

House Bill 2613

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

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" for purposes of Oregon Vehicle Code.

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 801.272, 807.060, 807.250, 809.235, 809.265, 809.730, 813.010, 813.012, 813.040, 813.131, 813.140,
4 813.150, 813.215, 813.220, 813.430, 813.500, 813.602 and 821.250.

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

6 **SECTION 1. Section 2 of this 2017 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 813.010 is amended to read:**

15 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if
16 the person drives a vehicle while the person:

17 (a) Has 0.08 percent or more by weight of alcohol in the blood of the person as shown by
18 chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;

19 **or**

20 (b) Is under the influence of [*intoxicating liquor, a controlled substance or an inhalant; or*]

21 [*(c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled*
22 *substance*] **an intoxicant or a combination of intoxicants.**

23 [(2) *A person may not be convicted of driving while under the influence of intoxicants on the basis*
24 *of being under the influence of a controlled substance or an inhalant unless the fact that the person*
25 *was under the influence of a controlled substance or an inhalant is pleaded in the accusatory instru-*
26 *ment and is either proved at trial or is admitted by the person through a guilty plea.]*

27 [(3)] (2) A person convicted of the offense described in this section is subject to ORS 813.020 in
28 addition to this section.

29 [(4)] (3) Except as provided in subsection [(5)] (4) of this section, the offense described in this

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 section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable
 2 upon any premises open to the public.

3 [(5)(a)] (4)(a) Driving while under the influence of intoxicants is a Class C felony if the current
 4 offense was committed in a motor vehicle and the person has, at least three times in the 10 years
 5 prior to the date of the current offense, been convicted of, or been found to be within the jurisdic-
 6 tion of the juvenile court for an act that if committed by an adult would be, any of the following
 7 offenses in any combination:

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

9 (i) This section; or

10 (ii) The statutory counterpart to this section in another jurisdiction.

11 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the
 12 impaired driving or operation of a vehicle, an aircraft or a boat due to the use of [*intoxicating liquor,*
 13 *a controlled substance, an inhalant or any combination thereof*] **an intoxicant or a combination of**
 14 **intoxicants.**

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

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

22 [(6)] (5) In addition to any other sentence that may be imposed, the court shall impose one or
 23 more of the following fines on a person convicted of driving while under the influence of intoxicants
 24 as follows:

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

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

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

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

32 [(7)] (6) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on
 33 a person convicted of driving while under the influence of intoxicants if:

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

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

37 **SECTION 4.** ORS 801.272 is amended to read:

38 801.272. "Field sobriety test" means a physical or mental test, approved by the Department of
 39 State Police by rule after consultation with the Department of Public Safety Standards and Training,
 40 that enables a police officer or trier of fact to screen for or detect probable impairment from
 41 [*intoxicating liquor, a controlled substance, an inhalant or any combination of intoxicating liquor, an*
 42 *inhalant and a controlled substance*] **an intoxicant.**

43 **SECTION 5.** ORS 807.060 is amended to read:

44 807.060. The Department of Transportation may not grant driving privileges to a person under
 45 a license if the person is not eligible under this section. The following are not eligible for a license:

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

2 (2)(a) A person under 18 years of age who is not an emancipated minor unless the application
3 of the person is signed by the person's mother, father or legal guardian. A person who signs an ap-
4 plication under this paragraph may have the driving privileges canceled as provided under ORS
5 809.320.

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

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

9 (4) A person that the department determines **under ORS 813.500** has a problem condition in-
10 volving [*alcohol, inhalants or controlled substances*] **intoxicants** as described under ORS 813.040.

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

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

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

17 (8) A person who cannot be issued a license under the Driver License Compact under ORS
18 802.540.

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

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

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

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

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

30 (14) A person who holds a current out-of-state license or driver permit or a valid Oregon license
31 or driver permit. A person who is not eligible under this subsection may become eligible by sur-
32 rendering the license, driver permit or out-of-state license or driver permit to the department before
33 issuance of the license. Nothing in this subsection authorizes a person to continue to operate a
34 motor vehicle on the basis of an out-of-state license or permit if the person is required by ORS
35 807.062 to obtain an Oregon license or permit.

