

A-Engrossed House Bill 2316

Ordered by the House March 15
Including House Amendments dated March 15

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for 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.

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. **Provides for affirmative defense.**

Decreases fines for driving while under the influence of intoxicants while riding bicycle. Eliminates driving privilege suspension imposed for driving while under the influence of intoxicants while riding bicycle.

Expands eligibility to participate in diversion program when defendant previously participated in treatment as juvenile or as parent or guardian pursuant to juvenile court order.

[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

1
2 Relating to driving while under the influence of intoxicants; creating new provisions; and amending
3 ORS 137.129, 146.113, 163.118, 163.185, 801.272, 807.060, 809.235, 809.730, 813.010, 813.011, 813.020,
4 813.040, 813.131, 813.215, 813.235, 813.300, 813.400, 813.430, 813.602 and 821.250.

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

6 **SECTION 1. Section 2 of this 2023 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) **A controlled substance;**

11 (3) **An inhalant;**

12 (4) **Cannabis;**

13 (5) **Psilocybin; or**

14 (6) **Any drug, as defined in ORS 475.005, that, when used either alone or in combination**
15 **with intoxicating liquor, an inhalant, psilocybin, cannabis or a controlled substance, ad-**
16 **versely affects a person's mental or physical faculties to a noticeable or perceptible degree.**

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

18 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if
19 the person drives a vehicle while the person:

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

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

3 **[(c) Is under the influence of any combination of intoxicating liquor, cannabis, psilocybin, a con-**
4 **trolled substance and an inhalant; or]**

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

6 **[(d)] (c)** Within two hours after driving a vehicle, and without consuming alcohol in the inter-
7 vening time period, has 0.08 percent or more by weight of alcohol in the blood of the person, as
8 shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140
9 or 813.150.

10 (2) A person may not be convicted of driving while under the influence of intoxicants on the
11 basis of being under the influence of a controlled substance or an inhalant unless the fact that the
12 person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory
13 instrument and is either proved at trial or is admitted by the person through a guilty plea.

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

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

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

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

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

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

30 (D) A driving offense in another jurisdiction that involved operating a vehicle, an aircraft or a
31 boat while having a blood alcohol content above that jurisdiction's permissible blood alcohol con-
32 tent.

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

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

40 **(a) If the current offense was committed while riding a bicycle, a minimum of \$500.**

41 **[(a)] (b)** For a person's first conviction **if the current offense was committed while operating**
42 **a vehicle other than a bicycle**, a minimum of \$1,000.

43 **[(b)] (c)** For a person's second conviction **if the current offense was committed while oper-**
44 **ating a vehicle other than a bicycle**, a minimum of \$1,500.

45 **[(c)] (d)** For a person's third or subsequent conviction **if the current offense was committed**

1 **while operating a vehicle other than a bicycle**, a minimum of \$2,000 if the person is not sentenced
2 to a term of imprisonment.

3 [(d)(A)] (e)(A) For a person who drives a vehicle, **other than a bicycle**, while the person has
4 0.15 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis
5 of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150, a minimum of
6 \$2,000.

7 (B) For a person who, within two hours after driving a vehicle, **other than a bicycle**, and
8 without consuming alcohol in the intervening time period, has 0.15 percent or more by weight of
9 alcohol in the blood of the person, as shown by chemical analysis of the breath or blood of the
10 person made under ORS 813.100, 813.140 or 813.150, a minimum of \$2,000.

