

Enrolled House Bill 2103

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber for Oregon Health Authority)

CHAPTER

AN ACT

Relating to driving while under the influence of intoxicants; creating new provisions; amending ORS 813.200; and declaring an emergency.

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

SECTION 1. A person required to pay for a screening interview, treatment program or diagnostic assessment under ORS 813.021, 813.200, 813.210 or 813.240 who is eligible for the state medical assistance program may utilize the state medical assistance program as a third party resource to support medically necessary chemical dependency services that are covered under the state medical assistance program. The person remains responsible for the costs of the screening interview, treatment program or diagnostic assessment, regardless of the amount of coverage or the failure of the third party resource to pay the costs.

SECTION 2. Section 1 of this 2011 Act applies to screening interviews performed, treatment programs entered into or diagnostic assessments performed on or after the effective date of this 2011 Act.

SECTION 3. ORS 813.200 is amended to read:

813.200. (1) The court shall inform at arraignment a defendant charged with the offense of driving while under the influence of intoxicants as defined in ORS 813.010 or a city ordinance conforming thereto that a diversion agreement may be available if the defendant meets the criteria set out in ORS 813.215 and files with the court a petition for a driving while under the influence of intoxicants diversion agreement.

(2) The petition forms for a driving while under the influence of intoxicants diversion agreement shall be available to a defendant at the court.

(3) The form of the petition for a driving while under the influence of intoxicants diversion agreement and the information and blanks contained therein shall be determined by the Supreme Court under ORS 1.525. The petition forms made available to a defendant by any city or state court shall conform to the requirements adopted by the Supreme Court.

(4) In addition to any other information required by the Supreme Court to be contained in a petition for a driving while under the influence of intoxicants diversion agreement, the petition shall include:

(a) A plea of guilty or no contest to the charge of driving while under the influence of intoxicants signed by the defendant;

(b) An agreement by the defendant to complete at an agency or organization designated by the city or state court a diagnostic assessment to determine the possible existence and degree of an alcohol or drug abuse problem;

(c) An agreement by the defendant to complete, at defendant's own expense based on defendant's ability to pay, the program of treatment indicated as necessary by the diagnostic assessment;

(d) **Except as provided in subsection (5) of this section**, an agreement by the defendant to not use intoxicants **during the diversion period** [*in conjunction with the defendant's operation of a motor vehicle*] and to comply fully with the laws of this state designed to discourage the use of intoxicants [*in conjunction with motor vehicle operation*];

(e) A notice to the defendant that the diversion agreement will be considered to be violated if the court receives notice that the defendant at any time during the diversion period committed the offense of driving while under the influence of intoxicants or committed a violation of ORS 811.170;

(f) An agreement by the defendant to keep the court advised of the defendant's current mailing address at all times during the diversion period;

(g) A waiver by the defendant of any former jeopardy rights under the federal and state Constitutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any other offenses based upon the same criminal episode;

(h) A sworn statement, as defined in ORS 162.055, by the defendant certifying that the defendant meets the criteria set out in ORS 813.215 to be eligible to enter into the driving while under the influence of intoxicants diversion agreement; and

(i) An agreement by the defendant to pay court-appointed attorney fees as determined by the court.

(5) A person may use intoxicants during the diversion period if:

(a) The person consumes sacramental wine given or provided as part of a religious rite or service;

(b) The person has a valid prescription for a substance and the person takes the substance as directed; or

(c) The person is using a nonprescription drug, as defined in ORS 689.005, in accordance with the directions for use that are printed on the label for that nonprescription drug.

SECTION 4. The amendments to ORS 813.200 by section 3 of this 2011 Act apply to diversion agreements entered into on or after the effective date of this 2011 Act.

SECTION 5. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House April 29, 2011

Received by Governor:

Repassed by House June 14, 2011

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Approved:

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Ramona Kenady Line, Chief Clerk of House

.....M.,....., 2011

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Bruce Hanna, Speaker of House

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John Kitzhaber, Governor

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Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

.....M.,....., 2011

Passed by Senate June 10, 2011

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State