

## SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2828

By COMMITTEE ON RULES

August 4

1 On page 1 of the printed A-engrossed bill, line 2, after the semicolon delete the rest of the line  
2 and line 3 and insert “creating new provisions; and amending ORS 137.700, 137.707, 163.005, 163.185,  
3 181.085, 419A.260, 807.252, 809.409, 809.600, 809.730, 811.182, 813.215 and 813.220.”.

4 Delete lines 5 through 26 and pages 2 through 4 and insert:

5 **“SECTION 1. (1) Criminal homicide constitutes aggravated vehicular homicide when it is**  
6 **committed with criminal negligence by a person while the person is operating a vehicle under**  
7 **the influence of intoxicants as described in ORS 813.010 and the person has been convicted:**

8 **“(a) Of driving while under the influence of intoxicants in violation of ORS 813.010 or its**  
9 **statutory counterpart in another jurisdiction at least one time previously and, as a result**  
10 **of that act, caused the death of, or serious physical injury to, another person; or**

11 **“(b) Previously of manslaughter in the first or second degree under ORS 163.118 or**  
12 **163.125, criminally negligent homicide under ORS 163.145, assault in the first, second or third**  
13 **degree under ORS 163.165, 163.175 or 163.185 or its statutory counterpart in another juris-**  
14 **isdiction, in which the death or serious physical injury was the result of the defendant’s state**  
15 **of intoxication while driving.**

16 **“(2) Aggravated vehicular homicide is a Class A felony.**

17 **“SECTION 2.** ORS 163.005 is amended to read:

18 **“163.005. (1) A person commits criminal homicide if, without justification or excuse, the person**  
19 **intentionally, knowingly, recklessly or with criminal negligence causes the death of another human**  
20 **being.**

21 **“(2) ‘Criminal homicide’ is murder, manslaughter, [or] criminally negligent homicide or aggra-**  
22 **ated vehicular homicide.**

23 **“(3) ‘Human being’ means a person who has been born and was alive at the time of the criminal**  
24 **act.**

25 **“SECTION 3.** ORS 137.700 is amended to read:

26 **“137.700. (1) When a person is convicted of one of the offenses listed in subsection (2)(a) of this**  
27 **section and the offense was committed on or after April 1, 1995, or of one of the offenses listed in**  
28 **subsection (2)(b) of this section and the offense was committed on or after October 4, 1997, or of**  
29 **the offense described in subsection (2)(c) of this section and the offense was committed on**  
30 **or after the effective date of this 2005 Act, the court shall impose, and the person shall serve,**  
31 **at least the entire term of imprisonment listed in subsection (2) of this section. The person is not,**  
32 **during the service of the term of imprisonment, eligible for release on post-prison supervision or any**  
33 **form of temporary leave from custody. The person is not eligible for any reduction in, or based on,**  
34 **the minimum sentence for any reason whatsoever under ORS 421.121 or any other statute. The**  
35 **court may impose a greater sentence if otherwise permitted by law, but may not impose a lower**

1 sentence than the sentence specified in subsection (2) of this section.

2 “(2) The offenses to which subsection (1) of this section applies and the applicable mandatory  
3 minimum sentences are:

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- 5  
6
- 7 (a)(A) Murder, as defined in  
8 ORS 163.115 .....300 months
  - 9 (B) Attempt or conspiracy  
10 to commit aggravated  
11 murder, as defined  
12 in ORS 163.095 .....120 months
  - 13 (C) Attempt or conspiracy  
14 to commit murder, as  
15 defined in ORS 163.115. ....90 months
  - 16 (D) Manslaughter in the  
17 first degree, as defined  
18 in ORS 163.118 .....120 months
  - 19 (E) Manslaughter in the  
20 second degree, as defined  
21 in ORS 163.125 .....75 months
  - 22 (F) Assault in the first  
23 degree, as defined in  
24 ORS 163.185 .....90 months
  - 25 (G) Assault in the second  
26 degree, as defined in  
27 ORS 163.175 .....70 months
  - 28 (H) Kidnapping in the first  
29 degree, as defined  
30 in ORS 163.235 .....90 months
  - 31 (I) Kidnapping in the second  
32 degree, as defined in  
33 ORS 163.225 .....70 months
  - 34 (J) Rape in the first degree,  
35 as defined in ORS 163.375....100 months
  - 36 (K) Rape in the second degree,  
37 as defined in ORS 163.365.....75 months
  - 38 (L) Sodomy in the first degree,  
39 as defined in  
40 ORS 163.405 .....100 months
  - 41 (M) Sodomy in the second  
42 degree, as defined in  
43 ORS 163.395 .....75 months
  - 44 (N) Unlawful sexual penetration  
45 in the first degree, as

- 1           defined in ORS 163.411. ....100 months
- 2       (O) Unlawful sexual penetration
- 3           in the second degree, as
- 4           defined in ORS 163.408. ....75 months
- 5       (P) Sexual abuse in the first
- 6           degree, as defined in
- 7           ORS 163.427. ....75 months
- 8       (Q) Robbery in the first degree,
- 9           as defined in ORS 164.415. ....90 months
- 10      (R) Robbery in the second
- 11           degree, as defined in
- 12           ORS 164.405. ....70 months
- 13      (b)(A) Arson in the first degree,
- 14           as defined in ORS 164.325,
- 15           when the offense represented
- 16           a threat of serious
- 17           physical injury. ....90 months
- 18      (B) Using a child in a display
- 19           of sexually explicit
- 20           conduct, as defined in
- 21           ORS 163.670. ....70 months
- 22      (C) Compelling prostitution,
- 23           as defined in ORS 167.017. ....70 months
- 24      (c) **Aggravated vehicular**
- 25           **homicide, as defined in**
- 26           **section 1 of this 2005**
- 27           **Act. ....240 months**

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30       “**SECTION 4.** ORS 137.707 is amended to read:

31       “137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-  
 32 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is  
 33 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or  
 34 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-  
 35 tion is 15, 16 or 17 years of age at the time the offense is committed[,] and the offense is committed  
 36 on or after October 4, 1997, **or when a person charged with the offense described in subsection**  
 37 **(4)(c) of this section is 15, 16 or 17 years of age at the time the offense is committed and the**  
 38 **offense is committed on or after the effective date of this 2005 Act,** the person shall be prose-  
 39 cuted as an adult in criminal court.

40       “(b) A district attorney, the Attorney General or a juvenile department counselor may not file  
 41 in juvenile court a petition alleging that a person has committed an act that, if committed by an  
 42 adult, would constitute aggravated murder or an offense listed in subsection (4) of this section if the  
 43 person was 15, 16 or 17 years of age at the time the act was committed.

44       “(2) When a person charged under this section is convicted of an offense listed in subsection (4)  
 45 of this section, the court shall impose at least the presumptive term of imprisonment provided for

1 the offense in subsection (4) of this section. The court may impose a greater presumptive term if  
2 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service  
3 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary  
4 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sen-  
5 tence for any reason under ORS 421.121 or any other provision of law. ORS 138.012, 163.105 and  
6 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated  
7 murder under ORS 163.095 except that a person who was under 18 years of age at the time the of-  
8 fense was committed is not subject to a sentence of death.

9 “(3) The court shall commit the person to the legal and physical custody of the Department of  
10 Corrections.

