

# House Bill 3399

Sponsored by Representative READ; Representatives BARKER, RILEY, Senators BONAMICI, HASS (at the request of Mary 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.

Directs police officer responding to accident in which person is seriously injured or killed to administer tests to operators of vehicles involved to determine if operators were under influence of intoxicants. Makes results of tests admissible at trial for vehicular homicide. Makes refusal of test admissible at any court proceeding or trial.

## A BILL FOR AN ACT

1  
2 Relating to vehicular homicide; creating new provisions; and amending ORS 161.005, 163.118, 163.149,  
3 163.185, 181.085, 419A.260, 807.252, 809.404, 809.409, 809.413, 809.600, 809.730, 811.182, 813.130,  
4 813.215 and 813.220.

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

6 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 163.**

7 **SECTION 2. (1) A person commits the crime of vehicular homicide if the person operates**  
8 **a motor vehicle that causes the death of another person and:**

9 (a) **The person does not have an appropriate grant of driving privileges from this state**  
10 **as required under ORS 807.010 for the type of vehicle that causes the death;**

11 (b) **The person is driving without liability insurance or self-insurance as required by ORS**  
12 **806.060; or**

13 (c) **The person's ability to safely operate the motor vehicle is impaired.**

14 (2) **As used in this section, "impaired" means:**

15 (a) **That a person is driving while under the influence of intoxicants in violation of ORS**  
16 **813.010; or**

17 (b) **That a person's ability to safely operate a motor vehicle is materially diminished as**  
18 **a result of:**

19 (A) **Use of an electronic device while operating the motor vehicle; or**

20 (B) **Sleep deprivation or the existence of another condition that negatively affects the**  
21 **person's sensory perception or reaction time.**

22 (3) **Vehicular homicide is a Class C felony.**

23 **SECTION 3. (1) As soon as reasonably possible, a police officer responding to an accident**  
24 **involving the operation of a motor vehicle in which a person is seriously injured or killed**  
25 **shall administer tests to determine whether the operators of vehicles involved were driving**  
26 **while under the influence of intoxicants in violation of ORS 813.010.**

27 (2)(a) **The results of tests administered under subsection (1) of this section are admissible**  
28 **at trial for vehicular homicide.**

**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) The refusal of a person charged with vehicular homicide to consent to a test admin-**  
 2 **istered under subsection (1) of this section is admissible at any court proceeding or trial.**

3       **SECTION 4.** ORS 163.118 is amended to read:

4       163.118. (1) Criminal homicide constitutes manslaughter in the first degree when:

5       (a) It is committed recklessly under circumstances manifesting extreme indifference to the value  
 6 of human life;

7       (b) It is committed intentionally by a defendant under the influence of extreme emotional dis-  
 8 turbance as provided in ORS 163.135, which constitutes a mitigating circumstance reducing the  
 9 homicide that would otherwise be murder to manslaughter in the first degree and need not be proved  
 10 in any prosecution;

11       (c) A person recklessly causes the death of a child under 14 years of age or a dependent person,  
 12 as defined in ORS 163.205, and:

13       (A) The person has previously engaged in a pattern or practice of assault or torture of the vic-  
 14 tim or another child under 14 years of age or a dependent person; or

15       (B) The person causes the death by neglect or maltreatment, as defined in ORS 163.115; or

16       (d) It is committed recklessly or with criminal negligence by a person operating a motor vehicle  
 17 while under the influence of intoxicants in violation of ORS 813.010 and:

18       (A) The person has at least three previous convictions for driving while under the influence of  
 19 intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior  
 20 to the date of the current offense; or

21       (B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of  
 22 this section, or their statutory counterparts in any jurisdiction; and

23       (ii) The victim's serious physical injury in the previous conviction was caused by the person  
 24 driving a motor vehicle.

