

# D R A F T

## SUMMARY

Provides that charging instrument that alleges that defendant committed misdemeanor automatically be treated as charging defendant with commission of Class A violation unless prosecuting attorney elects to charge defendant with misdemeanor. Specifies certain misdemeanors that are not subject to automatic violation treatment. Specifies certain misdemeanors that are not subject to automatic violation treatment but that prosecuting attorney may elect to treat as violations.

## A BILL FOR AN ACT

1  
2 Relating to offenses; amending ORS 133.245, 133.310, 153.008, 161.566 and  
3 161.568.

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

4 **SECTION 1.** ORS 153.008 is amended to read:

5  
6 153.008. (1) Except as provided in subsection (2) of this section, an offense  
7 is a violation if any of the following apply:

8 (a) The offense is designated as a violation in the statute defining the  
9 offense.

10 (b) The statute prescribing the penalty for the offense provides that the  
11 offense is punishable by a fine but does not provide that the offense is  
12 punishable by a term of imprisonment. The statute may provide for punish-  
13 ment in addition to a fine as long as the punishment does not include a term  
14 of imprisonment.

15 (c) The offense is created by an ordinance of a county, city, district or  
16 other political subdivision of this state with authority to create offenses, and  
17 the ordinance provides that violation of the ordinance is punishable by a fine  
18 but does not provide that the offense is punishable by a term of

**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 imprisonment. The ordinance may provide for punishment in addition to a  
2 fine as long as the punishment does not include a term of imprisonment.

3 **(d) The offense is designated as a misdemeanor in the statute de-**  
4 **fining the offense but is subject to automatic violation treatment un-**  
5 **der ORS 161.566 (1).**

6 *[(d)]* **(e) The offense is designated as a misdemeanor in the statute**  
7 **defining the offense and is not subject to automatic violation treat-**  
8 **ment under ORS 161.566, but** the prosecuting attorney has elected to treat  
9 the offense as a violation *[for purposes of a particular case]* in the manner  
10 provided by ORS 161.566 (4).

11 *[(e)]* **(f) The court has elected to treat the offense as a violation for pur-**  
12 **poses of a particular case in the manner provided by ORS 161.568.**

13 (2) Conviction of a violation does not give rise to any disability or legal  
14 disadvantage based on conviction of a crime.

15 **SECTION 2.** ORS 161.566, as amended by section 2, chapter 82, Oregon  
16 Laws 2012, is amended to read:

17 161.566. *[(1) Except as provided in subsection (4) of this section, a prose-*  
18 *cuting attorney may elect to treat any misdemeanor as a Class A violation.*  
19 *The election must be made by the prosecuting attorney orally at the time of the*  
20 *first appearance of the defendant or in writing filed on or before the time*  
21 *scheduled for the first appearance of the defendant. If no election is made*  
22 *within the time allowed, the case shall proceed as a misdemeanor.]*

23 **(1) Except as provided in subsections (2) and (3) of this section, ev-**  
24 **ery charging instrument that alleges that a defendant committed a**  
25 **misdemeanor shall automatically be treated as charging the defendant**  
26 **with the commission of a Class A violation unless a prosecuting at-**  
27 **torney elects to charge the defendant with a misdemeanor in the**  
28 **manner described in subsection (4) of this section.**

29 **(2) A charging instrument that alleges that the defendant commit-**  
30 **ted one or more of the following offenses is not subject to automatic**  
31 **violation treatment under subsection (1) of this section, and the of-**

1 **fense shall be prosecuted as a misdemeanor:**

2 **(a) Fleeing or attempting to elude a police officer under ORS**  
3 **811.540.**

4 **(b) Driving under the influence of intoxicants under ORS 813.010.**

5 **(3) A charging instrument that alleges that the defendant commit-**  
6 **ted one or more of the following offenses is not subject to automatic**  
7 **violation treatment under subsection (1) of this section, and the of-**  
8 **fense shall be prosecuted as a misdemeanor unless a prosecuting at-**  
9 **torney elects to treat the offense as a Class A violation under**  
10 **subsection (4) of this section:**

11 **(a) Any offense constituting domestic violence as that term is de-**  
12 **finied in ORS 90.100.**

13 **(b) Escape in the third degree under ORS 162.145.**

14 **(c) Unauthorized departure under ORS 162.175.**

15 **(d) Interfering with a peace officer or parole and probation officer**  
16 **under ORS 162.247.**

