Chapter 164

2011 EDITION

Offenses Against Property

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DEFINITIONS

164.005 Definitions. As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

(1) "Appropriate property of another to oneself or a third person" or "appropriate" means to:

(a) 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 such circumstances as to acquire the major portion of the economic value or benefit of such property; or

(b) Dispose of the property of another for the benefit of oneself or a third person.

(2) "Deprive another of property" or "deprive" means to:

(a) 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

(b) Dispose of the property in such manner or under such circumstances as to render it unlikely that an owner will recover such property.

(3) "Obtain" includes, but is not limited to, the bringing about of a transfer or purported transfer of property or of a legal interest therein, whether to the obtainer or another.

(4) "Owner of property taken, obtained or withheld" or "owner" means any person who has a right to possession thereof superior to that of the taker, obtainer or withholder.

(5) "Property" means 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. [1971 c.743 §121]

Note: Legislative Counsel has substituted "chapter 743, Oregon Laws 1971," for the words "this Act" in sections 121 and 131, chapter 743, Oregon Laws 1971, compiled as 164.005 and 164.115. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1971 Comparative Section Table located in Volume 20 of ORS.

164.010 [Amended by 1959 c.236 §1; repealed by 1971 c.743 §432]

THEFT AND RELATED OFFENSES

164.015 "Theft" described. A person commits theft when, 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;

(2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065;

(3) Commits theft by extortion as provided in ORS 164.075;

(4) Commits theft by deception as provided in ORS 164.085; or

(5) Commits theft by receiving as provided in ORS 164.095. [1971 c.743 §123; 2007 c.71 §47]

164.020 [Amended by 1959 c.236 §2; repealed by 1971 c.743 §432]

164.025 Consolidation of theft offenses; pleading and proof. (1) Except for the crime of theft by extortion, conduct denominated theft under ORS 164.015 constitutes a single offense.

(2) If it is an element of the crime charged that property was taken by extortion, an accusation of theft must so specify. In all other cases an accusation of theft is sufficient if it alleges that the defendant committed theft of property of the nature or value required for the commission of the crime charged without designating the particular way or manner in which the theft was committed.

(3) Proof that the defendant engaged in conduct constituting theft as defined in ORS 164.015 is sufficient to support any indictment, information or complaint for theft other than one charging theft by extortion. An accusation of theft by extortion must be supported by proof establishing theft by extortion. [1971 c.743 §122]

164.030 [Amended by 1955 c.37 §1; 1959 c.236 §3; repealed by 1971 c.743 §432]

164.035 Defenses to theft. (1) In a prosecution for theft it is a defense that the defendant acted under an honest claim of right, in that:

(a) The defendant was unaware that the property was that of another; or

(b) The defendant reasonably believed that the defendant was entitled to the property involved or had a right to acquire or dispose of it as the defendant did.

(2) In a prosecution for theft by extortion committed by instilling in the victim a fear that the victim or another person would be charged with a crime, it is a defense that the defendant reasonably believed the threatened charge to be true and that the sole purpose of the defendant was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

(3) In a prosecution for theft by receiving, it is a defense that the defendant re-

ceived, retained, concealed or disposed of the property with the intent of restoring it to the owner.

(4) It is a defense that the property involved was that of the defendant's spouse, unless the parties were not living together as husband and wife and were living in separate abodes at the time of the alleged theft. [1971 c.743 §132; 2001 c.104 §53]

164.040 [Amended by 1959 c.236 §4; repealed by 1971 c.743 §432]

164.043 Theft in the third degree. (1) A person commits the crime of theft in the third degree if:

(a) By means other than extortion, the person commits theft as defined in ORS 164.015; and

(b) The total value of the property in a single or an aggregate transaction is less than $100.

(2) Theft in the third degree is a Class C misdemeanor. [1987 c.907 §2; 2009 c.11 §11; 2009 c.16 §1]

164.045 Theft in the second degree. (1) A person commits the crime of theft in the second degree if:

(a) By means other than extortion, the person commits theft as defined in ORS 164.015; and

(b) The total value of the property in a single or aggregate transaction is $100 or more and less than $1,000.

(2) Theft in the second degree is a Class A misdemeanor. [1971 c.743 §124; 1987 c.907 §3; 1993 c.680 §19; 2009 c.11 §12; 2009 c.16 §2]

164.050 [Repealed by 1965 c.253 §153]

164.055 Theft in the first degree. (1) A person commits the crime of theft in the first degree if, by means other than extortion, the person commits theft as defined in ORS 164.015 and:

(a) The total value of the property in a single or aggregate transaction is $1,000 or more;

(b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an area affected by the riot, fire, explosion, catastrophe or other emergency;

(c) The theft is theft by receiving committed by buying, selling, borrowing or lending on the security of the property;

(d) The subject of the theft is a firearm or explosive;

(e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); or

(f) The subject of the theft is a precursor substance.

(2) As used in this section:

(a) "Companion animal" means a dog or cat possessed by a person, business or other entity for purposes of companionship, security, hunting, herding or providing assistance in relation to a physical disability.

(b) "Explosive" means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

(c) "Firearm" has the meaning given that term in ORS 166.210.

(d) "Livestock animal" means a ratite, psittacine, horse, gelding, mare, filly, stallion, colt, mule, ass, jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

(e) "Precursor substance" has the meaning given that term in ORS 475.940.

(3) Theft in the first degree is a Class C felony. [1971 c.743 §125; 1973 c.405 §1; 1983 c.740 §32; 1987 c.907 §4; 1991 c.837 §9; 1993 c.252 §5; 1993 c.680 §20; 2005 c.706 §10; 2009 c.16 §3; 2009 c.610 §6]

164.057 Aggravated theft in the first degree. (1) A person commits the crime of aggravated theft in the first degree, if:

(a) The person violates ORS 164.055 with respect to property, other than a motor vehicle used primarily for personal rather than commercial transportation; and

(b) The value of the property in a single or aggregate transaction is $10,000 or more.

(2) Aggravated theft in the first degree is a Class B felony. [1987 c.907 §5]

164.060 [Repealed by 1965 c.253 §153]

164.061 Sentence for aggravated theft in the first degree when victim 65 years of age or older. When a person is convicted of aggravated theft in the first degree under ORS 164.057, the court shall sentence the person to a term of incarceration ranging from 16 months to 45 months, depending on the person's criminal history, if:

(1) The victim of the theft was 65 years of age or older at the time of the commission of the offense; and

(2) The value of the property stolen from the victim described in subsection (1) of this section, in a single or aggregate transaction, is $10,000 or more. [2008 c.14 §4]

Note: 164.061 was enacted into law but was not added to or made a part of ORS chapter 164 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

164.063 Disproportionate impact. (1) As used in this section, "disproportionate impact" means that, in a case of theft in the first degree under ORS 164.055 or aggravated theft in the first degree under ORS 164.057:

(a) The offender caused damage to property during the commission of the theft and the cost to restore the damaged property to the condition the property was in immediately before the theft is more than three times the value of the property that was the subject of the theft; or

(b) The theft of the property creates a hazard to public health or safety or the environment.

(2) The Oregon Criminal Justice Commission shall adopt rules that establish disproportionate impact as an aggravating factor that a court may consider as a substantial and compelling reason to impose an upward departure from a presumptive sentence under the rules of the commission. [2009 c.811 §7]

Note: 164.063 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.065 Theft of lost, mislaid property. A person who comes into control of property of another that the person knows or has good reason to know to have been lost, mislaid or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, commits theft if, with intent to deprive the owner thereof, the person fails to take reasonable measures to restore the property to the owner. [1971 c.743 §126]

164.070 [Amended by 1965 c.253 §131; repealed by 1971 c.743 §432]

164.075 Theft by extortion. (1) A person commits theft by extortion when the 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 some person;

(b) Cause damage to property;

(c) Engage in other conduct constituting a crime;

(d) Accuse some person of a crime or cause criminal charges to be instituted against the person;

(e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;

(f) Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such conduct is not considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act;

(g) Testify or provide information or withhold testimony or information with respect to 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 manner as to affect some person adversely; or

(i) Inflict any other harm that would not benefit the actor.

(2) Theft by extortion is a Class B felony. [1971 c.743 §127; 1987 c.158 §27; 2007 c.71 §48]

164.080 [Repealed by 1971 c.743 §432]

164.085 Theft by deception. (1) A person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, the person:

(a) Creates or confirms another's false impression of law, value, intention or other state of mind that the actor does not believe to be true;

(b) Fails to correct a false impression that the person previously created or confirmed;

(c) Prevents another from acquiring information pertinent to the disposition of the property involved;

(d) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance that the person does not intend to perform or knows will not be performed.

(2) "Deception" does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary persons in the group addressed. For purposes of this subsection, the theft of a companion animal, as defined in ORS 164.055, or a captive wild animal is a matter having pecuniary significance.

(3) In a prosecution for theft by deception, the defendant's intention or belief that a promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed.

(4) In a prosecution for theft by deception committed by means of a bad check, it is prima facie evidence of knowledge that the check or order would not be honored if:

(a) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or

(b) Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal. [1971 c.743 §128; 1991 c.837 §10; 2007 c.71 §49]

164.090 [Repealed by 1971 c.743 §432]

164.095 Theft by receiving. (1) A person commits theft by receiving if the person receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property was the subject of theft.

(2) It is a defense to a charge of violating subsection (1) of this section if:

(a) The person is a scrap metal business as defined in ORS 165.116 or an agent or employee of a scrap metal business;

(b) The person receives or retains metal property as defined in ORS 165.116; and

(c) The person makes a report in accordance with ORS 165.118 (3)(a).

(3) "Receiving" means acquiring possession, control or title, or lending on the security of the property. [1971 c.743 §129; 2009 c.811 §9]

164.098 Organized retail theft. (1) A person commits the crime of organized retail theft if, acting in concert with another person:

(a) The person violates ORS 164.015 or aids or abets the other person to violate ORS 164.015;

(b) The subject of the theft is merchandise and the merchandise is taken from a mercantile establishment; and

(c) The aggregate value of the merchandise taken within any 90-day period exceeds $5,000.

(2) As used in this section:

(a) "Merchandise" has the meaning given that term in ORS 30.870.

(b) "Mercantile establishment" has the meaning given that term in ORS 30.870.

(3) Organized retail theft is a Class B felony. [2007 c.498 §2]

Note: 164.098 was added to and made a part of ORS chapter 164 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

164.100 [Repealed by 1971 c.743 §432]

164.105 Right of possession. Right of possession of property is as follows:

(1) A person who has obtained possession of property by theft or other illegal means shall be deemed to have a right of possession superior to that of another person who takes, obtains or withholds the property from that person by means of theft.

(2) A joint or common owner of property shall not be deemed to have a right of possession of the property superior to that of any other joint or common owner of the property.

