

# House Bill 2115

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

## 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**.

Expands offense of driving while under influence of intoxicants to include any drug that adversely affects person's physical or mental faculties to noticeable or perceptible degree. Defines "intoxicant." Provides affirmative defense.

Permits conviction of driving while under influence of intoxicants even if accusatory instrument does not plead fact that person was under influence of controlled substance or inhalant.

## A BILL FOR AN ACT

1  
2 Relating to driving while under the influence of intoxicants; creating new provisions; and amending  
3 ORS 421.121, 801.272, 807.060, 807.250, 809.235, 809.265, 809.730, 813.010, 813.012, 813.040, 813.131,  
4 813.140, 813.150, 813.215, 813.220, 813.430, 813.500 and 821.250.

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

6 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of the Oregon Vehicle**  
7 **Code.**

8 **SECTION 2. "Intoxicant" means:**

9 (1) **Intoxicating liquor;**

10 (2) **Controlled substances;**

11 (3) **Inhalants; or**

12 (4) **Any other drug, as defined in ORS 475.005, that adversely affects a person's physical**  
13 **or mental faculties to a noticeable or perceptible degree.**

14 **SECTION 3. ORS 801.272 is amended to read:**

15 801.272. "Field sobriety test" means a physical or mental test, approved by the Department of  
16 State Police by rule after consultation with the Department of Public Safety Standards and Training,  
17 that enables a police officer or trier of fact to screen for or detect probable impairment from  
18 [*intoxicating liquor, a controlled substance, an inhalant or any combination of intoxicating liquor, an*  
19 *inhalant and a controlled substance*] **an intoxicant or a combination of intoxicants.**

20 **SECTION 4. ORS 807.060, as amended by section 4, chapter 9, Oregon Laws 2012, is amended**  
21 **to read:**

22 807.060. The Department of Transportation may not grant driving privileges to a person under  
23 a license if the person is not eligible under this section. The following are not eligible for a license:

24 (1) A person under 16 years of age.

25 (2)(a) A person under 18 years of age who is not an emancipated minor unless the application  
26 of the person is signed by the person's mother, father or legal guardian. A person who signs an ap-  
27 plication under this paragraph may have the driving privileges canceled as provided under ORS  
28 809.320.

29 (b) A person under 18 years of age who does not meet the requirements of ORS 807.065.

**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 (3) Notwithstanding subsection (2) of this section, a person under 18 years of age is not eligible  
2 for a commercial driver license.

3 (4) A person that the department determines has a problem condition involving [*alcohol,*  
4 *inhalants or controlled substances*] **intoxicants** as described under ORS 813.040.

5 (5) A person the department reasonably believes has a mental or physical condition or impair-  
6 ment that affects the person's ability to safely operate a motor vehicle upon the highways.

7 (6) A person the department reasonably believes is unable to understand highway signs that  
8 warn, regulate or direct traffic.

9 (7) A person who is required to make future responsibility filings but has not made filings as  
10 required.

11 (8) A person who cannot be issued a license under the Driver License Compact under ORS  
12 802.540.

13 (9) A person who is not subject to the Driver License Compact under ORS 802.540 but whose  
14 driving privileges are currently under suspension or revocation in any other state upon grounds  
15 which, if committed in this state, would be grounds for the suspension or revocation of the driving  
16 privileges of the person.

17 (10) A person who has been declared a habitual offender under ORS 809.640. A person declared  
18 not eligible to be licensed under this subsection may become eligible by having eligibility restored  
19 under ORS 809.640.

20 (11) A person whose driving privileges are canceled in this state under ORS 809.310 until the  
21 person is eligible under ORS 809.310.

22 (12) A person while the person's driving privileges are revoked in this state.

23 (13) A person during a period when the person's driving privileges are suspended in this state.

24 (14) A person who holds a current out-of-state license or driver permit or a valid Oregon license  
25 or driver permit. A person who is not eligible under this subsection may become eligible by sur-  
26 rendering the license, driver permit or out-of-state license or driver permit to the department before  
27 issuance of the license. Nothing in this subsection authorizes a person to continue to operate a  
28 motor vehicle on the basis of an out-of-state license or permit if the person is required by ORS  
29 807.062 to obtain an Oregon license or permit.

30 (15) A person who has not complied with the requirements and responsibilities created by cita-  
31 tion for or conviction of a traffic offense in another jurisdiction if an agreement under ORS 802.530  
32 authorizes the department to withhold issuance of a license.

33 (16) A person who has not complied with the requirements of section 2, chapter 9, Oregon Laws  
34 2012.

