

House Bill 2425

Sponsored by COMMITTEE ON JUDICIARY

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, 813.215, 813.220, 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)~~(a)~~ Driving while under the influence of intoxicants is a Class C felony if the current offense
23 was committed in a motor vehicle and the defendant has been convicted, **in the 10 years prior to**
24 **the date of the current offense**, at least:

25 (a) Three times [*in the 10 years prior to the date of the current offense,*] of any of the following
26 offenses in any combination:

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

28 (i) This section; or

29 (ii) The statutory counterpart to this section in another jurisdiction.

30 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the
31 impaired driving or operation of a vehicle, an aircraft or a boat due to the use of intoxicating liquor,

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 a controlled substance, an inhalant or any combination thereof.

2 (C) A driving offense in another jurisdiction that involved operating a vehicle, an aircraft or a
 3 boat while having a blood alcohol content above that jurisdiction's permissible blood alcohol con-
 4 tent.

5 **(b) Two times of any offense or combination of offenses listed in paragraph (a) of this**
 6 **subsection and:**

7 **(A) The person participated in a driving while under the influence of intoxicants diversion**
 8 **program or in any similar driving while under the influence of intoxicants alcohol or drug**
 9 **rehabilitation program in this state or in another jurisdiction;**

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

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

14 [(b)] (6) For the purposes of [paragraph (a) of this subsection] **subsection (5) of this section**, a
 15 conviction for a driving offense in another jurisdiction based solely on a person under 21 years of
 16 age having a blood alcohol content that is lower than the permissible blood alcohol content in that
 17 jurisdiction for a person 21 years of age or older does not constitute a prior conviction.

18 [(6)] (7) In addition to any other sentence that may be imposed, the court shall impose a fine
 19 on a person convicted of driving while under the influence of intoxicants as follows:

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

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

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

24 [(7)] (8) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on
 25 a person convicted of driving while under the influence of intoxicants if:

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

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

29 **SECTION 2.** ORS 813.215 is amended to read:

30 813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following con-
 31 ditions:

32 (a) On the date the defendant filed the petition for a driving while under the influence of
 33 intoxicants diversion agreement, the defendant had no charge, other than the charge for the present
 34 offense, pending for:

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

36 (i) ORS 813.010; or

37 (ii) The statutory counterpart to ORS 813.010 in another jurisdiction;

38 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the
 39 impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an
 40 inhalant or any combination thereof; or

41 (C) A driving offense in another jurisdiction that involved operating a vehicle while having a
 42 blood alcohol content above that jurisdiction's permissible blood alcohol content.

43 (b) The defendant has not been convicted of an offense described in paragraph (a) of this sub-
 44 section within the period beginning 10 years before the date of the commission of the present offense
 45 and ending on the date the defendant filed the petition for a driving while under the influence of

1 intoxicants diversion agreement.

2 (c) The defendant has not been convicted of a felony offense described in ORS 813.010 (5)[(a)].

3 (d) The defendant was not participating in a driving while under the influence of intoxicants
 4 diversion program or in any similar alcohol or drug rehabilitation program, other than a program
 5 entered into as a result of the charge for the present offense, in this state or in another jurisdiction
 6 on the date the defendant filed the petition for a driving while under the influence of intoxicants
 7 diversion agreement.

8 (e) The defendant did not participate in a diversion or rehabilitation program described in par-
 9 agraph (d) of this subsection, other than a program entered into as a result of the charge for the
 10 present offense, within the period beginning 10 years before the date of the commission of the
 11 present offense and ending on the date the defendant filed the petition for a driving while under the
 12 influence of intoxicants diversion agreement.

13 (f) The defendant had no charge of an offense of aggravated vehicular homicide or of murder,
 14 manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor
 15 vehicle pending in this state or in another jurisdiction on the date the defendant filed the petition
 16 for a driving while under the influence of intoxicants diversion agreement.

17 (g) The defendant has not been convicted of an offense described in paragraph (f) of this sub-
 18 section within the period beginning 10 years before the date of the commission of the present offense
 19 and ending on the date the defendant filed the petition for a driving while under the influence of
 20 intoxicants diversion agreement.

21 (h) The defendant did not hold a commercial driver license on the date of the commission of the
 22 offense.

