

House Bill 3329

Sponsored by Representative SMITH DB (at the request of former Representative Wayne Krieger)

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**.

Increases penalties for crime of disorderly conduct in the second degree when crime committed during violent or disorderly assembly. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Provides that damaging or destroying property of another during violent or disorderly assembly constitutes criminal mischief in the first degree. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both.

Provides that causing alarm with threatening or intimidating conduct in place of public accommodation constitutes crime of harassment. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Establishes mandatory minimum sentences for crime of assaulting a public safety officer if victim is peace officer and crime committed during violent or disorderly assembly.

Directs Oregon Criminal Justice Commission to adopt rules reflecting that certain violent conduct during violent or disorderly assembly is aggravating factor for purposes of sentencing guidelines.

Prohibits state agency from providing funds to cities or counties that reduced funding for law enforcement services.

Provides that public bodies, officers, employees or agents are not immune from civil claims arising out of riots if grossly negligent.

Provides that person convicted of riot or crime occurring during violent or disorderly assembly is not eligible for public assistance or state employment.

Prohibits release for person arrested for riot or crime occurring during violent or disorderly assembly until first appearance. Directs court to set security release of \$50,000 upon making certain findings.

Directs district attorney to prosecute felonies involving property destruction.

A BILL FOR AN ACT

1
2 Relating to public order; creating new provisions; and amending ORS 30.265, 135.240, 163.208,
3 164.365, 166.023 and 166.065.

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

5 **SECTION 1.** ORS 166.023 is amended to read:

6 166.023. (1) A person commits the crime of disorderly conduct in the first degree if[,]:

7 (a) With intent to cause public inconvenience, annoyance or alarm, or knowingly creating a risk
8 thereof, the person initiates or circulates a report, knowing it to be false:

9 [(a)] (A) Concerning an alleged hazardous substance or an alleged or impending fire, explosion,
10 catastrophe or other emergency; and

11 [(b)] (B) Stating that the hazardous substance, fire, explosion, catastrophe or other emergency
12 is located in or upon a court facility or a public building, as those terms are defined in ORS
13 166.360[.]; **or**

14 (b) **The person violates ORS 166.025 (1)(d) and the offense occurs during a violent or dis-**
15 **orderly assembly.**

16 (2)(a) Disorderly conduct in the first degree **under subsection (1)(a) of this section** is a Class
17 A misdemeanor.

18 (b) Notwithstanding paragraph (a) of this subsection, disorderly conduct in the first degree **un-**

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 **der subsection (1)(a) of this section** is a Class C felony if the defendant has at least one prior
2 conviction for violating subsection (1)(a) of this section.

3 **(c) Disorderly conduct in the first degree under subsection (1)(b) of this section is a Class**
4 **C felony.**

5 **(3) As used in this section, “violent or disorderly assembly” means an assembly of two**
6 **or more persons who cause damage to property or injury to other persons.**

7 **SECTION 2.** ORS 164.365 is amended to read:

8 164.365. (1) A person commits the crime of criminal mischief in the first degree who, with intent
9 to damage property, and having no right to do so nor reasonable ground to believe that the person
10 has such right:

11 (a) Damages or destroys property of another:

12 **(A) During a violent or disorderly assembly;**

13 ~~[(A)]~~ **(B)** In an amount exceeding \$1,000;

14 ~~[(B)]~~ **(C)** By means of an explosive;

15 ~~[(C)]~~ **(D)** By starting a fire in an institution while the person is committed to and confined in
16 the institution;

17 ~~[(D)]~~ **(E)** Which is a livestock animal as defined in ORS 164.055;

18 ~~[(E)]~~ **(F)** Which is the property of a public utility, telecommunications carrier, railroad, public
19 transportation facility or medical facility used in direct service to the public; or

20 ~~[(F)]~~ **(G)** By intentionally interfering with, obstructing or adulterating in any manner the service
21 of a public utility, telecommunications carrier, railroad, public transportation facility or medical
22 facility; or

23 (b) Intentionally uses, manipulates, arranges or rearranges the property of a public utility,
24 telecommunications carrier, railroad, public transportation facility or medical facility used in direct
25 service to the public so as to interfere with its efficiency.

