

**A-Engrossed**  
**Senate Bill 1503**

Ordered by the Senate February 7  
Including Senate Amendments dated February 7

Sponsored by Senators COURTNEY, PROZANSKI; Senator ROBLAN (Presession 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.

Provides that person commits offense of driving while under influence of intoxicants if person has blood alcohol level of 0.08 percent or more by weight within two hours after driving vehicle. Creates affirmative defense.

**Defines "statutory counterpart."**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to driving while under the influence of intoxicants; creating new provisions; amending ORS  
3 163.118, 163.149, 163.185, 813.010, 813.011 and 813.300; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2020 Act is added to and made a part of the Oregon Vehicle**  
6 **Code.**

7 **SECTION 2. "Statutory counterpart" means a statute from another jurisdiction that has**  
8 **the same use, role or characteristics as an identified Oregon statute notwithstanding differ-**  
9 **ences in substantive scope between the statutes. Another jurisdiction's statute need not be**  
10 **the same or nearly the same as an identified Oregon statute to be considered a statutory**  
11 **counterpart.**

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

13 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if  
14 the person:

15 (a) Drives a vehicle while the person:

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

18 [(b)] (B) Is under the influence of intoxicating liquor, cannabis, a controlled substance or an  
19 inhalant; or

20 [(c)] (C) Is under the influence of any combination of intoxicating liquor, cannabis, a controlled  
21 substance and an inhalant[.]; or

22 (b) Within two hours after driving a vehicle, has 0.08 percent or more by weight of alco-  
23 hol in the blood of the person, as shown by chemical analysis of the breath or blood of the  
24 person made under ORS 813.100, 813.140 or 813.150.

25 (2) A person may not be convicted of driving while under the influence of intoxicants on the  
26 basis of being under the influence of a controlled substance or an inhalant unless the fact that the

**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 person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory  
2 instrument and is either proved at trial or is admitted by the person through a guilty plea.

3 (3) A person convicted of the offense described in this section is subject to ORS 813.020 in ad-  
4 dition to this section.

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

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

13 (A) Driving while under the influence of intoxicants in violation of **this section**[.].

14 [(i) *This section*; or]

15 [(ii) (B) The statutory counterpart to this section in another jurisdiction.

16 [(B)] (C) [A] **Any** driving under the influence of intoxicants offense in another jurisdiction that  
17 involved the impaired driving or operation of a vehicle, an aircraft or a boat due to the use of  
18 intoxicating liquor, cannabis, a controlled substance, an inhalant or any combination thereof.

19 [(C)] (D) [A] **Any** driving offense in another jurisdiction that involved operating a vehicle, an  
20 aircraft or a boat while having a blood alcohol content above that jurisdiction's permissible blood  
21 alcohol content.

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

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

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

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

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

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

36 **(B) For a person who, within two hours after driving a vehicle, has 0.15 percent or more**  
37 **by weight of alcohol in the blood of the person, as shown by chemical analysis of the breath**  
38 **or blood of the person made under ORS 813.100, 813.140 or 813.150, a minimum of \$2,000.**

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

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

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

44 **(8) It is an affirmative defense to a charge of violating subsection (1)(b) of this section**  
45 **that the defendant consumed a sufficient quantity of alcohol after the time of driving a ve-**

1 **hicle and before the administration of a chemical analysis of the defendant's breath or blood**  
2 **to cause the defendant's blood alcohol content to be 0.08 percent or more within two hours**  
3 **after driving. The court may not admit evidence of this defense unless the defendant notifies**  
4 **the prosecution in writing at least 21 days before the first trial setting of defendant's intent**  
5 **to assert the affirmative defense.**

6 **SECTION 4.** ORS 813.011 is amended to read:

7 813.011. (1) Driving under the influence of intoxicants under ORS 813.010 shall be a Class C  
8 felony if **at least two times in the 10 years prior to the date of the current offense** the de-  
9 fendant has been convicted of [*driving under the influence of intoxicants in violation of ORS 813.010,*  
10 *or its statutory counterpart in another jurisdiction, at least two times in the 10 years prior to the date*  
11 *of the current offense.*] **any of the following offenses in any combination:**