35 **SECTION 5.** ORS 807.060, as amended by sections 4 and 5, chapter 9, Oregon Laws 2012, is  
36 amended to read:

37 807.060. The Department of Transportation may not grant driving privileges to a person under  
38 a license if the person is not eligible under this section. The following are not eligible for a license:

39 (1) A person under 16 years of age.

40 (2)(a) A person under 18 years of age who is not an emancipated minor unless the application  
41 of the person is signed by the person's mother, father or legal guardian. A person who signs an ap-  
42 plication under this paragraph may have the driving privileges canceled as provided under ORS  
43 809.320.

44 (b) A person under 18 years of age who does not meet the requirements of ORS 807.065.

45 (3) Notwithstanding subsection (2) of this section, a person under 18 years of age is not eligible

1 for a commercial driver license.

2 (4) A person that the department determines has a problem condition involving [*alcohol,*  
3 *inhalants or controlled substances*] **intoxicants** as described under ORS 813.040.

4 (5) A person the department reasonably believes has a mental or physical condition or impair-  
5 ment that affects the person's ability to safely operate a motor vehicle upon the highways.

6 (6) A person the department reasonably believes is unable to understand highway signs that  
7 warn, regulate or direct traffic.

8 (7) A person who is required to make future responsibility filings but has not made filings as  
9 required.

10 (8) A person who cannot be issued a license under the Driver License Compact under ORS  
11 802.540.

12 (9) A person who is not subject to the Driver License Compact under ORS 802.540 but whose  
13 driving privileges are currently under suspension or revocation in any other state upon grounds  
14 which, if committed in this state, would be grounds for the suspension or revocation of the driving  
15 privileges of the person.

16 (10) A person who has been declared a habitual offender under ORS 809.640. A person declared  
17 not eligible to be licensed under this subsection may become eligible by having eligibility restored  
18 under ORS 809.640.

19 (11) A person whose driving privileges are canceled in this state under ORS 809.310 until the  
20 person is eligible under ORS 809.310.

21 (12) A person while the person's driving privileges are revoked in this state.

22 (13) A person during a period when the person's driving privileges are suspended in this state.

23 (14) A person who holds a current out-of-state license or driver permit or a valid Oregon license  
24 or driver permit. A person who is not eligible under this subsection may become eligible by sur-  
25 rendering the license, driver permit or out-of-state license or driver permit to the department before  
26 issuance of the license. Nothing in this subsection authorizes a person to continue to operate a  
27 motor vehicle on the basis of an out-of-state license or permit if the person is required by ORS  
28 807.062 to obtain an Oregon license or permit.

29 (15) A person who has not complied with the requirements and responsibilities created by cita-  
30 tion for or conviction of a traffic offense in another jurisdiction if an agreement under ORS 802.530  
31 authorizes the department to withhold issuance of a license.

32 **SECTION 6.** ORS 807.250 is amended to read:

33 807.250. (1) In addition to any requirements under ORS 807.240 and any applicable conditions  
34 under ORS 813.500 and 813.520, the Department of Transportation may not issue a hardship permit  
35 under ORS 807.240 to a person whose suspension of driving privileges is based upon a conviction  
36 of any of the following unless the person submits to the department a recommendation from the  
37 judge before whom the person was convicted:

38 (a) ORS 811.140.

39 (b) ORS 811.540.

40 (c) Driving while under the influence of intoxicants. If a person's driving privileges are sus-  
41 pended for a conviction for driving while under the influence of intoxicants and the person is de-  
42 termined under ORS 813.500 to have a problem condition involving [*alcohol, inhalants or controlled*  
43 *substances*] **intoxicants** as described in ORS 813.040, the judge must:

44 (A) Make the recommendation with reference to the best interest of the public as well as of the  
45 defendant and the recommendation must be in writing.

1 (B) Recommend times, places, routes and days minimally necessary for the person to seek or  
 2 retain employment, to attend any alcohol or drug treatment or rehabilitation program or to receive  
 3 necessary medical treatment for the person or a member of the person's immediate family.

4 (2) The department may not issue a hardship permit to a person whose suspension of driving  
 5 privileges is based on a conviction described in ORS 809.265.

6 (3) The department may not issue a hardship permit to a person whose driver license or driver  
 7 permit is suspended pursuant to ORS 25.750 to 25.783.

8 (4) The department may not issue a hardship permit to a person whose driving privileges are  
 9 suspended pursuant to ORS 809.280 (4) or 809.416 (1) or (2).

