

# D R A F T

## SUMMARY

Expands offense of driving while under influence of intoxicants to include any substance that, when taken into human body, can impair the ability of person to operate vehicle safely. 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.

Provides that once individual is convicted of felony driving while under influence of intoxicants, any subsequent episode of driving while under influence of intoxicants is Class C felony regardless of amount of time that intervenes between offenses.

## A BILL FOR AN ACT

Relating to driving while under the influence of intoxicants; creating new provisions; and amending ORS 146.113, 801.272, 807.060, 809.235, 809.730, 813.010, 813.011, 813.012, 813.040, 813.131, 813.215, 813.220, 813.300, 813.430, 813.602 and 821.250.

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

**SECTION 1. Section 2 of this 2023 Act is added to and made a part of the Oregon Vehicle Code.**

**SECTION 2. “Intoxicant” means:**

**(1) Intoxicating liquor;**

**(2) A controlled substance;**

**(3) An inhalant;**

**(4) Cannabis;**

**(5) Psilocybin; or**

**(6) Any drug, as defined in ORS 475.005, either alone or when used**

1 **in combination with intoxicating liquor, an inhalant, psilocybin,**  
2 **cannabis or a controlled substance.**

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

4 813.010. (1) A person commits the offense of driving while under the in-  
5 fluence of intoxicants if the person drives a vehicle while the person:

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

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

11 *[(c) Is under the influence of any combination of intoxicating liquor,*  
12 *cannabis, psilocybin, a controlled substance and an inhalant; or]*

13 **(b) Is under the influence of an intoxicant or a combination of**  
14 **intoxicants; or**

15 *[(d)] (c)* Within two hours after driving a vehicle, and without consuming  
16 alcohol in the intervening time period, has 0.08 percent or more by weight  
17 of alcohol in the blood of the person, as shown by chemical analysis of the  
18 breath or blood of the person made under ORS 813.100, 813.140 or 813.150.

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

25 *[(3)] (2)* A person convicted of the offense described in this section is  
26 subject to ORS 813.020 in addition to this section.

27 *[(4)] (3)* Except as provided in subsection *[(5)] (4)* of this section, the of-  
28 fense described in this section, driving while under the influence of  
29 intoxicants, is a Class A misdemeanor and is applicable upon any premises  
30 open to the public.

31 *[(5)(a)] (4)(a)* Driving while under the influence of intoxicants is a Class

1 C felony if the current offense was committed in a motor vehicle and the  
2 person has, at least three times in the 10 years prior to the date of the cur-  
3 rent offense, been convicted of, or been found to be within the jurisdiction  
4 of the juvenile court for an act that if committed by an adult would be, any  
5 of the following offenses in any combination:

6 (A) Driving while under the influence of intoxicants in violation of this  
7 section.

8 (B) The statutory counterpart to this section in another jurisdiction.

9 (C) A driving under the influence of intoxicants offense in another juris-  
10 diction that involved the impaired driving or operation of a vehicle, an air-  
11 craft or a boat due to the use of [*intoxicating liquor, cannabis, psilocybin, a*  
12 *controlled substance, an inhalant or any combination thereof*] **an intoxicant**  
13 **or a combination of intoxicants.**

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

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

23 [(6)] (5) In addition to any other sentence that may be imposed, the court  
24 shall impose one or more of the following fines on a person convicted of  
25 driving while under the influence of intoxicants 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  
29 the person is not sentenced to a term of imprisonment.

30 (d)(A) For a person who drives a vehicle while the person has 0.15 percent  
31 or more by weight of alcohol in the blood of the person as shown by chemical

1 analysis of the breath or blood of the person made under ORS 813.100, 813.140  
2 or 813.150, a minimum of \$2,000.

3 (B) For a person who, within two hours after driving a vehicle, and  
4 without consuming alcohol in the intervening time period, has 0.15 percent  
5 or more by weight of alcohol in the blood of the person, as shown by chem-  
6 ical analysis of the breath or blood of the person made under ORS 813.100,  
7 813.140 or 813.150, a minimum of \$2,000.

