# Chapter 813

## 2009 EDITION

# Driving Under the Influence of Intoxicants


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## GENERAL PROVISIONS

**813.010 Driving under the influence of intoxicants; penalty.** (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, a controlled substance or an inhalant; or

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

(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:

(i) This section; or

(ii) The statutory counterpart to this section 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, a controlled substance, an inhalant or any combination thereof.

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

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

(c) For a person's third or subsequent conviction, a minimum of $2,000 if the person is not sentenced to a term of imprisonment.

(d) For a person who drives a vehicle 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.

(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. [1983 c.338 §587; 1985 c.16 §293; 1987 c.138 §5; 1991 c.835 §7; 1999 c.619 §3; 1999 c.1049 §1; 2003 c.14 §495; 2003 c.445 §1; 2007 c.879 §3; 2009 c.525 §1; 2009 c.613 §1]

**813.012 Crime classification for purposes of rules of Oregon Criminal Justice Commission.** (1) The Oregon Criminal Justice Commission shall classify a violation of ORS 813.010 that is a felony as crime category 6 of the rules of the Oregon Criminal Justice Commission.

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

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

(b) Consider felony driving while under the influence of intoxicants to be a person felony and consider misdemeanor driving while under the influence of intoxicants to be a person Class A misdemeanor. [1999 c.1049 §3]

**813.020 Fee to be paid on conviction; screening and treatment; mandatory imprisonment or community service; attendance at victim impact treatment session; session fee.** 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; and

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

(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 to attend a victim impact treatment session. 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. [1983 c.338 §588; 1985 c.16 §294 and former 487.549; 1989 c.576 §5; 1991 c.557 §3; 1993 c.13 §4; 1993 c.468 §1; 1999 c.126 §1; 2003 c.14 §496]

**813.021 Requirements for screening interview and treatment program.** (1) When a court, in accordance with ORS 813.020, requires a person to complete a screening interview and a treatment program, the court shall require the person to do all of the following:

(a) Complete a screening interview for the purpose of determining appropriate placement of the person in a program for treatment for alcoholism, drug dependency or dependency on inhalants.

(b) Pay directly to the agency or organization conducting the screening interview a fee of $150.

(c) Complete the treatment program to which the person is referred.

(d) Pay for the treatment program to which the person is referred.

(2) The screening interview required by this section shall be conducted by an agency or organization designated by the court. The designated agency or organization must meet the standards set by the Director of the Oregon Health Authority to conduct the screening interviews. Wherever possible a court shall designate agencies or organizations to perform the screening interview that are separate from those that may be designated to carry out a treatment program.

(3) An agency or organization doing a screening interview under this section may not refer a person to a treatment program that has not been approved by the Director of the Oregon Health Authority.

(4) The agency or organization conducting a screening interview under this section shall monitor the progress of the person referred to the agency or organization. The agency or organization shall make a report to the referring court stating the person's successful completion or failure to complete all or any part of the screening interview or of the treatment program to which the person was referred by the agency or organization. The report shall be in a form determined by agreement between the court and the agency or organization. [1999 c.126 §3; 1999 c.619 §8a; 2005 c.303 §1; 2009 c.595 §1140]

**Note:** 813.021 was added to and made a part of the Oregon Vehicle Code by legislative action but was not added to ORS chapter 813 or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**813.025 Designation of agency to perform screening, diagnostic assessment and treatment; qualifications; rules.** A court may designate a single agency or organization to perform the screening interviews and treatment programs described in ORS 813.021, or the diagnostic assessment and treatment described in ORS 813.260 (1) when the Director of the Oregon Health Authority certifies that:

(1) An agency or organization may accept such designations due to the lack of alternative agencies or organizations in the service area; or

(2) An agency or organization has applied to and been authorized by the Oregon Health Authority to operate a demonstration project that combines screening interviews and treatment programs or diagnostic assessment and treatment. The authority shall by rule set forth the conditions under which a demonstration project may be authorized. [1991 c.557 §2; 1999 c.126 §4; 2009 c.595 §1141]

**813.030 Amount of fee; distribution.** The fee required by ORS 471.432 and 813.020 (1) shall be in the amount of $130, except that the court may waive all or part of the fee in cases involving indigent defendants. The court may make provision for payment of the fee on an installment basis. The fee shall be ordered paid as follows:

(1) $105 to be credited and distributed under ORS 137.295 as an obligation payable to the state; and

(2) $25 to be paid to the Director of the Oregon Health Authority for deposit in the Intoxicated Driver Program Fund created by ORS 813.270. [1985 c.16 §296; 1987 c.905 §29; 1989 c.576 §§6a,7a; 1989 c.635 §§1,3; 1991 c.557 §4; 1993 c.13 §5; 1999 c.646 §3; 2009 c.595 §1142]

**813.040 Standards for determination of problem condition involving alcohol, inhalants or controlled substances.** This section establishes, for purposes of ORS 471.432, 807.060 and 813.500, when a person has a problem condition involving alcohol, inhalants or controlled substances. For purposes of ORS 471.432, 807.060 and 813.500, a person has a problem condition involving alcohol, inhalants or controlled substances 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 alcoholic beverages; 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 drug, inhalant or controlled substance to avoid characteristic withdrawal symptoms; or

(b) A psychological dependence characterized by an overwhelming mental desire for continued use of a drug, inhalant or controlled substance. [1983 c.338 §589; 1999 c.126 §5; 1999 c.619 §9; 1999 c.646 §4]

**813.050 Out-of-service orders for operators of commercial motor vehicles; grounds; duration; rules; penalty.** (1) A police officer or a person authorized by the Department of Transportation to perform vehicle safety inspections shall issue an out-of-service order to the operator of a commercial motor vehicle if any of the following applies:

(a) The person has reasonable grounds to believe that the operator has consumed alcohol or other intoxicating beverage within four hours prior to the time the operator began operating the vehicle or at any time while operating the vehicle. As used in this paragraph, "reasonable grounds" includes, but is not limited to, smelling alcohol on the breath or person of the operator.

(b) A chemical test of the operator's breath discloses any amount of alcohol in the blood of the operator.

(c) The operator possesses an intoxicating beverage while operating the vehicle. This subsection does not apply to possession of an intoxicating beverage that is manifested and transported as part of a shipment.

(2) An out-of-service order issued under this section shall become effective upon its issuance and shall remain in effect for 24 hours.

(3) The Department of Transportation shall adopt rules requiring that any driver issued an out-of-service order under this section be required to report the order to the department and to the driver's employer. Rules adopted under this section may include, but need not be limited to, rules specifying the times within which reports must be made and the contents of the reports.

(4) Violation of an out-of-service order issued under this section is a Class A misdemeanor. [1991 c.185 §14; 1993 c.400 §1]

**813.052** [1993 c.400 §4; 2003 c.402 §39; 2007 c.122 §4; repealed by 2009 c.395 §15]

**813.055 Civil penalty for violation of out-of-service order or notice.** (1) The Department of Transportation shall impose a civil penalty on the operator of a commercial motor vehicle if:

(a) The operator has violated an out-of-service order issued under ORS 813.050 or any other out-of-service order or notice issued by the department or an authorized representative of the department; or

(b) The department receives notification that a person has violated any out-of-service order or notice issued by a state or federal agency.

(2) For the purposes of this section, "notification" may include, but is not limited to, a record of conviction or a record of a determination by a state or federal agency with jurisdiction to determine that the operator has violated an out-of-service order or notice.

(3) Civil penalties under this section shall be imposed in the manner provided in

ORS 183.745 and may not be reduced. The civil penalties are:

(a) $2,500 for the first violation of an out-of-service order or notice.

(b) $5,000 for a second or subsequent violation of an out-of-service order or notice. [2009 c.395 §14]

**Note:** 813.055 was added to and made a part of the Oregon Vehicle Code by legislative action but was not added to ORS chapter 813 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

## IMPLIED CONSENT

**813.095 Offense of refusal to take a test for intoxicants; penalty.** (1) A person commits the offense of refusal to take a test for intoxicants if the person refuses to:

(a) Take a breath test when requested to do so in accordance with the provisions of ORS 813.100; or

(b) Take a urine test when requested to do so in accordance with the provisions of ORS 813.131 and 813.132.

(2) The offense described in this section, refusal to take a test for intoxicants, is a traffic offense punishable by a fine of at least $500 and not more than $1,000. The fine described in this section is in addition to any other consequence prescribed by law for refusal to take a test for intoxicants. [2003 c.814 §2; 2009 c.614 §1]

**813.100 Implied consent to breath or blood test; confiscation of license upon refusal or failure of test.** (1) 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 implied consent law, to a chemical test of the person's breath, or of the person's blood if the person is receiving medical care in a health care facility immediately after a motor vehicle accident, for the purpose of determining the alcoholic content of the person's blood if the person is arrested for driving a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance. A test shall be administered upon the request of a police officer having reasonable grounds to believe the person arrested to have been driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance. Before the test is administered the person requested to take the test shall be informed of consequences and rights as described under ORS 813.130.

(2) No chemical test of the person's breath or blood shall be given, under subsection (1) of this section, to a person under arrest for driving a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, if the person refuses the request of a police officer to submit to the chemical test after the person has been informed of consequences and rights as described under ORS 813.130.

(3) If a person refuses to take a test under this section or if a breath test under this section discloses that the person, at the time of the test, had a level of alcohol in the person's blood that constitutes being under the influence of intoxicating liquor under ORS 813.300, the person's driving privileges are subject to suspension under ORS 813.410 and the police officer shall do all of the following:

(a) Immediately take custody of any driver license or permit issued by this state to the person to grant driving privileges.

(b) Provide the person with a written notice of intent to suspend, on forms prepared and provided by the Department of Transportation. The written notice shall inform the person of consequences and rights as described under ORS 813.130.

(c) If the person qualifies under ORS 813.110, issue to the person, on behalf of the department, a temporary driving permit described under ORS 813.110.

