

Requested by Senator FREDERICK

**PROPOSED AMENDMENTS TO
HOUSE BILL 2169**

1 In line 2 of the printed bill, after the semicolon insert “creating new
2 provisions; amending ORS 131.615, 153.039, 181A.830, 810.410, 813.200, 813.225,
3 813.230 and 813.255;”.

4 Delete lines 4 through 12 and insert:
5

6 **“RESTORATIVE JUSTICE**
7

8 **“SECTION 1. (1) The Oregon Criminal Justice Commission shall**
9 **establish a program to award grants to public and private entities for**
10 **restorative justice programs.**

11 **“(2) The commission shall adopt rules to administer the grant pro-**
12 **gram described in subsection (1) of this section. The rules must:**

13 **“(a) Specify the application process and eligibility criteria for the**
14 **grant program.**

15 **“(b) Include a methodology for reviewing and approving grant ap-**
16 **plications and distributing grant funds.**

17 **“SECTION 2. In addition to and not in lieu of any other appropri-**
18 **ation, there is appropriated to the Oregon Criminal Justice Commis-**
19 **sion, for the biennium beginning July 1, 2021, out of the General Fund,**
20 **the amount of \$_____ for the purposes of funding the grant pro-**
21 **gram described in section 1 of this 2021 Act.**

1 **SECTION 3. Section 1 of this 2021 Act is repealed on July 1, 2023.**

2
3 **“PRE-PLEA DIVERSION**

4
5 **SECTION 4. ORS 813.200 is amended to read:**

6 “813.200. (1) The court shall inform at arraignment a defendant charged
7 with the offense of driving while under the influence of intoxicants as de-
8 fined in ORS 813.010 or a city ordinance conforming thereto that a diversion
9 agreement may be available if the defendant meets the criteria set out in
10 ORS 813.215 and files with the court a petition for a driving while under the
11 influence of intoxicants diversion agreement.

12 “(2) The petition forms for a driving while under the influence of
13 intoxicants diversion agreement shall be available to a defendant at the
14 court.

15 “(3) The form of the petition for a driving while under the influence of
16 intoxicants diversion agreement and the information and blanks contained
17 therein shall be determined by the Supreme Court under ORS 1.525. The pe-
18 tition forms made available to a defendant by any city or state court shall
19 conform to the requirements adopted by the Supreme Court.

20 “(4) In addition to any other information required by the Supreme Court
21 to be contained in a petition for a driving while under the influence of
22 intoxicants diversion agreement, the petition shall include:

23 “(a) **The option of entering either:**

24 “(A) A plea of guilty or no contest to the charge of driving while under
25 the influence of intoxicants signed by the defendant; **or**

26 “(B) **A waiver of the following rights of the defendant with respect**
27 **to the charge of driving while under the influence of intoxicants:**

28 “(i) **The right to a speedy trial and trial by jury;**

29 “(ii) **The right to present evidence on the defendant’s behalf;**

30 “(iii) **The right to confront witnesses against the defendant; and**

1 **“(iv) The right to contest evidence presented against the defendant,**
2 **including the right to object to hearsay evidence;**

3 “(b) An agreement by the defendant to complete at an agency or organ-
4 ization designated by the city or state court a screening interview to deter-
5 mine the possible existence and degree of an alcohol or drug abuse problem;

6 “(c) An agreement by the defendant to complete, at defendant’s own ex-
7 pense based on defendant’s ability to pay, the program of treatment:

8 “(A) Indicated as necessary by the screening interview; or

9 “(B) If ordered by the court under ORS 813.640 after the court receives
10 at least two negative reports;

11 “(d) Except as provided in subsection (5) of this section, an agreement by
12 the defendant to not use intoxicants during the diversion period and to
13 comply fully with the laws of this state designed to discourage the use of
14 intoxicants;

15 “(e) A notice to the defendant that the diversion agreement will be con-
16 sidered to be violated if the court receives notice that the defendant at any
17 time during the diversion period committed the offense of driving while un-
18 der the influence of intoxicants or committed a violation of ORS 811.170;

