

# Senate Bill 386

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## 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**.

Modifies culpable mental state for crime of unauthorized use of a vehicle when person takes, operates, exercises control over or otherwise uses vehicle, boat or aircraft without consent of owner. Removes riding in vehicle, boat or aircraft without consent of owner as manner of committing crime. Renames crime as unauthorized use of a vehicle in the first degree.

Creates crime of unauthorized use of a vehicle in the second degree applicable to persons riding in vehicle, boat or aircraft without consent of owner. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both.

## A BILL FOR AN ACT

1  
2 Relating to unauthorized use of a vehicle; creating new provisions; and amending ORS 131.602,  
3 137.717, 161.067, 164.135, 164.395 and 166.715.

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

5 **SECTION 1.** ORS 164.135 is amended to read:

6 164.135. (1) A person commits the crime of unauthorized use of a vehicle **in the first degree**  
7 when:

8 (a)(A) The person **knowingly** takes, operates, exercises control over[, *rides in*] or otherwise uses  
9 another's vehicle, boat or aircraft [*without consent of the owner*];

10 (B) **The person is aware of and consciously disregards a substantial and unjustifiable risk**  
11 **that the owner of the vehicle, boat or aircraft does not consent to the taking, operation or**  
12 **other use of, or the exercise of control over, the vehicle, boat or aircraft; and**

13 (C) **The owner of the vehicle, boat or aircraft did not consent to the taking, operation**  
14 **or other use of, or the exercise of control over, the vehicle, boat or aircraft;**

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

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

25 (2) Unauthorized use of a vehicle[, *boat or aircraft*] **in the first degree** is a Class C felony.

26 (3) Subsection (1)(a) of this section does not apply to a person who [*rides in or otherwise*] uses  
27 a public transit vehicle, as defined in ORS 166.116, if the vehicle is being operated by an authorized

**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 operator within the scope of the operator's employment.

2 **SECTION 2.** Section 3 of this 2019 Act is added to and made a part of ORS 164.015 to  
3 **164.135.**

4 **SECTION 3.** (1) A person commits the crime of unauthorized use of a vehicle in the  
5 second degree when:

6 (a) The person knowingly rides in another's vehicle, boat or aircraft;

7 (b) The person knows that the owner of the vehicle, boat or aircraft does not consent to  
8 the person's riding in the vehicle, boat or aircraft; and

9 (c) The owner or an authorized user of the vehicle, boat or aircraft did not consent to  
10 the person's riding in the vehicle, boat or aircraft.

11 (2) Unauthorized use of a vehicle in the second degree is a Class A misdemeanor.

12 (3) Subsection (1) of this section does not apply to a person who rides in a public transit  
13 vehicle, as defined in ORS 166.116, if the vehicle is being operated by an authorized operator  
14 within the scope of the operator's employment.

15 (4) Unauthorized use of a vehicle in the second degree is not a lesser included offense of  
16 unauthorized use of a vehicle in the first degree under ORS 164.135.

17 **SECTION 4.** ORS 131.602 is amended to read:

18 131.602. The crimes to which ORS 131.550 (12)(b) applies are:

19 (1) Bribe giving, as defined in ORS 162.015.

20 (2) Bribe receiving, as defined in ORS 162.025.

21 (3) Public investment fraud, as defined in ORS 162.117.

22 (4) Bribing a witness, as defined in ORS 162.265.

23 (5) Bribe receiving by a witness, as defined in ORS 162.275.

24 (6) Simulating legal process, as defined in ORS 162.355.

25 (7) Official misconduct in the first degree, as defined in ORS 162.415.

26 (8) Assisting another person to commit suicide, as defined in ORS 163.193.

27 (9) Custodial interference in the second degree, as defined in ORS 163.245.

28 (10) Custodial interference in the first degree, as defined in ORS 163.257.

29 (11) Buying or selling a person under 18 years of age, as defined in ORS 163.537.

30 (12) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.

31 (13) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.

32 (14) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.

33 (15) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.

34 (16) Possession of materials depicting sexually explicit conduct of a child in the first degree, as  
35 defined in ORS 163.688.