8 [(7)] (6) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that  
9 a court may impose on a person convicted of driving while under the influ-  
10 ence of intoxicants if:

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

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

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

16 813.011. (1) Driving under the influence of intoxicants under ORS 813.010  
17 shall be a Class C felony if at least two times in the 10 years prior to the  
18 date of the current offense the defendant has been convicted of any of the  
19 following offenses in any combination:

20 (a) Driving under the influence of intoxicants in violation of ORS 813.010,  
21 or its statutory counterpart in another jurisdiction.

22 (b) A driving under the influence of intoxicants offense in another juris-  
23 diction that involved the impaired driving or operation of a vehicle, an air-  
24 craft or a boat due to the use of [*intoxicating liquor, cannabis, a controlled*  
25 *substance, an inhalant or any combination thereof*] **an intoxicant or a**  
26 **combination of intoxicants.**

27 (c) An offense in another jurisdiction that involved driving or operating  
28 a vehicle, an aircraft or a boat while having a blood alcohol content above  
29 that jurisdiction's permissible blood alcohol content.

30 (2) Once a person has been sentenced for a Class C felony under this  
31 section **or under ORS 813.010 (4)**, the 10-year time limitation is eliminated

1 and any subsequent episode of driving under the influence of intoxicants  
2 shall be a Class C felony regardless of the amount of time which intervenes.

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

6 **SECTION 5.** ORS 801.272 is amended to read:

7 801.272. "Field sobriety test" means a physical or mental test, approved  
8 by the Department of State Police by rule after consultation with the De-  
9 partment of Public Safety Standards and Training, that enables a police of-  
10 ficer or trier of fact to screen for or detect probable impairment from  
11 [*intoxicating liquor, cannabis, psilocybin, a controlled substance or an*  
12 *inhalant, or any combination of intoxicating liquor, cannabis, psilocybin, a*  
13 *controlled substance and an inhalant*] **an intoxicant or a combination of**  
14 **intoxicants.**

15 **SECTION 6.** ORS 807.060 is amended to read:

16 807.060. The Department of Transportation may not grant driving privi-  
17 leges to a person under a license if the person is not eligible under this  
18 section. The following are not eligible for a license:

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

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

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

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

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

31 (5) A person the department reasonably believes has a mental or physical

1 condition or impairment that affects the person's ability to safely operate a  
2 motor vehicle upon the highways.

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

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

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

9 (9) A person who is not subject to the Driver License Compact under ORS  
10 802.540 but whose driving privileges are currently under suspension or revo-  
11 cation in any other state upon grounds which, if committed in this state,  
12 would be grounds for the suspension or revocation of the driving privileges  
13 of the person.

14 (10) A person who has been declared a habitual offender under ORS  
15 809.640. A person declared not eligible to be licensed under this subsection  
16 may become eligible by having eligibility restored under ORS 809.640.

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

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

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

23 (14) A person who holds a current out-of-state license or driver permit or  
24 a valid Oregon license or driver permit. A person who is not eligible under  
25 this subsection may become eligible by surrendering the license, driver per-  
26 mit or out-of-state license or driver permit to the department before issuance  
27 of the license. Nothing in this subsection authorizes a person to continue  
28 to operate a motor vehicle on the basis of an out-of-state license or permit  
29 if the person is required by ORS 807.062 to obtain an Oregon license or  
30 permit.

31 (15) A person who has not complied with the requirements and responsi-

1 bilities created by citation for or conviction of a traffic offense in another  
2 jurisdiction if an agreement under ORS 802.530 authorizes the department to  
3 withhold issuance of a license.

4 (16) A person who has not complied with the requirement of ORS 813.022  
5 (1).

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

7 809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that  
8 a person's driving privileges be permanently revoked if the person is con-  
9 victed of any degree of murder and the court finds that the person inten-  
10 tionally used a motor vehicle as a dangerous weapon resulting in the death  
11 of the victim, or if the person is convicted of aggravated vehicular homicide,  
12 manslaughter in the first or second degree resulting from the operation of  
13 a motor vehicle, criminally negligent homicide resulting from the operation  
14 of a motor vehicle or assault in the first degree resulting from the operation  
15 of a motor vehicle.