19 “(f) An agreement by the defendant to keep the court advised of the
20 defendant’s current mailing address at all times during the diversion period;

21 “(g) A waiver by the defendant of any former jeopardy rights under the
22 federal and state Constitutions and ORS 131.505 to 131.525 in any subsequent
23 action upon the charge or any other offenses based upon the same criminal
24 episode;

25 “(h) A sworn statement, as defined in ORS 162.055, by the defendant cer-
26 tifying that the defendant meets the criteria set out in ORS 813.215 to be
27 eligible to enter into the driving while under the influence of intoxicants
28 diversion agreement;

29 “(i) An agreement by the defendant to pay court-appointed attorney fees
30 as determined by the court; and

1 “(j) An agreement by the defendant to pay restitution if ordered by the
2 court under ORS 137.108.

3 “(5) A person may use intoxicants during the diversion period if:

4 “(a) The person consumes sacramental wine given or provided as part of
5 a religious rite or service;

6 “(b) The person has a valid prescription for a substance and the person
7 takes the substance as directed; or

8 “(c) The person is using a nonprescription drug, as defined in ORS
9 689.005, in accordance with the directions for use that are printed on the
10 label for that nonprescription drug.

11 **“SECTION 5.** ORS 813.225 is amended to read:

12 “813.225. (1) A defendant may apply by motion to the court in which a
13 driving while under the influence of intoxicants diversion agreement de-
14 scribed in ORS 813.230 was entered for an order extending the diversion pe-
15 riod:

16 “(a) Within 30 days prior to the end of the diversion period; or

17 “(b) If the defendant is serving on active duty as a member of the Armed
18 Forces of the United States, or is a member of the reserve components of the
19 Armed Forces of the United States or the National Guard, at any time prior
20 to the end of the diversion period.

21 “(2) Petition forms for an application for an extension under this section
22 shall be available to a defendant at the court.

23 “(3) The form of the petition for an extension under this section shall be
24 determined by the Supreme Court under ORS 1.525. The petition forms made
25 available to a defendant by any city or state court shall conform to the re-
26 quirements of the Supreme Court.

27 “(4) The court may grant a petition for an extension filed under this
28 section if the court finds that the defendant made a good faith effort to
29 complete the conditions of the diversion agreement and that the defendant
30 can complete the conditions of the diversion agreement within the requested

1 extended diversion period.

2 “(5) An extension granted under this section may be for no more than 180
3 days from the ending date of the original diversion period or for another time
4 period the court allows under subsection (7) of this section.

5 “(6) Except as provided in subsection (7) of this section, a court may grant
6 a defendant only one extension of a diversion period under this section.

7 “(7) The court may extend the diversion period as necessary to allow the
8 defendant sufficient time to complete the conditions of the diversion agree-
9 ment if the defendant:

10 “(a) Is a member of the Armed Forces of the United States, the reserve
11 components of the Armed Forces of the United States or the National Guard;

12 “(b) Is on active duty or has received orders that the defendant will be
13 called to active duty; and

14 “(c) Demonstrates that the military service will impair the defendant’s
15 ability to complete the conditions of the diversion agreement and no com-
16 parable treatment program described in ORS 813.233 is available.

17 “(8) If the court grants the petition for an extension under this section,
18 the following apply:

19 “(a) If the defendant fully complies with the conditions of the diversion
20 agreement within the extended diversion period, the court may dismiss the
21 charge with prejudice under ORS 813.250.

22 “(b) If the court finds that the defendant failed to comply with the di-
23 version agreement within the extended diversion period, the court shall **ei-**
24 **ther** enter the guilty plea or no contest plea filed as part of the petition for
25 a diversion agreement **or find the defendant guilty of driving under the**
26 **influence of intoxicants in accordance with the waiver of rights in the**
27 **diversion agreement, as applicable**, shall enter a judgment of conviction
28 and shall sentence the defendant.

