

A-Engrossed
House Bill 3314

Ordered by the House May 8
Including House Amendments dated May 8

Sponsored by COMMITTEE ON JUDICIARY (at the request of Bicycle Transportation Alliance)

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 offense of infliction of serious physical injury or death to vulnerable user of public way. Punishes by [*maximum of one year's imprisonment, \$6,250 fine, or both*] **fine of \$12,500.**

Creates [*driving diversion*] **driver improvement agreement. Establishes fee for filing petition to participate in driver improvement agreement and requires defendant to pay specified amount to agency or organization providing driver improvement program.**

Creates Driver Improvement Program Fund. Continuously appropriates moneys in fund to Department of Transportation to pay expenses and costs related to driver improvement program.

A BILL FOR AN ACT

1
2 Relating to vehicular contact with vulnerable user of a public way; creating new provisions;
3 amending ORS 809.411; and appropriating money.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of the Oregon Vehicle**
6 **Code.**

7 **SECTION 2. (1) For the purposes of this section:**

8 (a) "Serious physical injury" has the meaning given in ORS 161.015.

9 (b) "Vulnerable user of a public way" means a pedestrian, a person riding an animal or
10 a person operating any of the following on a public way, crosswalk or shoulder of the high-
11 way:

12 (A) A vehicle registered as a farm vehicle under ORS 805.300 without an enclosed shell;

13 (B) A skateboard;

14 (C) Roller skates;

15 (D) In-line skates; or

16 (E) A bicycle.

17 (2) A person commits the offense of infliction of serious physical injury or death to a
18 vulnerable user of a public way if the person:

19 (a) Operates a vehicle upon the highway in a careless or reckless manner; and

20 (b) Causes serious physical injury or death to a vulnerable user of a public way.

21 (3) The offense described in this section, infliction of serious physical injury or death to
22 a vulnerable user of a public way, is a Class A traffic violation.

23 (4) In addition to any other penalty, a person convicted of infliction of serious physical
24 injury or death to a vulnerable user of a public way is subject to:

25 (a) Suspension of driving privileges as provided in ORS 809.411; and

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) Notwithstanding ORS 153.018, a fine of \$12,500.**

2 **SECTION 3.** ORS 809.411 is amended to read:

3 809.411. (1)(a) Upon receipt of a record of conviction for an offense described in this section, the
4 Department of Transportation shall suspend the driving privileges of the person convicted.

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

7 (c) Except as otherwise provided in subsections (7), (8), (9), [and] (10) **and (11)** of this section,
8 the suspension shall be for the period of time described in Schedule I of ORS 809.428, except that
9 the department may not reinstate driving privileges of any person whose privileges are suspended
10 under this section until the person complies with future responsibility filings.

11 (2) The department shall take action under subsection (1) of this section upon receipt of a record
12 of conviction of any degree of recklessly endangering another person, menacing or criminal mischief
13 resulting from the operation of a motor vehicle.

14 (3) The department shall take action under subsection (1) of this section upon receipt of a record
15 of conviction of reckless driving under ORS 811.140.

16 (4) The department shall take action under subsection (1) of this section upon receipt of a record
17 of conviction of failure to perform duties of a driver when property is damaged under ORS 811.700.

18 (5) The department shall take action under subsection (1) of this section upon receipt of a record
19 of conviction of fleeing or attempting to elude a police officer under ORS 811.540.

20 (6) The department shall take action under subsection (1) of this section upon receipt of a record
21 of conviction of reckless endangerment of highway workers under ORS 811.231 (1).

22 (7) The department shall take action under subsection (1) of this section upon receipt of a record
23 of conviction of theft under ORS 164.043, 164.045 or 164.055 when the theft was of gasoline. A sus-
24 pension under this subsection shall continue for a period of six months from the date of suspension.

25 (8) The department shall take action under subsection (1) of this section upon receipt of a record
26 of conviction of criminal trespass under ORS 164.245 that involves the operation of a motor vehicle.
27 A suspension under this subsection shall continue for a period of six months from the date of sus-
28 pension.

29 (9) The department shall take action under subsection (1) of this section upon receipt of a record
30 of conviction of an offense described in ORS 809.310. A suspension under this subsection shall con-
31 tinue for a period of one year from the date of the suspension.

32 (10)(a) The department shall take action under subsection (1) of this section upon receipt of a
33 record of conviction of assault in the second, third or fourth degree resulting from the operation of
34 a motor vehicle.

35 (b) A person who is convicted of assault in the second degree and whose driving privileges are
36 suspended under this subsection may apply for reinstatement of driving privileges eight years from
37 the date the person is released from incarceration for the conviction, if the sentence includes
38 incarceration. If the sentence for the conviction does not include incarceration, the person may ap-
39 ply for reinstatement of driving privileges eight years from the date the department suspended the
40 privileges under this subsection.

