

Enrolled
House Bill 2870

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to motor vehicles; creating new provisions; and amending ORS 809.235 and 809.409.

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

SECTION 1. ORS 809.235 is amended to read:

809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving privileges be permanently revoked if the person is convicted of any degree of murder [*or of manslaughter in the first degree*] and the court finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the death of the victim, **or if the person is convicted of aggravated vehicular homicide, manslaughter in the first or second degree resulting from the operation of a motor vehicle, criminally negligent homicide resulting from the operation of a motor vehicle or assault in the first degree resulting from the operation of a motor vehicle.**

(b) The court shall order that a person's driving privileges be permanently revoked if the person is convicted of felony driving while under the influence of intoxicants in violation of ORS 813.010 or if the person is convicted for a third or subsequent time of any of the following offenses in any combination:

(A) Driving while under the influence of intoxicants in violation of:

- (i) ORS 813.010; or
- (ii) The statutory counterpart to ORS 813.010 in another jurisdiction.

(B) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, a controlled substance, an inhalant or any combination thereof.

(C) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(c) For the purposes of paragraph (b) of this subsection, a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction.

(2)(a) A person whose driving privileges are revoked as described in subsection (1) of this section may file a petition in the circuit court of the county in which the person resides for an order restoring the person's driving privileges. A petition may be filed under this subsection no sooner than 10 years after the person is:

(A) Released on parole or post-prison supervision **for the crime for which the person's driving privileges were revoked and any other crimes arising out of the same criminal episode;**
or

(B) Sentenced to probation if the probation is not revoked and the person is thereafter discharged without the imposition of a sentence of imprisonment.

(b) The district attorney of the county in which the person resides shall be named and served as the respondent in the petition.

(3) The court shall hold a hearing on a petition filed in accordance with subsection (2) of this section. In determining whether to grant the petition, the court shall consider:

(a) The nature of the offense for which driving privileges were revoked.

(b) The degree of violence involved in the offense.

(c) Other criminal and relevant noncriminal behavior of the petitioner both before and after the conviction that resulted in the revocation.

(d) The recommendation of the person's parole officer, which shall be based in part on a psychological evaluation ordered by the court to determine whether the person is presently a threat to the safety of the public.

(e) Any other relevant factors.

(4) If, after a hearing described in subsection (3) of this section, the court is satisfied by clear and convincing evidence that the petitioner is rehabilitated and that the petitioner does not pose a threat to the safety of the public, the court shall order the petitioner's driving privileges restored.

SECTION 2. ORS 809.409 is amended to read:

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

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

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

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

(a) If the sentence for the *[offense]* **crime** includes incarceration, *[eight]* **10** years from the date the person is released from incarceration for the *[offense]* **crime for which the person's driving privileges were revoked and any other crimes arising out of the same criminal episode;** or

(b) If the sentence **for the crime for which the person's driving privileges were revoked and any other crimes arising from the same criminal episode** does not include incarceration, *[eight]* **no sooner than 10** years from the date the department revoked the privileges under this subsection.

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

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

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

SECTION 3. The amendments to ORS 809.235 and 809.409 by sections 1 and 2 of this 2009 Act apply to persons whose conviction of any degree of murder, manslaughter in the first or second degree, aggravated vehicular homicide, criminally negligent homicide or assault in the first degree occurs on or after the effective date of this 2009 Act.

Passed by House April 7, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 29, 2009

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President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State