26 (2) As used in subsection (1) of this section:

27 (a) “Institution” includes state and local correctional facilities, mental health facilities, juvenile
28 detention facilities and state training schools.

29 (b) “Medical facility” means a health care facility as defined in ORS 442.015, a licensed
30 physician’s office or anywhere a licensed medical practitioner provides health care services.

31 (c) “Public utility” has the meaning provided for that term in ORS 757.005 and includes any
32 cooperative, people’s utility district or other municipal corporation providing an electric, gas, water
33 or other utility service.

34 (d) “Railroad” has the meaning provided for that term in ORS 824.020.

35 (e) “Public transportation facility” means any property, structure or equipment used for or in
36 connection with the transportation of persons for hire by rail, air or bus, including any railroad
37 cars, buses or airplanes used to carry out such transportation.

38 (f) “Telecommunications carrier” has the meaning given that term in ORS 133.721.

39 **(g) “Violent or disorderly assembly” means an assembly of two or more persons who**
40 **cause damage to property or injury to other persons.**

41 **(3)(a) Criminal mischief in the first degree as described in subsection (1)(a)(B) to (G) or (b)**
42 **of this section** is a Class C felony.

43 **(b) Criminal mischief in the first degree as described in subsection (1)(a)(A) of this sec-**
44 **tion is a Class B felony.**

45 **SECTION 3.** ORS 166.065 is amended to read:

1 166.065. (1) A person commits the crime of harassment if the person intentionally:
 2 (a) Harasses or annoys another person by:
 3 (A) Subjecting such other person to offensive physical contact; or
 4 (B) Publicly insulting such other person by abusive words or gestures in a manner intended and
 5 likely to provoke a violent response;
 6 (b) Subjects another to alarm by conveying a false report, known by the conveyor to be false,
 7 concerning death or serious physical injury to a person, which report reasonably would be expected
 8 to cause alarm; *[or]*
 9 (c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict
 10 serious physical injury on that person or to commit a felony involving the person or property of that
 11 person or any member of that person's family, which threat reasonably would be expected to cause
 12 alarm[.]; **or**
 13 **(d) Subjects another to alarm by engaging in threatening or intimidating conduct in a**
 14 **place of public accommodation.**
 15 (2)(a) A person is criminally liable for harassment if the person knowingly permits any telephone
 16 or electronic device under the person's control to be used in violation of subsection (1) of this sec-
 17 tion.
 18 (b) Harassment that is committed under the circumstances described in subsection (1)(c) of this
 19 section is committed in either the county in which the communication originated or the county in
 20 which the communication was received.
 21 (3) **Except as provided in subsections (4) and (5) of this section,** harassment is a Class B
 22 misdemeanor.
 23 (4) *[Notwithstanding subsection (3) of this section,]* Harassment is a Class A misdemeanor *[if a*
 24 *person violates]* **when committed under the circumstances described in:**
 25 (a) Subsection (1)(a)(A) of this section by subjecting another person to offensive physical contact
 26 and:
 27 (A) The offensive physical contact consists of touching the sexual or other intimate parts of the
 28 other person; or
 29 (B)(i) The victim of the offense is a family or household member of the person; and
 30 (ii) The offense is committed in the immediate presence of, or is witnessed by, the person's or
 31 the victim's minor child or stepchild or a minor child residing within the household of the person
 32 or victim; or
 33 (b) Subsection (1)(c) of this section and:
 34 (A) The person has a previous conviction under subsection (1)(c) of this section and the victim
 35 of the current offense was the victim or a member of the family of the victim of the previous offense;
 36 (B) At the time the offense was committed, the victim was protected by a stalking protective
 37 order, a restraining order as defined in ORS 24.190 or any other court order prohibiting the person
 38 from contacting the victim;
 39 (C) At the time the offense was committed, the person reasonably believed the victim to be un-
 40 der 18 years of age and more than three years younger than the person; or
 41 (D)(i) The person conveyed a threat to kill the other person or any member of the family of the
 42 other person;
 43 (ii) The person expressed the intent to carry out the threat; and
 44 (iii) A reasonable person would believe that the threat was likely to be followed by action.
 45 **(5) Harassment is a Class C felony when committed under the circumstances described**

1 **in subsection (1)(d) of this section.**

2 [(5)] (6) The Oregon Criminal Justice Commission shall classify harassment as described in
 3 subsection (4)(a)(B) of this section as a person Class A misdemeanor under the rules of the com-
 4 mission.