36 (17) Possession of materials depicting sexually explicit conduct of a child in the second degree,  
37 as defined in ORS 163.689.

38 (18) Theft in the second degree, as defined in ORS 164.045.

39 (19) Theft in the first degree, as defined in ORS 164.055.

40 (20) Aggravated theft in the first degree, as defined in ORS 164.057.

41 (21) Extortion, as defined in ORS 164.075.

42 (22) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.

43 (23) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.

44 (24) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.

45 (25)(a) Unauthorized use of a vehicle **in the first degree**, as defined in ORS 164.135.

1       **(b) Unauthorized use of a vehicle in the second degree, as defined in section 3 of this 2019**  
2 **Act.**

3       (26) Mail theft or receipt of stolen mail, as defined in ORS 164.162.

4       (27) Laundering a monetary instrument, as defined in ORS 164.170.

5       (28) Engaging in a financial transaction in property derived from unlawful activity, as defined  
6 in ORS 164.172.

7       (29) Burglary in the second degree, as defined in ORS 164.215.

8       (30) Burglary in the first degree, as defined in ORS 164.225.

9       (31) Possession of a burglary tool or theft device, as defined in ORS 164.235.

10       (32) Unlawful entry into a motor vehicle, as defined in ORS 164.272.

11       (33) Arson in the second degree, as defined in ORS 164.315.

12       (34) Arson in the first degree, as defined in ORS 164.325.

13       (35) Computer crime, as defined in ORS 164.377.

14       (36) Robbery in the third degree, as defined in ORS 164.395.

15       (37) Robbery in the second degree, as defined in ORS 164.405.

16       (38) Robbery in the first degree, as defined in ORS 164.415.

17       (39) Unlawful labeling of a sound recording, as defined in ORS 164.868.

18       (40) Unlawful recording of a live performance, as defined in ORS 164.869.

19       (41) Unlawful labeling of a videotape recording, as defined in ORS 164.872.

20       (42) A violation of ORS 164.886.

21       (43)(a) Endangering aircraft in the first degree, as defined in ORS 164.885.

22       (b) Endangering aircraft in the second degree, as defined in ORS 164.885.

23       (44) Interference with agricultural operations, as defined in ORS 164.887.

24       (45) Forgery in the second degree, as defined in ORS 165.007.

25       (46) Forgery in the first degree, as defined in ORS 165.013.

26       (47) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.

27       (48) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.

28       (49) Criminal possession of a forgery device, as defined in ORS 165.032.

29       (50) Criminal simulation, as defined in ORS 165.037.

30       (51) Fraudulently obtaining a signature, as defined in ORS 165.042.

31       (52) Fraudulent use of a credit card, as defined in ORS 165.055.

32       (53) Negotiating a bad check, as defined in ORS 165.065.

33       (54) Possessing a fraudulent communications device, as defined in ORS 165.070.

34       (55) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.

35       (56) Falsifying business records, as defined in ORS 165.080.

36       (57) Sports bribery, as defined in ORS 165.085.

37       (58) Sports bribe receiving, as defined in ORS 165.090.

38       (59) Misapplication of entrusted property, as defined in ORS 165.095.

39       (60) Issuing a false financial statement, as defined in ORS 165.100.

40       (61) Obtaining execution of documents by deception, as defined in ORS 165.102.

41       (62) A violation of ORS 165.543.

42       (63) Cellular counterfeiting in the third degree, as defined in ORS 165.577.

43       (64) Cellular counterfeiting in the second degree, as defined in ORS 165.579.

44       (65) Cellular counterfeiting in the first degree, as defined in ORS 165.581.

45       (66) Identity theft, as defined in ORS 165.800.