11 “(4) The offenses to which this section applies and the presumptive sentences are:

12 “

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- 13
- 14 (a)(A) Murder, as defined in  
15 ORS 163.115 .....300 months
  - 16 (B) Attempt or conspiracy  
17 to commit aggravated  
18 murder, as defined  
19 in ORS 163.095 .....120 months
  - 20 (C) Attempt or conspiracy  
21 to commit murder, as  
22 defined in ORS 163.115 .....90 months
  - 23 (D) Manslaughter in the  
24 first degree, as defined  
25 in ORS 163.118 .....120 months
  - 26 (E) Manslaughter in the  
27 second degree, as defined  
28 in ORS 163.125 .....75 months
  - 29 (F) Assault in the first  
30 degree, as defined  
31 in ORS 163.185 .....90 months
  - 32 (G) Assault in the second  
33 degree, as defined  
34 in ORS 163.175 .....70 months
  - 35 (H) Kidnapping in the first  
36 degree, as defined in  
37 ORS 163.235 .....90 months
  - 38 (I) Kidnapping in the second  
39 degree, as defined in  
40 ORS 163.225 .....70 months
  - 41 (J) Rape in the first degree,  
42 as defined in ORS 163.375 .....100 months
  - 43 (K) Rape in the second  
44 degree, as defined in  
45 ORS 163.365 .....75 months

- 1 (L) Sodomy in the first
- 2 degree, as defined in
- 3 ORS 163.405 .....100 months
- 4 (M) Sodomy in the second
- 5 degree, as defined in
- 6 ORS 163.395 .....75 months
- 7 (N) Unlawful sexual
- 8 penetration in the first
- 9 degree, as defined
- 10 in ORS 163.411 .....100 months
- 11 (O) Unlawful sexual
- 12 penetration in the
- 13 second degree, as
- 14 defined in ORS 163.408 .....75 months
- 15 (P) Sexual abuse in the first
- 16 degree, as defined in
- 17 ORS 163.427 .....75 months
- 18 (Q) Robbery in the first
- 19 degree, as defined in
- 20 ORS 164.415 .....90 months
- 21 (R) Robbery in the second
- 22 degree, as defined in
- 23 ORS 164.405 .....70 months
- 24 (b)(A) Arson in the first degree,
- 25 as defined in
- 26 ORS 164.325, when
- 27 the offense represented
- 28 a threat of serious
- 29 physical injury. ....90 months
- 30 (B) Using a child in a display
- 31 of sexually explicit
- 32 conduct, as defined in
- 33 ORS 163.670 .....70 months
- 34 (C) Compelling prostitution,
- 35 as defined in ORS 167.017 .....70 months
- 36 (c) **Aggravated vehicular**
- 37 **homicide, as defined in**
- 38 **section 1 of this 2005**
- 39 **Act. ....240 months**

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42 “(5) If a person charged with an offense under this section is found guilty of a lesser included

43 offense and the lesser included offense is:

44 “(a) An offense listed in subsection (4) of this section, the court shall sentence the person as

45 provided in subsection (2) of this section.

1           “(b) Not an offense listed in subsection (4) of this section:

2           “(A) But constitutes an offense for which waiver is authorized under ORS 419C.349, the court,

3 upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction

4 or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdic-

5 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdic-

6 tion, the court shall sentence the person as an adult under sentencing guidelines. If the court does

7 not retain jurisdiction, the court shall:

8           “(i) Order that a presentence report be prepared;

9           “(ii) Set forth in a memorandum any observations and recommendations that the court deems

10 appropriate; and

11           “(iii) Enter an order transferring the case to the juvenile court for disposition under ORS

12 419C.067 and 419C.411.

13           “(B) And is not an offense for which waiver is authorized under ORS 419C.349, the court may

14 not sentence the person. The court shall:

15           “(i) Order that a presentence report be prepared;

16           “(ii) Set forth in a memorandum any observations and recommendations that the court deems

17 appropriate; and

18           “(iii) Enter an order transferring the case to the juvenile court for disposition under ORS

19 419C.067 and 419C.411.

20           “(6) When a person is charged under this section, other offenses based on the same act or

21 transaction shall be charged as separate counts in the same accusatory instrument and consolidated

22 for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection

23 (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by

24 the joinder and consolidation of offenses, the court may order an election or separate trials of

25 counts or provide whatever other relief justice requires.

