

LEGISLATIVE UPDATE 2018

House Bills Senate Bills

Signed into Law
By
Governor Kate Brown

Compiled by



Oregon Department of Public Safety
Standards and Training

With thanks to



Oregon Association Chiefs of Police



Oregon District Attorneys Association



Oregon State Sheriffs' Association



Oregon Attorney General's Office
Criminal Division



Oregon State Bar

Table of Contents¹

DRIVING OFFENSES 2

- 1. HB 4055 (Ch. 22) Failure to Perform the Duties of a Driver*
- 2. HB 4116 (Ch. 32) Driving a Motor Vehicle While Using a Mobile Electronic Device

ANIMALS 4

- 1. HB 4030 (Ch. 14) Compensatory Fines for Wildlife Offenses
- 2. HB 4050 (Ch. 19) Cockfighting Equipment

OTHER LEGISLATION 5

- 1. HB 4049 (Ch. 55) Sexual Assault Forensic Evidence Kits
- 2. HB 4056 (Ch. 23) Civil Forfeiture Proceeds
- 3. HB 4145 (Ch. 5) Protective Orders and Firearms
- 4. SB 1543 (Ch. 120) Omnibus Public Safety Bill 6. SB 1562 (Ch. 84) Strangulation

***FAILURE TO PERFORM THE DUTIES OF A DRIVER TEXT FOR 2019..... 8**

¹ My aim is to focus this update on what is most important and tangible for recruits. The primary sources (other than the Oregon Chapter Laws) are the outline from the [Oregon State Bar 2018 Legislative Highlights](#), the [Oregon Legislative Policy and Research Office’s 2018 Summary of Legislation](#), the 2018 ODAA Legislative Update, and the 2018 Legislative Session: [OSSA](#) Update by Kevin Campbell.

DRIVING OFFENSES

1. **HB 4055 (Ch. 22) Failure to Perform the Duties of a Driver; Amends ORS 811.700 (property damage), 811.705 (injury), 811.710 (domestic animal)**
 - a. This was a legislative “fix” to [Garcia-Cisneros, 285 Or App 252, rev den, 361 OR 886 \(2017\)](#). The Court of Appeals held that under the then-language of ORS 811.705, a driver’s affirmative legal obligations to remain at the scene and/or provide certain identifying information only arose when the driver became aware of the damage to the property or injuries to persons or domestic animals at the time of the accident. In [Garcia-Cisneros](#), the defendant had driven through a pile of leaves unaware that two small children were playing in them; she struck them and caused their deaths. The driver discovered *after the fact*, i.e. not on-scene, that she had been involved in an accident resulting in injury (confirmed by two witnesses). The State could not prove that *on-scene she knew* of this. Therefore, under the then-language of ORS 811.705, the Court of Appeals held that she had no legal obligation to take affirmative steps. FPDD convictions overturned.
 - b. There are several changes that put more of an onus on drivers:
 - i. Duties apply to a driver who knows *or* “has reason to believe” the driver’s vehicle was in a collision. This is key, as “reason to believe” is defined in the statute and is very similar to reckless.
 - ii. The word “accident” is replaced by “collision.”
 - iii. There is an affirmative obligation on drivers who learn after leaving the scene of a collision that the driver’s vehicle was in a collision. The driver must “as reasonably possible make a good faith effort” to perform the affirmative obligations per the statute(s). For example, if a person is injured, the driver must call 911 in addition.
 - iv. There are more specific duties drivers must accomplish than before, and even more if the vehicle the driver operates is a motor vehicle.
 - c. **Takes effect January 1, 2019.**
 - d. *See pages 6-9 for the new statutory language; curriculum amended.*

2. HB 4116 (Ch. 32) Driving a Motor Vehicle While Using a Mobile Electronic Device aka “Distracted Driving fix”; amends ORS 811.507

- a. This modifies the definition of “driving” (slightly) to exclude when it is required to park in a roadway for construction or utility maintenance.
- b. “Hands-free accessory” means an attachment or built-in feature for or an addition to a mobile electronic device that gives a person the ability to keep both hands on the steering wheel at all times while using the device or requires only the minimal use of a finger, via a swipe or a tap, to activate or deactivate a function of the device;” ORS 811.507(1)(b).
- c. There are also exemptions for
 - i. Truck drivers who use a hands-free device in the scope of their employment; and
 - ii. For those using a two-way radio device in certain circumstances such as transporting livestock, vehicles larger than one lane of travel, or certain-slow moving vehicles.
- d. Repeat offender penalties apply to convictions occurring *after 7/1/18*.
 - i. B violation = first offense
 - ii. A violation = second offense in 10 years or first that contributes to an accident
 - iii. B misdemeanor = third offense in 10 years
- e. **This went into effect March 16, 2018.**
- f. *Curriculum changes made.*