11 (C) **For a person who rides a bicycle while the person has 0.15 percent or more by weight**
12 **of alcohol in the blood of the person as shown by chemical analysis of the breath or blood**
13 **of the person made under ORS 813.140 or 813.150, a minimum of \$1,000.**

14 (D) **For a person who, within two hours after riding a bicycle, and without consuming**
15 **alcohol in the intervening time period, has 0.15 percent or more by weight of alcohol in the**
16 **blood of the person, as shown by chemical analysis of the breath or blood of the person made**
17 **under ORS 813.140 or 813.150, a minimum of \$1,000.**

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

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

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

23 (8) **When the court enters a judgment of conviction for driving while under the influence**
24 **of intoxicants, the court shall indicate in the judgment document whether the person was**
25 **riding a bicycle.**

26 (9) **As used in this section, “bicycle” does not include electric assisted bicycles.**

27 **SECTION 4. Section 5 of this 2023 Act is added to and made a part of the Oregon Vehicle**
28 **Code.**

29 **SECTION 5. (1) As used in this section, “drug” has the meaning given that term in ORS**
30 **475.005.**

31 (2) **In a prosecution under ORS 813.010 for driving while under the influence of**
32 **intoxicants other than a prosecution involving intoxicating liquor, a controlled substance, an**
33 **inhalant, cannabis or psilocybin, it is an affirmative defense that:**

34 (a)(A) **The defendant obtained a drug pursuant to a prescription issued by a licensed**
35 **health care professional authorized to prescribe drugs and that the defendant consumed the**
36 **drug in the prescribed or recommended dosage and followed all directions and warnings re-**
37 **lating to the consumption of the drug, including directions, if any, from the manufacturer**
38 **of the drug, the pharmacist who provided the drug to the defendant and the licensed health**
39 **care professional who prescribed or recommended the drug to the defendant; or**

40 (B) **The defendant obtained a drug that is available without a prescription and that the**
41 **defendant consumed the drug in the recommended dosage and followed all directions and**
42 **warnings relating to the consumption of the drug; and**

43 (b) **The defendant experienced a reaction to the drug that the defendant could not rea-**
44 **sonably have anticipated and that caused the defendant’s mental or physical faculties to be**
45 **adversely affected to a noticeable and perceptible degree while driving a vehicle.**

1 **(3) A defendant may not introduce evidence of the affirmative defense described in sub-**
2 **section (2) of this section unless the defendant gives notice in writing of intent to do so. The**
3 **notice must be filed with the court and served on the prosecuting attorney at least 45 days**
4 **before the first trial date set for the case unless the parties agree otherwise or the court**
5 **authorizes a later date for good cause shown, but under no circumstances less than 21 days**
6 **before trial. The notice must specify the drug the defendant consumed and contact infor-**
7 **mation for any medical provider who advised the defendant regarding that drug.**

8 **(4) The affirmative defense described in subsection (2) of this section may be asserted**
9 **only with respect to a drug that is specified in the notice given under subsection (3) of this**
10 **section, and may not be asserted when intoxicating liquor, a controlled substance, an**
11 **inhalant, cannabis or psilocybin, or any combination of intoxicating liquor, a controlled sub-**
12 **stance, an inhalant, cannabis or psilocybin, is pleaded in the accusatory instrument.**

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

14 813.011. (1) Driving under the influence of intoxicants under ORS 813.010 shall be a Class C
15 felony if at least two times in the 10 years prior to the date of the current offense the defendant
16 has been convicted of any of the following offenses in any combination:

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

19 (b) A driving under the influence of intoxicants offense in another jurisdiction that involved the
20 impaired driving or operation of a vehicle, an aircraft or a boat due to the use of [*intoxicating liquor,*
21 *cannabis, a controlled substance, an inhalant or any combination thereof*] **an intoxicant, as defined**
22 **in section 2 of this 2023 Act, or a combination of intoxicants.**

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

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

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

31 **SECTION 7.** ORS 801.272 is amended to read:

32 801.272. "Field sobriety test" means a physical or mental test, approved by the Department of
33 State Police by rule after consultation with the Department of Public Safety Standards and Training,
34 that enables a police officer or trier of fact to screen for or detect probable impairment from
35 [*intoxicating liquor, cannabis, psilocybin, a controlled substance or an inhalant, or any combination*
36 *of intoxicating liquor, cannabis, psilocybin, a controlled substance and an inhalant*] **an intoxicant or**
37 **a combination of intoxicants.**

38 **SECTION 8.** ORS 807.060 is amended to read:

39 807.060. The Department of Transportation may not grant driving privileges to a person under
40 a license if the person is not eligible under this section. The following are not eligible for a license:

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

42 (2)(a) A person under 18 years of age who is not an emancipated minor, unless the application
43 of the person is signed by the person's mother, father or legal guardian. A person who signs an ap-
44 plication under this paragraph may have the driving privileges canceled as provided under ORS
45 809.320.

