

Enrolled Senate Bill 340

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary and Ballot Measure 110 Implementation)

CHAPTER

AN ACT

Relating to crime; amending ORS 131.315, 137.717, 164.055, 164.098 and 164.115.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 131.315 is amended to read:

131.315. (1) If conduct constituting elements of an offense or results constituting elements of an offense occur in two or more counties, trial of the offense may be held in any of the counties concerned.

(2) If a cause of death is inflicted on a person in one county and the person dies therefrom in another county, trial of the offense may be held in either county.

(3) If the commission of an offense commenced outside this state is consummated within this state, trial of the offense shall be held in the county in which the offense is consummated or the interest protected by the criminal statute in question is impaired.

(4) If an offense is committed on any body of water located in, or adjacent to, two or more counties or forming the boundary between two or more counties, trial of the offense may be held in any nearby county bordering on the body of water.

(5) If an offense is committed in or upon any railroad car, vehicle, aircraft, boat or other conveyance in transit and it cannot readily be determined in which county the offense was committed, trial of the offense may be held in any county through or over which the conveyance passed.

(6) If an offense is committed on the boundary of two or more counties or within one mile thereof, trial of the offense may be held in any of the counties concerned.

(7) A person who commits theft, burglary or robbery may be tried in any county in which the person exerts control over the property that is the subject of the crime.

(8) If the offense is an attempt or solicitation to commit a crime, trial of the offense may be held in any county in which any act that is an element of the offense is committed.

(9) If the offense is criminal conspiracy, trial of the offense may be held in any county in which any act or agreement that is an element of the offense occurs.

(10) A person who in one county commits an inchoate offense that results in the commission of an offense by another person in another county, or who commits the crime of hindering prosecution of the principal offense, may be tried in either county.

(11) A criminal nonsupport action may be tried in any county in which the dependent child is found, irrespective of the domicile of the parent, guardian or other person lawfully charged with support of the child.

(12)(a) If the offense is theft, forgery or identity theft and the offense consists of an aggregate transaction involving more than one county, trial of the offense may be held in any county in which one of the acts of theft, forgery or identity theft was committed.

(b) If the offense is two or more offenses listed in ORS 137.717 (2) committed against the same victim within a 180-day period, trial of the offenses may be held in any county in which one of the offenses was committed.

(13) When a prosecution is for violation of the Oregon Securities Law, the trial of the offense may be held in the county in which:

(a) The offer to purchase or sell securities took place or where the sale or purchase of securities took place; or

(b) Any act that is an element of the offense occurred.

(14) When a prosecution under ORS 165.692 and 165.990 or 411.675 and 411.990 (2) and (3) involves Medicaid funds, the trial of the offense may be held in the county in which the claim was submitted for payment or in the county in which the claim was paid.

(15)(a) If the offense is stalking under ORS 163.732 and involves contacts as defined in ORS 163.730 in more than one county, trial of the offense may be held in any county in which a contact occurred.

(b) If the offense is violating a court's stalking protective order under ORS 163.750, trial of the offense may be held in the county in which the defendant engaged in conduct prohibited by the order or in the county in which the order was issued.

SECTION 2. ORS 137.717 is amended to read:

137.717. (1) When a court sentences a person convicted of:

(a) Aggravated theft in the first degree under ORS 164.057, **organized retail theft under ORS 164.098**, burglary in the first degree under ORS 164.225 or aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, **organized retail theft under ORS 164.098**, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

(C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime of conviction was committed while the defendant was on supervision for the previous conviction or less than three years after the date the defendant completed the period of supervision for the previous conviction.

(b) Unauthorized use of a vehicle under ORS 164.135, mail theft or receipt of stolen mail under ORS 164.162, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS 164.377, robbery in the third degree under ORS 164.395, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b), possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, **organized retail theft under ORS 164.098**, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

(C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime of conviction was committed while the defendant was on supervision for the previous conviction or less than three years after the date the defendant completed the period of supervision for the previous conviction.

(c) Theft in the first degree under ORS 164.055 or identity theft under ORS 165.800, the presumptive sentence is 13 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, **organized retail theft under ORS 164.098**, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803; or

(B) Four or more previous convictions for any combination of crimes listed in subsection (2) of this section.