29 “(9) If the court denies the petition for an extension under this section,
30 the court shall **either** enter the guilty plea or no contest plea filed as part

1 of the petition for a diversion agreement **or find the defendant guilty of**
2 **driving under the influence of intoxicants in accordance with the**
3 **waiver of rights in the diversion agreement, as applicable,** shall enter
4 a judgment of conviction and shall sentence the defendant.

5 **“SECTION 6.** ORS 813.230 is amended to read:

6 “813.230. (1) When the court allows a petition for a driving while under
7 the influence of intoxicants diversion agreement filed as provided in ORS
8 813.210, the judge taking that action shall:

9 “(a)(A) Accept the guilty plea or no contest plea filed as part of the pe-
10 tition for a diversion agreement but withhold entry of a judgment of con-
11 viction; **or**

12 **“(B) Accept the waiver of rights in the petition for a diversion**
13 **agreement; and**

14 “(b) Sign the petition and indicate thereon the date of allowance of the
15 diversion period, the length of the diversion period and the date upon which
16 the driving while under the influence offense occurred.

17 “(2)(a) The petition when signed and dated becomes the diversion agree-
18 ment between the defendant and the court. The court shall make the agree-
19 ment a part of the record of the case. The court shall notify the Department
20 of Transportation of the diversion agreement in a form agreed to by the de-
21 partment and the State Court Administrator within 48 hours after allowing
22 the petition. The department shall make the fact of the diversion agreement
23 a part of the defendant’s operating record.

24 **“(b) Entering into a diversion agreement based on a waiver of rights**
25 **under this section does not constitute an admission of guilt and is not**
26 **sufficient to warrant a finding or adjudication of guilt by a court.**

27 **“(c) If a defendant enters into a diversion agreement based on a**
28 **waiver of rights under this section, police reports or other documents**
29 **associated with the criminal charges in a court file other than the di-**
30 **version agreement may not be admitted into evidence and do not es-**

1 **tablish a factual basis for finding the defendant guilty.**

2 “(3) A driving while under the influence of intoxicants diversion agree-
3 ment shall be for a period of one year after the date the court allows the
4 petition. During the diversion period the court shall stay the driving while
5 under the influence of intoxicants offense proceeding pending completion of
6 the diversion agreement or its termination.

7 “(4) When the court denies a petition for a driving while under the in-
8 fluence of intoxicants diversion agreement, it shall continue the offense
9 proceeding against the defendant. The guilty plea or no contest plea filed as
10 part of the petition for the diversion agreement, **or the waiver of rights**
11 **in the petition for the diversion agreement**, may not be used in the of-
12 fense proceeding under this subsection.

13 **“SECTION 7.** ORS 813.255 is amended to read:

14 “813.255. (1) At any time before the court dismisses with prejudice the
15 charge of driving while under the influence of intoxicants, the court on its
16 own motion or on the motion of the district attorney or city attorney may
17 issue an order requiring the defendant to appear and show cause why the
18 court should not terminate the diversion agreement. The order to show cause
19 must:

20 “(a) State the reasons for the proposed termination;

21 “(b) Specify the amount of any fees owed and, if the amount owed is \$500
22 or less, inform the defendant that the court may dismiss with prejudice the
23 charge of driving while under the influence of intoxicants if the person has
24 complied with and performed all of the conditions of the diversion agreement
25 and pays the remaining amount before or on the date of the hearing; and

26 “(c) Set an appearance date.

27 “(2) The order to show cause shall be served on the defendant and on the
28 defendant’s attorney, if any. Service may be made by first class mail, postage
29 paid, addressed to the defendant at the mailing address shown on the diver-
30 sion petition and agreement or at any other address that the defendant pro-

1 vides in writing to the court.

2 “(3) Except as provided in subsections (4), (5) and (6) of this section, the
3 court shall terminate the diversion agreement and **either** enter the guilty
4 plea or no contest plea that was filed as part of the petition for the diversion
5 agreement, **or find the defendant guilty of driving under the influence**
6 **of intoxicants in accordance with the waiver of rights in the petition**
7 **for the diversion agreement**, if the defendant fails to appear at the hearing
8 on the order to show cause or if, at the hearing on the order to show cause,
9 the court finds by a preponderance of the evidence that:

10 “(a) The defendant no longer qualifies for the diversion agreement under
11 the conditions described in ORS 813.215; or

12 “(b) The defendant failed to fulfill all of the terms of the diversion
13 agreement.