10 **SECTION 7.** ORS 809.235 is amended to read:

11 809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving  
 12 privileges be permanently revoked if the person is convicted of any degree of murder and the court  
 13 finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the  
 14 death of the victim, or if the person is convicted of aggravated vehicular homicide, manslaughter in  
 15 the first or second degree resulting from the operation of a motor vehicle, criminally negligent  
 16 homicide resulting from the operation of a motor vehicle or assault in the first degree resulting from  
 17 the operation of a motor vehicle.

18 (b) The court shall order that a person's driving privileges be permanently revoked if the person  
 19 is convicted of felony driving while under the influence of intoxicants in violation of ORS 813.010  
 20 or if the person is convicted for a third or subsequent time of any of the following offenses in any  
 21 combination:

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

23 (i) ORS 813.010; or

24 (ii) The statutory counterpart to ORS 813.010 in another jurisdiction.

25 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the  
 26 impaired driving of a vehicle due to the use of [*intoxicating liquor, a controlled substance, an inhalant*  
 27 *or any combination thereof*] **an intoxicant or a combination of intoxicants.**

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

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

34 (2)(a) A person whose driving privileges are revoked as described in subsection (1) of this sec-  
 35 tion may file a petition in the circuit court of the county in which the person's driving privileges  
 36 were revoked for an order restoring the person's driving privileges. A petition may be filed under  
 37 this subsection no sooner than 10 years after the person is:

38 (A) Released on parole or post-prison supervision for the crime for which the person's driving  
 39 privileges were revoked and any other crimes arising out of the same criminal episode;

40 (B) Sentenced to probation for the crime for which the person's driving privileges were revoked,  
 41 unless the probation is revoked, in which case the petition may be filed no sooner than 10 years  
 42 after the date probation is revoked; or

43 (C) Sentenced for the crime for which the person's driving privileges were revoked, if no other  
 44 provision of this paragraph applies.

45 (b) Notwithstanding paragraph (a) of this subsection, if during the revocation period for the

1 crime for which the person was convicted the person is convicted of a criminal offense involving a  
2 motor vehicle, the person may file a petition to restore driving privileges as described in paragraph  
3 (a) of this subsection no sooner than 10 years from the date of the most recent conviction involving  
4 a motor vehicle.

5 (c) The district attorney of the county in which the person's driving privileges were revoked  
6 shall be named and served as the respondent in the petition.

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

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

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

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

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

16 (e) Any other relevant factors.

17 (4) The court shall order a petitioner's driving privileges restored if, after a hearing described  
18 in subsection (3) of this section, the court finds by clear and convincing evidence that the petitioner:

19 (a) Is rehabilitated;

20 (b) Does not pose a threat to the safety of the public; and

21 (c) If the sentence for the crime for which the petitioner's driving privileges were revoked re-  
22 quired the petitioner to complete an alcohol or drug treatment program, has completed an alcohol  
23 or drug treatment program in a facility approved by the Director of the Oregon Health Authority  
24 or a similar program in another jurisdiction.

25 (5) Upon receiving a court order to restore a person's driving privileges, the department may  
26 reinstate driving privileges in accordance with ORS 809.390, except that the department may not  
27 reinstate driving privileges of any person whose privileges are revoked under this section until the  
28 person complies with future responsibility filings.

29 **SECTION 8.** ORS 809.265 is amended to read:

30 809.265. (1) Unless the court finds compelling circumstances not to order suspension of driving  
31 privileges, the court in which a person is convicted of an offense described in this subsection shall  
32 order suspension of the person's driving privileges. This subsection applies when a person is con-  
33 victed of:

34 (a) Any offense involving manufacturing, possession or delivery of controlled substances.

35 (b) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal  
36 ordinance if the person was under the influence of an [*inhalant or a controlled substance*] **intoxicant**  
37 **other than intoxicating liquor.**

38 (2) Upon receipt of an order under this section, the department shall take action as directed  
39 under ORS 809.280.

40 **SECTION 9.** ORS 809.730 is amended to read:

41 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is  
42 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS  
43 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been  
44 convicted of:

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

- 1 (A) ORS 813.010; or
- 2 (B) The statutory counterpart to ORS 813.010 in another jurisdiction;
- 3 (b) A driving under the influence of intoxicants offense in another jurisdiction that involved the
- 4 impaired driving of a vehicle due to the use of *[intoxicating liquor, a controlled substance, an inhalant*
- 5 *or any combination thereof]* **an intoxicant or a combination of intoxicants;**
- 6 (c) A driving offense in another jurisdiction that involved operating a vehicle while having a
- 7 blood alcohol content above that jurisdiction’s permissible blood alcohol content;
- 8 (d) Murder, manslaughter, criminally negligent homicide or assault that resulted from the oper-
- 9 ation of a motor vehicle in this state or in another jurisdiction; or
- 10 (e) Aggravated vehicular homicide under ORS 163.149 or aggravated driving while suspended
- 11 or revoked under ORS 163.196.