(3) In the absence of a specific agreement to the contrary, a person in lawful possession of property shall be deemed to have a right of possession superior to that of a person having only a security interest in the property, even if legal title to the property lies with the holder of the security interest pursuant to a conditional sale contract or other security agreement. [1971 c.743 §130; 1987 c.158 §28]

164.110 [Repealed by 1971 c.743 §432]

164.115 Value of property. For the purposes of chapter 743, Oregon Laws 1971, the value of property shall be ascertained as follows:

(1) Except as otherwise specified in this section, value means the market value of the property at the time and place of the crime, or if such cannot reasonably be ascertained, the cost of replacement of the property within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertainable market value, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, including, but not limited to, a check, draft or promissory note, shall be considered the amount due or collectible thereon or thereby.

(b) The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be considered the greatest amount of economic loss which the owner might reasonably suffer because of the loss of the instrument.

(3) The value of a gambling chip, token, imitation currency or similar device is its face value.

(4) The value of the wildlife listed in ORS 496.705 is the amount of damages as specified in ORS 496.705.

(5) When the value of property cannot reasonably be ascertained, it shall be presumed to be an amount less than $50 in a case of theft, and less than $500 in any other case.

(6) The value of single theft transactions may be added together if the thefts were committed:

(a) Against multiple victims by similar means within a 30-day period; or

(b) Against the same victim, or two or more persons who are joint owners, within a

180-day period. [1971 c.743 §131; 1987 c.907 §6; 1993 c.680 §22; 1997 c.867 §18; 2011 c.363 §2]

Note: See note under 164.005.

164.125 Theft of services. (1) A person commits the crime of theft of services if:

(a) With intent to avoid payment therefor, the person obtains services that are available only for compensation, by force, threat, deception or other means to avoid payment for the services; or

(b) Having control over the disposition of labor or of business, commercial or industrial equipment or facilities of another, the person uses or diverts to the use of the person or a third person such labor, equipment or facilities with intent to derive for the person or the third person a commercial benefit to which the person or the third person is not entitled.

(2) As used in this section, "services" includes, but is not limited to, labor, professional services, toll facilities, transportation, communications service, entertainment, the supplying of food, lodging or other accommodations in hotels, restaurants or elsewhere, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam and water. "Communication service" includes, but is not limited to, use of telephone, computer and cable television systems.

(3) Absconding without payment or offer to pay for hotel, restaurant or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained with intent to avoid payment therefor. Obtaining the use of any communication system the use of which is available only for compensation, including but not limited to telephone, computer and cable television systems, or obtaining the use of any services of a public utility nature, without payment or offer to pay for such use is prima facie evidence that the obtaining of the use of such system or the use of such services was gained with intent to avoid payment therefor.

(4) 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 30-day period; or

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

(5) Theft of services is:

(a) A Class C misdemeanor if the aggregate total value of services that are the subject of the theft is less than $100;

(b) A Class A misdemeanor if the aggregate total value of services that are the subject of the theft is $100 or more and less than $1,000;

(c) A Class C felony if the aggregate total value of services that are the subject of the theft is $1,000 or more; and

(d) A Class B felony if the aggregate total value of services that are the subject of the theft is $10,000 or more. [1971 c.743 §133; 1973 c.133 §1; 1985 c.537 §1; 1987 c.907 §8; 1993 c.680 §21; 2009 c.16 §4]

164.130 Application of ORS 164.125 to telephone or telegraph services; jurisdiction. (1) ORS 164.125 shall apply when the telephone or telegraph communication involved either originates or terminates, or both originates and terminates, in this state, or when the charges for service would have been billable, in normal course, by a person providing telephone or telegraph service in this state, but for the fact that the charge for service was avoided, or attempted to be avoided by one or more of the means set forth in ORS 164.125.

(2) Jurisdiction of an offense under ORS 164.125 is in the jurisdictional territory where the telephone or telegraph communication involved in the offense originates or where it terminates, or the jurisdictional territory to which the bill for the service is sent or would have been sent but for the fact that the service was obtained or attempted to be obtained by one or more of the means set forth in ORS 164.125. [1973 c.133 §3]

164.132 Unlawful distribution of cable television equipment. (1) A person commits the crime of unlawful distribution of cable television equipment if the person knowingly manufactures, imports into this state, distributes, sells, offers for sale, rental or use, possesses for sale, rental or use, or advertises for sale, rental or use, any device designed to make available the unauthorized reception of cable television signals.

(2) Unlawful distribution of cable television equipment is a Class B misdemeanor. [1985 c.537 §3]

164.135 Unauthorized use of a vehicle. (1) A person commits the crime of unauthorized use of a vehicle when:

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

(b) Having custody of a vehicle, boat or aircraft pursuant to an agreement between the person or another and the owner thereof whereby the person or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, the person intentionally uses or operates it, without consent of the owner, for the

person's own purpose in a manner constituting a gross deviation from the agreed purpose; or

(c) Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, the person knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

(2) Unauthorized use of a vehicle, boat or aircraft is a Class C felony.

(3) Subsection (1)(a) of this section does not apply to a person who rides in or otherwise uses a public transit vehicle, as defined in ORS 166.116, if the vehicle is being operated by an authorized operator within the scope of the operator's employment. [1971 c.743 §134; 2001 c.851 §1; 2007 c.71 §50]

164.138 Criminal possession of a rented or leased motor vehicle. (1) A person commits the offense of criminal possession of a rented or leased motor vehicle if:

(a) After renting a motor vehicle from a commercial renter of motor vehicles under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, the person fails to return the motor vehicle as specified, is thereafter served in accordance with subsection (2) of this section with a written demand to return the motor vehicle and knowingly fails to return the motor vehicle within three calendar days from the date of the receipt or refusal of the demand; or

(b) After leasing a motor vehicle from a commercial lessor of motor vehicles under a written agreement that provides for periodic lease payments, the person fails to pay the lessor a periodic payment when due for a period of 45 days, is thereafter served with a written demand to return the motor vehicle in accordance with subsection (2) of this section and knowingly fails to return the motor vehicle within three calendar days from the date of the receipt or refusal of the demand.

(2)(a) Service of written demand under this section shall be accomplished by delivery through any commercial overnight service that can supply a delivery receipt. The demand shall be sent to the person who obtained the motor vehicle by rental or lease at the address stated in the rental or lease agreement and any other address of the person provided by the person to the renter or lessor. The person is responsible for providing correct current address information to the renter or lessor until the motor vehicle is returned.

(b) The person shall be considered to have refused the written demand if the commercial delivery service determines that the demand is not deliverable to the person at the address or addresses provided by the person.

(3) A bona fide contract dispute with the lessor or renter shall be an affirmative defense to a charge of criminal possession of a rented or leased motor vehicle.

(4) Criminal possession of a rented or leased motor vehicle is a Class C felony. [2007 c.684 §1]

Note: 164.138 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.140 Criminal possession of rented or leased personal property. (1) A person is guilty of criminal possession of rented or leased personal property if:

(a) After renting an item of personal property from a commercial renter of personal property under a written agreement which provides for the return of the item to a particular place at a particular time, the person fails to return the item as specified, is thereafter served by mail with a written demand to return the item, and knowingly fails to return the item within 10 business days from the date of mailing of the demand; or

(b) After leasing an item of personal property from a commercial lessor of personal property under a written agreement which provides for periodic lease payments, the person fails to pay the lessor a periodic payment when due for a period of 45 days, is thereafter served by mail with a written demand to return the item, and knowingly fails to return the item within 10 business days from the date of mailing of the demand.

(2) Service of written demand under this section shall be accomplished by certified mail sent to the person who obtained the item of personal property by rental or lease, sent to the address stated in the rental or lease agreement and any other address of the person provided by the person to the renter or lessor. The person is responsible for providing correct current address information to the renter or lessor until the item of personal property is returned.

(3) A bona fide contract dispute with the lessor or renter shall be an affirmative defense to a charge of criminal possession of rented or leased personal property.

(4) For purposes of this section, the value of property shall be ascertained as provided

in ORS 164.115. Criminal possession of rented or leased personal property is:

(a) A Class A misdemeanor if the aggregate total value of the personal property not returned is under $500.

(b) A Class C felony if the aggregate total value of the personal property not returned is $500 or more. [1979 c.476 §3; 1987 c.907 §9]

MAIL-RELATED OFFENSES

164.160 Definitions. As used in this section and ORS 164.162:

(1) "Authorized depository" means a mailbox, post office box or rural box used by postal customers to deposit outgoing mail or used by the Postal Service to deliver incoming mail.

(2) "Mail" means any letter, card, parcel or other material that:

(a) Is sent or delivered by means of the Postal Service;

(b) Has postage affixed by the postal customer or Postal Service or has been accepted for delivery by the Postal Service; and

(c) Is placed in any authorized depository or mail receptacle or given to any Postal Service employee for delivery.

(3) "Mail receptacle" means any location used by the Postal Service or postal customers to place outgoing mail or receive incoming mail.

(4) "Postage" means a Postal Service stamp, permit imprint, meter strip or other authorized indication of prepayment for service provided or authorized by the Postal Service for collection and delivery of mail.

(5) "Postal Service" means the United States Postal Service. [1999 c.920 §1]

Note: 164.160, 164.162 and 164.164 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.162 Mail theft or receipt of stolen mail. (1) A person commits the crime of mail theft or receipt of stolen mail if the person intentionally:

(a) Takes or, by fraud or deception, obtains mail from a post office, postal station, mail receptacle, authorized depository or mail carrier;

(b) Takes from mail any article contained therein;

(c) Secretes, embezzles or destroys mail or any article contained therein;

(d) Takes or, by fraud or deception, obtains mail that has been delivered to or left for collection on or adjacent to a mail receptacle or authorized depository; or

(e) Buys, receives, conceals or possesses mail or any article contained therein knowing that the mail or article has been unlawfully taken or obtained.

(2) Mail theft or receipt of stolen mail is a Class C felony. [1999 c.920 §2; 2008 c.14 §10; 2009 c.660 §§9,14]

Note 1: The amendments to ORS 164.162 by section 14, chapter 660, Oregon Laws 2009, became operative January 1, 2012, and apply to sentences imposed for crimes committed on or after January 1, 2012. See section 48 (4) [renumbered to (3) by amendment in 2011], chapter 660, Oregon Laws 2009, as amended by section 5, chapter 2, Oregon Laws 2010, and section 3, chapter 596, Oregon Laws 2011. See also section 49 (5), chapter 660, Oregon Laws 2009, as amended by section 6, chapter 2, Oregon Laws 2010, section 2, chapter 498, Oregon Laws 2011, and section 4, chapter 596, Oregon Laws 2011.

Note 2: The amendments to ORS 164.162 by section 9, chapter 660, Oregon Laws 2009, were operative from February 15, 2010, until January 1, 2012, and apply to sentences imposed on or after February 15, 2010, for crimes committed on or after January 1, 2009, and before January 1, 2012. See section 48 (3) [renumbered to (2) by amendment in 2011], chapter 660, Oregon Laws 2009, as amended by section 5, chapter 2, Oregon Laws 2010, and section 3, chapter 596, Oregon Laws 2011. See also section 49 (4), chapter 660, Oregon Laws 2009, as amended by section 6, chapter 2, Oregon Laws 2010, section 2, chapter 498, Oregon Laws 2011, and section 4, chapter 596, Oregon Laws 2011. The text that was operative until January 1, 2012, is set forth for the user's convenience.