ANIMALS

1. HB 4030 (Ch. 14) Compensatory Fines for Wildlife Offenses

- a. In State v. Shockey, 285 Or App 718 (2017), a judge in Gilliam County found two defendants guilty of unlawfully possessing bighorn sheep but denied the State's requires for restitution. The Court of Appeals affirmed the trial court in holding that the civil damages arising from ORS 496.705 (Damage suits for unlawful killing of wildlife) do not constitute "economic damages". Therefore, a victim could not get restitution in a criminal case under this statute. HB 4030 was a legislative "fix" to that Court of Appeals opinion.
- b. This statutory "fix"
 - i. allows the SF&WC to initiate litigation to recover damages if SF&WC's damages were more than ORS 496.705 permitted SF&WC to recover;
 - ii. requires a court to order defendant to pay all or some of a fine to SF&WC (if the court imposes a fine); and
 - iii. applies to all Oregon wildlife laws offenses.
- c. ORS 496.992 establishes compensatory fines for wildlife prosecutions and the court may order a compensatory fine to SF&WC.
- d. **This bill took effect January 1, 2019.**
- e. No changes to DPSST curriculum submitted.

2. HB 4050 (Ch. 19) Cockfighting Equipment; amends ORS 167.428

- a. Modifies the crimes of cockfighting and participation in cockfighting (both remain C felonies). Also clarifies that the exemption from animal abuse statutes for livestock transportation, rodeos, commercially grown poultry, etc. does not create an exemption for individuals prohibited from owning or possessing animals under ORS 167.332.
- b. No changes to DPSST curriculum submitted.

OTHER LEGISLATION

1. **HB 4049 (Ch. 55) Sexual Assault Forensic Evidence (SAFE) Kits Amends ORS 181A.323 to 181A.326**
 - a. **No changes to curriculum**, *but* this is an important investigative issue. Recruits need to understand the importance of collecting such evidence and following up on their cases to make sure the evidence is processed.
Note: [OSP clears backlog of unprocessed sexual assault kits](#), 10/31/18
 - b. State Police must establish a committee on the tracking of sexual assault forensic evidence kits (SAFE kits) and implement the committee's recommendations. All law enforcement agencies, medical facilities, crime laboratories, and others are required to fully participate in tracking system within one year of system becoming operational. The Task Force must submit a report on its findings to the Governor and Attorney General no later than January 1, 2019.
 - c. **In effect since April 3, 2018.**

2. **HB 4056 (Ch. 23) Civil Forfeiture Proceeds – Scholarships for Deceased/Disabled Law Enforcement Officers**
 - a. This bill designates 10 percent of forfeiture proceeds to a scholarship program for children of public safety officers and specifies the length and amount of scholarship. It allows disbursement of certain forfeiture proceeds for support of all specialty courts. Scholarship program changes operative for applications submitted on or after July 1, 2018.
 - b. **In effect since March 16, 2018.**
 - c. No changes to curriculum submitted.

3. HB 4145 (Ch. 5) Protective Orders and Firearms, the “boyfriend loophole fix”

- a. ORS 166.255 Possession of firearm or ammunition by certain persons prohibited – here is the relevant language for the amended statute, i.e. **bold**:

(1) It is unlawful for a person to knowingly possess a firearm or ammunition if:

- (a) The person is the subject of a court order that:
 - (A) Was issued or continued after a hearing for which the person had actual notice and during the course of which the person had an opportunity to be heard;
 - (B) Restrains the person from stalking, intimidating, molesting or menacing **a family or household member of the person, a child of a family or household member of the person or a child of the person**; and
 - (C) Includes a finding that the person represents a credible threat to the physical safety of **a family or household member of the person, a child of a family or household member of the person or a child of the person**;
- (b) The person has been convicted of a qualifying misdemeanor and, at the time of the offense, the person was
 - (A) A family **or household** member of the victim of the offense; or
 - (B) **A parent or guardian of the victim of the offense**; or
- (c) The person has been convicted of stalking under ORS 163.732.

(2) * * *

(3) As used in this section:

- (a) * * *
- (b) * * *
- (c) “Family **or household** member” **has the meaning given that term in ORS 135.230.**

Upshot of what has changed in ORS 166.255: The insertion of “family or household member”; elimination of “intimate partner”; and the addition of a “parent or guardian of the victim of the offense,” *clarify and broaden the members who may be prior victims as predicate convictions for a qualifying offense under this statute to limit the possession of firearms or ammunition.* The practical effect means that adult persons related by blood or marriage and persons who have been involved in a sexually intimate relationship but have *not* cohabitated would now be prohibited from possessing a firearm if they are convicted of a crime against a family or household member.

