

CHAPTER 162

I. PERJURY AND RELATED OFFENSES

Applicable Definitions:

1. "Benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary.

2. "Material" means that which could have affected the course or outcome of any proceeding or transaction. Whether a false statement is material in a given factual situation is a question of law.

NOTE: For a false statement to be "material" it must be one that could influence the course or outcome of the proceeding or transaction. The issue generally is whether the alleged falsification was material to a central issue in the proceeding.

QUESTION: Why are the elements of a crime considered "material issues" in a criminal case?

3. "Statement" means any representation of fact and includes a representation of opinion, belief or other state of mind where the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation.

4. "Sworn Statement" means any statement knowingly given under any form of oath or affirmation attesting to the truth of what is stated.

5. "Transaction" has been defined as including "all that takes place in the conducting of any item of business or an affair."

A. PERJURY - ORS 162.065

Definition: A person commits the crime of perjury if the person makes a false sworn statement in regard to a material issue, knowing it to be false.

Defining cases:

State v. Hayes: Defendant was asked in his sex abuse trial whether he had ever been "mean" to his grand children. He answered: "I've never been mean to any of my kids or grand kids." The state then called 4 grand children to testify that he had abused them all. The court found that the prosecuting attorney failed to be sufficiently specific when he asked the defendant if

he had ever been mean. A perjury prosecution may not be based on an inference that a defendant meant one thing when he said another.

State v. Park: Defendant applied for a diversion for a recent DUII citation. His affidavit indicated that he did not have any prior DUII or driving related homicides. The defendant had a prior criminally negligent homicide conviction.

QUESTION: Can a sworn affidavit form the basis for a perjury charge? Yes _____ No _____

State v. Romero: Defendant falsified his name and date of birth on an affidavit of indigency in order to qualify for a court appointed attorney. Issue = Was his falsification material to his case? A false statement need not actually affect a proceeding or transaction in order to be material. It is enough that the statements could have affected its course or outcome.

QUESTION: What makes an affidavit a sworn statement?

State v. Carr: Defendant lied in an affidavit. Affidavits are notarized with sufficient formality to impress on the person the seriousness of his/her act.

State v. Real: Defendant is stopped by an officer who discovers marijuana, heroin and cocaine. At the scene, the defendant tells the officer that the drugs belong to him. At trial, however, the defendant tells the jury that the drugs did not belong to him. QUESTION: Can a perjury conviction be based solely on the contradictory statement of a single witness?
Yes _____ No _____

In any prosecution for perjury or false swearing, the falsity of a statement may not be established solely through contradiction by the testimony of a single witness. Corroboration is required.

QUESTION: How much corroboration is required?

QUESTION: What if the officer had the defendant's fingerprints on the container holding the drugs? Could the state prove perjury?
Yes _____ No _____

QUESTION: What if the prosecution offered statements from the defendant's friends implicating the defendant along with the officers testimony. Could the state prove perjury?
Yes _____ No _____

QUESTION: What if the friend who testified was a co-defendant?

Could the officer's testimony along with the co-defendant's establish perjury?

Yes _____ No _____

QUESTION: What if the officer smelled marijuana in the car in addition to having the defendant's confession that the marijuana belonged to him. Are the officer's olfactory talents sufficient corroboration for a perjury conviction?

Yes _____ No _____

B. FALSE SWEARING - ORS 162.075

Definition: A person commits the crime of false swearing if the person makes a false sworn statement knowing it to be false.

QUESTION: What distinguishes perjury from false swearing?

C. UNSWORN FALSIFICATION - ORS 162.085

Definition: A person commits the crime of unsworn falsification if the person knowingly makes any false written statement to a public servant in connection with an application for any benefit.

QUESTION: What distinguishes false swearing from unsworn falsification.

IT IS NO DEFENSE TO THE ABOVE CRIMES THAT:

1. The statement was inadmissible under the rules of evidence;
2. The oath or affirmation was taken or administered in an irregular manner; or
3. The defendant mistakenly believed the false statement to be immaterial.

