

Senate Bill 965

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon District Attorneys Association)

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 is used in combination with intoxicating liquor, inhalant, cannabis or controlled substance. 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, 809.235, 809.730, 813.010, 813.012, 813.040, 813.131, 813.215, 813.220, 813.430,
4 813.602 and 821.250.

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

6 **SECTION 1. Section 2 of this 2019 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 substance;**

11 **(3) Inhalant;**

12 **(4) Cannabis; or**

13 **(5) Any drug, as defined in ORS 475.005, when used in combination with intoxicating li-**
14 **quor, an inhalant, cannabis or a controlled substance.**

15 **SECTION 3. ORS 813.010 is amended to read:**

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

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

21 (b) Is under the influence of **an intoxicant or a combination of intoxicants**. [*intoxicating li-*
22 *quor, cannabis, a controlled substance or an inhalant; or*]

23 [(c) *Is under the influence of any combination of intoxicating liquor, cannabis, a controlled sub-*
24 *stance and an inhalant.*]

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

29 [(3)] **(2)** A person convicted of the offense described in this section is subject to ORS 813.020 in
30 addition to this section.

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 [(4)] (3) Except as provided in subsection [(5)] (4) of this section, the offense described in this
 2 section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable
 3 upon any premises open to the public.

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

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

10 (i) This section; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 807.060. The Department of Transportation may not grant driving privileges to a person under
 2 a license if the person is not eligible under this section. The following are not eligible for a license:

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

4 (2)(a) A person under 18 years of age who is not an emancipated minor, unless the application
 5 of the person is signed by the person's mother, father or legal guardian. A person who signs an ap-
 6 plication under this paragraph may have the driving privileges canceled as provided under ORS
 7 809.320.

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

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

11 (4) A person the department determines has a problem condition involving [*alcohol, cannabis,*
 12 *controlled substances or inhalants*] **intoxicants** as described under ORS 813.040.

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

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

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

19 (8) A person who cannot be issued a license under the Driver License Compact under ORS
 20 802.540.

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

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

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

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

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

32 (14) A person who holds a current out-of-state license or driver permit or a valid Oregon license
 33 or driver permit. A person who is not eligible under this subsection may become eligible by sur-
 34 rendering the license, driver permit or out-of-state license or driver permit to the department before
 35 issuance of the license. Nothing in this subsection authorizes a person to continue to operate a
 36 motor vehicle on the basis of an out-of-state license or permit if the person is required by ORS
 37 807.062 to obtain an Oregon license or permit.

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

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

42 **SECTION 6.** ORS 809.235 is amended to read:

43 809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving
 44 privileges be permanently revoked if the person is convicted of any degree of murder and the court
 45 finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the

1 death of the victim, or if the person is convicted of aggravated vehicular homicide, manslaughter in
2 the first or second degree resulting from the operation of a motor vehicle, criminally negligent
3 homicide resulting from the operation of a motor vehicle or assault in the first degree resulting from
4 the operation of a motor vehicle.

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

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

10 (i) ORS 813.010; or

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

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

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

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

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

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

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

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

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

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

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

45 (d) The recommendation of the person's parole officer, which shall be based in part on a psy-

1 chological evaluation ordered by the court to determine whether the person is presently a threat to
 2 the safety of the public.

3 (e) Any other relevant factors.

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

6 (a) Is rehabilitated;

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

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

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

16 **SECTION 7.** ORS 809.730 is amended to read:

17 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is
 18 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS
 19 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been
 20 convicted of:

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

22 (A) ORS 813.010; or

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

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

27 (c) A driving offense in another jurisdiction that involved operating a vehicle while having a
 28 blood alcohol content above that jurisdiction’s permissible blood alcohol content;

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

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

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

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

39 **SECTION 8.** ORS 813.040, as amended by section 14, chapter 76, Oregon Laws 2018, is amended
 40 to read:

41 813.040. This section establishes, for purposes of ORS 471.432 and 807.060, when a person has
 42 a problem condition involving [*alcohol, cannabis, controlled substances or inhalants*] **intoxicants**. For
 43 purposes of ORS 471.432 and 807.060, a person has a problem condition involving [*alcohol, cannabis,*
 44 *controlled substances or inhalants*] **intoxicants** if it is determined that the person has a problem
 45 condition in which the person’s health or that of others is substantially impaired or endangered or

1 the person’s social or economic function is substantially disrupted because of the person’s:

2 (1) Habitual or periodic use of:

3 (a) Alcoholic beverages; or

4 (b) Cannabis, unless the person holds a registry identification card as defined in ORS 475B.791;

5 or

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

8 (a) A physical dependence in which the body requires a continuing supply of a controlled sub-
9 stance, an inhalant or a drug to avoid characteristic withdrawal symptoms; or

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

12 **SECTION 9.** ORS 813.131 is amended to read:

13 813.131. (1) Any person who operates a motor vehicle upon premises open to the public or the
14 highways of this state shall be deemed to have given consent, subject to the Motorist Implied Con-
15 sent Law, to a chemical test of the person’s urine for the purpose of determining the presence of
16 [*cannabis, a controlled substance or an inhalant*] **an intoxicant other than intoxicating liquor** in
17 the person’s body if the person is arrested for driving while under the influence of intoxicants in
18 violation of ORS 813.010 or of a municipal ordinance and either:

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

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

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

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

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

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

38 **SECTION 10.** ORS 813.215 is amended to read:

39 813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following con-
40 ditions:

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

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

45 (i) ORS 813.010; or

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

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

5 (C) A driving offense in another jurisdiction that involved operating a vehicle while having a
 6 blood alcohol content above that jurisdiction’s permissible blood alcohol content.