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

39 (16) A person who has not complied with the requirement of ORS 813.022 (1).

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

41 807.250. (1) In addition to any requirements under ORS 807.240 and any applicable conditions
42 under ORS 813.500 and 813.520, the Department of Transportation may not issue a hardship permit
43 under ORS 807.240 to a person whose suspension of driving privileges is based upon a conviction
44 of any of the following unless the person submits to the department a recommendation from the
45 judge before whom the person was convicted:

1 (a) ORS 811.140.

2 (b) ORS 811.540.

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

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

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

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

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

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

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

19 809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving
 20 privileges be permanently revoked if the person is convicted of any degree of murder and the court
 21 finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the
 22 death of the victim, or if the person is convicted of aggravated vehicular homicide, manslaughter in
 23 the first or second degree resulting from the operation of a motor vehicle, criminally negligent
 24 homicide resulting from the operation of a motor vehicle or assault in the first degree resulting from
 25 the operation of a motor vehicle.

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

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

31 (i) ORS 813.010; or

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

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

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

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

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

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

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

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

8 (b) Notwithstanding paragraph (a) of this subsection, if during the revocation period for the
 9 crime for which the person was convicted the person is convicted of a criminal offense involving a
 10 motor vehicle, the person may file a petition to restore driving privileges as described in paragraph
 11 (a) of this subsection no sooner than 10 years from the date of the most recent conviction involving
 12 a motor vehicle.

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

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

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

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

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

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

24 (e) Any other relevant factors.

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

27 (a) Is rehabilitated;

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

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

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

37 **SECTION 8.** ORS 809.265, as amended by section 61, chapter 24, Oregon Laws 2016, is amended
 38 to read:

39 809.265. (1) Unless the court finds compelling circumstances not to order suspension of driving
 40 privileges, the court in which a person is convicted of an offense described in this subsection shall
 41 order suspension of the person's driving privileges. This subsection applies when a person is con-
 42 victed of:

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

44 (b) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal
 45 ordinance if the person was under the influence of an [*inhalant or a controlled substance*] **intoxicant**

1 **other than intoxicating liquor.**

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

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

5 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is
6 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS
7 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been
8 convicted of:

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

10 (A) ORS 813.010; or

11 (B) The statutory counterpart to ORS 813.010 in another jurisdiction;

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

15 (c) A driving offense in another jurisdiction that involved operating a vehicle while having a
16 blood alcohol content above that jurisdiction's permissible blood alcohol content;

17 (d) Murder, manslaughter, criminally negligent homicide or assault that resulted from the oper-
18 ation of a motor vehicle in this state or in another jurisdiction; or

19 (e) Aggravated vehicular homicide under ORS 163.149 or aggravated driving while suspended
20 or revoked under ORS 163.196.

21 (2) For the purposes of subsection (1) of this section, a conviction for a driving offense in an-
22 other jurisdiction based solely on a person under 21 years of age having a blood alcohol content that
23 is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age
24 or older does not constitute a prior conviction.

25 (3) All seizure and forfeiture proceedings under this section shall be conducted in accordance
26 with ORS chapter 131A.

27 **SECTION 10.** ORS 813.040 is amended to read:

28 813.040. This section establishes, for purposes of ORS 471.432, 807.060 and 813.500, when a per-
29 son has a problem condition involving [*alcohol, inhalants or controlled substances*] **intoxicants.** For
30 purposes of ORS 471.432, 807.060 and 813.500, a person has a problem condition involving [*alcohol,*
31 *inhalants or controlled substances*] **intoxicants** if it is determined that the person has a problem
32 condition in which the person's health or that of others is substantially impaired or endangered or
33 the person's social or economic function is substantially disrupted because of the person's:

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

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

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

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

41 **SECTION 11.** ORS 813.131 is amended to read:

42 813.131. (1) Any person who operates a motor vehicle upon premises open to the public or the
43 highways of this state shall be deemed to have given consent, subject to the Motorist Implied Con-
44 sent Law, to a chemical test of the person's urine for the purpose of determining the presence of
45 [*a controlled substance or an inhalant*] **an intoxicant other than intoxicating liquor** in the person's

1 body if the person is arrested for driving while under the influence of intoxicants in violation of
 2 ORS 813.010 or of a municipal ordinance and either:

