

House Bill 3146

Sponsored by Representative HELFRICH (at the request of Governor's Advisory Committee on DUII)

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 **as introduced**.

Expands offense of driving while under influence of intoxicants to include any substance that, when taken into human body, can impair the ability of person to operate vehicle safely. Defines "intoxicant" for purposes of Oregon Vehicle Code.

Permits conviction of driving while under influence of intoxicants even if accusatory instrument does not plead fact that person was under influence of controlled substance or inhalant.

A BILL FOR AN ACT

Relating to substances that constitute an intoxicant when operating a vehicle; creating new provisions; and amending ORS 146.113, 801.272, 807.060, 809.235, 809.730, 813.010, 813.011, 813.012, 813.040, 813.131, 813.215, 813.220, 813.300, 813.430, 813.602 and 821.250.

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

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

SECTION 2. "Intoxicant" means:

(1) Intoxicating liquor;

(2) A controlled substance;

(3) An inhalant;

(4) Cannabis;

(5) Psilocybin; or

(6) Any substance that, when taken into the human body, can impair the ability of the person to operate a vehicle safely.

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

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 of being under the influence of a controlled substance or an inhalant unless the fact that the person
 2 was under the influence of a controlled substance or an inhalant is pleaded in the accusatory instru-
 3 ment and is either proved at trial or is admitted by the person through a guilty plea.]

4 [(3)] (2) A person convicted of the offense described in this section is subject to ORS 813.020 in
 5 addition to this section.

6 [(4)] (3) Except as provided in subsection [(5)] (4) of this section, the offense described in this
 7 section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable
 8 upon any premises open to the public.

9 [(5)(a)] (4)(a) Driving while under the influence of intoxicants is a Class C felony if the current
 10 offense was committed in a motor vehicle and the person has, at least three times in the 10 years
 11 prior to the date of the current offense, been convicted of, or been found to be within the jurisdic-
 12 tion of the juvenile court for an act that if committed by an adult would be, any of the following
 13 offenses in any combination:

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

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

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

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

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

27 [(6)] (5) In addition to any other sentence that may be imposed, the court shall impose one or
 28 more of the following fines on a person convicted of driving while under the influence of intoxicants
 29 as follows:

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

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

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

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

37 (B) For a person who, within two hours after driving a vehicle, and without consuming alcohol
 38 in the intervening time period, has 0.15 percent or more by weight of alcohol in the blood of the
 39 person, as shown by chemical analysis of the breath or blood of the person made under ORS 813.100,
 40 813.140 or 813.150, a minimum of \$2,000.

41 [(7)] (6) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on
 42 a person convicted of driving while under the influence of intoxicants if:

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

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

SECTION 4. 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 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 5. 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 6. 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

1 802.540.

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

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

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

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

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

13 (14) A person who holds a current out-of-state license or driver permit or a valid Oregon license
 14 or driver permit. A person who is not eligible under this subsection may become eligible by sur-
 15 rendering the license, driver permit or out-of-state license or driver permit to the department before
 16 issuance of the license. Nothing in this subsection authorizes a person to continue to operate a
 17 motor vehicle on the basis of an out-of-state license or permit if the person is required by ORS
 18 807.062 to obtain an Oregon license or permit.

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

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

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

24 809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving
 25 privileges be permanently revoked if the person is convicted of any degree of murder and the court
 26 finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the
 27 death of the victim, or if the person is convicted of aggravated vehicular homicide, manslaughter in
 28 the first or second degree resulting from the operation of a motor vehicle, criminally negligent
 29 homicide resulting from the operation of a motor vehicle or assault in the first degree resulting from
 30 the operation of a motor vehicle.

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

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

36 (i) ORS 813.010; or

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

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

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

43 (c) For the purposes of paragraph (b) of this subsection, a conviction for a driving offense in
 44 another jurisdiction based solely on a person under 21 years of age having a blood alcohol content
 45 that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years

1 of age or older does not constitute a prior conviction.

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

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

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

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

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

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

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

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

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

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

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

29 (e) Any other relevant factors.

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

32 (a) Is rehabilitated;

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

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

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

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

43 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is
 44 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS
 45 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been

1 convicted of:

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

3 (A) ORS 813.010; or

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

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

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

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

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

21 813.012. (1) The Oregon Criminal Justice Commission shall classify felony driving while under
22 the influence of intoxicants that is committed under the circumstances described in ORS 813.010
23 [(5)] **(4)** as crime category 6 of the rules of the Oregon Criminal Justice Commission.

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

27 (a) Consider two prior convictions of misdemeanor driving while under the influence of
28 intoxicants to be equivalent to one conviction of felony driving while under the influence of
29 intoxicants; and

30 (b) Consider felony driving while under the influence of intoxicants to be a person felony and
31 consider misdemeanor driving while under the influence of intoxicants to be a person Class A
32 misdemeanor.

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

34 813.040. This section establishes, for purposes of ORS 471.432 and 807.060, when a person has
35 a problem condition involving [*alcohol, cannabis, psilocybin, controlled substances or inhalants*]
36 **intoxicants**. For purposes of ORS 471.432 and 807.060, a person has a problem condition involving
37 [*alcohol, cannabis, psilocybin, controlled substances or inhalants*] **intoxicants** if it is determined that
38 the person has a problem condition in which the person’s health or that of others is substantially
39 impaired or endangered or the person’s social or economic function is substantially disrupted be-
40 cause of the person’s:

41 (1) Habitual or periodic use of:

42 (a) Alcoholic beverages;

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

44 or

45 (c) Psilocybin; or

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

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

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

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

8 813.131. (1) A person may be asked to provide a urine sample under ORS 813.140 or subsection
9 (2) of this section.

