

Enrolled
House Bill 2740

Sponsored by Representative BARKER; Representatives BOONE, CLEM, DALLUM, C EDWARDS, D EDWARDS, FLORES, KOMP, KRIEGER, KRUMMEL, WHISNANT, Senator MONNES ANDERSON (at the request of Crime Victims United)

CHAPTER

AN ACT

Relating to driving while under the influence of intoxicants; creating new provisions; and amending ORS 137.700, 137.707, 161.005, 163.005, 163.118, 163.185, 181.085, 419A.260, 807.252, 809.409, 809.600, 809.730, 811.182, 813.215 and 813.220.

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

SECTION 1. (1) Criminal homicide constitutes aggravated vehicular homicide when it is committed with criminal negligence, recklessly or recklessly under circumstances manifesting extreme indifference to the value of human life by a person operating a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 and:

(a) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and

(b) The victim's death in the previous conviction was caused by the person driving a motor vehicle.

(2) The previous convictions to which subsection (1) of this section applies are:

(a) Manslaughter in the first degree under ORS 163.118;

(b) Manslaughter in the second degree under ORS 163.125; or

(c) Criminally negligent homicide under ORS 163.145.

(3) It is an affirmative defense to a prosecution under this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.

(4) Aggravated vehicular homicide is a Class A felony.

SECTION 2. ORS 163.118 is amended to read:

163.118. (1) Criminal homicide constitutes manslaughter in the first degree when:

(a) It is committed recklessly under circumstances manifesting extreme indifference to the value of human life;

(b) It is committed intentionally by a defendant under the influence of extreme emotional disturbance as provided in ORS 163.135, which constitutes a mitigating circumstance reducing the homicide that would otherwise be murder to manslaughter in the first degree and need not be proved in any prosecution; [or]

(c) A person recklessly causes the death of a child under 14 years of age or a dependent person, as defined in ORS 163.205, and:

(A) The person has previously engaged in a pattern or practice of assault or torture of the victim or another child under 14 years of age or a dependent person; or

(B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115[.]; or
(d) **It is committed recklessly or with criminal negligence by a person operating a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 and:**

(A) **The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or**

(B)(i) **The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and**

(ii) **The victim's serious physical injury in the previous conviction was caused by the person driving a motor vehicle.**

(2) **The previous convictions to which subsection (1)(d)(B) of this section applies are:**

(a) **Assault in the first degree under ORS 163.185;**

(b) **Assault in the second degree under ORS 163.175; or**

(c) **Assault in the third degree under ORS 163.165.**

[2)] (3) **Manslaughter in the first degree is a Class A felony.**

[3)] (4) **It is an affirmative defense to a charge of violating:**

(a) **Subsection (1)(c)(B) of this section that the child or dependent person was under care or treatment solely by spiritual means pursuant to the religious beliefs or practices of the child or person or the parent or guardian of the child or person.**

(b) **Subsection (1)(d)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.**

SECTION 3. ORS 163.185 is amended to read:

163.185. (1) **A person commits the crime of assault in the first degree if the person:**

(a) **Intentionally causes serious physical injury to another by means of a deadly or dangerous weapon; [or]**

(b) **Intentionally or knowingly causes serious physical injury to a child under six years of age[.]; or**

(c) **Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 and:**

(A) **The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or**

(B)(i) **The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and**

(ii) **The victim's death or serious physical injury in the previous conviction was caused by the person driving a motor vehicle.**

(2) **The previous convictions to which subsection (1)(c)(B) of this section apply are:**

(a) **Manslaughter in the first degree under ORS 163.118;**

(b) **Manslaughter in the second degree under ORS 163.125;**

(c) **Criminally negligent homicide under ORS 163.145;**

(d) **Assault in the first degree under this section;**

(e) **Assault in the second degree under ORS 163.175; or**

(f) **Assault in the third degree under ORS 163.165.**

[2)] (3) **Assault in the first degree is a Class A felony.**

(4) **It is an affirmative defense to a prosecution under subsection (1)(c)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction.**

SECTION 4. ORS 163.005 is amended to read:

163.005. (1) **A person commits criminal homicide if, without justification or excuse, the person intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being.**

(2) "Criminal homicide" is murder, manslaughter, [or] criminally negligent homicide **or aggravated vehicular homicide**.

(3) "Human being" means a person who has been born and was alive at the time of the criminal act.

