

# Chapter 166

2003 EDITION

## Offenses Against Public Order; Firearms and Other Weapons; Racketeering

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**TREASON, RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES**

**166.005 Treason.** (1) A person commits the crime of treason if the person levies war against the State of Oregon or adheres to its enemies, giving them aid and comfort.

(2) No person shall be convicted of treason unless upon the testimony of two witnesses to the same overt act or upon confession in open court.

(3) A person convicted of treason shall be punished by imprisonment for life. [1971 c.743 §217]

**166.010** [Repealed by 1971 c.743 §432]

**166.015 Riot.** (1) A person commits the crime of riot if while participating with five or more other persons the person engages in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm.

(2) Riot is a Class C felony. [1971 c.743 §218]

**166.020** [Repealed by 1971 c.743 §432]

**166.025 Disorderly conduct.** (1) A person commits the crime of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

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

(b) Makes unreasonable noise;

(c) Disturbs any lawful assembly of persons without lawful authority;

(d) Obstructs vehicular or pedestrian traffic on a public way;

(e) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse;

(f) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or

(g) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

(2) Disorderly conduct is a Class B misdemeanor. [1971 c.743 §220; 1983 c.546 §5; 2001 c.104 §55]

**166.030** [Repealed by 1971 c.743 §432]

**166.035** [1971 c.743 §221; repealed by 1975 c.715 §2]

**166.040** [Repealed by 1971 c.743 §432]

**166.045** [1971 c.743 §222; repealed by 1983 c.546 §3]

**166.050** [Repealed by 1971 c.743 §432]

**166.060** [Amended by 1959 c.436 §1; 1961 c.503 §1; repealed by 1971 c.743 §432]

**166.065 Harassment.** (1) A person commits the crime of harassment if the person intentionally:

(a) Harasses or annoys another person by:

(A) Subjecting such other person to offensive physical contact; or

(B) Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;

(b) Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or

(c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

(2) A person is criminally liable for harassment if the person knowingly permits any telephone or electronic device under the person's control to be used in violation of subsection (1) of this section.

(3) Harassment is a Class B misdemeanor.

(4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a person violates subsection (1) of this section by subjecting another person to offensive physical contact and the offensive physical contact consists of touching the sexual or other intimate parts of the other person. [1971 c.743 §223; 1981 c.468 §1; 1985 c.498 §1; 1987 c.806 §3; 1995 c.802 §1; 2001 c.870 §2]

**166.075 Abuse of venerated objects.** (1) A person commits the crime of abuse of venerated objects if the person intentionally abuses a public monument or structure, a place of worship or the national or state flag.

(2) As used in this section and ORS 166.085, "abuse" means to deface, damage, defile or otherwise physically mistreat in a manner likely to outrage public sensibilities.

(3) Abuse of venerated objects is a Class C misdemeanor. [1971 c.743 §224; 1995 c.261 §2]

**166.076 Abuse of a memorial to the dead.** (1) A person commits the crime of abuse of a memorial to the dead if the person:

(a) Intentionally destroys, mutilates, defaces, injures or removes any:

(A) Tomb, monument, gravestone or other structure or thing placed as or designed for a memorial to the dead; or

(B) Fence, railing, curb or other thing intended for the protection or for the ornamentation of any structure or thing listed in subparagraph (A) of this paragraph;

(b) Intentionally destroys, mutilates, removes, cuts, breaks or injures any tree,

shrub or plant within any structure listed in paragraph (a) of this subsection; or

(c) Buys, sells or transports any object listed in paragraph (a) of this subsection that was stolen from a pioneer cemetery knowing that the object is stolen.

(2) Abuse of a memorial to the dead is a Class A misdemeanor.

(3)(a) Notwithstanding ORS 161.635, the maximum fine that a court may impose for abuse of a memorial to the dead is \$50,000 if:

(A) The person violates subsection (1)(a) of this section and the object destroyed, mutilated, defaced, injured or removed is or was located in a pioneer cemetery; or

(B) The person violates subsection (1)(c) of this section.

(b) In addition to any other sentence a court may impose, if a defendant is convicted of violating this section under the circumstances described in paragraph (a)(A) of this subsection, the court shall consider ordering the defendant to pay restitution. The court shall base the amount of restitution on the historical value of the object destroyed, mutilated, defaced, injured or removed.

(4) This section does not apply to a person who is the burial right owner or that person's representative, an heir at law of the deceased, or a person having care, custody or control of a cemetery by virtue of law, contract or other legal right, if the person is acting within the scope of the person's legal capacity and the person's actions have the effect of maintaining, protecting or improving the tomb, monument, gravestone or other structure or thing placed as or designed for a memorial to the dead.

(5) As used in this section, "pioneer cemetery" means a cemetery that is listed with the Oregon Commission on Historic Cemeteries under ORS 97.782. [1995 c.261 §1; 1999 c.731 §12; 2003 c.291 §1]

**Note:** 166.076 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 166 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**166.085 Abuse of corpse in the second degree.** (1) A person commits the crime of abuse of corpse in the second degree if, except as otherwise authorized by law, the person intentionally:

(a) Abuses a corpse; or

(b) Disinters, removes or carries away a corpse.

(2) Abuse of corpse in the second degree is a Class C felony.

(3) As used in this section and ORS 166.087, "abuse of corpse" includes treatment of a corpse by any person in a manner not

recognized by generally accepted standards of the community or treatment by a professional person in a manner not generally accepted as suitable practice by other members of the profession, as may be defined by rules applicable to the profession. [1971 c.743 §225; 1985 c.207 §2; 1993 c.294 §1]

**166.087 Abuse of corpse in the first degree.** (1) A person commits the crime of abuse of corpse in the first degree if the person:

(a) Engages in sexual activity with a corpse or involving a corpse; or

(b) Dismembers, mutilates, cuts or strikes a corpse.

(2) Abuse of corpse in the first degree is a Class B felony. [1993 c.294 §2]

**Note:** 166.087 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 166 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**166.090 Telephonic harassment.** (1) A telephone caller commits the crime of telephonic harassment if the caller intentionally harasses or annoys another person:

(a) By causing the telephone of the other person to ring, such caller having no communicative purpose; or

(b) By causing such other person's telephone to ring, knowing that the caller has been forbidden from so doing by a person exercising lawful authority over the receiving telephone.

(2) Telephonic harassment is a Class B misdemeanor. [1987 c.806 §2; 1999 c.115 §1]

**166.095 Misconduct with emergency telephone calls.** (1) A person commits the crime of misconduct with emergency telephone calls if the person:

(a) Intentionally refuses to relinquish immediately a party line or public pay telephone after being informed that it is needed for an emergency call; or

(b) Requests another to relinquish a party line or public pay telephone to place an emergency call with knowledge that no such emergency exists.

(2) As used in this section:

(a) "Party line" means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

(b) "Emergency call" means a telephone call to a police or fire department, or for medical aid or ambulance service, necessitated by a situation in which human life or property is in jeopardy and prompt summoning of aid is essential.

(3) Every telephone directory published after January 1, 1972, which is distributed to members of the general public in this state shall contain in a prominent place a notice of the offense punishable by this section.

(4) Misconduct with emergency telephone calls is a Class B misdemeanor. [1971 c.743 §288]

**166.110** [Amended by 1961 c.503 §2; repealed by 1971 c.743 §432]

**166.115** [1981 c.783 §3; repealed by 2001 c.851 §2 (166.116 enacted in lieu of 166.115)]

**166.116 Interfering with public transportation.** (1) A person commits the crime of interfering with public transportation if the person:

(a) Intentionally or knowingly enters or remains unlawfully in or on a public transit vehicle or public transit station;

(b) Intentionally or knowingly interferes with the provision or use of public transportation services by, among other things, interfering with the movement of, or access to, public transit vehicles;

(c) While in or on a public transit vehicle or public transit station, engages in disorderly conduct as defined in ORS 166.025; or

(d) Subjects a public transportation passenger, employee, agent or security officer or transit police officer to offensive physical contact.

(2) Interfering with public transportation is a Class A misdemeanor.

(3) As used in this section:

(a) "Enter or remain unlawfully" has the meaning given that term in ORS 164.205.

(b) "Public transit station" includes all facilities, structures, lands and rights of way that are owned, leased, held or used for the purposes of providing public transportation services.

(c) "Public transit vehicle" means a vehicle that is used for public transportation or operated by or under contract to any public body in order to provide public transportation.

(d) "Public transportation" means transportation provided by a city, county, special district or any other political subdivision or municipal or public corporation. [2001 c.851 §3 (enacted in lieu of 166.115)]

**166.120** [Repealed by 1971 c.743 §432]

**166.130** [Repealed by 1971 c.743 §432]

**166.140** [Repealed by 1971 c.743 §432]

**166.150** [Repealed by 1971 c.743 §432]

## INTIMIDATION

**166.155 Intimidation in the second degree.** (1) A person commits the crime of intimidation in the second degree if the person:

(a) Tampers or interferes with property, having no right to do so nor reasonable ground to believe that the person has such right, with the intent to cause substantial inconvenience to another because of the person's perception of the other's race, color, religion, national origin or sexual orientation;

(b) Intentionally subjects another to offensive physical contact because of the person's perception of the other's race, color, religion, national origin or sexual orientation; or

(c) Intentionally, because of the person's perception of race, color, religion, national origin or sexual orientation of another or of a member of the other's family, subjects such other person to alarm by threatening:

(A) To inflict serious physical injury upon or to commit a felony affecting such other person, or a member of the person's family; or

(B) To cause substantial damage to the property of the other person or of a member of the other person's family.

(2) Intimidation in the second degree is a Class A misdemeanor.

(3) For purposes of this section:

(a) "Property" means any tangible personal property or real property.

(b) "Sexual orientation" means heterosexuality, homosexuality or bisexuality. [1981 c.785 §1; 1983 c.521 §1; 1989 c.1029 §1]

**166.160** [Repealed by 1971 c.743 §432]

**166.165 Intimidation in the first degree.** (1) Two or more persons acting together commit the crime of intimidation in the first degree, if the persons:

(a)(A) Intentionally, knowingly or recklessly cause physical injury to another person because of the actors' perception of that person's race, color, religion, national origin or sexual orientation; or

(B) With criminal negligence cause physical injury to another person by means of a deadly weapon because of the actors' perception of that person's race, color, religion, national origin or sexual orientation;

(b) Intentionally, because of the actors' perception of another person's race, color, religion, national origin or sexual orientation, place another person in fear of imminent serious physical injury; or

(c) Commit such acts as would constitute the crime of intimidation in the second de-

gree, if undertaken by one person acting alone.

(2) Intimidation in the first degree is a Class C felony.

(3) "Sexual orientation" has the meaning given that term in ORS 166.155. [1981 c.785 §2; 1983 c.521 §2; 1989 c.1029 §2; 1993 c.332 §1; 1995 c.79 §53; 1997 c.249 §50]

### AUTHORITY TO REGULATE FIREARMS

**166.170 State preemption.** (1) Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.

(2) Except as expressly authorized by state statute, no county, city or other municipal corporation or district may enact civil or criminal ordinances, including but not limited to zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition. Ordinances that are contrary to this subsection are void. [1995 s.s. c.1 §1]

**166.171 Authority of county to regulate discharge of firearms.** (1) A county may adopt ordinances to regulate, restrict or prohibit the discharge of firearms within their boundaries.

(2) Ordinances adopted under subsection (1) of this section may not apply to or affect:

(a) A person discharging a firearm in the lawful defense of person or property.

(b) A person discharging a firearm in the course of lawful hunting.

(c) A landowner and guests of the landowner discharging a firearm, when the discharge will not endanger adjacent persons or property.

(d) A person discharging a firearm on a public or private shooting range, shooting gallery or other area designed and built for the purpose of target shooting.

(e) A person discharging a firearm in the course of target shooting on public land that is not inside an urban growth boundary or the boundary of a city, if the discharge will not endanger persons or property. [1995 s.s. c.1 §2]

**166.172 Authority of city to regulate discharge of firearms.** (1) A city may adopt ordinances to regulate, restrict or prohibit the discharge of firearms within the city's boundaries.

(2) Ordinances adopted under subsection (1) of this section may not apply to or affect:

(a) A person discharging a firearm in the lawful defense of person or property.

(b) A person discharging a firearm on a public or private shooting range, shooting gallery or other area designed and built for the purpose of target shooting. [1995 s.s. c.1 §3]

**166.173 Authority of city or county to regulate possession of loaded firearms in public places.** (1) A city or county may adopt ordinances to regulate, restrict or prohibit the possession of loaded firearms in public places as defined in ORS 161.015.

(2) Ordinances adopted under subsection (1) of this section do not apply to or affect:

(a) A law enforcement officer in the performance of official duty.

(b) A member of the military in the performance of official duty.

(c) A person licensed to carry a concealed handgun.

(d) A person authorized to possess a loaded firearm while in or on a public building or court facility under ORS 166.370. [1995 s.s. c.1 §4; 1999 c.782 §8]

**166.174 Authority of city, county, municipal corporation or district to regulate possession or sale of firearms.** Notwithstanding any other provision of law, a city, county or other municipal corporation or district may not adopt ordinances that regulate, restrict or prohibit the possession or sale of firearms in a public building that is rented or leased to a person during the term of the lease. [1995 s.s. c.1 §5]

**166.175 Authority of city to regulate purchase of used firearms.** (1) Notwithstanding any other provision of law, a city may continue to regulate the purchase of used firearms by pawnshops and secondhand stores.