(d) Within a period of time required by the department by rule, report action taken under this section to the department and prepare and cause to be delivered to the department a report as described in ORS 813.120, along with the confiscated license or permit and a copy of the notice of intent to suspend.

(4) If a blood test under this section discloses that the person, at the time of the test, had a level of alcohol in the person's blood that constitutes being under the influence of intoxicating liquor under ORS 813.300, the person's driving privileges are subject to suspension under ORS 813.410 and the police officer shall report to the department within 45 days of the date of arrest that the person failed the blood test. [1983 c.338 §591; 1985 c.16 §298; 1985 c.672 §19; 1993 c.305 §1; 1995 c.568 §1]

**813.110 Temporary permit upon confiscation of license.** (1) Except as otherwise provided by this section, police officers, on behalf of the Department of Transportation, shall issue temporary driving permits described under this section to persons when required under ORS 813.100.

(2) The department shall provide police departments and agencies with permits for issuance as required by this section. The department shall establish the form and content of permits described in this section as the department determines appropriate, but in a manner consistent with this section.

(3) A permit described in this section is subject to all the following:

(a) Except as provided in paragraph (b) of this subsection, the permit is valid until the 30th day after the date of arrest.

(b) During the 12-hour period following issuance of the permit, the person is subject to ORS 807.570, and the permit is not a defense to a charge under ORS 807.570.

(c) The permit shall be issued without payment of any fee.

(d) The permit grants the same driving privileges as those granted by the person's license taken into possession under ORS 813.100.

(4) A police officer shall not issue a permit under this section if:

(a) Driving privileges of the person were suspended, revoked or canceled at the time the person was arrested;

(b) The person whose license was taken into custody was operating on an invalid license;

(c) The person was not entitled to driving privileges at the time of the arrest for any other reason; or

(d) The person holds a license or permit granting driving privileges that was issued by another state or jurisdiction and that is not taken into custody under ORS 813.100. [1985 c.16 §142; 1985 c.672 §17]

**813.120 Police report to department.** (1) A report required by ORS 813.100 shall disclose substantially all of the following information:

(a) Whether the person, at the time the person was requested to submit to a test, was under arrest for driving a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance.

(b) Whether the police officer had reasonable grounds to believe, at the time the request was made, that the person arrested had been driving under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance.

(c) Whether the person refused to submit to a test or if the person submitted to a breath or blood test whether the level of alcohol in the person's blood, as shown by the test, was sufficient to constitute being under the influence of intoxicating liquor under ORS 813.300.

(d) Whether the person was driving a commercial motor vehicle and refused to submit to a test or if the person submitted to a breath or blood test whether the level of alcohol in the person's blood, as shown by the test, was 0.04 percent or more by weight.

(e) Whether the person was informed of consequences and rights as described under ORS 813.130.

(f) Whether the person was given written notice of intent to suspend required by ORS 813.100 (3)(b).

(g) If the arrested person took a test, a statement that the person conducting the test was appropriately qualified.

(h) If the arrested person took a test, a statement that any methods, procedures and equipment used in the test comply with any requirements under ORS 813.160.

(2) A report required by ORS 813.100 may be made in one or more forms specified by the Department of Transportation. [1983 c.338 §405; 1985 c.16 §215; 1985 c.672 §20; 1989 c.636 §42; 1993 c.305 §3; 1993 c.751 §70; 1995 c.568 §3]

**813.130 Rights of and consequences for person asked to take test.** This section establishes the requirements for information about rights and consequences for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and consequences:

(1) The information about rights and consequences shall be substantially in the form prepared by the Department of Transportation. The department may establish any form it determines appropriate and convenient.

(2) The information about rights and consequences shall be substantially as follows:

(a) Driving under the influence of intoxicants is a crime in Oregon, and the person is subject to criminal penalties if a test under ORS 813.100 shows that the person is under the influence of intoxicants. If the person refuses a test or fails, evidence of the refusal or failure may also be offered against the person.

(b) The person will fail a test under ORS 813.100 for purposes of criminal penalties if the test discloses a blood alcohol content of 0.08 percent or more by weight. The person will fail a test for purposes of the Motorist Implied Consent Law if the test discloses a blood alcohol content of:

(A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;

(B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or

(C) Any amount if the person was under 21 years of age.

(c) If the person refuses or fails a test under ORS 813.100, the person's driving privileges will be suspended. The outcome of a criminal charge for driving under the in-

fluence of intoxicants will not affect the suspension. The suspension will be substantially longer if the person refuses a test.

(d) If the person refuses a test or fails a breath test under ORS 813.100 and has an Oregon driver license or permit, the license or permit will be taken immediately and, unless the person does not currently have full valid driving privileges, a temporary driving permit will be issued to the person.

(e) If the person refuses a test under ORS 813.100, the person is not eligible for a hardship permit for at least 90 days, and possibly for three years, depending on the following factors set forth in ORS 813.430:

(A) Whether 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; or

(B) Whether within the five years preceding the date of arrest any of the following occurred:

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

(ii) The person was convicted of driving while under the influence of intoxicants in violation of ORS 813.010 or the statutory counterpart to ORS 813.010 in another jurisdiction, as described in ORS 813.430;

(iii) The person was convicted of driving while under the influence of intoxicants in violation of a municipal ordinance in this state or another jurisdiction, as described in ORS 813.430; or

(iv) 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, as described in ORS 813.430.

(f) If the person refuses a breath test under ORS 813.100, or refuses a urine test under ORS 813.131 and 813.132, the person is subject to a fine of at least $500 and not more than $1,000.

(g) After taking a test under ORS 813.100, the person will have a reasonable opportunity, upon request, for an additional chemical test for blood alcohol content to be performed at the person's own expense by a qualified individual of the person's choosing.

(h) The person has a right to a hearing to challenge the validity of the suspension before the suspension becomes effective. The person must make a written request to the department for such a hearing. If the person wins at the hearing, the person's driving privileges will not be suspended. If the person loses at the hearing, the suspension will remain in effect during any court review of the hearing.

(i) If the person is issued a temporary driving permit under ORS 813.100, the information provided to the person shall include the number of hours before the driving permit will be effective and the number of days the permit will be effective.

(j) The information provided to the person shall include the number of days within which a person must request a hearing under ORS 813.410.

(k) The information provided to the person shall include the number of days within which a hearing under ORS 813.410 will be held.

(L) The person may possibly qualify for a hardship permit in 30 days if the person fails a test, depending on the person's driving record.

(3) If the person is driving a commercial motor vehicle, the information about rights and consequences shall include, in addition to the provisions of subsection (2) of this section, substantially the following:

(a) If the person refuses a test under ORS 813.100 or submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or more by weight, the person's commercial driver license or right to apply for a commercial driver license will be suspended and no hardship permit authorizing the person to drive a commercial motor vehicle will be issued. The suspension will be substantially longer if the person refuses a test.

(b) The suspension of the person's commercial driver license or right to apply for a commercial driver license will be for the person's lifetime if the person refuses a test under ORS 813.100 or submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or more by weight and:

(A) The person previously has been convicted of failure to perform the duties of a driver;

(B) The person previously has been convicted of a crime punishable as a felony and the person was driving a motor vehicle at the time the offense was committed;

(C) The person previously has been convicted of driving a commercial motor vehicle while the person's commercial driver license or right to apply for a commercial driver license was suspended or revoked;

(D) The person previously has been convicted of any degree of murder, manslaughter or criminally negligent homicide resulting from the operation of a commercial motor

vehicle or assault in the first degree resulting from the operation of a commercial motor vehicle;

(E) The person previously has been convicted of driving while under the influence of intoxicants;

(F) The person's commercial driver license previously has been suspended or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100; or

(G) The person's right to apply for a commercial driver license previously has been suspended or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100 resulting from the operation of a commercial motor vehicle.

(4) Nothing in this section prohibits the department from providing additional information concerning rights and consequences that the department considers convenient or appropriate. [1985 c.672 §22; 1987 c.673 §3; 1987 c.801 §11; 1989 c.171 §92; 1989 c.636 §43; 1991 c.185 §15; 1991 c.860 §10; 1993 c.305 §4; 1995 c.568 §4; 2003 c.814 §3; 2005 c.649 §28; 2009 c.607 §2; 2009 c.614 §2]

**813.131 Implied consent to urine test; privacy; laboratories for analysis.** (1) 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 a controlled substance or an inhalant 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.

(2) A police officer may not request a urine test unless the officer is certified by the Board on 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 a controlled substance, an inhalant or any combination of an inhalant, a controlled substance and intoxicating liquor.

(3) 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.

(4)(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 under this subsection if analysis is performed in an accredited or licensed toxicology laboratory. [1995 c.676 §1; 1999 c.619 §10; 1999 c.752 §1; 2009 c.325 §1]

**813.132 Consequences of refusing to take urine test; exception.** (1) Except as otherwise provided in this section, a refusal to take a urine test requested under ORS 813.131 shall be treated for all purposes as a refusal to take a breath test. A suspension imposed for refusal to take a urine test shall be consecutive to any other suspension imposed under the Motorist Implied Consent Law. If a person is subject to consecutive suspensions, the length of time that must elapse before the Department of Transportation may reinstate driving privileges or issue a hardship permit under ORS 813.520 shall be doubled.

(2) Before any test of urine may be administered under ORS 813.131, in addition to information described in ORS 813.130, the person asked to take the test shall be informed that if the person refuses the test, the person's driving privileges will be suspended for the same time period and with the same consequences as if the person had refused the breath test and that a suspension for refusal of the urine test will be consecutive to any other suspension under the Motorist Implied Consent Law.

