

Senate Bill 221

Sponsored by Senator HASS; Representative READ (Pre-session 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**.

Permits court to stay termination of driving while under influence of intoxicants diversion agreement under certain conditions.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to driving while under the influence of intoxicants diversion; creating new provisions;
3 amending ORS 813.255; and declaring an emergency.

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

5 **SECTION 1.** ORS 813.255 is amended to read:

6 813.255. (1) At any time before the court dismisses with prejudice the charge of driving while
7 under the influence of intoxicants, the court on its own motion or on the motion of the district at-
8 torney or city attorney may issue an order requiring defendant to appear and show cause why the
9 court should not terminate the diversion agreement. The order to show cause shall state the reasons
10 for the proposed termination and shall set an appearance date.

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

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

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

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

21 **(3) Except as provided in subsections (4) and (5) of this section, the court shall terminate**
22 **the diversion agreement and enter the guilty plea or no contest plea that was filed as part**
23 **of the petition for the diversion agreement if the defendant fails to appear at the hearing on**
24 **the order to show cause or if, at the hearing on the order to show cause, the court finds by**
25 **a preponderance of the evidence that:**

26 **(a) The defendant no longer qualifies for the diversion agreement under the criteria de-**
27 **scribed in ORS 813.215; or**

28 **(b) The defendant failed to fulfill the terms of the diversion agreement.**

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

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

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

6 **(5) If the defendant fails to appear at a hearing on an order to show cause, the court
7 may stay the termination proceeding if the reason for the issuance of the order to show
8 cause is:**

9 **(a) The defendant has not paid the fees required under ORS 813.200, 813.210, 813.235 and
10 813.240; or**

11 **(b) The defendant has not paid the fees described in paragraph (a) of this subsection and
12 failed to keep the court advised of the defendant's current mailing address.**

13 **(6) A stay of termination granted under subsection (5) of this section may be for no more
14 than 180 days from the ending date of the original diversion period.**

15 **(7) If the court permits a stay of termination under subsection (5) of this section, the
16 court may issue a warrant of arrest in order to ensure the appearance of the defendant in
17 court.**

18 **(8) If the defendant pays all of the fees owed before the stay of termination under sub-
19 section (5) of this section expires, the court shall rescind the warrant and dismiss the charge
20 with prejudice under ORS 813.250.**

21 **(9) If the court grants a stay of termination under subsection (5) of this section and the
22 defendant fails to appear and pay the fees owed within the time allowed, the court shall enter
23 the guilty plea or no contest plea filed as part of the petition for a diversion agreement, shall
24 sentence the defendant and shall enter a judgment of conviction.**

25 [(5)] **(10) If the court terminates the diversion agreement and enters the guilty plea or no contest
26 plea, the court may take into account at time of sentencing any partial fulfillment by the defendant
27 of the terms of the diversion agreement.**

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

30 [(a) *The defendant fails to fulfill the terms of the diversion agreement.*]

31 [(b) *The defendant does not qualify for the diversion agreement under the criteria in ORS
32 813.215.*]

33 **SECTION 2. The amendments to ORS 813.255 by section 1 of this 2013 Act apply to di-
34 version agreements entered into before, on or after the effective date of this 2013 Act.**

35 **SECTION 3. This 2013 Act being necessary for the immediate preservation of the public
36 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
37 on its passage.**