(2) As used in this section, "secondhand store" means a store or business whose primary source of revenue is the sale of used merchandise. [1995 s.s. c.1 §6]

**166.176 Exception to preemption for certain county ordinances.** (1) Nothing in ORS 166.170 or 166.171 is intended to preempt, invalidate or in any way affect the operation of any provision of a county ordinance that was in effect on November 2, 1995, to the extent that the provision:

(a) Established a procedure for regulating, restricting or prohibiting the discharge of firearms; or

(b) Regulated, restricted or prohibited the discharge of firearms.

(2) Subsection (1) of this section does not apply to ordinances regulating, restricting or prohibiting the discharge of firearms on a shooting range or in a shooting gallery or other area designed and built for the purpose of target shooting. [1997 c.403 §1]

### POSSESSION AND USE OF WEAPONS

#### 166.180 Negligently wounding another.

Any person who, as a result of failure to use ordinary care under the circumstances, wounds any other person with a bullet or shot from any firearm, or with an arrow from any bow, shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine not to exceed \$500, or both. In addition, any person so convicted shall forfeit any license to hunt, obtained under the laws of this state, and shall be ineligible to obtain a license to hunt for a period of 10 years following the date of conviction. [Formerly 163.310]

#### 166.190 Pointing firearm at another; courts having jurisdiction over offense.

Any person over the age of 12 years who, with or without malice, purposely points or aims any loaded or empty pistol, gun, revolver or other firearm, at or toward any other person within range of the firearm, except in self-defense, shall be fined upon conviction in any sum not less than \$10 nor more than \$500, or be imprisoned in the county jail not less than 10 days nor more than six months, or both. Justice courts have jurisdiction concurrent with the circuit court of the trial of violations of this section. When any person is charged before a justice court with violation of this section, the court shall, upon motion of the district attorney, at any time before trial, act as a committing magistrate, and if probable cause be established, hold such person to the grand jury. [Formerly 163.320]

**166.210 Definitions.** As used in ORS 166.250 to 166.270, 166.291 to 166.295 and 166.410 to 166.470:

(1) "Antique firearm" means:

(a) Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured in or before 1898; and

(b) Any replica of any firearm described in paragraph (a) of this subsection if the replica:

(A) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) Uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade.

(2) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of powder and which is readily capable of use as a weapon.

(3) "Firearms silencer" means any device for silencing, muffling or diminishing the report of a firearm.

(4) "Handgun" means any pistol or revolver using a fixed cartridge containing a propellant charge, primer and projectile, and designed to be aimed or fired otherwise than from the shoulder.

(5) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, which is designed or modified to allow two or more shots to be fired by a single pressure on the trigger device.

(6) "Minor" means a person under 18 years of age.

(7) "Parole and probation officer" has the meaning given that term in ORS 181.610.

(8) "Short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle if the weapon has an overall length of less than 26 inches.

(9) "Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun if the weapon has an overall length of less than 26 inches. [Amended by 1977 c.769 §1; 1979 c.779 §3; 1989 c.839 §1; 1993 c.735 §14; 1995 c.670 §3; 1999 c.1040 §2; 2001 c.666 §§32,44; 2003 c.614 §7]

**166.220 Unlawful use of weapon.** (1) A person commits the crime of unlawful use of a weapon if the person:

(a) Attempts to use unlawfully against another, or carries or possesses with intent to use unlawfully against another, any dangerous or deadly weapon as defined in ORS 161.015; or

(b) Intentionally discharges a firearm, blowgun, bow and arrow, crossbow or explosive device within the city limits of any city or within residential areas within urban growth boundaries at or in the direction of any person, building, structure or vehicle within the range of the weapon without having legal authority for such discharge.

(2) This section does not apply to:

(a) Police officers or military personnel in the lawful performance of their official duties;

(b) Persons lawfully defending life or property as provided in ORS 161.219;

(c) Persons discharging firearms, blow-guns, bows and arrows, crossbows or explosive devices upon public or private shooting ranges, shooting galleries or other areas designated and built for the purpose of target shooting; or

(d) Persons lawfully engaged in hunting in compliance with rules and regulations adopted by the State Department of Fish and Wildlife.

(3) Unlawful use of a weapon is a Class C felony. [Amended by 1975 c.700 §1; 1985 c.543 §1; 1991 c.797 §1]

**166.230** [Repealed by 1979 c.779 §7]

**166.240 Carrying of concealed weapons.** (1) Except as provided in subsection (2) of this section, any person who carries concealed upon the person any knife having a blade that projects or swings into position by force of a spring or by centrifugal force, any dirk, dagger, ice pick, slungshot, metal knuckles, or any similar instrument by the use of which injury could be inflicted upon the person or property of any other person, commits a Class B misdemeanor.

(2) Nothing in subsection (1) of this section applies to any peace officer as defined in ORS 133.005, whose duty it is to serve process or make arrests. Justice courts have concurrent jurisdiction to try any person charged with violating any of the provisions of subsection (1) of this section. [Amended by 1977 c.454 §1; 1985 c.543 §2; 1989 c.839 §21; 1999 c.1040 §15]

**166.245** [1989 c.839 §38; repealed by 1995 s.s. c.1 §7]

**166.250 Unlawful possession of firearms.** (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274, 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm if the person knowingly:

(a) Carries any firearm concealed upon the person;

(b) Possesses a handgun that is concealed and readily accessible to the person within any vehicle; or

(c) Possesses a firearm and:

(A) Is under 18 years of age;

(B)(i) While a minor, was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470; and

(ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section;

(C) Has been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;

(D) Was committed to the Department of Human Services under ORS 426.130; or

(E) Was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness.

(2) This section does not prohibit:

(a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from possessing a firearm:

(A) Other than a handgun, if the firearm was transferred to the minor by the minor's parent or guardian or by another person with the consent of the minor's parent or guardian; or

(B) Temporarily for hunting, target practice or any other lawful purpose; or

(b) Any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270 and subsection (1) of this section, from owning, possessing or keeping within the person's place of residence or place of business any handgun, and no permit or license to purchase, own, possess or keep any such firearm at the person's place of residence or place of business is required of any such citizen. As used in this subsection, "residence" includes a recreational vessel or recreational vehicle while used, for whatever period of time, as residential quarters.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

(4) Unlawful possession of a firearm is a Class A misdemeanor. [Amended by 1979 c.779 §4; 1985 c.543 §3; 1989 c.839 §13; 1993 c.732 §1; 1993 c.735 §12; 1999 c.1040 §1; 2001 c.666 §§33,45; 2003 c.614 §8]

**166.260 Persons not affected by ORS 166.250.** (1) ORS 166.250 does not apply to or affect:

(a) Sheriffs, constables, marshals, police officers, whether active or honorably retired, parole and probation officers or other duly appointed peace officers.

(b) Any person summoned by any such officer to assist in making arrests or preserving the peace, while said person so summoned is actually engaged in assisting the officer.



(c) The possession or transportation by any merchant of unloaded firearms as merchandise.

(d) Active or reserve members of the Army, Navy, Air Force, Coast Guard or Marine Corps of the United States, or of the National Guard, when on duty.

(e) Organizations which are by law authorized to purchase or receive weapons described in ORS 166.250 from the United States, or from this state.

(f) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their organization.

(g) A corrections officer while transporting or accompanying an individual convicted of or arrested for an offense and confined in a place of incarceration or detention while outside the confines of the place of incarceration or detention.

(h) A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.

(2) Except for persons who are otherwise prohibited from possessing a firearm under ORS 166.250 (1)(c) or 166.270, ORS 166.250 does not apply to or affect:

(a) Members of any club or organization, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in ORS 166.250 upon such target ranges, or while going to and from such ranges.

(b) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from a hunting or fishing expedition.

(3) The exceptions listed in subsection (1)(b) to (h) of this section constitute affirmative defenses to a charge of violating ORS 166.250. [Amended by 1977 c.207 §1; 1991 c.67 §36; 1993 c.735 §1; 1995 c.670 §2; 1999 c.1040 §3]

**166.262 Limitation on peace officer's authority to arrest for violating ORS 166.250 or 166.370.** A peace officer may not arrest or charge a person for violating ORS 166.250 (1)(a) or (b) or 166.370 (1) if the person has in the person's immediate possession a valid license to carry a firearm as provided in ORS 166.291 and 166.292. [1999 c.1040 §5]

**166.263 Authority of parole and probation officer to carry firearm.** When authorized by the officer's employer, a parole and probation officer, as defined in ORS 181.610, may carry a firearm while engaged in official duties if the officer has completed:

(1) A firearms training program recognized by the Board on Public Safety Standards and Training; and

(2) A psychological screening. [1995 c.670 §1]

**166.270 Possession of weapons by certain felons.** (1) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns or has in the person's possession or under the person's custody or control any firearm commits the crime of felon in possession of a firearm.

(2) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns or has in the person's possession or under the person's custody or control any instrument or weapon having a blade that projects or swings into position by force of a spring or by centrifugal force or any blackjack, slungshot, sandclub, sandbag, sap glove or metal knuckles, or who carries a dirk, dagger or stiletto, commits the crime of felon in possession of a restricted weapon.

(3) For the purposes of this section, a person "has been convicted of a felony" if, at the time of conviction for an offense, that offense was a felony under the law of the jurisdiction in which it was committed. Such conviction shall not be deemed a conviction of a felony if:

(a) The court declared the conviction to be a misdemeanor at the time of judgment; or

(b) The offense was possession of marijuana and the conviction was prior to January 1, 1972.

(4) Subsection (1) of this section does not apply to any person who has been:

(a) Convicted of only one felony under the law of this state or any other state, or who has been convicted of only one felony under the laws of the United States, which felony did not involve criminal homicide, as defined in ORS 163.005, or the possession or use of a firearm or a weapon having a blade that projects or swings into position by force of a spring or by centrifugal force, and who has been discharged from imprisonment, parole or probation for said offense for a period of 15 years prior to the date of alleged violation of subsection (1) of this section; or

(b) Granted relief from the disability under 18 U.S.C. 925(c) or has had the person's record expunged under the laws of this state or equivalent laws of another jurisdiction.

(5) Felon in possession of a firearm is a Class C felony. Felon in possession of a restricted weapon is a Class A misdemeanor. [Amended by 1975 c.702 §1; 1985 c.543 §4; 1985 c.709 §2;

1987 c.853 §1; 1989 c.839 §4; 1993 c.735 §2; 1995 c.518 §1; 1999 c.1040 §16; 2003 c.14 §64]

**166.272 Unlawful possession of machine guns, certain short-barreled firearms and firearms silencers.** (1) A person commits the crime of unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer if the person knowingly possesses any machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer.

(2) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer is a Class B felony.

(3) A peace officer may not arrest or charge a person for violating subsection (1) of this section if the person has in the person's immediate possession documentation showing that the machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer is registered as required under federal law.

(4) It is an affirmative defense to a charge of violating subsection (1) of this section that the machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer was registered as required under federal law. [1989 c.839 §13a; 1997 c.749 §8; 1997 c.798 §1]

**166.274 Relief from prohibition against possessing or purchasing firearm.** (1) A person barred from possessing a firearm under ORS 166.250 (1)(c)(A), (B), (D) or (E) or barred from purchasing a firearm under ORS 166.470 may file a petition for relief from the bar in:

(a) A justice court in the petitioner's county of residence that is reasonably accessible to the petitioner; or

(b) If no justice court is reasonably accessible, the circuit court.

(2) A person may apply once per calendar year for relief under the provisions of this section.

(3)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

(A) The city chief of police if the court in which the petition is filed is located in a city; or

(B) The sheriff of the county in which the court is located.

(b) The copy of the petition shall be served on the chief of police or sheriff at the same time the petition is filed at the court.

(4)(a) When a petition is denied, the judge shall cause that information to be entered into the Department of State Police computerized criminal history files.

(b) When a petition is granted, the judge shall cause that information and a fingerprint card of the petitioner to be entered into the Department of State Police computerized criminal history files. If, after a petition is granted, the petitioner is arrested and convicted of a crime that would disqualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall notify the court that granted relief under this section. The court shall review the order granting relief and determine whether to rescind the order. The Department of State Police may charge a reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

(5) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county, district or other political subdivision or public corporation in this state, without appearance by attorney, may appear as a party to an action under this section.

(6) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief shall be granted when the petitioner demonstrates, by clear and convincing evidence, that the petitioner does not pose a threat to the safety of the public or the petitioner.

(7) A person barred from possessing or purchasing a firearm because the person, while a minor, was found to be within the jurisdiction of the juvenile court for committing an act which, if committed by an adult, would have constituted a felony or a misdemeanor involving violence, is not eligible to petition for relief under this section until more than four years have passed since the person was discharged from the jurisdiction of the juvenile court.

(8) Petitions filed under this section shall be heard and disposed of within 15 judicial days of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge shall then make findings and conclusions and issue a judgment based on the findings and conclusions in accordance with the requirements of law.

(9) Filing fees shall be as for any civil action filed in the court.

(10)(a) Initial appeals of petitions shall be heard de novo.

(b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the same manner as for any other civil action.