14 “(4) If a defendant is a member of the Armed Forces of the United States,
15 the reserve components of the Armed Forces of the United States or the
16 National Guard and is on active duty, the court shall:

17 “(a) Allow the defendant to appear at the hearing by telephone or other
18 communication device approved by the court, if the defendant’s military
19 service permits such an appearance; or

20 “(b) Stay the termination proceeding if the defendant’s military service
21 prohibits the defendant’s appearance by telephone or other communication
22 device and prohibits the defendant from aiding and assisting the attorney
23 who would appear on the defendant’s behalf.

24 “(5) If the defendant appears at the hearing on the order to show cause,
25 the court shall dismiss with prejudice the charge of driving while under the
26 influence of intoxicants if:

27 “(a) The defendant has complied with and performed all of the conditions
28 of the diversion agreement except that the defendant owes \$500 or less of the
29 fees required under ORS 813.200, 813.210, 813.235 and 813.240; and

30 “(b) The defendant pays the balance of the fees owed by 5 p.m. on the day

1 the hearing is held. The defendant may also pay the balance of the fees owed
2 before the day the hearing is held.

3 “(6) A court may not terminate a diversion agreement under this section
4 for failure to pay restitution under ORS 137.108 if the defendant has other-
5 wise complied with and performed all of the conditions of the diversion
6 agreement.

7 “(7) Before the court dismisses with prejudice the charge of driving while
8 under the influence of intoxicants under this section, the court shall enter
9 a judgment containing a money award, as defined in ORS 18.005, for any re-
10 maining amount of restitution owed by the defendant.

11 “(8) If the court terminates the diversion agreement and **either** enters the
12 guilty plea or no contest plea, **or finds the defendant guilty of driving**
13 **under the influence of intoxicants in accordance with the waiver of**
14 **rights**, the court may take into account at time of sentencing any partial
15 fulfillment by the defendant of the terms of the diversion agreement.

16 **“SECTION 8. The amendments to ORS 813.200, 813.225, 813.230 and**
17 **813.255 by sections 4 to 7 of this 2021 Act apply to criminal proceedings**
18 **initiated on or after the effective date of this 2021 Act.**

19

20 “POLICE OVERSIGHT

21

22 **“SECTION 9. A city or county may form an agency or board for the**
23 **purposes of providing oversight for the law enforcement agency of the**
24 **city or county. Notwithstanding any other state law, the oversight**
25 **agency or board may:**

26 **“(1) Receive complaints and initiate investigations into allegations**
27 **of police officer misconduct;**

28 **“(2) Issue findings and recommend disciplinary actions;**

29 **“(3) Access all records and data retained by the law enforcement**
30 **agency;**

- 1 **“(4) Interview all employees of the law enforcement agency;**
2 **“(5) Subpoena records and persons necessary to conduct investi-**
3 **gations or reviews of alleged police officer misconduct;**
4 **“(6) Review and provide recommendations on investigations com-**
5 **pleted internally by the law enforcement agency; and**
6 **“(7) Issue reports to the public on the investigations and reviews**
7 **of the practices of the law enforcement agency.**

8 **“SECTION 10.** ORS 181A.830, as amended by section 5, chapter 7, Oregon
9 Laws 2020 (first special session), is amended to read:

10 “181A.830. (1) As used in this section:

11 “(a) ‘Public body’ has the meaning given that term in ORS 192.311.

12 “(b) ‘Public safety employee’ means a certified reserve officer, corrections
13 officer, parole and probation officer, police officer or youth correction officer
14 as those terms are defined in ORS 181A.355.

15 “(2) A public body may not disclose a photograph of a public safety em-
16 ployee of the public body without the written consent of the employee. This
17 subsection does not apply to the use by the public body of a photograph of
18 a public safety employee.