12 **(a) Driving under the influence of intoxicants in violation of ORS 813.010.**

13 **(b) The statutory counterpart, as defined in section 2 of this 2020 Act, to ORS 813.010 in**  
14 **another jurisdiction.**

15 **(c) Any driving under the influence of intoxicants offense in another jurisdiction that**  
16 **involved the impaired driving or operation of a vehicle, an aircraft or a boat due to the use**  
17 **of intoxicating liquor, cannabis, a controlled substance, an inhalant or any combination**  
18 **thereof.**

19 **(d) Any offense in another jurisdiction that involved driving or operating a vehicle, an**  
20 **aircraft or a boat while having a blood alcohol content above that jurisdiction's permissible**  
21 **blood alcohol content.**

22 (2) Once a person has been sentenced for a Class C felony under this section, the 10-year time  
23 limitation is eliminated and any subsequent episode of driving under the influence of intoxicants  
24 shall be a Class C felony regardless of the amount of time which intervenes.

25 (3) Upon conviction for a Class C felony under this section, the person shall be sentenced to a  
26 mandatory minimum term of incarceration of 90 days, without reduction for any reason.

27 **SECTION 5.** ORS 813.300 is amended to read:

28 813.300. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts  
29 committed by a person driving a motor vehicle while under the influence of intoxicants, if the  
30 amount of alcohol in the person's blood at the time alleged is less than 0.08 percent by weight of  
31 alcohol as shown by chemical analysis of the person's breath or blood, it is indirect evidence that  
32 may be used with other evidence, if any, to determine whether or not the person was then under the  
33 influence of intoxicants.

34 (2) Not less than 0.08 percent by weight of alcohol in a person's blood constitutes being under  
35 the influence of intoxicating liquor.

36 (3) Notwithstanding subsection (2) of this section, for purposes of the Motorist Implied Consent  
37 Law as defined in ORS 801.010, for a person who is under 21 years of age, any amount of alcohol  
38 in the blood constitutes being under the influence of intoxicating liquor.

39 (4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100  
40 milliliters of blood or based upon grams of alcohol per 210 liters of breath.

41 **(5) ORS 813.010 (1)(b) may not be construed to limit the admissibility of any evidence of**  
42 **the amount of alcohol in a person's blood as shown by chemical analysis of the person's**  
43 **breath or blood, in any civil or criminal action, suit or proceeding arising out of the acts**  
44 **committed by the person driving a vehicle while under the influence of intoxicants.**

45 **SECTION 6.** ORS 163.118 is amended to read:

1 163.118. (1) Criminal homicide constitutes manslaughter in the first degree when:

2 (a) It is committed recklessly under circumstances manifesting extreme indifference to the value  
3 of human life;

4 (b) It is committed intentionally by a defendant under the influence of extreme emotional dis-  
5 turbance as provided in ORS 163.135, which constitutes a mitigating circumstance reducing the  
6 homicide that would otherwise be murder to manslaughter in the first degree and need not be proved  
7 in any prosecution;

8 (c) A person recklessly causes the death of a child under 14 years of age or a dependent person,  
9 as defined in ORS 163.205, and:

10 (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-  
11 tim or another child under 14 years of age or a dependent person; or

12 (B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115; or

13 (d) It is committed recklessly or with criminal negligence by a person operating a motor vehicle  
14 while under the influence of intoxicants in violation of ORS 813.010 and:

15 (A) The person has at least three previous convictions for driving while under the influence of  
16 intoxicants under ORS 813.010, or its statutory counterpart, **as defined in section 2 of this 2020**  
17 **Act**, in any jurisdiction, in the 10 years prior to the date of the current offense; or

18 (B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of  
19 this section, or their statutory counterparts, **as defined in section 2 of this 2020 Act**, in any ju-  
20 risdiction; and

21 (ii) The victim's serious physical injury in the previous conviction was caused by the person  
22 driving a motor vehicle.

