

Infliction of Serious Physical Injury or Death to a Vulnerable User of a Public Way

DRAFT CONCEPT

(1) A person commits the crime of Infliction of Serious Physical Injury or Death to a Vulnerable User of a Public Way if the person is the operator of a motor vehicle and causes serious bodily injury or death to a vulnerable user of a public way while failing to yield or provide the lawful right of way to a vulnerable user of a public way in violation of any provision of ORS Chapter 811.

(2) The court shall inform at the arraignment of a defendant charged with the offense of Infliction of Serious Physical Injury or Death to a Vulnerable User of a Public Way that the defendant may enter into a diversion agreement if:

(a) The defendant signs a plea of guilty or no contest to the charges of Infliction of Serious Physical Injury or Death to a Vulnerable User of a Public Way; and

(b) The defendant has not previously entered into a diversion agreement under this section.

(3) A diversion agreement established under subsection (2) of this section shall require the defendant to:

(a) Successfully complete a certified driver training, collision avoidance and driver improvement course that includes training in the safe operation of motor vehicles when vulnerable users of public ways are in the vicinity;

(b) Obtain a complete physical and mental exam and receive certification by a medical professional that the defendant is capable and competent to be a safe driver;

(c) Complete a program of community service approved by the court that includes at least 200 hours of activities related to traffic safety, the rights of vulnerable users of public ways, and education to adults and juveniles on the hazards and consequences of dangerous and negligent driving;

(d) Comply with any order of the court awarding restitution under ORS 137.106 or 811.706 for violation of a provision of ORS Chapter 811 or any other offense, and

(e) Comply with any other terms or conditions imposed by the court.

(4) The court may terminate the diversion agreement and enter the guilty plea or no contest plea to Infliction of Serious Physical Injury or Death to a Vulnerable User of a Public Way if, after notice to the defendant and an opportunity for hearing, the court determines that the defendant:

(a) Is not in compliance with the terms and conditions of the diversion agreement established under subsection (3) of this section, or

(b) Has not complied with the requirements of the diversion agreement established under subsection (3) of this section within court ordered deadlines not to exceed eighteen months after entering into the agreement.

(5) On compliance with the requirements of the diversion agreement established under subsection (3) of this section, the defendant may apply by motion to the court wherein the diversion agreement was entered for an order dismissing the charged offense with prejudice. Charges for any other offense shall not be affected by the diversion agreement or the dismissal of charges under this section.

(6) The offense described in this section, Infliction of Serious Physical Injury or Death to a Vulnerable User of a Public Way, is a Class A Misdemeanor.

(7) Upon receipt of notification that a person has signed a plea of guilty or no contest under paragraph (2)(a) of this section, the Department of Transportation shall suspend the driving privileges of the person. The suspension shall be for a period described under Schedule I of ORS 809.428.

(8) Upon receipt of notification that a person has been convicted of the crime of Infliction of Serious Physical Injury or Death to a Vulnerable User of a Public Way, the Department of Transportation shall suspend the driving privileges of the person. The suspension shall be for a period described under Schedule II of ORS 809.428.

(9) The crime Infliction of Serious Physical Injury or Death to a Vulnerable User of a Public Way is a compensable crime under ORS 135.905 and 147.005 to 147.367. For purposes of this subsection, the entry into a diversion agreement under subsection (3) of this section by a defendant shall establish eligibility for a victim or dependents of a victim.

(10) As used in this section:

(a) “Serious Physical Injury” has the meaning established in ORS 161.015.

(b) “Vulnerable User of a Public Way” means a bicyclist, pedestrian, motorcyclist, operator or occupant of a non-enclosed piece of farm equipment, wheelchair user, skateboarder, roller blader, animal rider or other person who is not enclosed within the protective shell of a motor vehicle and is lawfully occupying a place on or beside a roadway, shoulder, crosswalk, or sidewalk.

Notes:

- A Class C Felony is punishable by up to 5 years in prison and a fine of up to \$125,000. (ORS 161.605 and 161.625)
- A Class A Misdemeanor is punishable by up to 1 year in jail and a fine of up to \$6,250. (ORS 161.615 and 161.635)
- A Class B Misdemeanor is punishable by up to 6 months in jail and a fine of up to \$2,500. (ORS 161.615 and 161.635)
- A Class C Misdemeanor is punishable by up to 30 days in jail and a fine of up to \$1,250. (ORS 161.615 and 161.635)
- ORS 809.428 provides the following two schedules for driver license suspension:
 - I. 90 days for a first offense, 1 year for a second offense, and 3 years for subsequent offenses, and
 - II. 1 year for first offense, 3 years for a second offense, and 3 years for subsequent offenses.
- Second degree manslaughter is a Class B felony. (ORS 163.125)
- Recklessly endangering another person is a Class A misdemeanor. (ORS 163.195)