19 “(3) A public body may not disclose information about a personnel inves-
20 tigation of a public safety employee of the public body if the investigation
21 does not result in discipline of the employee.

22 “(4) Subsection (3) of this section does not apply:

23 “(a) When the public interest requires disclosure of the information.

24 “(b) When the employee consents to disclosure in writing.

25 “(c) When disclosure is necessary for an investigation by the public body,
26 the Department of Public Safety Standards and Training or a citizen review
27 body designated by the public body.

28 “(d) To disclosures required under section 4, chapter 7, Oregon Laws 2020
29 (first special session).

30 “(e) When the public body determines that nondisclosure of the informa-

1 tion would adversely affect the confidence of the public in the public body.

2 “(5)(a) Notwithstanding subsection (3) of this section, and except
3 as provided in paragraph (b) of this subsection, the public body shall
4 disclose information about a completed personnel investigation relat-
5 ing to an interaction between a police officer and a member of the
6 public.

7 “(b) The public body may decline to disclose information described
8 in paragraph (a) of this subsection if there is an open criminal or
9 personnel investigation related to the requested information.

10 “[5] (6) If an investigation of a public safety employee of a public body
11 results from a complaint, the public body may disclose to the complainant
12 the disposition of the complaint and, to the extent the public body considers
13 necessary to explain the action of the public body on the complaint, a writ-
14 ten summary of information obtained in the investigation.

15 “[6] (7) A public body must notify a public safety employee of the public
16 body if the public body receives a request for:

17 “(a) A photograph of the employee.

18 “(b) Information about the employee that is exempt from disclosure under
19 ORS 192.345 or 192.355 (2) or (3).

20 “(c) Information about the employee that is prohibited from disclosure by
21 subsection (3) of this section.

22

23

“POLICE STOPS

24

25 “**SECTION 11.** ORS 131.615 is amended to read:

26 “131.615. (1) A peace officer who reasonably suspects that a person has
27 committed or is about to commit a crime may stop the person and, after in-
28 forming the person that the peace officer is a peace officer **and of the rea-**
29 **son for the stop**, make a reasonable inquiry.

30 “(2) The detention and inquiry shall be conducted in the vicinity of the

1 stop and for no longer than a reasonable time.

2 “(3) The inquiry shall be considered reasonable if it is limited to:

3 “(a) The immediate circumstances that aroused the officer’s suspicion;

4 “(b) Other circumstances arising during the course of the detention and
5 inquiry that give rise to a reasonable suspicion of criminal activity; and

6 “(c) Ensuring the safety of the officer, the person stopped or other persons
7 present, including an inquiry regarding the presence of weapons.

8 “(4)(a) The inquiry may include a request for consent to search in re-
9 lation to the circumstances specified in subsection (3) of this section or to
10 search for items of evidence otherwise subject to search or seizure under
11 ORS 133.535 **only if the officer first informs the person that the person**
12 **has the right to refuse the request.**

13 “(b) **An officer who obtains consent to search under this subsection**
14 **shall ensure that there is a record that the person gave informed and**
15 **voluntary consent to search.**

16 “(5) A peace officer making a stop may use the degree of force reasonably
17 necessary to make the stop and ensure the safety of the peace officer, the
18 person stopped or other persons who are present.

19 “(6) **A peace officer shall provide a person stopped pursuant to the**
20 **authority of this section with the officer’s name and badge number if**
21 **the stop does not result in an arrest or citation.**

22 “**SECTION 12.** ORS 153.039 is amended to read:

23 “153.039. (1) An enforcement officer may not arrest, stop or detain a per-
24 son for the commission of a violation except to the extent provided in this
25 section and ORS 810.410.

26 “(2)(a) An enforcement officer may stop and detain any person if the of-
27 ficer has reasonable grounds to believe that the person has committed a vi-
28 olation. An enforcement officer may stop and detain any employee, agent or
29 representative of a firm, corporation or other organization if the officer has
30 reasonable grounds to believe that the firm, corporation or other organiza-

1 tion has committed a violation.