(3) Notwithstanding subsection (1) of this section, no suspension of driving privileges shall be imposed for refusal to provide a urine sample if the person provides documentation from a physician licensed by this state showing that the person has a medical condition that makes it impossible for the person to provide a sample. [1995 c.676 §2; 1997 c.25 §3]

**813.135 Implied consent to field sobriety tests.** Any person who operates a vehicle upon premises open to the public or the highways of the state shall be deemed to have given consent to submit to field sobriety tests upon the request of a police officer for the purpose of determining if the person is under the influence of intoxicants if the police officer reasonably suspects that the person has committed the offense of driving while under the influence of intox-

icants in violation of ORS 813.010 or a municipal ordinance. Before the tests are administered, the person requested to take the tests shall be informed of the consequences of refusing to take or failing to submit to the tests under ORS 813.136. [1989 c.576 §15]

**813.136 Consequence of refusal or failure to submit to field sobriety tests.** If a person refuses or fails to submit to field sobriety tests as required by ORS 813.135, evidence of the person's refusal or failure to submit is admissible in any criminal or civil action or proceeding arising out of allegations that the person was driving while under the influence of intoxicants. [1989 c.576 §14]

## CHEMICAL TESTS; METHODS AND REQUIREMENTS

**813.140 Chemical test with consent; unconscious person.** Nothing in ORS 813.100 is intended to preclude the administration of a chemical test described in this section. A police officer may obtain a chemical test of the blood to determine the amount of alcohol in any person's blood or a test of the person's blood or urine, or both, to determine the presence of a controlled substance or an inhalant in the person as provided in the following:

(1) If, when requested by a police officer, the person expressly consents to such a test.

(2) Notwithstanding subsection (1) of this section, from a person without the person's consent if:

(a) The police officer has probable cause to believe that the person was driving while under the influence of intoxicants and that evidence of the offense will be found in the person's blood or urine; and

(b) The person is unconscious or otherwise in a condition rendering the person incapable of expressly consenting to the test or tests requested. [1983 c.338 §593; 1985 c.16 §299; 1999 c.619 §11]

**813.150 Chemical test at request of arrested person.** In addition to a chemical test of the breath, blood or urine administered under ORS 813.100 or 813.140, upon the request of a police officer, a person shall be permitted upon request, at the person's own expense, reasonable opportunity to have any licensed physician and surgeon, licensed professional nurse or qualified technician, chemist or other qualified person of the person's own choosing administer a chemical test or tests of the person's breath or blood for the purpose of determining the alcoholic content of the person's blood or a chemical test or tests of the person's blood or urine, or both, for the purpose of determining the presence of a controlled substance or an inhalant in the person. The failure or inability to obtain such a test or tests by a person shall not preclude the admission of evidence relating to a test or tests taken upon the request of a police officer. [1983 c.338 §594; 1985 c.16 §300; 1999 c.619 §12]

**813.160 Methods of conducting chemical analyses; duties of Department of State Police; reports; costs.** (1) A chemical analysis is valid under ORS 813.300 if:

(a) It is an analysis of a person's blood for alcohol content and is performed in:

(A) A laboratory certified or accredited under 42 C.F.R. part 493 and approved for toxicology testing;

(B) A laboratory licensed under ORS 438.110 and approved for toxicology testing; or

(C) A forensic laboratory established by the Department of State Police under ORS 181.080 that is accredited by a national forensic accrediting organization.

(b) It is an analysis of a person's breath and is performed by an individual possessing a valid permit to perform chemical analyses issued by the Department of State Police and is performed according to methods approved by the Department of State Police. For purposes of this paragraph, the Department of State Police shall do all of the following:

(A) Approve methods of performing chemical analyses of a person's breath.

(B) Prepare manuals and conduct courses throughout the state for the training of police officers in chemical analyses of a person's breath, which courses shall include, but are not limited to, approved methods of chemical analyses, use of approved equipment and interpretation of test results together with a written examination on these subjects.

(C) Test and certify the accuracy of equipment to be used by police officers for chemical analyses of a person's breath before regular use of the equipment and periodically thereafter at intervals of not more than 90 days. Tests and certification required by this subparagraph must be conducted by trained technicians. Certification under this subparagraph does not require a signed document.

(D) Ascertain the qualifications and competence of individuals to conduct chemical analyses in accordance with one or more methods approved by the department.

(E) Issue permits to individuals according to their qualifications. Permits may be issued to police officers only upon satisfactory completion of the prescribed training course and written examination. A permit must state the methods and equipment that the police offi-

cer is qualified to use. Permits are subject to termination or revocation at the discretion of the Department of State Police.

(2) In conducting a chemical test of the blood, only a duly licensed physician or a person acting under the direction or control of a duly licensed physician may withdraw blood or pierce human tissue. A licensed physician, or a qualified person acting under the direction or control of a duly licensed physician, is not civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer.

(3) An individual who performs a chemical analysis of breath or blood under ORS 813.100 or 813.140 shall prepare and sign a written report of the findings of the test that must include the identification of the police officer upon whose request the test was administered.

(4) Any individual having custody of the report mentioned in subsection (3) of this section shall, upon request of the person tested, furnish that person or that person's attorney, a copy of the report.

(5) The expense of conducting a chemical test as provided by ORS 813.100 or 813.140 must be paid by the governmental unit on whose equipment the test is conducted or by the governmental unit upon whose request the test was administered if no governmental unit's equipment is used to conduct the test. [1983 c.338 §173; 1985 c.16 §57; 1985 c.337 §2; 1995 c.351 §1; 2003 c.19 §1]

## PLEA AGREEMENT

**813.170 Plea agreement prohibited.** (1) Notwithstanding ORS 135.405 to 135.445, a person charged with the offense of driving under the influence of intoxicants shall not be allowed to plead "guilty" or "no contest" to any other offense in exchange for a dismissal of the offense charged. No district attorney or city attorney shall make any motion and no judge shall enter any order in derogation of this section. This section does not prohibit diversion as provided under ORS 813.200.

(2) Notwithstanding ORS 135.881 to 135.901, a person charged with the offense of driving under the influence of intoxicants shall not be allowed to enter into any program of supervised performance or diversion except as provided under ORS 813.200. [1983 c.338 §382; 1999 c.1051 §294]

## DIVERSION

**813.200 Notice of availability of diversion; petition; form; contents.** (1) The court shall inform at arraignment a defendant charged with the offense of driving while under the influence of intoxicants as defined in ORS 813.010 or a city ordinance conforming thereto that a diversion agreement may be available if the defendant meets the criteria set out in ORS 813.215 and files with the court a petition for a driving while under the influence of intoxicants diversion agreement.

(2) The petition forms for a driving while under the influence of intoxicants diversion agreement shall be available to a defendant at the court.

(3) The form of the petition for a driving while under the influence of intoxicants diversion agreement and the information and blanks contained therein shall be determined by the Supreme Court under ORS 1.525. The petition forms made available to a defendant by any city or state court shall conform to the requirements adopted by the Supreme Court.

(4) In addition to any other information required by the Supreme Court to be contained in a petition for a driving while under the influence of intoxicants diversion agreement, the petition shall include:

(a) A plea of guilty or no contest to the charge of driving while under the influence of intoxicants signed by the defendant;

(b) An agreement by the defendant to complete at an agency or organization designated by the city or state court a diagnostic assessment to determine the possible existence and degree of an alcohol or drug abuse problem;

(c) An agreement by the defendant to complete, at defendant's own expense based on defendant's ability to pay, the program of treatment indicated as necessary by the diagnostic assessment;

(d) An agreement by the defendant to not use intoxicants in conjunction with the defendant's operation of a motor vehicle and to comply fully with the laws of this state designed to discourage the use of intoxicants in conjunction with motor vehicle operation;

(e) A notice to the defendant that the diversion agreement will be considered to be violated if the court receives notice that the defendant at any time during the diversion period committed the offense of driving while under the influence of intoxicants or committed a violation of ORS 811.170;

(f) An agreement by the defendant to keep the court advised of the defendant's current mailing address at all times during the diversion period;

(g) A waiver by the defendant of any former jeopardy rights under the federal and state Constitutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any other offenses based upon the same criminal episode;

(h) A sworn statement, as defined in ORS 162.055, by the defendant certifying that the defendant meets the criteria set out in ORS 813.215 to be eligible to enter into the driving while under the influence of intoxicants diversion agreement; and

(i) An agreement by the defendant to pay court-appointed attorney fees as determined by the court. [1983 c.338 §369; 1985 c.16 §191; 1987 c.441 §4; 2003 c.816 §1]

**813.210 Petition; filing fee; diagnostic assessment fee; service on prosecutor; objection.** (1) After an accusatory instrument has been filed charging the defendant with the offense of driving while under the influence of intoxicants, a defendant may file with the court a petition for a driving while under the influence of intoxicants diversion agreement described in ORS 813.200. The petition:

(a) Must be filed within 30 days after the date of the defendant's first appearance on the summons, unless a later filing date is allowed by the court upon a showing of good cause. For purposes of this paragraph, the filing of a demurrer, a motion to suppress or a motion for an omnibus hearing does not constitute good cause.

(b) Notwithstanding paragraph (a) of this subsection, may not be filed after entry of a guilty plea or a no contest plea or after commencement of any trial on the charge whether or not a new trial or retrial is ordered for any reason.

(2) The defendant shall pay to the court, at the time of filing a petition for a driving while under the influence of intoxicants diversion agreement, a filing fee established under ORS 813.240. The court may make provision for payment of the filing fee by the defendant on an installment basis. The court may waive all or part of the filing fee in cases involving indigent defendants. The filing fee paid to the court under this subsection shall be retained by the court if the petition is allowed. The filing fee shall be distributed as provided by ORS 813.240.

(3) The defendant shall pay to the agency or organization providing the diagnostic assessment, at the time the petition is allowed, the fee required by ORS 813.240 (2).

(4)(a) Unless otherwise provided under paragraph (b) of this subsection, the defendant shall pay to the court any court-appointed attorney fees agreed to under ORS 813.200 (4)(i). Payments shall be made prior to the end of the diversion period on a schedule determined by the court.