- 1 (67) A violation of ORS 166.190.
- 2 (68) Unlawful use of a weapon, as defined in ORS 166.220.
- 3 (69) A violation of ORS 166.240.
- 4 (70) Unlawful possession of a firearm, as defined in ORS 166.250.
- 5 (71) A violation of ORS 166.270.
- 6 (72) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or  
7 firearms silencer, as defined in ORS 166.272.
- 8 (73) A violation of ORS 166.275.
- 9 (74) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 10 (75) A violation of ORS 166.370.
- 11 (76) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 12 (77) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 13 (78) Possession of a hoax destructive device, as defined in ORS 166.385.
- 14 (79) A violation of ORS 166.410.
- 15 (80) Providing false information in connection with a transfer of a firearm, as defined in ORS  
16 166.416.
- 17 (81) Improperly transferring a firearm, as defined in ORS 166.418.
- 18 (82) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 19 (83) A violation of ORS 166.429.
- 20 (84) A violation of ORS 166.470.
- 21 (85) A violation of ORS 166.480.
- 22 (86) A violation of ORS 166.635.
- 23 (87) A violation of ORS 166.638.
- 24 (88) Unlawful paramilitary activity, as defined in ORS 166.660.
- 25 (89) A violation of ORS 166.720.
- 26 (90) Prostitution, as defined in ORS 167.007.
- 27 (91) Commercial sexual solicitation, as defined in ORS 167.008.
- 28 (92) Promoting prostitution, as defined in ORS 167.012.
- 29 (93) Compelling prostitution, as defined in ORS 167.017.
- 30 (94) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 31 (95) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 32 (96) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 33 (97) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 34 (98) Possession of gambling records in the first degree, as defined in ORS 167.137.
- 35 (99) Possession of a gambling device, as defined in ORS 167.147.
- 36 (100) Possession of a gray machine, as defined in ORS 167.164.
- 37 (101) Cheating, as defined in ORS 167.167.
- 38 (102) Tampering with drug records, as defined in ORS 167.212.
- 39 (103) A violation of ORS 167.262.
- 40 (104) Research and animal interference, as defined in ORS 167.312.
- 41 (105) Animal abuse in the first degree, as defined in ORS 167.320.
- 42 (106) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- 43 (107) Animal neglect in the first degree, as defined in ORS 167.330.
- 44 (108) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS  
45 167.352.

- 1 (109) Involvement in animal fighting, as defined in ORS 167.355.
- 2 (110) Dogfighting, as defined in ORS 167.365.
- 3 (111) Participation in dogfighting, as defined in ORS 167.370.
- 4 (112) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 5 (113) Interference with livestock production, as defined in ORS 167.388.
- 6 (114) A violation of ORS 167.390.
- 7 (115) Participation in cockfighting, as defined in ORS 167.431.
- 8 (116) A violation of ORS 471.410.
- 9 (117) Failure to report missing precursor substances, as defined in ORS 475.955.
- 10 (118) Illegally selling drug equipment, as defined in ORS 475.960.
- 11 (119) Providing false information on a precursor substances report, as defined in ORS 475.965.
- 12 (120) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- 13 (121) A violation of ORS 475.752, if it is a felony or a Class A misdemeanor.
- 14 (122) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- 15 (123) A violation of ORS 475.916.
- 16 (124) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- 17 (125) A violation of ORS 475.904.
- 18 (126) A violation of ORS 475B.337, if it is a felony or a Class A misdemeanor.
- 19 (127) A violation of ORS 475B.341, if it is a felony or a Class A misdemeanor.
- 20 (128) A violation of ORS 475B.346, if it is a felony or a Class A misdemeanor.
- 21 (129) A violation of ORS 475B.349, if it is a felony or a Class A misdemeanor.
- 22 (130) A violation of ORS 475B.227.
- 23 (131) Misuse of an identification card, as defined in ORS 807.430.
- 24 (132) Unlawful production of identification cards, licenses, permits, forms or camera cards, as  
25 defined in ORS 807.500.
- 26 (133) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- 27 (134) Using an invalid license, as defined in ORS 807.580.
- 28 (135) Permitting misuse of a license, as defined in ORS 807.590.
- 29 (136) Using another's license, as defined in ORS 807.600.
- 30 (137) Criminal driving while suspended or revoked, as defined in ORS 811.182.
- 31 (138) Aggravated driving while suspended or revoked, as defined in ORS 163.196.
- 32 (139) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a  
33 felony.
- 34 (140) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- 35 (141) Unlawful distribution of tobacco products, as defined in ORS 323.632.
- 36 (142) A violation of ORS 180.440 (2) or 180.486 (2).
- 37 (143) A violation described in ORS 475.806 to 475.894, if it is a felony.
- 38 (144) Subjecting another person to involuntary servitude in the first degree, as defined in ORS  
39 163.264.
- 40 (145) Subjecting another person to involuntary servitude in the second degree, as defined in ORS  
41 163.263.
- 42 (146) Trafficking in persons, as defined in ORS 163.266.
- 43 (147) Luring a minor, as defined in ORS 167.057.
- 44 (148) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.
- 45 (149) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.