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

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

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

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

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

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

12 (8) A person who cannot be issued a license under the Driver License Compact under ORS
13 802.540.

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

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

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

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

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

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

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

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

35 **SECTION 9.** ORS 809.235 is amended to read:

36 809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving
37 privileges be permanently revoked if the person is convicted of any degree of murder and the court
38 finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the
39 death of the victim, or if the person is convicted of aggravated vehicular homicide, manslaughter in
40 the first or second degree resulting from the operation of a motor vehicle, criminally negligent
41 homicide resulting from the operation of a motor vehicle or assault in the first degree resulting from
42 the operation of a motor vehicle.

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

1 combination:

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

3 (i) ORS 813.010; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (d) The recommendation of the person's parole officer, which shall be based in part on a psy-
39 chological evaluation ordered by the court to determine whether the person is presently a threat to
40 the safety of the public.

41 (e) Any other relevant factors.

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

44 (a) Is rehabilitated;

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

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

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

9 **(6) The provisions of this section do not apply to convictions of driving while under the**
10 **influence of intoxicants if the offense was committed while the person was riding a bicycle.**

11 **(7) For the purposes of this section, "bicycle" does not include an electric assisted bicy-**
12 **cle.**

13 **SECTION 10.** ORS 809.730 is amended to read:

14 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is
15 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS
16 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been
17 convicted of:

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

19 (A) ORS 813.010; or

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

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

24 (c) A driving offense in another jurisdiction that involved operating a vehicle while having a
25 blood alcohol content above that jurisdiction's permissible blood alcohol content;

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

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

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

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

36 **SECTION 11.** ORS 813.040 is amended to read:

37 813.040. This section establishes, for purposes of ORS 471.432 and 807.060, when a person has
38 a problem condition involving [*alcohol, cannabis, psilocybin, controlled substances or inhalants*]
39 **intoxicants.** For purposes of ORS 471.432 and 807.060, a person has a problem condition involving
40 [*alcohol, cannabis, psilocybin, controlled substances or inhalants*] **intoxicants** if it is determined that
41 the person has a problem condition in which the person's health or that of others is substantially
42 impaired or endangered or the person's social or economic function is substantially disrupted be-
43 cause of the person's:

44 (1) Habitual or periodic use of:

45 (a) Alcoholic beverages;

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

2 or

3 (c) Psilocybin; or

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

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

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

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

11 813.131. (1) A person may be asked to provide a urine sample under ORS 813.140 or subsection
12 (2) of this section.

13 (2) Any person who operates a motor vehicle upon premises open to the public or the highways
14 of this state shall be deemed to have given consent, subject to the Motorist Implied Consent Law,
15 to a chemical test of the person's urine for the purpose of determining the presence of [*cannabis,*
16 *psilocybin, 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 (3) 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, psilocybin, a controlled substance, an*
28 *inhalant or any combination of cannabis, psilocybin, a controlled substance, an inhalant and*
29 *intoxicating liquor*] **an intoxicant other than intoxicating liquor or a combination of**
30 **intoxicants.**

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

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

37 (b) A chemical analysis of a person's urine is valid if analysis is performed in an accredited or
38 licensed toxicology laboratory.

