

# House Bill 2535

Sponsored by Representative ELMER; Representative LEWIS (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes theft crimes to address porch pirates and retail theft. (Flesch Readability Score: 81.8).

Creates a new way of committing the crime of theft in the second degree when the theft occurs from a dwelling or within the curtilage of a residence. Punishes by a maximum of 364 days' imprisonment, \$6,250 fine, or both.

Creates two new ways of committing the crime of theft in the first degree when the theft occurs from a dwelling or within the curtilage of a residence. Punishes by a maximum of five years' imprisonment, \$125,000 fine, or both. Directs the Oregon Criminal Justice Commission to rank theft in the first degree at specified crime category levels.

Creates a new way of committing the crime of aggravated theft in the first degree when the theft occurs from a dwelling or within the curtilage of a residence. Punishes by a maximum of 10 years' imprisonment, \$250,000 fine, or both.

Modifies and creates two new ways of committing the crime of organized retail theft. Increases the penalties for organized retail theft if the person possesses a firearm during the commission of the offense or has two or more prior convictions. Punishes by a maximum of 20 years' imprisonment, \$375,000 fine, or both. Directs the Oregon Criminal Justice Commission to rank organized retail theft at specified crime category levels.

## A BILL FOR AN ACT

1  
2 Relating to theft; amending ORS 164.045, 164.055, 164.057 and 164.098.

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

4 **SECTION 1.** ORS 164.045 is amended to read:

5 164.045. (1) A person commits the crime of theft in the second degree if[.] **by means other than**  
6 **extortion, the person commits theft as defined in ORS 164.015, and:**

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

8 [*(b)*] **(a)** The total value of the property in a single or aggregate transaction is \$100 or more and  
9 less than \$1,000[.]; **or**

10 **(b) The total value of the property is less than \$40 and the property is taken from a**  
11 **dwelling, as defined in ORS 164.205, or from the unenclosed curtilage of a dwelling.**

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

13 **SECTION 2.** ORS 164.055 is amended to read:

14 164.055. (1) A person commits the crime of theft in the first degree if, by means other than  
15 extortion, the person commits theft as defined in ORS 164.015 and:

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

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

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

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

22 (e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c);

2 (f) The subject of the theft is a precursor substance; *[or]*

3 (g) During the commission of the theft, the person recklessly engages in conduct that creates a  
4 substantial risk of serious physical injury to another person*[,]*;

5 **(h) The total value of the property in a single or aggregate transaction is \$40 or more  
6 and the property is taken from a dwelling or from the unenclosed curtilage of a dwelling; or**

7 **(i) The person violates ORS 164.045 (1)(b) and has one or more prior convictions for theft  
8 in any degree at the time of the offense.**

9 (2) As used in this section:

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

13 **(b) "Dwelling" has the meaning given that term in ORS 164.205.**

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

19 *[(c)]* (d) "Firearm" has the meaning given that term in ORS 166.210.

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

22 *[(e)]* (f) "Precursor substance" has the meaning given that term in ORS 475.940.

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

24 **(4) The Oregon Criminal Justice Commission shall classify theft in the first degree in the  
25 following crime categories of the sentencing guidelines of the commission:**

26 **(a) Crime category 2 if the person violates subsection (1)(h) of this section, or violates  
27 subsection (1)(i) of this section and has one prior conviction.**

28 **(b) Crime category 4 if the person violates subsection (1)(h) of this section and the total  
29 value of the property in a single or aggregate transaction is \$750 or more, or if the person  
30 violates subsection (1)(i) of this section and has two or more prior convictions.**

31 **SECTION 3.** ORS 164.057 is amended to read:

32 164.057. (1) A person commits the crime of aggravated theft in the first degree, if $[:]$  **the person  
33 violates ORS 164.055 with respect to property, other than a motor vehicle used primarily for  
34 personal rather than commercial transportation, and:**

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

37 *[(b)]* (a) The value of the property in a single or aggregate transaction is \$10,000 or more; **or**

38 **(b) The property is of any value and is taken from more than 20 dwellings, as defined in  
39 ORS 164.205, or from the unenclosed curtilage of more than 20 dwellings, or any combination  
40 thereof.**

41 (2) Aggravated theft in the first degree is a Class B felony.