25       (2) The previous convictions to which subsection (1)(d)(B) of this section applies are:

26       (a) Assault in the first degree under ORS 163.185;

27       (b) Assault in the second degree under ORS 163.175; [*or*]

28       (c) Assault in the third degree under ORS 163.165[.]; **or**

29       **(d) Vehicular homicide under section 2 of this 2009 Act.**

30       (3) Manslaughter in the first degree is a Class A felony.

31       (4) It is an affirmative defense to a charge of violating:

32       (a) Subsection (1)(c)(B) of this section that the child or dependent person was under care or  
 33 treatment solely by spiritual means pursuant to the religious beliefs or practices of the child or  
 34 person or the parent or guardian of the child or person.

35       (b) Subsection (1)(d)(B) of this section that the defendant was not under the influence of  
 36 intoxicants at the time of the conduct that resulted in the previous conviction.

37       **SECTION 5.** ORS 163.149 is amended to read:

38       163.149. (1) Criminal homicide constitutes aggravated vehicular homicide when it is committed  
 39 with criminal negligence, recklessly or recklessly under circumstances manifesting extreme indif-  
 40 ference to the value of human life by a person operating a motor vehicle while under the influence  
 41 of intoxicants in violation of ORS 813.010 and:

42       (a) The person has a previous conviction for any of the crimes described in subsection (2) of this  
 43 section, or their statutory counterparts in any jurisdiction; and

44       (b) The victim's death in the previous conviction was caused by the person driving a motor ve-  
 45 hicle.

1 (2) The previous convictions to which subsection (1) of this section applies are:

- 2 (a) Manslaughter in the first degree under ORS 163.118;
- 3 (b) Manslaughter in the second degree under ORS 163.125; *[or]*
- 4 (c) Criminally negligent homicide under ORS 163.145[.]; **or**
- 5 **(d) Vehicular homicide under section 2 of this 2009 Act.**

6 (3) It is an affirmative defense to a prosecution under this section that the defendant was not  
7 under the influence of intoxicants at the time of the conduct that resulted in the previous con-  
8 viction.

9 (4) Aggravated vehicular homicide is a Class A felony.

10 **SECTION 6.** ORS 163.185 is amended to read:

11 163.185. (1) A person commits the crime of assault in the first degree if the person:

- 12 (a) Intentionally causes serious physical injury to another by means of a deadly or dangerous  
13 weapon;
- 14 (b) Intentionally or knowingly causes serious physical injury to a child under six years of age;  
15 or
- 16 (c) Intentionally, knowingly or recklessly causes serious physical injury to another while oper-  
17 ating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 and:

18 (A) The person has at least three previous convictions for driving while under the influence of  
19 intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior  
20 to the date of the current offense; or

21 (B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of  
22 this section, or their statutory counterparts in any jurisdiction; and

23 (ii) The victim's death or serious physical injury in the previous conviction was caused by the  
24 person driving a motor vehicle.

25 (2) The previous convictions to which subsection (1)(c)(B) of this section apply are:

- 26 (a) Manslaughter in the first degree under ORS 163.118;
- 27 (b) Manslaughter in the second degree under ORS 163.125;
- 28 (c) Criminally negligent homicide under ORS 163.145;
- 29 **(d) Vehicular homicide under section 2 of this 2009 Act;**

- 30 *[(d)]* (e) Assault in the first degree under this section;
- 31 *[(e)]* (f) Assault in the second degree under ORS 163.175; or
- 32 *[(f)]* (g) Assault in the third degree under ORS 163.165.

33 (3) Assault in the first degree is a Class A felony.

34 (4) It is an affirmative defense to a prosecution under subsection (1)(c)(B) of this section that the  
35 defendant was not under the influence of intoxicants at the time of the conduct that resulted in the  
36 previous conviction.

37 **SECTION 7.** ORS 161.005 is amended to read:

38 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290  
39 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,  
40 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to  
41 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.215 to 163.257,  
42 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433, 163.505 to  
43 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270, 164.305  
44 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,  
45 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.054, 167.057, 167.060 to 167.100, 167.117,

1 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350, 167.810 and 167.820 **and section 2 of this 2009 Act** shall be known and may be cited as Oregon Criminal Code of 1971.