SECTION 5. ORS 137.700, as amended by section 1, chapter 1, Oregon Laws 2006, is amended to read:

137.700. (1) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995, or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on or after October 4, 1997, **or of the offense described in subsection (2)(c) of this section and the offense was committed on or after the effective date of this 2007 Act**, the court shall impose, and the person shall serve, at least the entire term of imprisonment listed in subsection (2) of this section. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason whatsoever under ORS 421.121 or any other statute. The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence than the sentence specified in subsection (2) of this section.

(2) The offenses to which subsection (1) of this section applies and the applicable mandatory minimum sentences are:

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- (a)(A) Murder, as defined in
ORS 163.115.300 months
 - (B) Attempt or conspiracy
to commit aggravated
murder, as defined
in ORS 163.095.120 months
 - (C) Attempt or conspiracy
to commit murder, as
defined in ORS 163.115.90 months
 - (D) Manslaughter in the
first degree, as defined
in ORS 163.118.120 months
 - (E) Manslaughter in the
second degree, as defined
in ORS 163.125.75 months
 - (F) Assault in the first
degree, as defined in
ORS 163.185.90 months
 - (G) Assault in the second
degree, as defined in
ORS 163.175.70 months
 - (H) Except as provided in
paragraph (b)(G) of
this subsection,
kidnapping in the first
degree, as defined
in ORS 163.235.90 months
 - (I) Kidnapping in the second
degree, as defined in
ORS 163.225.70 months

- (J) Rape in the first degree,
as defined in ORS 163.375
(1)(a), (c) or (d).....100 months
- (K) Rape in the second degree,
as defined in ORS 163.365.....75 months
- (L) Sodomy in the first degree,
as defined in ORS 163.405
(1)(a), (c) or (d).....100 months
- (M) Sodomy in the second
degree, as defined in
ORS 163.395.75 months
- (N) Unlawful sexual penetration
in the first degree, as
defined in ORS 163.411
(1)(a) or (c).....100 months
- (O) Unlawful sexual penetration
in the second degree, as
defined in ORS 163.408.75 months
- (P) Sexual abuse in the first
degree, as defined in
ORS 163.427.75 months
- (Q) Robbery in the first degree,
as defined in ORS 164.415.....90 months
- (R) Robbery in the second
degree, as defined in
ORS 164.405.70 months
- (b)(A) Arson in the first degree,
as defined in ORS 164.325,
when the offense represented
a threat of serious
physical injury.90 months
- (B) Using a child in a display
of sexually explicit
conduct, as defined in
ORS 163.670.70 months
- (C) Compelling prostitution,
as defined in ORS 167.017.....70 months
- (D) Rape in the first degree,
as defined in
ORS 163.375 (1)(b).300 months
- (E) Sodomy in the first degree,
as defined in
ORS 163.405 (1)(b).300 months
- (F) Unlawful sexual penetration
in the first degree, as
defined in
ORS 163.411 (1)(b).300 months
- (G) Kidnapping in the first
degree, as defined in
ORS 163.235, when the
offense is committed in
furtherance of the commission

- or attempted commission of an offense listed in subparagraph (D), (E) or (F) of this paragraph.....300 months
- (c) **Aggravated vehicular homicide, as defined in section 1 of this 2007 Act.240 months**

SECTION 6. ORS 137.707 is amended to read:

137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggravated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after October 4, 1997, **or when a person charged with the offense described in subsection (4)(c) of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is committed on or after the effective date of this 2007 Act,** the person shall be prosecuted as an adult in criminal court.

(b) A district attorney, the Attorney General or a juvenile department counselor may not file in juvenile court a petition alleging that a person has committed an act that, if committed by an adult, would constitute aggravated murder or an offense listed in subsection (4) of this section if the person was 15, 16 or 17 years of age at the time the act was committed.

(2) When a person charged under this section is convicted of an offense listed in subsection (4) of this section, the court shall impose at least the presumptive term of imprisonment provided for the offense in subsection (4) of this section. The court may impose a greater presumptive term if otherwise permitted by law, but may not impose a lesser term. The person is not, during the service of the term of imprisonment, eligible for post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason under ORS 421.121 or any other provision of law. ORS 138.012, 163.105 and 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated murder under ORS 163.095 except that a person who was under 18 years of age at the time the offense was committed is not subject to a sentence of death.

