

**Enrolled**  
**Senate Bill 999**

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER .....

AN ACT

Relating to traffic offenses; amending ORS 135.815, 813.100, 813.120, 813.130, 813.131, 813.132, 813.135, 813.136, 813.140, 813.310, 813.320 and 813.602.

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

**SECTION 1.** ORS 813.100 is amended to read:

813.100. (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)]* (2) If a person refuses to *[take]* **submit to** 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 **and the person has been informed of rights and consequences as provided under ORS 813.130**, 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] (3) 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.

[5] (4) Nothing in this section precludes a police officer from obtaining a chemical test of the person's breath or blood through any lawful means for use as evidence in a criminal or civil proceeding including, but not limited to, obtaining a search warrant.

**SECTION 2.** ORS 813.130 is amended to read:

813.130. 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) **Except as provided in subsection (3) of this section,** 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 a **test**, 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 **of alcohol in the blood of the person as shown by chemical analysis of the breath or blood**. 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 **of alcohol in the blood of the person as shown by chemical analysis of the breath or blood** if the person was not driving a commercial motor vehicle;

(B) 0.04 percent or more by weight **of alcohol in the blood of the person as shown by chemical analysis of the breath or blood** 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 influence 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)] (e) 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)] (f) 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)] (g) 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)] (h) 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)] (i) The information provided to the person shall include the number of days within which a hearing under ORS 813.410 will be held.*

*[(L)] (j) 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 driving privileges or right to apply for commercial driving privileges 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 driving privileges or right to apply for commercial driving privileges 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 driving privileges or right to apply for commercial driving privileges was suspended or revoked for offenses committed while operating a commercial motor vehicle;]*

*[(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 driving privileges previously have 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 commercial driving privileges 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.]*

**(k) If the person is driving a commercial motor vehicle, and takes a breath or blood test under ORS 813.100 after being informed of the rights and consequences under paragraphs (a) to (j) of this subsection, the following additional information shall be provided:**

**(A) If the level of alcohol in the person's blood is 0.04 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood, the person's commercial driving privileges or right to apply for commercial driving privileges will be suspended and no hardship permit authorizing the person to drive a commercial motor vehicle will be issued.**

**(B) The suspension of the person's commercial driving privileges or right to apply for commercial driving privileges will be for the person's lifetime if the person takes a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood and:**

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

**(ii) 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;**

**(iii) The person previously has been convicted of driving a commercial motor vehicle while the person's commercial driving privileges or right to apply for commercial driving privileges was suspended or revoked for offenses committed while operating a commercial motor vehicle;**

**(iv) 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;**

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

**(vi) The person's commercial driving privileges previously have been suspended or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100; or**

**(vii) The person's right to apply for commercial driving privileges 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.**

**(3) A person who refuses to submit to a chemical test after being informed of the rights and consequences in subsection (2) of this section shall be provided additional information, substantially as follows:**

**(a) If the person refuses to provide consent to a breath or blood test, and is thereafter requested to provide only physical cooperation to submit to a breath or blood test, and the person refuses to physically submit to a test, evidence of that refusal may be offered against the person.**

**(b) If the person refuses to submit to a test under ORS 813.100, the person's driving privileges will be suspended. The outcome of a criminal charge for driving under the influence of intoxicants will not affect the suspension. The suspension will be substantially longer if a person refuses a test.**

**(c) If the person refuses to submit to 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.**

**(d) If the person refuses to submit to 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.

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

(f) 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.

(g) If the person is issued a temporary driving permit under ORS 813.100, the number of hours before the driving permit will be effective and the number of days the permit will be effective.

(h) The number of days within which a person must request a hearing under ORS 813.410.

(i) The number of days within which a hearing under ORS 813.410 will be held.

(j) 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.

(k) If the person is driving a commercial motor vehicle, further information as follows:

(A) If the person refuses to submit to a test under ORS 813.100, the person's commercial driving privileges or right to apply for commercial driving privileges 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 the test.

(B) The suspension of the person's commercial driving privileges or right to apply for commercial driving privileges will be for the person's lifetime if the person refuses to submit to a test under ORS 813.100 and:

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

(ii) 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;

(iii) The person previously has been convicted of driving a commercial motor vehicle while the person's commercial driving privileges or right to apply for commercial driving privileges was suspended or revoked for offenses committed while operating a commercial motor vehicle;

(iv) 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;

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

(vi) **The person's commercial driving privileges previously have been suspended or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100; or**

(vii) **The person's right to apply for commercial driving privileges 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.

**SECTION 3.** ORS 813.131 is amended to read:

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

[1] (2) 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 cannabis, 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] (3) A police officer may not request a urine test unless the officer is certified by the Department of 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 cannabis, a controlled substance, an inhalant or any combination of cannabis, a controlled substance, an inhalant and intoxicating liquor.

[3] (4) 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)] (5)(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.