16 (b) The court shall order that a person's driving privileges be permanently  
17 revoked if the person is convicted of felony driving while under the influence  
18 of intoxicants in violation of ORS 813.010 or if the person is convicted for  
19 a third or subsequent time of any of the following offenses in any combina-  
20 tion:

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

22 (i) ORS 813.010; or

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

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

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

1 (c) For the purposes of paragraph (b) of this subsection, a conviction for  
2 a driving offense in another jurisdiction based solely on a person under 21  
3 years of age having a blood alcohol content that is lower than the permis-  
4 sible blood alcohol content in that jurisdiction for a person 21 years of age  
5 or older does not constitute a prior conviction.

6 (2)(a) A person whose driving privileges are revoked as described in sub-  
7 section (1) of this section may file a petition in the circuit court of the  
8 county in which the person's driving privileges were revoked for an order  
9 restoring the person's driving privileges. A petition may be filed under this  
10 subsection no sooner than 10 years after the person is:

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

14 (B) Sentenced to probation for the crime for which the person's driving  
15 privileges were revoked, unless the probation is revoked, in which case the  
16 petition may be filed no sooner than 10 years after the date probation is re-  
17 voked; or

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

20 (b) Notwithstanding paragraph (a) of this subsection, if during the revo-  
21 cation period for the crime for which the person was convicted the person  
22 is convicted of a criminal offense involving a motor vehicle, the person may  
23 file a petition to restore driving privileges as described in paragraph (a) of  
24 this subsection no sooner than 10 years from the date of the most recent  
25 conviction involving a motor vehicle.

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

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

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

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

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

5 (d) The recommendation of the person's parole officer, which shall be  
6 based in part on a psychological evaluation ordered by the court to deter-  
7 mine whether the person is presently a threat to the safety of the public.

8 (e) Any other relevant factors.

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

12 (a) Is rehabilitated;

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

14 (c) If the sentence for the crime for which the petitioner's driving privi-  
15 leges were revoked required the petitioner to complete an alcohol or drug  
16 treatment program, has completed an alcohol or drug treatment program in  
17 a facility approved by the Director of the Oregon Health Authority or a  
18 similar program in another jurisdiction.

19 (5) Upon receiving a court order to restore a person's driving privileges,  
20 the department may reinstate driving privileges in accordance with ORS  
21 809.390, except that the department may not reinstate driving privileges of  
22 any person whose privileges are revoked under this section until the person  
23 complies with future responsibility filings.

24 **SECTION 8.** ORS 809.730 is amended to read:

25 809.730. (1) A motor vehicle may be seized and forfeited if the person op-  
26 erating the vehicle is arrested or issued a citation for driving while under  
27 the influence of intoxicants in violation of ORS 813.010 and the person,  
28 within three years prior to the arrest or issuance of the citation, has been  
29 convicted of:

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

31 (A) ORS 813.010; or

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

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

7 (c) A driving offense in another jurisdiction that involved operating a  
8 vehicle while having a blood alcohol content above that jurisdiction's per-  
9 missible blood alcohol content;

10 (d) Murder, manslaughter, criminally negligent homicide or assault that  
11 resulted from the operation of a motor vehicle in this state or in another  
12 jurisdiction; or

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

15 (2) For the purposes of subsection (1) of this section, a conviction for a  
16 driving offense in another jurisdiction based solely on a person under 21  
17 years of age having a blood alcohol content that is lower than the permis-  
18 sible blood alcohol content in that jurisdiction for a person 21 years of age  
19 or older does not constitute a prior conviction.

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

22 **SECTION 9.** ORS 813.012 is amended to read:

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

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

31 (a) Consider two prior convictions of misdemeanor driving while under

1 the influence of intoxicants to be equivalent to one conviction of felony  
2 driving while under the influence of intoxicants; and

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

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

7 813.040. This section establishes, for purposes of ORS 471.432 and 807.060,  
8 when a person has a problem condition involving [*alcohol, cannabis,*  
9 *psilocybin, controlled substances or inhalants*] **intoxicants**. For purposes of  
10 ORS 471.432 and 807.060, a person has a problem condition involving [*alcohol,*  
11 *cannabis, psilocybin, controlled substances or inhalants*] **intoxicants** if it is  
12 determined that the person has a problem condition in which the person's  
13 health or that of others is substantially impaired or endangered or the  
14 person's social or economic function is substantially disrupted because of the  
15 person's:

16 (1) Habitual or periodic use of:

17 (a) Alcoholic beverages;

18 (b) Cannabis, unless the person holds a registry identification card as  
19 defined in ORS 475C.777; or

20 (c) Psilocybin; or

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

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

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

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

30 813.131. (1) A person may be asked to provide a urine sample under ORS  
31 813.140 or subsection (2) of this section.

