

## HOUSE AMENDMENTS TO HOUSE BILL 2627

By COMMITTEE ON JUDICIARY

March 27

1 In line 2 of the printed bill, after the semicolon insert “creating new provisions; amending ORS  
2 137.109, 813.200, 813.210 and 813.255 and section 1, chapter 670, Oregon Laws 2011;”.

3 Delete lines 4 through 19 and insert:

4 “**SECTION 1.** ORS 813.255 is amended to read:

5 “813.255. (1) At any time before the court dismisses with prejudice the charge of driving while  
6 under the influence of intoxicants, the court on its own motion or on the motion of the district at-  
7 torney or city attorney may issue an order requiring **the** defendant to appear and show cause why  
8 the court should not terminate the diversion agreement. The order to show cause [*shall*] **must:**

9 “(a) State the reasons for the proposed termination [*and shall*];

10 “(b) **Specify the amount of any fees owed and, if the amount owed is \$500 or less, inform**  
11 **the defendant that the court may dismiss with prejudice the charge of driving while under**  
12 **the influence of intoxicants if the person has complied with and performed all of the condi-**  
13 **tions of the diversion agreement and pays the remaining amount before or on the date of the**  
14 **hearing; and**

15 “(c) Set an appearance date.

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

20 “[*(3) Except as provided in subsection (4) of this section, the court shall terminate the diversion*  
21 *agreement and enter the guilty plea or no contest plea that was filed as part of the petition for the di-*  
22 *version agreement if:*]

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

25 “[*(b) The defendant fails to appear at the hearing on the order to show cause.*]

26 “(3) **Except as provided in subsections (4), (5) and (6) of this section, the court shall ter-**  
27 **minate the diversion agreement and enter the guilty plea or no contest plea that was filed**  
28 **as part of the petition for the diversion agreement if the defendant fails to appear at the**  
29 **hearing on the order to show cause or if, at the hearing on the order to show cause, the**  
30 **court finds by a preponderance of the evidence that:**

31 “(a) **The defendant no longer qualifies for the diversion agreement under the conditions**  
32 **described in ORS 813.215; or**

33 “(b) **The defendant failed to fulfill all of the terms of the diversion agreement.**

34 “(4) If a defendant is a member of the Armed Forces of the United States, the reserve compo-  
35 nents of the Armed Forces of the United States or the National Guard and is on active duty, the

1 court shall:

2 “(a) Allow the defendant to appear at the hearing by telephone or other communication device  
3 approved by the court, if the defendant’s military service permits such an appearance; or

4 “(b) Stay the termination proceeding if the defendant’s military service prohibits the defendant’s  
5 appearance by telephone or other communication device and prohibits the defendant from aiding and  
6 assisting the attorney who would appear on the defendant’s behalf.

7 “(5) **If the defendant appears at the hearing on the order to show cause, the court shall**  
8 **dismiss with prejudice the charge of driving while under the influence of intoxicants if:**

9 “(a) **The defendant has complied with and performed all of the conditions of the diversion**  
10 **agreement except that the defendant owes \$500 or less of the fees required under ORS**  
11 **813.200, 813.210, 813.235 and 813.240; and**

12 “(b) **The defendant pays the balance of the fees owed by 5 p.m. on the day the hearing**  
13 **is held. The defendant may also pay the balance of the fees owed before the day the hearing**  
14 **is held.**

15 “(6) **A court may not terminate a diversion agreement under this section for failure to**  
16 **pay restitution under section 7 of this 2013 Act if the defendant has otherwise complied with**  
17 **and performed all of the conditions of the diversion agreement.**

18 “(7) **Before the court dismisses with prejudice the charge of driving while under the in-**  
19 **fluence of intoxicants under this section, the court shall enter a judgment containing a**  
20 **money award, as defined in ORS 18.005, for any remaining amount of restitution owed by the**  
21 **defendant.**

22 “[5] (8) **If the court terminates the diversion agreement and enters the guilty plea or no contest**  
23 **plea, the court may take into account at time of sentencing any partial fulfillment by the defendant**  
24 **of the terms of the diversion agreement.**

25 “[6] *The court shall terminate a diversion agreement under this section for any of the following*  
26 *reasons:]*

27 “[a] *The defendant fails to fulfill the terms of the diversion agreement.]*

28 “[b] *The defendant does not qualify for the diversion agreement under the criteria in ORS*  
29 *813.215.]*

30 “**SECTION 2.** Section 3 of this 2013 Act is added to and made a part of ORS chapter 813.

