

# House Bill 3102

Sponsored by Representative THOMPSON

## 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**.

Requires court to impose 300-month term of imprisonment for persons convicted more than once of certain felony sexual offenses.

Modifies circumstances under which driving while under influence of intoxicants is elevated to felony. Requires court to impose term of incarceration of at least 90 days for person convicted of elevated offense.

## A BILL FOR AN ACT

1 Relating to crime; creating new provisions; and amending ORS 813.010, 813.020, 813.215 and 813.220.

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

3 **SECTION 1. (1) Notwithstanding ORS 161.605, when a court sentences a person convicted**  
4 **of a crime described in subsection (3) of this section, the court shall impose a term of**  
5 **imprisonment of 300 months if the person has a previous conviction for:**

6 (a) **A crime described in subsection (3) of this section; or**

7 (b) **A statutory counterpart in another jurisdiction to a crime described in subsection (3)**  
8 **of this section.**

9 (2) **A person sentenced under this section is not, during the service of the term of**  
10 **imprisonment, eligible for release on post-prison supervision, any form of temporary leave**  
11 **from custody or any reduction in the term of imprisonment under ORS 421.121 or any other**  
12 **statute.**

13 (3) **The crimes to which subsection (1) of this section applies are:**

14 (a) **Rape in the first degree, as defined in ORS 163.375.**

15 (b) **Sodomy in the first degree, as defined in ORS 163.405.**

16 (c) **Unlawful sexual penetration in the first degree, as defined in ORS 163.411.**

17 (d) **Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.**

18 (4) **As used in this section, "previous conviction" means a conviction that was entered**  
19 **prior to imposing sentence on the current crime of conviction, provided that the prior con-**  
20 **viction is based on a crime committed in a separate criminal episode as defined in ORS**  
21 **131.505.**

22 **SECTION 2.** ORS 813.010 is amended to read:

23 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if  
24 the person drives a vehicle while the person:

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

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

28 (c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled  
29 substance.  
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**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 (2) A person may not be convicted of driving while under the influence of intoxicants on the  
 2 basis of being under the influence of a controlled substance or an inhalant unless the fact that the  
 3 person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory  
 4 instrument and is either proved at trial or is admitted by the person through a guilty plea.

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

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

10 [(5)(a)] (5) Driving while under the influence of intoxicants is a Class C felony if:

11 (a) The current offense was committed in a motor vehicle and the defendant has been convicted,  
 12 at least [three] two times in the 10 years prior to the date of the current offense, of any of the  
 13 [following offenses in any combination:] offenses described in subsection (6) of this section; or

14 (b) The defendant has a prior conviction for a felony offense described in subsection (6)  
 15 of this section.

16 (6)(a) The offenses to which subsection (5) of this section applies are:

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

18 (i) This section; or

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

20 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the  
 21 impaired driving or operation of a vehicle, an aircraft or a boat due to the use of intoxicating liquor,  
 22 a controlled substance, an inhalant or any combination thereof.

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

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

30 [(6)] (7) In addition to any other sentence that may be imposed, the court shall impose a fine  
 31 on a person convicted of driving while under the influence of intoxicants as follows:

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

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

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

36 [(7)] (8) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on  
 37 a person convicted of driving while under the influence of intoxicants if:

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

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

41 **SECTION 3.** ORS 813.020 is amended to read:

42 813.020. When a person is convicted of driving while under the influence of intoxicants in vio-  
 43 lation of ORS 813.010, a court shall comply with the following in addition to any fine or other pen-  
 44 alty imposed upon the person under ORS 813.010:

45 (1) The court shall require the person to:

1 (a) Pay to the court the fee described under ORS 813.030 in addition to any fine imposed under  
 2 ORS 813.010; and

3 (b) Complete a screening interview and a treatment program as provided in ORS 813.021.

4 (2) The court must impose and not suspend execution of a sentence requiring the person either  
 5 to serve at least 48 hours' imprisonment, which shall be served consecutively unless justice requires  
 6 otherwise, or to perform community service for times specified by the court under ORS 137.129. For  
 7 purposes of this subsection:

8 (a) A court may provide for the imprisonment to be served in jail, minimum security facilities  
 9 or inpatient rehabilitation or treatment centers.

10 (b) Whenever the judge provides for the mandatory imprisonment to be served other than con-  
 11 secutively, the judgment must specifically so provide and the judge must state the reasons in writ-  
 12 ing.

13 **(3) The court must impose and not suspend execution of a sentence requiring a person**  
 14 **convicted of a felony offense described in ORS 813.010 (5) to serve at least 90 days'**  
 15 **imprisonment, which shall be served consecutively.**

16 [(3)] (4) In a county that has a victim impact program a court may require the person to attend  
 17 a victim impact treatment session. If the court requires attendance under this section, the court may  
 18 require the defendant to pay a reasonable fee to the victim impact program to offset the cost of the  
 19 defendant's participation. The fee shall be established for each county by the victim impact panel  
 20 coordinator and steering committee of that county and shall be not less than \$5 or more than \$50.

21 **SECTION 4.** ORS 813.215 is amended to read:

22 813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following con-  
 23 ditions:

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

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

28 (i) ORS 813.010; or

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

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

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

35 (b) The defendant has not been convicted of an offense described in paragraph (a) of this sub-  
 36 section within the period beginning 10 years before the date of the commission of the present offense  
 37 and ending on the date the defendant filed the petition for a driving while under the influence of  
 38 intoxicants diversion agreement.

39 (c) The defendant has not been convicted of a felony offense described in ORS 813.010 [(5)(a)]  
 40 (5).

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

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

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

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

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

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

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

19 (A) Death of any person; or

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

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

25 **SECTION 5.** ORS 813.220 is amended to read:

26 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request  
 27 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether  
 28 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-  
 29 ment. In making a determination under this section, the court:

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

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

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

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

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

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

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

1 convicted of:

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

3 (A) ORS 813.010; or

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

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

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

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

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

20 (10) Shall deny the petition for a driving while under the influence of intoxicants diversion  
21 agreement if the defendant has been convicted of a felony offense described in ORS 813.010 [(5)(a)]  
22 (5).

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

27 **SECTION 6. Section 1 of this 2009 Act and the amendments to ORS 813.010, 813.020,**  
28 **813.215 and 813.220 by sections 2 to 5 of this 2009 Act apply to persons sentenced for offenses**  
29 **committed on or after the effective date of this 2009 Act.**

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