164.162. (1) A person commits the crime of mail theft or receipt of stolen mail if the person intentionally:

(a) Takes or, by fraud or deception, obtains mail from a post office, postal station, mail receptacle, authorized depository or mail carrier;

(b) Takes from mail any article contained therein;

(c) Secretes, embezzles or destroys mail or any article contained therein;

(d) Takes or, by fraud or deception, obtains mail that has been delivered to or left for collection on or adjacent to a mail receptacle or authorized depository; or

(e) Buys, receives, conceals or possesses mail or any article contained therein knowing that the mail or article has been unlawfully taken or obtained.

(2) Mail theft or receipt of stolen mail is a Class A misdemeanor.

Note 3: See note under 164.160.

164.164 Defense in prosecution under ORS 164.162; applicability of ORS 164.162. (1) In a prosecution under ORS 164.162, it is a defense that the defendant acted under an honest claim of right in that:

(a) The defendant was unaware that the property was that of another person;

(b) The defendant reasonably believed that the defendant was entitled to the property involved or had a right to acquire or dispose of it as the defendant did; or

(c) The property involved was that of the defendant's spouse, unless the parties were not living together as husband and wife and

were living in separate abodes at the time of the alleged offense.

(2)(a) ORS 164.162 does not apply to employees charged with the operation of facilities listed in paragraph (b) of this subsection when the employees are carrying out their official duties to protect the safety and security of the facilities.

(b) The facilities to which paragraph (a) of this subsection applies are juvenile detention facilities and local correctional facilities as defined in ORS 169.005, detention facilities as defined in ORS 419A.004, youth correction facilities as defined in ORS 420.005 and Department of Corrections institutions as defined in ORS 421.005. [1999 c.920 §3]

Note: See note under 164.160.

MONEY LAUNDERING

164.170 Laundering a monetary instrument. (1) A person commits the crime of laundering a monetary instrument if the person:

(a) Knowing that the property involved in a financial transaction represents the proceeds of some form, though not necessarily which form, of unlawful activity, conducts or attempts to conduct a financial transaction that involves the proceeds of unlawful activity:

(A) With the intent to promote the carrying on of unlawful activity; or

(B) Knowing that the transaction is designed in whole or in part to:

(i) Conceal or disguise the nature, location, source, ownership or control of the proceeds of unlawful activity; or

(ii) Avoid a transaction reporting requirement under federal law;

(b) Transports, transmits or transfers or attempts to transport, transmit or transfer a monetary instrument or funds:

(A) With the intent to promote the carrying on of unlawful activity; or

(B) Knowing that the monetary instrument or funds involved in the transportation, transmission or transfer represent the proceeds of some form, though not necessarily which form, of unlawful activity and knowing that the transportation, transmission or transfer is designed, in whole or in part, to:

(i) Conceal or disguise the nature, location, source, ownership or control of the proceeds of unlawful activity; or

(ii) Avoid a transaction reporting requirement under federal law; or

(c) Intentionally conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of unlawful activity or property used to conduct or facilitate unlawful activity to:

(A) Promote the carrying on of unlawful activity;

(B) Conceal or disguise the nature, location, source, ownership or control of property believed to be the proceeds of unlawful activity; or

(C) Avoid a transaction reporting requirement under federal law.

(2)(a) Laundering a monetary instrument is a Class B felony.

(b) In addition to any other sentence of imprisonment or fine that a court may impose and notwithstanding ORS 161.625, a court may include in the sentence of a person convicted under this section a fine in an amount equal to the value of the property, funds or monetary instruments involved in the unlawful transaction.

(3) For purposes of subsection (1)(b)(B) of this section, the state may establish the defendant's knowledge through evidence that a peace officer, federal officer or another person acting at the direction of or with the approval of a peace officer or federal officer represented the matter specified in subsection (1)(b)(B) of this section as true and the defendant's subsequent statements or actions indicate that the defendant believed the representations to be true.

(4) For purposes of subsection (1)(c) of this section, "represented" includes, but is not limited to, any representation made by a peace officer, federal officer or another person acting at the direction of or with the approval of a peace officer or federal officer.

(5) As used in this section:

(a) "Conducts" includes initiating, concluding or participating in the initiation or conclusion of a transaction.

(b) "Federal officer" has the meaning given that term in ORS 133.005.

(c) "Financial institution" has the meaning given that term in ORS 706.008.

(d) "Financial transaction" means a transaction involving:

(A) The movement of funds by wire or other means;

(B) One or more monetary instruments;

(C) The transfer of title to any real property, vehicle, vessel or aircraft; or

(D) The use of a financial institution.

(e) "Monetary instrument" means:

(A) Coin or currency of the United States or of any other country, traveler's checks, personal checks, bank checks, cashier's checks, money orders, foreign bank drafts of

any foreign country or gold, silver or platinum bullion or coins; or

(B) Investment securities or negotiable instruments, in bearer form or otherwise in such form that title passes upon delivery.

(f) "Peace officer" has the meaning given that term in ORS 133.005.

(g) "Transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition and, with respect to a financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument, use of a safe deposit box or any other payment, transfer or delivery by, through or to a financial institution by whatever means.

(h) "Unlawful activity" means any act constituting a felony under state, federal or foreign law. [1999 c.878 §1]

Note: 164.170, 164.172 and 164.174 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.172 Engaging in a financial transaction in property derived from unlawful activity. (1) A person commits the crime of engaging in a financial transaction in property derived from unlawful activity if the person knowingly engages in or attempts to engage in a financial transaction in property that:

(a) Constitutes, or is derived from, the proceeds of unlawful activity;

(b) Is of a value greater than $10,000; and

(c) The person knows is derived from or represents the proceeds of some form, though not necessarily which form, of unlawful activity.

(2)(a) Engaging in a financial transaction in property derived from unlawful activity is a Class C felony.

(b) In addition to any other sentence of imprisonment or fine that a court may impose and notwithstanding ORS 161.625, a court may include in the sentence of a person convicted under this section a fine in an amount equal to the value of the property involved in the unlawful transaction.

(3) As used in this section:

(a) "Financial transaction" has the meaning given that term in ORS 164.170. "Financial transaction" does not include any transaction necessary to preserve a person's right to representation as guaranteed by section 11, Article I of the Oregon Constitution, and the Sixth Amendment to the United States Constitution.

(b) "Unlawful activity" has the meaning given that term in ORS 164.170. [1999 c.878 §2]

Note: See note under 164.170.

164.174 Exceptions. Nothing in ORS 164.170 or 164.172 or the amendments to ORS 166.715 by section 4, chapter 878, Oregon Laws 1999, is intended to allow the prosecution of a corporation, business, partnership, limited liability company, limited liability partnership or any similar entity, or an employee or agent of such an entity, that makes a good faith effort to comply with federal and state laws governing the entity. [1999 c.878 §3]

Note: See note under 164.170.

BURGLARY AND CRIMINAL TRESPASS

164.205 Definitions for ORS 164.205 to 164.270. As used in ORS 164.205 to 164.270, except as the context requires otherwise:

(1) "Building," in addition to its ordinary meaning, includes any booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, including, but not limited to, separate apartments, offices or rented rooms, each unit is, in addition to being a part of such building, a separate building.

(2) "Dwelling" means a building which regularly or intermittently is occupied by a person lodging therein at night, whether or not a person is actually present.

(3) "Enter or remain unlawfully" means:

(a) 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 do so;

(b) To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge;

(c) To enter premises that are open to the public after being lawfully directed not to enter the premises; or

(d) To enter or remain in a motor vehicle when the entrant is not authorized to do so.

(4) "Open to the public" means premises which by their physical nature, function, custom, usage, notice or lack thereof or other circumstances at the time would cause a reasonable person to believe that no permission to enter or remain is required.

(5) "Person in charge" means a person, a representative or employee of the person who has lawful control of premises by ownership, tenancy, official position or other legal relationship. "Person in charge" includes, but is not limited to the person, or holder of a position, designated as the person or

position-holder in charge by the Governor, board, commission or governing body of any political subdivision of this state.

(6) "Premises" includes any building and any real property, whether privately or publicly owned. [1971 c.743 §135; 1983 c.740 §33; 1999 c.1040 §10; 2003 c.444 §1]

164.210 [Repealed by 1971 c.743 §432]

164.215 Burglary in the second degree. (1) Except as otherwise provided in ORS 164.255, a person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime therein.

(2) Burglary in the second degree is a Class C felony. [1971 c.743 §136; 1993 c.680 §24]

164.220 [Repealed by 1971 c.743 §432]

164.225 Burglary in the first degree. (1) A person commits the crime of burglary in the first degree if the person violates ORS 164.215 and the building is a dwelling, or if in effecting entry or while in a building or in immediate flight therefrom the person:

(a) Is armed with a burglary tool or theft device as defined in ORS 164.235 or a deadly weapon;

(b) Causes or attempts to cause physical injury to any person; or

(c) Uses or threatens to use a dangerous weapon.

(2) Burglary in the first degree is a Class A felony. [1971 c.743 §137; 2003 c.577 §10]

164.230 [Repealed by 1971 c.743 §432]

164.235 Possession of a burglary tool or theft device. (1) A person commits the crime of possession of a burglary tool or theft device if the person possesses a burglary tool or theft device and the person:

(a) Intends to use the tool or device to commit or facilitate a forcible entry into premises or a theft by a physical taking; or

(b) Knows that another person intends to use the tool or device to commit or facilitate a forcible entry into premises or a theft by a physical taking.

(2) For purposes of this section, "burglary tool or theft device" means an acetylene torch, electric arc, burning bar, thermal lance, oxygen lance or other similar device capable of burning through steel, concrete or other solid material, or nitroglycerine, dynamite, gunpowder or any other explosive, tool, instrument or other article adapted or designed for committing or facilitating a forcible entry into premises or theft by a physical taking.

(3) Possession of a burglary tool or theft device is a Class A misdemeanor. [1971 c.743 §138; 1999 c.1040 §13; 2003 c.577 §9]

164.240 [Amended by 1959 c.99 §1; repealed by 1971 c.743 §432]

164.243 Criminal trespass in the second degree by a guest. A guest commits the crime of criminal trespass in the second degree if that guest intentionally remains unlawfully in a transient lodging after the departure date of the guest's reservation without the approval of the hotelkeeper. "Guest" means a person who is registered at a hotel and is assigned to transient lodging, and includes any individual accompanying the person. [1979 c.856 §2]

164.245 Criminal trespass in the second degree. (1) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully in a motor vehicle or in or upon premises.

