

B-Engrossed
House Bill 2740

Ordered by the House June 23
Including House Amendments dated May 7 and June 23

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)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates crime of aggravated vehicular homicide. Punishes by mandatory minimum sentence of imprisonment of 20 years, maximum fine of \$375,000, or both.

Expands [*crime*] **crimes of manslaughter** and of assault in first degree to include serious physical injury caused by person driving under influence of intoxicants if person has specified record.

A BILL FOR AN ACT

1
2 Relating to driving while under the influence of intoxicants; creating new provisions; and amending
3 ORS 137.700, 137.707, 161.005, 163.005, 163.118, 163.185, 181.085, 419A.260, 807.252, 809.409,
4 809.600, 809.730, 811.182, 813.215 and 813.220.

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

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

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

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

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

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

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

17 (c) **Criminally negligent homicide under ORS 163.145.**

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

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

22 **SECTION 2. ORS 163.118 is amended to read:**

23 163.118. (1) Criminal homicide constitutes manslaughter in the first degree when:

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

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

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

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

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

9 (B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115[.]; or

10 **(d) It is committed recklessly or with criminal negligence by a person operating a motor**
11 **vehicle while under the influence of intoxicants in violation of ORS 813.010 and:**

12 **(A) The person has at least three previous convictions for driving while under the influ-**
13 **ence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the**
14 **10 years prior to the date of the current offense; or**

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

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

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

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

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

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

23 [(2)] **(3) Manslaughter in the first degree is a Class A felony.**

24 [(3)] **(4) It is an affirmative defense to a charge of violating:**

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

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

30 **SECTION 3. ORS 163.185 is amended to read:**

31 163.185. (1) A person commits the crime of assault in the first degree if the person:

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

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

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

38 **(A) The person has at least three previous convictions for driving while under the influ-**
39 **ence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the**
40 **10 years prior to the date of the current offense; or**

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

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

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

- 1 (a) **Manslaughter in the first degree under ORS 163.118;**
- 2 (b) **Manslaughter in the second degree under ORS 163.125;**
- 3 (c) **Criminally negligent homicide under ORS 163.145;**
- 4 (d) **Assault in the first degree under this section;**
- 5 (e) **Assault in the second degree under ORS 163.175; or**
- 6 (f) **Assault in the third degree under ORS 163.165.**

7 [(2)] (3) Assault in the first degree is a Class A felony.

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

11 **SECTION 4.** ORS 163.005 is amended to read:

12 163.005. (1) A person commits criminal homicide if, without justification or excuse, the person
13 intentionally, knowingly, recklessly or with criminal negligence causes the death of another human
14 being.

15 (2) "Criminal homicide" is murder, manslaughter, [or] criminally negligent homicide **or aggra-**
16 **ated vehicular homicide.**

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

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

21 137.700. (1) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses
22 listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995,
23 or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on
24 or after October 4, 1997, **or of the offense described in subsection (2)(c) of this section and the**
25 **offense was committed on or after the effective date of this 2007 Act,** the court shall impose,
26 and the person shall serve, at least the entire term of imprisonment listed in subsection (2) of this
27 section. The person is not, during the service of the term of imprisonment, eligible for release on
28 post-prison supervision or any form of temporary leave from custody. The person is not eligible for
29 any reduction in, or based on, the minimum sentence for any reason whatsoever under ORS 421.121
30 or any other statute. The court may impose a greater sentence if otherwise permitted by law, but
31 may not impose a lower sentence than the sentence specified in subsection (2) of this section.

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

-
- 37 (a)(A) Murder, as defined in
38 ORS 163.115.300 months
 - 39 (B) Attempt or conspiracy
40 to commit aggravated
41 murder, as defined
42 in ORS 163.095.120 months
 - 43 (C) Attempt or conspiracy
44 to commit murder, as
45 defined in ORS 163.115.90 months