1 (2) Any person who operates a motor vehicle upon premises open to the  
2 public or the highways of this state shall be deemed to have given consent,  
3 subject to the Motorist Implied Consent Law, to a chemical test of the  
4 person's urine for the purpose of determining the presence of [*cannabis,*  
5 *psilocybin, a controlled substance or an inhalant*] **an intoxicant other than**  
6 **intoxicating liquor** in the person's body if the person is arrested for driving  
7 while under the influence of intoxicants in violation of ORS 813.010 or of a  
8 municipal ordinance and either:

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

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

15 (3) A police officer may not request a urine test unless the officer is  
16 certified by the Department of Public Safety Standards and Training as  
17 having completed at least eight hours of training in recognition of drug im-  
18 paired driving and the officer has a reasonable suspicion that the person  
19 arrested has been driving while under the influence of [*cannabis, psilocybin,*  
20 *a controlled substance, an inhalant or any combination of cannabis, psilocybin,*  
21 *a controlled substance, an inhalant and intoxicating liquor*] **an intoxicant**  
22 **other than intoxicating liquor or a combination of intoxicants.**

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

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

31 (b) A chemical analysis of a person's urine is valid if analysis is per-

1 formed in an accredited or licensed toxicology laboratory.

2 **SECTION 12.** ORS 813.215 is amended to read:

3 813.215. (1) A defendant is eligible for diversion if the defendant meets  
4 all of the following conditions:

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

8 (A) An offense of driving while under the influence of intoxicants in vi-  
9 olation 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 juris-  
13 diction that involved the impaired driving of a vehicle due to the use of  
14 [*intoxicating liquor, cannabis, psilocybin, a controlled substance, an inhalant*  
15 *or any combination thereof*] **an intoxicant or a combination of**  
16 **intoxicants;** or

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

20 (b) The defendant has not been convicted of an offense described in par-  
21 agraph (a) of this subsection within the period beginning 15 years before the  
22 date of the commission of the present offense and ending on the date the  
23 defendant filed the petition for a driving while under the influence of  
24 intoxicants diversion agreement.

25 (c) The defendant has not been convicted of a felony offense described in  
26 ORS 813.010 [(5)(a)] **(4)(a)**.

27 (d) The defendant was not participating in a driving while under the in-  
28 fluence of intoxicants diversion program or in any similar alcohol or drug  
29 rehabilitation program in this state or in another jurisdiction on the date  
30 the defendant filed the petition for a driving while under the influence of  
31 intoxicants diversion agreement. A defendant is not ineligible for diversion

1 under this paragraph by reason of participation in a diversion program or  
2 any similar alcohol or drug rehabilitation program as a result of the charge  
3 for the present offense or a charge for violation of ORS 471.430.

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

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

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

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

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

27 (j) The present driving while under the influence of intoxicants offense  
28 did not involve an accident resulting in:

29 (A) Death of any person; or

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

1 (2) For the purposes of subsection (1)(a) of this section, a conviction for  
2 a driving offense in another jurisdiction based solely on a person under 21  
3 years of age having a blood alcohol content that is lower than the permis-  
4 sible blood alcohol content in that jurisdiction for a person 21 years of age  
5 or older does not constitute a prior conviction.

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

13 **SECTION 13.** ORS 813.220 is amended to read:

14 813.220. After the time for requesting a hearing under ORS 813.210 has  
15 expired with no request for a hearing, or after a hearing requested under  
16 ORS 813.210, the court shall determine whether to allow or deny a petition  
17 for a driving while under the influence of intoxicants diversion agreement.  
18 In making a determination under this section, the court:

19 (1) Shall consider whether the diversion will be of benefit to the defend-  
20 ant and the community.

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

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

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

30 (5) May take into consideration whether the offense was committed in a  
31 motor vehicle and whether there was a passenger in the motor vehicle who

1 was under 18 years of age and at least three years younger than the de-  
2 fendant.