**SECTION 4.** ORS 813.132 is amended to read:

813.132. (1) Except as otherwise provided in this section, a refusal to *[take]* **submit to** a urine test requested under ORS 813.131 shall be treated for all purposes as a refusal to *[take]* **submit to** a breath test. A suspension imposed for refusal to *[take]* **submit to** a urine test **under ORS 813.131 (2)** 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]* **If a person refuses to submit to a urine test** under ORS 813.131 (2), in addition to information described in ORS 813.130, the person asked to take the test shall be informed that if the person refuses **to submit to** 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 **to submit to** the breath test and that a suspension for refusal *[of]* **to submit to** 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]* **submit to a urine test** if the person provides doc-

umentation 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.

**SECTION 5.** ORS 813.135 is amended to read:

813.135. 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 intoxicants 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]* **If the person refuses to consent to field sobriety tests, the person shall be asked to provide only physical cooperation to submit to nontestimonial field sobriety tests, and the person shall be informed of the consequences of failing to physically submit to those tests under ORS 813.136.**

**SECTION 6.** ORS 813.136 is amended to read:

813.136. If a person refuses or fails to **physically** submit to field sobriety tests as required by ORS 813.135 **after the person has been informed of the consequences of refusing to submit**, evidence of the person's refusal or failure to **physically** 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.

**SECTION 7.** ORS 813.140 is amended to read:

813.140. Nothing in ORS 813.100, **813.131** or **813.132** is intended to preclude the administration of a chemical test described in this section. A police officer may obtain a chemical test of the breath or 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 cannabis, 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.

**SECTION 8.** ORS 813.310 is amended to read:

813.310. If a person refuses to **physically** submit to a chemical test under ORS 813.100 or **813.131** *[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.

**SECTION 9.** ORS 813.320 is amended to read:

813.320. (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.]*

**SECTION 10.** ORS 813.602 is amended to read:

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

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

- (A) Any degree of murder.
- (B) Manslaughter in the first or second degree.
- (C) Criminally negligent homicide.
- (D) Assault in the first degree.
- (b) Aggravated vehicular homicide.

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

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

(A) The court shall require that an approved ignition interlock device be installed and used in any vehicle operated by the person during the period of the agreement when the person has driving privileges if:

(i) *[The person submitted to]* A chemical test of the person's breath or blood *[as required under ORS 813.100 and the test]* disclosed a blood alcohol content of 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;**

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

(iii) *[The person submitted to]* A chemical test of the person's breath, blood or urine *[as required under ORS 813.100 or 813.131 and the test]* disclosed a blood alcohol content of more than 0.00 **but less than 0.08** percent by weight *[but less than 0.08 percent by weight]* **of alcohol in the blood of the person as shown by chemical analysis of the breath or blood** and disclosed the presence of cannabis, a controlled substance or an inhalant.

(B) The court may require that an approved ignition interlock device be installed and used in any vehicle operated by the person during the period of the agreement when the person has driving privileges if the person submitted to a chemical test of the person's breath, blood or urine *[as required under ORS 813.100 or 813.131]* and the test disclosed a blood alcohol content below 0.08 percent by weight **of alcohol in the blood of the person as shown by chemical analysis of the breath or blood.**

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

(c) A court may exempt a person from the condition in a diversion agreement to have installed and be using an ignition interlock device if the court determines that the person meets the re-



quirements for a medical exemption in accordance with rules adopted by the department under this section. A person granted a medical exemption under this paragraph shall carry proof of the medical exemption with the person while operating any vehicle.

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

(5) When a person is required to install an ignition interlock device under subsection (2) of this section, the service center providing the device shall provide notice of any installation or removal of the device or any tampering with the device to:

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

(b) The district attorney or the city prosecutor.

**SECTION 10a. If House Bill 3005 becomes law, section 10 of this 2019 Act (amending ORS 813.602) is repealed and ORS 813.602, as amended by section 4, chapter 200, Oregon Laws 2019 (Enrolled House Bill 3005), is amended to read:**

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

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

(A) Any degree of murder.

(B) Manslaughter in the first or second degree.

(C) Criminally negligent homicide.

(D) Assault in the first degree.

(b) Aggravated vehicular homicide.

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

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

(A) The court shall require that an approved ignition interlock device be installed and used in any vehicle operated by the person during the period of the agreement when the person has driving privileges if:

(i) *[The person submitted to]* A chemical test of the person's breath or blood *[as required under ORS 813.100, 813.140 or 813.150 and the test]* disclosed a blood alcohol content of 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;**

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

(iii) *[The person submitted to]* A chemical test of the person's breath, blood or urine *[as required under ORS 813.100 or 813.131 and the test]* disclosed a blood alcohol content of more than 0.00 **but less than 0.08** percent by weight *[but less than 0.08 percent by weight]* **of alcohol in the blood of the person as shown by chemical analysis of the breath or blood** and disclosed the presence of cannabis, a controlled substance or an inhalant.

