

HB 2640 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 2/26

WHAT THE MEASURE DOES:

The measure removes an unconstitutional provision of the crime of harassment and adds a requirement that the intentional propulsion of saliva at a public safety officer must create a risk of spreading communicable disease to the officer for the crime of aggravated harassment. The measure changes the following crimes from misdemeanors to violations: several types of failure to appear, theft in the third degree of a basic need item, criminal trespass in the second degree, criminal mischief in the third degree, and failure to carry a license or present a license to a police officer. The measure requires an officer who is arresting or citing someone for certain kinds of failure to report as a sex offender to offer the person an opportunity to complete the failed report and reduces the offense to a Class A violation if the person completes the required report. And the measure changes all theories of misdemeanor driving while suspended to violations.

Detailed Summary

Harassment Changes

- Eliminates "Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response" as a theory of committing the crime of harassment.
- Adds a requirement that propelling saliva at a public safety officer, where the saliva comes into physical contact with the public safety officer, must also "create[] a risk of spreading communicable disease to the officer" to be the crime of aggravated harassment.

Decriminalization of Certain Crimes

Changes Misdemeanors to Violations

- Changes **failure to appear on a criminal citation** for a misdemeanor offense from a Class A misdemeanor to a Class A violation.
- Changes **failure to appear on a violation citation** from a Class A misdemeanor to a Class A violation.
- Changes **failure to appear in the second degree** from a Class A misdemeanor to a Class A violation.
- Changes **theft in the third degree** from a Class C misdemeanor to a Class A violation if the property is a "basic need item" and defines "basic need item" to mean "food, water, clothing, health care or medical supplies, shelter including but not limited to tarps and tents, reproductive care items including but not limited to condoms and menstrual products, child care items including but not limited to diapers and formula or sanitation items including but not limited to soap, disinfectant and toilet tissues."
- Changes **criminal trespass in the second degree** from a Class C misdemeanor to a Class A violation.
- Changes **criminal mischief in the third degree** from a Class C misdemeanor to a Class A violation.
- Changes **failure to carry a license or to present a license to a police officer** from a Class C misdemeanor to a Class A violation.
- Changes **failure to perform the duties of a driver when property is damaged** from a Class A misdemeanor to a Class A violation when the property damaged is owned by the State of Oregon.

Changes Failure to Report as a Sex Offender

Requires an officer who is arresting or citing someone for failing to report as a sex offender to provide the person with an opportunity to complete the failed report. Changes the failure to report from a Class A misdemeanor to a Class A violation if the person uses the opportunity to complete the required report. Restricts the use of a report

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completed as a result of this opportunity to determining the offense level of the charge, not as evidence the person failed to report. Limits this opportunity to use only with the following kinds of failure to report:

- Failure to report where the person works, carries on a vocation, or attends an institution of higher education;
- Failure to report following a change of school enrollment or employment status;
- Failure to report moving to a new address;
- Failure to report a legal change of name;
- Failure to make an annual report; and
- Failure to sign the sex offender registration form.

Does not apply the opportunity to failure to make an initial sex offender report to an agency, failure or refusal to participate in a sex offender risk assessment as directed, failure to submit to fingerprinting or photographing, or failure to report prior to intended travel outside the United States.

Changes Driving While Suspended or Revoked

Changes all theories of misdemeanor driving while suspended or revoked where the basis for the offense is a suspension rather than a revocation from a Class A misdemeanor to a Class A traffic violation. Retains the Class B felony theory of driving while suspended or revoked based on a qualifying underlying suspension.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Harassment

ORS 166.065(1)(a)(B) prohibits intentionally harassing or annoying another person by "[p]ublicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response." In 2008, the Oregon Supreme Court held that this prohibition is unconstitutional under Article 1, section 8 of the Oregon Constitution because it is overbroad on its face. *State v. Johnson*, 345 Or. 190.

Reductions

In Oregon, "[a] crime is a misdemeanor if it is so designated in any statute of this state or if a person convicted thereof may be sentenced to a maximum term of imprisonment of not more than one year." ORS 161.545. A misdemeanor may belong to one of four classifications: Class A, Class B, Class C, and unclassified. ORS 161.555. Each classification has a different maximum allowable time of imprisonment: for Class A, 365 days, Class B, six months, and Class C, 30 days. Misdemeanors also have maximum allowable fines depending on classification: \$6,250 for a Class A misdemeanor, \$2,500 for Class B, and \$1,250 for Class C. ORS 161.635. Unclassified misdemeanors vary in maximum terms of imprisonment. ORS 161.615. A "violation" in Oregon has several definitions, but most commonly refers to offenses where the "statute prescribing the penalty for the offense provides that the offense is punishable by a fine but does not provide that the offense is punishable by a term of imprisonment." ORS 153.008. The maximum fine for a Class A violation for an individual is \$2,000. ORS 153.018.

FRSO

Certain persons who have been convicted of a sex crime are required to report as a sex offender to law enforcement in Oregon under ORS 163A.005 et seq. Failure to report as a sex offender, a crime under ORS 163A.040, can be either a Class A misdemeanor or a Class C felony depending on the circumstances or underlying charge. The statutory purpose for sex offender reporting obligations "is to assist law enforcement agencies in preventing future sex offenses." ORS 163A.045.

Driving While Suspended or Revoked

It is an offense in Oregon for a person to operate a motor vehicle on a highway when the person's driving privileges have been either suspended or revoked. The offense can be either a violation or a crime depending on the circumstances. Under current law the offense is a Class B felony if the suspension or revocation resulted from any degree of murder, manslaughter, criminally negligent homicide or assault resulting from the operation of a motor vehicle, if the suspension or revocation resulted from aggravated vehicular homicide or aggravated driving while suspended or revoked or if the revocation resulted from a conviction for felony driving while under the influence of intoxicants. ORS 811.182. The offense is a misdemeanor if the revocation resulted from habitual offender status under ORS 809.640 or from misdemeanor driving while under the influence of intoxicants.

The offense is currently a Class A misdemeanor if the person's driving privileges were suspended and the suspension was any of the following:

- A suspension for committing recklessly endangering another person, menacing, or criminal mischief;
- A suspension under ORS 813.410 for refusing to take or for failing a breath or blood test for blood alcohol content under implied consent;
- A suspension of commercial driving privileges for committing failure to perform the duties of a driver when property is damaged;
- A suspension of commercial driving privileges because the person's commercial driving privileges have been suspended or revoked by another jurisdiction for failure of or refusal to take a test for blood alcohol content;
- A suspension of commercial driving privileges under ORS 809.520 governing lifetime suspensions for the conviction of certain crimes involving a motor vehicle;
- A suspension resulting from a crime punishable as a felony where operation of a motor vehicle was a material element;
- A suspension for failure to perform the duties of a driver to injured persons;
- A suspension for reckless driving;
- A suspension for fleeing or attempting to elude a police officer;
- A suspension for misdemeanor driving while under the influence of intoxicants; or
- A suspension for use of a motor vehicle in the commission of a crime punishable as a felony.

Unless the offense falls under the criminal theories listed in ORS 811.182, driving while suspended or revoked is a Class A traffic violation.