- 1 (D) Manslaughter in the
2 first degree, as defined
3 in ORS 163.118.....120 months
- 4 (E) Manslaughter in the
5 second degree, as defined
6 in ORS 163.125.....75 months
- 7 (F) Assault in the first
8 degree, as defined in
9 ORS 163.185.....90 months
- 10 (G) Assault in the second
11 degree, as defined in
12 ORS 163.175.....70 months
- 13 (H) Except as provided in
14 paragraph (b)(G) of
15 this subsection,
16 kidnapping in the first
17 degree, as defined
18 in ORS 163.235.....90 months
- 19 (I) Kidnapping in the second
20 degree, as defined in
21 ORS 163.225.....70 months
- 22 (J) Rape in the first degree,
23 as defined in ORS 163.375
24 (1)(a), (c) or (d).....100 months
- 25 (K) Rape in the second degree,
26 as defined in ORS 163.365.....75 months
- 27 (L) Sodomy in the first degree,
28 as defined in ORS 163.405
29 (1)(a), (c) or (d).....100 months
- 30 (M) Sodomy in the second
31 degree, as defined in
32 ORS 163.395.....75 months
- 33 (N) Unlawful sexual penetration
34 in the first degree, as
35 defined in ORS 163.411
36 (1)(a) or (c).100 months
- 37 (O) Unlawful sexual penetration
38 in the second degree, as
39 defined in ORS 163.408.75 months
- 40 (P) Sexual abuse in the first
41 degree, as defined in
42 ORS 163.427.75 months
- 43 (Q) Robbery in the first degree,
44 as defined in ORS 164.415.....90 months
- 45 (R) Robbery in the second

- 1 degree, as defined in
- 2 ORS 164.405.70 months
- 3 (b)(A) Arson in the first degree,
- 4 as defined in ORS 164.325,
- 5 when the offense represented
- 6 a threat of serious
- 7 physical injury.90 months
- 8 (B) Using a child in a display
- 9 of sexually explicit
- 10 conduct, as defined in
- 11 ORS 163.670.70 months
- 12 (C) Compelling prostitution,
- 13 as defined in ORS 167.017.70 months
- 14 (D) Rape in the first degree,
- 15 as defined in
- 16 ORS 163.375 (1)(b).300 months
- 17 (E) Sodomy in the first degree,
- 18 as defined in
- 19 ORS 163.405 (1)(b).300 months
- 20 (F) Unlawful sexual penetration
- 21 in the first degree, as
- 22 defined in
- 23 ORS 163.411 (1)(b).300 months
- 24 (G) Kidnapping in the first
- 25 degree, as defined in
- 26 ORS 163.235, when the
- 27 offense is committed in
- 28 furtherance of the commission
- 29 or attempted commission of an
- 30 offense listed in subparagraph
- 31 (D), (E) or (F) of
- 32 this paragraph.300 months
- 33 (c) **Aggravated vehicular**
- 34 **homicide, as defined in**
- 35 **section 1 of this 2007**
- 36 **Act.240 months**

37
38

39 **SECTION 6.** ORS 137.707 is amended to read:

40 137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
 41 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
 42 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
 43 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
 44 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed
 45 on or after October 4, 1997, **or when a person charged with the offense described in subsection**

1 **(4)(c) of this section is 15, 16 or 17 years of age at the time the offense is committed and the**
2 **offense is committed on or after the effective date of this 2007 Act,** the person shall be prose-
3 cuted as an adult in criminal court.

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

8 (2) When a person charged under this section is convicted of an offense listed in subsection (4)
9 of this section, the court shall impose at least the presumptive term of imprisonment provided for
10 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
11 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service
12 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary
13 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sen-
14 tence for any reason under ORS 421.121 or any other provision of law. ORS 138.012, 163.105 and
15 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated
16 murder under ORS 163.095 except that a person who was under 18 years of age at the time the of-
17 fense was committed is not subject to a sentence of death.

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

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



- 23 (a)(A) Murder, as defined in
24 ORS 163.115.....300 months
- 25 (B) Attempt or conspiracy
26 to commit aggravated
27 murder, as defined
28 in ORS 163.095.....120 months
- 29 (C) Attempt or conspiracy
30 to commit murder, as
31 defined in ORS 163.11590 months
- 32 (D) Manslaughter in the
33 first degree, as defined
34 in ORS 163.118.....120 months
- 35 (E) Manslaughter in the
36 second degree, as defined
37 in ORS 163.125.....75 months
- 38 (F) Assault in the first
39 degree, as defined
40 in ORS 163.185.....90 months
- 41 (G) Assault in the second
42 degree, as defined
43 in ORS 163.175.....70 months
- 44 (H) Kidnapping in the first
45 degree, as defined in