D. RETRACTION AS A DEFENSE: It is a defense to a prosecution for perjury or false swearing committed in an official proceeding that the defendant retracted the false statement:

1. In a manner showing a complete and voluntary retraction of the prior false statement; and
2. During the course of the same official proceeding in which it was made; and
3. Before the subject matter of the official proceeding is

submitted to the ultimate trier of fact.

QUESTION: Will a defendant be able to assert that the oath given was given in an irregular manner in his defense for the crime of perjury? Yes _____ No _____

QUESTION: Defendant lied on the witness stand about a material fact. He retracts the lie after the jury has begun to deliberate in the jury room. Has the defendant committed perjury? Yes _____ No _____

II. ESCAPE

DEFINITIONS:

1. "CUSTODY" = The imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order, but does not include detention in a correctional facility or state hospital.

2. "CORRECTIONAL FACILITY" = Any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order and includes but is not limited to a juvenile facility. "Correctional facility" applies to a state hospital only as to persons detained therein charged with or convicted of a crime, or detained therein after acquittal of a crime by reason of mental disease or defect.

3. "ESCAPE" = The unlawful departure of a person from custody or a correctional facility. "Escape" includes the unauthorized departure or absence from this state or failure to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board. "Escape" does not include failure to comply with provisions of conditional release.

NOTE: Conditional release is release pending trial generally through a release program which monitors a defendant's behavior and whereabouts.

4. "UNAUTHORIZED DEPARTURE" = Means the unauthorized departure of a person confined by court order in a juvenile facility or a state hospital that, because of the nature of the court order, is not a correctional facility, or the failure to return to custody after any form of temporary release or transitional leave from a correctional facility.

A. ESCAPE I - ORS 162.165

Definition: A person commits escape I if:

1. Aided by another person actually present, the person uses or threatens to use physical force in escaping from custody or

a correctional facility; or

2. The person uses or threatens to use a dangerous weapon escaping from custody.

B. ESCAPE II - ORS 162.155

Definition: A person commits escape II when:

1. Using or threatening to use force escaping from custody; or

2. Having been convicted or found guilty of a felony, the person escapes from custody imposed as a result thereof; or

3. The person escapes from a correctional facility; or

4. While under the supervision of the PSRB, the person departs, is absent from or fails to return to this state without authorization of the board.

QUESTION: When escaping from prison Harry threatened the guard with a razor blade. What crime did Harry commit?

QUESTION: Defendant departs from his home during a court ordered home detention program imposed as a sentence for Assault III. Did he commit the crime of Escape II?

Yes _____ No _____

QUESTION: Defendant violated conditions of pre-trial release by not staying home. Did he commit the crime of Escape II?

Yes _____ No _____ Explain your answer:

C. ESCAPE III - ORS 162.145

Definition: A person commits escape in the third degree when s/he escapes from custody.

QUESTION: Define "custody"

QUESTION: An officer approaches suspect to engage in mere conversation. The suspect flees from the officer. Has the suspect committed Escape III? Yes _____ No _____
Explain your answer:

DEFENSE: It is a defense to a prosecution of Escape III if the person escaping or attempting to escape was in custody pursuant to an illegal arrest.

QUESTION: A defendant escapes from an officer who is taking him to detox for minor in possession of alcohol. Has the defendant committed Escape III? Yes _____ No _____
Explain your answer:

E. UNAUTHORIZED DEPARTURE - ORS 162.175

Definition: A person commits unauthorized departure if:

1. The person makes an unauthorized departure, or
2. Not being an inmate therein, the person aids another in making or attempting to make an unauthorized departure.

QUESTION: Define what unauthorized departure means and how it differs from Escape II.

CASES DEFINING ESCAPE

1. State v. Esmond: Defendant's departure from his home during a court ordered home detention program constituted Escape II. A defendant who is sentenced to constructive custody at his home commits Escape II if he leaves the home without the permission of his probation officer.

2. State v. Schaffer: Court is faced with jail overcrowding so the court orders defendant who is released from jail to report to the courtroom every day from 8 until 5 to serve his sentence. Defendant's failure to appear for his courtroom confinement imposed due to lack of jail space constituted Escape II because the court had declared the courtroom a correctional facility.

3. State v. Wilde: Defendant violated conditions of pre-trial release by not staying home. This did not amount to an escape because it related to "pre-trial release" rather than court ordered confinement after sentencing.

