

Senate Bill 1058

Sponsored by Senator PROZANSKI, Representative READ; Senators ATKINSON, AVAKIAN, BROWN, DECKERT, MONROE, STARR, Representatives BARKER, DINGFELDER, HOLVEY, KRUMMEL, MACPHERSON, OLSON, TOMEI (at the request of Thomas Jefferson in memory of his wife, Jane Higdon; Mary O'Donnell in memory of her husband, Tim O'Donnell)

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 crime of vehicular homicide. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

A BILL FOR AN ACT

Relating to vehicular homicide; creating new provisions; and amending ORS 163.005, 181.085, 419A.260, 807.252, 809.404, 809.409, 809.413, 809.600, 809.730, 811.182, 813.130, 813.215 and 813.220.

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

SECTION 1. (1) Criminal homicide constitutes vehicular homicide when a person negligently operates a motor vehicle or a boat in a manner that causes the death of another human being.

(2) As used in this section, "negligence" means that a person fails to be aware of a risk that death will occur. The risk must be of such a nature and degree that the failure to be aware of it constitutes a deviation from the standard of care that a reasonable person would observe in the situation.

(3) The commission of acts constituting an offense are admissible to prove negligence under this section if the acts are a cause of the homicide.

(4) Vehicular homicide is a Class C felony.

SECTION 2. ORS 163.005 is amended to read:

163.005. (1) A person commits criminal homicide if, without justification or excuse, the person:

(a) Intentionally, knowingly, recklessly or with criminal negligence causes the death of another human being[.]; or

(b) Negligently causes the death of another human being while operating a motor vehicle or a boat under section 1 of this 2007 Act.

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

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

SECTION 3. ORS 181.085 is amended to read:

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

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

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

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

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

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

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

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

18 (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using
 19 a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to
 20 163.427, 163.465 (1)(c), 163.525 and 163.670;

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

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

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

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

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

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

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

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

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

30 **(K) Vehicular homicide, as defined in section 1 of this 2007 Act;**

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

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

34 (b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-
 35 partment shall analyze samples from persons convicted of a felony under ORS 475.840, 475.846 to
 36 475.894, 475.904, 475.906 or 475.914.

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

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

42 (4) The department may not transfer or disclose any sample, physical evidence or criminal
 43 identification information obtained, stored or maintained under authority of this section, ORS
 44 137.076, 161.325 or 419C.473 (1) except:

45 (a) To a law enforcement agency as defined in ORS 181.010, a district attorney or the Criminal

1 Justice Division of the Department of Justice for the purpose of establishing the identity of a person
2 in the course of a criminal investigation or proceeding;

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

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

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

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

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

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

29 (b) Upon receipt of a written request for destruction pursuant to this section and a certified
30 copy of the court order reversing the conviction, judgment or order, the department shall destroy
31 any sample received from the person, any physical evidence obtained from that sample and any
32 criminal identification records pertaining to the person, unless the department determines that the
33 person has otherwise become obligated to submit a blood or buccal sample as a result of a separate
34 conviction, juvenile adjudication or finding of guilty except for insanity for an offense listed in ORS
35 137.076 (1). When the department destroys a sample, physical evidence or criminal identification
36 record under this paragraph, the department shall notify any public agency or person to whom the
37 sample, physical evidence or criminal identification information was transferred or disclosed under
38 subsection (4) of this section of the reversal of the conviction, judgment or order.

39 (c) The department is not required to destroy an item of physical evidence obtained from a blood
40 or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076,
41 161.325, 181.085, 419A.260 and 419C.473 (1) would thereby be destroyed. Notwithstanding this sub-
42 section, no sample, physical evidence or criminal identification record is affected by an order to set
43 aside a conviction under ORS 137.225.

