Chapter 164

1983 REPLACEMENT PART

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DEFINITIONS

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

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

(a) Exercise control over property of another, or to aid a third person to exercise control over property of another, permanently or for so extended a period or under such circumstances as to acquire the major portion of the economic value or benefit of such property; or

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

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

(a) Withhold property of another or cause property of another to be withheld from him permanently or for so extended a period or under such circumstances that the major portion of its economic value or benefit is lost to him; or

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

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

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

(5) "Property" means any article, substance or thing of value, including, but not limited to, money, tangible and intangible personal property, real property, choses-in-action, evidence of debt or of contract. [1971 c.743 §121]

164.010 [Amended by 1959 c.236 §1; repealed by 1971 c.743 §432]

THEFT AND RELATED OFFENSES

164.015 "Theft" described. A person commits theft when, with intent to deprive another of property or to appropriate property to himself or to a third person, he:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof; or

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

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

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

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

164.020 [Amended by 1959 c.236 §2; repealed by 1971 c.743 §432]

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

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

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

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

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

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

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

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

(3) In a prosecution for theft by receiving, it is a defense that the defendant received, retained, concealed or disposed of the property with the intent of restoring it to the owner.

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

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

164.045 Theft in the second degree. (1) A person commits the crime of theft in the second degree if, by other than extortion, he:

(a) Commits theft as defined in ORS 164.015; and

(b) The total value of the property in a single or aggregate transaction is under $200.

(2) Theft in the second degree is a Class A misdemeanor. [1971 c.743 §124]

164.050 [Repealed by 1965 c.253 §153]

164.055 Theft in the first degree. (1) A person commits the crime of theft in the first degree if, by 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 $200 or more; or

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

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

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

(e) The subject of the theft is a livestock animal.

(2) As used in this section:

(a) "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.

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

(c) "Livestock animal" means a horse, gelding, mare, stallion, colt, mule, ass, jennie, bull, steer, cow, calf, goat, sheep, lamb, pig or hog.

(3) Theft in the first degree is a Class C felony. [1971 c.743 §125; 1973 c.405 §1; 1983 c.740 §32]

164.060 [Repealed by 1965 c.253 §153]

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

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

164.075 Theft by extortion. (1) A person commits theft by extortion when he compels or induces another person to deliver property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will in the future:

(a) Cause physical injury to some person; or

(b) Cause damage to property; or

(c) Engage in other conduct constituting a crime; or

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

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

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

(g) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(h) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

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

(2) Theft by extortion is a Class B felony. [1971 c.743 §127]

164.080 [Repealed by 1971 c.743 §432]

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

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

(b) Fails to correct a false impression which he previously created or confirmed; or

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

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

(e) Promises performance which he does not intend to perform or knows will not be performed.

(2) "Deception" does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary persons in the group addressed.

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

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

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

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

164.090 [Repealed by 1971 c.743 §432]

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

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

164.100 [Repealed by 1971 c.743 §432]

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

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

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

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

164.110 [Repealed by 1971 c.743 §432]

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

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

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

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

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

(3) When the value of property cannot reasonably be ascertained, it shall be presumed to be an amount less than $200. [1971 c.743 §131]

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

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

(b) Having control over the disposition of labor or of business, commercial or industrial

equipment or facilities of another, he uses or diverts to the use of himself or a third person such labor, equipment or facilities with intent to derive a commercial benefit for himself or a third person not entitled thereto.

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

(3) Absconding without payment or offer to pay for hotel, restaurant or other services for which compensation is customarily paid immediately upon the receiving of them is prima facie evidence that the services were obtained by deception.

(4) Theft of services is:

(a) A Class A misdemeanor if the aggregate total amount of services the person obtains or attempts to obtain is under $200.

(b) A Class C felony if the total amount of services obtained aggregates $200 or more within any period of 12 consecutive months. [1971 c.743 §133; 1973 c.133 §1]

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

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

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

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

(b) Having custody of a vehicle, boat or aircraft pursuant to an agreement between himself or another and the owner thereof whereby he or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, he intentionally uses or operates it, without consent of the owner, for his own purpose in a manner constituting a gross deviation from the agreed purpose; or

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

(2) Unauthorized use of a vehicle, boat or aircraft is a Class C felony. [1971 c.743 §134]

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

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

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

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

information to the renter or lessor until the item of personal property is returned.

