] (d) The defendant was not participating in a driving while under the influence of
31 intoxicants diversion program or in any similar alcohol or drug rehabilitation program, other than
32 a program entered into as a result of the charge for the present offense, in this state or in [any
33 other] another jurisdiction on the date the defendant filed the petition for a driving while under the
34 influence of intoxicants diversion agreement;

35 “[(4)] (e) The defendant did not participate in a diversion or rehabilitation program described
36 in paragraph (d) of this subsection [(3) of this section], other than a program entered into as a re-
37 sult of the charge for the present offense, within the period beginning 10 years before the date of
38 the commission of the present offense and ending on the date the defendant filed the petition for a
39 driving while under the influence of intoxicants diversion agreement;

40 “[(5)] (f) The defendant had no charge of an offense of murder, manslaughter, criminally
41 negligent homicide or assault that resulted from the operation of a motor vehicle pending in this
42 state or in [any other] another jurisdiction on the date the defendant filed the petition for a driving
43 while under the influence of intoxicants diversion agreement;

44 “[(6)] (g) The defendant has not been convicted of an offense described in paragraph (f) of this
45 subsection [(5) of this section] within the period beginning 10 years before the date of the commission

1 of the present offense and ending on the date the defendant filed the petition for a driving while
2 under the influence of intoxicants diversion agreement;

3 “[(7)] (h) The defendant did not have a commercial driver license at the time of the offense;

4 “[(8)] (i) The defendant was not operating a commercial motor vehicle at the time of the offense;
5 and

6 “[(9)] (j) The present driving while under the influence of intoxicants offense did not involve an
7 accident resulting in:

8 “[a)] (A) Death of any person other than the defendant; or

9 “[b)] (B) Physical injury as defined in ORS 161.015 to any person other than the defendant.

10 “(2) For the purposes of subsection (1)(a) of this section, a conviction for a driving of-
11 fense in another jurisdiction based solely on a person under 21 years of age having a blood
12 alcohol content that is lower than the permissible blood alcohol content in that jurisdiction
13 for a person 21 years of age or older does not constitute a prior conviction.

14 “**SECTION 7.** ORS 813.220 is amended to read:

15 “813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request
16 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether
17 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-
18 ment. In making a determination under this section, the court:

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

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

23 “(3) May take into consideration whether there is a probability that the defendant will cooper-
24 ate with the diagnostic assessment and treatment agencies.

25 “(4) May take into consideration whether the defendant will observe the restrictions contained
26 in the diversion agreement.

27 “(5) May take into consideration whether the offense was committed in a motor vehicle and
28 whether there was a passenger in the motor vehicle who was under 18 years of age and at least
29 three years younger than the defendant.

30 “(6) Shall deny the petition for a driving while under the influence of intoxicants diversion
31 agreement if the defendant failed to appear at an arraignment on the present offense without good
32 cause.

33 “(7) Shall deny the petition for a driving while under the influence of intoxicants diversion
34 agreement if, **after the date the defendant filed the petition**, the defendant was charged with or
35 convicted of:

36 “(a) An offense of driving while under the influence of intoxicants **in violation of:**

37 “(A) **ORS 813.010**; or

38 “(B) [Its] **The** statutory counterpart to **ORS 813.010** in [any] **another** jurisdiction; [after the date
39 the defendant filed the petition]

40 “(b) **A driving under the influence of intoxicants offense in another jurisdiction that in-**
41 **volved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled**
42 **substance, an inhalant or any combination thereof; or**

43 “(c) **A driving offense in another jurisdiction that involved operating a vehicle while**
44 **having a blood alcohol content above that jurisdiction’s permissible blood alcohol content.**

45 “(8) Shall deny the petition for a driving while under the influence of intoxicants diversion

1 agreement if the defendant participated in a driving while under the influence of intoxicants diver-
2 sion program or in any similar alcohol or drug rehabilitation program, other than a program entered
3 into as a result of the charge for the present offense, in this state or in [any other] **another** juris-
4 diction after the date the defendant filed the petition.

5 “(9) Shall deny the petition for a driving while under the influence of intoxicants diversion
6 agreement if the defendant was charged with or convicted of an offense of murder, manslaughter,
7 criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this
8 state or in [any other] **another** jurisdiction after the date the defendant filed the petition.

9 “(10) **Shall deny the petition for a driving while under the influence of intoxicants diver-**
10 **sion agreement if the defendant has been convicted of a felony offense described in ORS**
11 **813.010 (5)(a).**

12 “(11) **For the purposes of subsection (7) of this section, may not consider a conviction for**
13 **a driving offense in another jurisdiction based solely on a person under 21 years of age having**
14 **a blood alcohol content that is lower than the permissible blood alcohol content in that ju-**
15 **risdiction for a person 21 years of age or older as a prior conviction.**

16 “**SECTION 8.** ORS 813.430 is amended to read:

17 “813.430. This section establishes circumstances under which ORS 813.420 requires an increase
18 in the time for suspension of driving privileges and under which ORS 813.520 requires an increase
19 in the time before the Department of Transportation may issue a hardship permit. A person is sub-
20 ject to an increase in suspension time under this section if any of the following apply:

21 “(1) The person is presently participating in a driving while under the influence of intoxicants
22 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or
23 [any other] **another** jurisdiction.

24 “(2) Within the five years preceding the date of arrest any of the following occurred:

25 “(a) A suspension of the person’s driving privileges under ORS 813.410 or 482.540 (1981 Re-
26 placement Part) became effective.

27 “(b) The person was convicted of:

28 “(A) Driving **while** under the influence of intoxicants in violation of:

29 “(i) ORS 813.010; [or]

30 “(ii) [Its] **The** statutory counterpart to **ORS 813.010** in another jurisdiction; or

31 “(iii) A municipal ordinance **in this state or another jurisdiction;**

32 “(B) **A driving under the influence of intoxicants offense in another jurisdiction that in-**
33 **volved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled**
34 **substance, an inhalant or any combination thereof; or**

35 “(C) **A driving offense in another jurisdiction that involved operating a vehicle while**
36 **having a blood alcohol content above that jurisdiction’s permissible blood alcohol content.**

37 “(c) The person commenced participating in a driving while under the influence of intoxicants
38 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or
39 [any other] **another** jurisdiction.

40 “(3) **For the purposes of subsection (2)(b) of this section, a conviction for a driving of-**
41 **fense in another jurisdiction based solely on a person under 21 years of age having a blood**
42 **alcohol content that is lower than the permissible blood alcohol content in that jurisdiction**
43 **for a person 21 years of age or older does not constitute a prior conviction.”.**