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

1 **SECTION 4.** ORS 419A.260 is amended to read:

2 419A.260. (1) As used in this section and ORS 419A.262:

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

7 (b) "Expunction" means:

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

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

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

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

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

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

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

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

29 (E) Records related to a support obligation;

30 (F) Medical records;

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

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

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

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

38 (i) Aggravated murder under ORS 163.095;

39 (ii) Murder under ORS 163.115;

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

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

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

43 (vi) Criminally negligent homicide under ORS 163.145;

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

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

- 1 (ix) Kidnapping in the first degree under ORS 163.235;
- 2 (x) Rape in the third degree under ORS 163.355;
- 3 (xi) Rape in the second degree under ORS 163.365;
- 4 (xii) Rape in the first degree under ORS 163.375;
- 5 (xiii) Sodomy in the third degree under ORS 163.385;
- 6 (xiv) Sodomy in the second degree under ORS 163.395;
- 7 (xv) Sodomy in the first degree under ORS 163.405;
- 8 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;
- 9 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
- 10 (xviii) Sexual abuse in the third degree under ORS 163.415;
- 11 (xix) Sexual abuse in the second degree under ORS 163.425;
- 12 (xx) Sexual abuse in the first degree under ORS 163.427;
- 13 (xxi) Promoting prostitution under ORS 167.012;
- 14 (xxii) Compelling prostitution under ORS 167.017; [or]
- 15 **(xxiii) Vehicular homicide under section 1 of this 2007 Act; or**
- 16 [(xxiii)] **(xxiv)** An attempt to commit a crime listed in this subparagraph other than
- 17 manslaughter in the second degree and criminally negligent homicide;
- 18 (K) Blood samples, buccal samples and other physical evidence and identification information
- 19 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,
- 20 181.085 or 419C.473; or
- 21 (L) Records maintained in the Law Enforcement Data System under ORS 181.592.
- 22 (e) "Termination" means:
- 23 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,
- 24 the final disposition of a case by informal means, by a decision not to place the person on probation
- 25 or make the person a ward of the court after the person has been found to be within the court's
- 26 jurisdiction, or by a discontinuance of probation or of the court's wardship.
- 27 (B) For a person who is the subject of a record kept by a law enforcement or public investi-
- 28 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final
- 29 disposition of the person's most recent contact with a law enforcement agency.
- 30 (2) The juvenile court or juvenile department shall make reasonable effort to provide written
- 31 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or
- 32 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's
- 33 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the
- 34 legal effect of an expunction order and the procedures for seeking relief from the duty to report as
- 35 a sex offender provided under ORS 181.607, at the following times:
- 36 (a) At any dispositional hearing or at the time of entering into a formal accountability agree-
- 37 ment;
- 38 (b) At the time of termination;
- 39 (c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile
- 40 department or motion on a juvenile court; and
- 41 (d) At the time of notice of execution of an expunction order.
- 42 **SECTION 5.** ORS 807.252 is amended to read:
- 43 807.252. (1) The Department of Transportation may not issue a hardship permit to a person
- 44 whose driving privileges are suspended for conviction of assault in the second, third or fourth degree
- 45 if the person, within 10 years preceding application for the permit, has been convicted of:

1 (a) Any degree of murder, manslaughter, criminally negligent homicide, **vehicular homicide** or
 2 assault resulting from the operation of a motor vehicle;

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

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

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

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

8 (f) Fleeing or attempting to elude a police officer, as defined in ORS 811.540.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (a) Reckless driving under ORS 811.140.

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

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

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

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

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

7 **SECTION 6.** ORS 809.404 is amended to read:

8 809.404. (1) The Department of Transportation shall suspend a person's commercial driver li-
9 cense or right to apply for a commercial driver license if the person is disqualified from holding a
10 commercial driver license under this section. A person is entitled to administrative review under
11 ORS 809.440 of a suspension under this section.

12 (2) A person is disqualified from holding a commercial driver license if the person has two or
13 more of any of the following in any combination:

14 (a) A record of conviction for driving while under the influence of intoxicants under ORS 813.010
15 and the person was driving a motor vehicle or a commercial motor vehicle at the time of the offense.