(c) If the governmental entity files an appeal under this subsection and does not prevail, it shall be ordered to pay the attorney fees for the prevailing party. [1989 c.839 §11; 1991 c.67 §37; 1993 c.732 §§3,4; 1995 c.518 §2; 1995 c.658 §88]

**166.275 Possession of weapons by inmates of institutions.** Any person committed to any institution who, while under the jurisdiction of any institution or while being conveyed to or from any institution, possesses or carries upon the person, or has under the custody or control of the person any dangerous instrument, or any weapon including but not limited to any blackjack, slingshot, billy, sand club, metal knuckles, explosive substance, dirk, dagger, sharp instrument, pistol, revolver or other firearm without lawful authority, is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the custody of the Department of Corrections for a term not more than 20 years. [1953 c.533 §1; 1987 c.320 §88]

**166.279 Forfeiture of deadly weapons.**

(1) Except as provided in subsection (2) of this section, at the time of sentencing for any criminal offense in which a firearm or other deadly weapon was possessed, used or available for use to facilitate the offense, the court shall declare the weapon to be contraband and order that the weapon be forfeited.

(2) If a firearm or other deadly weapon that was possessed, used or available for use to facilitate a criminal offense was stolen from its lawful owner and was recovered from a person other than the lawful owner, the court may not order that the weapon be forfeited but shall order that the weapon be restored to the lawful owner as soon as the weapon is no longer needed for evidentiary purposes.

(3) The court shall release a firearm or other deadly weapon forfeited under subsection (1) of this section to the law enforcement agency that seized the weapon. The law enforcement agency may destroy or sell the weapon, use the weapon as a service weapon or use the weapon for training, identification or demonstration purposes. When a weapon is sold pursuant to this subsection, the law enforcement agency shall pay the proceeds from the sale, less the costs of the sale, as follows:

(a) When the seizing agency is not the state:

(A) Three percent to the Asset Forfeiture Oversight Account established in ORS 475A.160;

(B) Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495;

(C) Ten percent to the state General Fund;

(D) Forty percent to the Mental Health Alcoholism and Drug Services Account established in ORS 430.380; and

(E) Forty percent to the general fund of the political subdivision that operates the

law enforcement agency, to be used for law enforcement purposes; or

(b) When the seizing agency is the state:

(A) Three percent to the Asset Forfeiture Oversight Account established in ORS 475A.160;

(B) Seven percent to the Illegal Drug Cleanup Fund established in ORS 475.495;

(C) Ten percent to the state General Fund;

(D) Forty percent to be distributed equitably between the agencies that participated in the seizure, to be used by those agencies for law enforcement purposes; and

(E) Forty percent to the Mental Health Alcoholism and Drug Services Account established in ORS 430.380.

(4) As used in this section, "deadly weapon" has the meaning given that term in ORS 161.015. [2003 c.614 §4]

**Note:** 166.279 becomes operative July 31, 2005. See section 58, chapter 666, Oregon Laws 2001, as amended by section 14d, chapter 926, Oregon Laws 2001, and section 12, chapter 614, Oregon Laws 2003.

**166.280** [Amended by 1981 c.767 §1; 1993 c.625 §2; 1997 c.480 §5; 1997 c.693 §2; repealed by 2001 c.666 §56]

**166.281** [2001 c.666 §52; repealed by 2003 c.614 §13]

**166.282 Sale of weapons by political subdivision; disposition of proceeds.** (1) A political subdivision in this state that sells a weapon described in subsection (2) of this section shall pay the proceeds from the sale of the weapon, less the costs of the sale, to the account of the police agency that received or seized the weapon, to be used for purposes of public safety, law enforcement and crime prevention and detection.

(2) Subsection (1) of this section applies to a weapon that is donated to the police agency. [1997 c.693 §1; 2001 c.666 §25]

**Note:** The amendments to 166.282 by section 37, chapter 666, Oregon Laws 2001, become operative July 31, 2005. See section 58, chapter 666, Oregon Laws 2001, as amended by section 14d, chapter 926, Oregon Laws 2001, and section 12, chapter 614, Oregon Laws 2003. The text that is operative on and after July 31, 2005, including amendments by section 5, chapter 614, Oregon Laws 2003, is set forth for the user's convenience.

**166.282.** (1) A political subdivision in this state that sells a weapon described in subsection (2) of this section shall pay the proceeds from the sale of the weapon, less the costs of the sale, to the account of the police agency that received the weapon, to be used for purposes of public safety, law enforcement and crime prevention and detection.

(2) Subsection (1) of this section applies to a weapon that is donated to the police agency.

**166.290** [Amended by 1973 c.391 §1; repealed by 1989 c.839 §7 (166.291 to 166.293 enacted in lieu of 166.290)]

**166.291 Issuance of concealed handgun license; application; fees; liability.** (1) The sheriff of a county, upon a person's application for an Oregon concealed handgun license, upon receipt of the appropriate fees

and after compliance with the procedures set out in this section, shall issue the person a concealed handgun license if the person:

(a)(A) Is a citizen of the United States; or

(B) Is a legal resident alien who can document continuous residency in the county for at least six months and has declared in writing to the Immigration and Naturalization Service the intent to acquire citizenship status and can present proof of the written declaration to the sheriff at the time of application for the license;

(b) Is at least 21 years of age;

(c) Has a principal residence in the county in which the application is made;

(d) Has no outstanding warrants for arrest;

(e) Is not free on any form of pretrial release;

(f) Demonstrates competence with a handgun by any one of the following:

(A) Completion of any hunter education or hunter safety course approved by the State Department of Fish and Wildlife or a similar agency of another state if handgun safety was a component of the course;

(B) Completion of any National Rifle Association firearms safety or training course if handgun safety was a component of the course;

(C) Completion of any firearms safety or training course or class available to the general public offered by law enforcement, community college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or a law enforcement agency if handgun safety was a component of the course;

(D) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, reserve law enforcement officers or any other law enforcement officers if handgun safety was a component of the course;

(E) Presents evidence of equivalent experience with a handgun through participation in organized shooting competition or military service;

(F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been revoked; or

(G) Completion of any firearms training or safety course or class conducted by a firearms instructor certified by a law enforcement agency or the National Rifle Association if handgun safety was a component of the course;

(g) Has never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;

(h) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor within the four years prior to the application;

(i) Has not been committed to the Department of Human Services under ORS 426.130;

(j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

(k) Has been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, the person was found to be within the jurisdiction of the juvenile court for having committed an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470; and

(L) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.732 or 163.738.

(2) A person who has been granted relief under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or has had the person's record expunged under the laws of this state or equivalent laws of other jurisdictions is not subject to the disabilities in subsection (1)(g) to (k) of this section.

(3) Before the sheriff may issue a license:

(a) The application must state the applicant's legal name, current address and telephone number, date and place of birth, hair and eye color and height and weight. The application must also list the applicant's residence address or addresses for the previous three years. The application must contain a statement by the applicant that the applicant meets the requirements of subsection (1) of this section. The application may include the Social Security number of the applicant if the applicant voluntarily provides this number. The application must be signed by the applicant.

(b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff shall fingerprint and photograph the applicant and shall conduct any investigation necessary to corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal records check is necessary, the sheriff shall request the Department of State Police to conduct the check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records check and may

not keep any record of the fingerprints. The Department of State Police shall report the results of the fingerprint-based criminal records check to the sheriff. The Department of State Police shall also furnish the sheriff with any information about the applicant that the Department of State Police may have in its possession from its central bureau of criminal identification including, but not limited to, manual or computerized criminal offender information.

(4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon request. The forms shall be uniform throughout the state in substantially the following form:

APPLICATION FOR LICENSE TO CARRY CONCEALED HANDGUN

Date \_\_\_\_\_

I hereby declare as follows:

I am a citizen of the United States or a legal resident alien who can document continuous residency in the county for at least six months and have declared in writing to the Immigration and Naturalization Service my intention to become a citizen and can present proof of the written declaration to the sheriff at the time of this application. I am at least 21 years of age. I have been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, I was found to be within the jurisdiction of the juvenile court for having committed an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470. I have never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not, within the last four years, been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor. There are no outstanding warrants for my arrest and I am not free on any form of pretrial release. I have not been committed to the Department of Human Services under ORS 426.130, nor have I been found mentally ill and presently subject to an order prohibiting me from purchasing or possessing a firearm because of mental illness. If any of the previous conditions do apply to me, I have been granted relief or wish to petition for relief from the disability under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or have had the records expunged. I am not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.732 or 163.738. I understand I will be fingerprinted and photographed.

Legal name \_\_\_\_\_

Age \_\_\_\_\_ Date of birth \_\_\_\_\_

Place of birth \_\_\_\_\_

Social Security number \_\_\_\_\_

(Disclosure of your Social Security account number is voluntary. Solicitation of the number is authorized under ORS 166.291. It will be used only as a means of identification.)

Proof of identification (Two pieces of current identification are required, one of which must bear a photograph of the applicant. The type of identification and the number on the identification are to be filled in by the sheriff):

1. \_\_\_\_\_

2. \_\_\_\_\_

Height \_\_\_\_\_ Weight \_\_\_\_\_

Hair color \_\_\_\_\_ Eye color \_\_\_\_\_

Current address \_\_\_\_\_ (List residence addresses for the past three years on the back.)

City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_

I have read the entire text of this application, and the statements therein are correct and true. (Making false statements on this application is a misdemeanor.)

(Signature of Applicant)

Character references.

Name Address

Name Address

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ by \_\_\_\_\_

Competence with handgun demonstrated by \_\_\_\_\_ (to be filled in by sheriff) Date \_\_\_\_\_ Fee Paid \_\_\_\_\_

License No. \_\_\_\_\_

(5)(a) Fees for concealed handgun licenses are:

(A) \$15 to the Department of State Police for conducting the fingerprint check of the applicant.

(B) \$50 to the sheriff for the issuance or renewal of a concealed handgun license.

(C) \$15 to the sheriff for the duplication of a license because of loss or change of address.

(b) The sheriff may enter into an agreement with the Department of Transportation to produce the concealed handgun license.

(6) No civil or criminal liability shall attach to the sheriff or any authorized representative engaged in the receipt and review of, or an investigation connected with, any application for, or in the issuance, denial or

revocation of, any license under ORS 166.291 to 166.295 as a result of the lawful performance of duties under those sections.

(7) Immediately upon acceptance of an application for a concealed handgun license, the sheriff shall enter the applicant's name into the Law Enforcement Data System indicating that the person is an applicant for a concealed handgun license or is a license holder.

(8) The county sheriff may waive the residency requirement in subsection (1)(c) of this section for a resident of a contiguous state who has a compelling business interest or other legitimate demonstrated need. [1989 c.839 §8 (166.291 to 166.293 enacted in lieu of 166.290); 1991 c.67 §38; 1993 c.732 §2; 1993 c.735 §4; 1995 c.729 §6; 1999 c.1052 §6; 2001 c.104 §56; 2003 c.166 §1]

**166.292 Procedure for issuing; form of license; duration.** (1) If the application for the license is approved, the sheriff shall issue and mail or otherwise deliver to the applicant at the address shown on the application, within 45 days of the application, a wallet sized license bearing the photograph of the licensee. The license must be signed by the licensee and carried whenever the licensee carries a concealed handgun.

(2) Failure of a person who carries a concealed handgun also to carry a concealed handgun license is prima facie evidence that the person does not have such a license.

(3) Licenses for concealed handguns shall be uniform throughout the state in substantially the following form:

OREGON CONCEALED HANDGUN  
LICENSE

County \_\_\_\_\_ License Number \_\_\_\_\_  
 Expires \_\_\_\_\_ Date of birth \_\_\_\_\_  
 Height \_\_\_\_\_ Weight \_\_\_\_\_  
 Name \_\_\_\_\_ Address \_\_\_\_\_  
 Licensee's City \_\_\_\_\_ Zip \_\_\_\_\_ Photograph \_\_\_\_\_  
 Signature \_\_\_\_\_  
 Issued by \_\_\_\_\_  
 Date of issue \_\_\_\_\_

(4) An Oregon concealed handgun license issued under ORS 166.291 and this section, unless revoked under ORS 166.293, is valid for a period of four years from the date on which it is issued.

(5) The sheriff shall keep a record of each license issued under ORS 166.291 and this section, or renewed pursuant to ORS 166.295.

(6) When a sheriff issues a concealed handgun license under this section, the sheriff shall provide the licensee with a list of those places where carrying concealed handguns is prohibited or restricted by state

or federal law. [1989 c.839 §9 (166.291 to 166.293 enacted in lieu of 166.290); 1993 c.625 §5; 1993 c.693 §2; 1993 c.735 §5]

**166.293 Denial or revocation of license; review.** (1) If the application for the concealed handgun license is denied, the sheriff shall set forth in writing the reasons for the denial. The denial shall be sent to the applicant by certified mail, restricted delivery, within 45 days after the application was made. If no decision is issued within 45 days, the person may seek review under the procedures in subsection (5) of this section.

(2) Notwithstanding ORS 166.291 (1), and subject to review as provided in subsection (5) of this section, a sheriff may deny a concealed handgun license if the sheriff has reasonable grounds to believe that the applicant has been or is reasonably likely to be a danger to self or others, or to the community at large, as a result of the applicant's mental or psychological state, as demonstrated by past pattern of behavior or participation in incidents involving unlawful violence or threats of unlawful violence.

(3)(a) Any act or condition that would prevent the issuance of a license under ORS 166.291 and 166.292 is cause for revoking a concealed handgun license.

(b) A sheriff may revoke a license by serving upon the licensee a notice of revocation. The notice must contain the grounds for the revocation and must be served either personally or by certified mail, restricted delivery. The notice and return of service shall be included in the file of the licensee. The revocation is effective upon the licensee's receipt of the notice.