(2) Criminal trespass in the second degree is a Class C misdemeanor. [1971 c.743 §139; 1999 c.1040 §9]

164.250 [Repealed by 1971 c.743 §432]

164.255 Criminal trespass in the first degree. (1) A person commits the crime of criminal trespass in the first degree if the person:

(a) Enters or remains unlawfully in a dwelling;

(b) Having been denied future entry to a building pursuant to a merchant's notice of trespass, reenters the building during hours when the building is open to the public with the intent to commit theft therein;

(c) Enters or remains unlawfully upon railroad yards, tracks, bridges or rights of way; or

(d) Enters or remains unlawfully in or upon premises that have been determined to be not fit for use under ORS 453.855 to 453.912.

(2) Subsection (1)(d) of this section does not apply to the owner of record of the premises if:

(a) The owner notifies the law enforcement agency having jurisdiction over the premises that the owner intends to enter the premises;

(b) The owner enters or remains on the premises for the purpose of inspecting or decontaminating the premises or lawfully removing items from the premises; and

(c) The owner has not been arrested for, charged with or convicted of a criminal offense that contributed to the determination that the premises are not fit for use.

(3) Criminal trespass in the first degree is a Class A misdemeanor. [1971 c.743 §140; 1993 c.680 §23; 1999 c.837 §1; 2001 c.386 §1; 2003 c.527 §1]

164.260 [Repealed by 1971 c.743 §432]

164.265 Criminal trespass while in possession of a firearm. (1) A person commits the crime of criminal trespass while in possession of a firearm who, while in possession of a firearm, enters or remains unlawfully in or upon premises.

(2) Criminal trespass while in possession of a firearm is a Class A misdemeanor. [1979 c.603 §2]

164.270 Closure of premises to motor-propelled vehicles. (1) For purposes of ORS 164.245, a landowner or an agent of the landowner may close the privately owned premises of the landowner to motor-propelled vehicles by posting signs on or near the boundaries of the closed premises at the normal points of entry as follows:

(a) Signs must be no smaller than eight inches in height and 11 inches in width;

(b) Signs must contain the words "Closed to Motor-propelled Vehicles" or words to that effect in letters no less than one inch in height;

(c) Signs must display the name, business address and phone number, if any, of the landowner or agent of the landowner; and

(d) Signs must be posted at normal points of entry and be no further apart than 350 yards.

(2) A person violates ORS 164.245 if the person operates or rides upon or within a motor-propelled vehicle upon privately owned premises when the premises are posted as provided in this section and the person does not have written authorization to operate a motor-propelled vehicle upon the premises.

(3) Nothing contained in this section prevents emergency or law enforcement vehicles from entering upon land closed to motor-propelled vehicles. [1981 c.394 §2]

164.272 Unlawful entry into a motor vehicle. (1) A person commits the crime of unlawful entry into a motor vehicle if the person enters a motor vehicle, or any part of a motor vehicle, with the intent to commit a crime.

(2) Unlawful entry into a motor vehicle is a Class A misdemeanor.

(3) As used in this section, "enters" includes, but is not limited to, inserting:

(a) Any part of the body; or

(b) Any object connected with the body. [1995 c.782 §1]

Note: 164.272 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.274 Definitions for ORS 164.276 and 164.278. As used in ORS 164.276 and 164.278:

(1) "Coach" means a person who instructs or trains members of a team or directs the strategy of a team participating in a sports event.

(2) "Inappropriate behavior" means:

(a) Engaging in fighting or in violent, tumultuous or threatening behavior;

(b) Violating the rules of conduct governing coaches, team players and spectators at a sports event;

(c) Publicly insulting another person by abusive words or gestures in a manner intended to provoke a violent response; or

(d) Intentionally subjecting another person to offensive physical contact.

(3) "Premises" has the meaning given that term in ORS 164.205.

(4) "Spectator" means any person, other than a team player or coach, who attends a sports event.

(5) "Sports official" has the meaning given that term in ORS 30.882. [2003 c.629 §1]

Note: 164.274 to 164.278 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.276 Authority of sports official to expel persons from sports event. A sports official may order a coach, team player or spectator to leave the premises at which a sports event is taking place and at which the sports official is officiating if the coach, team player or spectator is engaging in inappropriate behavior. [2003 c.629 §2]

Note: See note under 164.274.

164.278 Criminal trespass at a sports event. (1) A person commits the crime of criminal trespass at a sports event if the person:

(a) Is a coach, team player or spectator at a sports event;

(b) Engages in inappropriate behavior;

(c) Has been ordered by a sports official to leave the premises at which the sports event is taking place; and

(d) Fails to leave the premises or returns to the premises during the period of time when reentry has been prohibited.

(2) Criminal trespass at a sports event is a Class C misdemeanor. [2003 c.629 §3]

Note: See note under 164.274.

DEFINITIONS FOR ARSON, CRIMINAL MISCHIEF AND RELATED OFFENSES

164.305 Definitions for ORS 164.305 to 164.377. As used in ORS 164.305 to 164.377, except as the context requires otherwise:

(1) "Protected property" means any structure, place or thing customarily occupied by people, including "public buildings" as defined by ORS 479.168 and "forestland," as defined by ORS 477.001.

(2) "Property of another" means 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 also have such an interest in the property. [1971 c.743 §141; 1977 c.640 §1; 1989 c.584 §1; 2003 c.543 §1]

164.310 [Amended by 1957 c.653 §1; 1959 c.302 §2; repealed by 1971 c.743 §432]

ARSON AND RELATED OFFENSES

164.315 Arson in the second degree. (1) A person commits the crime of arson in the second degree if:

(a) By starting a fire or causing an explosion, the person intentionally damages:

(A) Any building of another that is not protected property; or

(B) Any property of another and the damages to the property exceed $750; or

(b) By knowingly engaging in the manufacture of methamphetamine, the person causes fire or causes an explosion that damages property described in paragraph (a) of this subsection.

(2) Arson in the second degree is a Class C felony. [1971 c.743 §143; 2001 c.432 §1; 2005 c.706 §3]

164.320 [Amended by 1959 c.77 §1; repealed by 1971 c.743 §432]

164.325 Arson in the first degree. (1) A person commits the crime of arson in the first degree if:

(a) By starting a fire or causing an explosion, the person intentionally damages:

(A) Protected property of another;

(B) Any property, whether the property of the person or the property of another person, and such act recklessly places another person in danger of physical injury or protected property of another in danger of damage; or

(C) Any property, whether the property of the person or the property of another person, and recklessly causes serious physical injury to a firefighter or peace officer acting in the line of duty relating to the fire; or

(b) By knowingly engaging in the manufacture of methamphetamine, the person causes fire or causes an explosion that damages property described in paragraph (a) of this subsection.

(2) Arson in the first degree is a Class A felony. [1971 c.743 §144; 1991 c.946 §1; 2005 c.706 §4]

164.330 [Repealed by 1971 c.743 §432]

164.335 Reckless burning. (1) A person commits the crime of reckless burning if the person recklessly damages property of another by fire or explosion.

(2) Reckless burning is a Class A misdemeanor. [1971 c.743 §142]

164.340 [Repealed by 1971 c.743 §432]

CRIMINAL MISCHIEF AND RELATED OFFENSES

164.345 Criminal mischief in the third degree. (1) A person commits the crime of criminal mischief in the third degree if, with intent to cause substantial inconvenience to the owner or to another person, and having no right to do so nor reasonable ground to believe that the person has such right, the person tampers or interferes with property of another.

(2) Criminal mischief in the third degree is a Class C misdemeanor. [1971 c.743 §145]

164.350 [Repealed by 1971 c.743 §432]

164.354 Criminal mischief in the second degree. (1) A person commits the crime of criminal mischief in the second degree if:

(a) The person violates ORS 164.345, and as a result thereof, damages property in an amount exceeding $500; or

(b) Having no right to do so nor reasonable ground to believe that the person has such right, the person intentionally damages property of another, or, the person recklessly damages property of another in an amount exceeding $500.

(2) Criminal mischief in the second degree is a Class A misdemeanor. [1971 c.743 §146; 2009 c.16 §5]

164.355 [1967 c.378 §§1,2,3,4; 1969 c.287 §1; repealed by 1971 c.743 §432]

164.360 [Repealed by 1971 c.743 §432]

164.362 [1957 c.714 §§1,6(1); repealed by 1971 c.743 §432]

164.364 [1957 c.714 §§4,5; repealed by 1971 c.743 §432]

164.365 Criminal mischief in the first degree. (1) A person commits the crime of criminal mischief in the first degree who, with intent to damage property, and having no right to do so nor reasonable ground to believe that the person has such right:

(a) Damages or destroys property of another:

(A) In an amount exceeding $1,000;

(B) By means of an explosive;

(C) By starting a fire in an institution while the person is committed to and confined in the institution;

(D) Which is a livestock animal as defined in ORS 164.055;

(E) Which is the property of a public utility, telecommunications carrier, railroad,

public transportation facility or medical facility used in direct service to the public; or

(F) By intentionally interfering with, obstructing or adulterating in any manner the service of a public utility, telecommunications carrier, railroad, public transportation facility or medical facility; or

(b) Intentionally uses, manipulates, arranges or rearranges the property of a public utility, telecommunications carrier, railroad, public transportation facility or medical facility used in direct service to the public so as to interfere with its efficiency.

(2) As used in subsection (1) of this section:

(a) "Institution" includes state and local correctional facilities, mental health facilities, juvenile detention facilities and state training schools.

(b) "Medical facility" means a health care facility as defined in ORS 442.015, a licensed physician's office or anywhere a licensed medical practitioner provides health care services.

(c) "Public utility" has the meaning provided for that term in ORS 757.005 and includes any cooperative, people's utility district or other municipal corporation providing an electric, gas, water or other utility service.

(d) "Railroad" has the meaning provided for that term in ORS 824.020.

(e) "Public transportation facility" means any property, structure or equipment used for or in connection with the transportation of persons for hire by rail, air or bus, including any railroad cars, buses or airplanes used to carry out such transportation.

(f) "Telecommunications carrier" has the meaning given that term in ORS 133.721.

(3) Criminal mischief in the first degree is a Class C felony. [1971 c.743 §147; 1973 c.133 §6; 1975 c.344 §1; 1979 c.805 §1; 1983 c.740 §33a; 1987 c.447 §104; 1987 c.907 §10; 1989 c.584 §2; 1991 c.837 §13; 1991 c.946 §2; 1993 c.94 §1; 1993 c.332 §3; 1999 c.1040 §11; 1999 c.1093 §2; 2003 c.543 §4; 2009 c.16 §6]

164.366 [1957 c.714 §§2,6(2); repealed by 1971 c.743 §432]

164.367 Determining value of damage; aggregation. For purposes of ORS 164.345, 164.354 and 164.365, the value of damage done during single incidents of criminal mischief may be added together if the incidents of criminal mischief were committed:

(1) Against multiple victims in the same course of conduct; or

(2) Against the same victim, or two or more persons who are joint owners, within a 30-day period. [1999 c.1040 §12]

Note: 164.367 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.368 [1957 c.714 §3; repealed by 1971 c.743 §432]

164.369 [1989 c.584 §4; 2003 c.543 §5; renumbered 167.337 in 2003]

164.370 [Repealed by 1971 c.743 §432]

164.373 Tampering with cable television equipment. (1) A person commits the crime of tampering with cable television equipment if the person:

(a) Knowingly tampers or otherwise interferes with or connects to by any means, whether mechanical, electrical, acoustical or other means, any cable, wire or other device used for the distribution of cable television service, without authority of the provider of such service; or

(b) Knowingly permits another person to tamper or otherwise interfere with, or connect to by any means, whether mechanical, electrical, acoustical or other means, any cable, wire or other device used for the distribution of cable television service, such tampering, interfering or connecting being upon premises under the control of such first person or intended for the benefit of such first person, without authority of the provider of such service.