16 (b) A suspension of the person's commercial driver license under ORS 813.410 for refusal to
17 submit to a test under ORS 813.100 and the person was driving a motor vehicle or a commercial
18 motor vehicle at the time of the offense.

19 (c) A suspension of the person's commercial driver license under ORS 813.410 because the per-
20 son submitted to a breath or blood test and the person's blood, as shown by the test, had 0.04 per-
21 cent or more by weight of alcohol and the person was driving a commercial motor vehicle at the
22 time of the offense.

23 (d) A record of conviction under ORS 811.700 or 811.705 of failure to perform the duties of a
24 driver and the person was driving a motor vehicle or a commercial motor vehicle at the time of the
25 offense.

26 (e) A record of conviction of a crime punishable as a felony, other than a felony described in
27 subsection (3) of this section, and the person was driving a motor vehicle or a commercial motor
28 vehicle at the time of the offense.

29 (f) A record of conviction for driving a commercial motor vehicle while, as a result of prior vi-
30 olations committed while driving a commercial motor vehicle, the person's commercial driver license
31 had been suspended or revoked.

32 (g) A record of conviction of any degree of murder, manslaughter, [or] criminally negligent
33 homicide **or vehicular homicide** resulting from the operation of a commercial motor vehicle or as-
34 sult in the first degree resulting from the operation of a commercial motor vehicle.

35 (3) A person is disqualified from holding a commercial driver license if the person has a record
36 of conviction for a crime punishable as a felony that involves the manufacturing, distributing or
37 dispensing of a controlled substance, as defined in ORS 475.005, and in which a motor vehicle or a
38 commercial motor vehicle was used. Notwithstanding subsection (4) of this section, the department
39 may not issue or reinstate a commercial driver license for the lifetime of a person whose commercial
40 driver license is suspended under this subsection.

41 (4) Ten years after a person is disqualified from holding a commercial driver license under sub-
42 section (2) of this section, the person may apply to the department for the right to apply for a
43 commercial driver license or for reinstatement of the person's commercial driver license. The de-
44 partment may issue or reinstate a commercial driver license to a person who meets all other re-
45 quirements for the issuance of a commercial driver license if the department, in the discretion of the

1 department, finds good cause shown and finds that the person voluntarily entered and successfully
2 completed rehabilitation as approved by the department.

3 (5) Notwithstanding subsection (4) of this section, if a person whose commercial driver license
4 is issued or reinstated under subsection (4) of this section receives a subsequent conviction or sus-
5 pension described in subsection (2) of this section, the department shall suspend the person's com-
6 mercial driver license or right to apply for a commercial driver license for the lifetime of the person.

7 (6) For the purposes of this section:

8 (a) Second or subsequent records of conviction or suspensions apply only if the convictions or
9 suspensions arose out of separate incidents.

10 (b) A record of conviction or suspension applies to a person who does not hold a commercial
11 driver license only if the person was driving a commercial motor vehicle at the time of the com-
12 mission of the offense.

13 **SECTION 7.** ORS 809.409 is amended to read:

14 809.409. (1)(a) Upon receipt of a record of conviction of an offense described in this section, the
15 Department of Transportation shall revoke the driving privileges of the person convicted.

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

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

22 (2) The department shall take action under subsection (1) of this section upon receipt of a record
23 of conviction of any degree of murder, manslaughter, [or] criminally negligent homicide **or vehicu-**
24 **lar homicide** resulting from the operation of a motor vehicle [and] **or** assault in the first degree
25 resulting from the operation of a motor vehicle, except that the provisions of this subsection do not
26 apply to a person whose driving privileges are ordered revoked under ORS 809.235. A person whose
27 driving privileges are revoked under this subsection may apply for reinstatement of driving privi-
28 leges:

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

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

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

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

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

1 **SECTION 8.** ORS 809.413 is amended to read:

2 809.413. The Department of Transportation shall suspend the commercial driver license of a
3 person when the department receives a record of conviction, notification or notice described in this
4 section. A person is entitled to administrative review under ORS 809.440 of a suspension under this
5 section. The department shall suspend the commercial driver license when the department receives:

6 (1) A record of conviction under ORS 811.700 or 811.705 of failure to perform the duties of a
7 driver while operating a motor vehicle or a commercial motor vehicle. A conviction under this
8 subsection shall result in:

9 (a) A suspension for a period of one year if:

10 (A) The person has not previously been convicted of an offense described in ORS 809.404 or had
11 a commercial driver license suspended as described in ORS 809.404; and

12 (B) The person was not driving a commercial motor vehicle containing a hazardous material at
13 the time of the offense.

