

# House Bill 2125

Sponsored by Representative GILLIAM, Senator JOHNSON, Representative BARTON; Representative TOMEI (at the request of John S. Foote, Clackamas County District Attorney) (Presession filed.)

## 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 person to pay restitution as requirement of driving while under influence of intoxicants diversion agreement.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to driving while under the influence of intoxicants diversion agreements; creating new  
3 provisions; amending ORS 137.109, 813.200 and 813.210 and section 1, chapter 670, Oregon Laws  
4 2011; and declaring an emergency.

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

6 **SECTION 1.** ORS 813.200 is amended to read:

7 813.200. (1) The court shall inform at arraignment a defendant charged with the offense of  
8 driving while under the influence of intoxicants as defined in ORS 813.010 or a city ordinance con-  
9 forming thereto that a diversion agreement may be available if the defendant meets the criteria set  
10 out in ORS 813.215 and files with the court a petition for a driving while under the influence of  
11 intoxicants diversion agreement.

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

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

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

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

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

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

28 (d) Except as provided in subsection (5) of this section, an agreement by the defendant to not  
29 use intoxicants during the diversion period and to comply fully with the laws of this state designed  
30 to discourage the use of intoxicants;

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

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

6 (g) A waiver by the defendant of any former jeopardy rights under the federal and state Con-  
 7 stitutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any other of-  
 8 fenses based upon the same criminal episode;

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

12 (i) An agreement by the defendant to pay court-appointed attorney fees as determined by the  
 13 court[.]; and

14 (j) **An agreement by the defendant to pay restitution if ordered by the court under sec-**  
 15 **tion 4 of this 2013 Act.**

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

17 (a) The person consumes sacramental wine given or provided as part of a religious rite or ser-  
 18 vice;

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

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

23 **SECTION 2.** ORS 813.210 is amended to read:

24 813.210. (1) After an accusatory instrument has been filed charging the defendant with the of-  
 25 fense of driving while under the influence of intoxicants, a defendant may file with the court a pe-  
 26 tition for a driving while under the influence of intoxicants diversion agreement described in ORS  
 27 813.200. The petition:

28 (a) Must be filed within 30 days after the date of the defendant's first appearance on the sum-  
 29 mons, unless a later filing date is allowed by the court upon a showing of good cause. For purposes  
 30 of this paragraph, the filing of a demurrer, a motion to suppress or a motion for an omnibus hearing  
 31 does not constitute good cause.

32 (b) Notwithstanding paragraph (a) of this subsection, may not be filed after entry of a guilty plea  
 33 or a no contest plea or after commencement of any trial on the charge whether or not a new trial  
 34 or retrial is ordered for any reason.

35 (2) The defendant shall pay to the court, at the time of filing a petition for a driving while under  
 36 the influence of intoxicants diversion agreement, a filing fee established under ORS 813.240. The  
 37 court may make provision for payment of the filing fee by the defendant on an installment basis.  
 38 The court may waive all or part of the filing fee in cases involving indigent defendants. The filing  
 39 fee paid to the court under this subsection shall be retained by the court if the petition is allowed.  
 40 The filing fee shall be distributed as provided by ORS 813.240.

41 (3) The defendant shall pay to the agency or organization providing the diagnostic assessment,  
 42 at the time the petition is allowed, the fee required by ORS 813.240 (3).

43 (4)(a) Unless otherwise provided under paragraph (b) of this subsection, the defendant shall pay  
 44 to the court any court-appointed attorney fees agreed to under ORS 813.200 (4)(i). Payments shall  
 45 be made prior to the end of the diversion period on a schedule determined by the court.

1 (b) The court may waive all or part of the court-appointed attorney fees agreed to under ORS  
 2 813.200 (4)(i).

3 **(5) The defendant shall pay to the court any restitution ordered under section 4 of this**  
 4 **2013 Act. Payments shall be made prior to the end of the diversion period on a schedule de-**  
 5 **termined by the court.**

6 [(5)] (6) The defendant shall cause a copy of the petition for a driving while under the influence  
 7 of intoxicants diversion agreement to be served upon the district attorney or city attorney. The  
 8 district attorney or city attorney may file with the court, within 15 days after the date of service,  
 9 a written objection to the petition and a request for a hearing.

10 **SECTION 3. Section 4 of this 2013 Act is added to and made a part of ORS 137.101 to**  
 11 **137.109.**

12 **SECTION 4. (1) When a person has entered into a driving while under the influence of**  
 13 **intoxicants diversion agreement and the person's actions resulted in economic damages, the**  
 14 **district attorney shall investigate and present to the court within 90 days of when diversion**  
 15 **agreement is entered, evidence of the nature and amount of the damages. If the court finds**  
 16 **from the evidence presented that a victim suffered economic damages the court shall order**  
 17 **the defendant to pay restitution and include in the diversion agreement one of the following:**

18 (a) A requirement that the defendant pay the victim restitution in a specific amount that  
 19 equals the full amount of the victim's economic damages as determined by the court.