(3) The court shall commit the person to the legal and physical custody of the Department of Corrections.

(4) The offenses to which this section applies and the presumptive sentences are:

- (a)(A) Murder, as defined in ORS 163.115300 months
- (B) Attempt or conspiracy to commit aggravated murder, as defined in ORS 163.095120 months
- (C) Attempt or conspiracy to commit murder, as defined in ORS 163.11590 months
- (D) Manslaughter in the first degree, as defined in ORS 163.118120 months
- (E) Manslaughter in the

- second degree, as defined
in ORS 163.12575 months
- (F) Assault in the first
degree, as defined
in ORS 163.18590 months
- (G) Assault in the second
degree, as defined
in ORS 163.17570 months
- (H) Kidnapping in the first
degree, as defined in
ORS 163.23590 months
- (I) Kidnapping in the second
degree, as defined in
ORS 163.22570 months
- (J) Rape in the first degree,
as defined in ORS 163.375100 months
- (K) Rape in the second
degree, as defined in
ORS 163.36575 months
- (L) Sodomy in the first
degree, as defined in
ORS 163.405100 months
- (M) Sodomy in the second
degree, as defined in
ORS 163.39575 months
- (N) Unlawful sexual
penetration in the first
degree, as defined
in ORS 163.411100 months
- (O) Unlawful sexual
penetration in the
second degree, as
defined in ORS 163.40875 months
- (P) Sexual abuse in the first
degree, as defined in
ORS 163.42775 months
- (Q) Robbery in the first
degree, as defined in
ORS 164.41590 months
- (R) Robbery in the second
degree, as defined in
ORS 164.40570 months
- (b)(A) Arson in the first degree,
as defined in
ORS 164.325, when
the offense represented
a threat of serious
physical injury.90 months
- (B) Using a child in a display
of sexually explicit
conduct, as defined in
ORS 163.670.70 months

- (C) Compelling prostitution,
as defined in ORS 167.017.....70 months
 - (c) **Aggravated vehicular
homicide, as defined in
section 1 of this 2007
Act.240 months**
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(5) If a person charged with an offense under this section is found guilty of a lesser included offense and the lesser included offense is:

(a) An offense listed in subsection (4) of this section, the court shall sentence the person as provided in subsection (2) of this section.

(b) Not an offense listed in subsection (4) of this section:

(A) But constitutes an offense for which waiver is authorized under ORS 419C.349, the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court does not retain jurisdiction, the court shall:

(i) Order that a presentence report be prepared;

(ii) Set forth in a memorandum any observations and recommendations that the court deems appropriate; and

(iii) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411.

(B) And is not an offense for which waiver is authorized under ORS 419C.349, the court may not sentence the person. The court shall:

(i) Order that a presentence report be prepared;

(ii) Set forth in a memorandum any observations and recommendations that the court deems appropriate; and

(iii) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411.

(6) When a person is charged under this section, other offenses based on the same act or transaction shall be charged as separate counts in the same accusatory instrument and consolidated for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by the joinder and consolidation of offenses, the court may order an election or separate trials of counts or provide whatever other relief justice requires.

(7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty of aggravated murder or an offense listed in subsection (4) of this section and one or more other offenses, the court shall impose the sentence for aggravated murder or the offense listed in subsection (4) of this section as provided in subsection (2) of this section and shall impose sentences for the other offenses as otherwise provided by law.

(b) If a person charged and tried as provided in subsection (6) of this section is not found guilty of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349, the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court does not retain jurisdiction, the court shall:

(A) Order that a presentence report be prepared;

(B) Set forth in a memorandum any observations and recommendations that the court deems appropriate; and

(C) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411.

SECTION 7. ORS 181.085 is amended to read:

181.085. (1) The Department of State Police is authorized to:

(a) Store blood and buccal samples received under authority of this section, ORS 137.076, 161.325 and 419C.473 (1) and section 2, chapter 852, Oregon Laws 2001, and other physical evidence obtained from analysis of such samples;

(b) Analyze such samples for the purpose of establishing the genetic profile of the donor or otherwise determining the identity of persons or contract with other qualified public or private laboratories to conduct that analysis;

(c) Maintain a criminal identification database containing information derived from blood and buccal analyses;

(d) Utilize such samples to create statistical population frequency databases, provided that genetic profiles or other such information in a population frequency database shall not be identified with specific individuals; and

(e) Adopt rules establishing procedures for obtaining, transmitting and analyzing blood and buccal samples and for storing and destroying blood and buccal samples and other physical evidence and criminal identification information obtained from such analysis. Procedures for blood and buccal analyses may include all techniques which the department determines are accurate and reliable in establishing identity, including but not limited to, analysis of DNA (deoxyribonucleic acid), antigen antibodies, polymorphic enzymes or polymorphic proteins.