41 (c) A person who is convicted of assault in the third degree and whose driving privileges are
42 suspended under this subsection may apply for reinstatement of driving privileges five years from
43 the date the person is released from incarceration for the conviction, if the sentence includes
44 incarceration. If the sentence for the conviction does not include incarceration, the person may ap-
45 ply for reinstatement of driving privileges five years from the date the department suspended the

1 privileges under this subsection.

2 (d) A person who is convicted of assault in the fourth degree and whose driving privileges are
3 suspended under this subsection may apply for reinstatement of driving privileges one year from the
4 date the person is released from incarceration for the conviction, if the sentence includes
5 incarceration. If the sentence for the conviction does not include incarceration, the person may ap-
6 ply for reinstatement of driving privileges one year from the date the department suspended the
7 privileges under this subsection.

8 **(11) The department shall take action under subsection (1) of this section upon receipt**
9 **of a record of conviction of infliction of serious physical injury or death to a vulnerable user**
10 **of a public way under section 2 of this 2007 Act. A suspension under this subsection shall be**
11 **for the period of time described in Schedule II of ORS 809.428 unless the person participates**
12 **in a driver improvement agreement under section 4 of this 2007 Act.**

13 **SECTION 4. (1) The court shall inform at arraignment a defendant charged with the of-**
14 **fense of infliction of serious physical injury or death to a vulnerable user of a public way that**
15 **a driver improvement agreement may be available if the offense for which the defendant is**
16 **before the court is the defendant's first offense of infliction of serious physical injury or**
17 **death to a vulnerable user of a public way and the defendant files with the court a petition**
18 **for a driver improvement agreement.**

19 **(2) The petition form for a driver improvement agreement shall be available to a de-**
20 **fendant at the court.**

21 **(3) The form of the petition for a driver improvement agreement and the information and**
22 **blanks contained therein shall be determined by the Supreme Court under ORS 1.525. The**
23 **petition form made available to a defendant by any state court shall conform to the re-**
24 **quirements adopted by the Supreme Court.**

25 **(4) In addition to any other information required by the Supreme Court to be contained**
26 **in a petition for a driver improvement agreement, the petition shall include:**

27 **(a) A waiver by the defendant of the right to a speedy trial or sentencing in any subse-**
28 **quent action upon the charge;**

29 **(b) An agreement by the defendant to complete a driver improvement program that in-**
30 **cludes training in the safe operation of a motor vehicle when vulnerable users of a public**
31 **way are in the vicinity. The driver improvement program shall be approved by the court;**

32 **(c) An agreement by the defendant to comply fully with the laws of this state regarding**
33 **the operation of a motor vehicle;**

34 **(d) An agreement by the defendant to complete a program of community service ap-**
35 **proved by the court that includes at least 200 hours of activities related to driver improve-**
36 **ment and providing public education on traffic safety;**

37 **(e) A notice to the defendant that the agreement will be considered to be violated if the**
38 **court receives notice that the defendant at any time during the agreement period committed**
39 **a violation of the traffic laws of this state;**

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

42 **(g) An agreement by the defendant to demonstrate to the department that the defendant**
43 **is qualified to safely operate a motor vehicle by completing the procedures in ORS 807.090 for**
44 **establishing eligibility for a driver license notwithstanding a mental or physical condition or**
45 **impairment.**

1 **SECTION 5.** (1) After an accusatory instrument has been filed charging the defendant
2 with the offense of infliction of serious physical injury or death to a vulnerable user of a
3 public way, a defendant may file with the court a petition for a driver improvement agree-
4 ment described in section 4 of this 2007 Act. The petition:

5 (a) Must be filed within 30 days after the date of the defendant's first appearance on the
6 summons, unless a later filing date is allowed by the court upon a showing of good cause.

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

10 (2) The defendant shall pay to the court, at the time of filing a petition for a driver im-
11 provement agreement, a filing fee established in section 10 of this 2007 Act. The court may
12 make provision for payment of the filing fee by the defendant on an installment basis. The
13 court may waive all or part of the filing fee in cases involving indigent defendants. The filing
14 fee paid to the court under this subsection shall be retained by the court if the petition is
15 allowed. The filing fee shall be distributed as provided by section 10 of this 2007 Act.

16 (3) The defendant shall cause a copy of the petition for a driver improvement agreement
17 to be served upon the district attorney. The district attorney may file with the court, within
18 15 days after the date of service, a written objection to the petition and a request for a
19 hearing.

20 **SECTION 6.** After the time for requesting a hearing under section 5 of this 2007 Act has
21 expired with no request for a hearing, or after a hearing requested under section 5 of this
22 2007 Act, the court shall allow the petition for a driver improvement agreement if the court
23 finds that the offense for which the defendant is before the court is the defendant's first
24 offense of infliction of serious physical injury or death to a vulnerable user of a public way.