3 **SECTION 8.** ORS 181.085 is amended to read:

4 181.085. (1) The Department of State Police is authorized to:

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

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

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

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

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

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

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

25 (A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using  
26 a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to  
27 163.427, 163.465 (1)(c), 163.525 and 163.670;

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

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

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

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

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

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

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

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

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

37 (K) Aggravated vehicular homicide, as defined in ORS 163.149;

38 **(L) Vehicular homicide, as defined in section 2 of this 2009 Act;**

39 [~~L~~] **(M) Conspiracy or attempt to commit any felony listed in subparagraphs (A) to (J) of this**  
40 **paragraph; or**

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

42 (b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-  
43 partment shall analyze samples from persons convicted of a felony under ORS 475.840, 475.846 to  
44 475.894, 475.904, 475.906 or 475.914.

45 (c) After analyzing samples from persons described in paragraphs (a) and (b) of this subsection,

1 the department shall analyze samples from persons convicted of any other felony.

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

5 (4) The department may not transfer or disclose any sample, physical evidence or criminal  
 6 identification information obtained, stored or maintained under authority of this section, ORS  
 7 137.076, 161.325 or 419C.473 (1) except:

8 (a) To a law enforcement agency as defined in ORS 181.010, a district attorney or the Criminal  
 9 Justice Division of the Department of Justice for the purpose of establishing the identity of a person  
 10 in the course of a criminal investigation or proceeding;

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

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

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

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

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

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

37 (b) Upon receipt of a written request for destruction pursuant to this section and a certified  
 38 copy of the court order reversing the conviction, judgment or order, the department shall destroy  
 39 any sample received from the person, any physical evidence obtained from that sample and any  
 40 criminal identification records pertaining to the person, unless the department determines that the  
 41 person has otherwise become obligated to submit a blood or buccal sample as a result of a separate  
 42 conviction, juvenile adjudication or finding of guilty except for insanity for an offense listed in ORS  
 43 137.076 (1). When the department destroys a sample, physical evidence or criminal identification  
 44 record under this paragraph, the department shall notify any public agency or person to whom the  
 45 sample, physical evidence or criminal identification information was transferred or disclosed under

1 subsection (4) of this section of the reversal of the conviction, judgment or order.

2 (c) The department is not required to destroy an item of physical evidence obtained from a blood  
 3 or buccal sample if evidence relating to another person subject to the provisions of ORS 137.076,  
 4 161.325, 419A.260 and 419C.473 (1) and this section would thereby be destroyed. Notwithstanding this  
 5 subsection, no sample, physical evidence or criminal identification record is affected by an order to  
 6 set aside a conviction under ORS 137.225.

7 (9) As used in this section, “convicted” includes a juvenile court finding of jurisdiction based  
 8 on ORS 419C.005.

9 **SECTION 9.** ORS 419A.260 is amended to read:

10 419A.260. (1) As used in this section and ORS 419A.262:

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

15 (b) “Expunction” means:

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

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

24 (c) “Person” includes a person under 18 years of age.

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

30 (A) A transcript of a student’s Youth Corrections Education Program academic record;

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

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

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

37 (E) Records related to a support obligation;

38 (F) Medical records;