(2) If the department is unable to analyze all samples due to lack of funds, the department shall analyze samples in the following order:

(a) The department shall first analyze samples from persons convicted of:

(A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to 163.427, 163.465 (1)(c), 163.525 and 163.670;

(B) Burglary in the second degree, as defined in ORS 164.215;

(C) Promoting or compelling prostitution, as defined in ORS 167.012 and 167.017;

(D) Burglary in the first degree, as defined in ORS 164.225;

(E) Assault in the first, second or third degree, as defined in ORS 163.165, 163.175 and 163.185;

(F) Kidnapping in the first or second degree, as defined in ORS 163.225 and 163.235;

(G) Stalking, as defined in ORS 163.732;

(H) Robbery in the first, second or third degree, as defined in ORS 164.395, 164.405 and 164.415;

(I) Manslaughter in the first or second degree, as defined in ORS 163.118 and 163.125;

(J) Criminally negligent homicide, as defined in ORS 163.145;

(K) Aggravated vehicular homicide, as defined in section 1 of this 2007 Act;

~~[(K)] (L) Conspiracy or attempt to commit any felony listed in subparagraphs (A) to (J) of this paragraph; or~~

~~[(L)] (M) Murder, aggravated murder or an attempt to commit murder or aggravated murder.~~

(b) After analyzing samples from persons described in paragraph (a) of this subsection, the department shall analyze samples from persons convicted of a felony under ORS 475.840, 475.846 to 475.894, 475.904, 475.906 or 475.914.

(c) After analyzing samples from persons described in paragraphs (a) and (b) of this subsection, the department shall analyze samples from persons convicted of any other felony.

(3) Notwithstanding subsection (2) of this section, the department may analyze a sample from a lower priority before all samples in higher priorities are analyzed if required in a particular case for law enforcement purposes.

(4) The department may not transfer or disclose any sample, physical evidence or criminal identification information obtained, stored or maintained under authority of this section, ORS 137.076, 161.325 or 419C.473 (1) except:

(a) To a law enforcement agency as defined in ORS 181.010, a district attorney or the Criminal Justice Division of the Department of Justice for the purpose of establishing the identity of a person in the course of a criminal investigation or proceeding;

(b) To a party in a criminal prosecution or juvenile proceeding pursuant to ORS 419C.005 if discovery or disclosure is required by a separate statutory or constitutional provision; or

(c) To a court or grand jury in response to a lawful subpoena or court order when the evidence is not otherwise privileged and is necessary for criminal justice purposes.

(5) The department may not transfer or disclose any sample, physical evidence or criminal identification information under subsection (4) of this section unless the public agency or person receiving the sample, physical evidence or criminal identification information agrees to destroy the sample, physical evidence or criminal identification information if notified by the department that a court has reversed the conviction, judgment or order that created the obligation to provide the blood or buccal sample.

(6) Any public agency that receives a sample, physical evidence or criminal identification information under authority of subsection (4) of this section may not disclose it except as provided in subsection (4) of this section.

(7) Notwithstanding subsections (4) and (6) of this section, any person who is the subject of a record within a criminal identification database maintained under the authority of this section may, upon request, inspect that information at a time and location designated by the department. The department may deny inspection if it determines that there is a reasonable likelihood that such inspection would prejudice a pending criminal investigation. In any case, the department is not required to allow the person or anyone acting on the person's behalf to test any blood or buccal sample or other physical evidence. The department shall adopt procedures governing the inspection of records and samples and challenges to the accuracy of records. The procedures shall accommodate the need to preserve the materials from contamination and destruction.

(8)(a) Whenever a court reverses the conviction, judgment or order that created an obligation to provide a blood or buccal sample under ORS 137.076 (2), 161.325 or 419C.473 (1), the person who provided the sample may request destruction of the sample and any criminal identification record created in connection with that sample.

