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House Agriculture & Natural Resources Committee

February 10, 2015

#### **House Bill 2051**

**Reduces penalty for crime of criminal trespass in the second degree in certain circumstances - Punishes by maximum of \$2,000 fine.**

Trespass is the No. 1 Hunting related citation issued by the Oregon State Police Fish and Wildlife Troopers (OSP 2012-2013)

Vast amounts of time is being expended investigating trespass violations by field Troopers - Time that needs to be spent on detecting and deterring unlawful harvest, illegal possession of wildlife etc..

Trespassers make all hunters look bad and close many private properties to public hunting to those seeking lawful permission

Criminal Trespass citations are not being uniformly prosecuted in some venues around Oregon due to already over extended District Attorney's offices - Simple trespass violations are low priority

Courts often look at trespass as unimportant due to overloaded dockets

Lowering Trespass in the 2<sup>nd</sup> Degree to a Class A violation streamlines the system

Reclassification to a Class A violation reduces the penalty to a fine - No term of imprisonment

Class A violation - \$2,000 (Presumptive fines for Class A violations: \$435)

Trial Proceedings May Exclude:

Court Appointed Defense Counsel - District Attorney Involvement is limited

District Attorney Workload Prioritization (Often the reason that trespasses cases are not filed in some jurisdictions is DA overload - High Caseloads = Lower percentage of case filings and successful prosecutions)

Trial Conducted by Citation Issuing Officer not the District Attorney - This judicial proceeding practice has been successfully used for several decades for numerous fish and wildlife violations

HB 2051 elevates to Class C misdemeanor if the person has two or more convictions for criminal trespass second degree (Does not create serial trespassers)

HB 2051 Increases the natural resource law enforcement effectiveness of our fish and wildlife troopers, forest patrols, rural sheriff's patrols, district attorneys and courts.

HB 2051 updates a very important property use - property protection statute

Stan Steele  
Oregon Outdoor Council

# House Bill 2051

Sponsored by Representative KRIEGER (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Reduces penalty for crime of criminal trespass in the second degree in certain circumstances. Punishes by maximum of \$2,000 fine.

### A BILL FOR AN ACT

1  
2 Relating to criminal trespass; amending ORS 164.245 and 496.680.

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

4 **SECTION 1.** ORS 164.245 is amended to read:

5 164.245. (1) A person commits the crime of criminal trespass in the second degree if the person  
6 enters or remains unlawfully:

7 (a) In a motor vehicle or in or upon premises; or

8 (b) **In or upon real property other than a building, for the purpose of angling for, taking,**  
9 **hunting or trapping wildlife.**

10 (2) Criminal trespass in the second degree **as described in subsection (1)(a) of this section**  
11 **is a Class C misdemeanor.**

12 (3)(a) **Except as provided in paragraph (b) of this subsection, criminal trespass in the**  
13 **second degree as described in subsection (1)(b) of this section is a Class A violation.**

14 (b) **Criminal trespass in the second degree as described in subsection (1)(b) of this section**  
15 **is a Class C misdemeanor if the person has two or more convictions for criminal trespass in**  
16 **the second degree as described in subsection (1)(b) of this section at the time of the offense.**

17 **SECTION 2.** ORS 496.680 is amended to read:

18 496.680. (1) All wildlife taken by, or in the possession of any person in violation of the wildlife  
19 laws, and all guns, boats, traps, fishing apparatus and implements used in angling, hunting or trap-  
20 ping or taking any wildlife in violation of the wildlife laws may be seized by any person authorized  
21 to enforce the wildlife laws, and may be forfeited.

22 (2) All wildlife shot **or taken** by any person while violating any provision of ORS 164.245 to  
23 164.270 or 498.120 shall be seized by any person authorized to enforce the wildlife laws and shall  
24 be forfeited.

25 (3) If forfeited, such property shall be turned over to the State Fish and Wildlife Commission  
26 by order of the court at the time of passing sentence for the violation.