- b. **This took effect January 1, 2019.**

- c. *Curriculum changes made.*

4. SB 1543 (Ch. 120) Omnibus Public Safety Bill; this is a “catch-all” public safety bill

- a. ORS 162.375(1), Initiating a False Report:
Amended to include (b)(B) which is a 30-day mandatory minimum jail sentence *if* the deployment of SWAT or similar law enforcement team resulted in death or serious physical injury to another person.
- b. ORS 137.540, General Conditions of Probation:
(1)(q) Submit to a risk and needs assessment as directed by the supervising officer **and follow reasonable recommendations resulting from the assessment.**
- c. ORS 161.705, Reduction of Certain Felonies to Misdemeanors:
Amendment broadens what felony convictions may be reduced to class A misdemeanors where the judge thinks it would be "unduly harsh" to not do so.
- d. ORS 147.397, Payment of Costs of Medical Assessment (for Crime Victims):
Law enforcement agencies must preserve SAFE kits for at least **60 years**.
- e. **Has been in effect since April 13, 2018.**
- f. No changes to curriculum.

5. SB 1562 (Ch. 84) Strangulation; amends ORS 163.187:

- a. (1)(a) Expanded to include pressure on the **chest** in addition to neck or throat.
- b. (1)(c) In addition to the prior aggravators (immediate presence of/witnessed by victim/defendant’s minor child or a minor in one of their households; victim is under 10yoa; a dangerous or deadly weapon was attempted to be, threatened to be or actually used; the defendant has a prior conviction for strangulation, assault or menacing against the same victim; the defendant has at least three priors for those offenses; or knows the victim is pregnant), **Strangulation is elevated to a C-felony where the “victim is a family or household member, as defined in ORS 135.230, of the person...”**
- c. **Effective for crimes committed on or after January 1, 2019.**
- d. *Curriculum changes made.*
- e. Resource: [Training Institute on Strangulation Prevention](#)

Failure to Perform Duties of a Driver, effective January 1, 2019

ORS 811.700 Failure to perform duties of driver when property is damaged

(1) A driver of a vehicle who knows or has reason to believe that the driver's vehicle was involved in a collision commits the offense of failure to perform the duties of a driver when property is damaged if the driver's vehicle is involved in a collision that results in damage to property and the driver does not perform duties required under any of the following:

(a) Immediately stop the driver's vehicle at the scene of the collision or as close to the scene of the collision as possible and reasonably investigate what the driver's vehicle struck. Every stop required under this paragraph should be made without obstructing traffic more than is necessary.

(b) If the driver's vehicle has been involved in a collision that results only in damage to a vehicle that is driven or attended by any other person, the driver shall perform all of the following duties:

(A) Remain at the scene of the collision until the driver has fulfilled all of the requirements under this paragraph.

(B) Give to the other driver or passenger:

(i) The driver's name and address, the name and address of the owner of the driver's vehicle and the name and address of any other occupants of the driver's vehicle; and

(ii) If the driver's vehicle is a motor vehicle, the registration number of the motor vehicle, the name of the insurance carrier covering the motor vehicle, the insurance policy number of the insurance policy insuring the motor vehicle and the phone number of the insurance carrier.

(C) Upon request and if available, exhibit and give to the occupant of or person attending any vehicle damaged the number of any document issued as evidence of driving privileges granted to the driver.

(c) If the driver's vehicle has been involved in a collision resulting in damage to any vehicle that is unattended, the driver shall perform all the following duties:

(A) Locate the operator or owner of the unattended vehicle and notify the operator or owner of:

(i) The driver's name and address and the name and address of the owner of the vehicle that struck the unattended vehicle; and

(ii) If the driver's vehicle is a motor vehicle, the registration number of the motor vehicle, the name of the insurance carrier covering the motor vehicle, the insurance policy number of the insurance policy insuring the motor vehicle and the phone number of the insurance carrier; or

2018 Oregon Legislation Update for Law Enforcement Officers

(B) Leave in a conspicuous place in the unattended vehicle a written notice giving:

(i) The driver's name and address and the name and address of the owner of the vehicle that struck the unattended vehicle and a statement of the circumstances of the collision; and

(ii) If the driver's vehicle is a motor vehicle, the registration number of the motor vehicle, the name of the insurance carrier covering the motor vehicle, the insurance policy number of the insurance policy insuring the motor vehicle and the phone number of the insurance carrier.

