

CHAPTER 164 OREGON REVISED STATUTES ET AL

THEFT

I. DEFINITIONS (ORS 164.005)

A. "theft" - with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

1. takes, appropriates, obtains or withholds such property from an owner thereof; or

2. commits theft of property lost, mislaid or delivered by mistake;

3. commits theft by extortion, deception, or by receiving.

b. "appropriate"

1. exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under circumstances as to acquire the major portion of the economic value or benefit; or

2. Dispose of the property of another for the benefit of oneself or a third person.

c. "Deprive property of another or deprive"

1. Withhold property of another or cause property of another to be withheld from that person permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to that person; or

2. dispose of the property in such a manner or under circumstances as to render it unlikely that an owner will recover such property.

D. "obtain" - includes but is not limited to the bringing about of a transfer or purported transfer of property or of legal title interest therein, whether to the obtainer or another.

e. "owner" - means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

f. "property" - any article, substance or thing of value, including, but not limited to, money, tangible and intangible personal property, real property, choses in action, evidence of debt or of contract.

g. "companion animal" - dog or cat possessed by a person, business, or other, entity for purpose of companionship, security, hunting, herding or providing assistance in relation to a physical disability.

II. Aggregation (ORS 164.115(5))

1. The value of single theft transactions may be added together if the thefts were committed:

a. Against multiple victims by a similar means within a thirty day period; or

b. Against the same victim, or two or more persons who are joint owners, within a 180 day period.

III. Offenses

***** generally value means the market value of the property at the time and place of the crime. When value of the property cannot be reasonably ascertained it is presumed to be an amount less than \$50.00 in the case of theft and less than 500 in any other case. *** NOTE *** value is still a key element in this offense.(ORS 164.115)

1. Theft III (ORS 164.043) - theft where total value of the property in a single or aggregate transaction is under 50 dollars.

2. Theft II (ORS 164.045) - theft where total value of the property in a single or aggregate transaction is \$50 or more but is under \$200 in a case of theft by receiving and under 750 in any other case.

3. Theft I (ORS 164.055)-

- a. the total value of the property in a single or aggregate transaction is 200 or more in case of theft by receiving, and 750 or more in any other case; or
- b. committed during riot, fire, explosion, catastrophe, or other emergency in an area affected thereby; or
- c. theft is by receiving, committed by buying, selling, borrowing or lending on the security of the property (Gill v. Cupp, 78 Or App 505 (1986). The value of property stolen is irrelevant when the charge is selling stolen property.); or
- d. the theft is of a firearm or explosive; or
- e. the theft is of livestock animal, a companion animal, or a wild animal removed from habitat or born of a wild animal removed from habitat.

4. Aggravated theft I (ORS 164.057)- person commits theft I with respect to property other than a motor vehicle used primarily for personal rather than commercial transportation, and value in single or aggregate transaction is \$10,000.00 or more.

5. Theft of lost or mislaid property (ORS 164.065) - person comes into control of property that the person knows or has reason to know is lost, mislaid, or delivered by mistake. (this knowledge will be determined by circumstantial evidence) Person is required to take reasonable steps to restore property to the owner.

6. Theft by extortion (ORS 164.075) - person compels or induces another to deliver property to the person or to a third person by instilling in the other a fear that, if the property is not so delivered, the actor or a third person will in the future:

- a. cause physical injury to someone;
- b. cause damage to property; or
- c. engage in other conduct constituting a crime; or
- d. accuse someone of a crime or cause criminal charges to be filed; or
- e. expose a fact about someone that would tend to subject person to hatred, contempt, ridicule; or

f. cause or continue a strike, boycott or other action that would injure a person's business.

g. give or withhold information regarding another's legal claim or defense.

h. Use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty in such a manner that would adversely affect another

i. inflict any other harm that would not benefit the actor.

7. Theft by deception (ORS 164.085) - with INTENT to defraud the person

a. creates or confirms another's false impression of value, intention or other state of mind that the actor does not believe

***** this does not include aggressive bargaining or persons with superior bargaining skills*****

b. fails to correct a false impression **which the person previously created** or confirmed

***** person 1 offers for sale to person 2 a Rolex wrist watch he believes to be a phoney knock off for 25.00. Person 2 recognizes the watch to be an authentic Rolex with 5,000.00. Person 2 buys the watch - is he guilty of theft by deception? NO.

c. prevents another from acquiring information pertinent to the disposition of the property involved

d. sells or otherwise encumbers property, failing to disclose a lien, or legal impediment

e. promises performance which the person does not intend to perform or knows will not be performed.