1 (150) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to (149) of this  
2 section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

3 **SECTION 5.** ORS 137.717 is amended to read:

4 137.717. (1) When a court sentences a person convicted of:

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

9 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary  
10 in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in  
11 the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated  
12 identity theft under ORS 165.803;

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

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

19 (b) Unauthorized use of a vehicle **in the first degree** under ORS 164.135, mail theft or receipt  
20 of stolen mail under ORS 164.162, burglary in the second degree under ORS 164.215, criminal mis-  
21 chief in the first degree under ORS 164.365, computer crime under ORS 164.377, robbery in the third  
22 degree under ORS 164.395, forgery in the first degree under ORS 165.013, criminal possession of a  
23 forged instrument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS  
24 165.055 (4)(b), possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles un-  
25 der ORS 819.310, the presumptive sentence is 18 months of incarceration, unless the rules of the  
26 Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

27 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-  
28 thorized use of a vehicle **in the first degree** under ORS 164.135, burglary in the first degree under  
29 ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under  
30 ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under  
31 ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under  
32 ORS 165.803;

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

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

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

42 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-  
43 thorized use of a vehicle **in the first degree** under ORS 164.135, burglary in the first degree under  
44 ORS 164.225, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS  
45 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS

1 819.310 or aggravated identity theft under ORS 165.803; or

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

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

- 5 (a) Theft in the second degree under ORS 164.045;
- 6 (b) Theft in the first degree under ORS 164.055;
- 7 (c) Aggravated theft in the first degree under ORS 164.057;
- 8 (d) Unauthorized use of a vehicle **in the first degree** under ORS 164.135;
- 9 (e) Mail theft or receipt of stolen mail under ORS 164.162;
- 10 (f) Burglary in the second degree under ORS 164.215;
- 11 (g) Burglary in the first degree under ORS 164.225;
- 12 (h) Criminal mischief in the second degree under ORS 164.354;
- 13 (i) Criminal mischief in the first degree under ORS 164.365;
- 14 (j) Computer crime under ORS 164.377;
- 15 (k) Forgery in the second degree under ORS 165.007;
- 16 (L) Forgery in the first degree under ORS 165.013;
- 17 (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;
- 18 (n) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- 19 (o) Fraudulent use of a credit card under ORS 165.055;
- 20 (p) Identity theft under ORS 165.800;
- 21 (q) Possession of a stolen vehicle under ORS 819.300;
- 22 (r) Trafficking in stolen vehicles under ORS 819.310; and
- 23 (s) Any attempt to commit a crime listed in this subsection.

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

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

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

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

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

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

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

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

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

45 (a) The person was not on probation, parole or post-prison supervision for a crime listed in

1 subsection (1) of this section at the time of the commission of the current crime of conviction;

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

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

5 (d) In consideration of the nature of the offense and the harm to the victim, a downward de-  
6 parture will:

7 (A) Increase public safety;

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

9 (C) Not unduly reduce the appropriate punishment.

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

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

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

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

23 (10) As used in this section:

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

26 (b) "Previous conviction" includes:

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

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

29 **SECTION 6.** ORS 137.717, as amended by section 7, chapter 649, Oregon Laws 2013, and section  
30 6, chapter 673, Oregon Laws 2017, is amended to read:

31 137.717. (1) When a court sentences a person convicted of:

32 (a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under  
33 ORS 164.225, robbery in the third degree under ORS 164.395 or aggravated identity theft under ORS  
34 165.803, the presumptive sentence is 24 months of incarceration, unless the rules of the Oregon  
35 Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

36 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary  
37 in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in  
38 the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated  
39 identity theft under ORS 165.803;