31 “**SECTION 3.** (1) **At any time before entry of a judgment of conviction and within 180 days**  
32 **after the conclusion of the period of a driving while under the influence of intoxicants di-**  
33 **version agreement described in ORS 813.230 or an extension described in ORS 813.225, a de-**  
34 **fendant who has complied with and performed all of the conditions of the diversion**  
35 **agreement, except that the defendant owes \$500 or less of the fees required under ORS**  
36 **813.200, 813.210, 813.235 and 813.240, may apply by motion to the court wherein the diversion**  
37 **agreement was entered for a judgment dismissing with prejudice the charge of driving while**  
38 **under the influence of intoxicants.**

39 “(2) **The defendant shall cause to be served on the district attorney or city attorney a**  
40 **copy of the motion for a judgment dismissing with prejudice the charge of driving while un-**  
41 **der the influence of intoxicants. The copy of the motion shall be served on the district at-**  
42 **torney or city attorney at the time the motion is filed with the court. The district attorney**  
43 **or city attorney may contest the motion.**

44 “(3) **At the hearing on the motion described in subsection (1) of this section, the court**  
45 **shall dismiss with prejudice the charge of driving while under the influence of intoxicants,**

1 **if the defendant pays the balance of the fees owed by 5 p.m. on the day the hearing is held.**  
2 **The defendant may also pay the balance of the fees owed before the day the hearing is held.**

3 **“(4) Before the court dismisses with prejudice a charge of driving while under the influ-**  
4 **ence of intoxicants under this section, the court shall enter a judgment containing a money**  
5 **award, as defined in ORS 18.005, for any remaining amount of restitution owed by the de-**  
6 **fendant.**

7 **“SECTION 4.** ORS 813.200 is amended to read:

8 **“813.200. (1)** The court shall inform at arraignment a defendant charged with the offense of  
9 driving while under the influence of intoxicants as defined in ORS 813.010 or a city ordinance con-  
10 forming thereto that a diversion agreement may be available if the defendant meets the criteria set  
11 out in ORS 813.215 and files with the court a petition for a driving while under the influence of  
12 intoxicants diversion agreement.

13 **“(2)** The petition forms for a driving while under the influence of intoxicants diversion agree-  
14 ment shall be available to a defendant at the court.

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

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

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

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

27 **“(c)** An agreement by the defendant to complete, at defendant’s own expense based on  
28 defendant’s ability to pay, the program of treatment indicated as necessary by the diagnostic as-  
29 sessment;

30 **“(d)** Except as provided in subsection (5) of this section, an agreement by the defendant to not  
31 use intoxicants during the diversion period and to comply fully with the laws of this state designed  
32 to discourage the use of intoxicants;

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

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

38 **“(g)** A waiver by the defendant of any former jeopardy rights under the federal and state Con-  
39 stitutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any other of-  
40 fenses based upon the same criminal episode;

41 **“(h)** A sworn statement, as defined in ORS 162.055, by the defendant certifying that the defend-  
42 ant meets the criteria set out in ORS 813.215 to be eligible to enter into the driving while under the  
43 influence of intoxicants diversion agreement; *[and]*

44 **“(i)** An agreement by the defendant to pay court-appointed attorney fees as determined by the  
45 court[.]; **and**

1       **“(j) An agreement by the defendant to pay restitution if ordered by the court under**  
2 **section 7 of this 2013 Act.**

3       “(5) A person may use intoxicants during the diversion period if:

4       “(a) The person consumes sacramental wine given or provided as part of a religious rite or  
5 service;

6       “(b) The person has a valid prescription for a substance and the person takes the substance as  
7 directed; or

8       “(c) The person is using a nonprescription drug, as defined in ORS 689.005, in accordance with  
9 the directions for use that are printed on the label for that nonprescription drug.

10       **“SECTION 5.** ORS 813.210 is amended to read:

11       “813.210. (1) After an accusatory instrument has been filed charging the defendant with the of-  
12 fense of driving while under the influence of intoxicants, a defendant may file with the court a pe-  
13 tition for a driving while under the influence of intoxicants diversion agreement described in ORS  
14 813.200. The petition:

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

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

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

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

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

33       “(b) The court may waive all or part of the court-appointed attorney fees agreed to under ORS  
34 813.200 (4)(i).

35       **“(5) The defendant shall begin paying to the court any restitution ordered under section**  
36 **7 of this 2013 Act. Payments shall be made during the diversion period on a schedule deter-**  
37 **mined by the court.**

38       “[(5)] (6) The defendant shall cause a copy of the petition for a driving while under the influence  
39 of intoxicants diversion agreement to be served upon the district attorney or city attorney. The  
40 district attorney or city attorney may file with the court, within 15 days after the date of service,  
41 a written objection to the petition and a request for a hearing.

42       **“SECTION 6. Section 7 of this 2013 Act is added to and made a part of ORS 137.103 to**  
43 **137.109.**

44       **“SECTION 7. (1) When a person has entered into a driving while under the influence of**  
45 **intoxicants diversion agreement and the person’s actions resulted in economic damages, the**

1 district attorney shall investigate and present to the court within 90 days of when the di-  
2 version agreement is entered, evidence of the nature and amount of the damages. If the  
3 court finds from the evidence presented that a victim suffered economic damages, the court  
4 shall order the defendant to pay restitution and include in the diversion agreement one of  
5 the following:

6 “(a) A requirement that the defendant pay the victim restitution in a specific amount  
7 that equals the full amount of the victim’s economic damages as determined by the court.