42 **SECTION 4.** ORS 164.098 is amended to read:

43 164.098. (1) A person commits the crime of organized retail theft if $[,]$ :

44 **(a)(A) The person violates ORS 164.015 or aids and abets another person in violating ORS  
45 164.015;**

1       **(B) The subject of the theft is merchandise and the merchandise is taken from one or**  
 2 **more mercantile establishments within any 180-day period; and**

3       **(C) The person acts in concert with five or more other persons within one or more**  
 4 **mercantile establishments for the purpose of overwhelming the response of a merchant, a**  
 5 **merchant’s employee or a law enforcement officer in order to carry out the offense or avoid**  
 6 **detection or apprehension for the offense;**

7       **(b) Acting in concert with another person:**

8       **[(a)] (A) The person violates ORS 164.015 or aids or abets the other person to violate ORS**  
 9 **164.015;**

10       **[(b)] (B) The subject of the theft is merchandise and the merchandise is taken from [a] one or**  
 11 **more mercantile [establishment] establishments; and**

12       **[(c)] (C) The aggregate value of the merchandise taken within any 180-day period exceeds**  
 13 **[\$5,000.] \$3,000; or**

14       **(c)(A) The person violates ORS 164.015 or aids and abets another person in violating ORS**  
 15 **164.015;**

16       **(B) The subject of the theft is merchandise and the merchandise is taken from one or**  
 17 **more mercantile establishments within any 180-day period;**

18       **(C) The person acts in concert with five or more other persons for the purpose of over-**  
 19 **whelming the response of a merchant, a merchant’s employee or a law enforcement officer**  
 20 **in order to carry out the offense or avoid detection or apprehension for the offense; and**

21       **(D) In the course of organizing or committing the offense, the person solicits the par-**  
 22 **ticipation of another person in the offense through the use of social media.**

23       **(2)(a) Organized retail theft under subsection (1)(a) of this section is a Class C felony.**

24       **(b) Organized retail theft under subsection (1)(b) or (c) of this section is a Class B felony.**

25       **(c) Notwithstanding paragraphs (a) and (b) of this subsection, organized retail theft is a**  
 26 **Class A felony if the person violates subsection (1)(a), (b) or (c) of this section and the per-**  
 27 **son:**

28       **(A) Possesses a firearm during the commission of the offense; or**

29       **(B) Has two or more prior convictions under this section at the time of the offense.**

30       **(3) The Oregon Criminal Justice Commission shall classify organized retail theft in the**  
 31 **following crime categories of the sentencing guidelines of the commission:**

32       **(a) Crime category 5 if the person violates subsection (1)(a) of this section.**

33       **(b) Crime category 6 if the person violates subsection (1)(b) or (c) of this section.**

34       **(c) Crime category 7 if the person violates subsection (1)(a), (b) or (c) of this section and**  
 35 **has two or more prior convictions under this section at the time of the offense.**

36       **(d) Crime category 8 if the person violates subsection (1)(a), (b) or (c) of this section and**  
 37 **possesses a firearm during the commission of the offense.**

38       **(4) Except as otherwise provided by ORS 137.106, when sentencing a person under this**  
 39 **section, the court shall order the person to pay restitution to the mercantile establishment,**  
 40 **including the value of merchandise that was damaged or stolen and the cost of repairing or**  
 41 **replacing any other property that was damaged during the commission of the offense.**

42       **[(2)] (5) As used in this section:**

43       **(a) “Merchandise” has the meaning given that term in ORS 30.870.**

44       **(b) “Mercantile establishment” has the meaning given that term in ORS 30.870.**

45       **(c) “Social media” means an electronic medium that allows users to create, share and**

1 **view user-generated content, including but not limited to uploading or downloading videos,**  
2 **still photographs, blogs, video blogs, podcasts, instant messages, electronic mail or Internet**  
3 **website profiles or locations.**

4 *[(3) Organized retail theft is a Class B felony.]*

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