

House Bill 3233

Sponsored by Representative KENNEMER

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**.

Authorizes court to shorten amount of time that person's driving privileges are revoked following third or subsequent conviction of felony driving while under influence or of driving while under influence of intoxicants. Requires court to find substantial and compelling circumstances to shorten revocation period.

Authorizes person whose driving privileges were revoked following third or subsequent conviction of felony driving while under influence or of driving while under influence of intoxicants, to petition court to shorten period of revocation. Requires court to find substantial and compelling evidence that petitioner has met certain requirements.

Requires person whose driving privileges are restored to install and use ignition interlock device for five years.

A BILL FOR AN ACT

1
2 Relating to driving while under the influence of intoxicants; creating new provisions; and amending
3 ORS 813.602.

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

5 **SECTION 1. Sections 2 and 3 of this 2015 Act are added to and made a part of the Oregon**
6 **Vehicle Code.**

7 **SECTION 2. (1) Notwithstanding ORS 809.235 (1)(b), the court may revoke a person's**
8 **driving privileges for a period that is less than the presumptive revocation period under ORS**
9 **809.235 if the court finds there are substantial and compelling circumstances justifying a**
10 **deviation from the presumptive revocation period.**

11 **(2) Subsection (1) of this section applies only to persons convicted of felony driving while**
12 **under the influence of intoxicants in violation of ORS 813.010 or persons convicted for a third**
13 **or subsequent time of any of the following offenses, in any combination:**

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

15 **(A) ORS 813.010; or**

16 **(B) The statutory counterpart to ORS 813.010 in another jurisdiction.**

17 **(b) A driving while under the influence of intoxicants offense in another jurisdiction that**
18 **involved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled**
19 **substance, an inhalant or any combination thereof.**

20 **(c) A driving offense in another jurisdiction that involved operating a vehicle while having**
21 **a blood alcohol content above that jurisdiction's permissible blood alcohol content.**

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

26 **(4) Whenever the court imposes a revocation period that is less than the presumptive**
27 **revocation period under ORS 809.235, the court shall set forth the reasons for the court's**

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 decision in the manner required by rules of the Oregon Criminal Justice Commission.

2 (5) After completion of the revocation period imposed under this section, a person may
 3 petition the court under section 3 of this 2015 Act to restore the person's driving privileges.

4 **SECTION 3.** (1)(a) Notwithstanding ORS 809.235 (2), a person whose driving privileges are
 5 revoked under ORS 809.235 (1)(b) may file a petition in the circuit court of the county in
 6 which the person's driving privileges were revoked for an order restoring the person's driv-
 7 ing privileges. A petition may be filed under this subsection no sooner than five years after
 8 the person is:

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

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

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

17 (b) Notwithstanding paragraph (a) this subsection, if during the revocation period for the
 18 crime for which the person was convicted the person is convicted of a criminal offense in-
 19 volving a motor vehicle, the person may file a petition to restore driving privileges as de-
 20 scribed in paragraph (a) of this subsection no sooner than five years from the date of the
 21 most recent conviction involving a motor vehicle.

22 (c) The district attorney of the county in which the person's driving privileges were re-
 23 voked shall be named and served as the respondent in the petition.

24 (2) The court shall hold a hearing on a petition filed in accordance with subsection (1)
 25 of this section. In determining whether to grant the petition, the court shall consider:

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

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

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

30 (d) The recommendation of the person's parole officer, which shall be based in part on a
 31 psychological evaluation ordered by the court to determine whether the person is presently
 32 a threat to the safety of the public.

33 (e) Any other relevant factors.

34 (3) The court shall order a petitioner's driving privileges restored if, after a hearing de-
 35 scribed in subsection (2) of this section, the court finds substantial and compelling evidence
 36 that the petitioner:

37 (a) Is rehabilitated;

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

39 (c) If the sentence for the crime for which the petitioner's driving privileges were re-
 40 voked required the petitioner to complete an alcohol or drug treatment program, has com-
 41 pleted an alcohol or drug treatment program in a facility approved by the Director of the
 42 Oregon Health Authority or a similar program in another jurisdiction.

43 (4) Upon receiving a court order to restore a person's driving privileges, the department
 44 may reinstate driving privileges in accordance with ORS 809.390, except that the department
 45 may not reinstate driving privileges of any person whose privileges are revoked under ORS

1 **809.235 until the person complies with future responsibility filings.**

2 **(5) This section applies only to a person whose driving privileges were revoked under ORS**
 3 **809.235 because the person was convicted of felony driving while under the influence of**
 4 **intoxicants in violation of ORS 813.010 or the person was convicted for a third or subsequent**
 5 **time of any of the following offenses, in any combination:**

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

7 **(A) ORS 813.010; or**

8 **(B) The statutory counterpart to ORS 813.010 in another jurisdiction.**

9 **(b) A driving while under the influence of intoxicants offense in another jurisdiction that**
 10 **involved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled**
 11 **substance, an inhalant or any combination thereof.**

12 **(c) A driving offense in another jurisdiction that involved operating a vehicle while having**
 13 **a blood alcohol content above that jurisdiction's permissible blood alcohol content.**

14 **(6) For purposes of subsection (5)(b) of this section, a conviction for a driving offense in**
 15 **another jurisdiction based solely on a person under 21 years of age having a blood alcohol**
 16 **content that is lower than the permissible blood alcohol content in that jurisdiction for a**
 17 **person 21 years of age or older does not constitute a prior conviction.**

18 **SECTION 4.** ORS 813.602 is amended to read:

19 813.602. (1) Except as provided in subsection (2) of this section, when a person is convicted of
 20 driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordi-
 21 nance, the Department of Transportation, in addition to any other requirement, shall require that
 22 the person install and use an approved ignition interlock device in any vehicle operated by the
 23 person:

24 **(a) Before the person is eligible for a hardship permit. The requirement is a condition of the**
 25 **hardship permit for the duration of the hardship permit.**

26 **(b) For a first conviction, for one year after the ending date of the suspension or revocation**
 27 **caused by the conviction. Violation of the condition imposed under this paragraph is a Class A**
 28 **traffic violation.**

29 **(c) For a second or subsequent conviction, for two years after the ending date of the suspension**
 30 **or revocation caused by the conviction. Violation of the condition imposed under this paragraph is**
 31 **a Class A traffic violation.**

32 **(2) When a person is convicted of a crime or multiple crimes as described in this subsection, the**
 33 **department, in addition to any other requirement, shall require that the person install and use an**
 34 **approved ignition interlock device in any vehicle operated by the person for five years after the**
 35 **ending date of the longest running suspension or revocation caused by any of the convictions. Vi-**
 36 **olation of the condition imposed under this subsection is a Class A traffic violation. A person is**
 37 **subject to this subsection when the person is convicted of:**

38 **(a) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal**
 39 **ordinance and any of the following crimes as part of the same criminal episode:**

40 **(A) Any degree of murder.**

41 **(B) Manslaughter in the first or second degree.**

42 **(C) Criminally negligent homicide.**

43 **(D) Assault in the first degree.**

44 **(b) Aggravated vehicular homicide.**

45 **(c) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal**

1 ordinance and the person's driving privileges are revoked under ORS 809.235 (1)(b) and later ordered
 2 restored under ORS 809.235 (4) **or section 3 of this 2015 Act.**

3 (3)(a) Except as provided in paragraph (b) of this subsection, the court shall require as a con-
 4 dition of a driving while under the influence of intoxicants diversion agreement that an approved
 5 ignition interlock device be installed and used in any vehicle operated by the person during the
 6 period of the agreement when the person has driving privileges. In addition to any action taken
 7 under ORS 813.255, violation of the condition imposed under this subsection is a Class A traffic vi-
 8 olation.

9 (b) A court may exempt a person from the condition in a diversion agreement to install and use
 10 an ignition interlock device if the court determines that the person meets the requirements for a
 11 medical exemption in accordance with rules adopted by the department under this section. A person
 12 granted a medical exemption under this paragraph shall carry proof of the medical exemption with
 13 the person while operating any vehicle.

14 (4) Except as provided in subsection (5) of this section, if an ignition interlock system is ordered
 15 or required under subsection (1), (2) or (3) of this section, the person so ordered or required shall
 16 pay to the provider the reasonable costs of leasing, installing and maintaining the device. A payment
 17 schedule may be established for the person by the department.

18 (5) The department may waive, in whole or in part, or defer the defendant's responsibility to pay
 19 all or part of the costs under subsection (4) of this section if the defendant meets the criteria for
 20 indigence established for waiving or deferring such costs under subsection (6) of this section. If the
 21 defendant's responsibility for costs is waived, then notwithstanding ORS 813.270, the costs described
 22 in subsection (4) of this section must be paid from the Intoxicated Driver Program Fund.

23 (6) The department, by rule, shall establish criteria and procedures it will use for qualification
 24 to waive or defer costs described under subsection (4) of this section for indigence. The criteria must
 25 be consistent with the standards for indigence adopted by the federal government for purposes of
 26 the Supplemental Nutrition Assistance Program.

27 (7) At the end of the suspension or revocation resulting from the conviction, the department
 28 shall suspend the driving privileges or right to apply for driving privileges of a person who has not
 29 submitted proof to the department that an ignition interlock device has been installed or who
 30 tampers with an ignition interlock device after it has been installed.

31 (8) If the department imposes a suspension under subsection (7) of this section for failing to
 32 submit proof of installation, the suspension continues until the department receives proof that the
 33 ignition interlock device has been installed. If the department does not receive proof that the ig-
 34 nition interlock device has been installed, the suspension shall continue for:

35 (a) One year after the ending date of the suspension resulting from the first conviction;

36 (b) Except as provided in paragraph (c) of this subsection, two years after the ending date of the
 37 suspension resulting from a second or subsequent conviction; or

38 (c) Five years after the ending date of the longest running suspension or revocation resulting
 39 from a conviction described in subsection (2) of this section.

40 (9) If the department imposes a suspension under subsection (7) of this section for tampering
 41 with an ignition interlock device, the suspension continues until:

42 (a) One year after the ending date of the suspension resulting from the first conviction;

43 (b) Except as provided in paragraph (c) of this subsection, two years after the ending date of the
 44 suspension resulting from a second or subsequent conviction; or

45 (c) Five years after the ending date of the longest running suspension or revocation resulting

1 from a conviction described in subsection (2) of this section.

2 (10) A person whose driving privileges or right to apply for privileges is suspended under sub-
3 section (7) of this section is entitled to administrative review, as described in ORS 809.440, of the
4 action.

5 (11) The department shall adopt rules permitting medical exemptions from the requirements of
6 installation and use of an ignition interlock device under subsections (1), (2) and (3) of this section.

7 (12) When a person is required to install an ignition interlock device under subsection (2) or (3)
8 of this section, the provider of the device shall provide notice of any installation or removal of the
9 device or any tampering with the device to the court that ordered installation of the device or to
10 the court's designee, including but not limited to an agency or organization certified by the Oregon
11 Health Authority under ORS 813.025.

12 **SECTION 5. Sections 2 and 3 of this 2015 Act and the amendments to ORS 813.602 by**
13 **section 4 of this 2015 Act apply to offenses committed before, on or after the effective date**
14 **of this 2015 Act.**

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