(b) The court may waive all or part of the court-appointed attorney fees agreed to under ORS 813.200 (4)(i).

(5) The defendant shall cause a copy of the petition for a driving while under the influence of intoxicants diversion agreement to be served upon the district attorney or city attorney. The district attorney or city attorney may file with the court, within 15 days after the date of service, a written objection to the petition and a request for a hearing. [1983 c.338 §370; 1985 c.16 §192; 1987 c.441 §5; 1987 c.534 §1; 1993 c.13 §6; 2003 c.816 §2]

**813.215 Eligibility for diversion.** (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, a controlled substance, an inhalant or any combination thereof; 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, other than a program entered into as a result of the charge for the present offense, 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.

(e) The defendant did not participate in a diversion or rehabilitation program described in paragraph (d) of this subsection, other than a program entered into as a result of the charge for the present offense, 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.

(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 a commercial driver license 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) 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. [1987 c.441 §3; 1997 c.749 §5; 1999 c.445 §1; 1999 c.1051 §295; 2005 c.649 §29; 2007 c.122 §11; 2007 c.867 §14; 2007 c.879 §10; 2009 c.515 §1]

**813.220 Matters to be considered by court in determining to allow diversion agreement; reasons for denial.** After the time for requesting a hearing under ORS 813.210 has expired with no request for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether to allow or deny a petition for a driving while under the influence of intoxicants diversion agreement. In making a determination under this section, the court:

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

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

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

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

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

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

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

(a) An offense of 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, a controlled substance, an inhalant or any combination thereof; 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.

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

(9) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant was charged with or convicted 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 in this state or in another jurisdiction after the date the defendant filed the petition.

(10) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant has been convicted of a felony offense described in ORS 813.010 (5)(a).

(11) For the purposes of subsection (7) of this section, may not consider 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 as a prior conviction. [1983 c.338 §371; 1987 c.441 §6; 1997 c.749 §6; 1999 c.1051 §296; 2003 c.445 §2; 2007 c.867 §15; 2007 c.879 §7]

**813.222 Right of victim to be present at hearing.** (1) If a driving while under the influence of intoxicants offense involves damage to property of a person other than the defendant, the victim of the property damage has a right to be present and to be heard at any hearing on a petition for a diversion agreement.

(2) The district attorney or city attorney shall notify the victim that the defendant may be eligible for diversion and that if there is a hearing on a petition for diversion, the victim has a right to be present and to be heard at the hearing. [1999 c.445 §3]

**813.225 Petition for extension of diversion period; conditions.** (1) Within 30 days prior to the end of the period of a driving while under the influence of intoxicants diversion agreement described in ORS 813.230, a defendant may apply by motion to the court in which the diversion agreement was entered for an order extending the diversion period.

(2) Petition forms for an application for an extension under this section shall be available to a defendant at the court.

(3) The form of the petition for an extension under this section shall be determined by the Supreme Court under ORS 1.525. The petition forms made available to a defendant by any city or state court shall conform to the requirements of the Supreme Court.

(4) The court may grant a petition for an extension filed under this section if the court finds that the defendant made a good faith effort to complete the conditions of the diversion agreement and that the defendant can complete the conditions of the diversion agreement within the requested extended diversion period.

(5) An extension granted under this section may be for no more than 180 days.

(6) A court may grant a defendant only one extension of a diversion period under this section.

(7) If the court grants the petition for an extension under this section, the following apply:

(a) If the defendant fully complies with the conditions of the diversion agreement within the extended diversion period, the court may dismiss the charge with prejudice under ORS 813.250.

(b) If the court finds that the defendant failed to comply with the diversion agreement within the extended diversion period, the court shall enter the guilty plea or no contest plea filed as part of the petition for a diversion agreement, shall enter a judgment of conviction and shall sentence the defendant.

(8) If the court denies the petition for an extension under this section, the court shall enter the guilty plea or no contest plea filed as part of the petition for a diversion agreement, shall enter a judgment of conviction and shall sentence the defendant. [1997 c.749 §7; 2003 c.816 §3]

**813.230 Diversion agreement; record; duration; effect of denial.** (1) When the court allows a petition for a driving while under the influence of intoxicants diversion agreement filed as provided in ORS 813.210, the judge taking that action shall:

(a) Accept the guilty plea or no contest plea filed as part of the petition for a diversion agreement but withhold entry of a judgment of conviction; and

(b) Sign the petition and indicate thereon the date of allowance of the diversion period, the length of the diversion period and the date upon which the driving while under the influence offense occurred.

(2) The petition when signed and dated becomes the diversion agreement between the defendant and the court. The court shall make the agreement a part of the record of

the case. The court shall notify the Department of Transportation of the diversion agreement in a form agreed to by the department and the State Court Administrator within 48 hours after allowing the petition. The department shall make the fact of the diversion agreement a part of the defendant's operating record.

(3) A driving while under the influence of intoxicants diversion agreement shall be for a period of one year after the date the court allows the petition. During the diversion period the court shall stay the driving while under the influence of intoxicants offense proceeding pending completion of the diversion agreement or its termination.

(4) When the court denies a petition for a driving while under the influence of intoxicants diversion agreement, it shall continue the offense proceeding against the defendant. The guilty plea or no contest plea filed as part of the petition for the diversion agreement may not be used in the offense proceeding under this subsection. [1983 c.338 §372; 1985 c.16 §193; 1985 c.710 §7; 1993 c.751 §71; 2003 c.816 §4]

**813.235 Attendance at victim impact treatment session as condition of diversion; fee.** 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. 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. [1987 c.830 §2; 1993 c.468 §2]

**813.240 Amount and distribution of filing fee; diagnostic assessment fee.** (1) The filing fee paid by a defendant at the time of filing a petition for a driving while under the influence of intoxicants diversion agreement as provided in ORS 813.210 shall be $261 and shall be ordered paid as follows if the petition is allowed:

(a) $136 to be credited and distributed under ORS 137.295 as an obligation payable to the state;

(b) $100 to be treated as provided for disposition of fines and costs under ORS 153.630; and

(c) $25 to be paid to the Director of the Oregon Health Authority for deposit in the Intoxicated Driver Program Fund created under ORS 813.270, to be used for purposes of the fund.

(2) In addition to the filing fee under subsection (1) of this section, the court shall order the defendant to pay $150 directly to the agency or organization providing the diagnostic assessment. [1983 c.338 §373; 1985 c.16 §194; 1985 c.277 §3; 1987 c.905 §30; 1989 c.576 §§8a,9a; 1989 c.635 §§2,4; 1991 c.557 §6; 1993 c.13 §7; 1999 c.1051 §297; 2003 c.737 §§71,72; 2005 c.303 §§2,3; 2005 c.702 §§85,86,87; 2009 c.595 §1143]

**Note:** Section 26, chapter 659, Oregon Laws 2009, provides:

**Sec. 26.** (1) In addition to the fees provided in ORS 135.921 and 813.240, upon the filing of a petition for diversion under ORS 135.909 or 813.210, the court shall order the defendant to pay $100 to the court as a program administration fee.

(2) This section applies only to petitions for diversion filed on or after October 1, 2009, and before July 1, 2011.

(3) Fees imposed under this section in the circuit court shall be deposited by the clerk of the court in the Judicial System Surcharge Account. Fees imposed in a justice court under this section shall be paid to the county treasurer. Fees imposed in a municipal court under this section shall be paid to the city treasurer.

(4) The collections and revenue management program established under ORS 1.204 may not be reimbursed under ORS 1.204 from fees imposed under this section. [2009 c.659 §26]

**813.250 Motion to dismiss charge on completion of diversion; admissibility of statements.** (1) At any time after the conclusion of the period of a driving while under the influence of intoxicants diversion agreement described in ORS 813.230, a defendant who has fully complied with and performed the conditions of the diversion agreement may apply by motion to the court wherein the diversion agreement was entered for an order dismissing the charge with prejudice.

(2) The defendant shall cause to be served on the district attorney or city attorney a copy of the motion for entry of an order dismissing with prejudice the charge of driving while under the influence of intoxicants. The motion shall be served on the district attorney or city attorney at the time it is filed with the court. The district attorney or city attorney may contest the motion.

(3) If the defendant does not appear as provided by subsection (1) of this section within six months after the conclusion of the diversion period, and if the court finds that the defendant fully complied with and performed the conditions of the diversion agreement, and if it gives notice of that finding to the district attorney or city attorney the court may on its own motion enter an order dismissing the charge of driving while under the influence of intoxicants with prejudice.

(4) No statement made by the defendant about the offense with which the defendant is charged shall be offered or received in evidence in any criminal or civil action or proceeding arising out of the same conduct which is the basis of the charge of driving

while under the influence of intoxicants, if the statement was made during the course of the diagnostic assessment or the rehabilitation program and to a person employed by the program. [1983 c.338 §374; 1985 c.16 §195; 1987 c.441 §7]

**813.255 Termination of diversion.** (1) At any time before the court dismisses with prejudice the charge of driving while under the influence of intoxicants, the court on its own motion or on the motion of the district attorney or city attorney may issue an order requiring defendant to appear and show cause why the court should not terminate the diversion agreement. The order to show cause shall state the reasons for the proposed termination and shall set an appearance date.

(2) The order to show cause shall be served on the defendant and on the defendant's attorney, if any. Service may be made by first class mail, postage paid, addressed to the defendant at the mailing address shown on the diversion petition and agreement or at any other address that the defendant provides in writing to the court.

(3) The court shall terminate the diversion agreement and enter the guilty plea or no contest plea that was filed as part of the petition for the diversion agreement if:

(a) At the hearing on the order to show cause, the court finds by a preponderance of the evidence that any of the reasons for termination described in this section exist; or

(b) The defendant fails to appear at the hearing on the order to show cause.