***** in cases of bad checks it is prima facie evidence of theft by deception if the person who wrote the check (drawer) had no account with the institution that the check is written on. Or if payment is refused by the drawee (the bank) for lack of funds, upon presentation within 30 days after the date of utterance (date check presented for payment) and the drawer (person who

wrote check) fails to make good within 10 days after receiving notice of refusal.

8. Theft by receiving (ORS 164.095) - person receives, retains, conceals, or disposes of property of another knowing or having good reason to know that the property was the subject of a theft

***** The police officers mere conversation or interviews of the subject is going to bring out evidence of this crime. For example - ask subject so Joe gave you an expensive car audio system - does Joe have a job ? where did Joe say he got it? did the fact that there was no box and the wires were cut on the back indicate anything to you?

9. Right to possession (ORS 164.105)

***** person 1 takes \$1000.00 worth of jeans from M & F he takes the jeans to his car and puts them into the trunk. The person 1 goes back into the mall to get an orange julius drink because all this thieving has made him thirsty. While person 1 is buying the orange julius person 2 gets into person 1's trunk and takes the jeans. Is person 2 guilty of theft? (yes) who is the victim? (Person 1). per Oregon law a person who obtains possession of property by theft or other illegal means shall be deemed to have a right to possession superior to that of another person who takes, obtains, withholds, the property from that person by means of theft.

***** Person 1 and Person 2 own a car as joint owners. They get into a fight and person 1 takes the car and leaves for an indefinite time. Can person 2 file theft charges against person 1? (no) Joint owners of property do not have a superior right to possession over the other owners.

10. Theft of services (ORS 164.125) - with I N T E N T to avoid payment the person obtains services that are available only for compensation by force threat deception or other means to avoid payment.

***** typical dine and dash, going over toll bridge without paying toll etc.

GO TO CASE LAW EXAMPLES

11. Unauthorized use of a motor vehicle (ORS 164.135) -

(a) The person takes, operates, exercises control over, rides in or otherwise uses another's vehicle, boat or aircraft without consent of the owner

***** NOTE this section does not talk about I N T E N T therefore the mental state is knowingly.

(b) person agrees to take custody of vehicle for another and uses it for that deviate from the original agreement.

***** Person 1 is a mechanic and agrees to do some mechanic work on person 2's street rod. Person 1 does the work but instead of calling person 2 and telling him to pick up his car person 1 takes it to the weekend drag races and uses it to compete in the drag races. Is person 1 committing UUMV? (YES)

GO TO CASE LAW EXAMPLES

12. criminal possession of rented or leased personal property
(ORS 164.140)-

a. Person rents an item of personal property from a commercial renter under WRITTEN AGREEMENT which provides for the return of the items to a particular place at a particular time, the person fails to return item as specified, is therefore served by mail with a written demand to return the item and KNOWINGLY (must be sent by certified mail) fails to return the item within ten business days from date of mailing the demand

13. Defenses (ORS 164.035)-

a. Honest claim of right.

b. unaware that the property was that of another

c. that the defendant reasonably believed def was entitled to the property involved or had a right to acquire or dispose of it.

d. In theft by receiving it is a defense that the def received, retained, concealed, or disposed of the property with intent to restore it to the owner.

e. property involved is that of the defendant's spouse unless they are not living together as man and wife A N D were living in separate abodes at the time of the alleged theft.

***** Police are going to see this most often when responding to domestic calls. Pre divorce usually involves a period of separation during which time due to financial concerns the parties live in the same house but occupy different parts.

BURGLARY

1. DEFINITIONS (ORS 164.205)

A. "building" in addition to ordinary meaning booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons or for carrying on of business therein. If separate units each unit is in addition to being a part of such building, they are separate buildings.

b. "Dwelling" building which regularly or intermittently is occupied by a person lodging therein at night, whether or not the person is actually present.

c. "enter or remain unlawfully"

1. to enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public OR when the entrant is not otherwise licensed or privileged to be there.

2. failure to leave premises that are open to the public after being lawfully directed to do so by a person in charge.

d. "open to the public" premises by their physical nature, function, custom of, usage, notice or lack thereof, or other circumstances at the time would lead a reasonable person to believe that no permission to enter or remain is required.

e. "Person in charge" a representative or employee of person who has lawful control by ownership, tenancy, official relationship, other legal relationship (I.E. LESSEE). It includes but is not limited to person designated by a board of directors, governing body of any political subdivision of this state.

f. "Premises" any building and any real property, wether privately or publicly held.

II. OFFENSES

1. Burglary II (ORS 164.225)- (Except in the case of criminal trespass I) if person enters or remains unlawfully in a building with intent to commit a crime therein.