14 (b) A suspension for a period of three years if:

15 (A) The person has not previously been convicted of an offense described in ORS 809.404 or had
16 a commercial driver license suspended as described in ORS 809.404; and

17 (B) The person was driving a commercial motor vehicle containing a hazardous material at the
18 time of the offense.

19 (c) Suspension of the commercial driver license for the lifetime of the person if the person has
20 previously been convicted of an offense described in ORS 809.404 or had a commercial driver license
21 suspended as described in ORS 809.404.

22 (2) A record of conviction of a crime punishable as a felony involving the operation of a motor
23 vehicle or a commercial motor vehicle, other than the felony described in subsection (3) of this
24 section. A conviction under this subsection shall result in:

25 (a) A suspension for a period of one year if:

26 (A) The person has not previously been convicted of an offense described in ORS 809.404 or had
27 a commercial driver license suspended as described in ORS 809.404; and

28 (B) The person was not driving a commercial motor vehicle containing a hazardous material at
29 the time of the offense.

30 (b) A suspension for a period of three years if:

31 (A) The person has not previously been convicted of an offense described in ORS 809.404 or had
32 a commercial driver license suspended as described in ORS 809.404; and

33 (B) The person was driving a commercial motor vehicle containing a hazardous material at the
34 time of the offense.

35 (c) Suspension of the commercial driver license for the lifetime of the person if the person has
36 previously been convicted of an offense described in ORS 809.404 or had a commercial driver license
37 suspended as described in ORS 809.404.

38 (3) A record of conviction of a crime punishable as a felony that involves the manufacturing,
39 distributing or dispensing of a controlled substance, as defined in ORS 475.005, and in which a motor
40 vehicle or commercial motor vehicle was used. A conviction under this subsection shall result in a
41 lifetime suspension of the person's commercial driving license.

42 (4) A record of conviction for driving a commercial motor vehicle while, as a result of prior vi-
43 olations committed while operating a commercial motor vehicle, the commercial driver license of the
44 driver had been suspended or revoked. A conviction under this subsection shall result in:

45 (a) A suspension for a period of one year if:

1 (A) The person has not previously been convicted of an offense described in ORS 809.404 or had
2 a commercial driver license suspended as described in ORS 809.404; and

3 (B) The person was not driving a commercial motor vehicle containing a hazardous material at
4 the time of the offense.

5 (b) A suspension for a period of three years if:

6 (A) The person has not previously been convicted of an offense described in ORS 809.404 or had
7 a commercial driver license suspended as described in ORS 809.404; and

8 (B) The person was driving a commercial motor vehicle containing a hazardous material at the
9 time of the offense.

10 (c) Suspension of the commercial driver license for the lifetime of the person if the person has
11 previously been convicted of an offense described in ORS 809.404 or had a commercial driver license
12 suspended as described in ORS 809.404.

13 (5) A record of conviction of any degree of murder, manslaughter or criminally negligent
14 homicide **or vehicular homicide** resulting from the operation of a commercial motor vehicle or as-
15 sult in the first degree resulting from the operation of a commercial motor vehicle. A conviction
16 under this section shall result in:

17 (a) A suspension for a period of one year if:

18 (A) The person has not previously been convicted of an offense described in ORS 809.404 or had
19 a commercial driver license suspended as described in ORS 809.404; and

20 (B) The person was not driving a commercial motor vehicle containing a hazardous material at
21 the time of the offense.