(2) The crimes to which subsection (1) of this section applies are:

(a) Theft in the second degree under ORS 164.045;

(b) Theft in the first degree under ORS 164.055;

(c) Aggravated theft in the first degree under ORS 164.057;

(d) Organized retail theft under ORS 164.098;

[*d*] (e) Unauthorized use of a vehicle under ORS 164.135;

[*e*] (f) Mail theft or receipt of stolen mail under ORS 164.162;

[*f*] (g) Burglary in the second degree under ORS 164.215;

[*g*] (h) Burglary in the first degree under ORS 164.225;

[*h*] (i) Criminal mischief in the second degree under ORS 164.354;

[*i*] (j) Criminal mischief in the first degree under ORS 164.365;

[*j*] (k) Computer crime under ORS 164.377;

[*k*] (L) Forgery in the second degree under ORS 165.007;

[*L*] (m) Forgery in the first degree under ORS 165.013;

[*m*] (n) Criminal possession of a forged instrument in the second degree under ORS 165.017;

[*n*] (o) Criminal possession of a forged instrument in the first degree under ORS 165.022;

[*o*] (p) Fraudulent use of a credit card under ORS 165.055;

[*p*] (q) Identity theft under ORS 165.800;

[*q*] (r) Possession of a stolen vehicle under ORS 819.300;

[*r*] (s) Trafficking in stolen vehicles under ORS 819.310; and

[*s*] (t) Any attempt to commit a crime listed in this subsection.

(3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this section shall be increased by two months for each previous conviction the person has that:

(A) Was for any of the crimes listed in subsection (1) or (2) of this section; and

(B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or (b) of this section.

(b) Previous convictions may not increase a presumptive sentence described in subsection (1)(a) or (b) of this section by more than 12 months under this subsection.

(4) The court may impose a sentence other than the sentence provided by subsection (1) or (3) of this section if the court imposes:

(a) A longer term of incarceration that is otherwise required or authorized by law; or

(b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) or (3) of this section.

(5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under subsection (4) of this section to a term of incarceration that exceeds the period of time described in ORS 161.605.

(6) The court shall sentence a person under this section to at least the presumptive sentence described in subsection (1)(a) or (b) or (3) of this section, unless the parties stipulate otherwise or the court finds that:

(a) The person was not on probation, parole or post-prison supervision for a crime listed in subsection (1) of this section at the time of the commission of the current crime of conviction;

(b) The person has not previously received a downward departure from a presumptive sentence for a crime listed in subsection (1) of this section;

(c) The harm or loss caused by the crime is not greater than usual for that type of crime; and

(d) In consideration of the nature of the offense and the harm to the victim, a downward departure will:

(A) Increase public safety;

(B) Enhance the likelihood that the person will be rehabilitated; and

(C) Not unduly reduce the appropriate punishment.

(7) When the court imposes a sentence of probation for a conviction for theft in the first degree or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS 144.087 may require the person to receive a high level of supervision for at least 12 months, and may extend the period of high-level supervision for all or part of the remaining probationary term.

(8)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(9) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

(10) As used in this section:

(a) "Downward departure" means a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission.

(b) "Previous conviction" includes:

(A) Convictions occurring before, on or after July 1, 2003; and

(B) Convictions entered in any other state or federal court for comparable offenses.

SECTION 3. ORS 137.717, as amended by section 7, chapter 649, Oregon Laws 2013, and section 6, chapter 673, Oregon Laws 2017, is amended to read:

137.717. (1) When a court sentences a person convicted of:

(a) Aggravated theft in the first degree under ORS 164.057, **organized retail theft under ORS 164.098**, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395 or aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, **organized retail theft under ORS 164.098**, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

(C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime of conviction was committed while the defendant was on supervision for the previous conviction or

less than three years after the date the defendant completed the period of supervision for the previous conviction.

(b) Unauthorized use of a vehicle under ORS 164.135, mail theft or receipt of stolen mail under ORS 164.162, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b), possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, **organized retail theft under ORS 164.098**, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

(C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime of conviction was committed while the defendant was on supervision for the previous conviction or less than three years after the date the defendant completed the period of supervision for the previous conviction.

(c) Theft in the first degree under ORS 164.055 or identity theft under ORS 165.800, the presumptive sentence is 13 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, **organized retail theft under ORS 164.098**, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803; or

(B) Four or more previous convictions for any combination of crimes listed in subsection (2) of this section.