2. Burglary I (ORS 164.225) - person commits burg I and the building is a dwelling, or if effecting entry or while in the building in flight therefrom the person

a. is armed with burglary tools (164.235- acetylene torch, electric arc, burning bar, thermal lance, or similar device able to burn through steel, or other solid material, or nitroglycerene, dynamite, gun powder or other explosive, tool or other device adapted or designed or commonly used for forcible entry into premises or theft by a physical taking) or a deadly weapon; or

2. causes attempts to cause physical to ant person, or

3. uses or threatens to use a dangerous weapon.

TRESPASS

I. OFFENSES

1. Criminal trespass II by a guest (ORS 164.243) - a person who is registered at a hotel and is in transient lodging and refuses to leave after being directed to do so after departure date of the guests reservation. (NOTE - if they are not in **transient housing** then we must go through F.E.D).

Note officers must understand this concept. All following characteristics MUST be present for there to be transient occupancy:

1. Occupancy is charged on a daily basis and is payable no less frequently that every two weeks

2. lodging operator provides maid and linen services daily or every two days

3. if occupancy exceeds 5 days the occupant has a business address or residence other than the transient lodging.

2. Criminal trespass II (ORS 164.245)- enter or remain unlawfully in or upon a premises unlawfully.

3. Criminal trespass I (ORS 164.255)-

a. Enter or remain unlawfully in a dwelling

b. having been denied future entry to a building per a merchants notice of trespass , reenter the building during during hours when the building is open to the public with the intent to commit theft therein.

4. Criminal trespass while in possession of a firearm (ORS 164.265)- while in possession of a firearm the person enters or remains unlawfully in or upon premises.

5. closure of premises to motor propelled vehicles (ORS 164 .270)-land owner can close privately owned property by posting signs 8" wide 11" wide saying "closed to motor vehicles" must display business name, address, phone number. Must be posted at normal points every 350 feet.

6. unlawful entry to a motor vehicle (ORS 164.272)- enters a motor vehicle or ant part of the motor vehicle with intent to commit a crime. " note - enters means inserting any part of the body or anything connecting with the body.

GO TO CASE LAW EXAMPLES

ARSON AND criminal MISCHIEF

1. DEFINITIONS (ORS 164.305)-

A. "Police animal" - dog or horse used in police work by a certified police officer.

B. "Protected property" - means any place structure or thing customarily occupied by people including public buildings and forest lands.

c. "property of another" - property in which anyone other than the actor has a legal or equitable interest that the actor has no right to defeat or impair even though the actor may have such an interest.

II. OFFENSES

A. Arson I (ORS 164.325) - starting a fire or causing an explosion OR the person intentionally damages:

1. protected property of another;
2. any property, whether property of the person or the property of the other, and such act **recklessly** places another person in danger of physical injury or protected property of another in danger of damage; or
3. any property, persons or others, and recklessly causes serious physical injury to a firefighter or peace officer acting in the line of duty relating to the fire.

B. Arson II (ORS 164.315) - Starting a fire or causing an explosion, the person intentionally damages any building of another that is not protected property.

C. Reckless burning(ORS 164.335) - Recklessly damages property of another by fire or explosion.

*****DEFINITIONS FOR CRIM MISCHIEF*****

" Institution" - includes state and local correction facilities, mental health facilities, juvenile detention facilities, and training schools.

"Medical facility" - health care facility, licensed physician's office, or anywhere a licensed health care practitioner provides health care services.

"Public utility" - includes cooperatives, people's utility district or other municipal corp providing, gas, electric, gas, water, communication, or other utility service.

"Public trans facility" - prop, structure, equipment, used for or in connection with the transportation of persons for hire by rail, air, or bus, including any rail cars, buses or airplanes used to carry out such transportation.

D. Criminal mischief III (ORS 164.345) - with intent to cause substantial inconvenience to the owner or other person, and having no right or reasonable

ground to believe that the person had such right, the person tampers or interferes with the property of another.

E. Criminal mischief II (ORS 164.354) -

1. Crim misch III and damage exceeds 100.00
2. **recklessly** damages property of another, no right nor reasonable grounds to believe they had a right, in an amount exceeding 100.00.
3. **Intentionally** damages property of another

F. Criminal Mischief I (ORS 164.365) - intent to damage property, having to right to or reasonable ground to believe that the person had such right, damages the property of another:

1. more than 500.00
2. by explosive
3. starting a fire in an institution in which the person is committed
4. property is livestock(def 164.055)
5. property is a public utility, telecommunication utility, railroad, public trans facility or medical facility used in direct service to the public
6. police animal and police animal suffers injury or serious physical injury
7. intentionally interfering with, obstructing or adulterating in any manner the service of a public utility, tele comm, railroad, public trans facility, or medical facility,
8. Intentionally, uses, or manipulates, arranges or rearranges property of PU, TU, RR, PT, MF, used in direct service to the public so as to interfere with its efficiency

F. "Interfering with police animal" - Intentionally or knowingly injures or attempts to injure an animal the person knows or reasonably should know is a police animal while the police animal is being used in the lawful discharge of its duty.