4. State v. McCauley: Defendant who had just been convicted of murder escaped from court guards and was missing for 2 days. Defendant's custody status was a result of the jury's verdict so it didn't matter that the court had not yet sentenced the defendant to custody. (McCauley was already in custody during the trial)

5. State v. McVay: Defendant was M.I.P. When the officer tried to take the defendant to detox, the defendant ran. Custody must be restraint pursuant to authority to arrest. Officer was not authorized to "arrest" for a violation so the defendant was not in custody when he fled.

6. State v. Langley: Defendant was in a "transitional program"

at OSH which allowed him to live in a cottage on OSH grounds. He had a pass to leave the grounds but was gone beyond the time period. He killed 2 people. Defendant who is in the custody of a correctional facility but who is not physically confined there is otherwise in custody.

III. OBSTRUCTING GOVERNMENTAL OR JUDICIAL ADMINISTRATION - ORS 162.235

Definition: A person commits the crime of obstructing governmental or judicial administration if the person intentionally obstructs, impairs or hinders the administration of law or other governmental or judicial function by means of intimidation, force, physical or economic interference or obstacle.

Caselaw:

State v. Matilla: A civil officer attempted to serve an eviction notice. The defendant refused to open the door to accept the notice. Officers arrived. The defendant threatened to shoot them. He placed a crutch up against the door to prevent entry into the home. Once inside the home the officers found an M-1 rifle in the defendant's bedroom.

NOTE: This charge does not apply to situations where the governmental or judicial action is unlawful.

IV. REFUSING TO ASSIST A POLICE OFFICER 162.245

Definition: A person commits this crime if upon command by a person known by the person to be a peace officer the person unreasonably refuses or fails to assist in effecting an authorized arrest or preventing another from committing a crime.

QUESTION: Officer, who is attempting to arrest a combative defendant, asks a passerby to assist him in making an arrest. The passerby refuses. Has he committed the crime of refusing to assist a police officer? Yes _____ No _____
Explain your answer:

NOTE: The key words in the refusing to assist statute are: "unreasonably refuses."

V. INTERFERING WITH A PEACE OFFICER

Definition: A person commits the crime of Interfering with a Peace Officer if the person, knowing that another person is a peace officer:

(1) Intentionally acts in a manner that prevents, or attempts to prevent, a peace officer from performing the lawful duties of the peace officer with regards to another person; or

(2) Refuses to obey a lawful order by the peace officer.

VI. TAMPERING WITH A WITNESS - ORS 162.285

Definition: A person commits the crime of tampering with a witness if:

A. The person knowingly induces or attempts to induce a witness or a person the person believes may be called as a witness in any official proceeding to offer false testimony or unlawfully withhold any testimony; or

B. The person knowingly induces or attempts to induce a witness to be absent from any official proceeding to which the person has been legally summoned.

QUESTION: What does induce mean in this statute. Does it require payment of money?

Definitions:

"Official Proceeding" = any proceeding before any judicial, legislative or administrative body or officer, wherein sworn statements are received, and includes any referee, hearing examiner, commissioner, notary or other person taking sworn statements in connection with such proceedings.

"Testimony" = oral or written statements that may be offered by a witness in an official proceeding.

QUESTION: If a defendant induces his friend to lie at grand jury concerning charges against the defendant, has he committed the crime of Tampering with a Witness? Yes _____ No _____

Caselaw:

State v. Wagner: The defendant was charged with sex abuse. The defendant induced his children and wife to leave the court's jurisdiction before they were served for trial. QUESTION: Can the state prove Tampering with a Witness given these facts?
Yes _____ No _____

NOTE: In order to be considered a witness in an official proceeding, the witness must be personally served for the proceeding.

QUESTION: The defendant induces his friend to leave the jurisdiction to avoid testifying in defendant's trial. The friend is aware of the proceeding because his daughter was given the

subpoena by the process server. The friend fails to appear for trial. Can the state prove Tampering with a Witness given these facts? Yes _____ No _____

Personal service requires that the witness be served in person.