(4) Any peace officer or corrections officer may seize a concealed handgun license and return it to the issuing sheriff when the license is held by a person who has been arrested or cited for a crime that can or would otherwise disqualify the person from being issued a concealed handgun license. The issuing sheriff shall hold the license for 30 days. If the person is not charged with a crime within the 30 days, the sheriff shall return the license unless the sheriff revokes the license as provided in subsection (3) of this section.

(5) A person denied a concealed handgun license or whose license is revoked or not renewed under ORS 166.291 to 166.295 may petition the circuit court in the petitioner's county of residence to review the denial, nonrenewal or revocation. The petition must be filed within 30 days after the receipt of the notice of denial or revocation.

(6) The judgment affirming or overturning the sheriff's decision shall be based solely on whether the petitioner meets the criteria

that are used for issuance of the license under ORS 166.291 and 166.292. Whenever the petitioner has been previously sentenced for a crime under ORS 161.610 or for a crime of violence for which the person could have received a sentence of more than 10 years, the court shall only grant relief if the court finds that relief should be granted in the interest of justice.

(7) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county, district or other political subdivision or public corporation in this state, without appearance by attorney, may appear as a party to an action under this section.

(8) Petitions filed under this section shall be heard and disposed of within 15 judicial days of filing or as soon as practicable thereafter.

(9) Filing fees for actions shall be as for any civil action filed in the court. If the petitioner prevails, the amount of the filing fee shall be paid by the respondent to the petitioner and may be incorporated into the court order.

(10) Initial appeals of petitions shall be heard de novo.

(11) Any party to a judgment under this section may appeal to the Court of Appeals in the same manner as for any other civil action.

(12) If the governmental entity files an appeal under this section and does not prevail, it shall be ordered to pay the attorney fees for the prevailing party. [1989 c.839 §9a (166.291 to 166.293 enacted in lieu of 166.290); 1993 c.735 §6; 1995 c.518 §3; 1995 c.658 §89; 1999 c.1052 §7; 2003 c.14 §65]

**166.295 Renewal of license.** (1)(a) A concealed handgun license is renewable by repeating the procedures set out in ORS 166.291 and 166.292, except for the requirement to submit fingerprints and provide character references.

(b) An otherwise expired concealed handgun license continues to be valid for up to 45 days after the licensee applies for renewal if:

(A) The licensee applies for renewal before the original license expires;

(B) The licensee has proof of the application for renewal; and

(C) The application for renewal has not been denied.

(2) If a licensee changes residence, the licensee shall report the change of address and the sheriff shall issue a new license as a duplication for a change of address. The license shall expire upon the same date as would the original. [1989 c.839 §10; 1993 c.735 §7]

**166.297 Annual report regarding revocation of licenses.** (1) The sheriff of a county shall submit annually to the Department of State Police a report containing the number of concealed handgun licenses revoked during the reporting period and the reasons for the revocations.

(2) The Department of State Police shall compile the reports submitted under subsection (1) of this section and shall submit the compilation to the Legislative Assembly biennially. [1993 c.735 §13]

**166.300 Killing another as cause for loss of right to bear arms.** (1) Any person who has committed, with firearms of any kind or description, murder in any degree, or manslaughter, either voluntary or involuntary, or who in a careless or reckless manner, kills or injures another with firearms, and who, at any time after committing murder or manslaughter or after said careless or reckless killing or injury of another, carries or bears firearms of any kind or description within this state, shall be punished upon conviction by a fine of not more than \$500, or by imprisonment in the county jail not to exceed one year, or both.

(2) Subsection (1) of this section does not deprive the people of this state of the right to bear arms for the defense of themselves and the state, and does not apply to any peace officer in the discharge of official duties or to a member of any regularly constituted military organization while on duty with such military organization.

(3) Justice courts, county courts and all other courts having jurisdiction as justice courts, shall have concurrent jurisdiction with the circuit courts of all prosecutions under subsection (1) of this section.

**166.310** [Repealed by 1985 c.709 §4]

**166.320 Setting springgun or setgun.** (1) Any person who places or sets any loaded springgun, setgun, or any gun, firearm or other device of any kind designed for containing or firing explosives, in any place where it may be fired, exploded or discharged by the contact of any person or animal with any string, wire, rod, stick, spring or other contrivance affixed to or connected with it, or with its trigger, shall be punished upon conviction by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for not less than 30 days nor more than six months, or both.

(2) Subsection (1) of this section does not apply to any loaded springgun, setgun, firearm or other device placed for the purpose of destroying gophers, moles or other burrowing rodents, and does not prevent the use of a coyote getter by employees of county, state or federal governments engaged

in cooperative predatory animal control work.

**166.330 Use of firearms with other than incombustible gun wadding.** Any person who uses in any firearms discharged on lands within this state, not owned by the person, anything other than incombustible gun wadding, shall be punished upon conviction by a fine of not less than \$5 nor more than \$100, or by imprisonment in the county jail for not less than two days nor more than 60 days.

**166.340** [1965 c.20 §§2,3; 1969 c.351 §1; repealed by 1981 c.41 §3]

**166.350 Unlawful possession of armor piercing ammunition.** (1) A person commits the crime of unlawful possession of armor piercing ammunition if the person:

(a) Makes, sells, buys or possesses any handgun ammunition the bullet or projectile of which is coated with Teflon or any chemical compound with properties similar to Teflon and which is intended to penetrate soft body armor, such person having the intent that the ammunition be used in the commission of a felony; or

(b) Carries any ammunition described in paragraph (a) of this subsection while committing any felony during which the person or any accomplice of the person is armed with a firearm.

(2) As used in this section, "handgun ammunition" means ammunition principally for use in pistols or revolvers notwithstanding that the ammunition can be used in some rifles.

(3) Unlawful possession of armor piercing ammunition is a Class A misdemeanor. [1985 c.755 §2; 1987 c.158 §29]

#### **POSSESSION OF WEAPON OR DESTRUCTIVE DEVICE IN PUBLIC BUILDING OR COURT FACILITY**

**166.360 Definitions for ORS 166.360 to 166.380.** As used in ORS 166.360 to 166.380, unless the context requires otherwise:

(1) "Capitol building" means the Capitol, the State Office Building, the State Library Building, the Labor and Industries Building, the State Transportation Building, the Agriculture Building or the Public Service Building and includes any new buildings which may be constructed on the same grounds as an addition to the group of buildings listed in this subsection.

(2) "Court facility" means a courthouse or that portion of any other building occupied by a circuit court, the Court of Appeals, the Supreme Court or the Oregon Tax Court or occupied by personnel related to the operations of those courts, or in which activ-

ities related to the operations of those courts take place.

(3) "Loaded firearm" means:

(a) A breech-loading firearm in which there is an unexpended cartridge or shell in or attached to the firearm including but not limited to, in a chamber, magazine or clip which is attached to the firearm.

(b) A muzzle-loading firearm which is capped or primed and has a powder charge and ball, shot or projectile in the barrel or cylinder.

(4) "Public building" means a hospital, a capitol building, a public or private school, as defined in ORS 339.315, a college or university, a city hall or the residence of any state official elected by the state at large, and the grounds adjacent to each such building. The term also includes that portion of any other building occupied by an agency of the state or a municipal corporation, as defined in ORS 297.405, other than a court facility.

(5) "Weapon" means:

(a) A firearm;

(b) Any dirk, dagger, ice pick, slingshot, metal knuckles or any similar instrument or a knife other than an ordinary pocket knife, the use of which could inflict injury upon a person or property;

(c) Mace, tear gas, pepper mace or any similar deleterious agent as defined in ORS 163.211;

(d) An electrical stun gun or any similar instrument;

(e) A tear gas weapon as defined in ORS 163.211;

(f) A club, bat, baton, billy club, bludgeon, knobkerrie, nunchaku, nightstick, truncheon or any similar instrument, the use of which could inflict injury upon a person or property; or

(g) A dangerous or deadly weapon as those terms are defined in ORS 161.015. [1969 c.705 §1; 1977 c.769 §2; 1979 c.398 §1; 1989 c.982 §4; 1993 c.741 §2; 1999 c.577 §2; 1999 c.782 §6; 2001 c.201 §1]

**166.370 Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school.** (1) Any person who intentionally possesses a loaded or unloaded firearm or any other instrument used as a dangerous weapon, while in or on a public building, shall upon conviction be guilty of a Class C felony.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection, a person who intentionally possesses:

(A) A firearm in a court facility is guilty, upon conviction, of a Class C felony. A per-



son who intentionally possesses a firearm in a court facility shall surrender the firearm to a law enforcement officer.

(B) A weapon, other than a firearm, in a court facility may be required to surrender the weapon to a law enforcement officer or to immediately remove it from the court facility. A person who fails to comply with this subparagraph is guilty, upon conviction, of a Class C felony.

(b) The presiding judge of a judicial district may enter an order permitting the possession of specified weapons in a court facility.

(3) Subsection (1) of this section does not apply to:

(a) A sheriff, police officer, other duly appointed peace officers or a corrections officer while acting within the scope of employment.

(b) A person summoned by a peace officer to assist in making an arrest or preserving the peace, while the summoned person is engaged in assisting the officer.

(c) An active or reserve member of the military forces of this state or the United States, when engaged in the performance of duty.

(d) A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.

(e) A person who is authorized by the officer or agency that controls the public building to possess a firearm or dangerous weapon in that public building.

(f) Possession of a firearm on school property if the firearm:

(A) Is possessed by a person who is not otherwise prohibited from possessing the firearm; and

(B) Is unloaded and locked in a motor vehicle.

(4) The exceptions listed in subsection (3)(b) to (f) of this section constitute affirmative defenses to a charge of violating subsection (1) of this section.

(5)(a) Any person who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at a place that the person knows is a school shall upon conviction be guilty of a Class C felony.

(b) Paragraph (a) of this subsection does not apply to the discharge of a firearm:

(A) As part of a program approved by a school in the school by an individual who is participating in the program; or

(B) By a law enforcement officer acting in the officer's official capacity.

(6) Notwithstanding the fact that a person's conduct in a single criminal episode constitutes a violation of both subsections (1) and (5) of this section, the district attorney may charge the person with only one of the offenses.

(7) As used in this section, "dangerous weapon" means a dangerous weapon as that term is defined in ORS 161.015. [1969 c.705 §§2,4; 1977 c.207 §2; 1979 c.398 §2; 1989 c.839 §22; 1989 c.982 §5; 1991 c.67 §39; 1993 c.625 §1; 1999 c.782 §7; 1999 c.1040 §4; 2001 c.666 §24]

**Note:** The amendments to 166.370 by section 36, chapter 666, Oregon Laws 2001, become operative July 31, 2005. See section 58, chapter 666, Oregon Laws 2001, as amended by section 14d, chapter 926, Oregon Laws 2001, and section 12, chapter 614, Oregon Laws 2003. The text that is operative on and after July 31, 2005, including amendments by section 6, chapter 614, Oregon Laws 2003, is set forth for the user's convenience.

**166.370.** (1) Any person who intentionally possesses a loaded or unloaded firearm or any other instrument used as a dangerous weapon, while in or on a public building, shall upon conviction be guilty of a Class C felony.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection, a person who intentionally possesses:

(A) A firearm in a court facility is guilty, upon conviction, of a Class C felony. A person who intentionally possesses a firearm in a court facility shall surrender the firearm to a law enforcement officer.

(B) A weapon, other than a firearm, in a court facility may be required to surrender the weapon to a law enforcement officer or to immediately remove it from the court facility. A person who fails to comply with this subparagraph is guilty, upon conviction, of a Class C felony.

(b) The presiding judge of a judicial district may enter an order permitting the possession of specified weapons in a court facility.

(3) Subsection (1) of this section does not apply to:

(a) A sheriff, police officer, other duly appointed peace officers or a corrections officer while acting within the scope of employment.

(b) A person summoned by a peace officer to assist in making an arrest or preserving the peace, while the summoned person is engaged in assisting the officer.

(c) An active or reserve member of the military forces of this state or the United States, when engaged in the performance of duty.

(d) A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.

(e) A person who is authorized by the officer or agency that controls the public building to possess a firearm or dangerous weapon in that public building.

(f) Possession of a firearm on school property if the firearm:

(A) Is possessed by a person who is not otherwise prohibited from possessing the firearm; and

(B) Is unloaded and locked in a motor vehicle.

(4) The exceptions listed in subsection (3)(b) to (f) of this section constitute affirmative defenses to a charge of violating subsection (1) of this section.

(5)(a) Any person who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at a place that the person knows is a school shall upon conviction be guilty of a Class C felony.

(b) Paragraph (a) of this subsection does not apply to the discharge of a firearm:

(A) As part of a program approved by a school in the school by an individual who is participating in the program; or

(B) By a law enforcement officer acting in the officer's official capacity.

(6) Any weapon carried in violation of this section is subject to the forfeiture provisions of ORS 166.279.

(7) Notwithstanding the fact that a person's conduct in a single criminal episode constitutes a violation of both subsections (1) and (5) of this section, the district attorney may charge the person with only one of the offenses.

(8) As used in this section, "dangerous weapon" means a dangerous weapon as that term is defined in ORS 161.015.

**166.372** [1993 c.625 §3; repealed by 1996 c.16 §5]

**166.373 Possession of weapon in court facility by peace officer or federal officer.**

(1) Notwithstanding ORS 166.370 (2) and except as provided in subsection (2) of this section, a peace officer, as defined in ORS 161.015, or a federal officer, as defined in ORS 133.005, may possess a weapon in a court facility if the officer:

(a) Is acting in an official capacity and is officially on duty;

(b) Is carrying a weapon that the employing agency of the officer has authorized the officer to carry; and

(c) Is in compliance with any security procedures established under subsections (3) and (4) of this section.