12 (2) For the purposes of subsection (1) of this section, a conviction for a driving offense in an-

13 other jurisdiction based solely on a person under 21 years of age having a blood alcohol content that

14 is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age

15 or older does not constitute a prior conviction.

16 (3) All seizure and forfeiture proceedings under this section shall be conducted in accordance

17 with ORS chapter 131A.

18 **SECTION 10.** 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]* **an**
- 24 **intoxicant;** or
- 25 (c) Is under the influence of any combination of *[intoxicating liquor, an inhalant and a controlled*
- 26 *substance]* **intoxicants.**

27 *[(2) A person may not be convicted of driving while under the influence of intoxicants on the basis*

28 *of being under the influence of a controlled substance or an inhalant unless the fact that the person*

29 *was under the influence of a controlled substance or an inhalant is pleaded in the accusatory instru-*

30 *ment and is either proved at trial or is admitted by the person through a guilty plea.]*

31 *[(3)]* (2) A person convicted of the offense described in this section is subject to ORS 813.020 in

32 addition to this section.

33 *[(4)]* (3) Except as provided in subsection *[(5)]* (4) of this section, the offense described in this

34 section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable

35 upon any premises open to the public.

36 *[(5)(a)]* (4)(a) Driving while under the influence of intoxicants is a Class C felony if the current

37 offense was committed in a motor vehicle and the person has, at least three times in the 10 years

38 prior to the date of the current offense, been convicted of, or been found to be within the jurisdic-

39 tion of the juvenile court for an act that if committed by an adult would be, any of the following

40 offenses in any combination:

- 41 (A) Driving while under the influence of intoxicants in violation of:
- 42 (i) This section; or
- 43 (ii) The statutory counterpart to this section in another jurisdiction.
- 44 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the
- 45 impaired driving or operation of a vehicle, an aircraft or a boat due to the use of *[intoxicating liquor,*

1 *a controlled substance, an inhalant or any combination thereof] an intoxicant or a combination of*  
 2 **intoxicants.**

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

6 (b) For the purposes of paragraph (a) of this subsection, a conviction or adjudication for a  
 7 driving offense 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 for a  
 9 person 21 years of age or older does not constitute a prior conviction or adjudication.

10 [(6)] (5) In addition to any other sentence that may be imposed, the court shall impose one or  
 11 more of the following fines on a person convicted of driving while under the influence of intoxicants  
 12 as follows:

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

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

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

17 (d) For a person who drives a vehicle while the person has 0.15 percent or more by weight of  
 18 alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the per-  
 19 son made under ORS 813.100, 813.140 or 813.150, a minimum of \$2,000.

20 [(7)] (6) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on  
 21 a person convicted of driving while under the influence of intoxicants if:

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

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

25 **SECTION 10a. Section 10b of this 2013 Act is added to and made a part of the Oregon**  
 26 **Vehicle Code.**

27 **SECTION 10b. (1) In a prosecution under ORS 813.010 for driving while under the influ-**  
 28 **ence of intoxicants other than intoxicating liquor, a controlled substance or an inhalant, it**  
 29 **is an affirmative defense that:**

30 (a) The defendant lawfully obtained and consumed the drug;

31 (b) The defendant consumed the drug in the prescribed dosage and followed all directions  
 32 and warnings relating to consumption of the drug, including directions, if any, from the  
 33 manufacturer of the drug, the pharmacist who provided the drug to the defendant and the  
 34 physician or other health care professional who prescribed or recommended the drug to the  
 35 defendant; and

36 (c) The defendant experienced a reaction to the drug that the defendant could not rea-  
 37 sonably have anticipated and that caused the defendant to be impaired while driving or op-  
 38 erating the vehicle.

39 (2) A defendant may not introduce evidence of the affirmative defense described in sub-  
 40 section (1) of this section unless the defendant gives notice of intent to do so in writing filed  
 41 with the court and served on the prosecuting attorney at least 21 days before the first trial  
 42 date set for the case. The notice must specify the drug the defendant claims caused the  
 43 impairment.