22 (b) A suspension for a period of three years if:

23 (A) The person has not previously been convicted of an offense described in ORS 809.404 or had
24 a commercial driver license suspended as described in ORS 809.404; and

25 (B) The person was driving a commercial motor vehicle containing a hazardous material at the
26 time of the offense.

27 (c) Suspension of the commercial driver license for the lifetime of the person if the person has
28 previously been convicted of an offense described in ORS 809.404 or had a commercial driver license
29 suspended as described in ORS 809.404.

30 (6) A record of conviction of a serious traffic violation if the conviction occurred within three
31 years of a previous conviction for a serious traffic violation and if the convictions arose out of
32 separate incidents. A suspension under this subsection shall be:

33 (a) For a period of 60 days if the conviction is the person's second conviction for a serious
34 traffic violation within the three-year period.

35 (b) For a period of 120 days if the conviction is the person's third or subsequent conviction for
36 a serious traffic violation within the three-year period. A suspension imposed under this paragraph
37 shall be consecutive to any other suspension imposed for a serious traffic violation.

38 (7) Notification that a person violated an out-of-service order issued under ORS 813.050 or has
39 knowingly violated any other out-of-service order or notice. Notification under this subsection may
40 include, but not be limited to, a record of conviction and a record of a determination by a state or
41 federal agency with jurisdiction to make a determination that the person has violated an out-of-
42 service order or notice. A suspension under this subsection shall be:

43 (a) Except as provided in paragraph (b) of this subsection, for a period of 90 days if the notifi-
44 cation relates to the person's first violation of an out-of-service order or notice.

45 (b) For a period of one year if the notification relates to the person's first violation of an out-

1 of-service order or notice and the person committed the violation while transporting hazardous ma-
2 terials required to be placarded or while operating a motor vehicle designed to transport 16 or more
3 persons, including the driver.

4 (c) Except as provided in paragraph (d) of this subsection, for a period of three years if the no-
5 tification relates to a second or subsequent violation of an out-of-service notice or order that oc-
6 curred within a 10-year period.

7 (d) For a period of five years if the notification relates to a second or subsequent violation of
8 an out-of-service notice or order that occurred within a 10-year period and the person committed the
9 violation while transporting hazardous materials required to be placarded or was operating a motor
10 vehicle designed to transport 16 or more persons, including the driver, regardless of the load or kind
11 of vehicle involved in the prior violation.

12 (8) Notification from the Federal Motor Carrier Safety Administration that a person in this state
13 who holds a commercial driver license in this state has been disqualified from operating a commer-
14 cial motor vehicle and that the disqualification is due to a determination that the driving of that
15 person constitutes an imminent hazard. A suspension under this subsection shall be made imme-
16 diately and for the period prescribed by the Federal Motor Carrier Safety Administration, except
17 that:

18 (a) Notwithstanding any disqualification hearings conducted by the Federal Motor Carrier
19 Safety Administration, a suspension under this subsection is subject to a post-imposition hearing
20 under ORS 809.440.

21 (b) Notwithstanding the period of suspension prescribed by the Federal Motor Carrier Safety
22 Administration, a suspension under this subsection may not exceed one year.

23 (9) Notification from another jurisdiction that the person failed to appear on a citation for a
24 traffic offense or for a violation in the other jurisdiction that, if committed in this state, would be
25 grounds for suspension under ORS 809.220, and the person held a commercial driver license or was
26 operating a commercial motor vehicle at the time of the offense. A suspension under this subsection:

27 (a) Shall end upon the earliest of five years from the date of suspension or upon notification by
28 the other jurisdiction that the person appeared.

29 (b) Shall be placed on the person's driving record regardless of whether another jurisdiction
30 places the suspension on the person's driving record.

31 (c) May not be for a person's failure to appear on a parking, pedestrian or bicyclist offense.