(4) If the court terminates the diversion agreement and enters the guilty plea or no contest plea, the court may take into account at time of sentencing any partial fulfillment by the defendant of the terms of the diversion agreement.

(5) The court shall terminate a diversion agreement under this section for any of the following reasons:

(a) The defendant fails to fulfill the terms of the diversion agreement.

(b) The defendant does not qualify for the diversion agreement under the criteria in ORS 813.215. [1987 c.441 §9; 2003 c.816 §5]

**813.260 Designation of agencies to perform diagnostic assessments; duties of agency.** (1) Courts having jurisdiction over driving while under the influence of intoxicants offenses shall designate agencies or organizations to perform the diagnostic assessment and treatment required under driving while under the influence of intoxicants diversion agreements described in ORS 813.200. The designated agencies or organizations must meet the standards set by the Director of the Oregon Health Authority to perform the diagnostic assessment and treatment of problem drinking, alcoholism and drug dependency and must be certified by the Director of the Oregon Health Authority. Wherever possible a court shall designate agencies or organizations to perform the diagnostic assessment that are separate from those that may be designated to carry out a program of treatment.

(2) Monitoring of a defendant's progress under a diversion agreement shall be the responsibility of the diagnostic assessment agency or organization. It shall make a report to the court stating the defendant's successful completion or failure to complete all or any part of the treatment program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the court and the diagnostic assessment agency or organization. The court shall make the report of the diagnostic assessment agency or organization that is required by this subsection a part of the record of the case. [1983 c.338 §375; 1991 c.557 §7; 2009 c.595 §1144]

**813.270 Intoxicated Driver Program Fund; creation; uses.** The Intoxicated Driver Program Fund is created to consist of moneys placed in the fund under ORS 813.030 and 813.240 or as otherwise provided by law and of gifts and grants made to the fund for carrying out the purposes of the fund. The moneys in the fund may be used only for the following purposes:

(1) To pay for providing treatment for individuals who enter diversion agreements under ORS 813.200 and who are found to be indigent. Payment for treatment under this subsection may include treatment for problem drinking, alcoholism or drug dependency. Payment shall be made as provided by the Director of the Oregon Health Authority by rule to agencies or organizations providing treatment.

(2) To pay for evaluation as provided by law of programs used for diversion agreements.

(3) To pay the cost of administration of the fund by the Oregon Health Authority.

(4) To pay for materials, resources and training supplied by the authority to those persons, organizations or agencies performing the diagnostic assessments or providing education or treatment to persons under diversion agreements.

(5) To pay for providing treatment programs required under ORS 813.020 and treatment or information programs required under ORS 471.432 for individuals who are found to be indigent.

(6) To pay for special services required to enable a person with a disability, or a person whose proficiency in the use of English is limited because of the person's national origin, to participate in treatment programs that are used for diversion agreements under ORS 813.200 or are required under ORS 813.020. This subsection applies:

(a) Whether or not the person is indigent; and

(b) Only to special services required solely because of the person's disability or limited proficiency in the use of English. [1983 c.338 §141; 1985 c.16 §42; 1989 c.576 §10; 1991 c.557 §8; 1993 c.757 §1; 1999 c.126 §6; 1999 c.646 §5a; 2007 c.70 §343; 2009 c.595 §1145]

## EVIDENCE

**813.300 Use of blood alcohol percentage as evidence; percentage required for being under the influence.** (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 one hundred cubic centimeters of blood. [1983 c.338 §590; 1985 c.16 §297; 1989 c.715 §7; 1991 c.860 §8]

**813.310 Refusal to take chemical test admissible as evidence.** If a person refuses to submit to a chemical test under ORS 813.100 or refuses to consent to chemical tests under ORS 813.140, evidence of the person's refusal is admissible in any civil or criminal action, suit or proceeding arising out of acts alleged to have been committed while the person was driving a motor vehicle on premises open to the public or the highways while under the influence of intoxicants. [1983 c.338 §595; 1985 c.16 §301]

**813.320 Effect of implied consent law on evidence.** (1) The provisions of the implied consent law, except ORS 813.300, shall not be construed by any court to limit the introduction of otherwise competent, relevant evidence in any civil action, suit or proceedings or in any criminal action other than a violation of ORS 813.010 or a similar municipal ordinance in proceedings under ORS 813.410.

(2) The provisions of the implied consent law shall not be construed by any court to limit the introduction of otherwise competent, relevant evidence of the amount of alcohol in the blood of a defendant in a prosecution for driving while under the influence of intoxicants if:

(a) The evidence results from a test of blood taken from the defendant while the defendant was hospitalized or otherwise receiving medical care, whether or not the defendant consented to the drawing of blood or to the test; or

(b) The evidence is obtained pursuant to a search warrant. [1983 c.338 §596; 1985 c.16 §302; 1999 c.437 §1]

**813.322 Department of State Police rules regarding breath tests as evidence; validity of officer's permit.** (1) A court shall, at the request of a party to the case, admit into evidence, without certification, a copy of administrative rules of the Department of State Police addressing methods of conducting chemical tests of a person's breath in a proceeding arising from the arrest of a person for driving while under the influence of intoxicants.

(2) If a police officer testifies in a proceeding arising from the arrest of a person for driving while under the influence of intoxicants that the officer has a valid permit to perform analysis of a person's breath, the defendant has the burden of moving forward with evidence to show that the officer does not have a valid permit. [1999 c.446 §2]

**Note:** 813.322 was added to and made a part of the Oregon Vehicle Code by legislative action but was not added to ORS chapter 813 or any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**813.324 Use of testimony from implied consent hearing as evidence in prosecution.** (1) If the prosecuting attorney or the attorney for the defendant in a prosecution for driving while under the influence of intoxicants obtains a tape or a transcript of a hearing held for the defendant under ORS 813.410, the attorney must provide a copy of the tape or transcript to the attorney for the other party at least seven days prior to the first date set for trial. If the attorney fails to supply the material in the time required, testimony from the hearing may not be ad-

mitted in evidence in the trial for any purpose, unless the attorney shows good cause for the failure to make the material available.

(2) The cost of a copy of a tape or transcript furnished under subsection (1) of this section shall be borne by the party who receives the copy.

(3) Nothing in this section requires a tape to be transcribed by the attorney who is required to provide a tape or transcript under subsection (1) of this section. [1999 c.831 §3]

**Note:** 813.324 was enacted into law by the Legislative Assembly but was not added to or made a part of the Oregon Vehicle Code or any chapter or series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**813.326 Felony driving while under the influence of intoxicants; prior convictions.** (1) In a prosecution for felony driving while under the influence of intoxicants under ORS 813.010, the state shall plead the prior convictions and shall prove the prior convictions unless the defendant stipulates to that fact prior to trial. If the defendant so stipulates and the trial is by jury:

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

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

(c) For the purpose of establishing the prior convictions solely as an element of the crime under ORS 813.010, neither the court nor the state shall reveal to the jury the prior convictions, but the prior convictions are established in the record by the defendant's stipulation; and

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

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

(3) When the defendant stipulates to the prior convictions required as an element of felony driving while under the influence of intoxicants under ORS 813.010, if the jury finds the defendant guilty upon instruction regarding the balance of the elements of the crime, the court shall enter a judgment of guilty of felony driving while under the influence of intoxicants.

(4) As used in this section, "conviction" includes a juvenile adjudication. [1999 c.1049 §5; 2009 c.525 §2]

**Note:** 813.326 was enacted into law by the Legislative Assembly but was not added to or made a part of the Oregon Vehicle Code or any chapter or series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**813.328 Notice of intent to challenge validity of prior convictions.** (1) A defendant who challenges the validity of prior convictions alleged by the state as an element of felony driving while under the influence of intoxicants must give notice of the intent to challenge the validity of the prior convictions at least seven days prior to the first date set for trial on the felony charge. The validity of the prior convictions shall be determined prior to trial by the court.

(2) As used in this section, "conviction" includes a juvenile adjudication. [1999 c.1049 §4; 2009 c.525 §3]

## SUSPENSION

### (For Conviction)

**813.400 Suspension or revocation upon conviction; duration; review.** (1) Except as provided in subsection (2) 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. [1983 c.338 §353(8); 1985 c.16 §166(8); 1985 c.393 §10a(8); 1985 c.669 §2a(8); 1991 c.702 §13; 2001 c.786 §3; 2003 c.346 §1; 2003 c.402 §40; 2005 c.436 §2]

**(Of Commercial Driver License)**

**813.403 Suspension of commercial driver license upon conviction; review.** Driving a commercial motor vehicle upon any highway or on premises open to the public while under the influence of intoxicants constitutes grounds for commercial driver license suspension. The following apply to this section:

(1) Upon receipt of a record of conviction for driving while under the influence of intoxicants, the Department of Transportation shall suspend the person's commercial driver license if the person was driving a commercial motor vehicle at the time the person committed the offense.

(2) The suspension shall be for a period described under ORS 813.404.

(3) A person is entitled to administrative review under ORS 809.440 of a suspension imposed under this section.

(4) Suspension under this section is in addition to any suspension under ORS 813.400. [1989 c.636 §40; 1991 c.702 §14; 2003 c.402 §41]

**813.404 Duration of suspension of commercial driver license.** When the Department of Transportation imposes a suspension of a commercial driver license under ORS 813.403 or 813.410 (2), or when the department imposes a suspension of a commercial driver license under ORS 809.413 (11) or (12) for conduct in another jurisdiction that is substantially similar to that described in either ORS 813.403 or 813.410 (2), the suspension shall be:

(1) For a period of one year if:

(a) The person has not previously been convicted of an offense described in ORS 809.404 or had a commercial driver license suspended as described in ORS 809.404;

(b) The person was not driving a commercial motor vehicle containing a hazardous material at the time of the offense; and

(c) The suspension is either because the person was convicted under ORS 813.010 or because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that was 0.04 percent or more by weight.