(2) Tampering with cable television equipment is a Class B misdemeanor. [1985 c.537 §5]

164.377 Computer crime. (1) As used in this section:

(a) To "access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network.

(b) "Computer" means, but is not limited to, an electronic, magnetic, optical electrochemical or other high-speed data processing device that performs logical, arithmetic or memory functions by the manipulations of electronic, magnetic or optical signals or impulses, and includes the components of a computer and all input, output, processing, storage, software or communication facilities that are connected or related to such a device in a system or network.

(c) "Computer network" means, but is not limited to, the interconnection of communication lines, including microwave or other means of electronic communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.

(d) "Computer program" means, but is not limited to, a series of instructions or statements, in a form acceptable to a com-

puter, which permits the functioning of a computer system in a manner designed to provide appropriate products from or usage of such computer system.

(e) "Computer software" means, but is not limited to, computer programs, procedures and associated documentation concerned with the operation of a computer system.

(f) "Computer system" means, but is not limited to, a set of related, connected or unconnected, computer equipment, devices and software. "Computer system" also includes any computer, device or software owned or operated by the Oregon State Lottery or rented, owned or operated by another person or entity under contract to or at the direction of the Oregon State Lottery.

(g) "Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs or instructions. "Data" may be in any form, in storage media, or as stored in the memory of the computer, or in transit, or presented on a display device. "Data" includes, but is not limited to, computer or human readable forms of numbers, text, stored voice, graphics and images.

(h) "Property" includes, but is not limited to, financial instruments, information, including electronically produced data, and computer software and programs in either computer or human readable form, intellectual property and any other tangible or intangible item of value.

(i) "Proprietary information" includes any scientific, technical or commercial information including any design, process, procedure, list of customers, list of suppliers, customers' records or business code or improvement thereof that is known only to limited individuals within an organization and is used in a business that the organization conducts. The information must have actual or potential commercial value and give the user of the information an opportunity to obtain a business advantage over competitors who do not know or use the information.

(j) "Services" include, but are not limited to, computer time, data processing and storage functions.

(2) Any person commits computer crime who knowingly accesses, attempts to access or uses, or attempts to use, any computer, computer system, computer network or any part thereof for the purpose of:

(a) Devising or executing any scheme or artifice to defraud;

(b) Obtaining money, property or services by means of false or fraudulent pretenses, representations or promises; or

(c) Committing theft, including, but not limited to, theft of proprietary information.

(3) Any person who knowingly and without authorization alters, damages or destroys any computer, computer system, computer network, or any computer software, program, documentation or data contained in such computer, computer system or computer network, commits computer crime.

(4) Any person who knowingly and without authorization uses, accesses or attempts to access any computer, computer system, computer network, or any computer software, program, documentation or data contained in such computer, computer system or computer network, commits computer crime.

(5)(a) A violation of the provisions of subsection (2) or (3) of this section shall be a Class C felony. Except as provided in paragraph (b) of this subsection, a violation of the provisions of subsection (4) of this section shall be a Class A misdemeanor.

(b) Any violation of this section relating to a computer, computer network, computer program, computer software, computer system or data owned or operated by the Oregon State Lottery or rented, owned or operated by another person or entity under contract to or at the direction of the Oregon State Lottery Commission shall be a Class C felony. [1985 c.537 §8; 1989 c.737 §1; 1991 c.962 §17; 2001 c.870 §18]

164.380 [Repealed by 1971 c.743 §432]

GRAFFITI-RELATED OFFENSES

164.381 Definitions. As used in ORS 137.131, 164.381 to 164.386 and 419C.461:

(1) "Graffiti" means any inscriptions, words, figures or designs that are marked, etched, scratched, drawn, painted, pasted or otherwise affixed to the surface of property.

(2) "Graffiti implement" means paint, ink, chalk, dye or other substance or any instrument or article designed or adapted for spraying, marking, etching, scratching or carving surfaces. [1995 c.615 §1]

Note: 164.381 to 164.388 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.383 Unlawfully applying graffiti. (1) A person commits the offense of unlawfully applying graffiti if the person, having no right to do so nor reasonable ground to believe that the person has such right, intentionally damages property of another by applying graffiti to the property.

(2) Unlawfully applying graffiti is a Class A violation. Upon a conviction for unlawfully applying graffiti, a court, in addition to any fine it imposes and pursuant to ORS 137.128

but notwithstanding ORS 137.129, may order the defendant to perform up to 100 hours of community service. The community service must include removing graffiti, either those that the defendant created or those created by another, or both.

(3) If the court orders community service, the community service must be completed within six months after entry of the order unless the person shows good cause why community service cannot be completed within the six-month time period. [1995 c.615 §2; 1999 c.1051 §156]

Note: See note under 164.381.

164.385 [1967 c.243 §1; repealed by 1971 c.743 §432]

164.386 Unlawfully possessing a graffiti implement. (1) A person commits the offense of unlawfully possessing a graffiti implement if the person possesses a graffiti implement with the intent of using the graffiti implement in violation of ORS 164.383.

(2) Unlawfully possessing a graffiti implement is a Class C violation. Upon a conviction for unlawfully possessing a graffiti implement, a court, in addition to any fine it imposes and pursuant to ORS 137.128 but notwithstanding ORS 137.129, may order the defendant to perform up to 50 hours of community service. The community service must include removing graffiti, either those that the defendant created or those created by another, or both.

(3) If the court orders community service, the community service must be completed within six months after entry of the order unless the person shows good cause why community service cannot be completed within the six-month time period. [1995 c.615 §3; 1999 c.1051 §157]

Note: See note under 164.381.

164.388 Preemption. The provisions of ORS 137.131, 164.381 to 164.386 and 419C.461 are not intended to preempt any local regulation of graffiti or graffiti-related activities or any prosecution under ORS 164.345, 164.354 or 164.365. [1995 c.615 §7; 1999 c.1040 §6]

Note: See note under 164.381.

164.390 [1959 c.626 §§1,4; repealed by 1971 c.743 §432]

164.392 [1959 c.626 §§2,3; repealed by 1971 c.743 §432]

ROBBERY

164.395 Robbery in the third degree. (1) A person commits the crime of robbery in the third degree if in the course of committing or attempting to commit theft or unauthorized use of a vehicle as defined in ORS 164.135 the person uses or threatens the immediate use of physical force upon another person with the intent of:

(a) Preventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking; or

(b) Compelling the owner of such property or another person to deliver the property or to engage in other conduct which might aid in the commission of the theft or unauthorized use of a vehicle.

(2) Robbery in the third degree is a Class C felony. [1971 c.743 §148; 2003 c.357 §1]

164.405 Robbery in the second degree. (1) A person commits the crime of robbery in the second degree if the person violates ORS 164.395 and the person:

(a) Represents by word or conduct that the person is armed with what purports to be a dangerous or deadly weapon; or

(b) Is aided by another person actually present.

(2) Robbery in the second degree is a Class B felony. [1971 c.743 §149]

164.410 [Repealed by 1971 c.743 §432]

164.415 Robbery in the first degree. (1) A person commits the crime of robbery in the first degree if the person violates ORS 164.395 and the person:

(a) Is armed with a deadly weapon;

(b) Uses or attempts to use a dangerous weapon; or

(c) Causes or attempts to cause serious physical injury to any person.

(2) Robbery in the first degree is a Class A felony. [1971 c.743 §150; 2007 c.71 §51]

164.420 [Repealed by 1971 c.743 §432]

164.430 [Repealed by 1971 c.743 §432]

164.440 [Amended by 1969 c.511 §1; repealed by 1971 c.404 §8 and by 1971 c.743 §432]

164.450 [Repealed by 1971 c.743 §432]

164.452 [1965 c.100 §300; repealed by 1971 c.743 §432]

164.455 [1953 c.535 §1; 1959 c.687 §2; 1965 c.453 §1; repealed by 1971 c.743 §432]

164.460 [Amended by 1957 c.470 §1; 1959 c.530 §2; 1969 c.501 §3; repealed by 1971 c.743 §432]

164.462 [1963 c.552 §§1,2; 1965 c.450 §1; repealed by 1971 c.743 §432]

164.465 [1953 c.430 §1; 1959 c.687 §3; repealed by 1971 c.743 §432]

164.470 [Amended by 1969 c.594 §1; repealed by 1971 c.743 §432]

164.480 [Repealed by 1971 c.743 §432]

164.485 [1969 c.652 §1; repealed by 1971 c.743 §432]

164.490 [1969 c.652 §2; repealed by 1971 c.743 §432]

164.500 [1969 c.652 §§3,4,6; repealed by 1971 c.743 §432]

164.505 [1969 c.652 §5; repealed by 1971 c.743 §432]

164.510 [Repealed by 1971 c.743 §432]

164.520 [Repealed by 1971 c.743 §432]

164.530 [Repealed by 1971 c.743 §432]

164.540 [Repealed by 1971 c.743 §432]

164.550 [Repealed by 1971 c.743 §432]

164.555 [1963 c.552 §3; repealed by 1971 c.743 §432]

164.560 [Repealed by 1971 c.743 §432]

164.570 [Repealed by 1971 c.743 §432]

164.580 [Amended by 1959 c.580 §103; repealed by 1971 c.743 §432]

164.590 [Repealed by 1971 c.743 §432]

164.610 [Repealed by 1971 c.743 §432]

164.620 [Repealed by 1971 c.743 §432]

164.630 [Repealed by 1971 c.743 §432]

164.635 [1961 c.310 §2; 1967 c.332 §1; repealed by 1971 c.743 §432]

164.640 [Repealed by 1971 c.743 §432]

164.650 [Repealed by 1971 c.743 §432]

164.660 [Amended by 1967 c.390 §1; repealed by 1971 c.743 §432]

164.670 [Amended by 1965 c.552 §1; repealed by 1971 c.743 §432]

164.680 [Repealed by 1971 c.743 §432]

164.690 [Repealed by 1971 c.743 §432]

164.700 [1965 c.594 §1; repealed by 1971 c.743 §432]

164.710 [Amended by 1969 c.517 §1; repealed by 1971 c.743 §432]

164.720 [Repealed by 1971 c.743 §432]

164.730 [Amended by 1967 c.351 §1; repealed by 1971 c.743 §432]

164.740 [Repealed by 1971 c.743 §432]

164.750 [1969 c.584 §1; repealed by 1971 c.743 §432]

164.760 [1969 c.584 §§2,3; repealed by 1971 c.743 §432]

164.770 [1969 c.584 §4; repealed by 1971 c.743 §432]

LITTERING

164.775 Deposit of trash within 100 yards of waters or in waters; license suspensions; civil penalties; credit for work in lieu of fine. (1) It is unlawful for any person to discard any glass, cans or other trash, rubbish, debris or litter on land within 100 yards of any of the waters of the state, as defined in ORS 468B.005, other than in receptacles provided for the purpose of holding such trash, rubbish, debris or litter.