(2) A judge may prohibit a peace officer or a federal officer from possessing a weapon in a courtroom. A notice of the prohibition of the possession of a weapon by an officer in a courtroom must be posted outside the entrance to the courtroom.

(3) A presiding judge of a judicial district may establish procedures regulating the possession of a weapon in a court facility by a peace officer or a federal officer subject to the following:

(a) The procedures must be established through a state court security improvement plan under ORS 1.180; and

(b) Notice of the procedures must be posted at the entrance to the court facility, or at an entrance for peace officers or federal officers if the entrance is separate from the entrance to the court facility, and at a security checkpoint in the court facility.

(4) A judge may establish procedures regulating the possession of a weapon in a courtroom by a peace officer or a federal officer. A notice of the procedures regulating the possession of a weapon by an officer must be posted outside the entrance to the courtroom. [2001 c.201 §3]

**166.380 Examination of firearm by peace officer; arrest for failure to allow examination.** (1) A peace officer may examine a firearm possessed by anyone on the person while in or on a public building to determine whether the firearm is a loaded firearm.

(2) Refusal by a person to allow the examination authorized by subsection (1) of this section constitutes reason to believe that the person has committed a crime and the peace officer may make an arrest pursuant to ORS 133.310. [1969 c.705 §3]

**166.382 Possession of destructive device prohibited; exceptions.** (1) A person commits the crime of unlawful possession of a destructive device if the person possesses:

(a) Any of the following devices with an explosive, incendiary or poison gas component:

(A) Bomb;

(B) Grenade;

(C) Rocket having a propellant charge of more than four ounces;

(D) Missile having an explosive or incendiary charge of more than one-quarter ounce; or

(E) Mine; or

(b) Any combination of parts either designed or intended for use in converting any device into any destructive device described in paragraph (a) of this subsection and from which a destructive device may be readily assembled.

(2) As used in this section:

(a) "Destructive device" does not include any device which is designed primarily or redesigned primarily for use as a signaling, pyrotechnic, line throwing, safety or similar device.

(b) "Possess" has the meaning given that term in ORS 161.015.

(3) This section does not apply to:

(a) Persons who possess explosives as provided in ORS 480.200 to 480.290.

(b) The possession of an explosive by a member of the Armed Forces of the United States while on active duty and engaged in the performance of official duties or by a member of a regularly organized fire or police department of a public agency while engaged in the performance of official duties.

(c) The possession of an explosive in the course of transportation by way of railroad, water, highway or air while under the jurisdiction of, or in conformity with, regulations adopted by the United States Department of Transportation.

(d) The possession, sale, transfer or manufacture of an explosive by a person acting in accordance with the provisions of any applicable federal law or regulation that provides substantially the same requirements as the comparable provisions of ORS 480.200 to 480.290.

(4) Possession of a destructive device is a Class C felony. [1989 c.982 §1]

**166.384 Unlawful manufacture of destructive device.** (1) A person commits the crime of unlawful manufacture of a destructive device if the person assembles, produces or otherwise manufactures:

(a) A destructive device, as defined in ORS 166.382; or

(b) A pyrotechnic device containing two or more grains of pyrotechnic charge in violation of chapter 10, Title 18 of the United States Code.

(2) Unlawful manufacture of a destructive device is a Class C felony. [1989 c.982 §2]

**166.385 Possession of hoax destructive device.** (1) A person commits the crime of possession of a hoax destructive device if the person knowingly places another person in fear of serious physical injury by:

(a) Possessing, manufacturing, selling, delivering, placing or causing to be placed a hoax destructive device; or

(b) Sending a hoax destructive device to another person.

(2) Possession of a hoax destructive device is a Class A misdemeanor.

(3) Notwithstanding subsection (2) of this section, possession of a hoax destructive device is a Class C felony if a person possesses, or threatens to use, a hoax destructive device while the person is committing or attempting to commit a felony.

(4) As used in this section, "hoax destructive device" means an object that reasonably appears, under the circumstances:

(a) To be a destructive device, as described in ORS 166.382 (1)(a), or an explosive, as defined in ORS 166.660, but is an inoperative imitation of a destructive device or explosive; or

(b) To contain a destructive device, as described in ORS 166.382 (1)(a), or an explosive, as defined in ORS 166.660. [1997 c.749 §1]

## SALE OR TRANSFER OF FIREARMS

**166.410 Manufacture, importation or sale of firearms.** Any person who manufactures or causes to be manufactured within this state, or who imports into this state, or offers, exposes for sale, or sells or transfers a handgun, short-barreled rifle, short-

barreled shotgun, firearms silencer or machine gun, otherwise than in accordance with ORS 166.250, 166.260, 166.270, 166.291, 166.292, 166.425, 166.450, 166.460 and 166.470, is guilty of a Class B felony. [Amended by 1979 c.779 §5; 1987 c.320 §89; 1989 c.839 §23; 1995 c.729 §7; 2001 c.666 §§34,46; 2003 c.14 §§66,67; 2003 c.614 §9]

**166.412 Definitions; firearms transaction record; criminal record check.** (1) As used in this section:

(a) "Antique firearm" has the meaning given that term in 18 U.S.C. 921;

(b) "Department" means the Department of State Police;

(c) "Firearm" has the meaning given that term in ORS 166.210, except that it does not include an antique firearm;

(d) "Firearms transaction record" means the firearms transaction record required by 18 U.S.C. 921 to 929;

(e) "Firearms transaction thumbprint form" means a form provided by the department under subsection (12) of this section;

(f) "Gun dealer" means a person engaged in the business, as defined in 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker or otherwise;

(g) "Handgun" has the meaning given that term in ORS 166.210; and

(h) "Purchaser" means a person who buys, leases or otherwise receives a firearm from a gun dealer.

(2) Except as provided in subsections (3)(c) and (13) of this section, a gun dealer shall comply with the following before a handgun is delivered to a purchaser:

(a) The purchaser shall present to the dealer current identification meeting the requirements of subsection (4) of this section.

(b) The gun dealer shall complete the firearms transaction record and obtain the signature of the purchaser on the record.

(c) The gun dealer shall obtain the thumbprints of the purchaser on the firearms transaction thumbprint form and attach the form to the gun dealer's copy of the firearms transaction record to be filed with that copy.

(d) The gun dealer shall request by telephone that the department conduct a criminal history record check on the purchaser and shall provide the following information to the department:

(A) The federal firearms license number of the gun dealer;

(B) The business name of the gun dealer;

(C) The place of transfer;

(D) The name of the person making the transfer;

(E) The make, model, caliber and manufacturer's number of the handgun being transferred;

(F) The name and date of birth of the purchaser;

(G) The Social Security number of the purchaser if the purchaser voluntarily provides this number to the gun dealer; and

(H) The type, issuer and identification number of the identification presented by the purchaser.

(e) The gun dealer shall receive a unique approval number for the transfer from the department and record the approval number on the firearms transaction record and on the firearms transaction thumbprint form.

(f) The gun dealer may destroy the firearms transaction thumbprint form five years after the completion of the firearms transaction thumbprint form.

(3)(a) Upon receipt of a request of the gun dealer for a criminal history record check, the department shall immediately, during the gun dealer's telephone call or by return call:

(A) Determine, from criminal records and other information available to it, whether the purchaser is disqualified under ORS 166.470 from completing the purchase; and

(B) Notify the dealer when a purchaser is disqualified from completing the transfer or provide the dealer with a unique approval number indicating that the purchaser is qualified to complete the transfer.

(b) If the department is unable to determine if the purchaser is qualified or disqualified from completing the transfer within 30 minutes, the department shall notify the dealer and provide the dealer with an estimate of the time when the department will provide the requested information.

(c) If the department fails to provide a unique approval number to a gun dealer or to notify the gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close of the gun dealer's next business day following the request by the dealer for a criminal history record check, the dealer may deliver the handgun to the purchaser.

(4)(a) Identification required of the purchaser under subsection (2) of this section shall include one piece of current identification bearing a photograph and the date of birth of the purchaser that:

(A) Is issued under the authority of the United States Government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental

organization or an international quasi-governmental organization; and

(B) Is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.

(b) If the identification presented by the purchaser under paragraph (a) of this subsection does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser. The Superintendent of State Police may specify by rule the type of identification that may be presented under this paragraph.

(c) The department may require that the dealer verify the identification of the purchaser if that identity is in question by sending the thumbprints of the purchaser to the department.

(5) The department shall establish a telephone number that shall be operational seven days a week between the hours of 8 a.m. and 10 p.m. for the purpose of responding to inquiries from dealers for a criminal history record check under this section.

(6) No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this section provided the employee, official or agency acts in good faith and without malice.

(7)(a) The department may retain a record of the information obtained during a request for a criminal records check for no more than five years.

(b) The record of the information obtained during a request for a criminal records check by a gun dealer is exempt from disclosure under public records law.

(8) The Department of Human Services shall provide the Department of State Police with direct electronic access to information from the Department of Human Services' database of information identifying persons meeting the criteria in ORS 166.470 (1)(e) and (f) who were committed or subject to an order under ORS 426.130. The Department of State Police and the Department of Human Services shall enter into an agreement describing the access to information under this subsection.

(9) A law enforcement agency may inspect the records of a gun dealer relating to transfers of handguns with the consent of a gun dealer in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant.

(10) When a handgun is delivered, it shall be unloaded.

(11) In accordance with applicable provisions of ORS chapter 183, the Superintendent of State Police may adopt rules necessary for:

(a) The design of the firearms transaction thumbprint form;

(b) The maintenance of a procedure to correct errors in the criminal records of the department;

(c) The provision of a security system to identify dealers who request a criminal history record check under subsection (2) of this section; and

(d) The creation and maintenance of a database of the business hours of gun dealers.

(12) The department shall publish the firearms transaction thumbprint form and shall furnish the form to gun dealers on application at cost.

(13) This section does not apply to transactions between persons licensed as dealers under 18 U.S.C. 923. [1995 c.729 §1; 2001 c.900 §25]

**Note:** 166.412 to 166.421 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 166 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**166.414 Fees for conducting criminal history record checks.** (1) The Department of State Police may adopt a fee schedule for criminal history record checks required under ORS 166.412 and collect a fee for each criminal history record check requested. The fee schedule shall be calculated to recover the cost of performing criminal history record checks required under ORS 166.412, but may not exceed \$10 per record check.

(2) Fees collected under this section shall be paid into the State Treasury and deposited in the General Fund to the credit of the State Police Account. [1995 c.729 §2]

**Note:** See note under 166.412.

**166.416 Providing false information in connection with a transfer of a firearm.**

(1) A person commits the crime of providing false information in connection with a transfer of a firearm if the person knowingly provides a false name or false information or presents false identification in connection with a purchase or transfer of a firearm.

(2) Providing false information in connection with a transfer of a firearm is a Class A misdemeanor. [1995 c.729 §3; 2001 c.1 §9]

**Note:** See note under 166.412.

**166.418 Improperly transferring a firearm.** (1) A person commits the crime of improperly transferring a firearm if the person is a gun dealer as defined in ORS 166.412 and sells, leases or otherwise transfers a

firearm and intentionally violates ORS 166.412 or 166.434.

(2) Improperly transferring a firearm is a Class A misdemeanor. [1995 c.729 §4; 2001 c.1 §10]

**Note:** See note under 166.412.

**166.420** [Amended by 1989 c.839 §2; 1993 c.4 §1; 1993 c.594 §4; 1993 c.693 §1; repealed by 1995 c.729 §13]

**166.421 Stolen firearms; determination; telephone requests.** The Department of State Police may respond to a telephone request from any person requesting that the department determine if department records show that a firearm is stolen. No public employee, official or agency shall be held criminally or civilly liable for performing the investigation allowed by this section provided that the employee, official or agency acts in good faith and without malice. [1995 c.729 §5]

**Note:** See note under 166.412.

**166.422 Enforcement of ORS 166.412.** Where appropriate, a person may enforce the legal duties imposed by ORS 166.412 (7), by the provisions of ORS 30.260 to 30.300 and ORS chapter 183. [1989 c.839 §12; 1995 c.729 §8]

**Note:** 166.422 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 166 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**166.425 Unlawful purchase of firearm.**

(1) A person commits the crime of unlawfully purchasing a firearm if the person, knowing that the person is prohibited by state or federal law from owning or possessing the firearm or having the firearm under the person's custody or control, purchases or attempts to purchase the firearm.

(2) Unlawfully purchasing a firearm is a Class A misdemeanor. [1989 c.839 §15]

**166.427 Register of transfers of used firearms.**

(1) Whenever a person engaged in the business, as defined in 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker or otherwise, buys or accepts in trade, a used firearm, the person shall enter in a register the time, date and place of purchase or trade, the name of the person selling or trading the firearm, the number of the identification documentation presented by the person and the make, model and manufacturer's number of the firearm. The register shall be obtained from and furnished by the Department of State Police to the dealer on application at cost.

(2) The duplicate sheet of the register shall, on the day of purchase or trade, be hand delivered or mailed to the local law enforcement authority.