27 (4) The commission may dispose of such property in any manner it considers proper, but the  
28 clear proceeds derived from the sale of any seized guns, boats, traps, fishing apparatus or imple-  
29 ments shall be deposited in the Common School Fund. Any wildlife taken in violation of the wildlife  
30 laws may be disposed of forthwith or used for food purposes, under rules of the commission, to  
31 prevent spoilage.

**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.

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HB 2051 elevates to Class C misdemeanor if the person has two or more convictions for criminal trespass second degree (Does not create serial trespassers)

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HB 2051 updates a very important property use - property protection statute

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

(2) Criminal trespass in the second degree is a Class C misdemeanor.

**164.265 Criminal trespass while in possession of a 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.

**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;

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

(c) To enter premises that are open to the public after being lawfully directed not to enter the premises; or

(d) To enter or remain in a motor vehicle when the entrant is not authorized to do so.

(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 employee of the person who has lawful control of premises by ownership, tenancy, official position or other legal relationship. "Person in charge" 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; 1999 c.1040 §10; 2003 c.444 §1]

(e) \$2,000 for a specific fine violation, or the maximum amount otherwise established by law for the specific fine violation.

**153.019 Presumptive fines; generally.** (1) Except as provided in ORS 153.020, the presumptive fines for violations are:

(a) \$435 for a Class A violation.

**153.076 Conduct of trial.** (1) Violation proceedings shall be tried to the court sitting without jury. The trial in a violation proceeding may not be scheduled fewer than seven days after the date that the citation is issued unless the defendant waives the seven-day period.

(2) The state, municipality or political subdivision shall have the burden of proving the charged violation by a preponderance of the evidence.

(3) The pretrial discovery rules in ORS 135.805 to 135.873 apply in violation proceedings.

(4) The defendant may not be required to be a witness in the trial of any violation.

(5) Defense counsel shall not be provided at public expense in any proceeding in which only violations are charged.

(6) A district attorney or city attorney may aid in preparing evidence and obtaining witnesses but, except upon good cause shown to the court, shall not appear in violation proceedings unless counsel for the defendant appears. The court shall ensure that the district attorney or city attorney is given timely notice if defense counsel is to appear at trial.

**153.083 Role of peace officer.** Notwithstanding ORS 9.160 and 9.320, in any trial of a violation, whether created by ordinance or statute, in which a city attorney or district attorney does not appear, the peace officer who issued the citation for the offense may present evidence, examine and cross-examine witnesses and make arguments relating to:

(1) The application of statutes and rules to the facts in the case;

(2) The literal meaning of the statutes or rules at issue in the case;

(3) The admissibility of evidence; and

(4) Proper procedures to be used in the trial.

**153.005 Definitions.** As used in this chapter:

- (1) "Enforcement officer" means:
  - (a) A member of the Oregon State Police.
  - (b) A sheriff or deputy sheriff.
- k) Any other person specifically authorized by law to issue citations for the commission of violations.

(4) "Violation proceeding" means a judicial proceeding initiated by issuance of a citation that charges a person with commission of a violation.

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

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

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

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

(d) The prosecuting attorney has elected to treat the offense as a violation for purposes of a particular case in the manner provided by ORS 161.566.

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

(2) Conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime. [1999 c.1051 §3]

**153.012 Violation categories.** Violations are classified for the purpose of sentencing into the following categories:

(1) Class A violations;

(2) Class B violations;

(3) Class C violations;

(4) Class D violations;

(5) Unclassified violations as described in ORS 153.015; and

(6) Specific fine violations as described in ORS 153.015. [1999 c.1051 §4]

**153.018 Maximum fines.** (1) The penalty for committing a violation is a fine. The law creating a violation may impose other penalties in addition to a fine but may not impose a term of imprisonment.

(2) Except as otherwise provided by law, the maximum fine for a violation committed by an individual is:

(a) \$2,000 for a Class A violation.

(b) \$1,000 for a Class B violation.

(c) \$500 for a Class C violation.

(d) \$250 for a Class D violation.