(2) It is unlawful for any person to discard any glass, cans or other similar refuse in any waters of the state, as defined in ORS 468B.005.

(3) In addition to or in lieu of the penalties provided for violation of any provision of this section, the court in which any individual is convicted of a violation of this section may order suspension of certain permits or licenses for a period not to exceed 90 days if the court finds that the violation occurred during or in connection with the exercise of the privilege granted by the permit or license. The permits and licenses to which this section applies are motor vehicle operator's permits or licenses, hunting licenses, fishing licenses or boat registrations.

(4)(a) Any person sentenced under subsection (6) of this section to pay a fine for violation of this section shall be permitted, in default of the payment of the fine, to work at clearing rubbish, trash and debris from the lands and waters described by subsections (1) and (2) of this section. Credit in compensation for such work shall be allowed at the rate of $25 for each day of work.

(b) In any case, upon conviction, if punishment by imprisonment is imposed upon the defendant, the form of the sentence shall include that the defendant shall be punished by confinement at labor clearing rubbish, trash and debris from the lands and waters described by subsections (1) and (2) of this section, for not less than one day nor more than five days.

(5) A citation conforming to the requirements of ORS 133.066 shall be used for all violations of subsection (1) or (2) of this section in the state.

(6) Violation of this section is a Class B misdemeanor.

(7) In addition to and not in lieu of the criminal penalty authorized by subsection (6) of this section, the civil penalty authorized by ORS 468.140 may be imposed for violation of this section.

(8) Nothing in this section or ORS 164.785 prohibits the operation of a disposal site, as defined in ORS 459.005, for which a permit is required by the Department of Environmental Quality, for which such a permit has been issued and which is being operated and maintained in accordance with the terms and conditions of such permit. [Formerly 449.107; 1999 c.1051 §132]

164.780 [1969 c.584 §5; repealed by 1971 c.743 §432]

164.785 Placing offensive substances in waters, on highways or other property. (1) It is unlawful for any person, including a person in the possession or control of any land, to discard any dead animal carcass or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious or offensive substance into or in any other manner befoul, pollute or impair the quality of any spring, river, brook, creek, branch, well, irrigation drainage ditch, irrigation ditch, cistern or pond of water.

(2) It is unlawful for any person to place or cause to be placed any polluting substance listed in subsection (1) of this section into any road, street, alley, lane, railroad right of way, lot, field, meadow or common. It is unlawful for an owner thereof to knowingly permit any polluting substances to remain in any of the places described in this subsection to the injury of the health or to the annoyance of any citizen of this state. Every 24 hours after conviction for violation of this subsection during which the violator permits the polluting substances to remain is an additional offense against this subsection.

(3) Nothing in this section shall apply to the storage or spreading of manure or like substance for agricultural, silvicultural or horticultural purposes, except that no sewage sludge, septic tank or cesspool pumpings shall be used for these purposes unless treated and applied in a manner approved by the Department of Environmental Quality.

(4) Violation of this section is a Class A misdemeanor.

(5) The Department of Environmental Quality may impose the civil penalty authorized by ORS 468.140 for violation of this section. [Formerly 449.105; 1983 c.257 §1; 1987 c.325 §1]

164.805 Offensive littering. (1) A person commits the crime of offensive littering if the person creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by intentionally:

(a) Discarding or depositing any rubbish, trash, garbage, debris or other refuse upon the land of another without permission of the owner, or upon any public way or in or upon any public transportation facility;

(b) Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way; or

(c) Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle that the person is operating. This subsection does not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Department of Transportation or a person operating a school bus described under ORS 801.460.

(2) As used in this section:

(a) "Public transportation facility" has the meaning given that term in ORS 164.365.

(b) "Public way" includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities operated by the state, a county or a local municipality for use by the general public.

(3) Offensive littering is a Class C misdemeanor. [1971 c.743 §283; 1975 c.344 §2; 1983 c.338 §897; 1985 c.420 §20; 2007 c.71 §52]

164.810 [Repealed by 1971 c.743 §432]

UNLAWFUL TRANSPORT

164.813 Unlawful cutting and transport of special forest products. (1) It is unlawful for any person to cut or split wood into special forest products or to harvest or remove special forest products from a place unless the person has in possession a written permit to do so from the owner of the land from which the wood is cut or the products taken. The written permit required under this subsection must set forth:

(a) The date of the permit;

(b) The name, address, telephone number and signature of the person granting the permit;

(c) The name, address and telephone number of the person to whom the permit is granted;

(d) The amount and kind of wood, by species, to be cut or split or the amount and kind of special forest products to be taken;

(e) A description of the premises from which the wood is to be cut or the products taken. The description may be by legal description, tax account number or other description clearly identifying the premises; and

(f) The date of expiration of the permit.

(2) It is unlawful for a person to transport special forest products without possessing a permit as described in subsection (1) of this section or a document of sale showing title thereto. A document of sale must be signed by the landowner, seller or donor, and must set forth:

(a) The date of the document;

(b) The name, address and telephone number of the seller or donor of the products;

(c) The name, address and telephone number of the purchaser or donee;

(d) The amount and kind of products sold, by species; and

(e) A description of the premises from which the special forest products were taken. The description may be by legal description, tax account number or other description clearly identifying the premises, or by street address in the event of purchase from a woodlot or fuel dealer or dealer in other special forest products.

(3) Any person who engages in the purchase or other acquisition of special forest products for resale, other than special forest products acquired from property owned by that person, shall keep records of such purchases or acquisitions for a period of one year from the date of purchase or acquisition. The records shall be made available to any peace officer upon request and shall reveal:

(a) The date of purchase or acquisition;

(b) The name, address, telephone number and signature of the person from whom the special forest products were obtained and the date they were obtained;

(c) The license number of any vehicle used to deliver the special forest products to the dealer for resale;

(d) The quantity of special forest products purchased or acquired; and

(e) The name and address of the landowner from whose land the special forest product was harvested.

(4) Any permit for the removal of special forest products from public lands issued by the United States Forest Service or the Bureau of Land Management is sufficient for the purposes of subsections (1) and (2) of this section, regardless of whether the permit conforms to the specific requirements as to content set forth in subsections (1) and (2) of this section.

(5) Subsections (1) and (2) of this section do not apply to:

(a) The cutting or transportation of wild edible mushrooms occupying a volume at harvest of one gallon or less;

(b) The cutting or transportation of special forest products, as defined in subsection (6)(b)(D), (F) and (H) of this section, having a total volume of less than 27 cubic feet;

(c) The cutting or transportation of special forest products, other than those specified in paragraphs (a) and (b) of this subsection, having a total volume of less than 12 cubic feet;

(d) The cutting or transportation of coniferous trees that are subject to the provisions of ORS 164.825;

(e) The cutting or transportation of special forest products by the owner of the land from which they were taken or by the owner's agent; or

(f) The transportation of special forest products by a common carrier or contract carrier.

(6) As used in this section:

(a) "Harvest" means to separate by cutting, prying, picking, peeling, breaking, pulling, splitting or otherwise removing a special forest product from:

(A) Its physical connection or point of contact with the ground or vegetation upon which it was growing; or

(B) The place or position where it lay.

(b) "Special forest products" means:

(A) Bear grass (Xerophyllum tenas), boughs, branches, ferns and other forest plant parts used in floral arrangements and decorations;

(B) The bark and needles of the Pacific yew (Taxus brevifolia);

(C) Cascara bark from the cascara tree (Rhamnus purshiana);

(D) Cedar salvage including cedar chunks, slabs, stumps and logs that are more than one cubic foot in volume;

(E) Cut or picked evergreen foliage and shrubs including, but not limited to, ferns, huckleberry, Oregon grape, rhododendron and salal;

(F) Firewood;

(G) Native ornamental trees and shrubs, including trees and shrubs that are not nursery grown and that have been removed from the ground with the roots intact;

(H) Round or split posts, poles, pickets, stakes or rails, shakeboards, shake-bolts, shingle bolts or other round or split products of any forest tree species; and

(I) Wild edible mushrooms that have not been cultivated or propagated by artificial means.

(c) "Special forest products" does not mean mill ends, driftwood and artificially fabricated fireplace logs.

(d) "Transportation" means the physical conveyance of special forest products away from a harvest site and includes, but is not limited to, transportation in or on:

(A) A motor vehicle designed for use on improved roadways;

(B) A boat, barge, raft or other water vessel; or

(C) An airplane, helicopter, balloon or other aircraft.

(7) Subsection (3) of this section does not apply to a person who purchases cedar products that are special forest products and who complies with the record keeping requirements of ORS 165.109.

(8) Violation of any provision of subsections (1) to (3) of this section is a Class B misdemeanor. [1981 c.645 §2; 1989 c.368 §1; 1993 c.167 §1; 1995 c.75 §1]

164.814 State Forester required to develop forms for special forest products. No later than three months after September 9, 1995, the State Forester shall develop a typical form for the permit and document of sale required by ORS 164.813 and for the records required by ORS 164.813 (3). The State Forester shall make copies of the forms available. Use of the forms is not required. [1995 c.75 §2]

Note: 164.814 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.815 Unlawfully transporting hay. (1) A person commits the crime of unlawfully transporting hay if the person knowingly transports more than 20 bales of hay on a public highway without having in possession

a transportation certificate signed by the producer or the agent of the producer showing:

(a) The amount of hay in possession and the date of acquisition of it;

(b) The price paid or agreed to be paid for the hay or other terms of the transportation or sale contract;

(c) The location where the hay was loaded and its destination;

(d) The total number of bales or other units and the method of bailing or packaging; and

(e) The type of hay.

(2) Subsection (1) of this section does not apply to transportation of hay:

(a) By the producer thereof or the agent of the producer who has in possession written evidence of authority to transport the hay for the producer; or

(b) By a person or the agent of the person under contract to transport the hay for the producer.

(3) As used in this section:

(a) "Hay" means grasses, legumes or other forage plants grown in Oregon and intended for use as a feed.

(b) "Producer" means a person who raises and harvests hay on land the person owns or leases and who is delivering that hay from the field to a place of storage or sale or to a feedlot for livestock.