44 (3) By giving notice under subsection (2) of this section, the defendant consents to full  
 45 release to the prosecuting attorney of the defendant's medical records that relate to the

1 **defendant's consumption of the drug, including but not limited to medical records relating**  
 2 **to the medical condition for which the drug was used and any medical advice given in asso-**  
 3 **ciation with the drug.**

4 **(4) The affirmative defense provided under this section may be asserted only with respect**  
 5 **to the impairment that was caused by an unanticipated adverse reaction to the drug specified**  
 6 **in the notice given under subsection (2) of this section, and may not be asserted with respect**  
 7 **to impairment caused by use of the drug specified in the notice in conjunction with**  
 8 **intoxicating liquor, a controlled substance or an inhalant.**

9 **SECTION 11.** ORS 813.040 is amended to read:

10 813.040. This section establishes, for purposes of ORS 471.432, 807.060 and 813.500, when a per-  
 11 son has a problem condition involving [*alcohol, inhalants or controlled substances*] **intoxicants**. For  
 12 purposes of ORS 471.432, 807.060 and 813.500, a person has a problem condition involving [*alcohol,*  
 13 *inhalants or controlled substances*] **intoxicants** if it is determined that the person has a problem  
 14 condition in which the person's health or that of others is substantially impaired or endangered or  
 15 the person's social or economic function is substantially disrupted because of the person's:

16 (1) Habitual or periodic use of alcoholic beverages; or

17 (2) Use of or loss of the ability to control the use of controlled substances, inhalants or other  
 18 substances with abuse potential including a condition that may have developed:

19 (a) A physical dependence in which the body requires a continuing supply of a drug, inhalant  
 20 or controlled substance to avoid characteristic withdrawal symptoms; or

21 (b) A psychological dependence characterized by an overwhelming mental desire for continued  
 22 use of a drug, inhalant or controlled substance.

23 **SECTION 12.** ORS 813.131 is amended to read:

24 813.131. (1) Any person who operates a motor vehicle upon premises open to the public or the  
 25 highways of this state shall be deemed to have given consent, subject to the Motorist Implied Con-  
 26 sent Law, to a chemical test of the person's urine for the purpose of determining the presence of  
 27 [*a controlled substance or an inhalant*] **an intoxicant other than intoxicating liquor** in the person's  
 28 body if the person is arrested for driving while under the influence of intoxicants in violation of  
 29 ORS 813.010 or of a municipal ordinance and either:

30 (a) The person takes the breath test described in ORS 813.100 and the test discloses a blood  
 31 alcohol content of less than 0.08 percent; or

32 (b) The person is involved in an accident resulting in injury or property damage. A urine test  
 33 may be requested under this paragraph regardless of whether a breath test has been requested and  
 34 regardless of the results of a breath test, if one is taken.

35 (2) A police officer may not request a urine test unless the officer is certified by the Board on  
 36 Public Safety Standards and Training as having completed at least eight hours of training in re-  
 37 cognition of drug impaired driving and the officer has a reasonable suspicion that the person ar-  
 38 rested has been driving while under the influence of [*a controlled substance, an inhalant*] **an**  
 39 **intoxicant other than intoxicating liquor** or any combination of [*an inhalant, a controlled sub-*  
 40 *stance and intoxicating liquor*] **intoxicants**.

41 (3) A person asked to give a urine sample shall be given privacy and may not be observed by  
 42 a police officer when producing the sample.

43 (4)(a) At the trial of any civil or criminal action, suit or proceeding arising out of the acts  
 44 committed by a person driving a motor vehicle while under the influence of intoxicants, a valid  
 45 chemical analysis of a person's urine is admissible as evidence and may be used with other evidence,

1 if any, to determine whether the person was driving while under the influence of intoxicants.

2 (b) A chemical analysis of a person's urine is valid under this subsection if analysis is performed  
3 in an accredited or licensed toxicology laboratory.

4 **SECTION 13.** ORS 813.140 is amended to read:

5 813.140. Nothing in ORS 813.100 is intended to preclude the administration of a chemical test  
6 described in this section. A police officer may obtain a chemical test of the blood to determine the  
7 amount of [*alcohol*] **intoxicants** in any person's blood or a test of the person's [*blood or*] urine[, *or*  
8 *both,*] to determine the presence of [*a controlled substance or an inhalant*] **an intoxicant other than**  
9 **intoxicating liquor** in the person as provided in the following:

10 (1) If, when requested by a police officer, the person expressly consents to such a test.

11 (2) Notwithstanding subsection (1) of this section, from a person without the person's consent  
12 if:

13 (a) The police officer has probable cause to believe that the person was driving while under the  
14 influence of intoxicants and that evidence of the offense will be found in the person's blood or urine;  
15 and

16 (b) The person is unconscious or otherwise in a condition rendering the person incapable of  
17 expressly consenting to the test or tests requested.