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

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



1 (b) Unauthorized use of a vehicle **in the first degree** under ORS 164.135, mail theft or receipt  
 2 of stolen mail under ORS 164.162, burglary in the second degree under ORS 164.215, criminal mis-  
 3 chief in the first degree under ORS 164.365, computer crime under ORS 164.377, forgery in the first  
 4 degree under ORS 165.013, criminal possession of a forged instrument in the first degree under ORS  
 5 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b), possession of a stolen vehicle under  
 6 ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is 18  
 7 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a  
 8 longer presumptive sentence, if the person has:

9 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-  
 10 thorized use of a vehicle **in the first degree** under ORS 164.135, burglary in the first degree under  
 11 ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under  
 12 ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under  
 13 ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under  
 14 ORS 165.803;

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

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

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

24 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-  
 25 thorized use of a vehicle **in the first degree** under ORS 164.135, burglary in the first degree under  
 26 ORS 164.225, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS  
 27 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS  
 28 819.310 or aggravated identity theft under ORS 165.803; or

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

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

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

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

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

35 (d) Unauthorized use of a vehicle **in the first degree** under ORS 164.135;

36 (e) Mail theft or receipt of stolen mail under ORS 164.162;

37 (f) Burglary in the second degree under ORS 164.215;

38 (g) Burglary in the first degree under ORS 164.225;

39 (h) Criminal mischief in the second degree under ORS 164.354;

40 (i) Criminal mischief in the first degree under ORS 164.365;

41 (j) Computer crime under ORS 164.377;

42 (k) Forgery in the second degree under ORS 165.007;

43 (L) Forgery in the first degree under ORS 165.013;

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

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

- 1 (o) Fraudulent use of a credit card under ORS 165.055;  
2 (p) Identity theft under ORS 165.800;  
3 (q) Possession of a stolen vehicle under ORS 819.300;  
4 (r) Trafficking in stolen vehicles under ORS 819.310; and  
5 (s) Any attempt to commit a crime listed in this subsection.
- 6 (3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this section shall be in-  
7 creased by two months for each previous conviction the person has that:  
8 (A) Was for any of the crimes listed in subsection (1) or (2) of this section; and  
9 (B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or  
10 (b) of this section.
- 11 (b) Previous convictions may not increase a presumptive sentence described in subsection (1)(a)  
12 or (b) of this section by more than 12 months under this subsection.
- 13 (4) The court may impose a sentence other than the sentence provided by subsection (1) or (3)  
14 of this section if the court imposes:  
15 (a) A longer term of incarceration that is otherwise required or authorized by law; or  
16 (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission  
17 based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon  
18 Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure al-  
19 lowed for a person sentenced under this subsection is double the presumptive sentence provided in  
20 subsection (1) or (3) of this section.
- 21 (5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under  
22 subsection (4) of this section to a term of incarceration that exceeds the period of time described  
23 in ORS 161.605.
- 24 (6) The court shall sentence a person under this section to at least the presumptive sentence  
25 described in subsection (1)(a) or (b) or (3) of this section, unless the parties stipulate otherwise or  
26 the court finds that:  
27 (a) The person was not on probation, parole or post-prison supervision for a crime listed in  
28 subsection (1) of this section at the time of the commission of the current crime of conviction;  
29 (b) The person has not previously received a downward departure from a presumptive sentence  
30 for a crime listed in subsection (1) of this section;  
31 (c) The harm or loss caused by the crime is not greater than usual for that type of crime; and  
32 (d) In consideration of the nature of the offense and the harm to the victim, a downward de-  
33 parture will:  
34 (A) Increase public safety;  
35 (B) Enhance the likelihood that the person will be rehabilitated; and  
36 (C) Not unduly reduce the appropriate punishment.
- 37 (7) When the court imposes a sentence of probation for a conviction for theft in the first degree  
38 or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS  
39 144.087 may require the person to receive a high level of supervision for at least 12 months, and  
40 may extend the period of high-level supervision for all or part of the remaining probationary term.
- 41 (8)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have  
42 occurred upon the pronouncement of sentence in open court. However, when sentences are imposed  
43 for two or more convictions arising out of the same conduct or criminal episode, none of the con-  
44 victions is considered to have occurred prior to any of the other convictions arising out of the same  
45 conduct or criminal episode.