1	ORS 163.235	90 months
2	(I) Kidnapping in the second	
3	degree, as defined in	
4	ORS 163.225	70 months
5	(J) Rape in the first degree,	
6	as defined in ORS 163.375.....	100 months
7	(K) Rape in the second	
8	degree, as defined in	
9	ORS 163.365	75 months
10	(L) Sodomy in the first	
11	degree, as defined in	
12	ORS 163.405	100 months
13	(M) Sodomy in the second	
14	degree, as defined in	
15	ORS 163.395	75 months
16	(N) Unlawful sexual	
17	penetration in the first	
18	degree, as defined	
19	in ORS 163.411	100 months
20	(O) Unlawful sexual	
21	penetration in the	
22	second degree, as	
23	defined in ORS 163.408	75 months
24	(P) Sexual abuse in the first	
25	degree, as defined in	
26	ORS 163.427	75 months
27	(Q) Robbery in the first	
28	degree, as defined in	
29	ORS 164.415	90 months
30	(R) Robbery in the second	
31	degree, as defined in	
32	ORS 164.405	70 months
33	(b)(A) Arson in the first degree,	
34	as defined in	
35	ORS 164.325, when	
36	the offense represented	
37	a threat of serious	
38	physical injury.	90 months
39	(B) Using a child in a display	
40	of sexually explicit	
41	conduct, as defined in	
42	ORS 163.670.	70 months
43	(C) Compelling prostitution,	
44	as defined in ORS 167.017.....	70 months
45	(c) Aggravated vehicular	

1 **homicide, as defined in**
2 **section 1 of this 2007**
3 **Act.240 months**
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5
6 (5) If a person charged with an offense under this section is found guilty of a lesser included
7 offense and the lesser included offense is:

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

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

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

17 (i) Order that a presentence report be prepared;

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

20 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
21 419C.067 and 419C.411.

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

24 (i) Order that a presentence report be prepared;

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

27 (iii) Enter an order transferring the case to the juvenile court for disposition under ORS
28 419C.067 and 419C.411.

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

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

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

1 jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court
2 does not retain jurisdiction, the court shall:

3 (A) Order that a presentence report be prepared;

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

6 (C) Enter an order transferring the case to the juvenile court for disposition under ORS
7 419C.067 and 419C.411.

8 **SECTION 7.** ORS 181.085 is amended to read:

9 181.085. (1) The Department of State Police is authorized to:

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

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

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

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

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

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

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

30 (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using
31 a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to
32 163.427, 163.465 (1)(c), 163.525 and 163.670;

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

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

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

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

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

38 (G) Stalking, as defined in ORS 163.732;

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

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

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

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

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

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

1 (b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-
2 partment shall analyze samples from persons convicted of a felony under ORS 475.840, 475.846 to
3 475.894, 475.904, 475.906 or 475.914.

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

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

9 (4) The department may not transfer or disclose any sample, physical evidence or criminal
10 identification information obtained, stored or maintained under authority of this section, ORS
11 137.076, 161.325 or 419C.473 (1) except:

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

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

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

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

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

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

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

41 (b) Upon receipt of a written request for destruction pursuant to this section and a certified
42 copy of the court order reversing the conviction, judgment or order, the department shall destroy
43 any sample received from the person, any physical evidence obtained from that sample and any
44 criminal identification records pertaining to the person, unless the department determines that the
45 person has otherwise become obligated to submit a blood or buccal sample as a result of a separate

1 conviction, juvenile adjudication or finding of guilty except for insanity for an offense listed in ORS
2 137.076 (1). When the department destroys a sample, physical evidence or criminal identification
3 record under this paragraph, the department shall notify any public agency or person to whom the
4 sample, physical evidence or criminal identification information was transferred or disclosed under
5 subsection (4) of this section of the reversal of the conviction, judgment or order.

6 (c) The department is not required to destroy an item of physical evidence obtained from a blood
7 or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076,
8 161.325, 181.085, 419A.260 and 419C.473 (1) would thereby be destroyed. Notwithstanding this sub-
9 section, no sample, physical evidence or criminal identification record is affected by an order to set
10 aside a conviction under ORS 137.225.

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

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

14 419A.260. (1) As used in this section and ORS 419A.262:

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

19 (b) "Expunction" means:

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

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

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

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

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

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

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

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

41 (E) Records related to a support obligation;

42 (F) Medical records;