32 (10) Notification from another jurisdiction that the person failed to pay a fine or obey an order
33 of the court on a citation for a traffic offense or for a violation in the other jurisdiction that, if
34 committed in this state, would be grounds for suspension under ORS 809.415 (4), and the person held
35 a commercial driver license or was operating a commercial motor vehicle at the time of the offense.
36 A suspension under this subsection:

37 (a) Shall end upon the earliest of five years from the date of suspension or upon notification by
38 the other jurisdiction that the person paid the fine or obeyed the order of the court.

39 (b) Shall be placed on the person's driving record regardless of whether another jurisdiction
40 places the suspension on the person's driving record.

41 (c) May not be for a person's failure to pay a fine or obey an order of the court on a parking,
42 pedestrian or bicyclist offense.

43 (11) Notice of a conviction in another jurisdiction of an offense that, if committed in this state,
44 would be grounds for the suspension of the person's commercial driver license. The period of sus-
45 pension under this subsection shall be the same as would be imposed on the person if the conviction

1 were for an offense committed in this state.

2 (12) Notification from another jurisdiction that a person who is a resident of this state and who
3 holds a commercial driver license has had commercial driving privileges suspended or revoked in
4 another jurisdiction for reasons that would be grounds for suspension of the person's commercial
5 driver license in this state. The period of suspension under this subsection shall be the same as
6 would be imposed on the person if the violation were committed in this state.

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

8 809.600. This section establishes the [*number and kind of offenses*] **kinds of offenses and the**
9 **number of convictions** necessary to revoke the driving privileges of a person as a habitual offender
10 under ORS 809.640. The [*number and kind of offenses*] **kinds of offenses and the number of con-**
11 **victions** necessary to revoke driving privileges as a habitual offender are as follows:

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

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

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

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

21 (d) Reckless driving under ORS 811.140.

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

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

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

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

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

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

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

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

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

37 **SECTION 10.** ORS 809.730 is amended to read:

38 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is
39 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS
40 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been
41 convicted of:

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

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

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

3 **SECTION 11.** ORS 811.182 is amended to read:

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

8 (2) Affirmative defenses to the offense described in this section are established under ORS
9 811.180.

10 (3) The [*crime*] **offense described in this section, criminal driving while suspended or re-**
11 **voked**, is a Class B felony if the suspension or revocation resulted from any degree of murder,
12 manslaughter, criminally negligent homicide, **vehicular homicide** or assault resulting from the op-
13 eration of a motor vehicle or if the revocation resulted from a conviction for felony driving while
14 under the influence of intoxicants.

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

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

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

22 (c) A suspension under ORS 813.410 resulting from refusal to take a test prescribed in ORS
23 813.100 or for taking a breath or blood test the result of which discloses a blood alcohol content
24 of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **SECTION 12.** ORS 813.130 is amended to read:

9 813.130. This section establishes the requirements for information about rights and consequences
10 for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and
11 consequences:

12 (1) The information about rights and consequences shall be substantially in the form prepared
13 by the Department of Transportation. The department may establish any form it determines appro-
14 priate and convenient.

15 (2) The information about rights and consequences shall be substantially as follows:

16 (a) Driving under the influence of intoxicants is a crime in Oregon, and the person is subject
17 to criminal penalties if a test under ORS 813.100 shows that the person is under the influence of
18 intoxicants. If the person refuses a test or fails, evidence of the refusal or failure may also be offered
19 against the person.

20 (b) The person will fail a test under ORS 813.100 for purposes of criminal penalties if the test
21 discloses a blood alcohol content of 0.08 percent or more by weight. The person will fail a test for
22 purposes of the Motorist Implied Consent Law if the test discloses a blood alcohol content of:

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

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

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

26 (c) If the person refuses or fails a test under ORS 813.100, the person's driving privileges will
27 be suspended. The outcome of a criminal charge for driving under the influence of intoxicants will
28 not affect the suspension. The suspension will be substantially longer if the person refuses a test.

29 (d) If the person refuses a test or fails a breath test under ORS 813.100 and has an Oregon
30 driver license or permit, the license or permit will be taken immediately and, unless the person does
31 not currently have full valid driving privileges, a temporary driving permit will be issued to the
32 person.