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

6 (7) Shall deny the petition for a driving while under the influence of  
7 intoxicants diversion agreement if, after the date the defendant filed the pe-  
8 tition, the defendant was charged with or convicted of:

9 (a) An offense of driving while under the influence of intoxicants in vio-  
10 lation of:

11 (A) ORS 813.010; or

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

13 (b) A driving under the influence of intoxicants offense in another juris-  
14 diction that involved the impaired driving of a vehicle due to the use of  
15 [*intoxicating liquor, cannabis, psilocybin, a controlled substance, an inhalant*  
16 *or any combination thereof*] **an intoxicant or a combination of**  
17 **intoxicants;** or

18 (c) A driving offense in another jurisdiction that involved operating a  
19 vehicle while having a blood alcohol content above that jurisdiction's per-  
20 missible blood alcohol content.

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

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

1 the date the defendant filed the petition.

2 (10) Shall deny the petition for a driving while under the influence of  
3 intoxicants diversion agreement if the defendant has been convicted of a  
4 felony offense described in ORS 813.010 [(5)(a)] (4)(a).

5 (11) For the purposes of subsection (7) of this section, may not consider  
6 a conviction for a driving offense in another jurisdiction based solely on a  
7 person under 21 years of age having a blood alcohol content that is lower  
8 than the permissible blood alcohol content in that jurisdiction for a person  
9 21 years of age or older as a prior conviction.

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

17 **SECTION 14.** ORS 813.300 is amended to read:

18 813.300. (1) At the trial of any civil or criminal action, suit or proceeding  
19 arising out of the acts committed by a person driving a motor vehicle while  
20 under the influence of intoxicants, if the amount of alcohol in the person's  
21 blood at the time alleged is less than 0.08 percent by weight of alcohol as  
22 shown by chemical analysis of the person's breath or blood, it is indirect  
23 evidence that may be used with other evidence, if any, to determine whether  
24 or not the person was then under the influence of intoxicants.

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

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

31 (4) Percent by weight of alcohol in the blood shall be based upon grams

1 of alcohol per 100 milliliters of blood or based upon grams of alcohol per 210  
2 liters of breath.

3 (5) ORS 813.010 [(1)(d)] (1)(c) may not be construed to limit the  
4 admissibility of any evidence of the amount of alcohol in a person's blood  
5 as shown by chemical analysis of the person's breath or blood, in any civil  
6 or criminal action, suit or proceeding arising out of the acts committed by  
7 the person driving a vehicle while under the influence of intoxicants.

8 **SECTION 15.** ORS 813.430 is amended to read:

9 813.430. This section establishes circumstances under which ORS 813.420  
10 requires an increase in the time for suspension of driving privileges and  
11 under which ORS 813.520 requires an increase in the time before the De-  
12 partment of Transportation may issue a hardship permit. A person is subject  
13 to an increase in suspension time under this section if any of the following  
14 apply:

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

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

20 (a) A suspension of the person's driving privileges under ORS 813.410 or  
21 482.540 (1981 Replacement Part) became effective.

22 (b) The person was convicted of:

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

24 (i) ORS 813.010;

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

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

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

1 (C) A driving offense in another jurisdiction that involved operating a  
2 vehicle while having a blood alcohol content above that jurisdiction's per-  
3 missible blood alcohol content.

4 (c) The person commenced participating in a driving while under the in-  
5 fluence of intoxicants diversion program in this state or in any similar al-  
6cohol or drug rehabilitation program in this or another jurisdiction.

7 (3) For the purposes of subsection (2)(b) of this section, a conviction for  
8 a driving offense in another jurisdiction based solely on a person under 21  
9 years of age having a blood alcohol content that is lower than the permis-  
10 sible blood alcohol content in that jurisdiction for a person 21 years of age  
11 or older does not constitute a prior conviction.

12 **SECTION 16.** ORS 813.602 is amended to read:

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

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

21 (b) For a first conviction, for one year after the ending date of the sus-  
22 pension or revocation caused by the conviction. Violation of the condition  
23 imposed under this paragraph is a Class A traffic violation.

