

Enrolled
Senate Bill 406

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CHAPTER

AN ACT

Relating to driving privileges; creating new provisions; and amending ORS 809.235.

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

SECTION 1. ORS 809.235 is amended to read:

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

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

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

(i) ORS 813.010; or

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

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

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

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

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

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

(B) Sentenced to probation [*if the probation is not revoked and the person is thereafter discharged without the imposition of a sentence of imprisonment.*] **for the crime for which the person's driving privileges were revoked, unless the probation is revoked, in which case the petition may be filed no sooner than 10 years after the date probation is revoked; or**

(C) **Sentenced for the crime for which the person's driving privileges were revoked, if no other provision of this paragraph applies.**

(b) **Notwithstanding paragraph (a) of this subsection, if during the revocation period for the crime for which the person was convicted the person is convicted of a criminal offense involving a motor vehicle, the person may file a petition to restore driving privileges as described in paragraph (a) of this subsection no sooner than 10 years from the date of the most recent conviction involving a motor vehicle.**

[(b)] (c) The district attorney of the county in which the [*person resides*] **person's driving privileges were revoked** shall be named and served as the respondent in the petition.

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

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

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

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

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

(e) Any other relevant factors.

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

(4) The court shall order a petitioner's driving privileges restored if, after a hearing described in subsection (3) of this section, the court finds by clear and convincing evidence that the petitioner:

(a) Is rehabilitated;

(b) Does not pose a threat to the safety of the public; and

(c) If the sentence for the crime for which the petitioner's driving privileges were revoked required the petitioner to complete an alcohol or drug treatment program, has completed an alcohol or drug treatment program in a facility approved by the Director of the Oregon Health Authority or a similar program in another jurisdiction.

SECTION 2. The amendments to ORS 809.235 by section 1 of this 2011 Act apply to petitions filed on or after the effective date of this 2011 Act.

Passed by Senate May 5, 2011

Repassed by Senate June 17, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 14, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

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John Kitzhaber, Governor

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Kate Brown, Secretary of State