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

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

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

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

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

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

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

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

37 813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following con-
38 ditions:

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

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

43 (i) ORS 813.010; or

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

45 (B) A driving under the influence of intoxicants offense in another jurisdiction that involved the

1 impaired driving of a vehicle due to the use of *[intoxicating liquor, cannabis, psilocybin, a controlled*
 2 *substance, an inhalant or any combination thereof]* **an intoxicant or a combination of intoxicants;**
 3 or

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

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

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

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

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

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

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

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

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

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

38 (A) Death of any person; or

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

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

44 (3) A defendant is eligible for a second or subsequent diversion if the defendant meets all of the
 45 conditions of subsection (1) of this section and the defendant has not been convicted of any other

1 criminal offense involving a motor vehicle within the period beginning 15 years before the date of
 2 the commission of the present offense and ending on the date the defendant filed the petition for the
 3 second or subsequent driving while under the influence of intoxicants diversion agreement.

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

5 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request
 6 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether
 7 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-
 8 ment. In making a determination under this section, the court:

9 (1) Shall consider whether the diversion will be of benefit to the defendant and the community.

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

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

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

17 (5) May take into consideration whether the offense was committed in a motor vehicle and
 18 whether there was a passenger in the motor vehicle who was under 18 years of age and at least
 19 three years younger than the defendant.

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

23 (7) Shall deny the petition for a driving while under the influence of intoxicants diversion
 24 agreement if, after the date the defendant filed the petition, the defendant was charged with or
 25 convicted of:

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

27 (A) ORS 813.010; or

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

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

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

35 (8) Shall deny the petition for a driving while under the influence of intoxicants diversion
 36 agreement if the defendant participated in a driving while under the influence of intoxicants diver-
 37 sion program or in any similar alcohol or drug rehabilitation program, other than a program entered
 38 into as a result of the charge for the present offense, in this state or in another jurisdiction after
 39 the date the defendant filed the petition.

40 (9) Shall deny the petition for a driving while under the influence of intoxicants diversion
 41 agreement if the defendant was charged with or convicted of an offense of aggravated vehicular
 42 homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the
 43 operation of a motor vehicle in this state or in another jurisdiction after the date the defendant filed
 44 the petition.

45 (10) Shall deny the petition for a driving while under the influence of intoxicants diversion

1 agreement if the defendant has been convicted of a felony offense described in ORS 813.010 [(5)(a)]
 2 (4)(a).

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

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

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

13 813.300. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts
 14 committed by a person driving a motor vehicle while under the influence of intoxicants, if the
 15 amount of alcohol in the person's blood at the time alleged is less than 0.08 percent by weight of
 16 alcohol as shown by chemical analysis of the person's breath or blood, it is indirect evidence that
 17 may be used with other evidence, if any, to determine whether or not the person was then under the
 18 influence of intoxicants.

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

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

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

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

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

31 813.430. This section establishes circumstances under which ORS 813.420 requires an increase
 32 in the time for suspension of driving privileges and under which ORS 813.520 requires an increase
 33 in the time before the Department of Transportation may issue a hardship permit. A person is sub-
 34 ject to an increase in suspension time under this section if any of the following apply:

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

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

39 (a) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replace-
 40 ment Part) became effective.

41 (b) The person was convicted of:

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

43 (i) ORS 813.010;

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

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

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

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

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

10 (3) For the purposes of subsection (2)(b) of this section, 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 **SECTION 16.** ORS 813.602 is amended to read:

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

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

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

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

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

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

- 35 (A) Any degree of murder.
- 36 (B) Manslaughter in the first or second degree.
- 37 (C) Criminally negligent homicide.
- 38 (D) Assault in the first degree.

39 (b) Aggravated vehicular homicide.

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

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

45 (A) The court shall require that an approved ignition interlock device be installed and used in

1 any vehicle operated by the person during the period of the agreement when the person has driving
 2 privileges if:

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

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

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

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

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

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

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

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

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

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

31 (c) The Oregon State Police.

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

33 821.250. (1) A person commits the offense of permitting dangerous operation of a snowmobile or
 34 an all-terrain vehicle if the person is the owner or other person having charge or control of a
 35 snowmobile or an all-terrain vehicle and the person knowingly authorizes or permits any person to
 36 operate the vehicle across a highway who is:

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

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

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

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

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

45 146.113. (1) A medical examiner or district attorney may, in any death requiring investigation,

1 order samples of blood or urine taken for laboratory analysis.

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

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

9 **SECTION 19. Section 2 of this 2023 Act and the amendments to ORS 146.113, 801.272,**
10 **807.060, 809.235, 809.730, 813.010, 813.011, 813.012, 813.040, 813.131, 813.215, 813.220, 813.300,**
11 **813.430, 813.602 and 821.250 by sections 3 to 18 of this 2023 Act apply to conduct occurring on**
12 **or after the effective date of this 2023 Act.**

13