33 (e) If the person refuses a test under ORS 813.100, the person will not be eligible for a hardship
34 permit for at least 90 days, and possibly for one year, depending on the person's driving record. The
35 person may possibly qualify for a hardship permit in 30 days if the person fails a test, depending on
36 the person's driving record.

37 (f) If the person refuses a breath test under ORS 813.100, the person is subject to a fine of at
38 least \$500 and not more than \$1,000.

39 (g) After taking a test under ORS 813.100, the person will have a reasonable opportunity, upon
40 request, for an additional chemical test for blood alcohol content to be performed at the person's
41 own expense by a qualified individual of the person's choosing.

42 (h) The person has a right to a hearing to challenge the validity of the suspension before the
43 suspension becomes effective. The person must make a written request to the department for such
44 a hearing. If the person wins at the hearing, the person's driving privileges will not be suspended.
45 If the person loses at the hearing, the suspension will remain in effect during any court review of

1 the hearing.

2 (i) The following times:

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

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

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

7 (3) If the person is driving a commercial motor vehicle, the information about rights and con-
8 sequences shall include, in addition to the provisions of subsection (2) of this section, substantially
9 the following:

10 (a) If the person refuses a test under ORS 813.100 or submits to a breath or blood test and the
11 level of alcohol in the person's blood is 0.04 percent or more by weight, the person's commercial
12 driver license or right to apply for a commercial driver license will be suspended and no hardship
13 permit authorizing the person to drive a commercial motor vehicle will be issued. The suspension
14 will be substantially longer if the person refuses a test.

15 (b) The suspension of the person's commercial driver license or right to apply for a commercial
16 driver license will be for the person's lifetime if the person refuses a test under ORS 813.100 or
17 submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or
18 more by weight and:

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

20 (B) The person previously has been convicted of a crime punishable as a felony and the person
21 was driving a motor vehicle at the time the offense was committed;

22 (C) The person previously has been convicted of driving a commercial motor vehicle while the
23 person's commercial driver license or right to apply for a commercial driver license was suspended
24 or revoked;

25 (D) The person previously has been convicted of any degree of murder, manslaughter, [or]
26 criminally negligent homicide **or vehicular homicide** resulting from the operation of a commercial
27 motor vehicle or assault in the first degree resulting from the operation of a commercial motor ve-
28 hicle;

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

30 (F) The person's commercial driver license previously has been suspended or revoked for refusal
31 to submit to, or failure of, a breath or blood test under ORS 813.100; or

32 (G) The person's right to apply for a commercial driver license previously has been suspended
33 or revoked for refusal to submit to, or failure of, a breath or blood test under ORS 813.100 resulting
34 from the operation of a commercial motor vehicle.

35 (4) Nothing in this section prohibits the department from providing additional information con-
36 cerning rights and consequences that the department considers convenient or appropriate.

37 **SECTION 13.** ORS 813.215 is amended to read:

38 813.215. A defendant is eligible for diversion if:

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

43 (2) The defendant has not been convicted of an offense described in subsection (1) of this section
44 within the period beginning 10 years before the date of the commission of the present offense and
45 ending on the date the defendant filed the petition for a driving while under the influence of

1 intoxicants diversion agreement;

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

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

12 (5) The defendant had no charge of an offense of murder, manslaughter, criminally negligent
13 homicide, **vehicular homicide** or assault that resulted from the operation of a motor vehicle pend-
14 ing in this state or in any other jurisdiction on the date the defendant filed the petition for a driving
15 while under the influence of intoxicants diversion agreement;

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

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

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

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

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

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

26 **SECTION 14.** ORS 813.220 is amended to read:

27 813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request
28 for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether
29 to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-
30 ment. In making a determination under this section, the court:

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

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

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

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

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

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

45 (7) Shall deny the petition for a driving while under the influence of intoxicants diversion

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

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

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

13
