

B-Engrossed
House Bill 3271

Ordered by the Senate June 8
Including House Amendments dated April 30 and Senate Amendments
dated June 8

Sponsored by Representative STIEGLER; Representatives BARKER, KRIEGER, OLSON, J SMITH, VANORMAN,
WHISNANT

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.

Increases penalty for crime of harassment, under certain circumstances, to maximum of *[five years' imprisonment, \$125,000 fine,]* **one year's imprisonment, \$6,250 fine,** or both.

Creates crime of aggravated harassment. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

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

Subjects person convicted of vehicular homicide to certain driving penalties.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; and amending ORS 161.005, 163.165, 166.065, 169.151,
3 419A.260, 807.252, 809.404, 809.409, 809.413, 809.600, 809.730 and 811.182.

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

5 **SECTION 1.** ORS 166.065 is amended to read:

6 166.065. (1) A person commits the crime of harassment if the person intentionally:

7 (a) Harasses or annoys another person by:

8 (A) Subjecting such other person to offensive physical contact; or

9 (B) Publicly insulting such other person by abusive words or gestures in a manner intended and
10 likely to provoke a violent response;

11 (b) Subjects another to alarm by conveying a false report, known by the conveyor to be false,
12 concerning death or serious physical injury to a person, which report reasonably would be expected
13 to cause alarm; or

14 (c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict
15 serious physical injury on that person or to commit a felony involving the person or property of that
16 person or any member of that person's family, which threat reasonably would be expected to cause
17 alarm.

18 ~~[(2)]~~ **(2)(a)** A person is criminally liable for harassment if the person knowingly permits any
19 telephone or electronic device under the person's control to be used in violation of subsection (1)
20 of this section.

21 **(b) Harassment that is committed under the circumstances described in subsection (1)(c)**
22 **of this section is committed in either the county in which the communication originated or**
23 **the county in which the communication was received.**

24 (3) Harassment is a Class B misdemeanor.

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 *[(4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a per-*
2 *son violates subsection (1) of this section by subjecting another person to offensive physical contact and*
3 *the offensive physical contact consists of touching the sexual or other intimate parts of the other*
4 *person.]*

5 **(4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor**
6 **if a person violates:**

7 **(a) Subsection (1)(a)(A) of this section by subjecting another person to offensive physical**
8 **contact and the offensive physical contact consists of touching the sexual or other intimate**
9 **parts of the other person; or**

10 **(b) Subsection (1)(c) of this section and:**

11 **(A) The person has a previous conviction under subsection (1)(c) of this section and the**
12 **victim of the current offense was the victim or a member of the family of the victim of the**
13 **previous offense;**

14 **(B) At the time the offense was committed, the victim was protected by a stalking pro-**
15 **TECTIVE order, a restraining order as defined in ORS 24.190 or any other court order prohib-**
16 **iting the person from contacting the victim;**

17 **(C) At the time the offense was committed, the person reasonably believed the victim to**
18 **be under 18 years of age and more than three years younger than the person; or**

19 **(D)(i) The person conveyed a threat to kill the other person or any member of the family**
20 **of the other person;**

21 **(ii) The person expressed the intent to carry out the threat; and**

22 **(iii) A reasonable person would believe that the threat was likely to be followed by action.**

23 **(5) As used in this section, “electronic threat” means a threat conveyed by electronic**
24 **mail, the Internet, a telephone text message or any other transmission of information by**
25 **wire, radio, optical cable, cellular system, electromagnetic system or other similar means.**

26 **SECTION 2. (1) A person commits the crime of aggravated harassment if the person,**
27 **knowing that the other person is a:**

28 **(a) Staff member, knowingly propels saliva, blood, urine, semen, feces or other dangerous**
29 **substance at the staff member while the staff member is acting in the course of official duty**
30 **or as a result of the staff member’s official duties; or**

31 **(b) Public safety officer, knowingly propels blood, urine, semen or feces at the public**
32 **safety officer while the public safety officer is acting in the course of official duty or as a**
33 **result of the public safety officer’s official duties.**

34 **(2) Aggravated harassment is a Class C felony. When a person is convicted of violating**
35 **subsection (1)(a) of this section, in addition to any other sentence it may impose, the court**
36 **shall impose a term of incarceration in a state correctional facility.**