23 (2) The previous convictions to which subsection (1)(d)(B) of this section applies are:

24 (a) Assault in the first degree under ORS 163.185;

25 (b) Assault in the second degree under ORS 163.175; or

26 (c) Assault in the third degree under ORS 163.165.

27 (3) Manslaughter in the first degree is a Class A felony.

28 (4) It is an affirmative defense to a charge of violating:

29 (a) Subsection (1)(c)(B) of this section that the victim was a dependent person who was at least  
30 18 years of age and was under care or treatment solely by spiritual means pursuant to the religious  
31 beliefs or practices of the dependent person or the guardian of the dependent person.

32 (b) Subsection (1)(d)(B) of this section that the defendant was not under the influence of  
33 intoxicants at the time of the conduct that resulted in the previous conviction.

34 **SECTION 7.** ORS 163.149 is amended to read:

35 163.149. (1) Criminal homicide constitutes aggravated vehicular homicide when it is committed  
36 with criminal negligence, recklessly or recklessly under circumstances manifesting extreme indif-  
37 ference to the value of human life by a person operating a motor vehicle while under the influence  
38 of intoxicants in violation of ORS 813.010 and:

39 (a) The person has a previous conviction for any of the crimes described in subsection (2) of this  
40 section, or their statutory counterparts, **as defined in section 2 of this 2020 Act**, in any jurisdic-  
41 tion; and

42 (b) The victim's death in the previous conviction was caused by the person driving a motor ve-  
43 hicle.

44 (2) The previous convictions to which subsection (1) of this section applies are:

45 (a) Manslaughter in the first degree under ORS 163.118;

1 (b) Manslaughter in the second degree under ORS 163.125; or

2 (c) Criminally negligent homicide under ORS 163.145.

3 (3) It is an affirmative defense to a prosecution under this section that the defendant was not  
4 under the influence of intoxicants at the time of the conduct that resulted in the previous con-  
5 viction.

6 (4) Aggravated vehicular homicide is a Class A felony.

7 **SECTION 8.** ORS 163.185 is amended to read:

8 163.185. (1) A person commits the crime of assault in the first degree if the person:

9 (a) Intentionally causes serious physical injury to another by means of a deadly or dangerous  
10 weapon;

11 (b) Intentionally or knowingly causes serious physical injury to a child under six years of age;

12 (c) Violates ORS 163.175 knowing that the victim is pregnant; or

13 (d) Intentionally, knowingly or recklessly causes serious physical injury to another while oper-  
14 ating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 and:

15 (A) The person has at least three previous convictions for driving while under the influence of  
16 intoxicants under ORS 813.010, or its statutory counterpart, **as defined in section 2 of this 2020**  
17 **Act**, in any jurisdiction, in the 10 years prior to the date of the current offense; or

18 (B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of  
19 this section, or their statutory counterparts, **as defined in section 2 of this 2020 Act**, in any ju-  
20 risdiction; and

21 (ii) The victim's death or serious physical injury in the previous conviction was caused by the  
22 person driving a motor vehicle.

23 (2) The previous convictions to which subsection (1)(d)(B) of this section apply are:

24 (a) Manslaughter in the first degree under ORS 163.118;

25 (b) Manslaughter in the second degree under ORS 163.125;

26 (c) Criminally negligent homicide under ORS 163.145;

27 (d) Assault in the first degree under this section;

28 (e) Assault in the second degree under ORS 163.175; or

29 (f) Assault in the third degree under ORS 163.165.

30 (3) Assault in the first degree is a Class A felony.

31 (4) It is an affirmative defense to a prosecution under subsection (1)(d)(B) of this section that the  
32 defendant was not under the influence of intoxicants at the time of the conduct that resulted in the  
33 previous conviction.

34 **SECTION 9. This 2020 Act being necessary for the immediate preservation of the public**  
35 **peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect**  
36 **on its passage.**

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