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

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

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

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

- 1 (i) Aggravated murder under ORS 163.095;
- 2 (ii) Murder under ORS 163.115;
- 3 (iii) Attempt, solicitation or conspiracy to commit murder or aggravated murder;
- 4 (iv) Manslaughter in the first degree under ORS 163.118;
- 5 (v) Manslaughter in the second degree under ORS 163.125;
- 6 (vi) Criminally negligent homicide under ORS 163.145;
- 7 (vii) Assault in the first degree under ORS 163.185;
- 8 (viii) Criminal mistreatment in the first degree under ORS 163.205;
- 9 (ix) Kidnapping in the first degree under ORS 163.235;
- 10 (x) Rape in the third degree under ORS 163.355;
- 11 (xi) Rape in the second degree under ORS 163.365;
- 12 (xii) Rape in the first degree under ORS 163.375;
- 13 (xiii) Sodomy in the third degree under ORS 163.385;
- 14 (xiv) Sodomy in the second degree under ORS 163.395;
- 15 (xv) Sodomy in the first degree under ORS 163.405;
- 16 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;
- 17 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
- 18 (xviii) Sexual abuse in the third degree under ORS 163.415;
- 19 (xix) Sexual abuse in the second degree under ORS 163.425;
- 20 (xx) Sexual abuse in the first degree under ORS 163.427;
- 21 (xxi) Promoting prostitution under ORS 167.012;
- 22 (xxii) Compelling prostitution under ORS 167.017;
- 23 (xxiii) Aggravated vehicular homicide under ORS 163.149; *[or]*
- 24 **(xxiv) Vehicular homicide under section 2 of this 2009 Act; or**
- 25 *[(xxiv)] (xxv)* An attempt to commit a crime listed in this subparagraph other than manslaughter
- 26 in the second degree and criminally negligent homicide;
- 27 (K) Blood samples, buccal samples and other physical evidence and identification information
- 28 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,
- 29 181.085 or 419C.473; or
- 30 (L) Records maintained in the Law Enforcement Data System under ORS 181.592.
- 31 (e) "Termination" means:
- 32 (A) For a person who is the subject of a record kept by a juvenile court or juvenile department,
- 33 the final disposition of a case by informal means, by a decision not to place the person on probation
- 34 or make the person a ward of the court after the person has been found to be within the court's
- 35 jurisdiction, or by a discontinuance of probation or of the court's wardship.
- 36 (B) For a person who is the subject of a record kept by a law enforcement or public investi-
- 37 gative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final
- 38 disposition of the person's most recent contact with a law enforcement agency.
- 39 (2) The juvenile court or juvenile department shall make reasonable effort to provide written
- 40 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or
- 41 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's
- 42 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the
- 43 legal effect of an expunction order and the procedures for seeking relief from the duty to report as
- 44 a sex offender provided under ORS 181.823, at the following times:
- 45 (a) At any dispositional hearing or at the time of entering into a formal accountability agree-

1 ment;

2 (b) At the time of termination;

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

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

6 **SECTION 10.** ORS 807.252 is amended to read:

7 807.252. (1) The Department of Transportation may not issue a hardship permit to a person  
8 whose driving privileges are suspended for conviction of assault in the second, third or fourth degree  
9 if the person, within 10 years preceding application for the permit, has been convicted of:

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

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

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

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

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

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

18 (g) Aggravated vehicular homicide, as defined in ORS 163.149, **or vehicular homicide, as de-**  
19 **defined in section 2 of this 2009 Act.**

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

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

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

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

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

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

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

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

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

44 (a) To the times, places, routes and days the department determines to be minimally necessary  
45 for the person to seek or retain employment, to attend any alcohol or drug treatment or rehabili-



1 tation program or to obtain required medical treatment for the person or a member of the person's  
 2 immediate family; and

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

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

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

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

11 (a) Reckless driving under ORS 811.140.

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

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

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

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

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

18 (g) Aggravated vehicular homicide under ORS 163.149 **or vehicular homicide under section 2**  
 19 **of this 2009 Act.**

20 **SECTION 11.** ORS 809.404 is amended to read:

21 809.404. (1) The Department of Transportation shall suspend a person's commercial driver li-  
 22 cense or right to apply for a commercial driver license if the person is disqualified from holding a  
 23 commercial driver license under this section. A person is entitled to administrative review under  
 24 ORS 809.440 of a suspension under this section.