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

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

8 (2) A police officer may not request a urine test unless the officer is certified by the Department
 9 of Public Safety Standards and Training as having completed at least eight hours of training in re-
 10 cognition of drug impaired driving and the officer has a reasonable suspicion that the person ar-
 11 rested has been driving while under the influence of [*a controlled substance, an inhalant or any*
 12 *combination of an inhalant, a controlled substance and intoxicating liquor*] **an intoxicant other than**
 13 **intoxicating liquor or a combination of intoxicants.**

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

16 (4)(a) At the trial of any civil or criminal action, suit or proceeding arising out of the acts
 17 committed by a person driving a motor vehicle while under the influence of intoxicants, a valid
 18 chemical analysis of a person's urine is admissible as evidence and may be used with other evidence,
 19 if any, to determine whether the person was driving while under the influence of intoxicants.

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

22 **SECTION 12.** ORS 813.140 is amended to read:

23 813.140. (1) Nothing in ORS 813.100 is intended to preclude the administration of a chemical test
 24 **or tests** described in this section.

25 (2) A police officer may obtain a chemical test [*of the breath or blood to determine the amount*
 26 *of alcohol in any person's blood or a test of the person's blood or urine, or both, to determine the*
 27 *presence of a controlled substance or an inhalant in the person as provided in the following:]*

28 [(1) *If, when requested by a police officer, the person expressly consents to such a test.*]

29 [(2) *Notwithstanding subsection (1) of this section, from a person without the person's consent if:]*

30 **or tests of a person's:**

31 (a) **Breath to determine the amount of alcohol in the person's blood;**

32 (b) **Blood to determine the amount or presence of one or more intoxicants in a person's**
 33 **blood; or**

34 (c) **Urine to determine the presence of one or more intoxicants other than intoxicating**
 35 **liquor in the person.**

36 (3) **The administration by a police officer of a chemical test or tests described in this**
 37 **section is subject to the following conditions:**

38 (a) **The person must expressly consent to the police officer's request to obtain the**
 39 **chemical test or tests before the police officer may obtain the test or tests.**

40 (b) **Notwithstanding paragraph (a) of this subsection, a police officer may obtain a**
 41 **chemical test or tests from a person without the person's consent if:**

42 [(a)] (A) The police officer has probable cause to believe that the person was driving while un-
 43 der the influence of intoxicants and that evidence of the offense will be found in the person's blood
 44 or urine; and

45 [(b)] (B) The person is unconscious or otherwise in a condition rendering the person incapable

1 of expressly consenting to the test or tests requested.

2 **SECTION 13.** ORS 813.150 is amended to read:

3 813.150. [*In addition to a chemical test of the breath, blood or urine administered under ORS*
 4 *813.100 or 813.140, upon the request of a police officer, a person shall be permitted upon request, at the*
 5 *person's own expense, reasonable opportunity to have any licensed physician and surgeon, licensed*
 6 *professional nurse or qualified technician, chemist or other qualified person of the person's own*
 7 *choosing administer a chemical test or tests of the person's breath or blood for the purpose of deter-*
 8 *mining the alcoholic content of the person's blood or a chemical test or tests of the person's blood or*
 9 *urine, or both, for the purpose of determining the presence of a controlled substance or an inhalant in*
 10 *the person. The failure or inability to obtain such a test or tests by a person shall not preclude the*
 11 *admission of evidence relating to a test or tests taken upon the request of a police officer.*]

12 **(1) In addition to a chemical test or tests of the breath, blood or urine administered un-**
 13 **der ORS 813.100 or 813.140 upon the request of a police officer, a person shall be permitted**
 14 **upon request, at the person's own expense, reasonable opportunity to have any licensed**
 15 **physician, licensed professional nurse, qualified technician, chemist or other qualified person,**
 16 **of the person's own choosing, administer a chemical test or tests of the person's:**

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

18 **(b) Blood for the purpose of determining the amount or presence of one or more**
 19 **intoxicants in the person's blood; or**

20 **(c) Urine for the purpose of determining the presence of one or more intoxicants other**
 21 **than intoxicating liquor in the person.**