(3) Violation of this section by any person engaged in the business of selling, leas-

ing or otherwise transferring a firearm is a Class C misdemeanor. [1989 c.839 §16; 1993 c.4 §3; 2001 c.539 §12]

**166.429 Firearms used in felony.** Any person who, with intent to commit a felony or who knows or reasonably should know that a felony will be committed with the firearm, ships, transports, receives, sells or otherwise furnishes any firearm in the furtherance of the felony is guilty of a Class B felony. [1989 c.839 §17]

**166.430** [Amended by 1971 c.464 §1; repealed by 1989 c.839 §39]

**166.432 Definitions for ORS 166.412 and 166.433 to 166.441.** (1) As used in ORS 166.412, 166.433, 166.434, 166.436 and 166.438, "criminal background check" or "criminal history record check" means determining the eligibility of a person to purchase or possess a firearm by reviewing state and federal databases including, but not limited to, the:

- (a) Oregon computerized criminal history system;
- (b) Oregon mental health data system;
- (c) Law Enforcement Data System;
- (d) National Instant Criminal Background Check System; and
- (e) Stolen guns system.

(2) As used in ORS 166.433, 166.434, 166.436, 166.438 and 166.441:

- (a) "Gun dealer" has the meaning given that term in ORS 166.412.
- (b) "Gun show" means an event at which more than 25 firearms are on site and available for transfer. [2001 c.1 §3]

**Note:** 166.432, 166.433 and 166.445 were adopted by the people by initiative petition but were not added to ORS chapter 166 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

**166.433 Findings regarding transfers of firearms.** The people of this state find that:

- (1) The laws of Oregon regulating the sale of firearms contain a loophole that allows people other than gun dealers to sell firearms at gun shows without first conducting criminal background checks;
- (2) It is necessary for the safety of the people of Oregon that any person who transfers a firearm at a gun show be required to request a criminal background check before completing the transfer of the firearm; and
- (3) It is in the best interests of the people of Oregon that any person who transfers a firearm at any location other than a gun show be allowed to voluntarily request a criminal background check before completing the transfer of the firearm. [2001 c.1 §1]

**Note:** See note under 166.432.

**166.434 Application of ORS 166.412 to all firearm transfers by gun dealers; fees for criminal background checks.** (1) Notwithstanding the fact that ORS 166.412 requires a gun dealer to request a criminal history record check only when transferring a handgun, a gun dealer shall comply with the requirements of ORS 166.412 before transferring any firearm to a purchaser. The provisions of ORS 166.412 apply to the transfer of firearms other than handguns to the same extent that they apply to the transfer of handguns.

(2) In addition to the determination required by ORS 166.412 (3)(a)(A), in conducting a criminal background check or criminal history record check, the Department of State Police shall also determine whether the recipient is otherwise prohibited by state or federal law from possessing a firearm.

(3) Notwithstanding ORS 166.412 (5), the department is not required to operate the telephone number established under ORS 166.412 (5) on Thanksgiving Day or Christmas Day.

(4)(a) The department may charge a fee, not to exceed the amount authorized under ORS 166.414, for criminal background checks required under this section or ORS 166.436.

(b) The department shall establish a reduced fee for subsequent criminal background checks on the same recipient that are performed during the same day between the hours of 8 a.m. and 10 p.m. [2001 c.1 §5]

**166.436 Firearm transfers by persons other than gun dealers; criminal background checks authorized; liability.** (1) The Department of State Police shall make the telephone number established under ORS 166.412 (5) available for requests from persons other than gun dealers for criminal background checks under this section.

(2) Prior to transferring a firearm, a transferor other than a gun dealer may request by telephone that the department conduct a criminal background check on the recipient and shall provide the following information to the department:

- (a) The name, address and telephone number of the transferor;
- (b) The make, model, caliber and manufacturer's number of the firearm being transferred;
- (c) The name, date of birth, race, sex and address of the recipient;
- (d) The Social Security number of the recipient if the recipient voluntarily provides that number;
- (e) The address of the place where the transfer is occurring; and

(f) The type, issuer and identification number of a current piece of identification bearing a recent photograph of the recipient presented by the recipient. The identification presented by the recipient must meet the requirements of ORS 166.412 (4)(a).

(3)(a) Upon receipt of a request for a criminal background check under this section, the department shall immediately, during the telephone call or by return call:

(A) Determine from criminal records and other information available to it whether the recipient is disqualified under ORS 166.470 from completing the transfer or is otherwise prohibited by state or federal law from possessing a firearm; and

(B) Notify the transferor when a recipient is disqualified from completing the transfer or provide the transferor with a unique approval number indicating that the recipient is qualified to complete the transfer. The unique approval number is a permit valid for 24 hours for the requested transfer. If the firearm is not transferred from the transferor to the recipient within 24 hours after receipt of the unique approval number, a new request must be made by the transferor.

(b) If the department is unable to determine whether the recipient is qualified for or disqualified from completing the transfer within 30 minutes of receiving the request, the department shall notify the transferor and provide the transferor with an estimate of the time when the department will provide the requested information.

(4) A public employee or public agency incurs no criminal or civil liability for performing the criminal background checks required by this section, provided the employee or agency acts in good faith and without malice.

(5)(a) The department may retain a record of the information obtained during a request for a criminal background check under this section for the period of time provided in ORS 166.412 (7).

(b) The record of the information obtained during a request for a criminal background check under this section is exempt from disclosure under public records law.

(6) The recipient of the firearm must be present when the transferor requests a criminal background check under this section.

(7)(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection, a transferor who receives notification under this section that the recipient is qualified to complete the transfer of a firearm is immune from civil liability for any use of the firearm from the time of the transfer unless the

transferor knows, or reasonably should know, that the recipient is likely to commit an unlawful act involving the firearm.

(b) If the transferor is required to request a criminal background check under ORS 166.438, the immunity provided by paragraph (a) of this subsection applies only if, in addition to receiving the notification required by this section, the transferor has the recipient fill out the form required by ORS 166.438 (1)(a) and retains the form as required by ORS 166.438 (2).

(c) The immunity provided by paragraph (a) of this subsection does not apply:

(A) If the transferor knows, or reasonably should know, that the recipient of the firearm intends to deliver the firearm to a third person who the transferor knows, or reasonably should know, may not lawfully possess the firearm; or

(B) In any product liability civil action under ORS 30.900 to 30.920. [2001 c.1 §6]

**166.438 Transfer of firearms at gun shows.** (1) A transferor other than a gun dealer may not transfer a firearm at a gun show unless the transferor:

(a)(A) Requests a criminal background check under ORS 166.436 prior to completing the transfer;

(B) Receives notification that the recipient is qualified to complete the transfer; and

(C) Has the recipient complete the form described in ORS 166.441; or

(b) Completes the transfer through a gun dealer.

(2) The transferor shall retain the completed form referred to in subsection (1) of this section for at least five years and shall make the completed form available to law enforcement agencies for the purpose of criminal investigations.

(3) A person who organizes a gun show shall post in a prominent place at the gun show a notice explaining the requirements of subsections (1) and (2) of this section. The person shall provide the form required by subsection (1) of this section to any person transferring a firearm at the gun show.

(4) Subsection (1) of this section does not apply if the transferee is licensed as a dealer under 18 U.S.C. 923.

(5)(a) Failure to comply with the requirements of subsection (1), (2) or (3) of this section is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, failure to comply with the requirements of subsection (1), (2) or (3) of this section is a Class C felony if the person has two or more previous convictions under this section.

(6) It is an affirmative defense to a charge of violating subsection (1) or (3) of this section that the person did not know, or reasonably could not know, that more than 25 firearms were at the site and available for transfer. [2001 c.1 §7]

**166.440** [Repealed by 1989 c.839 §39]

**166.441 Form for transfer of firearm at gun show.** (1) The Department of State Police shall develop a form to be completed by a person seeking to obtain a firearm at a gun show from a transferor other than a gun dealer. The department shall consider including in the form all of the requirements for disclosure of information that are required by federal law for over-the-counter firearms transactions.

(2) The department shall make the form available to the public at no cost. [2001 c.1 §8]

**166.445 Short title.** ORS 166.432 to 166.445 and the amendments to ORS 166.416, 166.418 and 166.460 by sections 9, 10 and 11, chapter 1, Oregon Laws 2001, shall be known as the Gun Violence Prevention Act. [2001 c.1 §2]

**Note:** See note under 166.432.

**166.450 Obliteration or change of identification number on firearms.** Any person who intentionally alters, removes or obliterates the identification number of any firearm for an unlawful purpose, shall be punished upon conviction by imprisonment in the custody of the Department of Corrections for not more than five years. Possession of any such firearm is presumptive evidence that the possessor has altered, removed or obliterated the identification number. [Amended by 1987 c.320 §90; 1989 c.839 §24]

**166.460 Antique firearms excepted.** (1) ORS 166.250, 166.260, 166.291 to 166.295, 166.410, 166.412, 166.425, 166.434, 166.438 and 166.450 do not apply to antique firearms.

(2) Notwithstanding the provisions of subsection (1) of this section, possession of an antique firearm by a person described in ORS 166.250 (1)(c)(B), (C) or (D) constitutes a violation of ORS 166.250. [Amended by 1979 c.779 §6; 1989 c.839 §25; 1993 c.735 §8; 1995 c.729 §9; 2001 c.1 §11; 2001 c.666 §§35,47; 2003 c.614 §10]

**166.470 Limitations and conditions for sales of firearms.** (1) Unless relief has been granted under ORS 166.274, 18 U.S.C. 925(c) or the expunction laws of this state or an equivalent law of another jurisdiction, a person may not intentionally sell, deliver or otherwise transfer any firearm when the transferor knows or reasonably should know that the recipient:

(a) Is under 18 years of age;

(b) Has been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony;

(c) Has any outstanding felony warrants for arrest;

(d) Is free on any form of pretrial release for a felony;

(e) Was committed to the Department of Human Services under ORS 426.130;

(f) After January 1, 1990, was found to be mentally ill and subject to an order under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness; or

(g) Has been convicted of a misdemeanor involving violence or found guilty, except for insanity under ORS 161.295, of a misdemeanor involving violence within the previous four years. As used in this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160, 163.187, 163.190, 163.195 or 166.155 (1)(b).

(2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or reasonably should know is stolen.

(3) Subsection (1)(a) of this section does not prohibit:

(a) The parent or guardian, or another person with the consent of the parent or guardian, of a minor from transferring to the minor a firearm, other than a handgun; or

(b) The temporary transfer of any firearm to a minor for hunting, target practice or any other lawful purpose.

(4) Violation of this section is a Class A misdemeanor. [Amended by 1989 c.839 §3; 1991 c.67 §40; 1993 c.735 §11; 2001 c.828 §2; 2003 c.577 §7]

**166.480 Sale or gift of explosives to children.** Any person who sells, exchanges, barbers or gives to any child, under the age of 14 years, any explosive article or substance, other than an ordinary firecracker containing not more than 10 grains of gunpowder or who sells, exchanges, barbers or gives to any such child, any instrument or apparatus, the chief utility of which is the fact that it is used, or is ordinarily capable of being used, as an article or device to increase the force or intensity of any explosive, or to direct or control the discharge of any such explosive, is guilty of a misdemeanor. [Amended by 1989 c.839 §26]

**166.490 Purchase of firearms in certain other states.** (1) As used in this section, unless the context requires otherwise:

(a) "Contiguous state" means California, Idaho, Nevada or Washington.

(b) "Resident" includes an individual or a corporation or other business entity that maintains a place of business in this state.

(2) A resident of this state may purchase or otherwise obtain a rifle or shotgun in a contiguous state and receive in this state or



transport into this state such rifle or shotgun, unless the purchase or transfer violates the law of this state, the state in which the purchase or transfer is made or the United States.

(3) This section does not apply to the purchase, receipt or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers or collectors.

(4) This section expires and stands repealed upon the date that section 922(b) (3) of the Gun Control Act of 1968 (18 U.S.C. 922(b) (3)) and regulations pursuant thereto are repealed or rescinded. [1969 c.289 §§1,2,3,4]

**166.510** [Amended by 1957 c.290 §1; 1973 c.746 §1; 1983 c.546 §2; repealed by 1985 c.709 §4]

**166.515** [1973 c.746 §2; repealed by 1985 c.709 §4]

**166.520** [Amended by 1973 c.746 §3; repealed by 1985 c.709 §4]

**166.560** [1965 c.118 §1; repealed by 1971 c.743 §432]

**166.610** [Repealed by 1971 c.743 §432]

**166.620** [Repealed by 1963 c.94 §2]

## DISCHARGING WEAPONS

**166.630 Discharging weapon on or across highway, ocean shore recreation area or public utility facility.** (1) Except as provided in ORS 166.220, any person is guilty of a violation who discharges or attempts to discharge any blowgun, bow and arrow, crossbow, air rifle or firearm:

(a) Upon or across any highway, railroad right of way or other public road in this state, or upon or across the ocean shore within the state recreation area as defined in ORS 390.605.

(b) At any public or railroad sign or signal or an electric power, communication, petroleum or natural gas transmission or distribution facility of a public utility, telecommunications utility or railroad within range of the weapon.

(2) Any blowgun, bow and arrow, crossbow, air rifle or firearm in the possession of the person that was used in committing a violation of this section may be confiscated and forfeited to the State of Oregon. This section does not prevent the discharge of firearms by peace officers in the performance of their duty or by military personnel within the confines of a military reservation.

(3) The hunting license revocation provided in ORS 497.415 is in addition to and not in lieu of the penalty and forfeiture provided in subsections (1) and (2) of this section.

