

Testimony before Senate Judiciary Committee
In support of HB 2335
On behalf of the OSB Uniform Criminal Jury Instructions Committee
March 5, 2015

Chair Prozanski and members of the Judiciary Committee:

My name is David Amesbury. I am here today as a member of the Oregon State Bar's Uniform Criminal Jury Instructions Committee, which is charged with developing uniform jury instructions that are used in criminal trials throughout Oregon. Currently our committee is made up of 15 members, representing judges, prosecutors and defense attorneys from throughout Oregon. I am also employed by the Department of Consumer and Business Services, but I am here solely in my capacity as a member of the Uniform Criminal Jury Instructions Committee.

In the course of improving the existing jury instructions we occasionally come across instances where the criminal statutes themselves are unclear. That is what happened with respect to ORS 164.205(3)(a), which defines the term "enter or remain unlawfully" as it is used in the crimes of burglary and criminal trespass. Rather than attempting to craft an instruction to explain the problem, which can be confusing, we decided to seek a more straightforward solution by proposing an amendment to the statute.

The Problem

As noted, ORS 164.205(3) defines the phrase "enter or remain unlawfully," which applies to the crimes of burglary and criminal trespass. It provides, as pertinent here:

- (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[.]

(Emphasis added). In 1981, the Oregon Supreme Court construed the statute so that the "or" really means "and"—that is, a person enters or remains unlawfully only if the premises are not open to the public **and** the entrant is not authorized to be there. *State v. Hartfield*, 290 Or 583, 624 P2d 588 (1981). In other words, both things have to be true for the entrant's conduct to be unlawful: the premises are not open to the public **and** the entrant is not authorized to be on the premises.

Although *Hartfield* was decided more than 30 years ago, the wording of ORS 164.205(3) remains a source of confusion for practitioners and that confusion has spawned appellate litigation. *See, e.g., State v. Nugent*, 261 Or App 22, 323 P3d 289 (2014) (declining to decide whether trial court erred in giving a jury instruction defining "enter or remain unlawfully" using the statutory definition, because any error was harmless based on the theory of the case).

What the Bill Does

This bill is very simple: it would replace the word “or” with the word “and,” codifying *Hartfield* and its progeny and eliminating the potential for confusion.

Thank you for your time and your consideration, and I’d be happy to answer any questions.