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

25 **SECTION 14.** ORS 813.215, as amended by section 62, chapter 24, Oregon Laws 2016, is
 26 amended to read:

27 813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following con-
 28 ditions:

29 (a) On the date the defendant filed the petition for a driving while under the influence of
 30 intoxicants diversion agreement, the defendant had no charge, other than the charge for the present
 31 offense, pending for:

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

33 (i) ORS 813.010; or

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

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

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

40 (b) The defendant has not been convicted of an offense described in paragraph (a) of this sub-
 41 section within the period beginning 15 years before the date of the commission of the present offense
 42 and ending on the date the defendant filed the petition for a driving while under the influence of
 43 intoxicants diversion agreement.

44 (c) The defendant has not been convicted of a felony offense described in ORS 813.010 [(5)(a)].

45 (d) The defendant was not participating in a driving while under the influence of intoxicants

1 diversion program or in any similar alcohol or drug rehabilitation program in this state or in an-
 2 other jurisdiction on the date the defendant filed the petition for a driving while under the influence
 3 of intoxicants diversion agreement. A defendant is not ineligible for diversion under this paragraph
 4 by reason of participation in a diversion program or any similar alcohol or drug rehabilitation pro-
 5 gram as a result of the charge for the present offense or a charge for violation of ORS 471.430.

6 (e) The defendant did not participate in a diversion or rehabilitation program described in par-
 7 agraph (d) of this subsection within the period beginning 15 years before the date of the commission
 8 of the present offense and ending on the date the defendant filed the petition for a driving while
 9 under the influence of intoxicants diversion agreement. A defendant is not ineligible for diversion
 10 under this paragraph by reason of participation in a diversion program or rehabilitation program
 11 described in paragraph (d) of this subsection as a result of the charge for the present offense or a
 12 charge for violation of ORS 471.430.

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

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

21 (h) The defendant did not hold commercial driving privileges on the date of the commission of
 22 the offense.

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

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

26 (A) Death of any person; or

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

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

32 (3) A defendant is eligible for a second or subsequent diversion if the defendant meets all of the
 33 conditions of subsection (1) of this section and the defendant has not been convicted of any other
 34 criminal offense involving a motor vehicle within the period beginning 15 years before the date of
 35 the commission of the present offense and ending on the date the defendant filed the petition for the
 36 second or subsequent driving while under the influence of intoxicants diversion agreement.

37 **SECTION 15.** ORS 813.220 is amended to read:

38 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request
 39 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether
 40 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-
 41 ment. In making a determination under this section, the court:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 **SECTION 16.** ORS 813.430 is amended to read:

44 813.430. This section establishes circumstances under which ORS 813.420 requires an increase
 45 in the time for suspension of driving privileges and under which ORS 813.520 requires an increase

1 in the time before the Department of Transportation may issue a hardship permit. A person is sub-
 2 ject to an increase in suspension time under this section if any of the following apply:

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

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

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

9 (b) The person was convicted of:

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

11 (i) ORS 813.010;

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

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

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

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

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

22 (3) For the 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 content
 24 that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years
 25 of age or older does not constitute a prior conviction.

26 **SECTION 17.** ORS 813.500 is amended to read:

27 813.500. (1) If a person's license is suspended for driving while under the influence of intoxicants
 28 under ORS 813.400 and the suspension period is determined by ORS 809.428 (2)(b) or (c), the De-
 29 partment of Transportation may only issue a hardship permit to the person under ORS 807.240 if the
 30 person, in addition to any requirement under ORS 807.240 and any applicable requirements under
 31 ORS 807.250 and 813.520:

32 (a) Is examined by the Oregon Health Authority to determine whether the person has a problem
 33 condition involving [*alcohol, inhalants or controlled substances*] **intoxicants** as described in ORS
 34 813.040; and

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

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

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

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

1 treatment for the person or a member of the person's immediate family.

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

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

10 813.602. (1) Subject to subsection (2) of this section, when a person is convicted of driving while
 11 under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, the De-
 12 partment of Transportation, in addition to any other requirement, shall require that the person have
 13 installed and be using an approved ignition interlock device in any vehicle operated by the person:

14 (a) Before the person is eligible for a hardship permit. The requirement is a condition of the
 15 hardship permit for the duration of the hardship permit.