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

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

5 (10) As used in this section:

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

8 (b) "Previous conviction" includes:

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

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

11 **SECTION 7.** ORS 161.067 is amended to read:

12 161.067. (1) When the same conduct or criminal episode violates two or more statutory pro-  
13 visions and each provision requires proof of an element that the others do not, there are as many  
14 separately punishable offenses as there are separate statutory violations.

15 (2) When the same conduct or criminal episode, though violating only one statutory provision  
16 involves two or more victims, there are as many separately punishable offenses as there are victims.  
17 However, two or more persons owning joint interests in real or personal property shall be consid-  
18 ered a single victim for purposes of determining the number of separately punishable offenses if the  
19 property is the subject of one of the following crimes:

20 (a) Theft as defined in ORS 164.015.

21 (b) Unauthorized use of a vehicle as defined in ORS 164.135 **or section 3 of this 2019 Act.**

22 (c) Criminal possession of rented or leased personal property as defined in ORS 164.140.

23 (d) Criminal possession of a rented or leased motor vehicle as defined in ORS 164.138.

24 (e) Burglary as defined in ORS 164.215 or 164.225.

25 (f) Criminal trespass as defined in ORS 164.243, 164.245, 164.255, 164.265 or 164.278.

26 (g) Arson and related offenses as defined in ORS 164.315, 164.325 or 164.335.

27 (h) Forgery and related offenses as defined in ORS 165.002 to 165.070.

28 (3) When the same conduct or criminal episode violates only one statutory provision and in-  
29 volves only one victim, but nevertheless involves repeated violations of the same statutory provision  
30 against the same victim, there are as many separately punishable offenses as there are violations,  
31 except that each violation, to be separately punishable under this subsection, must be separated  
32 from other such violations by a sufficient pause in the defendant's criminal conduct to afford the  
33 defendant an opportunity to renounce the criminal intent. Each method of engaging in oral or anal  
34 sexual intercourse as defined in ORS 163.305, and each method of engaging in unlawful sexual pen-  
35 etration as defined in ORS 163.408 and 163.411 shall constitute separate violations of their respec-  
36 tive statutory provisions for purposes of determining the number of statutory violations.

37 **SECTION 8.** ORS 164.395 is amended to read:

38 164.395. (1) A person commits the crime of robbery in the third degree if in the course of com-  
39 mitting or attempting to commit theft or unauthorized use of a vehicle **in the first degree** as de-  
40 fined in ORS 164.135 the person uses or threatens the immediate use of physical force upon another  
41 person with the intent of:

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

44 (b) Compelling the owner of such property or another person to deliver the property or to en-  
45 gage in other conduct which might aid in the commission of the theft or unauthorized use of a ve-

1 hicle.

2 (2) Robbery in the third degree is a Class C felony.

3 **SECTION 9.** ORS 166.715 is amended to read:

4 166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

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

9 (2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business  
10 trust or other profit or nonprofit legal entity, and includes any union, association or group of indi-  
11 viduals associated in fact although not a legal entity, and both illicit and licit enterprises and gov-  
12 ernmental and nongovernmental entities.

13 (3) "Investigative agency" means the Department of Justice or any district attorney.

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

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

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

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

33 (A) ORS 59.005 to 59.505, 59.710 to 59.830, 59.991 and 59.995, relating to securities;

34 (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;

35 (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating to obstructing  
36 governmental administration;

37 (D) ORS 162.405 to 162.425, relating to abuse of public office;

38 (E) ORS 162.455, relating to interference with legislative operation;

39 (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;

40 (G) ORS 163.160 to 163.205, relating to assault and related offenses;

41 (H) ORS 163.225 and 163.235, relating to kidnapping;

42 (I) ORS 163.275, relating to coercion;

43 (J) ORS 163.665 to 163.693, relating to sexual conduct of children;

44 (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.098, 164.125, 164.135,  
45 164.140, 164.215, 164.225 and 164.245 to 164.270 **and section 3 of this 2019 Act**, relating to theft,