37 **(3) As used in this section:**

38 **(a) “Public safety officer” means an emergency medical technician as defined in ORS**
39 **682.025 or a fire service professional, a parole and probation officer or a police officer as**
40 **those terms are defined in ORS 181.610.**

41 **(b) “Staff member” has the meaning given that term in ORS 163.165.**

42 **SECTION 3. ORS 163.165 is amended to read:**

43 163.165. (1) A person commits the crime of assault in the third degree if the person:

44 (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous
45 weapon;

1 (b) Recklessly causes serious physical injury to another under circumstances manifesting ex-
2 tremely indifference to the value of human life;

3 (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon un-
4 der circumstances manifesting extreme indifference to the value of human life;

5 (d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical
6 injury to the operator of a public transit vehicle while the operator is in control of or operating the
7 vehicle. As used in this paragraph, "public transit vehicle" has the meaning given that term in ORS
8 166.116;

9 (e) While being aided by another person actually present, intentionally or knowingly causes
10 physical injury to another;

11 (f) While committed to a youth correction facility, intentionally or knowingly causes physical
12 injury to another knowing the other person is a staff member of a youth correction facility while
13 the other person is acting in the course of official duty;

14 (g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical tech-
15 nician [*or paramedic, as those terms are*], **as** defined in ORS 682.025, **or a paramedic** while the
16 **emergency medical** technician or paramedic is performing official duties;

17 (h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child
18 10 years of age or younger;

19 [*i*] *Knowing the other person is a staff member, intentionally or knowingly propels any dangerous*
20 *substance at the staff member while the staff member is acting in the course of official duty or as a*
21 *result of the staff member's official duties;]* or

22 [(j)] (i) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle,
23 physical injury to the operator of a taxi while the operator is in control of the taxi.

24 (2) Assault in the third degree is a Class C felony. [*When a person is convicted of violating sub-*
25 *section (1)(i) of this section, in addition to any other sentence it may impose, the court shall impose a*
26 *term of incarceration in a state correction facility.*]

27 (3) As used in this section:

28 [(a) "*Dangerous substance*" includes, but is not limited to, blood, urine, saliva, semen and feces.]

29 [(b) (a) "Staff member" means:

30 (A) A corrections officer as defined in ORS 181.610, a youth correction officer, a Department
31 of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a con-
32 tract with the department or youth authority to work with, or in the vicinity of, inmates or youth
33 offenders; and

34 (B) A volunteer authorized by the department, youth authority or other entity in charge of a
35 corrections facility to work with, or in the vicinity of, inmates or youth offenders.

36 [(c) (b) "Youth correction facility" has the meaning given that term in ORS 162.135.

37 **SECTION 4. Section 5 of this 2009 Act is added to and made a part of ORS chapter 163.**

38 **SECTION 5. (1) A person commits the crime of vehicular homicide if the person operates**
39 **a motor vehicle that causes the death of another person while violating ORS 811.175 or**
40 **811.182, if the suspension or revocation resulted from, or if the hardship or probationary**
41 **permit violated is based upon a suspension or revocation that resulted from, a criminal of-**
42 **fense involving the use of a motor vehicle.**

43 **(2) Vehicular homicide is a Class C felony.**

44 **SECTION 6. ORS 161.005 is amended to read:**

45 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290

1 to 161.370, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,
2 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
3 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.215 to 163.257,
4 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433, 163.505 to
5 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305
6 to 164.377, 164.395 to 164.415, 164.805, 164.886, 165.002 to 165.102, 165.109, 165.805, 166.005 to 166.095,
7 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.054, 167.057, 167.060 to 167.100, 167.117,
8 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 and 167.820 **and sec-**
9 **tion 5 of this 2009 Act** shall be known and may be cited as Oregon Criminal Code of 1971.