(b) Upon receipt of a written request for destruction pursuant to this section and a certified copy of the court order reversing the conviction, judgment or order, the department shall destroy any sample received from the person, any physical evidence obtained from that sample and any criminal identification records pertaining to the person, unless the department determines that the person has otherwise become obligated to submit a blood or buccal sample as a result of a separate conviction, juvenile adjudication or finding of guilty except for insanity for an offense listed in ORS 137.076 (1). When the department destroys a sample, physical evidence or criminal identification record under this paragraph, the department shall notify any public agency or person to whom the sample, physical evidence or criminal identification information was transferred or disclosed under subsection (4) of this section of the reversal of the conviction, judgment or order.

(c) The department is not required to destroy an item of physical evidence obtained from a blood or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076, 161.325, 181.085, 419A.260 and 419C.473 (1) would thereby be destroyed. Notwithstanding this subsection, no sample, physical evidence or criminal identification record is affected by an order to set aside a conviction under ORS 137.225.

(9) As used in this section, "convicted" includes a juvenile court finding of jurisdiction based on ORS 419C.005.

SECTION 8. ORS 419A.260 is amended to read:

419A.260. (1) As used in this section and ORS 419A.262:

(a) "Contact" means any instance in which a person's act or behavior, or alleged act or behavior, which could result in a juvenile court's assumption of jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or 419C.005 comes to the attention of an agency specified in paragraph (d) of this subsection.

(b) "Expunction" means:

(A) The removal and destruction or sealing of a judgment or order related to a contact and all records and references; and

(B) Where a record is kept by the Department of Human Services or the Oregon Youth Authority, either the sealing of such record by the department or the Oregon Youth Authority or, in a multiperson file, the affixing to the front of the file, by the department or the youth authority, a stamp or statement identifying the name of the individual, the date of expunction and instruction that no further reference shall be made to the material that is subject to the expunction order except upon an order of a court of competent jurisdiction.

(c) "Person" includes a person under 18 years of age.

(d) "Record" includes a fingerprint or photograph file, report, exhibit or other material which contains information relating to a person's contact with any law enforcement agency or juvenile court or juvenile department and is kept manually, through the use of electronic data processing equipment, or by any other means by a law enforcement or public investigative agency, a juvenile court or juvenile department or an agency of the State of Oregon. "Record" does not include:

(A) A transcript of a student's Youth Corrections Education Program academic record;

(B) Material on file with a public agency which is necessary for obtaining federal financial participation regarding financial assistance or services on behalf of a person who has had a contact;

(C) Records kept or disseminated by the Department of Transportation, State Marine Board and State Fish and Wildlife Commission pursuant to juvenile or adult order or recommendation;

(D) Police and court records related to an order of waiver where the matter is still pending in the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order;

(E) Records related to a support obligation;

(F) Medical records;

(G) Records of a proposed or adjudicated termination of parental rights and adoptions;

(H) Any law enforcement record of a person who currently does not qualify for expunction or of current investigations or cases waived to the adult court;

(I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;

(J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be within the jurisdiction of the court based upon the person's commission of an act which if done by an adult would constitute one of the following offenses:

(i) Aggravated murder under ORS 163.095;

(ii) Murder under ORS 163.115;

(iii) Attempt, solicitation or conspiracy to commit murder or aggravated murder;

(iv) Manslaughter in the first degree under ORS 163.118;

(v) Manslaughter in the second degree under ORS 163.125;

(vi) Criminally negligent homicide under ORS 163.145;

(vii) Assault in the first degree under ORS 163.185;

(viii) Criminal mistreatment in the first degree under ORS 163.205;

(ix) Kidnapping in the first degree under ORS 163.235;

(x) Rape in the third degree under ORS 163.355;

(xi) Rape in the second degree under ORS 163.365;

(xii) Rape in the first degree under ORS 163.375;

(xiii) Sodomy in the third degree under ORS 163.385;

(xiv) Sodomy in the second degree under ORS 163.395;

(xv) Sodomy in the first degree under ORS 163.405;

(xvi) Unlawful sexual penetration in the second degree under ORS 163.408;

(xvii) Unlawful sexual penetration in the first degree under ORS 163.411;

- (xviii) Sexual abuse in the third degree under ORS 163.415;
- (xix) Sexual abuse in the second degree under ORS 163.425;
- (xx) Sexual abuse in the first degree under ORS 163.427;
- (xxi) Promoting prostitution under ORS 167.012;
- (xxii) Compelling prostitution under ORS 167.017; [or]

(xxiii) Aggravated vehicular homicide under section 1 of this 2007 Act; or

[(xxiii)] **(xxiv)** An attempt to commit a crime listed in this subparagraph other than manslaughter in the second degree and criminally negligent homicide;

(K) Blood samples, buccal samples and other physical evidence and identification information obtained, stored or maintained by the Department of State Police under authority of ORS 137.076, 181.085 or 419C.473; or

(L) Records maintained in the Law Enforcement Data System under ORS 181.592.

