

House Bill 3314

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 **as introduced**.

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.
Creates driving diversion agreement.

A BILL FOR AN ACT

1
2 Relating to vehicular contact with vulnerable user of a public way; creating new provisions; and
3 amending ORS 135.905 and 809.411.

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:

19 (a) The person operates a motor vehicle upon the highway in a manner that results in
20 contact between the person's motor vehicle and a vulnerable user of a public way; and

21 (b) The contact causes serious physical injury or death to the vulnerable user of a public
22 way.

23 (3) The offense described in this section, infliction of serious physical injury or death to
24 a vulnerable user of a public way, is a Class A misdemeanor.

25 (4) In addition to any other penalty, a person convicted of infliction of serious physical
26 injury or death to a vulnerable user of a public way is subject to suspension of driving priv-
27 ileges as provided in ORS 809.411.

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

29 809.411. (1)(a) Upon receipt of a record of conviction for an offense described in this section, the
30 Department of Transportation shall suspend the driving privileges of the person convicted.

31 (b) A person is entitled to administrative review under ORS 809.440 of a suspension under this

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 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ply for reinstatement of driving privileges one year from the date the department suspended the
2 privileges under this subsection.

3 **(11) The department shall take action under subsection (1) of this section upon receipt**
4 **of a record of conviction of infliction of serious physical injury or death to a vulnerable user**
5 **of a public way under section 2 of this 2007 Act. A suspension under this subsection shall be**
6 **for the period of time described in Schedule II of ORS 809.428 unless the person participates**
7 **in a driving diversion agreement under section 4 of this 2007 Act. If the person participates**
8 **in a driving diversion agreement, then the period of suspension shall be for the period of time**
9 **described in Schedule I of ORS 809.428.**

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

16 **(2) The petition form for a driving diversion agreement shall be available to a defendant**
17 **at the court.**

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

22 **(4) In addition to any other information required by the Supreme Court to be contained**
23 **in a petition for a driving diversion agreement, the petition shall include:**

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

26 **(b) An agreement by the defendant to complete a driver improvement program that in-**
27 **cludes training in the safe operation of a motor vehicle when vulnerable users of a public**
28 **way are in the vicinity. The driver improvement program shall be conducted by the Depart-**
29 **ment of Transportation or other rehabilitative program;**

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

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

35 **(e) A notice to the defendant that the diversion agreement will be considered to be vio-**
36 **lated if the court receives notice that the defendant at any time during the diversion period**
37 **committed a violation of the traffic laws of this state;**

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

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

44 **(h) A waiver by the defendant of any former jeopardy rights under the federal and state**
45 **Constitutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any**

1 other offenses based upon the same criminal episode.

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

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

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

11 (2) The defendant shall pay to the court, at the time of filing a petition for a driving di-
 12 version agreement, a filing fee as specified in ORS 135.921. The court may make provision for
 13 payment of the filing fee by the defendant on an installment basis. The court may waive all
 14 or part of the filing fee in cases involving indigent defendants. The filing fee paid to the court
 15 under this subsection shall be retained by the court if the petition is allowed. The filing fee
 16 shall be distributed as provided in ORS 135.921.

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

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

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

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

37 (3) When the court denies a petition for a driving diversion agreement, it shall continue
 38 the offense proceeding against the defendant.

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

44 (2) The defendant shall cause to be served on the district attorney a copy of the motion
 45 for entry of an order dismissing with prejudice the charge of infliction of serious physical

1 injury or death to a vulnerable user of a public way. The motion shall be served on the dis-
 2 trict attorney at the time it is filed with the court. The district attorney may contest the
 3 motion.

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

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

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

20 (3) The court shall terminate the driving diversion agreement and continue the offense
 21 proceeding if:

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

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

25 (4) If the court terminates the driving diversion agreement and continues the offense
 26 proceeding, the court:

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

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

31 (5) The court shall terminate a driving diversion agreement under this subsection for any
 32 of the following reasons:

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

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

35 **SECTION 10.** ORS 135.905 is amended to read:

36 135.905. (1) Whenever a defendant accused of committing a crime participates in a diversion
 37 agreement under ORS 135.881 to 135.901 or under ORS 813.210, 813.215, 813.220 and 813.230 **or un-**
 38 **der sections 4 to 9 of this 2007 Act**, the defendant, as a condition of the diversion, shall pay the
 39 unitary assessment for which the defendant would have been liable under ORS 137.290 if the de-
 40 fendant had been convicted. The district attorney, or the city attorney if the case is prosecuted by
 41 the city attorney, shall include in the diversion agreement a provision setting forth the defendant's
 42 obligation. If the diversion is terminated and criminal proceedings are resumed against defendant,
 43 any payment made by the defendant under this subsection shall be refunded upon subsequent ac-
 44 quittal of the defendant or dismissal of the case.

45 (2) Assessments under this section shall be paid within 90 days of imposition, unless the court

1 allows payment at a later time. The assessments shall be paid to the clerk of the court, who shall
2 account for and distribute the moneys as provided in ORS 137.293 and 137.295.
3 _____