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

(4) For purposes of this section, the value of property shall be ascertained as provided in ORS 164.115. Criminal possession of rented or leased personal property is:

(a) A Class A misdemeanor if the aggregate total value of the personal property not returned is under $200.

(b) A Class C felony if the aggregate total value of the personal property not returned is $200 or more. [1979 c.476 §3]

BURGLARY AND CRIMINAL TRESPASS

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

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

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

(3) "Enter or remain unlawfully" means:

(a) To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public or when the entrant is not otherwise licensed or privileged to do so; or

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

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

(5) "Person in charge" means a person, a representative or employe of the person who has lawful control of premises by ownership, tenancy, official position or other legal relationship. It includes, but is not limited to the person, or holder of a position, designated as the person or position-holder in charge by the Governor, board, commission or governing body of any political subdivision of this state.

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

164.210 [Repealed by 1971 c.743 §432]

164.215 Burglary in the second degree. (1) A person commits the crime of burglary in the second degree if he enters or remains unlawfully in a building with intent to commit a crime therein.

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

164.220 [Repealed by 1971 c.743 §432]

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

(a) Is armed with a burglar's tool as defined in ORS 164.235 or a deadly weapon; or

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

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

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

164.230 [Repealed by 1971 c.743 §432]

164.235 Possession of burglar's tools. (1) A person commits the crime of possession of burglar's tools if he possesses any burglar tool with the intent to use the tool or knowing that some person intends to use the tool to commit or facilitate a forcible entry into premises or theft by a physical taking.

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

(3) Possession of burglar's tools is a Class A misdemeanor. [1971 c.743 §138]

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

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

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

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

164.250 [Repealed by 1971 c.743 §432]

164.255 Criminal trespass in the first degree. (1) A person commits the crime of criminal trespass in the first degree if he enters or remains unlawfully in a dwelling.

(2) Criminal trespass in the first degree is a Class A misdemeanor. [1971 c.743 §140]

164.260 [Repealed by 1971 c.743 §432]

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

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

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

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

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

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

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

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

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

ARSON AND RELATED OFFENSES

164.305 Definitions for ORS 164.305 to 164.365. As used in ORS 164.305 to 164.365, except as the context requires otherwise:

(1) "Protected property" means any structure, place or thing customarily occupied by people, including "public buildings" as defined by ORS 479.010 and "forest land" as defined by ORS 477.001.

(2) "Property of another" means property in which anyone other than the actor has a legal or equitable interest that the actor has no right to defeat or impair, even though the actor may also have such an interest in the property. [1971 c.743 §141; 1977 c.640 §1]

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

164.315 Arson in the second degree. (1) A person commits the crime of arson in the second degree if, by starting a fire or causing an explosion, he intentionally damages any building of another that is not protected property.

(2) Arson in the second degree is a Class C felony. [1971 c.743 §143]

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

164.325 Arson in the first degree. (1) A person commits the crime of arson in the first degree if, by starting a fire or causing an explosion, he intentionally damages:

(a) Protected property of another; or

(b) Any property, whether his own or another's, and such act recklessly places another person in danger of physical injury or protected property of another in danger of damage.

(2) Arson in the first degree is a Class A felony. [1971 c.743 §144]

164.330 [Repealed by 1971 c.743 §432]

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

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

164.340 [Repealed by 1971 c.743 §432]

CRIMINAL MISCHIEF

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

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

164.350 [Repealed by 1971 c.743 §432]

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

(a) He violates ORS 164.345, and as a result thereof, damages property in an amount exceeding $100; or

(b) Having no right to do so nor reasonable ground to believe that he has such right, he intentionally damages property of another, or, he recklessly damages property of another in an amount exceeding $100.

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

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

164.360 [Repealed by 1971 c.743 §432]

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

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

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

(a) In an amount exceeding $200;

(b) By means of an explosive;

(c) Which is a livestock animal as defined in ORS 164.055 (2)(c); or

(d) Which is the property of a public utility, railroad, or public transportation facility used in direct service to the public, or who wilfully uses, manipulates, arranges or rearranges the property of a public utility, railroad, or public transportation facility used in direct service to the public so as to interfere with its efficiency, or who wilfully interferes with, obstructs or adulterates in any manner the service of such public utility, railroad, or public transportation facility.