(4) Unlawfully transporting hay is a Class C misdemeanor. [1971 c.743 §288a; 1973 c.445 §1]

164.820 [Amended by 1971 c.647 §1; repealed by 1971 c.743 §432]

164.825 Cutting and transport of coniferous trees without permit or bill of sale. (1) It is unlawful for any person to cut more than five coniferous trees unless the person has in possession written permission to do so from the owner of the land from which the trees are cut. The written permit required under this subsection must set forth:

(a) The date of the permit;

(b) The name, address, telephone number and signature of the person granting the permit;

(c) The name, address and telephone number of the person to whom the permit is granted;

(d) The number of trees, by species, to be cut;

(e) A description of the premises from which the trees are to be cut. The description may be by legal description or tax account number; and

(f) The date of expiration of the permit.

(2) It is unlawful for any person to transport over the highways of this state more than five coniferous trees without possessing a cutting permit as described in subsection (1) of this section or a document of title showing title thereto. A document of sale must be signed by the landowner, seller or donor, and shall set forth:

(a) The date of the document;

(b) The name, address and telephone number of the seller or donor of the trees;

(c) The name, address and telephone number of the purchaser or donee of the trees;

(d) The number of trees, by species, sold or transferred by the permit or document of sale; and

(e) A description of the premises from which the trees were taken. The description may be by legal description, tax account number or other description clearly identifying the premises.

(3) The provisions of subsections (1) and (2) of this section do not apply to:

(a) The transportation of trees in the course of transplantation, with their roots intact.

(b) The cutting or transportation of coniferous trees by the owner of the land from which they were taken or by the owner's agent.

(c) The transportation of coniferous trees by a common carrier or contract carrier.

(4) Violation of the provisions of subsection (1) or (2) of this section is a Class B misdemeanor. [1971 c.743 §295; 1981 c.645 §6]

164.828 Ownership as affirmative defense under ORS 164.813 and 164.825. It is an affirmative defense to any charge under ORS 164.813 or 164.825 that the defendant is in fact the owner of the trees or special forest products cut or transported. [1981 c.645 §7; 1993 c.167 §2]

Note: 164.828 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.830 [Repealed by 1971 c.743 §432]

164.835 Investigation to prevent violations of ORS 164.813 and 164.825. (1) All peace officers shall note and investigate the cutting and transportation of coniferous trees and special forest products as defined in ORS 164.813 for the purpose of preventing violations of ORS 164.813 and 164.825.

(2) Justice courts and circuit courts have concurrent jurisdiction of violations of ORS 164.813 and 164.825. [1971 c.743 §296; 1981 c.645 §3; 1993 c.167 §3]

164.840 [Repealed by 1971 c.743 §432]

164.845 Arrest, summons for cutting or transport of trees or special forest products; effect of failure to appear. (1) Whenever any peace officer has reasonable cause to believe that a person is cutting or transporting trees or special forest products in violation of ORS 164.813 (1) or (2) or 164.825, the peace officer may arrest the person without a warrant and take the person before any court having jurisdiction of the offense. The court shall proceed without delay to hear, try and determine the matter and enter judgment according to the allegations and proofs.

(2) The peace officer making the arrest, if not immediately taking the person arrested into custody, may issue a summons to the person. The summons shall direct the person to appear at the court named in the summons to answer a complaint to be filed therewith. The violation shall be noted on the summons, which shall be dated and signed by the peace officer.

(3) Any person to whom a summons is issued under this section who fails to appear at the time and place specified therein commits a Class B misdemeanor. [1971 c.743 §297; 1981 c.645 §4; 1993 c.167 §4]

164.850 [Repealed by 1971 c.743 §432]

164.855 Seizure of trees or special forest products cut or transported in violation of ORS 164.813 or 164.825. (1) Whenever any peace officer has reasonable cause for believing that a person is cutting or transporting trees or special forest products in violation of ORS 164.813 (1) or (2) or 164.825, the peace officer may, at the time of making the arrest or issuing the summons, under ORS 164.845, seize and take possession of the trees or special forest products. The peace officer shall hold the trees or special forest products subject to the order of the court before which the arrested person is ordered to appear. If the owner of the trees or special forest products appears before the court within 48 hours after the seizure thereof and presents satisfactory evidence of ownership, the court shall order the peace officer to deliver the trees or special forest products to the owner. If the owner does not appear within the 48-hour period and prove ownership of the trees or special forest products, the court may direct the peace officer to sell the trees or special forest products in any manner and for any price that appears to the court to be warranted. If the trees or special forest products have no value, the court may direct the officer to destroy them in any manner practicable. The proceeds of the sale, less the reasonable expenses thereof, shall be paid to the treasurer of the county in which the trees or special forest products are sold. At any time within one year after the seizure of the trees or special forest products the owner thereof may appear before the court, and, upon presentation of satisfactory evidence of ownership, the court shall direct the treasurer of the county to pay the proceeds to the owner. If the owner does not appear within one year from the seizure of the trees or special forest products and prove a right to the proceeds, the proceeds shall thereafter belong to the county, and may be disposed of as the county court may direct.

(2) The return of the trees or special forest products or the payment of the proceeds shall not preclude the court from imposing any fine or penalty for any violation of ORS 164.825 to 164.855. [1971 c.743 §298; 1981 c.645 §5; 1993 c.167 §5]

164.857 Unlawfully transporting metal property. (1) A person commits the offense of unlawfully transporting metal property if the person transports metal property on a public highway or on premises open to the public with the intent to deliver the metal property to a scrap metal business and the person does not have a metal transportation certificate in the person's possession.

(2) A seller or transferor of metal property that has reason to believe that a buyer or transferee intends to obtain the metal property for delivery to a scrap metal business shall provide the buyer or transferee with a metal transportation certificate.

(3) A metal transportation certificate must include:

(a) The date the metal property was acquired and the amount and type of metal property that the person is transporting;

(b) The location where the metal property was loaded and the destination of the metal property;

(c) The name, address and telephone number of the seller or the transferor;

(d) The signature of the seller or transferor or the authorized agent of the seller or transferor; and

(e) The name, address and telephone number of the person transporting the metal property.

(4) The Department of State Police shall create a form that may serve as a metal transportation certificate and shall make the form available on the department's website.

(5) It is a defense to a charge of unlawfully transporting metal property that the person transporting the metal property is the owner of the property or an agent or employee of the owner of the property.

(6) Unlawfully transporting metal property is a Class C misdemeanor.

(7) As used in this section:

(a) "Agent or employee of the owner of the property" includes a motor carrier as defined in ORS 825.005 that is operating in accordance with the provisions of ORS chapter 825.

(b) "Metal property" and "scrap metal business" have the meanings given those terms in ORS 165.116. [2009 c.811 §3; 2010 c.56 §4]

Note: 164.857 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.860 [Repealed by 1971 c.743 §432]

164.863 Unlawful transport of meat animal carcasses. (1) Except as provided in subsection (2) of this section, it shall be unlawful for any person to transport the carcass or a primal cut thereof of any meat animal on a public highway without having in possession a transportation certificate signed by the owner or the agent of the owner showing:

(a) The location where the carcass or primal cut was loaded and its destination;

(b) The quantity in possession and the date of acquisition of it; and

(c) Transportation or bill of sale.

(2) Subsection (1) of this section does not apply to the carcass or meat of a meat animal:

(a) That is transported by common carrier;

(b) That is marked, tagged or otherwise identified as required by ORS chapter 619;

(c) That is marked, tagged or identified as required by ORS 603.045 (2), or that is the subject of the certificate and tags described in ORS 603.045 (4); or

(d) That is marked, tagged or otherwise identified as having been previously inspected under the Federal Meat Inspection Act.

(3) As used in this section:

(a) "Common carrier" means:

(A) Any person who transports for hire or who purports to be to the public as willing to transport for hire, compensation or consideration by motor vehicle, persons or property, or both, for those who may choose to employ the person; or

(B) Any person who leases, rents or otherwise provides a motor vehicle for the use of others and who in connection therewith in the regular course of business provides, procures or arranges for, directly, indirectly or by course of dealing, a driver or operator therefor.

(b) "Federal Meat Inspection Act" means the Act so entitled approved March 4, 1907, (34 Stat. 1260), as amended by the Wholesome Meat Act (81 Stat. 584).

(c) "Meat animal" means any live cattle, equines, sheep, goats or swine.

(d) "Meat" or "meat product" means any edible muscle, except any muscle found in the lips, snout or ears of meat animals, which is skeletal or found in the tongue, diaphragm, heart or esophagus, with or without any accompanying and overlying fat, and any portion of bone, skin, sinew, nerve or blood vessels normally accompanying the muscle tissue and not separated from it in the process of dressing or as otherwise prescribed by the Department of Agriculture.

(4) Unlawfully transporting the carcass or primal cut of a meat animal is a Class C misdemeanor.

(5) For the purpose of this section "primal cut" of cattle and equines means round, loin, flank, rib, chuck, brisket, plate or shank; of pork means ham, loin, side, spareribs, shoulder or jowl; of sheep and goats means rib or rack, loin, leg or shoulder. [1975 c.201 §2]

MISCELLANEOUS

164.864 Definitions for ORS 164.864 to 164.882. As used in ORS 164.865, 164.866, 164.868, 164.869, 164.872, 164.873, 164.875 and 164.882 and this section, unless the context requires otherwise:

(1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part of a motion picture by means of any technology now known or later developed.

(2) "Commercial enterprise" means a business operating in intrastate or interstate commerce for profit. "Commercial enterprise" does not include:

(a) Activities by schools, libraries or religious organizations;

(b) Activities incidental to a bona fide scholastic or critical endeavor;

(c) Activities incidental to the marketing or sale of recording devices; and

(d) Activities involving the recording of school or religious events or activities.

(3) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated for a period of more than transitory duration.

(4) "Live performance" means a recitation, rendering or playing of musical instru-

ments or vocal arrangements in an audible sequence in a public performance.

(5) "Manufacturer" means the entity authorizing the duplication of a specific recording, but shall not include the manufacturer of the cartridge or casing itself.

(6) "Master recording" means the master disk, master tape, master film or other device used for reproducing recorded sound from which a sound recording is directly or indirectly derived.

(7) "Motion picture" includes any motion picture, regardless of length or content, that is exhibited in a motion picture theater, exhibited on television to paying customers or under the sponsorship of a paying advertiser or produced and exhibited for scientific research or educational purposes. "Motion picture" does not include amateur films that are shown free or at cost to friends, neighbors or civic groups.

(8) "Motion picture theater" means a movie theater, screening room or other venue that is being utilized primarily for the exhibition of a motion picture.

(9) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disk, master tape, master film or other recording on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived.

(10) "Recording" means a tangible medium on which information, sounds or images, or any combination thereof, are recorded or otherwise stored. Medium includes, but is not limited to, an original phonograph record, disk, tape, audio or video cassette, wire, film or other medium now existing or developed later on which sounds, images or both are or can be recorded or otherwise stored or a copy or reproduction that duplicates in whole or in part the original.

(11) "Sound recording" means any reproduction of a master recording.

