

Enrolled Senate Bill 568

Sponsored by Senator GELSNER BLOUIN; Senator DEMBROW (Pre-session filed.)

CHAPTER

AN ACT

Relating to driving while under the influence of intoxicants diversion agreements; creating new provisions; and amending ORS 813.645.

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

SECTION 1. ORS 813.645 is amended to read:

813.645. (1) A defendant may apply by motion to the court in which a driving while under the influence of intoxicants diversion agreement described in ORS 813.230 was entered for an order vacating the requirement to install and use an ignition interlock device if the defendant:

(a) Has complied with the condition of the diversion agreement described in ORS 813.602 (3) for at least six consecutive months and provides a certificate to the court from the ignition interlock device manufacturer’s representative stating that the device has not recorded a negative report; and

(b) The defendant has entered into and is in compliance with any treatment program that the person is required to participate in as a condition of diversion.

(2) The defendant shall cause to be served on the district attorney or city prosecutor a copy of the motion for an order vacating the requirement to install and use an ignition interlock device under ORS 813.602 (3). The copy of the motion shall be served on the district attorney or city prosecutor at the time the motion is filed with the court. The district attorney or city prosecutor may contest the motion.

(3) A motion under this section must include the following information:

(a) An affidavit or declaration that states that the defendant has complied with the condition of the diversion agreement described in ORS 813.602 (3) for at least six consecutive months with no negative results;

(b) A copy of the certificate described in subsection (1)(a) of this section from the ignition interlock device manufacturer’s representative stating that the device has not recorded a negative report; and

(c) If the defendant is required to participate in a treatment program as a condition of diversion, a letter signed by a treatment counselor from the treatment program in which the defendant is enrolled stating that the defendant has entered into and is in compliance with the treatment program.

[(3)] (4) The court [shall] may hold a hearing on a petition filed in accordance with subsection (1) of this section. The court shall hold a hearing if the district attorney or city prosecutor:

(a) Contests the motion;

(b) Requests a hearing; and

(c) Files a written objection with the court within 10 days after the date of service.

(5) In determining whether to grant the petition, the court shall consider:

- (a) The nature of the underlying crime for which driving privileges were suspended.
- (b) The blood alcohol content of the defendant at the time of the arrest.
- (c) Any other relevant factors.

[(4)] (6) The court may vacate a defendant's requirement to install and use an ignition interlock device under ORS 813.602 (3) if, after a hearing described in subsection [(3)] (4) of this section, the court finds by a preponderance of the evidence that the petitioner:

(a) Has complied with the condition of the diversion agreement described in ORS 813.602 (3) for at least six consecutive months with no negative reports; and

(b) Has entered into and is in compliance with any treatment program required as a condition of diversion.

[(5)] (7) When a court vacates a defendant's requirement to install and use an ignition interlock device under ORS 813.602 (3), the court shall notify the Department of Transportation.

SECTION 2. The amendments to ORS 813.645 by section 1 of this 2023 Act apply to petitions filed on or after the effective date of this 2023 Act.

Passed by Senate March 15, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 18, 2023

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Dan Rayfield, Speaker of House

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