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

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

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

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

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

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

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

45 (g) A record of conviction of any degree of murder, manslaughter or criminally negligent

1 homicide resulting from the operation of a commercial motor vehicle or assault in the first degree  
 2 resulting from the operation of a commercial motor vehicle.

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

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

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

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

22 (6) For the purposes of this section:

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

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

28 **SECTION 12.** ORS 809.409 is amended to read:

29 809.409. (1)(a) Upon receipt of a record of conviction of an offense described in this section, the  
 30 Department of Transportation shall revoke the driving privileges of the person convicted.

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

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

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

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

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

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

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

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

16 **SECTION 13.** ORS 809.413 is amended to read:

17 809.413. The Department of Transportation shall suspend the commercial driver license of a  
18 person when the department receives a record of conviction, notification or notice described in this  
19 section. A person is entitled to administrative review under ORS 809.440 of a suspension under this  
20 section. The department shall suspend the commercial driver license when the department receives:

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) A suspension for a period of three years 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 driving a commercial motor vehicle containing a hazardous material at the  
4 time of the offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (6) A record of conviction of a serious traffic violation if the conviction occurred within three

1 years of a previous conviction for a serious traffic violation and if the convictions arose out of  
2 separate incidents. A suspension under this subsection shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 14.** ORS 809.600 is amended to read:

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

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

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

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

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

(d) Reckless driving under ORS 811.140.

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

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

(g) Aggravated vehicular homicide under ORS 163.149 **or vehicular homicide under section 2 of this 2009 Act.**

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

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

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

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

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

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

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

9 **SECTION 15.** ORS 809.730 is amended to read:

10 809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is  
 11 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS  
 12 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been  
 13 convicted of:

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

15 (A) ORS 813.010; or

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

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

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

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

24 (e) Aggravated vehicular homicide under ORS 163.149 **or vehicular homicide under section 2**  
 25 **of this 2009 Act.**

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

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

32 **SECTION 16.** ORS 811.182 is amended to read:

33 811.182. (1) A person commits the offense of criminal driving while suspended or revoked if the  
 34 person violates ORS 811.175 and the suspension or revocation is one described in this section, or if  
 35 the hardship or probationary permit violated is based upon a suspension or revocation described in  
 36 subsection (3) or (4) of this section.

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

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

44 (4) The offense described in this section, criminal driving while suspended or revoked, is a Class  
 45 A misdemeanor if the suspension or revocation is any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 **SECTION 17.** ORS 813.130 is amended to read:

38 813.130. This section establishes the requirements for information about rights and consequences  
 39 for purposes of ORS 813.100 and 813.410. The following apply to the information about rights and  
 40 consequences:

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

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

45 (a) Driving under the influence of intoxicants is a crime in Oregon, and the person is subject



1 to criminal penalties if a test under ORS 813.100 shows that the person is under the influence of  
2 intoxicants. If the person refuses a test or fails, evidence of the refusal or failure may also be offered  
3 against the person.

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

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

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

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

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

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

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

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

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

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

31 (i) *[The following times]* **If the person is issued a temporary driving permit under ORS**  
32 **813.110:**

33 (A) *[If the person is issued a temporary driving permit under ORS 813.100,]* The number of hours  
34 before the driving permit will be effective and the number of days the permit will be effective.

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

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

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

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

45 (b) The suspension of the person's commercial driver license or right to apply for a commercial

1 driver license will be for the person's lifetime if the person refuses a test under ORS 813.100 or  
 2 submits to a breath or blood test and the level of alcohol in the person's blood is 0.04 percent or  
 3 more by weight and:

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

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

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

10 (D) The person previously has been convicted of any degree of murder, manslaughter or  
 11 criminally negligent homicide resulting from the operation of a commercial motor vehicle, [or] as-  
 12 sault in the first degree resulting from the operation of a commercial motor vehicle **or aggravated**  
 13 **vehicular homicide or vehicular homicide**;