10 **SECTION 7.** ORS 419A.260 is amended to read:

11 419A.260. (1) As used in this section and ORS 419A.262:

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

16 (b) "Expunction" means:

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

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

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

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

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

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

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

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

38 (E) Records related to a support obligation;

39 (F) Medical records;

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

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

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

44 (J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be
45 within the jurisdiction of the court based upon the person's commission of an act which if done by

1 an adult would constitute one of the following offenses:

- 2 (i) Aggravated murder under ORS 163.095;
- 3 (ii) Murder under ORS 163.115;
- 4 (iii) Attempt, solicitation or conspiracy to commit murder or aggravated murder;
- 5 (iv) Manslaughter in the first degree under ORS 163.118;
- 6 (v) Manslaughter in the second degree under ORS 163.125;
- 7 (vi) Criminally negligent homicide under ORS 163.145;
- 8 (vii) Assault in the first degree under ORS 163.185;
- 9 (viii) Criminal mistreatment in the first degree under ORS 163.205;
- 10 (ix) Kidnapping in the first degree under ORS 163.235;
- 11 (x) Rape in the third degree under ORS 163.355;
- 12 (xi) Rape in the second degree under ORS 163.365;
- 13 (xii) Rape in the first degree under ORS 163.375;
- 14 (xiii) Sodomy in the third degree under ORS 163.385;
- 15 (xiv) Sodomy in the second degree under ORS 163.395;
- 16 (xv) Sodomy in the first degree under ORS 163.405;
- 17 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;
- 18 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
- 19 (xviii) Sexual abuse in the third degree under ORS 163.415;
- 20 (xix) Sexual abuse in the second degree under ORS 163.425;
- 21 (xx) Sexual abuse in the first degree under ORS 163.427;
- 22 (xxi) Promoting prostitution under ORS 167.012;
- 23 (xxii) Compelling prostitution under ORS 167.017;
- 24 **(xxiii) Vehicular homicide under section 5 of this 2009 Act;**
- 25 [*xxiii*] **(xxiv)** Aggravated vehicular homicide under ORS 163.149; or
- 26 [*xxiv*] **(xxv)** An attempt to commit a crime listed in this subparagraph other than manslaughter
- 27 in the second degree and criminally negligent homicide;
- 28 (K) Blood samples, buccal samples and other physical evidence and identification information
- 29 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,
- 30 181.085 or 419C.473; or
- 31 (L) Records maintained in the Law Enforcement Data System under ORS 181.592.

32 (e) "Termination" means:

33 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,

34 the final disposition of a case by informal means, by a decision not to place the person on probation

35 or make the person a ward of the court after the person has been found to be within the court's

36 jurisdiction, or by a discontinuance of probation or of the court's wardship.

37 (B) For a person who is the subject of a record kept by a law enforcement or public investi-

38 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final

39 disposition of the person's most recent contact with a law enforcement agency.

40 (2) The juvenile court or juvenile department shall make reasonable effort to provide written

41 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or

42 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's

43 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the

44 legal effect of an expunction order and the procedures for seeking relief from the duty to report as

45 a sex offender provided under ORS 181.823, at the following times:

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

3 (b) At the time of termination;

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

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

7 **SECTION 8.** ORS 807.252 is amended to read:

8 807.252. (1) The Department of Transportation may not issue a hardship permit to a person
9 whose driving privileges are suspended for conviction of assault in the second, third or fourth degree
10 if the person, within 10 years preceding application for the permit, has been convicted of:

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

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

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

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

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

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

19 (g) Aggravated vehicular homicide, as defined in ORS 163.149, **or vehicular homicide, as de-**
20 **defined in section 5 of this 2009 Act.**

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

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

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

28 (b) For a period of four years 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 second
30 degree and the person was incarcerated for that conviction.

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

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

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

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

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

45 (a) To the times, places, routes and days the department determines to be minimally necessary

1 for the person to seek or retain employment, to attend any alcohol or drug treatment or rehabili-
2 tation program or to obtain required medical treatment for the person or a member of the person's
3 immediate family; and

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

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

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

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

12 (a) Reckless driving under ORS 811.140.

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

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

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

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

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

19 (g) Aggravated vehicular homicide under ORS 163.149 **or vehicular homicide under section 5**
20 **of this 2009 Act.**

21 **SECTION 9.** ORS 809.404 is amended to read:

22 809.404. (1) The Department of Transportation shall suspend a person's commercial driver li-
23 cense or right to apply for a commercial driver license if the person is disqualified from holding a
24 commercial driver license under this section. A person is entitled to administrative review under
25 ORS 809.440 of a suspension under this section.

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

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

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

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

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

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

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

1 (g) A record of conviction of any degree of murder, manslaughter or criminally negligent
2 homicide resulting from the operation of a commercial motor vehicle or assault in the first degree
3 resulting from the operation of a commercial motor vehicle.