8 “(b) A requirement that the defendant pay the victim restitution in a specific amount  
9 that is less than the full amount of the victim’s economic damages, with the consent of the  
10 victim.

11 “(2) After the district attorney makes a presentation described in subsection (1) of this  
12 section, if the court is unable to find from the evidence presented that a victim suffered  
13 economic damages, the court shall make a finding on the record to that effect.

14 “(3) A finding made by the court under this section, or a failure of the court to make a  
15 finding, does not limit or impair the right of a person injured to sue and recover damages in  
16 a civil action as provided in ORS 137.109.

17 “(4) If the defendant objects to the imposition, amount or distribution of the restitution,  
18 the court shall allow the defendant to be heard on such issue at the time the court deter-  
19 mines the amount of restitution.

20 “(5) As used in this section, ‘victim’ includes any person the court determines has suf-  
21 fered economic damages as a result of the act that has brought the defendant before the  
22 court for the purpose of entering into a driving while under the influence of intoxicants di-  
23 version agreement.

24 “**SECTION 8.** ORS 137.109 is amended to read:

25 “137.109. (1) Nothing in ORS 137.103 to 137.109, 137.540, 144.102, 144.275, 161.675 and 161.685  
26 limits or impairs the right of a person injured by a defendant’s commission of a crime, [or] by a  
27 defendant’s commission of a violation described in ORS 153.008, **or by a defendant’s commission**  
28 **of an act that has brought the defendant before the court for the purpose of entering into**  
29 **a driving while under the influence of intoxicants diversion agreement**, to sue and recover  
30 damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered  
31 to pay restitution pursuant to ORS 137.103 to 137.109, 137.540, 144.102, 144.275, 161.675 and 161.685  
32 may not be introduced in any civil action arising out of the facts or events that were the basis for  
33 the restitution. However, the court shall credit any restitution paid by the defendant to a victim  
34 against any judgment in favor of the victim in such civil action.

35 “(2) If conviction in a criminal trial necessarily decides the issue of a defendant’s liability for  
36 economic damages of a victim, that issue is conclusively determined as to the defendant if it is in-  
37 volved in a subsequent civil action.

38 “**SECTION 9.** Section 1, chapter 670, Oregon Laws 2011, is amended to read:

39 “**Sec. 1.** (1) The Department of Justice shall establish a restitution collection pilot program in  
40 geographically dispersed counties or regions of this state to increase the collection of restitution  
41 ordered under ORS 137.106 and 137.107 **and section 7 of this 2013 Act.**

42 “(2)(a) The department shall make grants from the Restitution Collection Pilot Program Fund  
43 established under section 2 [of this 2011 Act], **chapter 670, Oregon Laws 2011**, to enable the dis-  
44 trict attorney’s office of each county, or a district attorney’s office located in a region, participating  
45 in the pilot program to employ at least one restitution clerk on at least a part-time basis.

1 “(b) In addition to the grants required under paragraph (a) of this subsection, the department  
2 may make grants from the fund to fund other positions, activities and expenses related to the col-  
3 lection of restitution.

4 “(3)(a) Each restitution clerk shall:

5 “(A) Investigate evidence of the nature and amount of the damages suffered by victims of crime  
6 pursuant to ORS 137.106;

7 “(B) Investigate and compile information regarding the defendant’s ability to pay restitution; and

8 “(C) Provide the evidence and information obtained pursuant to this paragraph to the prosecut-  
9 ing attorney before any hearing on the issue of restitution.

10 “(b) Pursuant to **Article I**, section 42, [*Article I*] of the Oregon Constitution, and ORS 137.106  
11 **and section 7 of this 2013 Act**, the district attorney shall present the information and evidence  
12 obtained by the restitution clerk to the court.

13 “(c) The recipient of a grant made pursuant to subsection (2) of this section is authorized to  
14 perform the activities set out in the grant agreement and in rules adopted by the department pur-  
15 suant to this section.

16 “(4)(a) The department shall employ and assign collection agents to each county or region par-  
17 ticipating in the restitution collection pilot program.

18 “(b) Each collection agent shall:

19 “(A) Notwithstanding ORS 137.118, conduct collections and collection investigation work to  
20 collect restitution from offenders and liable third parties;

21 “(B) Coordinate the collection investigation work with the respective restitution clerk in the  
22 participating county or region; and

23 “(C) Be available to present the results of the collection investigation work in judicial pro-  
24 ceedings, including sentencing hearings, parole revocation hearings, judgment debtor examinations  
25 and contempt proceedings.

26 “(5) The department shall adopt rules to carry out the provisions of this section.

27 “**SECTION 10. Sections 3 and 7 of this 2013 Act and the amendments to ORS 137.109,**  
28 **813.200, 813.210 and 813.255 and section 1, chapter 670, Oregon Laws 2011, by sections 1, 4, 5,**  
29 **8 and 9 of this 2013 Act apply to diversion agreements entered into on or after the effective**  
30 **date of this 2013 Act.**

31 “**SECTION 11. This 2013 Act being necessary for the immediate preservation of the public**  
32 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
33 **on its passage.”.**