39 **SECTION 13.** ORS 813.215 is amended to read:

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

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

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

1 (i) ORS 813.010; or

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

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

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

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

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

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

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

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

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

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

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

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

40 (A) Death of any person; or

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

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

1 **(3) Notwithstanding subsection (1)(d) or (e) of this section, a defendant is eligible for di-**
2 **version if the defendant participated in a diversion program or any similar alcohol or drug**
3 **rehabilitation program:**

4 **(a) As a result of the charge for the present offense or a charge for violation of ORS**
5 **471.430.**

6 **(b) As a ward, youth or adjudicated youth, as those terms are defined in ORS 419A.004,**
7 **pursuant to an order of the juvenile court under ORS chapter 419B or 419C, or referral of**
8 **the juvenile department under ORS chapter 419C, and such order or referral was made when**
9 **the defendant was under 18 years of age.**

10 **(c) As the parent or guardian of a ward, youth or adjudicated youth, as those terms are**
11 **defined in ORS 419A.004, pursuant to an order of the juvenile court under ORS chapter 419B**
12 **or 419C.**

13 [(3)] (4) A defendant is eligible for a second or subsequent diversion if the defendant meets all
14 of the conditions of subsection (1) of this section and the defendant has not been convicted of any
15 other criminal offense involving a motor vehicle within the period beginning 15 years before the date
16 of the commission of the present offense and ending on the date the defendant filed the petition for
17 the second or subsequent driving while under the influence of intoxicants diversion agreement.

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

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

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

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

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

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

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

37 813.430. This section establishes circumstances under which ORS 813.420 requires an increase
38 in the time for suspension of driving privileges and under which ORS 813.520 requires an increase
39 in the time before the Department of Transportation may issue a hardship permit. A person is sub-
40 ject to an increase in suspension time under this section if any of the following apply:

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

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

45 (a) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replace-

1 ment Part) became effective.

2 (b) The person was convicted of:

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

4 (i) ORS 813.010;

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

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

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

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

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

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

20 **SECTION 16.** ORS 821.250 is amended to read:

21 821.250. (1) A person commits the offense of permitting dangerous operation of a snowmobile or
22 an all-terrain vehicle if the person is the owner or other person having charge or control of a
23 snowmobile or an all-terrain vehicle and the person knowingly authorizes or permits any person to
24 operate the vehicle across a highway who is:

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

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

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

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

32 **SECTION 17.** ORS 146.113 is amended to read:

33 146.113. (1) A medical examiner or district attorney may, in any death requiring investigation,
34 order samples of blood or urine taken for laboratory analysis.

35 (2) When a death requiring an investigation as a result of a motor vehicle accident occurs
36 within five hours after the accident and the deceased is over 13 years of age, a blood sample shall
37 be taken and forwarded to an approved laboratory for analysis. Such blood or urine samples shall
38 be analyzed for the presence and quantity of ethyl alcohol, and if considered necessary by the Chief
39 Medical Examiner, the presence of [*cannabis or controlled substances*] **any other intoxicants, as**
40 **defined in section 2 of this 2023 Act.**

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

43 **SECTION 18.** ORS 137.129 is amended to read:

44 137.129. The length of a community service sentence shall be within these limits:

45 (1) For a violation, not more than 48 hours.

1 (2) For a misdemeanor other than driving under the influence of intoxicants in violation of ORS
2 813.010, not more than 160 hours.

3 (3)(a) For a felony committed prior to November 1, 1993, not more than 500 hours.

4 (b) For a felony committed on or after November 1, 1993, as provided in the rules of the Oregon
5 Criminal Justice Commission.

6 (4) **Except as provided in subsection (5) of this section**, for a violation of driving **while** under
7 the influence of intoxicants under ORS 813.010 **committed while operating a vehicle, other than**
8 **a bicycle as defined in ORS 801.150**, not less than 80 hours or more than 250 hours.

9 (5) **For a violation of driving while under the influence of intoxicants under ORS 813.010**
10 **committed while riding a bicycle, as defined in ORS 801.150, 48 hours.**

11 **SECTION 19.** ORS 813.020 is amended to read:

12 813.020. When a person is convicted of driving while under the influence of intoxicants in vio-
13 lation of ORS 813.010, a court shall comply with the following in addition to any fine or other pen-
14 alty imposed upon the person under ORS 813.010:

15 (1) The court shall require the person to:

16 (a) Pay to the court the fee described under ORS 813.030 in addition to any fine imposed under
17 ORS 813.010;

18 (b) Complete a screening interview and a treatment program as provided in ORS 813.021; and

19 (c) Submit to booking, if the person has not already been booked.