(4) As used in this section:

(a) "Public sign" includes all signs, signals and markings placed or erected by authority of a public body.

(b) "Public utility" has the meaning given that term in ORS 164.365 (2).

(c) "Railroad" has the meaning given that term in ORS 824.020. [Amended by 1963 c.94 §1; 1969 c.501 §2; 1969 c.511 §4; 1973 c.196 §1; 1973 c.723 §118; 1981 c.900 §1; 1987 c.447 §113; 1991 c.797 §2]

**166.635 Discharging weapon or throwing objects at trains.** (1) A person shall not knowingly throw an object at, drop an object on, or discharge a bow and arrow, air rifle, rifle, gun, revolver or other firearm at a railroad train, a person on a railroad train or a commodity being transported on a railroad train. This subsection does not prevent a peace officer or a railroad employee from performing the duty of a peace officer or railroad employee.

(2) Violation of subsection (1) of this section is a misdemeanor. [1973 c.139 §4]

**166.638 Discharging weapon across airport operational surfaces.** (1) Any person who knowingly or recklessly discharges any bow and arrow, gun, air gun or other firearm upon or across any airport operational surface commits a Class A misdemeanor. Any bow and arrow, gun, air gun or other firearm in the possession of the person that was used in committing a violation of this subsection may be confiscated and forfeited to the State of Oregon, and the clear proceeds shall be deposited with the State Treasury in the Common School Fund.

(2) As used in subsection (1) of this section, "airport operational surface" means any surface of land or water developed, posted or marked so as to give an observer reasonable notice that the surface is developed for the purpose of storing, parking, taxiing or operating aircraft, or any surface of land or water when actually being used for such purpose.

(3) Subsection (1) of this section does not prohibit the discharge of firearms by peace officers in the performance of their duty or by military personnel within the confines of a military reservation, or otherwise lawful hunting, wildlife control or other discharging of firearms done with the consent of the proprietor, manager or custodian of the airport operational surface.

(4) The hunting license revocation provided in ORS 497.415 is in addition to and not in lieu of the penalty provided in subsection (1) of this section. [1981 c.901 §2; 1987 c.858 §2]

**166.640** [Repealed by 1971 c.743 §432]

**POSSESSION OF BODY ARMOR**

**166.641 Definitions for ORS 166.641 to 166.643.** As used in this section and ORS 166.642 and 166.643:

(1) "Body armor" means any clothing or equipment designed in whole or in part to minimize the risk of injury from a deadly weapon.

(2) "Deadly weapon" has the meaning given that term in ORS 161.015.

(3) "Misdemeanor involving violence" has the meaning given that term in ORS 166.470. [2001 c.635 §1]

**166.642 Felon in possession of body armor.** (1) A person commits the crime of felon in possession of body armor if the person:

(a) Has been convicted of a felony or misdemeanor involving violence under the law of any state or the United States; and

(b) Knowingly is in possession or control of body armor.

(2) Felon in possession of body armor is a Class C felony.

(3) For purposes of subsection (1) of this section, a person who has been found to be within the jurisdiction of a juvenile court for having committed an act that would constitute a felony or misdemeanor involving violence has been convicted of a felony or misdemeanor involving violence.

(4) Subsection (1) of this section does not apply to:

(a) A person who is wearing body armor provided by a peace officer for the person's safety or protection while the person is being transported or accompanied by a peace officer; or

(b) A person who has been convicted of only one felony under the law of this state or any other state, or who has been convicted of only one felony under the law of the United States, which felony did not involve criminal homicide, as defined in ORS 163.005, and who has been discharged from imprisonment, parole or probation for the offense for a period of 15 years prior to the date of the alleged violation of subsection (1) of this section.

(5) It is an affirmative defense to a charge of violating subsection (1) of this section that a protective order or restraining order has been entered to the benefit of the person. The affirmative defense created by this subsection is not available if the person possesses the body armor while committing or attempting to commit a crime. [2001 c.635 §2]

**166.643 Unlawful possession of body armor.** (1) A person commits the crime of unlawful possession of body armor if the person, while committing or attempting to commit a felony or misdemeanor involving violence, knowingly:

(a) Wears body armor; and

(b) Possesses a deadly weapon.

(2) Unlawful possession of body armor is a Class B felony. [2001 c.635 §3]

**MISCELLANEOUS**

**166.645 Hunting in cemeteries prohibited.** (1) Hunting in cemeteries is prohibited.

(2) As used in subsection (1) of this section "hunting" has the meaning for that term provided in ORS 496.004.

(3) Violation of subsection (1) of this section is a misdemeanor. [1973 c.468 §2; 1987 c.158 §30]

**166.649 Throwing an object off an overpass in the second degree.** (1) A person commits the crime of throwing an object off an overpass in the second degree if the person:

(a) With criminal negligence throws an object off an overpass; and

(b) Knows, or reasonably should have known, that the object was of a type or size to cause damage to any person or vehicle that the object might hit.

(2) Throwing an object off an overpass in the second degree is a Class A misdemeanor.

(3) As used in this section and ORS 166.651, "overpass" means a structure carrying a roadway or pedestrian pathway over a roadway. [1993 c.731 §1]

**166.650** [Repealed by 1971 c.743 §432]

**166.651 Throwing an object off an overpass in the first degree.** (1) A person commits the crime of throwing an object off an overpass in the first degree if the person:

(a) Recklessly throws an object off an overpass; and

(b) Knows, or reasonably should have known, that the object was of a type or size to cause damage to any person or vehicle that the object might hit.

(2) Throwing an object off an overpass in the first degree is a Class C felony. [1993 c.731 §2]

**166.660 Unlawful paramilitary activity.** (1) A person commits the crime of unlawful paramilitary activity if the person:

(a) Exhibits, displays or demonstrates to another person the use, application or making of any firearm, explosive or incendiary device or any technique capable of causing injury or death to persons and intends or

knows that such firearm, explosive or incendiary device or technique will be unlawfully employed for use in a civil disorder; or

(b) Assembles with one or more other persons for the purpose of training with, practicing with or being instructed in the use of any firearm, explosive or incendiary device or technique capable of causing injury or death to persons with the intent to unlawfully employ such firearm, explosive or incendiary device or technique in a civil disorder.

(2)(a) Nothing in this section makes unlawful any act of any law enforcement officer performed in the otherwise lawful performance of the officer's official duties.

(b) Nothing in this section makes unlawful any activity of the State Department of Fish and Wildlife, or any activity intended to teach or practice self-defense or self-defense techniques, such as karate clubs or self-defense clinics, and similar lawful activity, or any facility, program or lawful activity related to firearms instruction and training intended to teach the safe handling and use of firearms, or any other lawful sports or activities related to the individual recreational use or possession of firearms, including but not limited to hunting activities, target shooting, self-defense, firearms collection or any organized activity including, but not limited to any hunting club, rifle club, rifle range or shooting range which does not include a conspiracy as defined in ORS 161.450 or the knowledge of or the intent to cause or further a civil disorder.

(3) Unlawful paramilitary activity is a Class C felony.

(4) As used in this section:

(a) "Civil disorder" means acts of physical violence by assemblages of three or more persons which cause damage or injury, or immediate danger thereof, to the person or property of any other individual.

(b) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the action of black powder or smokeless black powder and which is readily capable of use as a weapon.

(c) "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.

(d) "Law enforcement officer" means any duly constituted police officer of the United States, any state, any political subdivision of a state or the District of Columbia, and also includes members of the military reserve forces or National Guard as defined in 10 U.S.C. 101 (9), members of the organized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or the District of Columbia not included within the definition of National Guard as defined by 10 U.S.C. 101 (9), members of the Armed Forces of the United States and such persons as are defined in ORS 161.015 (4) when in the performance of official duties. [1983 c.792 §2; 1987 c.858 §3; 2001 c.666 §26]

**Note:** The amendments to 166.660 by section 38, chapter 666, Oregon Laws 2001, become operative July 31, 2005. See section 58, chapter 666, Oregon Laws 2001, as amended by section 14d, chapter 926, Oregon Laws 2001, and section 12, chapter 614, Oregon Laws 2003. The text that is operative on and after July 31, 2005, is set forth for the user's convenience.

**166.660.** (1) A person commits the crime of unlawful paramilitary activity if the person:

(a) Exhibits, displays or demonstrates to another person the use, application or making of any firearm, explosive or incendiary device or any technique capable of causing injury or death to persons and intends or knows that such firearm, explosive or incendiary device or technique will be unlawfully employed for use in a civil disorder; or

(b) Assembles with one or more other persons for the purpose of training with, practicing with or being instructed in the use of any firearm, explosive or incendiary device or technique capable of causing injury or death to persons with the intent to unlawfully employ such firearm, explosive or incendiary device or technique in a civil disorder.

(2)(a) Nothing in this section makes unlawful any act of any law enforcement officer performed in the otherwise lawful performance of the officer's official duties.

(b) Nothing in this section makes unlawful any activity of the State Department of Fish and Wildlife, or any activity intended to teach or practice self-defense or self-defense techniques, such as karate clubs or self-defense clinics, and similar lawful activity, or any facility, program or lawful activity related to firearms instruction and training intended to teach the safe handling and use of firearms, or any other lawful sports or activities related to the individual recreational use or possession of firearms, including but not limited to hunting activities, target shooting, self-defense, firearms collection or any organized activity including, but not limited to any hunting club, rifle club, rifle range or shooting range which does not include a conspiracy as defined in ORS 161.450 or the knowledge of or the intent to cause or further a civil disorder.

(3) Unlawful paramilitary activity is a Class C felony. In addition to any other penalty imposed pursuant to this section, the court may order forfeited to the State of Oregon for the benefit of the Common School Fund any firearm or explosive or incendiary device used in any activity in violation of this section.

(4) As used in this section:

(a) "Civil disorder" means acts of physical violence by assemblages of three or more persons which cause damage or injury, or immediate danger thereof, to the person or property of any other individual.

(b) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile by the

action of black powder or smokeless black powder and which is readily capable of use as a weapon.

(c) “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.

(d) “Law enforcement officer” means any duly constituted police officer of the United States, any state, any political subdivision of a state or the District of Columbia, and also includes members of the military reserve forces or National Guard as defined in 10 U.S.C. 101 (9), members of the organized militia of any state or territory of the United States, the Commonwealth of Puerto Rico or the District of Columbia not included within the definition of National Guard as defined by 10 U.S.C. 101 (9), members of the Armed Forces of the United States and such persons as are defined in ORS 161.015 (4) when in the performance of official duties.

**166.663 Casting artificial light from vehicle while possessing certain weapons prohibited.** (1) No person shall cast from a motor vehicle an artificial light while there is in the possession or in the immediate physical presence of the person a bow and arrow or a rifle, gun, revolver or other firearm.

(2) Subsection (1) of this section does not apply to a person casting an artificial light:

(a) From the headlights of a motor vehicle that is being operated on a road in the usual manner.

(b) When the bow and arrow, rifle, gun, revolver or other firearm that the person has in the possession or immediate physical presence of the person is disassembled or stored, or in the trunk or storage compartment of the motor vehicle.

(c) When the ammunition or arrows are stored separate from the weapon.

(d) On land owned or lawfully occupied by that person.

(e) On publicly owned land when that person has an agreement with the public body to use that property.

(f) When the person is a peace officer or government employee engaged in the performance of official duties.

(g) When the person has been issued a license under ORS 166.290 to carry a concealed weapon.

(3) Violation of subsection (1) of this section is punishable as a Class B violation. [1989 c.848 §2; 1999 c.1051 §159]

**166.710** [1957 c.601 §1; repealed by 1971 c.743 §432]

## RACKETEERING

**166.715 Definitions for ORS 166.715 to 166.735.** As used in ORS 166.715 to 166.735, unless the context requires otherwise:

(1) “Documentary material” means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(2) “Enterprise” includes any individual, sole proprietorship, partnership, corporation, business trust or other profit or nonprofit legal entity, and includes any union, association or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(3) “Investigative agency” means the Department of Justice or any district attorney.

(4) “Pattern of racketeering activity” means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided at least one of such incidents occurred after November 1, 1981, and that the last of such incidents occurred within five years after a prior incident of racketeering activity. Notwithstanding ORS 131.505 to 131.525 or 419A.190 or any other provision of law providing that a previous prosecution is a bar to a subsequent prosecution, conduct that constitutes an incident of racketeering activity may be used to establish a pattern of racketeering activity without regard to whether the conduct previously has been the subject of a criminal prosecution or conviction or a juvenile court adjudication, unless the prosecution resulted in an acquittal or the adjudication resulted in entry of an order finding the youth not to be within the jurisdiction of the juvenile court.

(5) “Person” means any individual or entity capable of holding a legal or beneficial interest in real or personal property.