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

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

(b) "Railroad" has the meaning provided for that term in ORS 760.005.

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

(3) Criminal mischief in the first degree is a Class C felony. [1971 c.743 §147; 1973 c.133 §6; 1975 c.344 §1; 1979 c.805 §1; 1983 c.740 §33a]

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

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

164.370 [Repealed by 1971 c.743 §432]

164.380 [Repealed by 1971 c.743 §432]

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

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

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

ROBBERY

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

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

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

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

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

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

(b) Is aided by another person actually present.

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

164.410 [Repealed by 1971 c.743 §432]

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

(a) Is armed with a deadly weapon; or

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

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

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

164.420 [Repealed by 1971 c.743 §432]

164.430 [Repealed by 1971 c.743 §432]

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

164.450 [Repealed by 1971 c.743 §432]

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

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

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

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

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

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

164.480 [Repealed by 1971 c.743 §432]

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

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

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

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

164.510 [Repealed by 1971 c.743 §432]

164.520 [Repealed by 1971 c.743 §432]

164.530 [Repealed by 1971 c.743 §432]

164.540 [Repealed by 1971 c.743 §432]

164.550 [Repealed by 1971 c.743 §432]

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

164.560 [Repealed by 1971 c.743 §432]

164.570 [Repealed by 1971 c.743 §432]

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

164.590 [Repealed by 1971 c.743 §432]

164.610 [Repealed by 1971 c.743 §432]

164.620 [Repealed by 1971 c.743 §432]

164.630 [Repealed by 1971 c.743 §432]

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

164.640 [Repealed by 1971 c.743 §432]

164.650 [Repealed by 1971 c.743 §432]

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

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

164.680 [Repealed by 1971 c.743 §432]

164.690 [Repealed by 1971 c.743 §432]

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

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

164.720 [Repealed by 1971 c.743 §432]

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

164.740 [Repealed by 1971 c.743 §432]

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

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

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

LITTERING

164.775 Deposit of trash within 100 yards of waters or in waters; license suspensions; civil penalties; credit for work in lieu of fine. (1) It is unlawful for any person to discard any glass, cans or other trash, rubbish, debris or litter on land within 100 yards of any of the waters of the state, as defined in ORS 468.700, other than in receptacles provided for the purpose of holding such trash, rubbish, debris or litter.

(2) It is unlawful for any person to discard any glass, cans or other similar refuse in any waters of the state, as defined in ORS 468.700.

(3) In addition to or in lieu of the penalties provided for violation of any provision of this section, the court in which any individual is convicted of a violation of this section may order suspension of certain permits or licenses for a

period not to exceed 90 days if the court finds that the violation occurred during or in connection with the exercise of the privilege granted by the permit or license. The permits and licenses to which this section applies are motor vehicle operator's permits or licenses, hunting licenses, fishing licenses or boat registrations.

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

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

(5) A citation conforming to the requirements of ORS 153.705 to 153.765 shall be used for all violations of subsection (1) or (2) of this section in the state.

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

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

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

Note: 164.775 and 164.785 were enacted into law by the Legislative Assembly but were not added to or made a part of the Oregon Criminal Code of 1971 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

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

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

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

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

(5) In addition to and not in lieu of the criminal penalty authorized by subsection (4) of this section, the civil penalty authorized by ORS 468.140 may be imposed for violation of this section. [Formerly 449.105; 1983 c.257 §1]

Note: See note under 164.775.

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

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

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

(c) Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle which he is operating; except that this subsection shall not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Public Utility Commissioner of

Oregon or a person operating a school bus subject to ORS 485.010 to 485.060.

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

(3) As used in this section, "public transportation facility" has the meaning provided for in ORS 164.365.

(4) Offensive littering is a Class C misdemeanor. [1971 c.743 §283; 1975 c.344 §2]

164.810 [Repealed by 1971 c.743 §432]

UNLAWFUL TRANSPORT

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

(a) The date of the permit;

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

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

(d) The amount and kind of wood, by species, to be cut or split;

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

(f) The date of expiration of the permit.