20 (2) The court must impose and not suspend execution of a sentence requiring the person either
21 to serve at least 48 hours' imprisonment, which shall be served consecutively unless justice requires
22 otherwise, or to perform community service for times specified by the court under ORS 137.129. For
23 purposes of this subsection:

24 (a) A court may provide for the imprisonment to be served in jail, minimum security facilities
25 or inpatient rehabilitation or treatment centers.

26 (b) Whenever the judge provides for the mandatory imprisonment to be served other than con-
27 secutively, the judgment must specifically so provide and the judge must state the reasons in writ-
28 ing.

29 (3) In a county that has a victim impact program a court may require the [*person*] **defendant**
30 to attend a victim impact treatment session. **The court may not require a defendant to attend**
31 **a victim impact treatment session if the defendant committed the current offense while**
32 **riding a bicycle that is not an electric assisted bicycle.** If the court requires attendance under
33 this section, the court may require the defendant to pay a reasonable fee to the victim impact pro-
34 gram to offset the cost of the defendant's participation. The fee shall be established for each county
35 by the victim impact panel coordinator and steering committee of that county and shall be not less
36 than \$5 or more than \$50.

37 **SECTION 20.** ORS 813.235 is amended to read:

38 813.235. In a county that has a victim impact program a court may require as a condition of a
39 driving while under the influence of intoxicants diversion agreement that the defendant attend a
40 victim impact treatment session. **The court may not require a defendant to attend a victim**
41 **impact treatment session if the defendant committed the current offense while riding a bi-**
42 **cycle that is not an electric assisted bicycle.** If the court requires attendance under this section,
43 the court may require the defendant, as part of the diversion agreement, to pay a reasonable fee to
44 the victim impact program to offset the cost of the defendant's participation. The fee shall be es-
45 tablished for each county by the victim impact panel coordinator and steering committee of that

1 county and shall be not less than \$5 or more than \$50.

2 **SECTION 21.** ORS 813.400 is amended to read:

3 813.400. (1) Except as provided in [subsection (2)] **subsections (2) and (3)** of this section, upon
4 receipt of a record of conviction for misdemeanor driving while under the influence of intoxicants,
5 the Department of Transportation shall suspend the driving privileges of the person convicted. The
6 suspension shall be for a period described under Schedule II of ORS 809.428, except the department
7 shall not reinstate any driving privileges to the person until the person complies with future re-
8 sponsibility filings. A person is entitled to administrative review under ORS 809.440 of a suspension
9 imposed under this subsection.

10 (2) A person convicted of felony driving while under the influence of intoxicants, or a person
11 convicted of misdemeanor driving while under the influence of intoxicants for a third or subsequent
12 time, is subject to revocation of driving privileges as provided in ORS 809.235.

13 **(3) The provisions of this section do not apply to convictions of driving while under the**
14 **influence of intoxicants if the offense was committed while the person was riding a bicycle.**

15 **(4) For the purposes of this section, "bicycle" does not include an electric assisted bicy-**
16 **cle.**

17 **SECTION 22.** ORS 813.602 is amended to read:

18 813.602. (1) Subject to [subsection (2)] **subsections (2) and (6)** of this section, when a person is
19 convicted of driving while under the influence of intoxicants in violation of ORS 813.010 or of a
20 municipal ordinance, the Department of Transportation, in addition to any other requirement, shall
21 require that the person have installed and be using an approved ignition interlock device in any
22 vehicle operated by the person:

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

25 (b) For a first conviction, for one year after the ending date of the suspension or revocation
26 caused by the conviction. Violation of the condition imposed under this paragraph is a Class A
27 traffic violation.

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

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

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

- 39 (A) Any degree of murder.
- 40 (B) Manslaughter in the first or second degree.
- 41 (C) Criminally negligent homicide.
- 42 (D) Assault in the first degree.