(d) If the driver's vehicle has been involved in a collision resulting only in damage to fixtures or property legally upon or adjacent to a highway, the driver shall perform all of the following duties:

(A) Take reasonable steps to notify the owner or person in charge of the property of the collision and of the driver's name and address, the vehicle owner's name and address and, if the driver's vehicle is a motor vehicle, the registration number of the motor vehicle, the name of the insurance carrier covering the motor vehicle, the insurance policy number of the insurance policy insuring the motor vehicle, and the phone number of the insurance carrier.

(B) Upon request and if available, exhibit any document issued as evidence of driving privileges granted to the driver.

(e) If the driver discovers only after leaving the scene of the collision that the driver's vehicle may have been involved in a collision that resulted in damage to another vehicle, fixture or property, the driver shall as soon as reasonably possible make a good faith effort to comply with the requirements of this subsection.

(2) As used in this section, "reason to believe" means that the driver is aware of a circumstance that would cause a reasonable person to be aware of a substantial and unjustifiable risk that the driver's vehicle has been in a collision. The risk must be of such nature or degree that failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(3) The offense described in this section, failure to perform the duties of a driver when property is damaged, is a Class A misdemeanor and is applicable on any premises open to the public.

ORS 811.705 Failure to perform duties of driver to injured persons

(1) A driver of a vehicle who knows or has reason to believe that the driver's vehicle was involved in a collision commits the offense of failure to perform the duties of a driver to injured persons if the driver's vehicle has been in a collision that results in injury or death to a person and the driver does not perform all of the following duties:

(a) Immediately stop the driver's vehicle at the scene of the collision or as close to the scene of the collision as possible and reasonably investigate what the driver's vehicle struck. Every stop required under this paragraph should be made without obstructing traffic more than is necessary.

(b) Remain at the scene of the collision until the driver has fulfilled all of the requirements under this subsection.

(c) Give to the other driver or a surviving passenger or any person not a passenger who is injured as a result of the collision:

(A) The driver's name and address, the name and address of the owner of the driver's vehicle and the name and address of any other occupants of the driver's vehicle; and

(B) If the driver's vehicle is a motor vehicle, the registration number of the motor vehicle, the name of the insurance carrier covering the motor vehicle, the insurance policy number of the insurance policy insuring the motor vehicle and the phone number of the insurance carrier.

(d) Upon request and if available, exhibit and give to the persons injured and to the occupant of or person attending any vehicle damaged the number of any document issued as official evidence of driving privileges granted to the driver.

(e) Render to any person injured in the collision reasonable assistance, including the conveying or the making of arrangements for the conveying, of an injured person to a physician, surgeon or hospital for medical or surgical treatment, if it is apparent that such treatment is necessary or if such conveying is requested by any injured person.

(f) Remain at the scene of a collision until a police officer has arrived and has received the required information, if all persons required to be given information under paragraph (c) of this subsection are killed in the collision or are unconscious or otherwise incapable of receiving the information. The requirement of this paragraph to remain at the scene of a collision until a police officer arrives does not apply to a driver who needs immediate medical care, who needs to leave the scene in order to secure medical care for another person injured in the collision or who needs to leave the scene in order to report the collision to the authorities, as long as the driver who leaves takes reasonable steps to return to the scene or to contact the nearest police officer.

(g) If the driver discovers only after leaving the scene of the collision that the driver's vehicle may have been involved in a collision that resulted in injury or death to any person, shall as soon as reasonably possible make a good faith effort to comply with the requirements of this subsection. The driver shall immediately contact 9-1-1 and provide to the dispatcher any requested information described in paragraph (c) of this subsection and the location and approximate time of the collision.

(2) As used in this section, "reason to believe" means that the driver is aware of a circumstance that would cause a reasonable person to be aware of a substantial and unjustifiable risk that the driver's vehicle has been in a collision. The risk must be of such nature or degree that failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(3) (a) Except as otherwise provided in paragraph (b) of this subsection, the offense described in this section, failure to perform the duties of a driver to injured persons, is a Class C felony and is applicable on any premises open to the public.

(b) Failure to perform the duties of a driver to injured persons is a Class B felony if a person suffers serious physical injury as defined in ORS 161.015 or dies as a result of the collision.

ORS 811.710 Failure to perform duties of driver when animal is injured

The changes are essentially the same as above with these particular duties:

- The duties are triggered for this statute only if the animal killed is a "domestic animal", ORS 167.310 (This means an animal owned by a person that is not livestock or a horse).
- Driver must
 - Make a reasonable effort to determine the animal's injuries.
 - Give animal "reasonable attention"
 - Immediately report to the owner or contact police if unable to do report to the owner.