18 **SECTION 14.** ORS 813.150 is amended to read:

19 813.150. [*In addition to a chemical test of the breath, blood or urine administered under ORS*  
20 *813.100 or 813.140, upon the request of a police officer, a person shall be permitted upon request, at the*  
21 *person's own expense, reasonable opportunity to have any licensed physician and surgeon, licensed*  
22 *professional nurse or qualified technician, chemist or other qualified person of the person's own*  
23 *choosing administer a chemical test or tests of the person's breath or blood for the purpose of deter-*  
24 *mining the alcoholic content of the person's blood or a chemical test or tests of the person's blood or*  
25 *urine, or both, for the purpose of determining the presence of a controlled substance or an inhalant in*  
26 *the person. The failure or inability to obtain such a test or tests by a person shall not preclude the*  
27 *admission of evidence relating to a test or tests taken upon the request of a police officer.*]

28 (1) **In addition to a chemical test of the breath, blood or urine administered under ORS**  
29 **813.100 or 813.140, upon the request of a police officer, a person shall be permitted upon re-**  
30 **quest, at the person's own expense, reasonable opportunity to have any licensed physician**  
31 **and surgeon, licensed professional nurse or qualified technician, chemist or other qualified**  
32 **person of the person's own choosing administer a chemical test or tests of the person's:**

33 (a) **Breath for the purpose of determining the alcoholic content of the person's blood;**

34 (b) **Blood for the purpose of determining the presence of intoxicants in the person's**  
35 **blood; or**

36 (c) **Urine for the purpose of determining the presence of intoxicants other than**  
37 **intoxicating liquor in the person.**

38 (2) **The failure or inability of a person to obtain a test or tests as described in subsection**  
39 **(1) of this section does not preclude the admission of evidence relating to a test or tests**  
40 **taken upon the request of a police officer.**

41 **SECTION 15.** ORS 813.215 is amended to read:

42 813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following con-  
43 ditions:

44 (a) On the date the defendant filed the petition for a driving while under the influence of  
45 intoxicants diversion agreement, the defendant had no charge, other than the charge for the present

1 offense, pending for:

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

3 (i) ORS 813.010; or

4 (ii) 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 inhalant*  
7 *or any combination thereof*] **an intoxicant or a combination of intoxicants**; 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 (b) The defendant has not been convicted of an offense described in paragraph (a) of this sub-  
11 section within the period beginning 15 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 (c) The defendant has not been convicted of a felony offense described in ORS 813.010 [~~(5)(a)~~]  
15 **(4)(a)**.

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

21 (e) The defendant did not participate in a diversion or rehabilitation program described in par-  
22 agraph (d) of this subsection, other than a program entered into as a result of the charge for the  
23 present offense, within the period beginning 15 years before the date of the commission of the  
24 present offense and ending on the date the defendant filed the petition for a driving while under the  
25 influence of intoxicants diversion agreement.

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

30 (g) The defendant has not been convicted of an offense described in paragraph (f) of this sub-  
31 section within the period beginning 15 years before the date of the commission of the present offense  
32 and ending on the date the defendant filed the petition for a driving while under the influence of  
33 intoxicants diversion agreement.

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

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

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

39 (A) Death of any person; or

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

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

45 (3) A defendant is eligible for a second or subsequent diversion if the defendant meets all of the

1 conditions of subsection (1) of this section and the defendant has not been convicted of any other  
 2 criminal offense involving a motor vehicle within the period beginning 15 years before the date of  
 3 the commission of the present offense and ending on the date the defendant filed the petition for the  
 4 second or subsequent driving while under the influence of intoxicants diversion agreement.

5 **SECTION 16.** ORS 813.220 is amended to read:

6 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request  
 7 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether  
 8 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-  
 9 ment. In making a determination under this section, the court:

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

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

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

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

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

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

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

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

28 (A) ORS 813.010; or

29 (B) 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 inhalant*  
 32 *or any combination thereof*] **an intoxicant or a combination of intoxicants**; 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 (8) Shall deny the petition for a driving while under the influence of intoxicants diversion  
 36 agreement if the defendant participated in a driving while under the influence of intoxicants diver-  
 37 sion program or in any similar alcohol or drug rehabilitation program, other than a program entered  
 38 into as a result of the charge for the present offense, in this state or in another jurisdiction after  
 39 the date the defendant filed the petition.

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

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

1 agreement if the defendant has been convicted of a felony offense described in ORS 813.010 [(5)(a)]  
 2 (4)(a).