20 (c) A requirement that the defendant pay the victim restitution in a specific amount that  
 21 is less than the full amount of the victim's economic damages, with the consent of the vic-  
 22 tim.

23 (2) After the district attorney makes a presentation described in subsection (1) of this  
 24 section, if the court is unable to find from the evidence presented that a victim suffered  
 25 economic damages, the court shall make a finding on the record to that effect.

26 (3) No finding made by the court or failure of the court to make a finding under this  
 27 section limits or impairs the rights of a person injured to sue and recover damages in a civil  
 28 action as provided in ORS 137.109.

29 (4) If the defendant objects to the imposition, amount or distribution of the restitution,  
 30 the court shall allow the defendant to be heard on such issue at the time the court deter-  
 31 mines the amount of restitution.

32 **SECTION 5. ORS 137.109 is amended to read:**

33 137.109. (1) Nothing in ORS 137.103 to 137.109, 137.540, 144.102, 144.275, 161.675 and 161.685 **and**  
 34 **section 4 of this 2013 Act** limits or impairs the right of a person injured by a defendant's commis-  
 35 sion of a crime, [or] by a defendant's commission of a violation described in ORS 153.008, **or by a**  
 36 **defendant who has entered into a driving while under the influence of intoxicants diversion**  
 37 **agreement**, to sue and recover damages from the defendant in a civil action. Evidence that the  
 38 defendant has paid or been ordered to pay restitution pursuant to ORS 137.103 to 137.109, 137.540,  
 39 144.102, 144.275, 161.675 and 161.685 **and section 4 of this 2013 Act** may not be introduced in any  
 40 civil action arising out of the facts or events that were the basis for the restitution. However, the  
 41 court shall credit any restitution paid by the defendant to a victim against any judgment in favor  
 42 of the victim in such civil action.

43 (2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for  
 44 economic damages of a victim, that issue is conclusively determined as to the defendant if it is in-  
 45 volved in a subsequent civil action.

1       **SECTION 6.** Section 1, chapter 670, Oregon Laws 2011, is amended to read:

2       **Sec. 1.** (1) The Department of Justice shall establish a restitution collection pilot program in  
 3 geographically dispersed counties or regions of this state to increase the collection of restitution  
 4 ordered under ORS 137.106 and 137.107 **and section 4 of this 2013 Act.**

5       (2)(a) The department shall make grants from the Restitution Collection Pilot Program Fund  
 6 established under section 2 [*of this 2011 Act*], **chapter 670, Oregon Laws 2011**, to enable the dis-  
 7 trict attorney’s office of each county, or a district attorney’s office located in a region, participating  
 8 in the pilot program to employ at least one restitution clerk on at least a part-time basis.

9       (b) In addition to the grants required under paragraph (a) of this subsection, the department  
 10 may make grants from the fund to fund other positions, activities and expenses related to the col-  
 11 lection of restitution.

12       (3)(a) Each restitution clerk shall:

13       (A) Investigate evidence of the nature and amount of the damages suffered by victims of crime  
 14 pursuant to ORS 137.106;

15       (B) Investigate and compile information regarding the defendant’s ability to pay restitution; and

16       (C) Provide the evidence and information obtained pursuant to this paragraph to the prosecuting  
 17 attorney before any hearing on the issue of restitution.

18       (b) Pursuant to **Article I**, section 42, [*Article I*] of the Oregon Constitution, and ORS 137.106,  
 19 the district attorney shall present the information and evidence obtained by the restitution clerk to  
 20 the court.

21       (c) The recipient of a grant made pursuant to subsection (2) of this section is authorized to  
 22 perform the activities set out in the grant agreement and in rules adopted by the department pur-  
 23 suant to this section.

24       (4)(a) The department shall employ and assign collection agents to each county or region par-  
 25 ticipating in the restitution collection pilot program.

26       (b) Each collection agent shall:

27       (A) Notwithstanding ORS 137.118, conduct collections and collection investigation work to col-  
 28 lect restitution from offenders and liable third parties;

29       (B) Coordinate the collection investigation work with the respective restitution clerk in the  
 30 participating county or region; and

31       (C) Be available to present the results of the collection investigation work in judicial pro-  
 32 ceedings, including sentencing hearings, parole revocation hearings, judgment debtor examinations  
 33 and contempt proceedings.

34       (5) The department shall adopt rules to carry out the provisions of this section.

35       **SECTION 7.** Section 4 of this 2013 Act and the amendments to ORS 137.109, 813.200 and  
 36 813.210 and section 1, chapter 670, Oregon Laws 2011, by sections 1, 2, 5 and 6 of this 2013  
 37 Act apply to diversion agreements entered into on or after the effective date of this 2013 Act.

38       **SECTION 8.** This 2013 Act being necessary for the immediate preservation of the public  
 39 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
 40 on its passage.

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