26           “(7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty

27 of aggravated murder or an offense listed in subsection (4) of this section and one or more other

28 offenses, the court shall impose the sentence for aggravated murder or the offense listed in sub-

29 section (4) of this section as provided in subsection (2) of this section and shall impose sentences for

30 the other offenses as otherwise provided by law.

31           “(b) If a person charged and tried as provided in subsection (6) of this section is not found guilty

32 of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one

33 of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349,

34 the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain

35 jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain

36 jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains

37 jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court

38 does not retain jurisdiction, the court shall:

39           “(A) Order that a presentence report be prepared;

40           “(B) Set forth in a memorandum any observations and recommendations that the court deems

41 appropriate; and

42           “(C) Enter an order transferring the case to the juvenile court for disposition under ORS

43 419C.067 and 419C.411.

44           “**SECTION 5.** ORS 163.185 is amended to read:

45           “163.185. (1) A person commits the crime of assault in the first degree if the person:

1       “(a) Intentionally causes serious physical injury to another by means of a deadly or dangerous  
2 weapon; or

3       “(b) **With criminal negligence violates ORS 163.175 (1)(a) or (c) while the person is oper-**  
4 **ating a vehicle under the influence of intoxicants as described in ORS 813.010 and the person**  
5 **has been convicted:**

6       “(A) **Of driving while under the influence of intoxicants in violation of ORS 813.010 or its**  
7 **statutory counterpart in another jurisdiction:**

8       “(i) **At least three times previously; or**

9       “(ii) **At least one time previously and, as a result of that act, caused the death of, or**  
10 **serious physical injury to, another person; or**

11       “(B) **Previously of manslaughter in the first or second degree under ORS 163.118 or**  
12 **163.125, criminally negligent homicide under ORS 163.145, assault in the first, second or third**  
13 **degree under ORS 163.165, 163.175 or 163.185 or its statutory counterpart in another juris-**  
14 **isdiction, in which the death or serious physical injury was the result of the defendant’s state**  
15 **of intoxication while driving.**

16       “(2) Assault in the first degree is a Class A felony.

17       “**SECTION 6.** ORS 181.085 is amended to read:

18       “181.085. (1) The Department of State Police is authorized to:

19       “(a) Store blood and buccal samples received under authority of this section, ORS 137.076,  
20 161.325 and 419C.473 (1) and section 2, chapter 852, Oregon Laws 2001, and other physical evidence  
21 obtained from analysis of such samples;

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

25       “(c) Maintain a criminal identification database containing information derived from blood and  
26 buccal analyses;

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

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

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

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

39       “(A) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using  
40 a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to  
41 163.427, 163.465 (1)(c), 163.525 and 163.670;