(B) The court may require that an approved ignition interlock device be installed and used in any vehicle operated by the person during the period of the agreement when the person has driving privileges if the person submitted to a chemical test of the person's breath, blood or urine *[as required under ORS 813.100 or 813.131]* and the test disclosed a blood alcohol content below 0.08 percent by weight **of alcohol in the blood of the person as shown by chemical analysis of the breath or blood**.

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

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

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

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

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

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

(c) The Oregon State Police.

**SECTION 11.** ORS 135.815 is amended to read:

135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall disclose to a represented defendant the following material and information within the possession or control of the district attorney:

(a) The names and addresses of persons whom the district attorney intends to call as witnesses at any stage of the trial, together with their relevant written or recorded statements or memoranda of any oral statements of such persons.

(b) Any written or recorded statements or memoranda of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one.

(c) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons which the district attorney intends to offer in evidence at the trial.

(d) Any books, papers, documents, photographs or tangible objects:

(A) Which the district attorney intends to offer in evidence at the trial; or

(B) Which were obtained from or belong to the defendant.

(e) If actually known to the district attorney, any record of prior criminal convictions of persons whom the district attorney intends to call as witnesses at the trial; and the district attorney shall make a good faith effort to determine if such convictions have occurred.

(f) All prior convictions of the defendant known to the state that would affect the determination of the defendant's criminal history for sentencing under rules of the Oregon Criminal Justice Commission.

(g) Any material or information that tends to:

(A) Exculpate the defendant;

(B) Negate or mitigate the defendant's guilt or punishment; or

(C) Impeach a person the district attorney intends to call as a witness at the trial.

(2)(a) The disclosure required by subsection (1)(g) of this section shall occur without delay after arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state. If the existence of the material or information is not known at that time, the disclosure shall be made upon discovery without regard to whether the represented defendant has entered or agreed to enter a guilty plea.

(b) Nothing in subsection (1)(g) of this section:

(A) Expands any obligation under a statutory provision or the Oregon or United States Constitution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement officers.

(B) Imposes any obligation on the district attorney to provide material or information beyond the obligation imposed by the Oregon and United States Constitutions.

(3) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of ORS 813.010 in which an instrument was used to test a person's breath, blood or urine to determine the alcoholic content of the person's blood the district attorney shall disclose to a represented defendant at least the following material and information within the possession or control of the district attorney:

(a) Any report prepared by a police officer relating to field tests, interviews, observations and other information relating to the charged offense;

(b) Any report relating to the test results;

(c) A copy of the form provided to the defendant under ORS 813.100 [(3)(b)] **(2)(b)**; and

(d) Any checklist prepared by the operator of the instrument for the test.

(4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the defendant all of the information described in subsections (1) and (3) of this section except for the personal identifiers of the victim and any witnesses.

(b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the personal identifiers of the victim and any witnesses if the trial court orders the disclosure. A trial court shall order the district attorney to disclose the personal identifiers of the victim and any witnesses if the trial court finds that:

(A) The defendant has requested the information; and

(B)(i) The victim or witness is a business or institution and disclosure of the information would not represent a risk of harm to the victim or witness; or

(ii) The need for the information cannot reasonably be met by other means.

(5)(a) Unless authorized by the trial court to disclose the information, a lawyer representing a defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers of a victim or witness obtained under subsections (1) and (3) of this section.

(b) The trial court shall order the lawyer, or representative of the lawyer, to disclose to the defendant the personal identifiers of a victim or witness if the court finds that:

(A) The defendant's lawyer has requested the district attorney to disclose the information to the defendant;

(B) The district attorney has refused to disclose the information to the defendant; and

(C) The need for the information cannot reasonably be met by other means.

(6) As used in this section:

(a) "Personal identifiers" means:

(A) In relation to a witness, the witness's address, telephone number, Social Security number and date of birth and the identifying number of the witness's depository account at a financial institution, as defined in ORS 706.008, or credit card account.

(B) In relation to a victim, the victim's address, electronic mail address, telephone number, Social Security number, date of birth, any user names or other identifying information associated with the victim's social media accounts and the identifying number of the victim's depository account at a financial institution, as defined in ORS 706.008, or credit card account.

(b) "Representative of the lawyer" has the meaning given that term in ORS 40.225.

(c) "Represented defendant" means a defendant who is represented by a lawyer in a criminal action.

(d) "Social media" has the meaning given that term in ORS 659A.330.

**SECTION 12.** ORS 813.120 is amended to read:

813.120. (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)] **(2)(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.

**Passed by Senate May 6, 2019**

**Received by Governor:**

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.....M.,....., 2019

**Approved:**

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2019

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Peter Courtney, President of Senate

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Kate Brown, Governor

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Tina Kotek, Speaker of House

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Bev Clarno, Secretary of State