5 [(6)(a)] (7)(a) As used in this section:

6 (A) “Electronic threat” means a threat conveyed by electronic mail, the Internet, a telephone
 7 text message or any other transmission of information by wire, radio, optical cable, cellular system,
 8 electromagnetic system or other similar means.

9 (B) “Family or household member” has the meaning given that term in ORS 135.230.

10 (C) **“Place of public accommodation” has the meaning given that term in ORS 659A.400.**

11 (b) For purposes of subsection (4) of this section, an offense is witnessed if the offense is seen
 12 or directly perceived in any other manner by the minor child.

13 **SECTION 4.** ORS 163.208 is amended to read:

14 163.208. (1) A person commits the crime of assaulting a public safety officer if the person in-
 15 tentiously or knowingly causes physical injury to the other person, knowing the other person to
 16 be a peace officer, corrections officer, youth correction officer, parole and probation officer, animal
 17 control officer, firefighter or staff member, and while the other person is acting in the course of
 18 official duty.

19 (2) Assaulting a public safety officer is a Class C felony.

20 [(3)(a) *Except as otherwise provided in paragraph (b) of this subsection, a person convicted under*
 21 *this section shall be sentenced to not less than seven days of imprisonment and shall not be granted*
 22 *bench parole or suspension of sentence nor released on a sentence of probation before serving at least*
 23 *seven days of the sentence of confinement.*]

24 [(b) *A person convicted under this section shall be sentenced to not less than 14 days of*
 25 *imprisonment and shall not be granted bench parole or suspension of sentence nor released on a sen-*
 26 *tence of probation before serving at least 14 days of the sentence of confinement if the victim is a peace*
 27 *officer.*]

28 (3)(a) **Except as otherwise provided in this subsection, a person convicted under this**
 29 **section shall be sentenced to at least seven days of imprisonment, and may not be granted**
 30 **suspension of sentence or released on a sentence of probation before serving the minimum**
 31 **sentence.**

32 (b) **If the victim is a peace officer, a person convicted under this section shall be sen-**
 33 **tenced to at least 14 days of imprisonment, and may not be granted suspension of sentence**
 34 **or released on a sentence of probation before serving the minimum sentence.**

35 (c) **If the victim is a peace officer and the offense occurred during a violent or disorderly**
 36 **assembly, a person convicted under this section shall be sentenced to at least six months of**
 37 **imprisonment, and may not be granted suspension of sentence or released on a sentence of**
 38 **probation before serving the minimum sentence.**

39 (d) **If the victim is a peace officer, the offense occurred during a violent or disorderly**
 40 **assembly and at the time of the offense, the person had been previously convicted under**
 41 **paragraph (c) of this subsection, a person convicted under this section shall be sentenced to**
 42 **at least 36 months’ imprisonment, and may not be granted suspension of sentence or re-**
 43 **leased on a sentence of probation before serving the minimum sentence.**

44 (4) As used in this section:

45 (a) “Animal control officer” has the meaning given that term in ORS 609.500[; and].

1 (b) “Staff member” means:

2 (A) A corrections officer as defined in ORS 181A.355, a youth correction officer, a Department
 3 of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a con-
 4 tract with the department or youth authority to work with, or in the vicinity of, adults in custody
 5 or youth offenders; and

6 (B) A volunteer authorized by the department, youth authority or other entity in charge of a
 7 corrections facility to work with, or in the vicinity of, adults in custody or youth offenders.