25 **SECTION 7.** (1) When the court allows a petition for a driver improvement agreement
26 filed as provided in section 5 of this 2007 Act, the judge taking that action shall sign the pe-
27 tition and indicate thereon the date of allowance of the agreement period, the length of the
28 agreement period and the date upon which the infliction of serious physical injury or death
29 to a vulnerable user of a public way offense occurred. The petition, when signed and dated,
30 becomes the agreement between the defendant and the court. The court shall make the
31 agreement a part of the record of the case.

32 (2) A driver improvement agreement shall be for a period of one year after the date the
33 court allows the petition. During the agreement period, the court shall stay the infliction of
34 serious physical injury or death to a vulnerable user of a public way offense proceeding
35 pending completion of the agreement or its termination.

36 (3) When the court denies a petition for a driver improvement agreement, it shall con-
37 tinue the offense proceeding against the defendant.

38 **SECTION 8.** (1) At any time after the conclusion of the period of a driver improvement
39 agreement described in section 7 of this 2007 Act, a defendant who has fully complied with
40 and performed the conditions of the agreement may apply by motion to the court wherein
41 the agreement was entered for an order dismissing the charge with prejudice.

42 (2) The defendant shall cause to be served on the district attorney a copy of the motion
43 for entry of an order dismissing with prejudice the charge of infliction of serious physical
44 injury or death to a vulnerable user of a public way. The motion shall be served on the dis-
45 trict attorney at the time it is filed with the court. The district attorney may contest the

1 motion.

2 (3) If the defendant does not appear as provided by subsection (1) of this section within
3 six months after the conclusion of the agreement period, and if the court finds that the de-
4 fendant fully complied with and performed the conditions of the driver improvement agree-
5 ment, and if it gives notice of that finding to the district attorney, the court may on its own
6 motion enter an order dismissing the charge of infliction of serious physical injury or death
7 to a vulnerable user of a public way with prejudice.

8 **SECTION 9.** (1) At any time before the court dismisses with prejudice the charge of in-
9 fliction of serious physical injury or death to a vulnerable user of a public way, the court on
10 its own motion or on the motion of the district attorney may issue an order requiring the
11 defendant to appear and show cause why the court should not terminate the driver im-
12 provement agreement. The order to show cause shall state the reasons for the proposed
13 termination and shall set an appearance date.

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

18 (3) The court shall terminate the driver improvement agreement and continue the of-
19 fense proceeding if:

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

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

23 (4) If the court terminates the driver improvement agreement and continues the offense
24 proceeding, the court:

25 (a) On the defendant's motion and for good cause shown, may reinstate the agreement
26 at any time before conviction, acquittal or dismissal with prejudice.

27 (b) If the defendant is convicted, may take into account at time of sentencing any partial
28 fulfillment by the defendant of the terms of the agreement.

29 (5) The court shall terminate a driver improvement agreement under this subsection for
30 any of the following reasons:

31 (a) If the defendant has failed to fulfill the terms of the agreement.

32 (b) If the defendant did not qualify for the agreement.

33 **SECTION 10.** (1) The filing fee paid by a defendant at the time of filing a petition for a
34 driver improvement agreement as provided in section 5 of this 2007 Act shall be \$237 and
35 shall be ordered paid as follows if the petition is allowed:

36 (a) \$112 to be credited and distributed under ORS 137.295 as an obligation payable to the
37 state;

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

40 (c) \$25 to be paid to the Department of Transportation for deposit in the Driver Im-
41 provement Program Fund created under section 11 of this 2007 Act, to be used for purposes
42 of the fund.

43 (2) In addition to the filing fee under subsection (1) of this section, the court shall order
44 the defendant to pay \$250 directly to the agency or organization providing the driver im-
45 provement program.

1 **SECTION 11.** The Driver Improvement Program Fund is created. The fund consists of
2 moneys placed in the fund under section 10 of this 2007 Act and as otherwise provided by law
3 and of gifts and grants made to the fund for carrying out the purposes of the fund. The
4 moneys in the fund are continuously appropriated to the Department of Transportation and
5 may be used only for the following purposes:

6 (1) To pay for providing driver improvement courses for individuals who enter driver
7 improvement agreements described in section 4 of this 2007 Act and who are found to be
8 indigent. Payment shall be made as provided by the Department of Transportation by rule
9 to agencies or organizations providing the driver improvement program.

10 (2) To pay for the driver improvement program.

11 (3) To pay the cost of administration of the fund by the Department of Transportation.

12 (4) To pay for special services required to enable a person with a disability, or a person
13 whose proficiency in the use of English is limited because of the person's national origin, to
14 participate in driver improvement programs that are required by driver improvement
15 agreements under section 4 of this 2007 Act. This subsection applies:

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

17 (b) Only to special services required solely because of the person's disability or limited
18 proficiency in the use of English.

19