43 (b) Aggravated vehicular homicide.

44 (c) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal
45 ordinance and the person's driving privileges are revoked under ORS 809.235 (1)(b) and later ordered

1 restored under ORS 809.235 (4).

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

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

7 (i) A chemical test of the person's breath or blood disclosed a blood alcohol content of 0.08
8 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of
9 the breath or blood;

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

11 (iii) A chemical test of the person's breath, blood or urine disclosed a blood alcohol content of
12 more than 0.00 but less than 0.08 percent by weight of alcohol in the blood of the person as shown
13 by chemical analysis of the breath or blood and disclosed the presence of [*cannabis, psilocybin, a*
14 *controlled substance or an inhalant*] **an intoxicant other than intoxicating liquor.**

15 (B) The court may require that an approved ignition interlock device be installed and used in
16 any vehicle operated by the person during the period of the agreement when the person has driving
17 privileges if the person submitted to a chemical test of the person's breath, blood or urine and the
18 test disclosed a blood alcohol content below 0.08 percent by weight of alcohol in the blood of the
19 person as shown by chemical analysis of the breath or blood.

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

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

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

29 (5) When a person is required to install an ignition interlock device under subsection (2) of this
30 section, the manufacturer's representative providing the device shall provide notice of any installa-
31 tion or removal of the device or any tampering with the device to:

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

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

35 (c) The Oregon State Police.

36 **(6) The provisions of this section do not apply to convictions of driving while under the**
37 **influence of intoxicants if the offense was committed while the person was riding a bicycle.**

38 **(7) As used in this section, "bicycle" does not include electric assisted bicycles.**

39 **SECTION 23.** ORS 163.118 is amended to read:

40 163.118. (1) Criminal homicide constitutes manslaughter in the first degree when:

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

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

1 in any prosecution;

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

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

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

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

9 (A) In the 10 years prior to the date of the current offense the person has been convicted of at
10 least three of any of the following offenses in any combination:

11 (i) Driving under the influence of intoxicants in violation of ORS 813.010, or its statutory
12 counterpart in another jurisdiction;

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

16 (iii) An offense in another jurisdiction that involved driving or operating a vehicle, an aircraft
17 or a boat while having a blood alcohol content above that jurisdiction's permissible blood alcohol
18 content; or

19 (B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of
20 this section, or their statutory counterparts in any jurisdiction; 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 **(5) As used in this section, "intoxicant" has the meaning given that term in section 2 of**
35 **this 2023 Act.**

36 **SECTION 24.** ORS 163.185 is amended to read:

37 163.185. (1) A person commits the crime of assault in the first degree if the person:

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

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

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

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

44 (A) In the 10 years prior to the date of the current offense the person has been convicted of at
45 least three of any of the following offenses in any combination:

1 (i) Driving under the influence of intoxicants in violation of ORS 813.010, or its statutory
2 counterpart in another jurisdiction;

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

6 (iii) An offense in another jurisdiction that involved driving or operating a vehicle, an aircraft
7 or a boat while having a blood alcohol content above that jurisdiction’s permissible blood alcohol
8 content; or

9 (B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of
10 this section, or their statutory counterparts in any jurisdiction; and

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

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

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

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

16 (c) Criminally negligent homicide under ORS 163.145;

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

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

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

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

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

24 (5) **As used in this section, “intoxicant” has the meaning given that term in section 2 of**
25 **this 2023 Act.**

26 **SECTION 25. Sections 2 and 5 of this 2023 Act and the amendments to ORS 137.129,**
27 **146.113, 163.118, 163.185, 801.272, 807.060, 809.235, 809.730, 813.010, 813.011, 813.020, 813.040,**
28 **813.131, 813.215, 813.235, 813.300, 813.400, 813.430, 813.602 and 821.250 by sections 3 and 6 to 24**
29 **of this 2023 Act apply to conduct occurring on or after the effective date of this 2023 Act.**

30