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

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

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

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

1 “(F) Kidnapping in the first or second degree, as defined in ORS 163.225 and 163.235;  
2 “(G) Stalking, as defined in ORS 163.732;  
3 “(H) Robbery in the first, second or third degree, as defined in ORS 164.395, 164.405 and 164.415;  
4 “(I) Manslaughter in the first or second degree, as defined in ORS 163.118 and 163.125;  
5 “(J) Criminally negligent homicide, as defined in ORS 163.145;  
6 “**(K) Aggravated vehicular homicide;**  
7 “[~~(K)~~] **(L)** Conspiracy or attempt to commit any felony listed in subparagraphs (A) to [~~(J)~~] **(K)**  
8 of this paragraph; or  
9 “[~~(L)~~] **(M)** Murder, aggravated murder or an attempt to commit murder or aggravated murder.  
10 “(b) After analyzing samples from persons described in paragraph (a) of this subsection, the de-  
11 partment shall analyze samples from persons convicted of a felony under ORS 475.992, 475.993,  
12 475.995 or 475.999.  
13 “(c) After analyzing samples from persons described in paragraphs (a) and (b) of this subsection,  
14 the department shall analyze samples from persons convicted of any other felony.  
15 “(3) Notwithstanding subsection (2) of this section, the department may analyze a sample from  
16 a lower priority before all samples in higher priorities are analyzed if required in a particular case  
17 for law enforcement purposes.  
18 “(4) The department may not transfer or disclose any sample, physical evidence or criminal  
19 identification information obtained, stored or maintained under authority of this section, ORS  
20 137.076, 161.325 or 419C.473 (1) except:  
21 “(a) To a law enforcement agency as defined in ORS 181.010, a district attorney or the Criminal  
22 Justice Division of the Department of Justice for the purpose of establishing the identity of a person  
23 in the course of a criminal investigation or proceeding;  
24 “(b) To a party in a criminal prosecution or juvenile proceeding pursuant to ORS 419C.005 if  
25 discovery or disclosure is required by a separate statutory or constitutional provision; or  
26 “(c) To a court or grand jury in response to a lawful subpoena or court order when the evidence  
27 is not otherwise privileged and is necessary for criminal justice purposes.  
28 “(5) The department may not transfer or disclose any sample, physical evidence or criminal  
29 identification information under subsection (4) of this section unless the public agency or person  
30 receiving the sample, physical evidence or criminal identification information agrees to destroy the  
31 sample, physical evidence or criminal identification information if notified by the department that  
32 a court has reversed the conviction, judgment or order that created the obligation to provide the  
33 blood or buccal sample.  
34 “(6) Any public agency that receives a sample, physical evidence or criminal identification in-  
35 formation under authority of subsection (4) of this section may not disclose it except as provided in  
36 subsection (4) of this section.  
37 “(7) Notwithstanding subsections (4) and (6) of this section, any person who is the subject of a  
38 record within a criminal identification database maintained under the authority of this section may,  
39 upon request, inspect that information at a time and location designated by the department. The  
40 department may deny inspection if it determines that there is a reasonable likelihood that such in-  
41 spection would prejudice a pending criminal investigation. In any case, the department is not re-  
42 quired to allow the person or anyone acting on the person’s behalf to test any blood or buccal  
43 sample or other physical evidence. The department shall adopt procedures governing the inspection  
44 of records and samples and challenges to the accuracy of records. The procedures shall accommo-  
45 date the need to preserve the materials from contamination and destruction.



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

5 “(b) Upon receipt of a written request for destruction pursuant to this section and a certified  
6 copy of the court order reversing the conviction, judgment or order, the department shall destroy  
7 any sample received from the person, any physical evidence obtained from that sample and any  
8 criminal identification records pertaining to the person, unless the department determines that the  
9 person has otherwise become obligated to submit a blood or buccal sample as a result of a separate  
10 conviction, juvenile adjudication or finding of guilty except for insanity for an offense listed in ORS  
11 137.076 (1). When the department destroys a sample, physical evidence or criminal identification  
12 record under this paragraph, the department shall notify any public agency or person to whom the  
13 sample, physical evidence or criminal identification information was transferred or disclosed under  
14 subsection (4) of this section of the reversal of the conviction, judgment or order.

15 “(c) The department is not required to destroy an item of physical evidence obtained from a  
16 blood or buccal sample if evidence relating to another person subject to the provisions of ORS  
17 137.076, 161.325, 181.085, 419A.260 and 419C.473 (1) would thereby be destroyed. Notwithstanding  
18 this subsection, no sample, physical evidence or criminal identification record is affected by an order  
19 to set aside a conviction under ORS 137.225.

20 “(9) As used in this section, ‘convicted’ includes a juvenile court finding of jurisdiction based  
21 on ORS 419C.005.

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

23 “419A.260. (1) As used in this section and ORS 419A.262:

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

28 “(b) ‘Expunction’ means:

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

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

37 “(c) ‘Person’ includes a person under 18 years of age.