(e) "Termination" means:

(A) For a person who is the subject of a record kept by a juvenile court or juvenile department, the final disposition of a case by informal means, by a decision not to place the person on probation or make the person a ward of the court after the person has been found to be within the court's jurisdiction, or by a discontinuance of probation or of the court's wardship.

(B) For a person who is the subject of a record kept by a law enforcement or public investigative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final disposition of the person's most recent contact with a law enforcement agency.

(2) The juvenile court or juvenile department shall make reasonable effort to provide written notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's parent, of the procedures for expunction of a record, the right to counsel under this chapter, the legal effect of an expunction order and the procedures for seeking relief from the duty to report as a sex offender provided under ORS 181.607, at the following times:

- (a) At any dispositional hearing or at the time of entering into a formal accountability agreement;
- (b) At the time of termination;
- (c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile department or motion on a juvenile court; and
- (d) At the time of notice of execution of an expunction order.

SECTION 9. ORS 807.252 is amended to read:

807.252. (1) The Department of Transportation may not issue a hardship permit to a person whose driving privileges are suspended for conviction of assault in the second, third or fourth degree if the person, within 10 years preceding application for the permit, has been convicted of:

- (a) Any degree of murder, manslaughter, criminally negligent homicide or assault resulting from the operation of a motor vehicle;
- (b) Reckless driving, as defined in ORS 811.140;
- (c) Driving while under the influence of intoxicants, as defined in ORS 813.010;
- (d) Failure to perform the duties of a driver involved in an accident or collision, as described in ORS 811.700 or 811.705;
- (e) Criminal driving while suspended or revoked, as defined in ORS 811.182; [or]
- (f) Fleeing or attempting to elude a police officer, as defined in ORS 811.540; **or**
- (g) Aggravated vehicular homicide, as defined in section 1 of this 2007 Act.**

(2) A conviction arising out of the same episode as the current suspension is not considered a conviction for purposes of subsection (1) of this section.

(3) The department may not issue a hardship permit to a person whose driving privileges are suspended for a conviction of assault in the second, third or fourth degree:

- (a) For a period of four years from the date the department suspends driving privileges if the person's driving privileges are suspended for conviction of assault in the second degree and the person was not incarcerated for that conviction.

(b) For a period of four years from the date the person is released from incarceration for the conviction if the person's driving privileges are suspended for conviction of assault in the second degree and the person was incarcerated for that conviction.

(c) For a period of two years from the date the department suspends driving privileges if the person's driving privileges are suspended for conviction of assault in the third degree and the person was not incarcerated for that conviction.

(d) For a period of two years from the date the person is released from incarceration for the conviction if the person's driving privileges are suspended for conviction of assault in the third degree and the person was incarcerated for that conviction.

(e) For a period of six months from the date the department suspends driving privileges if the person's driving privileges are suspended for conviction of assault in the fourth degree and the person is not incarcerated for that conviction.

(f) For a period of six months from the date the person is released from incarceration for the conviction if the person's driving privileges are suspended for conviction of assault in the fourth degree and the person was incarcerated for that conviction.

(4) A hardship permit issued to a person whose driving privileges are suspended because of a conviction for assault in the second, third or fourth degree 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.

(5) 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.

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

(7) 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 while 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.

(f) Any degree of murder, manslaughter, criminally negligent homicide or assault resulting from the operation of a motor vehicle.

(g) Aggravated vehicular homicide under section 1 of this 2007 Act.

SECTION 10. ORS 809.409 is amended to read:

809.409. (1)(a) Upon receipt of a record of conviction of an offense described in this section, the Department of Transportation shall revoke the driving privileges of the person convicted.

(b) A person is entitled to administrative review under ORS 809.440 of a revocation under this section.