17 **(e) Resisting arrest under ORS 162.315.**

18 **(f) Assault in the fourth degree under ORS 163.160.**

19 **(g) Disorderly conduct in any degree under ORS 166.023 and 166.025.**

20 **(4) A prosecuting attorney may elect to charge a defendant with a**  
21 **misdemeanor for an offense that would automatically be treated as a**  
22 **Class A violation under subsection (1) of this section, or to charge a**  
23 **defendant with a Class A violation for an offense listed in subsection**  
24 **(3) of this section, by oral announcement at the time of the first ap-**  
25 **pearance of the defendant or in a writing filed on or before the time**  
26 **scheduled for the first appearance of the defendant.**

27 **[(2)] (5) [If a prosecuting attorney elects to treat a misdemeanor] If an of-**  
28 **fense was charged as a misdemeanor but is treated as a Class A vio-**  
29 **lation under this section, the court shall amend the accusatory instrument**  
30 **to reflect the charged offense as a Class A violation and clearly denominate**  
31 **the offense as a Class A violation in any judgment entered in the matter.**

1 *[Notwithstanding ORS 153.021,]* The fine that a court may impose upon con-  
2 viction of a violation under this section may not:

3 (a) Be less than the presumptive fine established by ORS 153.019 for a  
4 Class A violation; or

5 (b) Exceed the maximum fine established by ORS 153.018 for a Class A  
6 violation.

7 *[(3) If a prosecuting attorney elects to treat a misdemeanor as a Class A*  
8 *violation under this section, and the defendant fails to make any required ap-*  
9 *pearance in the matter, the court may enter a default judgment against the*  
10 *defendant in the manner provided by ORS 153.102. Notwithstanding ORS*  
11 *153.021, the fine that the court may impose under a default judgment entered*  
12 *pursuant to ORS 153.102 may not:]*

13 *[(a) Be less than the presumptive fine established by ORS 153.019 for a*  
14 *Class A violation; or]*

15 *[(b) Exceed the maximum fine established by ORS 153.018 for a Class A*  
16 *violation.]*

17 *[(4) A prosecuting attorney may not elect to treat misdemeanors created*  
18 *under ORS 811.540 or 813.010 as violations under the provisions of this*  
19 *section.]*

20 *[(5)]* **(6)** The *[election]* **elections** provided for in this section may be made  
21 by a city attorney acting as prosecuting attorney in the case of municipal  
22 ordinance offenses, a county counsel acting as prosecuting attorney under a  
23 county charter in the case of county ordinance offenses, and the Attorney  
24 General acting as prosecuting attorney in those criminal actions or pro-  
25 ceedings within the jurisdiction of the Attorney General.

26 **SECTION 3.** ORS 161.568, as amended by section 3, chapter 82, Oregon  
27 Laws 2012, is amended to read:

28 161.568. (1) Except as provided in subsection (4) of this section, a court  
29 may elect to treat any misdemeanor **listed in ORS 161.566 (3)** as a Class A  
30 violation for the purpose of entering a default judgment under ORS 153.102  
31 if:

1 (a) A complaint or information has been filed with the court for the  
2 misdemeanor;

3 (b) The defendant has failed to make an appearance in the proceedings  
4 required by the court or by law; and

5 (c) The court has given notice to the district attorney for the county and  
6 the district attorney has informed the court that the district attorney does  
7 not object to treating the misdemeanor as a Class A violation.

8 (2) If the court treats a misdemeanor as a Class A violation under this  
9 section, the court shall amend the accusatory instrument to reflect the  
10 charged offense as a Class A violation and clearly denominate the offense  
11 as a Class A violation in the judgment entered in the matter.

12 (3) Notwithstanding ORS 153.021, if the court treats a misdemeanor as a  
13 Class A violation under this section, the fine that the court may impose  
14 under a default judgment entered pursuant to ORS 153.102 may not:

15 (a) Be less than the presumptive fine established by ORS 153.019 for a  
16 Class A violation; or

17 (b) Exceed the maximum fine established by ORS 153.018 for a Class A  
18 violation.

19 *[(4) A court may not treat misdemeanors created under ORS 811.540 or*  
20 *813.010 as violations under the provisions of this section.]*

21 **SECTION 4.** ORS 133.245 is amended to read:

22 133.245. (1) A federal officer may arrest a person:

23 (a) For any crime committed in the federal officer's presence if the federal  
24 officer has probable cause to believe the person committed the crime.