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

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

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

1 “(C) Records kept or disseminated by the Department of Transportation, State Marine Board and  
2 State Fish and Wildlife Commission pursuant to juvenile or adult order or recommendation;  
3 “(D) Police and court records related to an order of waiver where the matter is still pending in  
4 the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order;  
5 “(E) Records related to a support obligation;  
6 “(F) Medical records;  
7 “(G) Records of a proposed or adjudicated termination of parental rights and adoptions;  
8 “(H) Any law enforcement record of a person who currently does not qualify for expunction or  
9 of current investigations or cases waived to the adult court;  
10 “(I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;  
11 “(J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be  
12 within the jurisdiction of the court based upon the person’s commission of an act which if done by  
13 an adult would constitute one of the following offenses:  
14 “(i) Aggravated murder under ORS 163.095;  
15 “(ii) Murder under ORS 163.115;  
16 “(iii) Attempt, solicitation or conspiracy to commit murder or aggravated murder;  
17 “(iv) Manslaughter in the first degree under ORS 163.118;  
18 “(v) Manslaughter in the second degree under ORS 163.125;  
19 “(vi) Criminally negligent homicide under ORS 163.145;  
20 “(vii) Assault in the first degree under ORS 163.185;  
21 “(viii) Criminal mistreatment in the first degree under ORS 163.205;  
22 “(ix) Kidnapping in the first degree under ORS 163.235;  
23 “(x) Rape in the third degree under ORS 163.355;  
24 “(xi) Rape in the second degree under ORS 163.365;  
25 “(xii) Rape in the first degree under ORS 163.375;  
26 “(xiii) Sodomy in the third degree under ORS 163.385;  
27 “(xiv) Sodomy in the second degree under ORS 163.395;  
28 “(xv) Sodomy in the first degree under ORS 163.405;  
29 “(xvi) Unlawful sexual penetration in the second degree under ORS 163.408;  
30 “(xvii) Unlawful sexual penetration in the first degree under ORS 163.411;  
31 “(xviii) Sexual abuse in the third degree under ORS 163.415;  
32 “(xix) Sexual abuse in the second degree under ORS 163.425;  
33 “(xx) Sexual abuse in the first degree under ORS 163.427;  
34 “(xxi) Promoting prostitution under ORS 167.012;  
35 “(xxii) Compelling prostitution under ORS 167.017;  
36 “**(xxiii) Aggravated vehicular homicide; or**  
37 “[*xxiii*] **(xxiv)** An attempt to commit a crime listed in this subparagraph other than **aggravated**  
38 **vehicular homicide**, manslaughter in the second degree and criminally negligent homicide;  
39 “(K) Blood samples, buccal samples and other physical evidence and identification information  
40 obtained, stored or maintained by the Department of State Police under authority of ORS 137.076,  
41 181.085 or 419C.473; or  
42 “(L) Records maintained in the Law Enforcement Data System under ORS 181.592.  
43 “(e) ‘Termination’ means:  
44 “(A) For a person who is the subject of a record kept by a juvenile court or juvenile department,  
45 the final disposition of a case by informal means, by a decision not to place the person on probation

1 or make the person a ward of the court after the person has been found to be within the court's  
2 jurisdiction, or by a discontinuance of probation or of the court's wardship.

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

6 "(2) The juvenile court or juvenile department shall make reasonable effort to provide written  
7 notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or  
8 to a youth who is within the court's jurisdiction under ORS 419C.005, and to the child's or youth's  
9 parent, of the procedures for expunction of a record, the right to counsel under this chapter, the  
10 legal effect of an expunction order and the procedures for seeking relief from the duty to report as  
11 a sex offender provided under ORS 181.607, at the following times:

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

14 "(b) At the time of termination;

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

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

18 "**SECTION 8.** ORS 807.252 is amended to read:

19 "807.252. (1) The Department of Transportation may not issue a hardship permit to a person  
20 whose driving privileges are suspended for conviction of assault in the second, third or fourth degree  
21 if the person, within 10 years preceding application for the permit, has been convicted of:

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

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

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

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

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

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

30 "**(g) Aggravated vehicular homicide.**

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

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

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

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

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

44 "(d) For a period of two years from the date the person is released from incarceration for the  
45 conviction if the person's driving privileges are suspended for conviction of assault in the third de-

1 gree and the person was incarcerated for that conviction.