23 (i) The defendant was not operating a commercial motor vehicle at the time of the offense.

24 (j) The present driving while under the influence of intoxicants offense did not involve an acci-
 25 dent resulting in:

26 (A) Death of any person; or

27 (B) Physical injury as defined in ORS 161.015 to any person other than the defendant.

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

32 **SECTION 3.** ORS 813.220 is amended to read:

33 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request
 34 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether
 35 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-
 36 ment. In making a determination under this section, the court:

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

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

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

43 (4) May take into consideration whether the defendant will observe the restrictions contained
 44 in the diversion agreement.

45 (5) May take into consideration whether the offense was committed in a motor vehicle and

1 whether there was a passenger in the motor vehicle who was under 18 years of age and at least
 2 three years younger than the defendant.

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

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

9 (a) An offense of driving while under the influence of intoxicants in violation of:

10 (A) ORS 813.010; or

11 (B) The statutory counterpart to ORS 813.010 in another jurisdiction;

12 (b) A driving under the influence of intoxicants offense in another jurisdiction that involved the
 13 impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an
 14 inhalant or any combination thereof; or

15 (c) A driving offense in another jurisdiction that involved operating a vehicle while having a
 16 blood alcohol content above that jurisdiction's permissible blood alcohol content.

17 (8) Shall deny the petition for a driving while under the influence of intoxicants diversion
 18 agreement if the defendant participated in a driving while under the influence of intoxicants diver-
 19 sion program or in any similar alcohol or drug rehabilitation program, other than a program entered
 20 into as a result of the charge for the present offense, in this state or in another jurisdiction after
 21 the date the defendant filed the petition.

22 (9) Shall deny the petition for a driving while under the influence of intoxicants diversion
 23 agreement if the defendant was charged with or convicted of an offense of aggravated vehicular
 24 homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the
 25 operation of a motor vehicle in this state or in another jurisdiction after the date the defendant filed
 26 the petition.

27 (10) Shall deny the petition for a driving while under the influence of intoxicants diversion
 28 agreement if the defendant has been convicted of a felony offense described in ORS 813.010 (5)[(a)].

29 (11) For the purposes of subsection (7) of this section, may not consider a conviction for a
 30 driving offense in another jurisdiction based solely on a person under 21 years of age having a blood
 31 alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a
 32 person 21 years of age or older as a prior conviction.

33 **SECTION 4.** ORS 813.326 is amended to read:

34 813.326. (1) In a prosecution for felony driving while under the influence of intoxicants under
 35 ORS 813.010, the state shall plead the prior convictions **or participation in a diversion program**
 36 and shall prove the prior convictions **or program participation** unless the defendant stipulates to
 37 *[that fact]* **those facts** prior to trial. If the defendant so stipulates and the trial is by jury:

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

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

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

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

3 (2) In a proceeding under ORS 813.010, the state may offer, and the court may receive and sub-
 4 mit to the jury, evidence of the prior convictions **or program participation** for impeachment of the
 5 defendant or another purpose, other than establishing the prior convictions **or program partic-**
 6 **ipation** as an element of the offense, when the evidence of the prior convictions **or program par-**
 7 **ticipation** is otherwise admissible for that purpose. When evidence of the prior convictions **or**
 8 **program participation** has been admitted by the court, the state may comment upon, and the court
 9 may give instructions about, the evidence of the prior convictions **or program participation** only
 10 to the extent that the comments or instructions relate to the purpose for which the evidence was
 11 admitted.

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

16 **SECTION 5.** ORS 813.328 is amended to read:

17 813.328. A defendant who challenges the validity of prior convictions **or participation in a di-**
 18 **version program** alleged by the state as an element of felony driving while under the influence of
 19 intoxicants must give notice of the intent to challenge the validity of the prior convictions **or pro-**
 20 **gram participation** at least seven days prior to the first date set for trial on the felony charge. The
 21 validity of the prior convictions **or program participation** shall be determined prior to trial by the
 22 court.

23 **SECTION 6.** The amendments to ORS 813.010 by section 1 of this 2009 Act apply to second
 24 and subsequent offenses committed on or after the effective date of this 2009 Act.