25 (b) For any felony or Class A misdemeanor **not subject to automatic**  
26 **violation treatment under ORS 161.566** if the federal officer has probable  
27 cause to believe the person committed the crime.

28 (c) When rendering assistance to or at the request of a law enforcement  
29 officer, as defined in ORS 414.805.

30 (d) When the federal officer has received positive information in writing  
31 or by telephone, telegraph, teletype, radio, facsimile machine or other au-

1 thortitative source that a peace officer holds a warrant for the person's ar-  
2 rest.

3 (2) The federal officer shall inform the person to be arrested of the federal  
4 officer's authority and reason for the arrest.

5 (3) In order to make an arrest, a federal officer may use physical force  
6 as is justifiable and authorized of a peace officer under ORS 161.235, 161.239  
7 and 161.245.

8 (4)(a) A federal officer making an arrest under this section without un-  
9 necessary delay shall take the arrested person before a magistrate or deliver  
10 the arrested person to a peace officer.

11 (b) The federal officer retains authority over the arrested person only  
12 until the person appears before a magistrate or until the law enforcement  
13 agency having general jurisdiction over the area in which the arrest took  
14 place assumes responsibility for the person.

15 (5) A federal officer when making an arrest for a nonfederal offense under  
16 the circumstances provided in this section shall have the same immunity  
17 from suit as a state or local law enforcement officer.

18 (6) A federal officer is authorized to make arrests under this section upon  
19 certification by the Department of Public Safety Standards and Training that  
20 the federal officer has received proper training to enable that officer to make  
21 arrests under this section.

22 **SECTION 5.** ORS 133.310 is amended to read:

23 133.310. (1) A peace officer may arrest a person without a warrant if the  
24 officer has probable cause to believe that the person has committed any of  
25 the following:

26 (a) A felony.

27 (b) A misdemeanor **not subject to automatic violation treatment un-**  
28 **der ORS 161.566.**

29 (c) An unclassified offense for which the maximum penalty allowed by law  
30 is equal to or greater than the maximum penalty allowed for a Class C  
31 misdemeanor.

1     [(d) Any other crime committed in the officer's presence.]

2     (2) A peace officer may arrest a person without a warrant when the peace  
3 officer is notified by telegraph, telephone, radio or other mode of communi-  
4 cation by another peace officer of any state that there exists a duly issued  
5 warrant for the arrest of a person within the other peace officer's jurisdic-  
6 tion.

7     (3) A peace officer shall arrest and take into custody a person without a  
8 warrant when the peace officer has probable cause to believe that:

9     (a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or  
10 (d), 107.716, 107.718, 124.015, 124.020, 163.738 or 419B.845 restraining the per-  
11 son;

12     (b) A true copy of the order and proof of service on the person has been  
13 filed as required in ORS 107.720, 124.030, 163.741 or 419B.845; and

14     (c) The person to be arrested has violated the terms of that order.

15     (4) A peace officer shall arrest and take into custody a person without a  
16 warrant if:

17     (a) The person protected by a foreign restraining order as defined by ORS  
18 24.190 presents a copy of the foreign restraining order to the officer and re-  
19 presents to the officer that the order supplied is the most recent order in  
20 effect between the parties and that the person restrained by the order has  
21 been personally served with a copy of the order or has actual notice of the  
22 order; and

23     (b) The peace officer has probable cause to believe that the person to be  
24 arrested has violated the terms of the foreign restraining order.

25     (5) A peace officer shall arrest and take into custody a person without a  
26 warrant if:

27     (a) The person protected by a foreign restraining order as defined by ORS  
28 24.190 has filed a copy of the foreign restraining order with a court or has  
29 been identified by the officer as a party protected by a foreign restraining  
30 order entered in the Law Enforcement Data System or in the databases of  
31 the National Crime Information Center of the United States Department of

1 Justice; and

2 (b) The peace officer has probable cause to believe that the person to be  
3 arrested has violated the terms of the foreign restraining order.

4 (6) A peace officer shall arrest and take into custody a person without a  
5 warrant if the peace officer has probable cause to believe:

6 (a) The person has been charged with an offense and is presently released  
7 as to that charge under ORS 135.230 to 135.290; and

8 (b) The person has failed to comply with a no contact condition of the  
9 release agreement.

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