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

(a) The date of the document;

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

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

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

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

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

(a) The date of purchase or acquisition;

(b) The name, address, telephone number and signature of the person from whom the firewood was obtained and the date it was obtained;

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

(d) The quantity of firewood purchased or acquired; and

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

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

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

(a) The cutting or transportation of minor forest products having a total volume of less than 27 cubic feet;

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

(c) The transportation of minor forest products by a common carrier or contract carrier.

(6) As used in this section, "minor forest products" means firewood, posts, poles, shakeboards, shake or shingle bolts or split products, excluding mill ends, driftwood and artificially fabricated fireplace logs.

(7) Violation of any provision of subsections (1) to (3) of this section is a Class B misdemeanor. [1981 c.645 §2]

Note: 164.813, 164.815, 164.825, 164.828, 164.835, 164.845, 164.855 and 164.865 were enacted into law by the Legislative Assembly but were not added to or made a part of the Oregon Criminal Code of 1971 by Legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.815 Unlawful transport of hay. (1) A person commits the crime of unlawfully transporting hay if he knowingly transports more than 20 bales of hay on a public highway without having in his possession a transportation certificate signed by the producer or his agent showing:

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

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

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

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

(e) The type of hay.

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

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

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

(3) As used in this section:

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

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

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

Note: See note under 164.813.

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

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

(a) The date of the permit;

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

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

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

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

(f) The date of expiration of the permit.

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

(a) The date of the document;

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

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

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

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

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

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

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

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

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

Note: See note under 164.813.

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

Note: See note under 164.813.

164.830 [Repealed by 1971 c.743 §432]

164.835 Investigation to prevent violations of ORS 164.813 and 164.825. (1) All peace officers shall note and investigate the cutting and transportation of coniferous trees

and minor forest products as defined in ORS 164.813 for the purpose of preventing violations of ORS 164.813 and 164.825.

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

Note: See note under 164.813.

164.840 [Repealed by 1971 c.743 §432]

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

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

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

Note: See note under 164.813.

164.850 [Repealed by 1971 c.743 §432]

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

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

Note: See note under 164.813.

164.860 [Repealed by 1971 c.743 §432]

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

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

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

(c) Transportation or bill of sale.

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

(a) That is transported by common carrier;

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

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

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

(3) As used in this section:

(a) "Common carrier" means:

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

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

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

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

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

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

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

MISCELLANEOUS

164.865 Unlawful sound recording. (1) As used in this section:

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

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

(2) A person commits the crime of unlawful sound recording if he:

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

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

(3) This section does not apply to:

(a) The reproduction of any master recording that is used or intended to be used only for broadcast by educational radio or television stations; and

(b) The reproduction of a sound recording, defined as a public record under ORS 192.005 (5), with or without charging and collecting a fee therefor, in accordance with ORS 192.005 to 192.170 or 357.805 to 357.895; and

(c) The reproduction of a sound recording, defined as a legislative record under ORS 171.410, with or without charging and collecting a fee therefor, in accordance with ORS 171.410 to 171.430.

(4) Unlawful sound recording is a Class B misdemeanor. [1973 c.747 §1]

Note: See note under 164.813.

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

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

164.875 Unlawful videotape recording. (1) As used in this section:

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

(b) "Videotape" means a reel of tape upon which a motion picture is electronically or magnetically imprinted by means of an electronic video recorder and which may be used in video playback equipment to project or display the motion picture on a television screen.

(2) A person commits the crime of unlawful videotape recording if the person:

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

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

(3) This section does not apply to:

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

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

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

164.880 [Repealed by 1971 c.743 §432]

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

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

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

(c) Tampers with any aircraft or aircraft equipment, fuel, lubricant or parts in a manner such as to impair the safety, efficiency or operation of the aircraft, unless the person does so with the consent of the owner, operator or possessor of the aircraft; or

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

(2) Endangering aircraft is a Class C felony. [1981 c.901 §1]

Note: 164.880 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 164 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

164.890 [Repealed by 1971 c.743 §432]

164.900 [Repealed by 1971 c.743 §432]