

Senate Bill 463

Sponsored by Senator BOQUIST (at the request of Brad Craig) (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**.

Requires that treatment reports submitted to court following conviction of driving while under influence of intoxicants contain certain information.

Requires that all drug and alcohol screening tests performed on person attending treatment program following conviction of driving while under influence of intoxicants be performed by certain individuals and not at on-site facility.

A BILL FOR AN ACT

Relating to driving while under the influence of intoxicants; amending ORS 438.435 and 813.021.

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

SECTION 1. ORS 813.021 is amended to read:

813.021. (1) When a court, in accordance with ORS 813.020, requires a person to complete a screening interview and a treatment program, the court shall require the person to do all of the following:

(a) Complete a screening interview for the purpose of determining appropriate placement of the person in a program for treatment for alcoholism, drug dependency or dependency on inhalants.

(b) Pay directly to the agency or organization conducting the screening interview a fee of \$150.

(c) Complete the treatment program to which the person is referred.

(d) Pay for the treatment program to which the person is referred.

(2) The screening interview required by this section shall be conducted by an agency or organization designated by the court. The designated agency or organization must meet the standards set by the Director of the Oregon Health Authority to conduct the screening interviews. Wherever possible a court shall designate agencies or organizations to perform the screening interview that are separate from those that may be designated to carry out a treatment program.

(3) An agency or organization doing a screening interview under this section may not refer a person to a treatment program that has not been approved by the Director of the Oregon Health Authority.

(4) The agency or organization conducting a screening interview under this section shall monitor the progress of the person referred to the agency or organization **and make a report to the court.** [*The agency or organization shall make a report to the referring court stating the person's successful completion or failure to complete all or any part of the screening interview or of the treatment program to which the person was referred by the agency or organization performing the screening interview.*] **The report must include the following:**

(a) Information from the agency or organization that conducted the person's screening interview regarding the person's successful completion or failure to complete all or any part of the screening interview;

(b) Information from the treatment provider regarding the person's successful com-

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 **pletion or failure to complete all or any part of the treatment program; and**

2 **(c) Copies of any negative reports, as described in ORS 813.635, produced by an ignition**
 3 **interlock device installed in the person's motor vehicle as required under ORS 813.602.**

4 **(5)** The report shall be in a form determined by agreement between the court and the agency
 5 or organization providing the screening interview.

6 **SECTION 2.** ORS 438.435 is amended to read:

7 438.435. (1) In addition to duties which a clinical laboratory may perform under ORS 438.010 to
 8 438.510, a laboratory is authorized to perform appropriate tests, examinations or analyses on mate-
 9 rials derived from the human body for the purpose of detecting substances of abuse in the body. All
 10 laboratories performing the tests, examinations or analyses must be licensed under the provisions
 11 of ORS 438.010 to 438.510 and must employ qualified technical personnel to perform the tests, ex-
 12 aminations and analyses.

13 (2) In order to perform such tests, examinations or analyses, the laboratory may examine speci-
 14 mens submitted by persons other than those described in ORS 438.430 (1) and shall report the result
 15 of any test, examination or analysis to the person who submitted the specimen. When the substance
 16 of abuse test is for nonmedical employment or pre-employment purposes, and a written request is
 17 provided, the test result shall be reported to the person from whom the specimen was originally
 18 obtained.

19 (3) When the specimen of a person tested for substances of abuse is submitted to the laboratory
 20 and the test result is positive, the laboratory shall perform a confirming test which has been desig-
 21 nated by rule of the Oregon Health Authority as the best available technology for use to determine
 22 whether or not the substance of abuse identified by the first test is present in the specimen prior
 23 to reporting the test results.

24 (4) The authority by rule shall set standards for special category laboratories that engage only
 25 in the initial testing for substances of abuse in the body, including registration procedures for such
 26 laboratories and personnel.

27 **(5) Except as provided in subsection (6) of this section,** the operator of a substances of abuse
 28 on-site screening facility may use substances of abuse on-site screening tests if the test results are
 29 not for use in diagnosing or preventing disease and are not for use by physicians, dentists or other
 30 licensed health care professionals in treating humans. Any entity using the test shall pay a yearly
 31 filing fee, not to exceed \$50, and file a registration form as provided by rule of the authority that:

32 (a) States the current name and address of the entity, the telephone number of the entity, if any,
 33 and the name of a contact individual at each on-site facility operated by the entity; and

34 (b) Certifies that:

35 (A) The tests are being administered according to the federal Food and Drug Administration
 36 package insert that accompanies the test;

37 (B) The tests are being administered according to the instructions of the manufacturer;

38 (C) Custody chain procedures are being followed;

39 (D) Operators of the substances of abuse on-site screening facility are trained in the use of the
 40 substances of abuse on-site screening tests by the manufacturer; and

41 (E) If the substances of abuse on-site screening facility obtains a positive test result on a spec-
 42 imen and the entity indicates that the test result is to be used to deny or deprive any person of
 43 employment or any benefit, or may otherwise result in adverse employment action, the same speci-
 44 men shall be submitted to a clinical laboratory licensed under ORS 438.110 and 438.150 or an
 45 equivalent out-of-state facility and the presence of a substance of abuse confirmed prior to release

1 of the on-site test result.

2 **(6) The operator of a substances of abuse on-site screening facility may not use sub-**
3 **stances of abuse on-site screening tests on persons referred to a treatment provider under**
4 **ORS 813.021. All screening tests for persons referred to a treatment provider under ORS**
5 **813.021 may be performed only by individuals described in ORS 438.430 (1).**

6 [(6)] (7) The authority by rule shall set reasonable standards for the screening by correctional
7 agencies of inmates within state and local correctional facilities and offenders on parole, probation
8 or post-prison supervision for substances of abuse. The standards shall include, but not be limited
9 to, the establishment of written procedures and protocols, the qualifications and training of indi-
10 viduals who perform screening tests, the approval of specific technologies and the minimum re-
11 quirements for record keeping, quality control and confirmation of positive screening results.

12 [(7)] (8) If an initial test by a special category laboratory under subsection (4) of this section
13 or a special category screening under subsection [(6)] (7) of this section shows a result indicating
14 the presence of a substance of abuse in the body, a confirmatory test shall be conducted in a li-
15 censed clinical laboratory if the results are to be used to deprive or deny any person of any em-
16 ployment or benefit. If a screening test of an inmate of a state or local correctional facility is
17 positive for a substance of abuse, the inmate may be held in a secure facility pending the outcome
18 of the confirmatory test. If the confirmatory test is positive, the inmate may be held in a secure
19 facility pending the outcome of any hearing to determine what action will be taken.

20 [(8)] (9) If any test for substances of abuse is performed outside this state the results of which
21 are to be used to deprive or deny any person any employment or any benefit, the person desiring
22 to use the test shall have the burden to show that the testing procedure used meets or exceeds the
23 testing standards of this state.

24