

# House Bill 2654

Sponsored by Representatives BARKER, JENSON; Representatives BERGER, BOONE, BRUUN, BUCKLEY, BUTLER, CAMERON, DALTO, DINGFELDER, GALIZIO, HASS, HOLVEY, HUNT, KOMP, KRIEGER, KROPF, MACPHERSON, OLSON, ROBLAN, ROSENBAUM, SCHAUFLER, SCOTT, G SMITH, WITT, Senator RINGO

## 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**.

Requires participation in driving while under influence of intoxicants diversion program to be counted toward felony driving while under influence of intoxicants.

## A BILL FOR AN ACT

1  
2 Relating to felony driving while under the influence of intoxicants; creating new provisions; and  
3 amending ORS 813.010, 813.326 and 813.328.

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

5 **SECTION 1.** ORS 813.010 is amended to read:

6 813.010. (1) A person commits the offense of driving while under the influence of intoxicants if  
7 the person drives a vehicle while the person:

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

10 (b) Is under the influence of intoxicating liquor, a controlled substance or an inhalant; or

11 (c) Is under the influence of any combination of intoxicating liquor, an inhalant and a controlled  
12 substance.

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

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

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

22 (5)(a) Driving while under the influence of intoxicants is a Class C felony if **the current of-**  
23 **fense was committed in a motor vehicle and if, in the 10 years prior to the date of the cur-**  
24 **rent offense**, the defendant [*has been*] **was** convicted of driving while under the influence of  
25 intoxicants in violation of this section or its statutory counterpart in another jurisdiction at least:

26 (A) Three times [*in the 10 years prior to the date of the current offense and the current offense*  
27 *was committed in a motor vehicle.*]; or

28 (B) **Two times and the person, in the 10 years prior to the date of the current offense,**  
29 **participated in a driving while under the influence of intoxicants diversion program or in any**  
30 **similar alcohol or drug rehabilitation program in this state or in another jurisdiction.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (b) For purposes of this subsection, a prior conviction for boating while under the influence of  
 2 intoxicants in violation of ORS 830.325 or its statutory counterpart in another jurisdiction, or for  
 3 prohibited operation of an aircraft in violation of ORS 837.080 (1)(a) or its statutory counterpart in  
 4 another jurisdiction, shall be considered a prior conviction of driving while under the influence of  
 5 intoxicants.

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

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

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

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

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

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

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

17 **SECTION 2. The amendments to ORS 813.010 by section 1 of this 2005 Act apply to second**  
 18 **and subsequent offenses committed on or after the effective date of this 2005 Act.**

19 **SECTION 3.** ORS 813.326 is amended to read:

20 813.326. (1) In a prosecution for felony driving while under the influence of intoxicants under  
 21 ORS 813.010, the state shall plead the prior convictions **or participation in the diversion program**  
 22 and shall prove the prior convictions **or participation** unless the defendant stipulates to that fact  
 23 prior to trial. If the defendant so stipulates and the trial is by jury:

24 (a) The court shall accept the stipulation regardless of whether or not the state agrees to it;

25 (b) The defendant's stipulation to the prior convictions **or participation** constitutes a judicial  
 26 admission to that element of the accusatory instrument. The stipulation shall be made a part of the  
 27 record of the case, but shall not be offered or received in the presence of the jury;

28 (c) For the purpose of establishing the prior convictions **or participation** solely as an element  
 29 of the crime under ORS 813.010, neither the court nor the state shall reveal to the jury the prior  
 30 convictions **or participation**, but the prior convictions **or participation** are established in the re-  
 31 cord by the defendant's stipulation; and

32 (d) The court shall not submit the accusatory instrument or evidence of the prior convictions  
 33 **or participation** to the jury.

34 (2) In a proceeding under ORS 813.010, the state may offer, and the court may receive and sub-  
 35 mit to the jury, evidence of the prior convictions **or participation** for impeachment of the defendant  
 36 or another purpose, other than establishing the prior convictions **or participation** as an element  
 37 of the offense, when the evidence of the prior convictions **or participation** is otherwise admissible  
 38 for that purpose. When evidence of the prior convictions **or participation** has been admitted by the  
 39 court, the state may comment upon, and the court may give instructions about, the evidence of the  
 40 prior convictions **or participation** only to the extent that the comments or instructions relate to  
 41 the purpose for which the evidence was admitted.

42 (3) When the defendant stipulates to the prior convictions **or participation** required as an ele-  
 43 ment of felony driving while under the influence of intoxicants under ORS 813.010, if the jury finds  
 44 the defendant guilty upon instruction regarding the balance of the elements of the crime, the court  
 45 shall enter a judgment of guilty of felony driving while under the influence of intoxicants.

1        **SECTION 4.** ORS 813.328 is amended to read:

2        813.328. A defendant who challenges the validity of prior convictions **or participation in the**  
3 **diversion program** alleged by the state as an element of felony driving while under the influence  
4 of intoxicants must give notice of the intent to challenge the validity of the prior convictions **or**  
5 **participation** at least seven days prior to the first date set for trial on the felony charge. The va-  
6 lidity of the prior convictions **or participation** shall be determined prior to trial by the court.

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