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

27 (2) When a person is convicted of a crime or multiple crimes as described  
28 in this subsection, the department, in addition to any other requirement,  
29 shall require that the person have installed and be using an approved ig-  
30 nition interlock device in any vehicle operated by the person for five years  
31 after the ending date of the longest running suspension or revocation caused

1 by any of the convictions. Violation of the condition imposed under this  
2 subsection is a Class A traffic violation. A person is subject to this sub-  
3 section when the person is convicted of:

4 (a) Driving while under the influence of intoxicants in violation of ORS  
5 813.010 or of a municipal ordinance and any of the following crimes as part  
6 of the same criminal episode:

7 (A) Any degree of murder.

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

9 (C) Criminally negligent homicide.

10 (D) Assault in the first degree.

11 (b) Aggravated vehicular homicide.

12 (c) Driving while under the influence of intoxicants in violation of ORS  
13 813.010 or of a municipal ordinance and the person's driving privileges are  
14 revoked under ORS 809.235 (1)(b) and later ordered restored under ORS  
15 809.235 (4).

16 (3)(a) Except as provided in paragraph (c) of this subsection, as a condi-  
17 tion of a driving while under the influence of intoxicants diversion agree-  
18 ment:

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

22 (i) A chemical test of the person's breath or blood disclosed a blood al-  
23 cohol content of 0.08 percent or more by weight of alcohol in the blood of  
24 the person as shown by chemical analysis of the breath or blood;

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

27 (iii) A chemical test of the person's breath, blood or urine disclosed a  
28 blood alcohol content of more than 0.00 but less than 0.08 percent by weight  
29 of alcohol in the blood of the person as shown by chemical analysis of the  
30 breath or blood and disclosed the presence of [*cannabis, psilocybin, a con-*  
31 *trolled substance or an inhalant*] **an intoxicant other than intoxicating**

1 **liquor.**

2 (B) The court may require that an approved ignition interlock device be  
3 installed and used in any vehicle operated by the person during the period  
4 of the agreement when the person has driving privileges if the person sub-  
5 mitted to a chemical test of the person's breath, blood or urine and the test  
6 disclosed a blood alcohol content below 0.08 percent by weight of alcohol in  
7 the blood of the person as shown by chemical analysis of the breath or blood.

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

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

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

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

23 (a) The supervising court or to the court's designee, including but not  
24 limited to an agency or organization certified by the Oregon Health Au-  
25 thority under ORS 813.025;

26 (b) The district attorney or the city prosecutor; and

27 (c) The Oregon State Police.

28 **SECTION 17.** ORS 821.250 is amended to read:

29 821.250. (1) A person commits the offense of permitting dangerous opera-  
30 tion of a snowmobile or an all-terrain vehicle if the person is the owner or  
31 other person having charge or control of a snowmobile or an all-terrain ve-

1 hicle and the person knowingly authorizes or permits any person to operate  
2 the vehicle across a highway who is:

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

4 (b) Under the influence of [*intoxicating liquor, cannabis, psilocybin, con-*  
5 *trolled substances or inhalants*] **an intoxicant.**

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

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

10 **SECTION 18.** ORS 146.113 is amended to read:

11 146.113. (1) A medical examiner or district attorney may, in any death  
12 requiring investigation, order samples of blood or urine taken for laboratory  
13 analysis.

14 (2) When a death requiring an investigation as a result of a motor vehicle  
15 accident occurs within five hours after the accident and the deceased is over  
16 13 years of age, a blood sample shall be taken and forwarded to an approved  
17 laboratory for analysis. Such blood or urine samples shall be analyzed for  
18 the presence and quantity of ethyl alcohol, and if considered necessary by  
19 the Chief Medical Examiner, the presence of [*cannabis or controlled sub-*  
20 *stances*] **any other intoxicants.**

21 (3) Laboratory reports of the analysis shall be made a part of the Chief  
22 Medical Examiner's and district medical examiner's files.

23 **SECTION 19. Section 2 of this 2023 Act and the amendments to ORS**  
24 **146.113, 801.272, 807.060, 809.235, 809.730, 813.010, 813.011, 813.012, 813.040,**  
25 **813.131, 813.215, 813.220, 813.300, 813.430, 813.602 and 821.250 by sections**  
26 **3 to 18 of this 2023 Act apply to conduct occurring on or after the ef-**  
27 **fective date of this 2023 Act.**

28