

Enrolled
House Bill 2316

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CHAPTER

AN ACT

Relating to driving while under the influence of intoxicants; creating new provisions; and amending ORS 137.129, 146.113, 163.118, 163.185, 801.272, 807.060, 809.235, 809.730, 813.010, 813.011, 813.020, 813.040, 813.131, 813.215, 813.235, 813.300, 813.400, 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, that, when used either alone or in combination with intoxicating liquor, an inhalant, psilocybin, cannabis or a controlled substance, adversely affects a person’s mental or physical faculties to a noticeable or perceptible degree.

SECTION 3. ORS 813.010 is amended to read:

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

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

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

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

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

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

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

(3) A person convicted of the offense described in this section is subject to ORS 813.020 in addition to this section.

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

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

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

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

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

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

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

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

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

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

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

[(c)] **(d) For a person's third or subsequent conviction if the current offense was committed while operating a vehicle other than a bicycle, a minimum of \$2,000 if the person is not sentenced to a term of imprisonment.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. ORS 813.011 is amended to read:

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

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

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

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

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

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

SECTION 7. ORS 801.272 is amended to read:

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

SECTION 8. ORS 807.060 is amended to read:

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

(1) A person under 16 years of age.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. ORS 809.235 is amended to read:

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

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

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

(i) ORS 813.010; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Any other relevant factors.

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

(a) Is rehabilitated;

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

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

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

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

(7) For the purposes of this section, "bicycle" does not include an electric assisted bicycle.

SECTION 10. ORS 809.730 is amended to read:

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

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

(A) ORS 813.010; or

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

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

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

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

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

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

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

SECTION 11. ORS 813.040 is amended to read:

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

(1) Habitual or periodic use of:

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

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

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

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

SECTION 12. ORS 813.131 is amended to read:

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

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

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

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

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

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

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

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

SECTION 13. ORS 813.215 is amended to read:

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

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

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

(i) ORS 813.010; or

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

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

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

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

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

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

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

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

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

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

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

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

(A) Death of any person; or

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

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

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

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

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

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

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

SECTION 14. ORS 813.300 is amended to read:

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

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

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

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

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

SECTION 15. ORS 813.430 is amended to read:

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

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

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

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

(b) The person was convicted of:

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

(i) ORS 813.010;

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

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

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

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

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

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

SECTION 16. ORS 821.250 is amended to read:

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

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

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

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

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

SECTION 17. ORS 146.113 is amended to read:

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

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

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

SECTION 18. ORS 137.129 is amended to read:

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

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

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

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

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

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

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

SECTION 19. ORS 813.020 is amended to read:

813.020. When a person is convicted of driving while under the influence of intoxicants in violation of ORS 813.010, a court shall comply with the following in addition to any fine or other penalty imposed upon the person under ORS 813.010:

(1) The court shall require the person to:

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

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

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

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

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

(b) Whenever the judge provides for the mandatory imprisonment to be served other than consecutively, the judgment must specifically so provide and the judge must state the reasons in writing.

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

SECTION 20. ORS 813.235 is amended to read:

813.235. In a county that has a victim impact program a court may require as a condition of a driving while under the influence of intoxicants diversion agreement that the defendant attend a victim impact treatment session. **The court may not require a defendant to attend a victim impact treatment session if the defendant committed the current offense while riding a bicycle that is not an electric assisted bicycle.** If the court requires attendance under this section, the court may require the defendant, as part of the diversion agreement, to pay a reasonable fee to the victim impact program to offset the cost of the defendant's participation. The fee shall be established for each county by the victim impact panel coordinator and steering committee of that county and shall be not less than \$5 or more than \$50.

SECTION 21. ORS 813.400 is amended to read:

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

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

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

(4) For the purposes of this section, "bicycle" does not include an electric assisted bicycle.

SECTION 22. ORS 813.602 is amended to read:

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

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

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

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

(2) When a person is convicted of a crime or multiple crimes as described in this subsection, the department, in addition to any other requirement, shall require that the person have installed and

be using an approved ignition interlock device in any vehicle operated by the person for five years after the ending date of the longest running suspension or revocation caused by any of the convictions. Violation of the condition imposed under this subsection is a Class A traffic violation. A person is subject to this subsection when the person is convicted of:

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

- (A) Any degree of murder.
- (B) Manslaughter in the first or second degree.
- (C) Criminally negligent homicide.
- (D) Assault in the first degree.
- (b) Aggravated vehicular homicide.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The Oregon State Police.

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

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

SECTION 23. ORS 163.118 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) As used in this section, "intoxicant" has the meaning given that term in section 2 of this 2023 Act.

SECTION 24. ORS 163.185 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Criminally negligent homicide under ORS 163.145;

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

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

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

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

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

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

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

Passed by House June 7, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 22, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State