2 “(b) **The enforcement officer shall inform a stopped person that the**
3 **enforcement officer is an enforcement officer and of the reason for the**
4 **stop.**

5 “(3) Except as provided in subsection (4) of this section, the period of
6 detention may be only as long as is necessary to:

7 “(a) Establish the identity of the person, firm, corporation or organization
8 believed to have committed the violation;

9 “(b) Conduct any investigation reasonably related to the violation; and

10 “(c) Issue a citation for the violation.

11 “(4) The authority of an enforcement officer to stop and detain a person
12 for a traffic violation as defined by ORS 801.557 is governed by ORS 810.410.

13 “(5) **An enforcement officer shall provide a person stopped pursuant**
14 **to the authority of this section with the officer’s name and badge**
15 **number if the stop does not result in an arrest or citation.**

16 “**SECTION 13.** ORS 810.410 is amended to read:

17 “810.410. (1) A police officer may arrest or issue a citation to a person for
18 a traffic crime at any place within or outside the jurisdictional authority of
19 the governmental unit by which the police officer is authorized to act as
20 provided by ORS 133.235 and 133.310.

21 “(2) A police officer may issue a citation to a person for a traffic violation
22 at any place within or outside the jurisdictional authority of the govern-
23 mental unit by which the police officer is authorized to act:

24 “(a) When the traffic violation is committed in the police officer’s pres-
25 ence; or

26 “(b) When the police officer has probable cause to believe an offense has
27 occurred based on a description of the vehicle or other information received
28 from a police officer who observed the traffic violation.

29 “(3) A police officer:

30 “(a) [*Shall*] **May** not arrest a person for a traffic violation.

1 “(b) May stop and detain a person for a traffic violation for the purposes
2 of investigation reasonably related to the traffic violation, identification and
3 issuance of citation.

4 **“(c) Shall inform a stopped person that the police officer is a police
5 officer and of the reason for the stop.**

6 “[*(c)*] (d) May make an inquiry into circumstances arising during the
7 course of a detention and investigation under paragraph (b) of this sub-
8 section that give rise to a reasonable suspicion of criminal activity.

9 “[*(d)*] (e) May make an inquiry to ensure the safety of the officer, the
10 person stopped or other persons present, including an inquiry regarding the
11 presence of weapons.

12 “[*(e)*] (f) May request consent to search in relation to the circumstances
13 referred to in paragraph [*(c)*] (d) of this subsection, or to search for items
14 of evidence otherwise subject to search or seizure under ORS 133.535[.], **only
15 if the officer first informs the person that the person has the right to
16 refuse the request. If consent is obtained, the officer shall ensure that
17 there is a record that the person gave informed and voluntary consent
18 to search.**

19 “[*(f)*] (g) May use the degree of force reasonably necessary to make the
20 stop and ensure the safety of the police officer, the person stopped or other
21 persons present.

22 “[*(g)*] (h) May make an arrest of a person as authorized by ORS 133.310
23 (2) if the person is stopped and detained pursuant to the authority of this
24 section.

25 **“(i) Shall provide a person stopped and detained pursuant to the
26 authority of this section with the officer’s name and badge number if
27 the stop does not result in an arrest or citation.**

28 “(4) When a police officer at the scene of a traffic accident has reasonable
29 grounds, based upon the police officer’s personal investigation, to believe
30 that a person involved in the accident has committed a traffic offense in

1 connection with the accident, the police officer may issue to the person a
2 citation for that offense. The authority under this subsection is in addition
3 to any other authority to issue a citation for a traffic offense.

4 **“SECTION 14. The amendments to ORS 131.615, 153.039 and 810.410**
5 **by sections 11 to 13 of this 2021 Act apply to stops and searches oc-**
6 **curring on or after the effective date of this 2021 Act.**

7

8

“EFFECTIVE DATE

9

10 **“SECTION 15. This 2021 Act takes effect on the 91st day after the**
11 **date on which the 2021 regular session of the Eighty-first Legislative**
12 **Assembly adjourns sine die.”.**

13