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

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

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

10 “(a) To the times, places, routes and days the department determines to be minimally necessary  
11 for the person to seek or retain employment, to attend any alcohol or drug treatment or rehabili-  
12 tation program or to obtain required medical treatment for the person or a member of the person’s  
13 immediate family; and

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

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

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

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

22 “(a) Reckless driving under ORS 811.140.

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

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

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

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

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

29 “(g) **Aggravated vehicular homicide.**

30 “**SECTION 9.** ORS 809.409 is amended to read:

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

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

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

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

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

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

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

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

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

18       “**SECTION 10.** ORS 809.600 is amended to read:

19       “809.600. This section establishes the number and kind of offenses necessary to revoke the  
20 driving privileges of a person as a habitual offender under ORS 809.640. The number and kind of  
21 offenses necessary to revoke driving privileges as a habitual offender are as follows:

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

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

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

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

31       “(d) Reckless driving under ORS 811.140.

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

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

34       “(g) **Aggravated vehicular homicide.**

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

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

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

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

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

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

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

3 “**SECTION 11.** ORS 809.730, as amended by section 18a, chapter 780, Oregon Laws 2001, is  
4 amended to read:

5 “809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is  
6 arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS  
7 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been  
8 convicted of:

9 “(a) Driving while under the influence of intoxicants in violation of ORS 813.010, or its statutory  
10 counterpart in another jurisdiction; [or]

11 “(b) Murder, manslaughter, criminally negligent homicide or assault that resulted from the op-  
12 eration of a motor vehicle in this state or in another jurisdiction; **or**

13 “(c) **Aggravated vehicular homicide.**

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

16 “**SECTION 12.** ORS 811.182 is amended to read:

17 “811.182. (1) A person commits the offense of criminal driving while suspended or revoked if the  
18 person violates ORS 811.175 and the suspension or revocation is one described in this section, or if  
19 the hardship or probationary permit violated is based upon a suspension or revocation described in  
20 subsection (3) or (4) of this section.

21 “(2) Affirmative defenses to the offense described in this section are established under ORS  
22 811.180.

23 “(3) The crime is a Class B felony if the suspension or revocation resulted from any degree of  
24 murder, manslaughter, criminally negligent homicide or assault resulting from the operation of a  
25 motor vehicle, **if the suspension or revocation resulted from aggravated vehicular homicide**  
26 **or if the revocation resulted from a conviction for felony driving while under the influence of**  
27 **intoxicants.**

28 “(4) The crime is a Class A misdemeanor if the suspension or revocation is any of the following:

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

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

34 “(c) A suspension under ORS 813.410 resulting from refusal to take a test prescribed in ORS  
35 813.100 or for taking a breath or blood test the result of which discloses a blood alcohol content  
36 of:

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

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

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

40 “(d) A suspension of a commercial driver license under ORS 809.413 (2) resulting from failure  
41 to perform the duties of a driver under ORS 811.700 while driving a commercial motor vehicle.

42 “(e) A suspension of a commercial driver license under ORS 809.400 (3)(b) where the person’s  
43 commercial driving privileges have been suspended or revoked by the other jurisdiction for failure  
44 of or refusal to take a chemical test to determine the alcoholic content of the person’s blood under  
45 a statute that is substantially similar to ORS 813.100.

1           “(f) A revocation resulting from habitual offender status under ORS 809.640.

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

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

6           “(i) A suspension for reckless driving under ORS 811.140.

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

8           “(k) A suspension or revocation resulting from misdemeanor driving while under the influence  
9           of intoxicants under ORS 813.010.

10          “(L) A suspension for use of a commercial motor vehicle in the commission of a crime punishable  
11          as a felony.