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

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

22 (2) When a person is convicted of a crime or multiple crimes as described in this subsection, the
 23 department, in addition to any other requirement, shall require that the person have installed and
 24 be using an approved ignition interlock device in any vehicle operated by the person for five years
 25 after the ending date of the longest running suspension or revocation caused by any of the con-
 26 victions. Violation of the condition imposed under this subsection is a Class A traffic violation. A
 27 person is subject to this subsection when the person is convicted of:

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

- 30 (A) Any degree of murder.
- 31 (B) Manslaughter in the first or second degree.
- 32 (C) Criminally negligent homicide.
- 33 (D) Assault in the first degree.

34 (b) Aggravated vehicular homicide.

35 (c) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal
 36 ordinance and the person's driving privileges are revoked under ORS 809.235 (1)(b) and later ordered
 37 restored under ORS 809.235 (4).

38 (3)(a) Except as provided in paragraph (c) of this subsection, as a condition of a driving while
 39 under the influence of intoxicants diversion agreement:

40 (A) The court shall require that an approved ignition interlock device be installed and used in
 41 any vehicle operated by the person during the period of the agreement when the person has driving
 42 privileges if:

43 (i) The person submitted to a chemical test of the person's breath or blood as required under
 44 ORS 813.100 and the test disclosed a blood alcohol content of 0.08 percent or more by weight;

45 (ii) The person refused to submit to a chemical test of the person's breath or blood; or

1 (iii) The person submitted to a chemical test of the person's breath, blood or urine as required
 2 under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content of more than 0.00 per-
 3 cent by weight but less than 0.08 percent by weight and disclosed the presence of [*a controlled*
 4 *substance or an inhalant*] **an intoxicant other than intoxicating liquor.**

5 (B) The court may require that an approved ignition interlock device be installed and used in
 6 any vehicle operated by the person during the period of the agreement when the person has driving
 7 privileges if the person submitted to a chemical test of the person's breath, blood or urine as re-
 8 quired under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content below 0.08 per-
 9 cent by weight.

10 (b) In addition to any action taken under ORS 813.255, violation of the condition imposed under
 11 this subsection is a Class A traffic violation.

12 (c) A court may exempt a person from the condition in a diversion agreement to have installed
 13 and be using an ignition interlock device if the court determines that the person meets the re-
 14 quirements for a medical exemption in accordance with rules adopted by the department under this
 15 section. A person granted a medical exemption under this paragraph shall carry proof of the medical
 16 exemption with the person while operating any vehicle.

17 (4) The department shall adopt rules permitting medical exemptions from the requirements of
 18 installation and use of an ignition interlock device under this section.

19 (5) When a person is required to install an ignition interlock device under subsection (2) of this
 20 section, the provider of the device shall provide notice of any installation or removal of the device
 21 or any tampering with the device to:

22 (a) The supervising court or to the court's designee, including but not limited to an agency or
 23 organization certified by the Oregon Health Authority under ORS 813.025; and

24 (b) The district attorney or the city prosecutor.

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

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

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

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

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

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

37 **SECTION 20.** ORS 813.012 is amended to read:

38 813.012. (1) The Oregon Criminal Justice Commission shall classify felony driving while under
 39 the influence of intoxicants that is committed under the circumstances described in ORS 813.010
 40 [(5)] (4) as crime category 6 of the rules of the Oregon Criminal Justice Commission.

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

44 (a) Consider two prior convictions of misdemeanor driving while under the influence of
 45 intoxicants to be equivalent to one conviction of felony driving while under the influence of

1 intoxicants; and

2 (b) Consider felony driving while under the influence of intoxicants to be a person felony and
3 consider misdemeanor driving while under the influence of intoxicants to be a person Class A
4 misdemeanor.

5 **SECTION 21. Section 2 of this 2017 Act and the amendments to ORS 801.272, 807.060,**
6 **807.250, 809.235, 809.265, 809.730, 813.010, 813.040, 813.131, 813.140, 813.150, 813.215, 813.220,**
7 **813.430, 813.500, 813.602 and 821.250 by sections 3 to 19 of this 2017 Act apply to conduct oc-**
8 **curring on or after the effective date of this 2017 Act.**

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