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

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

12 **SECTION 17.** ORS 813.430 is amended to read:

13 813.430. This section establishes circumstances under which ORS 813.420 requires an increase  
 14 in the time for suspension of driving privileges and under which ORS 813.520 requires an increase  
 15 in the time before the Department of Transportation may issue a hardship permit. A person is sub-  
 16 ject to an increase in suspension time under this section if any of the following apply:

17 (1) The person is presently participating in a driving while under the influence of intoxicants  
 18 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or  
 19 another jurisdiction.

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

21 (a) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replace-  
 22 ment Part) became effective.

23 (b) The person was convicted of:

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

25 (i) ORS 813.010;

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

27 (iii) A municipal ordinance in this state or another jurisdiction;

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

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

33 (c) The person commenced participating in a driving while under the influence of intoxicants  
 34 diversion program in this state or in any similar alcohol or drug rehabilitation program in this or  
 35 another jurisdiction.

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

40 **SECTION 18.** ORS 813.500 is amended to read:

41 813.500. (1) If a person's license is suspended for driving while under the influence of intoxicants  
 42 under ORS 813.400 and the suspension period is determined by ORS 809.428 (2)(b) or (c), the De-  
 43 partment of Transportation may only issue a hardship permit to the person under ORS 807.240 if the  
 44 person, in addition to any requirement under ORS 807.240 and any applicable requirements under  
 45 ORS 807.250 and 813.520:

1 (a) Is examined by the Oregon Health Authority to determine whether the person has a problem  
 2 condition involving [*alcohol, inhalants or controlled substances*] **intoxicants** as described in ORS  
 3 813.040; and

4 (b) Complies with the requirements of this section.

5 (2) If the authority determines that the person has a problem condition involving [*alcohol,*  
 6 *inhalants or controlled substances*] **intoxicants**, as described in ORS 813.040, the department may  
 7 issue the permit to the person only if both the following apply:

8 (a) The person enrolled in a program for rehabilitation for alcoholism or drug dependence ap-  
 9 proved by the authority.

10 (b) The authority recommends, on the basis of the person's progress in the rehabilitation pro-  
 11 gram, such reinstatement in writing to the department. If the authority makes a recommendation  
 12 under this paragraph, the authority shall state specifically in the recommendation the times, places,  
 13 routes and days of the week minimally necessary for the person to seek or retain employment, to  
 14 attend any alcohol or drug treatment or rehabilitation program or to obtain necessary medical  
 15 treatment for the person or a member of the person's immediate family.

16 (3) If the authority determines that the person does not have a problem condition involving [*al-*  
 17 *cohol, inhalants or controlled substances*] **intoxicants** as described in ORS 813.040, the department  
 18 may issue the permit to the person only if, in addition to any requirements under ORS 807.240, the  
 19 person enters an alcohol or drug information program approved by the authority and the department  
 20 determines that issuance of a permit is appropriate. If the department issues a permit to a person  
 21 described in this subsection, the department shall require, under ORS 807.240, that the person com-  
 22 plete the program as a condition of retaining the permit.

23 **SECTION 19.** ORS 821.250 is amended to read:

24 821.250. (1) A person commits the offense of permitting dangerous operation of a snowmobile or  
 25 an all-terrain vehicle if the person is the owner or other person having charge or control of a  
 26 snowmobile or an all-terrain vehicle and the person knowingly authorizes or permits any person to  
 27 operate the vehicle across a highway who is:

28 (a) Incapable by reason of age, physical or mental disability; or

29 (b) Under the influence of [*intoxicating liquor, inhalants or controlled substances*] **an**  
 30 **intoxicant**.

31 (2) In addition to other penalties provided by this section, operators or owners may be liable  
 32 as provided under ORS 821.310.

33 (3) The offense described in this section, permitting dangerous operation of a snowmobile or an  
 34 all-terrain vehicle, is a Class A traffic violation.

35 **SECTION 20.** ORS 421.121 is amended to read:

36 421.121. (1) Except as provided in ORS 137.635, each inmate sentenced to the custody of the  
 37 Department of Corrections for felonies committed on or after November 1, 1989, is eligible for a  
 38 reduction in the term of incarceration for:

39 (a) Appropriate institutional behavior, as defined by rule of the Department of Corrections; and

40 (b)(A) Participation in the adult basic skills development program described in ORS 421.084; or

41 (B) Obtaining a high school diploma, a General Educational Development (GED) certificate, a  
 42 certificate or degree from a post-secondary education institution as defined in ORS 337.511 or a  
 43 journey level certification from a registered apprenticeship program as defined in ORS 660.010. The  
 44 reduction described in this subparagraph may not exceed a period of 60 days.