VII. TAMPERING WITH PHYSICAL EVIDENCE - 162.295

Definition: A person commits the crime of tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or to the knowledge of such person is about to be instituted, the person:

a. Destroys, mutilates, alters, conceals or removes physical evidence impairing its verity or availability, or

b. Knowingly makes, produces or offers any false physical evidence, or

c. Prevents the production of physical evidence by an act of force, intimidation or deception against any person

"PHYSICAL EVIDENCE" = Any article, object, record, document or other evidence of physical substance.

QUESTIONS: Does the proceeding have to be pending in order to establish the crime?

What if a forensic scientist for the defense recklessly destroys a piece of evidence that was intended for use in a trial. Do these facts establish tampering with physical evidence? If so, why. If not, why not.

VIII. RESISTING ARREST - ORS 162.315

Definition: A person commits the crime of resist arrest if the person intentionally resists a person known by the person to be a peace officer in making an arrest.

"Resist," as used in this section, means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person and includes behavior clearly intended to prevent being taken into custody by overcoming the actions of the arresting officer. The behavior does not have to result in actual physical injury to the arresting officer. Passive resistance does not constitute behavior intended to prevent being taken into custody.

IT IS NOT A DEFENSE to resist arrest under this section that the peace officer lacked legal authority to make the arrest,

provided the peace officer was acting under color of official authority.

QUESTION: If a defendant does not "resist" when initially arrested, but later kicks at and hits an officer at the garage at the justice center, has the defendant committed the crime of resisting arrest?
Yes _____ No _____

Caselaw: State v. Bolden: "Arrest" means the entire course of events during which an officer effectuates and maintains custody over the arrestee.

QUESTION: Must an officer receive injuries in order for the state to prove resisting arrest? Yes _____ No _____

QUESTION: Officers perform an illegal stop and entry into a motor vehicle which contain methamphetamine. The defendant resists arrest when the officers take him into custody. The judge throws out the evidence of methamphetamine possession based on the exclusionary rule. Is the resist arrest charge a viable charge once the underlying charge for the arrest is dismissed?
Yes _____ No _____

Caselaw: State v. Janicke: The court refused to extend the exclusionary rule to evidence of crimes committed against officers during what turned out to be an illegal stop/entry.

QUESTION: Does a defendant commit the crime of Resist Arrest when the only person he puts at risk of physical injury is himself?
Yes _____ No _____

Caselaw: State v. Allison: Defendant clutched the steering wheel of his car while officers attempted to arrest him. During this time, his car was running, he was intoxicated and he grabbed the officer's radio and placed it down his pants. Once out of the car he dug his heels into the ground as he was taken to the squad car. Resist arrest statute covers situations where there is a "substantial risk of physical injury to ANY PERSON, including the defendant.

QUESTION: Should the comparative size of the defendant and the arresting officer be considered when evaluating whether a defendant can be prosecuted for resist arrest?
Yes _____ No _____ Why or why not?

QUESTION: Defendant is arrested for trespassing during an anti-abortion protest. She refuses to place her hands behind her back to be cuffed. Additionally, she refuses to walk to the police vehicle, causing the arresting officers to carry her to the

vehicle. Has she committed resist arrest?

Yes _____ No _____

QUESTION: 5'4" defendant is arrested by 6'4", 300 lb. officer. She refuses to be cuffed. She pulls away at one point. She screams loudly at the arresting officer, causing her brother to come to the officer and intervene in the arrest. Has the defendant committed the crime of resist arrest?

Yes _____ No _____

Caselaw: State v. Hutchison: Defendant wrestled and scuffled and attempted to get away from the arresting officer. His wife also intervened. Passive resistance and nonviolent flight is not sufficient to prove resisting arrest; however, defendant's size (he was a big guy) and the fact that his wife began to assist him in the struggle was sufficient for purposes of the statute.

State v. Hassan: Diminutive size of the defendant, 5'4", compared to the 300 lb, 6'4" officer resulted in the court finding that the victim did not directly create a substantial risk of physical injury to the officer; however, the defendant's actions incited her brothers to join in the struggle. Actions which cause 3rd parties to present a substantial risk of physical injury are sufficient to find someone guilty of resist arrest.

QUESTION: Is a defendant justified in resisting arrest if the arresting officer uses excessive force in making the arrest?

