

# House Bill 3184

Sponsored by COMMITTEE ON JUDICIARY

## 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**.

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 161.568.

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

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

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

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

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

12 (c) The offense is created by an ordinance of a county, city, district or other political subdivision  
13 of this state with authority to create offenses, and the ordinance provides that violation of the or-  
14 dinance is punishable by a fine but does not provide that the offense is punishable by a term of  
15 imprisonment. The ordinance may provide for punishment in addition to a fine as long as the pun-  
16 ishment does not include a term of imprisonment.

17 **(d) The offense is designated as a misdemeanor in the statute defining the offense but is  
18 subject to automatic violation treatment under ORS 161.566 (1).**

19 **[(d)] (e) The offense is designated as a misdemeanor in the statute defining the offense  
20 and is not subject to automatic violation treatment under ORS 161.566, but** the prosecuting  
21 attorney has elected to treat the offense as a violation [*for purposes of a particular case*] in the  
22 manner provided by ORS 161.566 (4).

23 **[(e)] (f)** The court has elected to treat the offense as a violation for purposes of a particular case  
24 in the manner provided by ORS 161.568.

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

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

29 161.566. *[(1) Except as provided in subsection (4) of this section, a prosecuting attorney may elect  
30 to treat any misdemeanor as a Class A violation. The election must be made by the prosecuting attorney*

**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 orally at the time of the first appearance of the defendant or in writing filed on or before the time  
 2 scheduled for the first appearance of the defendant. If no election is made within the time allowed, the  
 3 case shall proceed as a misdemeanor.]

4 (1) Except as provided in subsections (2) and (3) of this section, every charging instru-  
 5 ment that alleges that a defendant committed a misdemeanor shall automatically be treated  
 6 as charging the defendant with the commission of a Class A violation unless a prosecuting  
 7 attorney elects to charge the defendant with a misdemeanor in the manner described in  
 8 subsection (4) of this section.

9 (2) A charging instrument that alleges that the defendant committed one or more of the  
 10 following offenses is not subject to automatic violation treatment under subsection (1) of this  
 11 section, and the offense shall be prosecuted as a misdemeanor:

12 (a) Fleeing or attempting to elude a police officer under ORS 811.540.

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

14 (3) A charging instrument that alleges that the defendant committed one or more of the  
 15 following offenses is not subject to automatic violation treatment under subsection (1) of this  
 16 section, and the offense shall be prosecuted as a misdemeanor unless a prosecuting attorney  
 17 elects to treat the offense as a Class A violation under subsection (4) of this section:

18 (a) Any offense constituting domestic violence as that term is defined in ORS 90.100.

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

20 (c) Unauthorized departure under ORS 162.175.

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

22 (e) Resisting arrest under ORS 162.315.

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

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

25 (4) A prosecuting attorney may elect to charge a defendant with a misdemeanor for an  
 26 offense that would automatically be treated as a Class A violation under subsection (1) of this  
 27 section, or to charge a defendant with a Class A violation for an offense listed in subsection  
 28 (3) of this section, by oral announcement at the time of the first appearance of the defendant  
 29 or in a writing filed on or before the time scheduled for the first appearance of the defend-  
 30 ant.

31 [(2)] (5) [If a prosecuting attorney elects to treat a misdemeanor] If an offense was charged as  
 32 a misdemeanor but is treated as a Class A violation under this section, the court shall amend the  
 33 accusatory instrument to reflect the charged offense as a Class A violation and clearly denominate  
 34 the offense as a Class A violation in any judgment entered in the matter. [Notwithstanding ORS  
 35 153.021,] The fine that a court may impose upon conviction of a violation under this section may  
 36 not:

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

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

39 [(3) If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this sec-  
 40 tion, and the defendant fails to make any required appearance in the matter, the court may enter a  
 41 default judgment against the defendant in the manner provided by ORS 153.102. Notwithstanding ORS  
 42 153.021, the fine that the court may impose under a default judgment entered pursuant to ORS 153.102  
 43 may not:]

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

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

1        [(4) A prosecuting attorney may not elect to treat misdemeanors created under ORS 811.540 or  
2 813.010 as violations under the provisions of this section.]

3        [(5)] (6) The [election] **elections** provided for in this section may be made by a city attorney  
4 acting as prosecuting attorney in the case of municipal ordinance offenses, a county counsel acting  
5 as prosecuting attorney under a county charter in the case of county ordinance offenses, and the  
6 Attorney General acting as prosecuting attorney in those criminal actions or proceedings within the  
7 jurisdiction of the Attorney General.

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

10        161.568. (1) Except as provided in subsection (4) of this section, a court may elect to treat any  
11 misdemeanor **listed in ORS 161.566 (3)** as a Class A violation for the purpose of entering a default  
12 judgment under ORS 153.102 if:

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

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

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

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

22        (3) Notwithstanding ORS 153.021, if the court treats a misdemeanor as a Class A violation under  
23 this section, the fine that the court may impose under a default judgment entered pursuant to ORS  
24 153.102 may not:

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

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

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

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

30        133.245. (1) A federal officer may arrest a person:

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

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

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

38        (d) When the federal officer has received positive information in writing or by telephone, tele-  
39 graph, teletype, radio, facsimile machine or other authoritative source that a peace officer holds a  
40 warrant for the person's arrest.

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

43        (3) In order to make an arrest, a federal officer may use physical force as is justifiable and au-  
44 thorized of a peace officer under ORS 161.235, 161.239 and 161.245.

45        (4)(a) A federal officer making an arrest under this section without unnecessary delay shall take

1 the arrested person before a magistrate or deliver the arrested person to a peace officer.

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

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

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

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

12 133.310. (1) A peace officer may arrest a person without a warrant if the officer has probable  
 13 cause to believe that the person has committed any of the following:

14 (a) A felony.

15 (b) A misdemeanor **not subject to automatic violation treatment under ORS 161.566.**

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

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

19 (2) A peace officer may arrest a person without a warrant when the peace officer is notified by  
 20 telegraph, telephone, radio or other mode of communication by another peace officer of any state  
 21 that there exists a duly issued warrant for the arrest of a person within the other peace officer's  
 22 jurisdiction.

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

25 (a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or (d), 107.716, 107.718,  
 26 124.015, 124.020, 163.738 or 419B.845 restraining the person;

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

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

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

31 (a) The person protected by a foreign restraining order as defined by ORS 24.190 presents a copy  
 32 of the foreign restraining order to the officer and represents to the officer that the order supplied  
 33 is the most recent order in effect between the parties and that the person restrained by the order  
 34 has been personally served with a copy of the order or has actual notice of the order; and

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

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

38 (a) The person protected by a foreign restraining order as defined by ORS 24.190 has filed a copy  
 39 of the foreign restraining order with a court or has been identified by the officer as a party pro-  
 40 tected by a foreign restraining order entered in the Law Enforcement Data System or in the data-  
 41 bases of the National Crime Information Center of the United States Department of Justice; and

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

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

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

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

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