45 (2)(a) The maximum amount of time credits earned for appropriate institutional behavior, for

1 participation in the adult basic skills development program described in ORS 421.084 or for obtain-  
 2 ing a diploma, certificate or degree described in subsection (1)(b)(B) of this section may not exceed  
 3 30 percent of the total term of incarceration in a Department of Corrections institution.

4 (b) Notwithstanding paragraph (a) of this subsection, the maximum amount of time credits  
 5 earned under this section may not exceed 20 percent of the total term of incarceration in a De-  
 6 partment of Corrections institution that is imposed in a criminal action described in subsection (3)  
 7 of this section.

8 (3) Subsection (2)(b) of this section applies to the total term of incarceration that is imposed in  
 9 a criminal action in which:

10 (a) The parties stipulate that the inmate is subject to subsection (2)(b) of this section;

11 (b) The inmate is convicted of an offense that was committed less than five years after the in-  
 12 mate completed serving a sentence for:

13 (A) A person felony; or

14 (B) A crime described in paragraph (e) of this subsection;

15 (c) The inmate is convicted of a person felony;

16 (d) The inmate is convicted of an offense involving the use or threatened use of a firearm; or

17 (e) The inmate is convicted of any of the following crimes:

18 (A) Subjecting another person to involuntary servitude in the second degree under ORS 163.263;

19 (B) Subjecting another person to involuntary servitude in the first degree under ORS 163.264;

20 (C) Trafficking in persons under ORS 163.266;

21 (D) Coercion under ORS 163.275;

22 (E) Online sexual corruption of a child in the second degree under ORS 163.432;

23 (F) Online sexual corruption of a child in the first degree under ORS 163.433;

24 (G) Aggravated theft in the first degree under ORS 164.057, if:

25 (i) The victim of the theft was 65 years of age or older at the time of the commission of the  
 26 offense; and

27 (ii) The value of the property stolen from the victim described in sub-subparagraph (i) of this  
 28 subparagraph, in a single or aggregate transaction, is \$10,000 or more;

29 (H) Treason under ORS 166.005;

30 (I) Abuse of a corpse in the second degree under ORS 166.085;

31 (J) Racketeering activities under ORS 166.720;

32 (K) Luring a minor under ORS 167.057;

33 (L) Assaulting a law enforcement animal under ORS 167.339;

34 (M) A sex crime as defined in ORS 181.594;

35 (N) Causing another person to ingest a controlled substance under ORS 475.908;

36 (O) Applying a controlled substance to the body of another person under ORS 475.910;

37 (P) Driving while under the influence of intoxicants under ORS 813.010 [(5)] (4); or

38 (Q) An attempt, conspiracy or solicitation to commit an offense described in this paragraph or  
 39 in paragraph (c) or (d) of this subsection.

40 (4) The time credits may not be used to shorten the term of actual prison confinement to less  
 41 than six months.

42 (5) The department shall adopt rules pursuant to the rulemaking provisions of ORS chapter 183  
 43 to establish a process for granting, retracting and restoring the time credits earned by the offender  
 44 as allowed in subsections (1) to (4) of this section.

45 (6) As used in this section:

1 (a) "Completed serving a sentence" includes the completion of any term of probation, parole or  
2 post-prison supervision.

3 (b) "Person felony" has the meaning given that term in the rules of the Oregon Criminal Justice  
4 Commission.

5 **SECTION 21.** ORS 813.012 is amended to read:

6 813.012. (1) The Oregon Criminal Justice Commission shall classify felony driving while under  
7 the influence of intoxicants that is committed under the circumstances described in ORS 813.010  
8 [(5)] (4) as crime category 6 of the rules of the Oregon Criminal Justice Commission.

9 (2) In determining criminal history for a person convicted of a felony that has operation of a  
10 motor vehicle as an element, or of a felony that involved death, injury or property damage caused  
11 by the use of a motor vehicle, the commission shall:

12 (a) Consider two prior convictions of misdemeanor driving while under the influence of  
13 intoxicants to be equivalent to one conviction of felony driving while under the influence of  
14 intoxicants; and

15 (b) Consider felony driving while under the influence of intoxicants to be a person felony and  
16 consider misdemeanor driving while under the influence of intoxicants to be a person Class A  
17 misdemeanor.

18 **SECTION 22.** Sections 2 and 10b of this 2013 Act and the amendments to ORS 421.121,  
19 801.272, 807.060, 807.250, 809.235, 809.265, 809.730, 813.010, 813.012, 813.040, 813.131, 813.140,  
20 813.150, 813.215, 813.220, 813.430, 813.500 and 821.250 by sections 3 to 10 and 11 to 21 of this 2013  
21 Act apply to crimes committed on or after the effective date of this 2013 Act.

22