- 1 burglary, criminal trespass and related offenses;
- 2 (L) ORS 164.315 to 164.335, relating to arson and related offenses;
- 3 (M) ORS 164.345 to 164.365, relating to criminal mischief;
- 4 (N) ORS 164.395 to 164.415, relating to robbery;
- 5 (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a  
6 recording;
- 7 (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and  
8 related offenses;
- 9 (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;
- 10 (R) ORS 165.540 and 165.555, relating to communication crimes;
- 11 (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating  
12 to firearms and other weapons;
- 13 (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.057,  
14 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355, 167.365,  
15 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, sexual conduct, gambling,  
16 computer crimes involving the Oregon State Lottery, animal fighting, forcible recovery of a fighting  
17 bird and related offenses;
- 18 (U) ORS 171.990, relating to legislative witnesses;
- 19 (V) ORS 260.575 and 260.665, relating to election offenses;
- 20 (W) ORS 314.075, relating to income tax;
- 21 (X) ORS 180.440 (2) and 180.486 (2) and ORS chapter 323, relating to cigarette and tobacco  
22 products taxes and the directories developed under ORS 180.425 and 180.477;
- 23 (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments or medical  
24 assistance benefits, and ORS 411.990 (2) and (3);
- 25 (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;
- 26 (AA) ORS 463.995, relating to entertainment wrestling and unarmed combat sports, as defined  
27 in ORS 463.015;
- 28 (BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445,  
29 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS  
30 chapter 471 relating to licenses issued under the Liquor Control Act;
- 31 (CC) ORS 475B.010 to 475B.545, relating to marijuana items as defined in ORS 475B.015;
- 32 (DD) ORS 475.005 to 475.285 and 475.752 to 475.980, relating to controlled substances;
- 33 (EE) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;
- 34 (FF) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;
- 35 (GG) ORS 658.452 or 658.991 (2) to (4), relating to labor contractors;
- 36 (HH) ORS chapter 706, relating to banking law administration;
- 37 (II) ORS chapter 714, relating to branch banking;
- 38 (JJ) ORS chapter 716, relating to mutual savings banks;
- 39 (KK) ORS chapter 723, relating to credit unions;
- 40 (LL) ORS chapter 726, relating to pawnbrokers;
- 41 (MM) ORS 166.382 and 166.384, relating to destructive devices;
- 42 (NN) ORS 165.074;
- 43 (OO) ORS 86A.095 to 86A.198, relating to mortgage bankers and mortgage brokers;
- 44 (PP) ORS chapter 496, 497 or 498, relating to wildlife;
- 45 (QQ) ORS 163.355 to 163.427, relating to sexual offenses;

- 1 (RR) ORS 166.015, relating to riot;
- 2 (SS) ORS 166.155 and 166.165, relating to intimidation;
- 3 (TT) ORS chapter 696, relating to real estate and escrow;
- 4 (UU) ORS chapter 704, relating to outfitters and guides;
- 5 (VV) ORS 165.692, relating to making a false claim for health care payment;
- 6 (WW) ORS 162.117, relating to public investment fraud;
- 7 (XX) ORS 164.170 or 164.172;
- 8 (YY) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;
- 9 (ZZ) ORS 164.886;
- 10 (AAA) ORS 167.312 and 167.388;
- 11 (BBB) ORS 164.889;
- 12 (CCC) ORS 165.800; or
- 13 (DDD) ORS 163.263, 163.264 or 163.266.

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

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

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

19 (A) ORS chapter 462, relating to racing;

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

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

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

24 (8) Notwithstanding contrary provisions in ORS 174.060, when this section references a statute  
25 in the Oregon Revised Statutes that is substantially different in the nature of its essential provisions  
26 from what the statute was when this section was enacted, the reference shall extend to and include  
27 amendments to the statute.

28 **SECTION 10. Section 3 of this 2019 Act and the amendments to ORS 131.602, 137.717,**  
29 **161.067, 164.135, 164.395 and 166.715 by sections 1 and 4 to 9 of this 2019 Act apply to offenses**  
30 **committed on or after the effective date of this 2019 Act.**

31