(c) Except as otherwise provided in subsections (2) and (3) of this section, the revocation shall be for a period of one year from the date of revocation, except that the department may not reinstate driving privileges of any person whose privileges are revoked under this section until the person complies with future responsibility filings.

(2) The department shall take action under subsection (1) of this section upon receipt of a record of conviction of **aggravated vehicular homicide** or any degree of murder, manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle *[and]* **or** assault in the first degree resulting from the operation of a motor vehicle, except that the provisions of this subsection do not apply to a person whose driving privileges are ordered revoked under ORS 809.235.

A person whose driving privileges are revoked under this subsection may apply for reinstatement of driving privileges:

(a) If the sentence for the offense includes incarceration, eight years from the date the person is released from incarceration for the offense; or

(b) If the sentence does not include incarceration, eight years from the date the department revoked the privileges under this subsection.

(3) The department shall take action under subsection (1) of this section upon receipt of a record of conviction of failure to perform the duties of a driver to injured persons under ORS 811.705. The department shall revoke driving privileges under this subsection for a period of five years if the court indicates on the record of conviction that a person was killed as a result of the accident. The person may apply for reinstatement of privileges five years after the date the person was released from incarceration, if the sentence includes incarceration. If the sentence does not include incarceration, the person may apply for reinstatement five years from the date the revocation was imposed under this subsection.

(4) The department shall take action under subsection (1) of this section upon receipt of a record of conviction of perjury or the making of a false affidavit to the department under any law of this state requiring the registration of vehicles or regulating their operation on the highways.

(5) The department shall take action under subsection (1) of this section upon receipt of a record of conviction of any felony with a material element involving the operation of a motor vehicle.

SECTION 11. ORS 809.600 is amended to read:

809.600. This section establishes the *[number and kind of offenses]* **kinds of offenses and the number of convictions** necessary to revoke the driving privileges of a person as a habitual offender under ORS 809.640. The *[number and kind of offenses]* **kinds of offenses and the number of convictions** necessary to revoke driving privileges as a habitual offender are as follows:

(1) A person's driving privileges shall be revoked as a habitual offender if the person, within a five-year period, has been convicted of three or more of any one or more of the following offenses as evidenced by the records maintained by the Department of Transportation or by the records of a similar agency of another state:

(a) Any degree of murder, manslaughter, criminally negligent homicide, assault, recklessly endangering another person, menacing or criminal mischief resulting from the operation of a motor vehicle.

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

(c) Criminally driving a motor vehicle while suspended or revoked, under ORS 811.182.

(d) Reckless driving under ORS 811.140.

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

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

(g) Aggravated vehicular homicide under section 1 of this 2007 Act.

(2) A person's driving privileges shall be revoked as a habitual offender if the person, within a five-year period, has been convicted of 20 or more of any one or more of the following offenses as evidenced by the records maintained by the department or by a similar agency of another state:

(a) Any offenses enumerated in subsection (1) of this section.

(b) Any offense specified in the rules of the department adopted under ORS 809.605.

(3) A person's driving privileges shall not be revoked under subsection (2) of this section until the person's 21st conviction within a five-year period when the 20th conviction occurs after a lapse of two years or more from the last preceding conviction.

(4) The offenses described under this section include any of the following:

(a) Any violation of a traffic ordinance of a city, municipal or quasi-municipal corporation that substantially conforms to offenses described under this section.

(b) Any violation of offenses under any federal law or any law of another state, including subdivisions thereof, that substantially *[conforms]* **conform** to offenses described in this section.

SECTION 12. ORS 809.730 is amended to read:

809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been convicted of:

(a) Driving while under the influence of intoxicants in violation of ORS 813.010, or its statutory counterpart in another jurisdiction; [or]

(b) Murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state or in another jurisdiction; **or**

(c) Aggravated vehicular homicide under section 1 of this 2007 Act.

(2) All seizure and forfeiture proceedings under this section shall be conducted in accordance with ORS chapter 475A.

SECTION 13. ORS 811.182 is amended to read:

811.182. (1) A person commits the offense of criminal driving while suspended or revoked if the person violates ORS 811.175 and the suspension or revocation is one described in this section, or if the hardship or probationary permit violated is based upon a suspension or revocation described in subsection (3) or (4) of this section.

(2) Affirmative defenses to the offense described in this section are established under ORS 811.180.