4 **(h) A record of conviction of aggravated vehicular homicide or vehicular homicide.**

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

11 (4) Ten years after a person is disqualified from holding a commercial driver license under sub-
12 section (2) of this section, or 10 years after receiving a lifetime suspension under ORS 809.413 (1),
13 (2), (4) or (5), the person may apply to the department for the right to apply for a commercial driver
14 license or for reinstatement of the person's commercial driver license. The department may issue
15 or reinstate a commercial driver license to a person who meets all other requirements for the issu-
16 ance of a commercial driver license if the department, in the discretion of the department, finds good
17 cause shown and finds that the person voluntarily entered and successfully completed rehabilitation
18 as approved by the department.

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

23 (6) For the purposes of this section:

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

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

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

30 809.409. (1)(a) Upon receipt of a record of conviction of an offense described in this section, the
31 Department of Transportation shall revoke the driving privileges of the person convicted.

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

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

38 (2) The department shall take action under subsection (1) of this section upon receipt of a record
39 of conviction of aggravated vehicular homicide **or vehicular homicide** or any degree of murder,
40 manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle or
41 assault in the first degree resulting from the operation of a motor vehicle, except that the provisions
42 of this subsection do not apply to a person whose driving privileges are ordered revoked under ORS
43 809.235. A person whose driving privileges are revoked under this subsection may apply for rein-
44 statement of driving privileges:

45 (a) If the sentence for the offense includes incarceration, eight years from the date the person

1 is released from incarceration for the offense; or

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

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

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

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

17 **SECTION 11.** ORS 809.413 is amended to read:

18 809.413. The Department of Transportation shall suspend the commercial driver license of a
19 person when the department receives a record of conviction, notification or notice described in this
20 section. A person is entitled to administrative review under ORS 809.440 of a suspension under this
21 section. The department shall suspend the commercial driver license when the department receives:

22 (1) A record of conviction under ORS 811.700 or 811.705 of failure to perform the duties of a
23 driver while operating a motor vehicle or a commercial motor vehicle. A conviction under this
24 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 (2) A record of conviction of a crime punishable as a felony involving the operation of a motor
39 vehicle or a commercial motor vehicle, other than the felony described in subsection (3) of this
40 section. A conviction under this subsection shall result in:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (5) A record of conviction of any degree of murder, manslaughter or criminally negligent
30 homicide resulting from the operation of a commercial motor vehicle or assault in the first degree
31 resulting from the operation of a commercial motor vehicle **or aggravated vehicular homicide or**
32 **vehicular homicide**. A conviction under this section shall result in:

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

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

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

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

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

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

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

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

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

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

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

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

16 (b) For a period of one year if the notification relates to the person's first violation of an out-
17 of-service order or notice and the person committed the violation while transporting hazardous ma-
18 terials required to be placarded or while operating a motor vehicle designed to transport 16 or more
19 persons, including the driver.

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

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

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

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

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

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

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

45 (b) Shall be placed on the person's driving record regardless of whether another jurisdiction

1 places the suspension on the person's driving record.

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

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

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

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

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

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

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

23 **SECTION 12.** ORS 809.600 is amended to read:

24 809.600. This section establishes the kinds of offenses and the number of convictions necessary
25 to revoke the driving privileges of a person as a habitual offender under ORS 809.640. The kinds
26 of offenses and the number of convictions necessary to revoke driving privileges as a habitual
27 offender are as follows:

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

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

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

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

37 (d) Reckless driving under ORS 811.140.

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

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

40 (g) Aggravated vehicular homicide under ORS 163.149 **or vehicular homicide under section 5**
41 **of this 2009 Act.**

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

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

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

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

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

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

8 (b) Any violation of offenses under any federal law or any law of another state, including sub-
9 divisions thereof, that substantially conform to offenses described in this section.

