

Enrolled
House Bill 2702

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

CHAPTER

AN ACT

Relating to driving while under the influence of intoxicants diversion agreement; creating new provisions; amending ORS 813.220, 813.225 and 813.255; and declaring an emergency.

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

SECTION 1. ORS 813.220 is amended to read:

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

- (1) Shall consider whether the diversion will be of benefit to the defendant and the community.
- (2) May take into consideration whether there was an early recognition by the defendant during the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug dependency would be beneficial.
- (3) May take into consideration whether there is a probability that the defendant will cooperate with the diagnostic assessment and treatment agencies.
- (4) May take into consideration whether the defendant will observe the restrictions contained in the diversion agreement.
- (5) May take into consideration whether the offense was committed in a motor vehicle and whether there was a passenger in the motor vehicle who was under 18 years of age and at least three years younger than the defendant.
- (6) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant failed to appear at an arraignment on the present offense without good cause.
- (7) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if, after the date the defendant filed the petition, the defendant was charged with or convicted of:
 - (a) An offense of driving while under the influence of intoxicants in violation of:
 - (A) ORS 813.010; or
 - (B) The statutory counterpart to ORS 813.010 in another jurisdiction;
 - (b) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an inhalant or any combination thereof; or
 - (c) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

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

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

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

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

(12) May not deny the petition for a driving while under the influence of intoxicants diversion agreement solely on the basis that the defendant is a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard and has been called or demonstrates that the defendant will be called to active duty, and the military service will impair the defendant's ability to complete the diversion program.

SECTION 2. ORS 813.225 is amended to read:

813.225. *[(1) Within 30 days prior to the end of the period of a driving while under the influence of intoxicants diversion agreement described in ORS 813.230, a defendant may apply by motion to the court in which the diversion agreement was entered for an order extending the diversion period.]*

(1) A defendant may apply by motion to the court in which a driving while under the influence of intoxicants diversion agreement described in ORS 813.230 was entered for an order extending the diversion period:

(a) Within 30 days prior to the end of the diversion period; or

(b) If the defendant is serving on active duty as a member of the Armed Forces of the United States, or is a member of the reserve components of the Armed Forces of the United States or the National Guard, at any time prior to the end of the diversion period.

(2) Petition forms for an application for an extension under this section shall be available to a defendant at the court.

(3) The form of the petition for an extension under this section 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 of the Supreme Court.

(4) The court may grant a petition for an extension filed under this section if the court finds that the defendant made a good faith effort to complete the conditions of the diversion agreement and that the defendant can complete the conditions of the diversion agreement within the requested extended diversion period.

(5) An extension granted under this section may be for no more than 180 days **from the ending date of the original diversion period or for another time period the court allows under subsection (7) of this section.**

(6) **Except as provided in subsection (7) of this section,** a court may grant a defendant only one extension of a diversion period under this section.

(7) The court may extend the diversion period as necessary to allow the defendant sufficient time to complete the conditions of the diversion agreement if the defendant:

(a) Is a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard;

(b) Is on active duty or has received orders that the defendant will be called to active duty; and

(c) Demonstrates that the military service will impair the defendant's ability to complete the conditions of the diversion agreement and no comparable treatment program described in section 5 of this 2011 Act is available.

[7] (8) If the court grants the petition for an extension under this section, the following apply:

(a) If the defendant fully complies with the conditions of the diversion agreement within the extended diversion period, the court may dismiss the charge with prejudice under ORS 813.250.

(b) If the court finds that the defendant failed to comply with the diversion agreement within the extended diversion period, the court shall enter the guilty plea or no contest plea filed as part of the petition for a diversion agreement, shall enter a judgment of conviction and shall sentence the defendant.

[8] (9) If the court denies the petition for an extension under this section, the court shall enter the guilty plea or no contest plea filed as part of the petition for a diversion agreement, shall enter a judgment of conviction and shall sentence the defendant.

SECTION 3. ORS 813.255 is amended to read:

813.255. (1) At any time before the court dismisses with prejudice the charge of driving while under the influence of intoxicants, the court on its own motion or on the motion of the district attorney or city attorney may issue an order requiring defendant to appear and show cause why the court should not terminate the diversion agreement. The order to show cause shall state the reasons for the proposed termination and shall set an appearance date.

(2) The order to show cause shall be served on the defendant and on the defendant's attorney, if any. Service may be made by first class mail, postage paid, addressed to the defendant at the mailing address shown on the diversion petition and agreement or at any other address that the defendant provides in writing to the court.

(3) **Except as provided in subsection (4) of this section,** the court shall terminate the diversion agreement and enter the guilty plea or no contest plea that was filed as part of the petition for the diversion agreement if:

(a) At the hearing on the order to show cause, the court finds by a preponderance of the evidence that any of the reasons for termination described in this section exist; or

(b) The defendant fails to appear at the hearing on the order to show cause.

(4) If a defendant is a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard and is on active duty, the court shall:

(a) Allow the defendant to appear at the hearing by telephone or other communication device approved by the court, if the defendant's military service permits such an appearance; or

(b) Stay the termination proceeding if the defendant's military service prohibits the defendant's appearance by telephone or other communication device and prohibits the defendant from aiding and assisting the attorney who would appear on the defendant's behalf.

[4] (5) If the court terminates the diversion agreement and enters the guilty plea or no contest plea, the court may take into account at time of sentencing any partial fulfillment by the defendant of the terms of the diversion agreement.

[5] (6) The court shall terminate a diversion agreement under this section for any of the following reasons:

(a) The defendant fails to fulfill the terms of the diversion agreement.

(b) The defendant does not qualify for the diversion agreement under the criteria in ORS 813.215.

SECTION 4. Section 5 of this 2011 Act is added to and made a part of the Oregon Vehicle Code.

SECTION 5. In lieu of completing a treatment program in this state as a part of completing the conditions of a driving while under the influence of intoxicants diversion agree-

ment in this state, the court may allow a defendant who is a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard and who is serving on active duty to participate in a comparable treatment program conducted by or authorized by a government entity in another jurisdiction.

SECTION 6. Section 5 of this 2011 Act and the amendments to ORS 813.220, 813.225 and 813.255 by sections 1 to 3 of this 2011 Act apply to petitions for driving while under the influence of intoxicants diversion agreements filed before, on or after the effective date of this 2011 Act.

SECTION 7. 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 March 15, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 17, 2011

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Peter Courtney, President of Senate

Received by Governor:

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

Approved:

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

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

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

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Kate Brown, Secretary of State