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

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

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

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

22 **SECTION 18.** ORS 813.215 is amended to read:

23 813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following con-  
 24 ditions:

25 (a) On the date the defendant filed the petition for a driving while under the influence of  
 26 intoxicants diversion agreement, the defendant had no charge, other than the charge for the present  
 27 offense, pending for:

28 (A) An offense of driving while under the influence of intoxicants in violation of:

29 (i) ORS 813.010; or

30 (ii) The statutory counterpart to ORS 813.010 in another jurisdiction;

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

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

36 (b) The defendant has not been convicted of an offense described in paragraph (a) of this sub-  
 37 section within the period beginning 10 years before the date of the commission of the present offense  
 38 and ending on the date the defendant filed the petition for a driving while under the influence of  
 39 intoxicants diversion agreement.

40 (c) The defendant has not been convicted of a felony offense described in ORS 813.010 (5)(a).

41 (d) The defendant was not participating in a driving while under the influence of intoxicants  
 42 diversion program or in any similar alcohol or drug rehabilitation program, other than a program  
 43 entered into as a result of the charge for the present offense, in this state or in another jurisdiction  
 44 on the date the defendant filed the petition for a driving while under the influence of intoxicants  
 45 diversion agreement.

1 (e) The defendant did not participate in a diversion or rehabilitation program described in par-  
 2 agraph (d) of this subsection, other than a program entered into as a result of the charge for the  
 3 present offense, within the period beginning 10 years before the date of the commission of the  
 4 present offense and ending on the date the defendant filed the petition for a driving while under the  
 5 influence of intoxicants diversion agreement.

6 (f) The defendant had no charge of an offense of aggravated vehicular homicide or **vehicular**  
 7 **homicide or** of murder, manslaughter, criminally negligent homicide or assault that resulted from  
 8 the operation of a motor vehicle pending in this state or in another jurisdiction on the date the  
 9 defendant filed the petition for a driving while under the influence of intoxicants diversion agree-  
 10 ment.

11 (g) The defendant has not been convicted of an offense described in paragraph (f) of this sub-  
 12 section within the period beginning 10 years before the date of the commission of the present offense  
 13 and ending on the date the defendant filed the petition for a driving while under the influence of  
 14 intoxicants diversion agreement.

15 (h) The defendant did not hold a commercial driver license on the date of the commission of the  
 16 offense.

17 (i) The defendant was not operating a commercial motor vehicle at the time of the offense.

18 (j) The present driving while under the influence of intoxicants offense did not involve an acci-  
 19 dent resulting in:

20 (A) Death of any person; or

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

22 (2) For the purposes of subsection (1)(a) of this section, a conviction for a driving offense in  
 23 another jurisdiction based solely on a person under 21 years of age having a blood alcohol content  
 24 that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years  
 25 of age or older does not constitute a prior conviction.

26 **SECTION 19.** 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, after the date the defendant filed the petition, the defendant was charged with or  
2 convicted of:

3 (a) An offense of driving while under the influence of intoxicants in violation of:

4 (A) ORS 813.010; or

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

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

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

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

16 (9) Shall deny the petition for a driving while under the influence of intoxicants diversion  
17 agreement if the defendant was charged with or convicted of an offense of aggravated vehicular  
18 homicide or **vehicular homicide or** of murder, manslaughter, criminally negligent homicide or as-  
19 sult that resulted from the operation of a motor vehicle in this state or in another jurisdiction after  
20 the date the defendant filed the petition.

21 (10) Shall deny the petition for a driving while under the influence of intoxicants diversion  
22 agreement if the defendant has been convicted of a felony offense described in ORS 813.010 (5)(a).

23 (11) For the purposes of subsection (7) of this section, may not consider a conviction for a  
24 driving offense in another jurisdiction based solely on a person under 21 years of age having a blood  
25 alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a  
26 person 21 years of age or older as a prior conviction.

27