(2) For a period of three years if:

(a) The person has not previously been convicted of an offense described in ORS 809.404 or had a commercial driver license suspended as described in ORS 809.404;

(b) The person was not driving a commercial motor vehicle containing a hazardous material at the time of the offense; and

(c) The suspension is for refusal of a test under ORS 813.100.

(3) For a period of three years if:

(a) The person has not previously been convicted of an offense described in ORS 809.404 or had a commercial driver license suspended as described in ORS 809.404;

(b) The person was driving a commercial motor vehicle containing a hazardous material at the time of the offense; and

(c) The suspension is either because the person was convicted under ORS 813.010 or because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that was 0.04 percent or more by weight.

(4) For a period of five years if:

(a) The person has not previously been convicted of an offense described in ORS 809.404 or had a commercial driver license suspended as described in ORS 809.404;

(b) The person was driving a commercial motor vehicle containing a hazardous material at the time of the offense; and

(c) The suspension is for refusal of a test under ORS 813.100.

(5) For the lifetime of the person if the person has previously been convicted of an offense described in ORS 809.404 or had a commercial driver license suspended as described in ORS 809.404. [1989 c.636 §41; 1991 c.185 §16; 1993 c.305 §5; 1995 c.568 §5; 2003 c.402 §42; 2005 c.649 §25]

**(Under Implied Consent Law)**

**813.410 Suspension upon receipt of police report on implied consent test; hearing; validity of suspension; appeal.** (1) If the Department of Transportation receives from a police officer a report that is in substantial compliance with ORS 813.120, the department shall suspend the driving privileges of the person in this state on the 30th day after the date of arrest or, if the report indicates that the person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described under this section, the department determines that the suspension would not be valid as described in this section. A suspension of driving privileges imposed under this subsection shall be for a period of time established under ORS 813.420.

(2) If the department receives from a police officer a report pursuant to ORS 813.120 that discloses that the person holds a commercial driver license and that the person was driving a motor vehicle or commercial motor vehicle and refused to submit to a test under ORS 813.100 or that the person was driving a commercial motor vehicle and submitted to a breath or blood test and the person's blood, as shown by the test, had 0.04 percent or more by weight of alcohol, the

department shall suspend the person's commercial driver license on the 30th day after the date of arrest or, if the report indicates that the person failed a blood test, on the 60th day after receipt of the report, unless, at a hearing described under this section, the department determines that the suspension would not be valid as described in this section. A commercial driver license suspension imposed under this subsection shall be for a period of time established under ORS 813.404.

(3) If within 10 days from the date of arrest, or, if the person fails a blood test, within 10 days from the date the department sends notice of suspension, the department receives a written request for a hearing from a person whose driving privileges or commercial driver license the department proposes to suspend under this section, the department shall provide a hearing in accordance with this section. Except as otherwise provided under this section, a hearing held by the department under this section shall be subject to the provisions for contested cases, other than appeal provisions, under ORS chapter 183. The applicable appeal provisions are as provided under ORS 813.450 and section 24, chapter 672, Oregon Laws 1985. Notwithstanding ORS 809.430, the department is not required to give any notice of intent to suspend or suspension in addition to that provided under ORS 813.100.

(4) A hearing required by this section is subject to all of the following:

(a) The hearing shall be before an administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605.

(b) Unless there is an agreement between the person and the department that the hearing be conducted elsewhere, the hearing shall be held either in the county where the alleged offense occurred or at any place within 100 miles of the place where the offense is alleged to have occurred, as established by the department by rule.

(c) The department may authorize the administrative law judge to issue a final order in any case.

(d) A person who requests a hearing under this section and who fails, without just cause, to appear in person or through an attorney waives the right to a hearing. If a person waives a right to a hearing under this paragraph, the department is not required to make any showing at hearing.

(e) Except as provided in ORS 813.440 or upon remand under ORS 813.450, the department shall hold the hearing and issue a final order within 30 days of the date of the arrest or, if the person fails a blood test, within 60 days from the date the department received the report of the failure.

(f) In connection with the hearing, the department or its authorized representative may administer oaths and shall issue subpoenas for the attendance of witnesses at the hearing requested by the person or the department and the production of relevant documents.

(g) The hearing shall be recorded by whatever means may be determined by the department and shall include testimony and exhibits, if any. The record of the proceedings shall not be transcribed unless requested by a party to the proceeding.

(5) This subsection shall be narrowly construed so as to effect the legislative purpose of limiting the scope of hearings under this section. The scope of a hearing under this section shall be limited to whether the suspension is valid as described in this subsection. A suspension under this section is valid if all of the following requirements have been met:

(a) The person, at the time the person was requested to submit to a test under ORS 813.100, was under arrest for driving while under the influence of intoxicants in violation of ORS 813.010 or a municipal ordinance.

(b) The police had reasonable grounds to believe, at the time the request was made, that the person arrested had been driving under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance.

(c) The person refused a test under ORS 813.100, or took a breath or blood test and the test disclosed that the level of alcohol in the person's blood at the time of the test was:

(A) 0.08 percent or more by weight if the person was not driving a commercial motor vehicle;

(B) 0.04 percent or more by weight if the person was driving a commercial motor vehicle; or

(C) Any amount if the person was under 21 years of age.

(d) If the report under ORS 813.120 indicates that the person was driving a commercial motor vehicle, the vehicle was in fact a commercial motor vehicle as defined in ORS 801.208.

(e) The person had been informed under ORS 813.100 of rights and consequences as described under ORS 813.130.

(f) The person was given written notice required under ORS 813.100.

(g) If the person arrested submitted to a test under ORS 813.100, the person administering the test was qualified to administer the test under ORS 813.160.

(h) If the person arrested submitted to a test under ORS 813.100, the methods, procedures and equipment used in the test complied with requirements under ORS 813.160.

(6) A suspension imposed under this section shall remain in effect pending any appeal or remand of a final order issued under this section and there shall be no stay of the suspension pending appeal or remand.

(7) Unless a person fails, without just cause, to appear in person or through an attorney at a hearing requested under this section, a person shall have the right to appeal any final order by the department after a hearing under this section by filing a petition. The following apply to this subsection:

(a) The person shall file the petition in the circuit court for the county where the person resides or, if the person does not reside in Oregon, in the circuit court of the county in which the arrest took place within 30 days after issuance of the final order of the department.

(b) The court upon receipt of the petition shall set the matter for hearing upon 10 days' notice to the department and the petitioner unless hearing is waived by both the department and the petitioner. [1983 c.338 §358; 1985 c.16 §167; 1985 c.672 §13; 1987 c.158 §170; 1989 c.636 §44; 1991 c.860 §11; 1993 c.305 §6; 1993 c.600 §1; 1995 c.568 §6; 1999 c.831 §2; 1999 c.849 §§193,194; 2003 c.75 §67; 2005 c.649 §27; 2007 c.288 §18]

**813.412 Role of peace officer in implied consent hearing.** Notwithstanding ORS 9.160 and 9.320, in any hearing under ORS 813.410 in which a city attorney or district attorney does not appear, the peace officer who issued the citation for the offense may present evidence, examine and cross-examine witnesses and make arguments relating to:

(1) The application of statutes and rules to the facts in the case;

(2) The literal meaning of the statutes or rules at issue in the case;

(3) The admissibility of evidence; and

(4) Proper procedures to be used in the hearing. [1999 c.831 §4]

**Note:** 813.412 was enacted into law by the Legislative Assembly but was not added to or made a part of the Oregon Vehicle Code or any chapter or series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**813.420 Duration of suspension for refusal or failure of test.** When the Department of Transportation imposes a suspension under ORS 813.410, the suspension shall be for a period of time determined according to the following:

(1) If the suspension is for refusal of a test under ORS 813.100 and the person is not subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of one year.

(2) If the suspension is for refusal of a test under ORS 813.100 and the person is subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of three years.

(3) If the suspension is because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that constituted being under the influence of intoxicating liquor under ORS 813.300 and the person is not subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of 90 days.

(4) If the suspension is because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that constituted being under the influence of intoxicating liquor under ORS 813.300 and the person is subject to an increase in the suspension time for reasons described in ORS 813.430, the suspension shall be for a period of one year. [1985 c.16 §171; 1993 c.305 §7; 1995 c.568 §7]

**813.430 Grounds for increase in duration of suspension.** 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, a controlled substance, an inhalant or any combination thereof; 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. [1985 c.16 §173; 1985 c.672 §15; 1987 c.801 §12; 2007 c.879 §8]

**813.440 Grounds for hearing on validity of suspension; rules.** (1) Notwithstanding ORS 813.410, the Department of Transportation may provide a hearing to determine the validity of a suspension under ORS 813.410 only if the time requirements under ORS 813.410 could not be met because of any of the following:

(a) The person's physical incapacity, verified by a physician to the satisfaction of the department to be of a nature that would prevent the person from making the appropriate request or attending the hearing.

(b) A death in the immediate family of the person, verified to the satisfaction of the department.

(c) An error of the department.

(d) The inability of a subpoenaed police officer to appear due to the officer's illness, vacation or official duty conflicts. The department shall set forth by rule the conditions that constitute "official duty conflicts." A hearing may not be rescheduled more than once for reasons described in this paragraph.

(e) A request for a change of administrative law judge under ORS 183.645.

(f) The inability of the person's attorney to appear due to the attorney's illness, vacation or scheduling conflict arising from other court or administrative hearing appearances. A hearing must be rescheduled no later than 45 days after the date of the original hearing and may not be rescheduled more than once for reasons described in this paragraph.

(g) Other just cause as defined by the department by administrative rule.

(2) A hearing held under this section is subject to the same provisions as a hearing held under ORS 813.410, except that the department is not required to hold the hearing and make the determination within the time required by ORS 813.410.