(3) The [*crime*] **offense described in this section, criminal driving while suspended or revoked**, is a Class B felony if the suspension or revocation resulted from any degree of murder, manslaughter, criminally negligent homicide or assault resulting from the operation of a motor vehicle, **if the suspension or revocation resulted from aggravated vehicular homicide** or if the revocation resulted from a conviction for felony driving while under the influence of intoxicants.

(4) The [*crime*] **offense described in this section, criminal driving while suspended or revoked**, is a Class A misdemeanor if the suspension or revocation is any of the following:

(a) A suspension under ORS 809.411 (2) resulting from commission by the driver of any degree of recklessly endangering another person, menacing or criminal mischief, resulting from the operation of a motor vehicle.

(b) A revocation under ORS 809.409 (4) resulting from perjury or the making of a false affidavit to the Department of Transportation.

(c) A suspension under ORS 813.410 resulting from refusal to take a test prescribed in ORS 813.100 or for taking a breath or blood test the result of which 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.

(d) A suspension of a commercial driver license under ORS 809.413 (1) resulting from failure to perform the duties of a driver under ORS 811.700 while driving a commercial motor vehicle.

(e) A suspension of a commercial driver license under ORS 809.413 (12) where the person's commercial driving privileges have been suspended or revoked by the other jurisdiction for failure of or refusal to take a chemical test to determine the alcoholic content of the person's blood under a statute that is substantially similar to ORS 813.100.

(f) A suspension of a commercial driver license under ORS 809.404.

(g) A revocation resulting from habitual offender status under ORS 809.640.

(h) A suspension resulting from any crime punishable as a felony with proof of a material element involving the operation of a motor vehicle, other than a crime described in subsection (3) of this section.

(i) A suspension for failure to perform the duties of a driver under ORS 811.705.

(j) A suspension for reckless driving under ORS 811.140.

(k) A suspension for fleeing or attempting to elude a police officer under ORS 811.540.

(L) A suspension or revocation resulting from misdemeanor driving while under the influence of intoxicants under ORS 813.010.

(m) A suspension for use of a commercial motor vehicle in the commission of a crime punishable as a felony.

(5) In addition to any other sentence that may be imposed, if a person is convicted of the offense described in this section and the underlying suspension resulted from driving while under the influence of intoxicants, the court shall impose a fine of at least \$1,000 if it is the person's first conviction for criminal driving while suspended or revoked and at least \$2,000 if it is the person's second or subsequent conviction.

(6) The Oregon Criminal Justice Commission shall classify a violation of this section that is a felony as crime category 6 of the rules of the Oregon Criminal Justice Commission.

SECTION 14. ORS 813.215 is amended to read:

813.215. A defendant is eligible for diversion if:

(1) The defendant had no charge of an offense of driving while under the influence of intoxicants or its statutory counterpart in any jurisdiction, other than the charge for the present offense, pending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement;

(2) The defendant has not been convicted of an offense described in subsection (1) of this section within the period beginning 10 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;

(3) 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 any other jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement;

(4) The defendant did not participate in a diversion or rehabilitation program described in subsection (3) of this section, other than a program entered into as a result of the charge for the present offense, within the period beginning 10 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;

(5) 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 any other jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement;

(6) The defendant has not been convicted of an offense described in subsection (5) of this section within the period beginning 10 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;

(7) The defendant did not have a commercial driver license at the time of the offense;

(8) The defendant was not operating a commercial motor vehicle at the time of the offense; and

(9) The present driving while under the influence of intoxicants offense did not involve an accident resulting in:

(a) Death of any person [*other than the defendant*]; or

(b) Physical injury as defined in ORS 161.015 to any person other than the defendant.

SECTION 15. ORS 813.220 is amended to read:

813.220. 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 the defendant was charged with or convicted of an offense of driving while under the influence of intoxicants or its statutory counterpart in any jurisdiction after the date the defendant filed the petition.

(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 any other 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** murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state or in any other jurisdiction after the date the defendant filed the petition.

SECTION 16. ORS 161.005 is amended to read:

161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290 to 161.370, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737, 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.160 to 163.208, 163.215 to 163.257, 163.275, 163.285, 163.305 to 163.467, 163.505 to 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.140, 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.877, 165.002 to 165.109, 165.805, 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.060 to 167.100, 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 and 167.820 **and section 1 of this 2007 Act**, shall be known and may be cited as Oregon Criminal Code of 1971.

Passed by House June 23, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 25, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State