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

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

- 1 (I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;
- 2 (J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be
- 3 within the jurisdiction of the court based upon the person's commission of an act which if done by
- 4 an adult would constitute one of the following offenses:
- 5 (i) Aggravated murder under ORS 163.095;
- 6 (ii) Murder under ORS 163.115;
- 7 (iii) Attempt, solicitation or conspiracy to commit murder or aggravated murder;
- 8 (iv) Manslaughter in the first degree under ORS 163.118;
- 9 (v) Manslaughter in the second degree under ORS 163.125;
- 10 (vi) Criminally negligent homicide under ORS 163.145;
- 11 (vii) Assault in the first degree under ORS 163.185;
- 12 (viii) Criminal mistreatment in the first degree under ORS 163.205;
- 13 (ix) Kidnapping in the first degree under ORS 163.235;
- 14 (x) Rape in the third degree under ORS 163.355;
- 15 (xi) Rape in the second degree under ORS 163.365;
- 16 (xii) Rape in the first degree under ORS 163.375;
- 17 (xiii) Sodomy in the third degree under ORS 163.385;
- 18 (xiv) Sodomy in the second degree under ORS 163.395;
- 19 (xv) Sodomy in the first degree under ORS 163.405;
- 20 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;
- 21 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
- 22 (xviii) Sexual abuse in the third degree under ORS 163.415;
- 23 (xix) Sexual abuse in the second degree under ORS 163.425;
- 24 (xx) Sexual abuse in the first degree under ORS 163.427;
- 25 (xxi) Promoting prostitution under ORS 167.012;
- 26 (xxii) Compelling prostitution under ORS 167.017; [or]
- 27 **(xxiii) Aggravated vehicular homicide under section 1 of this 2007 Act; or**
- 28 [*xxiii*] **(xxiv)** An attempt to commit a crime listed in this subparagraph other than
- 29 manslaughter in the second degree and criminally negligent homicide;
- 30 (K) Blood samples, buccal samples and other physical evidence and identification information
- 31 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,
- 32 181.085 or 419C.473; or
- 33 (L) Records maintained in the Law Enforcement Data System under ORS 181.592.
- 34 (e) "Termination" means:
- 35 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,
- 36 the final disposition of a case by informal means, by a decision not to place the person on probation
- 37 or make the person a ward of the court after the person has been found to be within the court's
- 38 jurisdiction, or by a discontinuance of probation or of the court's wardship.
- 39 (B) For a person who is the subject of a record kept by a law enforcement or public investi-
- 40 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final
- 41 disposition of the person's most recent contact with a law enforcement agency.
- 42 (2) The juvenile court or juvenile department shall make reasonable effort to provide written
- 43 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or
- 44 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's
- 45 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the

1 legal effect of an expunction order and the procedures for seeking relief from the duty to report as
2 a sex offender provided under ORS 181.607, at the following times:

3 (a) At any dispositional hearing or at the time of entering into a formal accountability agree-
4 ment;

5 (b) At the time of termination;

6 (c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile
7 department or motion on a juvenile court; and

8 (d) At the time of notice of execution of an expunction order.

9 **SECTION 9.** ORS 807.252 is amended to read:

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

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

15 (b) Reckless driving, as defined in ORS 811.140;

16 (c) Driving while under the influence of intoxicants, as defined in ORS 813.010;

17 (d) Failure to perform the duties of a driver involved in an accident or collision, as described
18 in ORS 811.700 or 811.705;

19 (e) Criminal driving while suspended or revoked, as defined in ORS 811.182; [or]

20 (f) Fleeing or attempting to elude a police officer, as defined in ORS 811.540; **or**

21 **(g) Aggravated vehicular homicide, as defined in section 1 of this 2007 Act.**

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

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

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

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

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

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

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

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

44 (4) A hardship permit issued to a person whose driving privileges are suspended because of a
45 conviction for assault in the second, third or fourth degree shall limit the person's driving privileges:

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

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

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

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

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

13 (a) Reckless driving under ORS 811.140.

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

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

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

17 (e) Driving while suspended or revoked under ORS 811.175 or 811.182.

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

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

21 **SECTION 10.** ORS 809.409 is amended to read:

22 809.409. (1)(a) Upon receipt of a record of conviction of an offense described in this section, the
23 Department of Transportation shall revoke the driving privileges of the person convicted.

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

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

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

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

39 (b) If the sentence does not include incarceration, eight years from the date the department re-
40 voked the privileges under this subsection.

41 (3) The department shall take action under subsection (1) of this section upon receipt of a record
42 of conviction of failure to perform the duties of a driver to injured persons under ORS 811.705. The
43 department shall revoke driving privileges under this subsection for a period of five years if the
44 court indicates on the record of conviction that a person was killed as a result of the accident. The
45 person may apply for reinstatement of privileges five years after the date the person was released

1 from incarceration, if the sentence includes incarceration. If the sentence does not include
2 incarceration, the person may apply for reinstatement five years from the date the revocation was
3 imposed under this subsection.