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

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

19          “**SECTION 13.** ORS 813.215 is amended to read:

20          “813.215. A defendant is eligible for diversion if:

21          “(1) The defendant had no charge of an offense of driving while under the influence of  
22          intoxicants or its statutory counterpart in any jurisdiction, other than the charge for the present  
23          offense, pending on the date the defendant filed the petition for a driving while under the influence  
24          of intoxicants diversion agreement;

25          “(2) The defendant has not been convicted of an offense described in subsection (1) of this sec-  
26          tion within the period beginning 10 years before the date of the commission of the present offense  
27          and ending on the date the defendant filed the petition for a driving while under the influence of  
28          intoxicants diversion agreement;

29          “(3) The defendant was not participating in a driving while under the influence of intoxicants  
30          diversion program or in any similar alcohol or drug rehabilitation program, other than a program  
31          entered into as a result of the charge for the present offense, in this state or in any other jurisdic-  
32          tion on the date the defendant filed the petition for a driving while under the influence of  
33          intoxicants diversion agreement;

34          “(4) The defendant did not participate in a diversion or rehabilitation program described in  
35          subsection (3) of this section, other than a program entered into as a result of the charge for the  
36          present offense, within the period beginning 10 years before the date of the commission of the  
37          present offense and ending on the date the defendant filed the petition for a driving while under the  
38          influence of intoxicants diversion agreement;

39          “(5) The defendant had no charge of an offense of murder, manslaughter, criminally negligent  
40          homicide or assault that resulted from the operation of a motor vehicle **or of aggravated vehicular**  
41          **homicide** pending in this state or in any other jurisdiction on the date the defendant filed the pe-  
42          tition for a driving while under the influence of intoxicants diversion agreement;

43          “(6) The defendant has not been convicted of an offense described in subsection (5) of this sec-  
44          tion within the period beginning 10 years before the date of the commission of the present offense  
45          and ending on the date the defendant filed the petition for a driving while under the influence of

1   intoxicants diversion agreement; and

2       “(7) The present driving while under the influence of intoxicants offense did not involve an ac-  
3   cident resulting in:

4       “(a) Death of any person other than the defendant; or

5       “(b) Physical injury as defined in ORS 161.015 to any person other than the defendant.

6       “**SECTION 14.** ORS 813.220 is amended to read:

7       “813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request  
8   for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether  
9   to allow or deny a petition for a driving while under the influence of intoxicants diversion agree-  
10  ment. In making a determination under this section, the court:

11       “(1) Shall consider whether the diversion will be of benefit to the defendant and the community.

12       “(2) May take into consideration whether there was an early recognition by the defendant dur-  
13   ing the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug  
14   dependency would be beneficial.

15       “(3) May take into consideration whether there is a probability that the defendant will cooper-  
16   ate with the diagnostic assessment and treatment agencies.

17       “(4) May take into consideration whether the defendant will observe the restrictions contained  
18   in the diversion agreement.

19       “(5) May take into consideration whether the offense was committed in a motor vehicle and  
20   whether there was a passenger in the motor vehicle who was under 18 years of age and at least  
21   three years younger than the defendant.

22       “(6) Shall deny the petition for a driving while under the influence of intoxicants diversion  
23   agreement if the defendant failed to appear at an arraignment on the present offense without good  
24   cause.

25       “(7) Shall deny the petition for a driving while under the influence of intoxicants diversion  
26   agreement if the defendant was charged with or convicted of an offense of driving while under the  
27   influence of intoxicants or its statutory counterpart in any jurisdiction after the date the defendant  
28   filed the petition.

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

34       “(9) Shall deny the petition for a driving while under the influence of intoxicants diversion  
35   agreement if the defendant was charged with or convicted of an offense of **aggravated vehicular**  
36   **homicide or** murder, manslaughter, criminally negligent homicide or assault that resulted from the  
37   operation of a motor vehicle in this state or in any other jurisdiction after the date the defendant  
38   filed the petition.”.

39