Yes _____ No _____

Caselaw: State v. Wright: The defendant in this case suffered from a dislocated shoulder and extensive nerve damage as a result of the arrest. A doctor testified that the injuries could only be caused by excessive force. A defendant's resistance to arrest is justified if the officer uses excessive force in making the arrest. Note: The prosecuting attorney in this case should have questioned the officer extensively about whether the officer believed that he had to use such force in order to effect the arrest. The court should have looked to the necessity of the use of force under the circumstances.

QUESTION: Does a defendant need to be told that he is under arrest in order to prove resist arrest?

Caselaw: State v. Toelaer: Defendant's knowledge that the officer is making an arrest is not relevant.

IX. HINDERING PROSECUTION - ORS 162.325

Definition: A person commits the crime of hindering prosecution if, with intent to hinder the apprehension, prosecution, conviction or punishment of a person who has committed a crime punishable as a felony, or with the intent to assist a

person who has committed a crime punishable as a felony in profiting or benefiting from the commission of the crime, the person:

- a. Harbors or conceals such person; or
- b. Warns such person of impending discovery or apprehension; or
- c. Provides or aids in providing such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or
- d. Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person; or
- e. Suppresses by any act of concealment, alteration or destruction physical evidence which might aid in the discovery or apprehension of such person; or
- f. Aids such person in securing or protecting the proceeds of the crime.

X. COMPOUNDING A FELONY - ORS 162.335

Definition: A person commits this crime if the person accepts or agrees to accept any pecuniary benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

QUESTION: In Hindering and Compounding a Felony cases, does it matter that the principal offender is not apprehended, prosecuted, convicted or punished?

Yes _____ No _____

XI. CRIMINAL IMPERSONATION - ORS 162.365

Definition: A person commits the crime of criminal impersonation if with intent to obtain a benefit or to injure or defraud another the person falsely impersonates a public servant and does an act in such assumed character.

XII. CRIMINAL IMPERSONATION OF A PEACE OFFICER - ORS 162.367

Definition: A person commits the crime of criminal impersonation of a peace officer if the person uses false law enforcement identification in the commission of an offense.

"False Law Enforcement Identification" means a badge or an identification card that identifies the possessor of the badge or the card as a member of law enforcement and was not lawfully issued to the possessor by the law enforcement unit.

XIII. POSSESSION OF A FALSE LAW ENFORCEMENT I.D. CARD - ORS 162.369

Definition: See above definition of false law enforcement i.d.

XIV. INITIATING A FALSE REPORT - ORS 162.375

Definition: A person commits this crime when s/he knowingly initiates a false alarm or report which is transmitted to a fire department, law enforcement agency or other organization that deals with emergencies involving danger to life or property.

QUESTION: If a person reports a rape to 911 and the accused denies the rape and passes a polygraph, can the state prove that the alleged victim initiated a false report?

Yes _____ No _____

QUESTION: What level of proof is required to show that someone has made a false report?

QUESTION: Should the state consider filing initiating a false report charge against a victim if the witness's statements at trial are not convincing and the state loses the trial.

Yes _____ No _____

XV. GIVING FALSE INFORMATION FOR A CITATION - ORS 162. 385

Definition: A person commits this crime if s/he knowingly uses or gives a false or fictitious name, address or date of birth to any peace officer for the purpose of the officer's issuing or serving the person a citation.

QUESTION: Defendant is placed into custody for transportation to the Multnomah County Detention Center where he is to be lodged for the crime of Rape I. He knowingly provides a false name to the arresting officer. Has the defendant committed the crime of giving false information for a citation? Yes _____ No _____

Explain your answer:

XVI. OFFICIAL MISCONDUCT IN THE FIRST DEGREE - ORS 162. 415

Definition: A public servant commits the crime of official misconduct in the first degree if with intent to obtain a benefit or to harm another:

a. The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of officer; or

b. The public servant knowingly performs an act constituting an unauthorized exercise in official duties.

QUESTION: Give an example of unauthorized exercise in official duties:

QUESTION: Can a third party, other than the public servant, be the recipient of the "benefit" in Official Misconduct cases?

Yes _____

No _____

XVII. OFFICIAL MISCONDUCT IN THE SECOND DEGREE - ORS 162. 405

Definition: A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person.