(2) The crimes to which subsection (1) of this section applies are:

(a) Theft in the second degree under ORS 164.045;

(b) Theft in the first degree under ORS 164.055;

(c) Aggravated theft in the first degree under ORS 164.057;

(d) Organized retail theft under ORS 164.098;

[(d)] (e) Unauthorized use of a vehicle under ORS 164.135;

[(e)] (f) Mail theft or receipt of stolen mail under ORS 164.162;

[(f)] (g) Burglary in the second degree under ORS 164.215;

[(g)] (h) Burglary in the first degree under ORS 164.225;

[(h)] (i) Criminal mischief in the second degree under ORS 164.354;

[(i)] (j) Criminal mischief in the first degree under ORS 164.365;

[(j)] (k) Computer crime under ORS 164.377;

[(k)] (L) Forgery in the second degree under ORS 165.007;

[(L)] (m) Forgery in the first degree under ORS 165.013;

[(m)] (n) Criminal possession of a forged instrument in the second degree under ORS 165.017;

[(n)] (o) Criminal possession of a forged instrument in the first degree under ORS 165.022;

[(o)] (p) Fraudulent use of a credit card under ORS 165.055;

[(p)] (q) Identity theft under ORS 165.800;

[(q)] (r) Possession of a stolen vehicle under ORS 819.300;

[(r)] (s) Trafficking in stolen vehicles under ORS 819.310; and

~~[(s)]~~ (t) Any attempt to commit a crime listed in this subsection.

(3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this section shall be increased by two months for each previous conviction the person has that:

(A) Was for any of the crimes listed in subsection (1) or (2) of this section; and

(B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or (b) of this section.

(b) Previous convictions may not increase a presumptive sentence described in subsection (1)(a) or (b) of this section by more than 12 months under this subsection.

(4) The court may impose a sentence other than the sentence provided by subsection (1) or (3) of this section if the court imposes:

(a) A longer term of incarceration that is otherwise required or authorized by law; or

(b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) or (3) of this section.

(5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under subsection (4) of this section to a term of incarceration that exceeds the period of time described in ORS 161.605.

(6) The court shall sentence a person under this section to at least the presumptive sentence described in subsection (1)(a) or (b) or (3) of this section, unless the parties stipulate otherwise or the court finds that:

(a) The person was not on probation, parole or post-prison supervision for a crime listed in subsection (1) of this section at the time of the commission of the current crime of conviction;

(b) The person has not previously received a downward departure from a presumptive sentence for a crime listed in subsection (1) of this section;

(c) The harm or loss caused by the crime is not greater than usual for that type of crime; and

(d) In consideration of the nature of the offense and the harm to the victim, a downward departure will:

(A) Increase public safety;

(B) Enhance the likelihood that the person will be rehabilitated; and

(C) Not unduly reduce the appropriate punishment.

(7) When the court imposes a sentence of probation for a conviction for theft in the first degree or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS 144.087 may require the person to receive a high level of supervision for at least 12 months, and may extend the period of high-level supervision for all or part of the remaining probationary term.

(8)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(9) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

(10) As used in this section:

(a) "Downward departure" means a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission.

(b) "Previous conviction" includes:

(A) Convictions occurring before, on or after July 1, 2003; and

(B) Convictions entered in any other state or federal court for comparable offenses.

SECTION 4. ORS 164.055 is amended to read:

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

- (a) The total value of the property in a single or aggregate transaction is \$1,000 or more;
- (b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an area affected by the riot, fire, explosion, catastrophe or other emergency;
- (c) The theft is theft by receiving committed by buying, selling, borrowing or lending on the security of the property;
- (d) The subject of the theft is a firearm or explosive;
- (e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); [or]
- (f) The subject of the theft is a precursor substance[.]; **or**
- (g) During the commission of the theft, the person recklessly engages in conduct that creates a substantial risk of serious physical injury to another person.**

(2) As used in this section:

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

(b) "Explosive" means a chemical compound, mixture or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.111, black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

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

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

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

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

SECTION 5. ORS 164.098 is amended to read:

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

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

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

(c) The aggregate value of the merchandise taken within any [90-day] **180-day** period exceeds \$5,000.

(2) As used in this section:

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

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

(3) Organized retail theft is a Class B felony.

SECTION 6. ORS 164.115, as amended by section 7, chapter 9, Oregon Laws 2022, is amended to read:

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

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

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

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

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

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

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

(b) The value of the wildlife listed on the list of prohibited species, as defined in section 3, chapter 9, Oregon Laws 2022, is the amount of damages as specified in section 4, chapter 9, Oregon Laws 2022.

(5) When the value of property cannot reasonably be ascertained, it shall be presumed to be an amount less than \$100 in a case of theft, and less than \$500 in any other case.

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

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

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

(6) The value of single theft transactions may be added together if the thefts were committed against the same or multiple victims within a one-year period.

Passed by Senate April 10, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 23, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State