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

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

12 (d) The defendant was not participating in a driving while under the influence of intoxicants
 13 diversion program or in any similar alcohol or drug rehabilitation program in this state or in an-
 14 other jurisdiction on the date the defendant filed the petition for a driving while under the influence
 15 of intoxicants diversion agreement. A defendant is not ineligible for diversion under this paragraph
 16 by reason of participation in a diversion program or any similar alcohol or drug rehabilitation pro-
 17 gram as a result of the charge for the present offense or a charge for violation of ORS 471.430.

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

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

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

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

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

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

38 (A) Death of any person; or

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

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

44 (3) A defendant is eligible for a second or subsequent diversion if the defendant meets all of the
 45 conditions of subsection (1) of this section and the defendant has not been convicted of any other

1 criminal offense involving a motor vehicle within the period beginning 15 years before the date of
 2 the commission of the present offense and ending on the date the defendant filed the petition for the
 3 second or subsequent driving while under the influence of intoxicants diversion agreement.

4 **SECTION 11.** ORS 813.220 is amended to read:

5 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request
 6 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether
 7 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-
 8 ment. In making a determination under this section, the court:

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

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

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

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

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

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

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

26 (a) An offense of driving while under the influence of intoxicants in violation of:

27 (A) ORS 813.010; or

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

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

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

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

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

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

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

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

10 **SECTION 12.** ORS 813.430 is amended to read:

11 813.430. This section establishes circumstances under which ORS 813.420 requires an increase
 12 in the time for suspension of driving privileges and under which ORS 813.520 requires an increase
 13 in the time before the Department of Transportation may issue a hardship permit. A person is sub-
 14 ject to an increase in suspension time under this section if any of the following apply:

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

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

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

21 (b) The person was convicted of:

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

23 (i) ORS 813.010;

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

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

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

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

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

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

38 **SECTION 13.** ORS 813.602 is amended to read:

39 813.602. (1) Subject to subsection (2) of this section, when a person is convicted of driving while
 40 under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, the De-
 41 partment of Transportation, in addition to any other requirement, shall require that the person have
 42 installed and be using an approved ignition interlock device in any vehicle operated by the person:

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

45 (b) For a first conviction, for one year after the ending date of the suspension or revocation

1 caused by the conviction. Violation of the condition imposed under this paragraph is a Class A
2 traffic violation.

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

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

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

14 (A) Any degree of murder.

15 (B) Manslaughter in the first or second degree.

16 (C) Criminally negligent homicide.

17 (D) Assault in the first degree.

18 (b) Aggravated vehicular homicide.

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

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

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

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

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

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

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

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

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

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

3 (5) When a person is required to install an ignition interlock device under subsection (2) of this
4 section, the service center providing the device shall provide notice of any installation or removal
5 of the device or any tampering with the device to:

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

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

9 **SECTION 14.** ORS 821.250 is amended to read:

10 821.250. (1) A person commits the offense of permitting dangerous operation of a snowmobile or
11 an all-terrain vehicle if the person is the owner or other person having charge or control of a
12 snowmobile or an all-terrain vehicle and the person knowingly authorizes or permits any person to
13 operate the vehicle across a highway who is:

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

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

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

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

21 **SECTION 15.** ORS 813.012 is amended to read:

22 813.012. (1) The Oregon Criminal Justice Commission shall classify felony driving while under
23 the influence of intoxicants that is committed under the circumstances described in ORS 813.010
24 [(5)] (4) as crime category 6 of the rules of the Oregon Criminal Justice Commission.

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

28 (a) Consider two prior convictions of misdemeanor driving while under the influence of
29 intoxicants to be equivalent to one conviction of felony driving while under the influence of
30 intoxicants; and

31 (b) Consider felony driving while under the influence of intoxicants to be a person felony and
32 consider misdemeanor driving while under the influence of intoxicants to be a person Class A
33 misdemeanor.

34 **SECTION 16.** Section 2 of this 2019 Act and the amendments to ORS 801.272, 807.060,
35 809.235, 809.730, 813.010, 813.012, 813.040, 813.131, 813.215, 813.220, 813.430, 813.602 and 821.250
36 by sections 3 to 15 of this 2019 Act apply to conduct occurring on or after the effective date
37 of this 2019 Act.

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