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

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

9 **SECTION 11.** ORS 809.600 is amended to read:

10 809.600. This section establishes the [*number and kind of offenses*] **kinds of offenses and the**
11 **number of convictions** necessary to revoke the driving privileges of a person as a habitual offender
12 under ORS 809.640. The [*number and kind of offenses*] **kinds of offenses and the number of con-**
13 **victions** necessary to revoke driving privileges as a habitual offender are as follows:

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

18 (a) Any degree of murder, manslaughter, criminally negligent homicide, assault, recklessly en-
19 dangering another person, menacing or criminal mischief resulting from the operation of a motor
20 vehicle.

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

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

23 (d) Reckless driving under ORS 811.140.

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

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

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

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

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

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

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

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

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

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

40 **SECTION 12.** ORS 809.730 is amended to read:

41 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is
42 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS
43 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been
44 convicted of:

45 (a) Driving while under the influence of intoxicants in violation of ORS 813.010, or its statutory

1 counterpart in another jurisdiction; [or]

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

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

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

7 **SECTION 13.** ORS 811.182 is amended to read:

8 811.182. (1) A person commits the offense of criminal driving while suspended or revoked if the
9 person violates ORS 811.175 and the suspension or revocation is one described in this section, or if
10 the hardship or probationary permit violated is based upon a suspension or revocation described in
11 subsection (3) or (4) of this section.

12 (2) Affirmative defenses to the offense described in this section are established under ORS
13 811.180.

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

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

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

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

26 (c) A suspension under ORS 813.410 resulting from refusal to take a test prescribed in ORS
27 813.100 or for taking a breath or blood test the result of which discloses a blood alcohol content
28 of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **SECTION 14.** ORS 813.215 is amended to read:

13 813.215. A defendant is eligible for diversion if:

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

18 (2) The defendant has not been convicted of an offense described in subsection (1) of this section
19 within the period beginning 10 years before the date of the commission of the present offense and
20 ending on the date the defendant filed the petition for a driving while under the influence of
21 intoxicants diversion agreement;

22 (3) The defendant was not participating in a driving while under the influence of intoxicants
23 diversion program or in any similar alcohol or drug rehabilitation program, other than a program
24 entered into as a result of the charge for the present offense, in this state or in any other jurisdic-
25 tion on the date the defendant filed the petition for a driving while under the influence of
26 intoxicants diversion agreement;

27 (4) The defendant did not participate in a diversion or rehabilitation program described in sub-
28 section (3) of this section, other than a program entered into as a result of the charge for the
29 present offense, within the period beginning 10 years before the date of the commission of the
30 present offense and ending on the date the defendant filed the petition for a driving while under the
31 influence of intoxicants diversion agreement;

32 (5) The defendant had no charge of an offense **of aggravated vehicular homicide or** of murder,
33 manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor
34 vehicle pending in this state or in any other jurisdiction on the date the defendant filed the petition
35 for a driving while under the influence of intoxicants diversion agreement;

36 (6) The defendant has not been convicted of an offense described in subsection (5) of this section
37 within the period beginning 10 years before the date of the commission of the present offense and
38 ending on the date the defendant filed the petition for a driving while under the influence of
39 intoxicants diversion agreement;

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

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

42 (9) The present driving while under the influence of intoxicants offense did not involve an ac-
43 cident resulting in:

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

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

1 **SECTION 15.** ORS 813.220 is amended to read:

2 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request
3 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether
4 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-
5 ment. In making a determination under this section, the court:

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

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

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

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

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

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

20 (7) Shall deny the petition for a driving while under the influence of intoxicants diversion
21 agreement if the defendant was charged with or convicted of an offense of driving while under the
22 influence of intoxicants or its statutory counterpart in any jurisdiction after the date the defendant
23 filed the petition.

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

29 (9) Shall deny the petition for a driving while under the influence of intoxicants diversion
30 agreement if the defendant was charged with or convicted of an offense **of aggravated vehicular**
31 **homicide or** of murder, manslaughter, criminally negligent homicide or assault that resulted from
32 the operation of a motor vehicle in this state or in any other jurisdiction after the date the de-
33 fendant filed the petition.

34 **SECTION 16.** ORS 161.005 is amended to read:

35 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
36 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,
37 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
38 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.160 to 163.208, 163.215 to 163.257, 163.275,
39 163.285, 163.305 to 163.467, 163.505 to 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.140,
40 164.205 to 164.270, 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.877, 165.002 to 165.109, 165.805,
41 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.060 to 167.100, 167.117,
42 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 and 167.820 **and sec-**
43 **tion 1 of this 2007 Act**, shall be known and may be cited as Oregon Criminal Code of 1971.