(3) The granting of a hearing under this section shall not delay the imposition of a suspension under ORS 813.410 within the time required under ORS 813.410. However, if a person establishes that the person was deprived by either department error or a subpoenaed police officer's illness, vacation or official duty conflicts of an opportunity to appear at a hearing, the department shall rescind the suspension and shall promptly schedule a subsequent hearing to determine the validity of the suspension under ORS 813.410. In other cases under this section, when the department is unable to hold the hearing within the time required by ORS 813.410, the department shall rescind any suspension imposed under ORS 813.410 only if the department determines, at a hearing held under this section, that the suspension was not valid as described under ORS 813.410.

(4) The following apply to this section:

(a) The department shall issue a final order within 10 days after the hearing described in this section.

(b) If the department has rescinded a suspension under subsection (3) of this section and if the department, at the hearing described in this section, determines that the suspension is valid as described under ORS 813.410, the department shall reinstate the suspension effective five days after the final order is issued.

(c) Notwithstanding ORS 809.430, no additional notice or order of suspension need be given. [1985 c.16 §169; 1985 c.672 §14; 1987 c.272 §5; 1993 c.600 §2; 1999 c.831 §1; 2001 c.294 §§9,10; 2003 c.75 §68; 2009 c.520 §1]

**813.450 Appeal from suspension for refusal or failure of breath test.** (1) The petition to the circuit court appealing an order of the Department of Transportation after a hearing under ORS 813.410 shall state the nature of the petitioner's interest and the ground or grounds upon which the petitioner contends the order should be reversed or remanded.

(2) The court shall conduct the review without a jury. Review shall be limited to the record of the department's hearing.

(3) Any party to the proceedings before the circuit court may appeal from the judgment of the court to the Court of Appeals.

(4) Upon review in the circuit court and Court of Appeals, the court may affirm, reverse or remand the order as follows:

(a) If the court finds that the department has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall:

(A) Set aside or modify the order; or

(B) Remand the case to the department for further action under a correct interpretation of the provision of law.

(b) The court shall remand the order to the department if it finds the department's exercise of discretion to be any of the following:

(A) Outside the range of discretion delegated to the agency by law.

(B) Inconsistent with a department rule, an officially stated department position, or a prior department practice, if the inconsistency is not explained by the department.

(C) Otherwise in violation of a constitutional or statutory provision.

(c) The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record.

(5) Upon review, the court shall affirm the department's order unless the court finds a ground for setting aside, modifying or remanding to the department under a specified provision of this section.

(6) In any review under this section, the court shall also review de novo determinations made by an agency that are subject to ORS 183.650 (4). [1985 c.672 §23; 1999 c.849 §§196,197; 2003 c.75 §69]

**813.460 Department procedures upon verification of suspension of driving privileges of wrong person.** If the Department of Transportation verifies to its satisfaction that it has suspended the driving privileges of the wrong person under ORS 813.410 because a person arrested for driving under the influence of intoxicants gave false identification at the time of the arrest, all the following apply:

(1) The department shall immediately rescind the suspension order under the false name and shall issue a suspension order for the period set forth in ORS 813.420 to the person arrested.

(2) The department shall issue the order in the manner set forth in ORS 809.430.

(3) No further notice of suspension need be given.

(4) The time limitations in ORS 813.410 (1), (2), (3) and (4)(e) do not apply to a suspension order issued under this section. [1985 c.672 §25; 1989 c.636 §47]

**813.470 Department notation on record of person acquitted after suspension.** The Department of Transportation shall make a notation on the driving record of a person indicating that the person was acquitted of a charge of driving under the influence of intoxicants if:

(1) The person's driving privileges were suspended because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that constituted being under the influence of intoxicating liquor under ORS 813.300;

(2) An accusatory instrument was filed charging the person with driving under the influence of intoxicants in violation of ORS 813.010 arising out of the same incident that led to the suspension of the person's driving privileges;

(3) The person was acquitted of the charge; and

(4) The person presents the department with a certified copy of the judgment of acquittal from the court clearly showing the location of the court, the date of the arrest and the findings of the court. [1987 c.303 §2; 1993 c.305 §8; 1995 c.568 §8]

## HARDSHIP PERMITS

**813.500 Restrictions on issuance.** (1) If a person's license is suspended for driving while under the influence of intoxicants under ORS 813.400 and the suspension period is determined by ORS 809.428 (2)(b) or (c), the Department of Transportation may only issue a hardship permit to the person under ORS 807.240 if the person, in addition to any requirement under ORS 807.240 and any applicable requirements under ORS 807.250 and 813.520:

(a) Is examined by the Oregon Health Authority to determine whether the person has a problem condition involving alcohol, inhalants or controlled substances as described in ORS 813.040; and

(b) Complies with the requirements of this section.

(2) If the authority determines that the person has a problem condition involving alcohol, inhalants or controlled substances, as described in ORS 813.040, the department may issue the permit to the person only if both the following apply:

(a) The person enrolled in a program for rehabilitation for alcoholism or drug dependence approved by the authority.

(b) The authority recommends, on the basis of the person's progress in the rehabilitation program, such reinstatement in writing to the department. If the authority makes a recommendation under this paragraph, the authority shall state specifically in the recommendation the times, places, routes and days of the week minimally necessary for the

person to seek or retain employment, to attend any alcohol or drug treatment or rehabilitation program or to obtain necessary medical treatment for the person or a member of the person's immediate family.

(3) If the authority determines that the person does not have a problem condition involving alcohol, inhalants or controlled substances as described in ORS 813.040, the department may issue the permit to the person only if, in addition to any requirements under ORS 807.240, the person enters an alcohol or drug information program approved by the authority and the department determines that issuance of a permit is appropriate. If the department issues a permit to a person described in this subsection, the department shall require, under ORS 807.240, that the person complete the program as a condition of retaining the permit. [1983 c.338 §328; 1985 c.16 §145; 1987 c.801 §13; 1989 c.401 §2; 1991 c.557 §9; 1999 c.619 §13; 2003 c.23 §4; 2009 c.595 §1146]

**813.510 Limitations on privileges granted by permit; conditions of permit.** This section establishes limitations that the Department of Transportation is required or permitted to place on hardship permits issued under ORS 807.240 to persons whose suspension is based upon a conviction for driving under the influence of intoxicants or upon ORS 813.100. Limitations placed on a hardship permit under this section are in addition to any limitations placed on the permit under ORS 807.240. A person's permit is subject to suspension or revocation as provided under ORS 807.240 if the department determines that the holder of the permit has violated any limitation placed upon the permit under this section. Violation of a limitation under this section is punishable as provided by ORS 811.175 or 811.182. The limitations are as described in the following:

(1) A hardship permit issued to the person shall limit the person's driving privileges:

(a) To the times, places, routes and days the department determines to be minimally necessary for the person to seek or retain employment, to attend any alcohol or drug treatment or rehabilitation program or to obtain required medical treatment for the person or a member of the person's immediate family; and

(b) To times, places, routes and days that are specifically stated.

(2) The person's driving privileges under the permit are subject to suspension or revocation if the person does not maintain a good driving record, as defined by the administrative rules of the department, during the term of the permit.

(3) If the person is in a rehabilitation program under ORS 813.500, the person must complete the rehabilitation program.

(4) The department may require the person to complete a driver improvement program under ORS 809.480 as a condition of the permit.

(5) If the person is involved in a diversion agreement under ORS 813.220 and 813.230, the department may require the person to successfully complete the diversion program as a condition of retaining the permit.

(6) The department shall condition the permit so that the permit will be revoked if the person is convicted of any of the following:

(a) Reckless driving under ORS 811.140.

(b) Driving under the influence of intoxicants under ORS 813.010.

(c) Failure to perform the duties of a driver under ORS 811.700 or 811.705.

(d) Fleeing or attempting to elude a police officer under ORS 811.540.

(e) Driving while suspended or revoked under ORS 811.175 or 811.182. [1983 c.338 §329; 1985 c.16 §146; 1987 c.730 §21; 1987 c.801 §14; 1991 c.208 §5; 2003 c.23 §5]

**813.520 Limitations on authority to issue hardship permit or reinstate driving privileges.** In addition to any provisions of ORS 807.240 and 813.510 or 807.250, this section establishes limitations on the authority of the Department of Transportation to issue driving privileges under ORS 807.240. The department may not reinstate any driving privileges or issue any hardship permit under ORS 807.240 as provided under any of the following:

(1) For a period of 90 days after the beginning of the suspension if the suspension is for refusal of a test under ORS 813.100 and the person is not subject to an increase in the time before a permit may be issued for reasons described in ORS 813.430. This period of 90 days shall be reduced by the time the department refused to issue a hardship permit under subsection (5) or (6) of this section if the person's driving privileges were suspended based on the same occurrence.

(2) For a period of 30 days after the beginning of the suspension if the suspension is because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that constituted being under the influence of intoxicating liquor under ORS 813.300 and the person is not subject to an increase in the time before a hardship permit may be issued for reasons described in ORS 813.430. This period of 30 days shall be reduced by the time

the department refused to issue a hardship permit under subsection (5) or (6) of this section if the person's driving privileges were suspended based on the same occurrence.

(3) For a period of one year after the beginning of the suspension if the suspension is because a breath or blood test under ORS 813.100 disclosed that the person had a level of alcohol in the person's blood that constituted being under the influence of intoxicating liquor under ORS 813.300 and the person is subject to an increase in the time before a hardship permit may be issued for reasons described under ORS 813.430. This period of one year shall be reduced by the time the department refused to issue a hardship permit under subsection (5) or (6) of this section if the person's driving privileges were suspended based on the same occurrence.

(4) For a period of three years after the beginning of the suspension if the suspension is for refusal of a test under ORS 813.100 and the person is subject to an increase in the time before a hardship permit may be issued for reasons described in ORS 813.430. This period of three years shall be reduced by the time the department refused to issue a hardship permit under subsection (5) or (6) of this section if the person's driving privileges were suspended based on the same occurrence.