Note - a common misperception is that one may aggregate criminal mischief similar to theft. This is NOT true the only theory under which we can combined criminal mischief offenses is by proving that the offenses were part of the same act and transaction. Two criteria to show same act and transaction:

1. close in time
2. close in proximity

COMPUTER CRIME

I. DEFINITIONS (ORS 164.377)

- A. "Access" - communicate, store data in, retrieve data from or otherwise make use of any resource of a computer, computer system or network.
- B. "Computer" - includes but not limited to an electronic device which performs arithmetic or memory functions by the manipulations of electronic, magnetic or optical signals or impulses, includes all in put out, and electrical storage, software or communications facilities, which are connected or relates to such a device in a system or network
- c. "Computer network" - a series of instructions used by a computer which permits the the functioning of the computer in a manner designed to provide appropriate products from the computer.
- d. "Computer software" - computer programs, procedures and associates documentation concerned with the operation of the computer
- e. "computer system" - related or connected computer devices, equipment, and software - includes state lottery devices.
- f. "Data" - information, knowledge, facts, concepts, computer software, programs, or instructions.
- g. "Property" - information, programs, intellectual property, any other tangible or intangible item of value.
- h. "proprietary information" - scientific, commercial, or technical information
- I. "Services" - computer time, data processing, and storage functions

II. OFFENSE

1. Computer crime (ORS 164.377(2)) - knowingly accesses, attempts to access, or uses, or attempts to use, any computer, system, network or part thereof :

- a. to defraud
- b. false or fraudulently obtaining money, property, or services
- c. committing theft
- d. knowingly and with out authorization destroys, alters, damages computer, comp system, network, system data, software
- e. Knowingly access or uses with out authority

EXAMPLES - ACCESS TO BILLBOARDS ETC.

GRAFFITI-RELATED OFFENSES

I. DEFINITIONS (ORS 164.381)

A. Graffiti - inscriptions, words, figures, designs, that are marked, etched, scratched, painted, pasted or otherwise affixed to the surface of property.

B. Graffiti implement - paint, ink, chalk, dye, or any substance or any instrument, or article designed tor adapted for spraying, marking, etching, scratching, or carving surfaces.

II. OFFENSES

1. Unlawfully applying Graffiti (ORS 164.383)- person having no right or reasonable grounds to believe they had such right damages property of another by applying graffiti.

2. Unlawfully possessing graffiti implement (ORS 164.386) - person possess a graffiti implement with intent to use said implement to unlawfully apply graffiti.

ROBBERY

I. OFFENSES

A. Robbery III (ORS 164.395) - in the course of committing or attempting to commit theft the person uses or threatens the immediate use of physical force upon another person with intent of :

1. preventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking; or
2. compelling the owner of such property or other person to deliver the property or to engage in other conduct which might aid in the commission of the theft.

B. Robbery II (ORS 164.405) - commits violation of 164.395 and

1. purports to be armed with a deadly or dangerous weapon; or
2. **is aided by another actually present (MOST COMMON IN JUVENILE CASES).**

c. Robbery I (ORS 164.415) - Commits violation of 163.395 and

1. is armed with a deadly weapon; or
2. uses or attempts to use a dangerous weapon;
3. causes or attempts to cause serious physical injury to any person.

GO TO CASE LAW EXAMPLES

PLACING OFFENSIVE SUBSTANCES IN WATERS, ON HIGHWAY, OR OTHER PROPERTY ORS 164.785

A. It is unlawful for anyone, even the person in charge of the property, to discard dead animals carcass, or part thereof, excrement, putrid, nauseous, decaying etc into any spring, river brook, creek, branch, well, irrigation, drainage ditch, irrigation ditch, cistern or pond of water.

B. it is unlawful to place these types of material in any roadway, alley, rail road right of way, lot, field, meadow or common

*** this section does not apply to spreading of manure or other agricultural practises.

ENDANGERING AIRCRAFT ORS 164.885

1. person knowingly:

- a. throws an object at or drops an object on an aircraft
- b. discharges a bow and arrow, gun, airgun, or firearm at or toward an aircraft
- c. tampers with aircraft or aircraft equipment, fuel, lubricant, or parts so as to impair safety, efficiency or operation of the aircraft, unless with consent of the owner, operator, or possessor; or
- d. places, sets, arms, or causes to be discharged any spring gun, trap, explosive, with the intent of damaging, destroying, or discouraging the operation of any aircraft.