10 **SECTION 13.** ORS 809.730 is amended to read:

11 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is
12 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS
13 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been
14 convicted of:

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

16 (A) ORS 813.010; or

17 (B) The statutory counterpart to ORS 813.010 in another jurisdiction;

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

21 (c) A driving offense in another jurisdiction that involved operating a vehicle while having a
22 blood alcohol content above that jurisdiction's permissible blood alcohol content;

23 (d) Murder, manslaughter, criminally negligent homicide or assault that resulted from the oper-
24 ation of a motor vehicle in this state or in another jurisdiction; or

25 (e) Aggravated vehicular homicide under ORS 163.149 **or vehicular homicide under section 5**
26 **of this 2009 Act.**

27 (2) For the purposes of subsection (1) of this section, a conviction for a driving offense in an-
28 other jurisdiction based solely on a person under 21 years of age having a blood alcohol content that
29 is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age
30 or older does not constitute a prior conviction.

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

33 **SECTION 14.** ORS 811.182 is amended to read:

34 811.182. (1) A person commits the offense of criminal driving while suspended or revoked if the
35 person violates ORS 811.175 and the suspension or revocation is one described in this section, or if
36 the hardship or probationary permit violated is based upon a suspension or revocation described in
37 subsection (3) or (4) of this section.

38 (2) Affirmative defenses to the offense described in this section are established under ORS
39 811.180.

40 (3) The offense described in this section, criminal driving while suspended or revoked, is a Class
41 B felony if the suspension or revocation resulted from any degree of murder, manslaughter,
42 criminally negligent homicide or assault resulting from the operation of a motor vehicle, if the sus-
43 pension or revocation resulted from aggravated vehicular homicide **or vehicular homicide** or if the
44 revocation resulted from a conviction for felony driving while under the influence of intoxicants.

45 (4) The offense described in this section, criminal driving while suspended or revoked, is a Class

1 A misdemeanor if the suspension or revocation is any of the following:

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

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

7 (c) A suspension under ORS 813.410 resulting from refusal to take a test prescribed in ORS
8 813.100 or for taking a breath or blood test the result of which discloses a blood alcohol content
9 of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 **SECTION 15.** ORS 169.151 is amended to read:

39 169.151. (1) A city or, notwithstanding ORS 169.150 (1), a county may seek reimbursement from
40 a person who is or was committed to the local correctional facility of the county or city upon con-
41 viction of a crime for any expenses incurred by the county or city in safekeeping and maintaining
42 the person. The county or city may seek reimbursement:

43 (a) At a rate of \$60 per day or its actual daily cost of safekeeping and maintaining the person,
44 whichever is less, multiplied by the total number of days the person was confined to the local
45 correctional facility, including, but not limited to, any period of pretrial detention; and

1 (b) For any other charges or expenses that the county or city is entitled to recover under ORS
2 169.150.

3 (2) The county or city may seek reimbursement for expenses as provided in subsection (1) of this
4 section by filing a civil action [*no later than one year*] **no later than six years** after the person from
5 whom reimbursement is sought is released from the local correctional facility.

6 (3) When a person is found liable for expenses described in subsection (1) of this section and an
7 amount is determined, the court shall, before entering a judgment against the person, allow the
8 person to present evidence on the issue of the person's ability to pay. When a person presents such
9 evidence, the court shall determine the person's ability to pay taking into consideration:

10 (a) The financial resources of the person and the burden that payment will impose on the person
11 in providing basic economic necessities to the person or the person's dependent family; and

12 (b) Any other monetary obligations imposed upon the person by the court as a result of the
13 conviction for which the person was committed to the local correctional facility.

14 (4) The court, and not a jury, shall determine the defendant's ability to pay under subsection (3)
15 of this section.

16 (5) Upon the conclusion of a proceeding under subsection (3) of this section, the court may enter
17 a judgment:

18 (a) Of dismissal if the court finds that the person lacks the ability to pay;

19 (b) For less than the full amount determined if the court finds that the person has the ability
20 to pay a portion of the amount; or

21 (c) For the full amount determined, plus costs and disbursements, if the court determines the
22 person has the ability to pay.

23 (6) Any reimbursements collected under this section must be credited to the general fund of the
24 county or city to be available for general fund purposes.

25 **SECTION 16.** (1) **Section 2 of this 2009 Act and the amendments to ORS 163.165 and**
26 **166.065 by sections 1 and 3 of this 2009 Act apply to conduct occurring on or after the effec-**
27 **tive date of this 2009 Act.**

28 (2) **The amendments to ORS 169.151 by section 15 of this 2009 Act apply to civil actions**
29 **seeking reimbursement from persons released from local correctional facilities on or after**
30 **the effective date of this 2009 Act.**

31