(5) For a period of 90 days after the beginning of the suspension under ORS 813.400 if it is the person's second conviction for driving while under the influence of intoxicants if the suspension period is determined by ORS 809.428 (2)(b). This period of 90 days shall be reduced by the time the department refused to issue a hardship permit under subsection (1), (2), (3) or (4) of this section if the person's driving privileges were suspended based on the same occurrence.

(6) For a period of one year after the beginning of the suspension under ORS 813.400 for driving while under the influence of intoxicants if the suspension period is determined by ORS 809.428 (2)(c). This period of one year shall be reduced by the time the department refused to issue a hardship permit under subsection (1), (2), (3) or (4) of this section if the person's driving privileges were suspended based on the same occurrence.

(7) To any person who has a mental or physical condition or impairment that affects the person's ability to safely operate a motor vehicle.

(8) If the suspension is based upon a conviction for a violation of ORS 813.010 or is imposed under ORS 813.410 based upon ORS 813.100 to a person who has available public or private transportation sufficient to fulfill the person's transportation needs while the person is suspended.

(9) For a period of 30 days following imposition of suspension, if the person, within the previous year, has been convicted of a traffic crime and the suspension is based upon a conviction for violation of ORS 813.010 or is imposed under ORS 813.410 based upon ORS 813.100. [1985 c.16 §148; 1985 c.672 §16; 1987 c.673 §1a; 1987 c.801 §15; 1989 c.224 §141; 1989 c.401 §3; 1993 c.305 §9; 1995 c.568 §9; 1999 c.1051 §91; 2005 c.140 §5; 2009 c.607 §1]

## IGNITION INTERLOCK DEVICES

**813.600 Ignition interlock program; rules.** (1) The Department of Transportation, in consultation with the Transportation Safety Committee, shall establish a program for the use of ignition interlock devices by persons convicted of driving under the influence of intoxicants and granted hardship permits under ORS 807.240.

(2) The department shall adopt rules that specify requirements for ignition interlock devices that may be used and shall publish a list of devices that meet the requirements. The list may include devices that:

(a) Do not impede the safe operation of the vehicle;

(b) Have the fewest opportunities to be bypassed;

(c) Correlate well with established measures of alcohol impairment;

(d) Work accurately and reliably in an unsupervised environment;

(e) Require a deep lung breath sample or other accurate measure of blood alcohol content equivalence;

(f) Resist tampering and give evidence if tampering is attempted;

(g) Are difficult to circumvent, and require premeditation to do so;

(h) Minimize inconvenience to a sober user;

(i) Operate reliably over the range of automobile environments or automobile manufacturing standards;

(j) Are manufactured by a party who is adequately insured for product liability; and

(k) Have a label affixed in a prominent location warning that any person tampering with, circumventing or otherwise misusing the device is subject to civil penalty. [1987 c.746 §1; 1991 c.453 §14; 1993 c.382 §2]

**813.602 Circumstances under which ignition interlock device required; costs; failure to install; penalty; exemptions; rules.** (1) 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 an approved ig-

nition interlock device be installed and used 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) If the court determines that approved ignition interlock devices are reasonably available, the court may require as a condition of a driving while under the influence of intoxicants diversion agreement that an approved ignition interlock device be installed in any vehicle operated by the person. Courts may not exercise authority under this subsection during any period the courts have notice from the Office of Economic Analysis of the Oregon Department of Administrative Services that there are not sufficient moneys in the Intoxicated Driver Program Fund to pay the costs under subsection (4) of this section. The Office of Economic Analysis of the Oregon Department of Administrative Services may not issue any notice under this subsection if federal funds are available to pay the cost of the interlock devices for indigents and costs of analysis of the use of interlock devices.

(3) Except as provided in subsection (4) of this section, if an ignition interlock system is ordered or required under subsection (1) or (2) of this section, the person so ordered or required shall pay to the provider the reasonable costs of leasing, installing and maintaining the device. A payment schedule may be established for the person by the department.

(4) The department may waive, in whole or in part, or defer the defendant's responsibility to pay all or part of the costs under subsection (3) of this section if the defendant meets the criteria for indigence established for waiving or deferring such costs under subsection (5) of this section. If the defendant's responsibility for costs is waived, then notwithstanding ORS 813.270, the costs described in subsection (3) of this section must be paid from the Intoxicated Driver Program Fund.

(5) The department, by rule, shall establish criteria and procedures it will use for qualification to waive or defer costs described under subsection (3) of this section for indigence. The criteria must be consistent with the standards for indigence adopted by the federal government for purposes of the Supplemental Nutrition Assistance Program.

(6) At the end of the suspension or revocation resulting from the conviction, the department shall suspend the driving privileges or right to apply for driving privileges of a person who has not submitted proof to the department that an ignition interlock device has been installed or who tampers with an ignition interlock device after it has been installed. If the suspension is for failing to submit proof of installation, the suspension continues until the department receives proof that the ignition interlock device has been installed or until one year after the ending date of the suspension resulting from the first conviction or two years after the ending date of the suspension resulting from a second or subsequent conviction, whichever comes first. If the suspension is for tampering with an ignition interlock device, the suspension continues until one year after the ending date of the suspension resulting from the first conviction or two years after the ending date of the suspension resulting from a second or subsequent conviction. A person whose driving privileges or right to apply for privileges is suspended under this subsection is entitled to administrative review, as described in ORS 809.440, of the action.

(7) The department shall adopt rules permitting medical exemptions from the requirements of installation and use of an ignition interlock device under subsection (1) of this section. [1987 c.746 §2; 1989 c.576 §1; 1991 c.453 §15; 1993 c.382 §3; 1993 c.627 §6; 1999 c.770 §7; 2001 c.786 §4; 2003 c.26 §1; 2007 c.655 §1; 2009 c.599 §26]

**813.604 Notice of court order; notation on hardship permit; rules.** (1) When a court orders installation of an ignition interlock device pursuant to ORS 813.602, the court shall send a copy of the order to the Department of Transportation. The department shall note the requirement on the driving record of the person required to install the device.

(2) The department may not issue a hardship permit under ORS 807.240 to any person who is ordered to install an ignition interlock device on the person's vehicle until the person furnishes the department satisfactory proof that the device has been installed on any vehicle owned or operated by the person. The department shall determine by rule what constitutes satisfactory proof under this subsection.

(3) When the department issues a hardship permit to a person who is required to have an ignition interlock device, the department shall note on the permit that the

device is required. The notation constitutes a limitation on the permit and a person who violates the limitation is punishable as provided in ORS 811.182 for criminal driving while suspended or revoked. [1987 c.746 §3; 1989 c.398 §2; 1997 c.249 §235]

**813.606 Exception for employee otherwise required to have device.** Notwithstanding ORS 813.604, if a person is required, in the course and scope of the person's employment, to operate a motor vehicle owned by the person's employer, the person may operate that vehicle without installation of an ignition interlock device if:

(1) The employer has been notified that the employee is operating with a hardship permit restricted as provided in ORS 813.604 or the employee is operating on a fully reinstated license within the first six months following suspension or revocation for driving while under the influence of intoxicants; and

(2) The employee has proof of the notification or fully reinstated license in the possession of the employee while operating the employer's vehicle in the course of employment. [1987 c.746 §4; 1999 c.770 §8; 2001 c.786 §5]

**813.608 Knowingly furnishing motor vehicle without ignition interlock device; penalty.** (1) A person commits the offense of knowingly furnishing a motor vehicle without an ignition interlock device to someone who is not authorized to drive such a vehicle if the person rents, leases, lends or otherwise furnishes a motor vehicle to someone the person knows to have been ordered or required under ORS 813.602, to install an ignition interlock device, and the motor vehicle is not equipped with such a device that is in working order.

(2) The offense described in this section, knowingly furnishing a motor vehicle without an ignition interlock device to someone who is not authorized to drive such a vehicle, is a Class A traffic violation. [1987 c.746 §5; 1989 c.576 §2]

**813.610 Soliciting another to blow into ignition interlock device; penalty.** (1) A person commits the offense of unlawfully soliciting another to blow into an ignition interlock device or start a motor vehicle equipped with an ignition interlock device if the person has such a device as a result of an order or requirement under ORS 813.602 and the person requests or solicits another to blow into the device or start the motor vehicle so as to circumvent the device.

(2) The offense described in this section, unlawfully soliciting another to blow into an ignition interlock device or start a motor vehicle equipped with an ignition interlock device, is a Class A traffic violation. [1987 c.746 §6; 1989 c.576 §3]

**813.612 Unlawfully blowing into ignition interlock device; penalty.** (1) A person commits the offense of unlawfully blowing into an ignition interlock device or starting a motor vehicle equipped with an ignition interlock device if, for the purpose of providing an operable motor vehicle for someone required under ORS 813.602 to have such a device, the person blows into an ignition interlock device or starts an automobile equipped with the device.

(2) This section does not apply to a person who is required to have an ignition interlock device and who blows into or starts the person's own vehicle that is so equipped.

(3) The offense described in this section, unlawfully blowing into an ignition interlock device or starting a motor vehicle equipped with an ignition interlock device, is a Class A traffic violation. [1987 c.746 §7]

**813.614 Tampering with ignition interlock device; penalty.** (1) A person commits the offense of tampering with an ignition interlock device if the person does anything to a device that was ordered installed pursuant to ORS 813.602 that circumvents the operation of the device.

(2) The offense described in this section, tampering with an ignition interlock device, is a Class A traffic violation. [1987 c.746 §9]

**813.616 Use of certain moneys to pay for ignition interlock program.** Notwithstanding ORS 813.270, moneys in the Intoxicated Driver Program Fund may be used to pay for administration and evaluation of the ignition interlock program established by ORS 813.600 to 813.616 and for the costs of participation in the program for indigents. [1987 c.746 §8; 1993 c.382 §4]