

Enrolled
House Bill 3271

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

CHAPTER

AN ACT

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

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

SECTION 1. ORS 166.065 is amended to read:

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

(a) Harasses or annoys another person by:

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

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

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

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

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

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

(3) Harassment is a Class B misdemeanor.

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

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

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

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

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

(B) At the time the offense was committed, the victim was protected by a stalking protective order, a restraining order as defined in ORS 24.190 or any other court order prohibiting the person from contacting the victim;

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

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

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

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

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

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

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

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

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

(3) As used in this section:

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

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

SECTION 3. ORS 163.165 is amended to read:

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

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

(b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;

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

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

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

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

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

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

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

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

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

(3) As used in this section:

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

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

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

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

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

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

SECTION 5. (1) A person commits the crime of aggravated driving while suspended or revoked if the person operates a motor vehicle that causes serious physical injury to, or the death of, another person while knowingly violating ORS 811.175 or 811.182, if the suspension or revocation resulted from, or if the hardship or probationary permit violated is based upon a suspension or revocation that resulted from, a conviction for a criminal offense involving the use of a motor vehicle.

(2) Aggravated driving while suspended or revoked is a Class C felony.

(3) The Oregon Criminal Justice Commission shall classify aggravated driving while suspended or revoked as crime category 7 of the sentencing guidelines grid of the commission.

SECTION 6. ORS 161.005 is amended to read:

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 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, 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 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, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433, 163.505 to 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 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, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.054, 167.057, 167.060 to 167.100, 167.117, 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 5 of this 2009 Act** shall be known and may be cited as Oregon Criminal Code of 1971.

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

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

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

(b) "Expunction" means:

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

(B) Where a record is kept by the Department of Human Services or the Oregon Youth Authority, either the sealing of such record by the department or the Oregon Youth Authority or, in

a multiperson file, the affixing to the front of the file, by the department or the youth authority, a stamp or statement identifying the name of the individual, the date of expunction and instruction that no further reference shall be made to the material that is subject to the expunction order except upon an order of a court of competent jurisdiction.

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

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

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

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

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

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

(E) Records related to a support obligation;

(F) Medical records;

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

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

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

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

(i) Aggravated murder under ORS 163.095;

(ii) Murder under ORS 163.115;

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

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

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

(vi) Criminally negligent homicide under ORS 163.145;

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

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

(ix) Kidnapping in the first degree under ORS 163.235;

(x) Rape in the third degree under ORS 163.355;

(xi) Rape in the second degree under ORS 163.365;

(xii) Rape in the first degree under ORS 163.375;

(xiii) Sodomy in the third degree under ORS 163.385;

(xiv) Sodomy in the second degree under ORS 163.395;

(xv) Sodomy in the first degree under ORS 163.405;

(xvi) Unlawful sexual penetration in the second degree under ORS 163.408;

(xvii) Unlawful sexual penetration in the first degree under ORS 163.411;

(xviii) Sexual abuse in the third degree under ORS 163.415;

(xix) Sexual abuse in the second degree under ORS 163.425;

(xx) Sexual abuse in the first degree under ORS 163.427;

(xxi) Promoting prostitution under ORS 167.012;

(xxii) Compelling prostitution under ORS 167.017;

(xxiii) Aggravated driving while suspended or revoked under section 5 of this 2009 Act;

[(xxiii)] **(xxiv)** Aggravated vehicular homicide under ORS 163.149; or

[(xxiv)] **(xxv)** An attempt to commit a crime listed in this subparagraph other than manslaughter in the second degree and criminally negligent homicide;

(K) Blood samples, buccal samples and other physical evidence and identification information obtained, stored or maintained by the Department of State Police under authority of ORS 137.076, 181.085 or 419C.473; or

(L) Records maintained in the Law Enforcement Data System under ORS 181.592.

(e) "Termination" means:

(A) For a person who is the subject of a record kept by a juvenile court or juvenile department, the final disposition of a case by informal means, by a decision not to place the person on probation or make the person a ward of the court after the person has been found to be within the court's jurisdiction, or by a discontinuance of probation or of the court's wardship.

(B) For a person who is the subject of a record kept by a law enforcement or public investigative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final disposition of the person's most recent contact with a law enforcement agency.

(2) The juvenile court or juvenile department shall make reasonable effort to provide written notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's parent, of the procedures for expunction of a record, the right to counsel under this chapter, the legal effect of an expunction order and the procedures for seeking relief from the duty to report as a sex offender provided under ORS 181.823, at the following times:

(a) At any dispositional hearing or at the time of entering into a formal accountability agreement;

(b) At the time of termination;

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

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

SECTION 8. ORS 807.252 is amended to read:

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

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

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

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

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

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

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

(g) Aggravated vehicular homicide, as defined in ORS 163.149, **or aggravated driving while suspended or revoked, as defined in section 5 of this 2009 Act.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Reckless driving under ORS 811.140.

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

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

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

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

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

(g) Aggravated vehicular homicide under ORS 163.149 **or aggravated driving while suspended or revoked under section 5 of this 2009 Act.**

SECTION 9. ORS 809.404 is amended to read:

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

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

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

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

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

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

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

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

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

(h) A record of conviction of aggravated vehicular homicide or aggravated driving while suspended or revoked.

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

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

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

(6) For the purposes of this section:

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

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

SECTION 10. ORS 809.409 is amended to read:

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

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

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

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

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

(b) If the sentence does not include incarceration, eight years from the date the department revoked the privileges under this subsection.

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

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

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

SECTION 11. ORS 809.413 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Notification that a person violated an out-of-service order issued under ORS 813.050 or has knowingly violated any other out-of-service order or notice. Notification under this subsection may include, but not be limited to, a record of conviction and a record of a determination by a state or

federal agency with jurisdiction to make a determination that the person has violated an out-of-service order or notice. A suspension under this subsection shall be:

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

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

(c) Except as provided in paragraph (d) of this subsection, for a period of three years if the notification relates to a second or subsequent violation of an out-of-service notice or order that occurred within a 10-year period.

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

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

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

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

(9) Notification from another jurisdiction that the person failed to appear 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 809.220, 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 appeared.

(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 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 12. 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 aggravated driving while suspended or revoked under section 5 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.

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

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

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

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

SECTION 13. ORS 809.730 is amended to read:

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

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

(A) ORS 813.010; or

(B) 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;

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

(e) Aggravated vehicular homicide under ORS 163.149 **or aggravated driving while suspended or revoked under section 5 of this 2009 Act.**

(2) For the purposes of subsection (1) of this section, 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.

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

SECTION 14. ORS 811.182 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 15. ORS 169.151 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by House May 7, 2009

Repassed by House June 25, 2009

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Chief Clerk of House

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Speaker of House

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President of Senate

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Secretary of State