(6) “Racketeering activity” includes conduct of a person committed both before and after the person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit:

(a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following provisions of the Oregon Revised Statutes:

- (A) ORS 59.005 to 59.451, 59.660 to 59.830, 59.991 and 59.995, relating to securities;
- (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;
- (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating to obstructing governmental administration;
- (D) ORS 162.405 to 162.425, relating to abuse of public office;
- (E) ORS 162.455, relating to interference with legislative operation;
- (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;
- (G) ORS 163.160 to 163.205, relating to assault and related offenses;
- (H) ORS 163.225 and 163.235, relating to kidnapping;
- (I) ORS 163.275, relating to coercion;
- (J) ORS 163.670 to 163.696, relating to sexual conduct of children;
- (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.125, 164.135, 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and related offenses;
- (L) ORS 164.315 to 164.335, relating to arson and related offenses;
- (M) ORS 164.345 to 164.365, relating to criminal mischief;
- (N) ORS 164.395 to 164.415, relating to robbery;
- (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a recording;
- (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and related offenses;
- (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;
- (R) ORS 165.485 to 165.515, 165.540 and 165.555, relating to communication crimes;
- (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating to firearms and other weapons;
- (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.062 to 167.080, 167.087, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355, 167.365, 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, gambling, computer crimes involving the Oregon State Lottery, animal fighting, forcible recovery of a fighting bird and related offenses;
- (U) ORS 171.990, relating to legislative witnesses;
- (V) ORS 260.575 and 260.665, relating to election offenses;
- (W) ORS 314.075, relating to income tax;
- (X) ORS 180.440 (2) and ORS chapter 323, relating to cigarette and tobacco products taxes and the directory developed under ORS 180.425;
- (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments, and ORS 411.990 (2) and (3);
- (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;
- (AA) ORS 463.995, relating to boxing and wrestling, as defined in ORS 463.015;
- (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445, 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS chapter 471 relating to licenses issued under the Liquor Control Act;
- (CC) ORS 475.005 to 475.285 and 475.940 to 475.999, relating to controlled substances;
- (DD) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;
- (EE) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;
- (FF) ORS 658.452 or 658.991 (2) to (4), relating to farm labor contractors;
- (GG) ORS chapter 706, relating to banking law administration;
- (HH) ORS chapter 714, relating to branch banking;
- (II) ORS chapter 716, relating to mutual savings banks;
- (JJ) ORS chapter 723, relating to credit unions;
- (KK) ORS chapter 726, relating to pawnbrokers;
- (LL) ORS 166.382 and 166.384, relating to destructive devices;
- (MM) ORS 165.074;
- (NN) ORS 59.840 to 59.980, relating to mortgage bankers and mortgage brokers;
- (OO) ORS chapter 496, 497 or 498, relating to wildlife;
- (PP) ORS 163.355 to 163.427, relating to sexual offenses;
- (QQ) ORS 166.015, relating to riot;
- (RR) ORS 166.155 and 166.165, relating to intimidation;
- (SS) ORS chapter 696, relating to real estate and escrow;
- (TT) ORS chapter 704, relating to outfitters and guides;

(UU) ORS 165.692, relating to making a false claim for health care payment;

(VV) ORS 162.117, relating to public investment fraud;

(WW) ORS 164.170 or 164.172;

(XX) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;

(YY) ORS 164.877;

(ZZ) ORS 167.312 and 167.388;

(AAA) ORS 164.889; or

(BBB) ORS 165.800.

(b) Any conduct defined as “racketeering activity” under 18 U.S.C. 1961 (1)(B), (C), (D) and (E).

(7) “Unlawful debt” means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(A) ORS chapter 462, relating to racing;

(B) ORS 167.108 to 167.164, relating to gambling; or

(C) ORS 82.010 to 82.170, relating to interest and usury.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under federal or state law.

(8) Notwithstanding contrary provisions in ORS 174.060, when this section references a statute in the Oregon Revised Statutes that is substantially different in the nature of its essential provisions from what the statute was when this section was enacted, the reference shall extend to and include amendments to the statute. [1981 c.769 §2; 1983 c.338 §898; 1983 c.715 §1; 1985 c.176 §5; 1985 c.557 §8; 1987 c.158 §31; 1987 c.249 §7; 1987 c.789 §20; 1987 c.907 §12; 1989 c.384 §2; 1989 c.839 §27; 1989 c.846 §13; 1989 c.982 §6; 1991 c.398 §3; 1991 c.962 §6; 1993 c.95 §13; 1993 c.215 §1; 1993 c.508 §45; 1993 c.680 §29; 1995 c.301 §35; 1995 c.440 §13; 1995 c.768 §10; 1997 c.631 §420; 1997 c.789 §1; 1997 c.867 §23; 1999 c.722 §8; 1999 c.878 §4; 2001 c.146 §1; 2001 c.147 §3; 2003 c.111 §1; 2003 c.484 §8; 2003 c.801 §15; 2003 c.804 §66]

**166.720 Racketeering activity unlawful; penalties.** (1) It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest or equity in, real property or in the establishment or operation of any enterprise.

(2) It is unlawful for any person, through a pattern of racketeering activity or through

the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any real property or enterprise.

(3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(4) It is unlawful for any person to conspire or endeavor to violate any of the provisions of subsections (1), (2) or (3) of this section.

(5)(a) Any person convicted of engaging in activity in violation of the provisions of subsections (1) to (4) of this section is guilty of a Class A felony.

(b) In lieu of a fine otherwise authorized by law, any person convicted of engaging in conduct in violation of the provisions of subsections (1) to (4) of this section, through which the person derived a pecuniary value, or by which the person caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(c) The court shall hold a hearing to determine the amount of the fine authorized by paragraph (b) of this subsection.

(d) For the purposes of paragraph (b) of this subsection, “pecuniary value” means:

(A) Anything of value in the form of money, a negotiable instrument, a commercial interest or anything else the primary significance of which is economic advantage; or

(B) Any other property or service that has a value in excess of \$100.

(6) An allegation of a pattern of racketeering activity is sufficient if it contains substantially the following:

(a) A statement of the acts constituting each incident of racketeering activity in ordinary and concise language, and in a manner that enables a person of common understanding to know what is intended;

(b) A statement of the relation to each incident of racketeering activity that the conduct was committed on or about a designated date, or during a designated period of time;

(c) A statement, in the language of ORS 166.715 (4) or other ordinary and concise language, designating which distinguishing characteristic or characteristics interrelate the incidents of racketeering activity; and

(d) A statement that the incidents alleged were not isolated. [1981 c.769 §§3,4; 1997 c.789 §2]

**166.725 Remedies for violation of ORS 166.720; time limitation.** (1) Any circuit court may, after making due provision for the rights of innocent persons, enjoin violations of the provisions of ORS 166.720 (1) to (4) by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering a divestiture by the defendant of any interest in any enterprise, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of the provisions of ORS 166.720 (1) to (4).

(c) Ordering the dissolution or reorganization of any enterprise.

(d) Ordering the suspension or revocation of a license, permit or prior approval granted to any enterprise by any agency of the state.

(e) Ordering the forfeiture of the charter of a corporation organized under the laws of this state, or the revocation of a certificate of authority authorizing a foreign corporation to conduct business within this state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of ORS 166.720 (1) to (4) and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate of authority revoked.

(2) All property, real or personal, including money, used in the course of, derived from or realized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. Forfeited property shall be distributed as follows:

(a)(A) All moneys and the clear proceeds of all other property forfeited shall be deposited with the State Treasurer to the credit of the Common School Fund.

(B) For purposes of subparagraph (A) of this paragraph, "clear proceeds" means proceeds of forfeited property less costs of maintaining and preserving property pending

its sale or other disposition, less costs of sale or disposition and, if the Department of Justice has not otherwise recovered its costs and expenses of the investigation and prosecution leading to the forfeiture, less 30 percent of the remaining proceeds of the property which is awarded to the department as reasonable reimbursement for costs of such investigation and prosecution.

(b) Any amounts awarded to the Department of Justice pursuant to paragraph (a) of this subsection shall be deposited in the Criminal Justice Revolving Account in the State Treasury.

(3) Property subject to forfeiture under this section may be seized by a police officer, as defined in ORS 133.525 (2), upon court process. Seizure without process may be made if:

(a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) In the event of a seizure under subsection (3) of this section, a forfeiture proceeding shall be instituted promptly. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the police officer making the seizure, subject only to the order of the court. When property is seized under this section, pending forfeiture and final disposition, the police officer may:

(a) Place the property under seal;

(b) Remove the property to a place designated by the court; or

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(5) The Attorney General, any district attorney or any state agency having jurisdiction over conduct in violation of a provision of ORS 166.715 to 166.735 may institute civil proceedings under this section. In any action brought under this section, the circuit court shall give priority to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper. The Attorney General, district attorney or state agency bringing an action under this section may be awarded, upon entry of a judgment in favor of the state, costs of investigation and litigation, reasonably incurred. Amounts recovered may include costs and expenses of state and local governmental

departments and agencies incurred in connection with the investigation or litigation.

(6)(a) Any aggrieved person may institute a proceeding under subsection (1) of this section:

(A) If the proceeding is based upon racketeering activity for which a criminal conviction has been obtained, any rights of appeal have expired and the action is against the individual convicted of the racketeering activity; or

(B) If the person is entitled to pursue a cause of action under subsection (7)(a)(B) of this section.

(b) In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of special or irreparable damage to the person shall have to be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

(7)(a) Any person who is injured by reason of any violation of the provisions of ORS 166.720 (1) to (4) shall have a cause of action for three-fold the actual damages sustained and, when appropriate, punitive damages:

(A) If a criminal conviction for the racketeering activity that is the basis of the violation has been obtained, any rights of appeal have expired and the action is against the individual convicted of the racketeering activity; or

(B) If the violation is based on racketeering activity as defined in ORS 166.715 (6)(a)(B) to (J), (K) as it relates to burglary and criminal trespass, (L) to (P), (S), (T) except for claims arising under ORS 167.087, (U), (V), (X) to (Z), (AA) to (DD), (KK), (LL) or (OO) to (VV).

(b) The defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this subsection.

(c) Any injured person shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds.

(8) An investigative agency may bring an action for civil penalties for any violation of ORS 166.720 (1) to (4). Upon proof of any such violation, the court shall impose a civil penalty of not more than \$250,000.

(9) A judgment rendered in favor of the state in any criminal proceeding under ORS

166.715 to 166.735 shall estop the defendant in any subsequent civil action or proceeding brought by the state or any other person as to all matters as to which such judgment would be an estoppel as between the state and the defendant.

(10) The Attorney General may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or (7) of this section if the Attorney General certifies that, in the opinion of the Attorney General, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Attorney General instituted the action or proceeding.

(11)(a) Notwithstanding any other provision of law, a criminal or civil action or proceeding under ORS 166.715 to 166.735 may be commenced at any time within five years after the conduct in violation of a provision of ORS 166.715 to 166.735 terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent or restrain any violation of the provisions of ORS 166.715 to 166.735, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsection (6) or (7) of this section which is based in whole or in part upon any matter complained of in any such prosecution, action or proceeding shall be suspended during the pendency of such prosecution, action or proceeding and for two years following its termination.

(b) A cause of action arising under subsection (6)(a)(A) or (7)(a)(A) of this section accrues when the criminal conviction for the underlying activity is obtained. In addition to any suspension of the running of the period of limitations provided for in paragraph (a) of this subsection, the period of limitations prescribed by paragraph (a) of this subsection is suspended during any appeal from the criminal conviction for the underlying activity.

(12) The application of one civil remedy under any provision of ORS 166.715 to 166.735 shall not preclude the application of any other remedy, civil or criminal, under ORS 166.715 to 166.735 or any other provision of law. Civil remedies under ORS 166.715 to 166.735 are supplemental and not mutually exclusive.

(13) Notwithstanding subsection (6) or (7) of this section, a person may not institute a proceeding under subsection (6) of this section and does not have a cause of action under subsection (7) of this section if the conduct that is the basis of the proceeding or action could also be the basis of a claim



of discrimination because of sex that constitutes sexual harassment.

(14) In an action brought under the provisions of this section by a person other than the Attorney General, a district attorney or a state agency, the court may award reasonable attorney fees to the prevailing party. In a civil action brought under the provisions of this section by the Attorney General, a district attorney or a state agency:

(a) The court may award reasonable attorney fees to the Attorney General, district attorney or state agency if the Attorney General, district attorney or state agency prevails in the action; and

(b) The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the Attorney General, district attorney or state agency had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court. [1981 c.769 §5; 1983 c.715 §2; 1995 c.79 §54; 1995 c.618 §58a; 1995 c.619 §1; 1995 c.696 §17; 1997 c.249 §51; 1997 c.789 §3; 2003 c.576 §390]

**166.730 Authority of investigative agency; compelling compliance with subpoena.** (1) If, pursuant to the civil enforcement provisions of ORS 166.725, an investigative agency has reason to believe that a person or other enterprise has engaged in, or is engaging in, activity in violation of ORS 166.715 to 166.735, the investigative agency may administer oaths or affirmations, subpoena witnesses or documents or other material, and collect evidence pursuant to the Oregon Rules of Civil Procedure.

(2) If matter that the investigative agency seeks to obtain by the subpoena is located outside the state, the person or enterprise subpoenaed may make such matter available to the investigative agency or its representative for examination at the place where such matter is located. The investigative agency may designate representatives, including officials of the jurisdiction in which the matter is located, to inspect the matter on its behalf and may respond to similar requests from officials of other jurisdictions.

(3) Upon failure of a person or enterprise, without lawful excuse, to obey a subpoena, and after reasonable notice to such person or enterprise, the investigative agency may apply to the circuit court for the judicial district in which such person or enterprise resides, is found or transacts business for an order compelling compliance. [1981 c.769 §6; 1983 c.715 §3]

**166.735 Short title; construction.** (1) ORS 166.715 to 166.735 may be cited as the Oregon Racketeer Influenced and Corrupt Organization Act.

(2) The provisions of ORS 166.715 to 166.735 shall be liberally construed to effectuate its remedial purposes. [1981 c.769 §§1,7; 1983 c.715 §4]