(12) "Videotape" means a reel of tape upon which a motion picture is electronically or magnetically imprinted by means of an electronic video recorder and which may be used in video playback equipment to project or display the motion picture on a television screen. [1993 c.95 §1; 2001 c.666 §§30,42; 2005 c.459 §§3,4; 2005 c.830 §22]

Note: 164.864, 164.866, 164.867, 164.868, 164.869, 164.872 and 164.873 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.865 Unlawful sound recording. (1) A person commits the crime of unlawful sound recording if the person:

(a) Reproduces for sale any sound recording without the written consent of the owner of the master recording; or

(b) Knowingly sells, offers for sale or advertises for sale any sound recording that has been reproduced without the written consent of the owner of the master recording.

(2) Unlawful sound recording is a Class B misdemeanor. [1973 c.747 §1; 1993 c.95 §3]

164.866 Civil action for injuries caused by criminal acts. Nothing in ORS 164.864, 164.865, 164.868, 164.869, 164.872, 164.873 or 164.875 or this section limits or impairs the right of a person injured by the criminal acts of a defendant to sue and recover damages from the defendant in a civil action. [1993 c.95 §11; 2001 c.666 §§31,43; 2005 c.830 §23]

Note: See note under 164.864.

164.867 Applicability of ORS 164.868, 164.869 and 164.872. The provisions of ORS 164.868, 164.869 and 164.872 apply only to persons operating commercial enterprises. [1993 c.95 §2]

Note: See note under 164.864.

164.868 Unlawful labeling of a sound recording. (1) A person commits unlawful labeling of a sound recording if the person:

(a) Fails to disclose the origin of a sound recording when the person knowingly advertises or offers for sale or resale, sells, resells, rents, leases, or lends or possesses for any of these purposes, any sound recording that does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket or label of the sound recording; and

(b) Possesses five or more duplicate copies or 20 or more individual copies of recordings produced without consent of the owner or performer and the recordings are intended for sale or distribution in violation of this section.

(2) Unlawful labeling of a sound recording is a Class C felony. [1993 c.95 §7]

Note: See note under 164.864.

164.869 Unlawful recording of a live performance. (1) A person commits unlawful recording of a live performance if the person:

(a)(A) Advertises or offers for sale, sells, rents, transports, or causes the sale, resale, rental or transportation of, or possesses for one or more of these purposes, a recording containing sounds of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(B) With the intent to sell, records or fixes, or causes to be recorded or fixed on a recording, a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; and

(b) Possesses five or more duplicate copies or 20 or more individual copies of recordings produced without consent of the owner or performer and the recordings are intended for sale or distribution in violation of this section.

(2) Unlawful recording of a live performance is a Class C felony.

(3) For purposes of subsections (1) and (2) of this section, in the absence of a written agreement or law to the contrary, the performer of a live performance is presumed to own the rights to record or fix the performance.

(4) A person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent. [1993 c.95 §§5,6]

Note: See note under 164.864.

164.870 [Repealed by 1957 c.269 §1; (164.871 enacted in lieu of 164.870)]

164.871 [1957 c.269 §2 (enacted in lieu of 164.870); repealed by 1971 c.743 §432]

164.872 Unlawful labeling of a videotape recording. (1) A person commits unlawful labeling of a videotape recording if the person:

(a) Fails to disclose the origin of a recording when the person knowingly advertises or offers for sale or resale, or sells, resells, rents, leases or lends, or possesses for any of these purposes, any videotape recording that does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket or label of the videotape recording; and

(b) Possesses five or more duplicate copies or 20 or more individual copies of videotape recordings produced without consent of the owner or performer and the videotape recordings are intended for sale or distribution in violation of this section.

(2) Unlawful labeling of a videotape recording is a Class C felony. [1993 c.95 §8]

Note: See note under 164.864.

164.873 Exemptions from ORS 164.865, 164.868, 164.869, 164.872 and 164.875. (1) The provisions of ORS 164.872 and 164.875 do not apply to:

(a) The production of a videotape of a motion picture that is defined as a public record under ORS 192.005 (5), in accordance with ORS 192.005 to 192.170 or 357.805 to 357.895.

(b) The production of a videotape of a motion picture that is defined as a legislative record under ORS 171.410, in accordance with ORS 171.410 to 171.430.

(2) The provisions of ORS 164.865, 164.868, 164.869 (1) and (2) and 164.875 do not apply to the reproduction of:

(a) Any recording that is used or intended to be used only for broadcast by educational radio or television stations.

(b) A sound recording, or the production of a videotape of a motion picture, that is defined as a public record under ORS 192.005 (5), with or without charging and collecting a fee therefor, in accordance with ORS 192.005 to 192.170 or 357.805 to 357.895.

(c) A sound recording defined as a legislative record under ORS 171.410, with or without charging and collecting a fee therefor, in accordance with ORS 171.410 to 171.430. [1993 c.95 §§9,10]

Note: See note under 164.864.

164.875 Unlawful videotape recording. (1) A person commits the crime of unlawful videotape recording if the person:

(a) Produces for sale any videotape without the written consent of the owner of the motion picture imprinted thereon; or

(b) Knowingly sells or offers for sale any videotape that has been produced without the written consent of the owner of the motion picture imprinted thereon.

(2) Unlawful videotape recording is a Class B misdemeanor. [1979 c.550 §2; 1993 c.95 §4]

164.876 [1993 c.95 §12; repealed by 2001 c.666 §56]

164.877 [1989 c.1003 §§2,3; renumbered 164.886 in 2007]

164.879 [2001 c.666 §50; repealed by 2005 c.830 §48]

164.880 [Repealed by 1971 c.743 §432]

164.882 Unlawful operation of an audiovisual device. (1) A person commits the crime of unlawful operation of an audiovisual device if the person knowingly operates the audiovisual recording function of any device in a motion picture theater, while a motion picture is being exhibited, without the written consent of the motion picture theater owner.

(2) Unlawful operation of an audiovisual device is a Class B misdemeanor.

(3) The provisions of subsection (1) of this section do not apply to any activity undertaken in the course of bona fide law enforcement activity or necessary to the proper functioning of the criminal justice system. [2005 c.459 §1]

Note: 164.882 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.885 Endangering aircraft. (1) A person commits the crime of endangering aircraft in the first degree if the person knowingly:

(a) Throws an object at, or drops an object upon, an aircraft;

(b) Discharges a bow and arrow, gun, airgun or firearm at or toward an aircraft;

(c) Tampers with an aircraft or a part, system, machine or substance used to operate an aircraft in such a manner as to impair the safety, efficiency or operation of an aircraft without the consent of the owner, operator or possessor of the aircraft; or

(d) Places, sets, arms or causes to be discharged a spring gun, trap, explosive device or explosive material with the intent of damaging, destroying or discouraging the operation of an aircraft.

(2)(a) Except as provided in paragraph (b) of this subsection, a person commits the crime of endangering aircraft in the second degree if the person knowingly possesses a firearm or deadly weapon in a restricted access area of a commercial service airport that has at least 2 million passenger boardings per calendar year.

(b) Paragraph (a) of this subsection does not apply to a person authorized under federal law or an airport security program to possess a firearm or deadly weapon in a restricted access area.

(3)(a) Endangering aircraft in the first degree is a Class C felony.

(b) Endangering aircraft in the second degree is a Class A misdemeanor.

(4) As used in this section, "restricted access area" means an area of a commercial service airport that is:

(a) Designated as restricted in the airport security program approved by the federal Transportation Security Administration; and

(b) Marked at points of entry with signs giving notice that access to the area is restricted. [1981 c.901 §1; 2009 c.299 §1]

Note: 164.885 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.886 Unlawful tree spiking; unlawful possession of substance that can damage certain wood processing equipment. (1) A person commits the crime of unlawful tree spiking if the person knowingly drives or places in any tree or saw log, without the prior consent of the owner thereof, any iron, steel or other substance sufficiently hard to damage saws or wood manufacturing or processing equipment with intent to cause inconvenience, annoyance or alarm to any other person.

(2) Except as provided in subsection (3) of this section, unlawful tree spiking is a Class C felony.

(3) Unlawful tree spiking that results in serious physical injury to another person is a Class B felony.

(4) Any person who possesses, with the intent to use in violation of subsections (1) to (3) of this section, any iron, steel or other substance sufficiently hard to damage saws or wood manufacturing or processing equipment is guilty of a Class A misdemeanor. [Formerly 164.877]

164.887 Interference with agricultural operations. (1) Except as provided in subsection (3) of this section, a person commits the offense of interference with agricultural operations if the person, while on the property of another person who is engaged in agricultural operations, intentionally or knowingly obstructs, impairs or hinders or attempts to obstruct, impair or hinder agricultural operations.

(2) Interference with agricultural operations is a Class A misdemeanor.

(3) The provisions of subsection (1) of this section do not apply to:

(a) A person who is involved in a labor dispute as defined in ORS 662.010 with the other person; or

(b) A public employee who is performing official duties.

(4) As used in this section:

(a)(A) "Agricultural operations" means the conduct of logging and forest management, mining, farming or ranching of livestock animals or domestic farm animals;

(B) "Domestic farm animal" means an animal used to control or protect livestock animals or used in other related agricultural activities; and

(C) "Livestock animals" has the meaning given that term in ORS 164.055.

(b) "Domestic farm animal" and "livestock animals" do not include stray animals. [1999 c.694 §1]

Note: 164.887 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.889 Interference with agricultural research. (1) A person commits the crime of interference with agricultural research if the person knowingly:

(a) Damages any property at an agricultural research facility with the intent to damage or hinder agricultural research or experimentation;

(b) Obtains any property of an agricultural research facility with the intent to damage or hinder agricultural research or experimentation;

(c) Obtains access to an agricultural research facility by misrepresentation with the intent to perform acts that would damage or hinder agricultural research or experimentation;

(d) Enters an agricultural research facility with the intent to damage, alter, duplicate or obtain unauthorized possession of records, data, materials, equipment or specimens related to agricultural research or experimentation;

(e) Without the authorization of the agricultural research facility, obtains or exercises control over records, data, materials, equipment or specimens of the agricultural research facility with the intent to destroy or conceal the records, data, materials, equipment or specimens; or

(f) Releases or steals an animal from, or causes the death, injury or loss of an animal at, an agricultural research facility.

(2) Interference with agricultural research is a Class C felony.

(3) For purposes of this section:

(a) "Agricultural research facility" means any structure or land, whether privately or publicly owned, leased or operated, that is being used for agricultural research or experimentation.

(b) "Agricultural research or experimentation" means the lawful study, analysis or testing of plants or animals, or the use of plants or animals to conduct studies, analyses, testing or teaching, for the purpose of improving farming, forestry or animal husbandry.

(4) In addition to any other penalty imposed for violation of this section, a person convicted of interference with agricultural research is liable for:

(a) Damages to real and personal property caused by acts constituting the violation; and

(b) The costs of repeating an experiment, including the replacement of the records, data, equipment, specimens, labor and materials, if acts constituting the violation cause the failure of an experiment in progress or irreparably damage completed research or experimentation. [2001 c.147 §1]

Note: 164.889 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.890 [Repealed by 1971 c.743 §432]

164.900 [Repealed by 1971 c.743 §432]