8 (c) **“Violent or disorderly assembly” means an assembly of two or more persons who**
 9 **cause damage to property or injury to other persons.**

10 **SECTION 5. (1) The Oregon Criminal Justice Commission, in the rules of the commission**
 11 **concerning sentencing departure factors, shall include as aggravating factors the commission**
 12 **of the following conduct, if associated with the crime of conviction:**

13 (a) **The defendant threw an object that struck another person, or attempted to strike**
 14 **another person by throwing an object, during a violent or disorderly assembly.**

15 (b) **The defendant caused physical injury to a law enforcement officer during a violent**
 16 **or disorderly assembly.**

17 (2) **The aggravating factors in subsection (1) of this section do not apply if the described**
 18 **conduct:**

19 (a) **Is the basis of, or constitutes an element of, the crime of conviction.**

20 (b) **Enhanced the offense classification of, or resulted in a mandatory sentence for, the**
 21 **crime of conviction.**

22 (3) **As used in this section, “violent or disorderly assembly” means an assembly of two**
 23 **or more persons who cause damage to property or injury to other persons.**

24 **SECTION 6. (1) Notwithstanding any other provision of law, a state agency may not**
 25 **provide a grant, moneys or financial aid of any kind to a city or county if, within the pre-**
 26 **ceding two years, the city or county reduced funding for law enforcement services.**

27 (2) **Subsection (1) of this section does not apply if the city or county reduced funding for**
 28 **other services by the same percentage as the reduction for law enforcement services.**

29 **SECTION 7.** ORS 30.265 is amended to read:

30 30.265. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to civil
 31 action for its torts and those of its officers, employees and agents acting within the scope of their
 32 employment or duties, whether arising out of a governmental or proprietary function or while op-
 33 erating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598.

34 (2) The sole cause of action for a tort committed by officers, employees or agents of a public
 35 body acting within the scope of their employment or duties and eligible for representation and
 36 indemnification under ORS 30.285 or 30.287 is an action under ORS 30.260 to 30.300. The remedy
 37 provided by ORS 30.260 to 30.300 is exclusive of any other action against any such officer, employee
 38 or agent of a public body whose act or omission within the scope of the officer’s, employee’s or
 39 agent’s employment or duties gives rise to the action. No other form of civil action is permitted.

40 (3) If an action under ORS 30.260 to 30.300 alleges damages in an amount equal to or less than
 41 the damages allowed under ORS 30.271, 30.272 or 30.273, the sole cause of action for a tort com-
 42 mitted by officers, employees or agents of a public body acting within the scope of their employment
 43 or duties and eligible for representation and indemnification under ORS 30.285 or 30.287 is an action
 44 against the public body. If an action is filed against an officer, employee or agent of a public body,
 45 and the plaintiff alleges damages in an amount equal to or less than the damages allowed under ORS

1 30.271, 30.272 or 30.273, the court upon motion shall substitute the public body as the defendant.
 2 Substitution of the public body as the defendant does not exempt the public body from making any
 3 report required under ORS 742.400.

4 (4) If an action under ORS 30.260 to 30.300 alleges damages in an amount greater than the
 5 damages allowed under ORS 30.271, 30.272 or 30.273, the action may be brought and maintained
 6 against an officer, employee or agent of a public body, whether or not the public body is also named
 7 as a defendant. An action brought under this subsection is subject to the limitations on damages
 8 imposed under ORS 30.271, 30.272 or 30.273, and the total combined amount recovered in the action
 9 may not exceed those limitations for a single accident or occurrence without regard to the number
 10 or types of defendants named in the action.

11 (5) Every public body is immune from liability for any claim for injury to or death of any person
 12 or injury to property resulting from an act or omission of an officer, employee or agent of a public
 13 body when such officer, employee or agent is immune from liability.

14 (6) Every public body and its officers, employees and agents acting within the scope of their
 15 employment or duties, or while operating a motor vehicle in a ridesharing arrangement authorized
 16 under ORS 276.598, are immune from liability for:

17 (a) Any claim for injury to or death of any person covered by any workers' compensation law.

18 (b) Any claim in connection with the assessment and collection of taxes.

19 (c) Any claim based upon the performance of or the failure to exercise or perform a discretion-
 20 ary function or duty, whether or not the discretion is abused.

21 (d) Any claim that is limited or barred by the provisions of any other statute, including but not
 22 limited to any statute of ultimate repose.

23 (e) Any claim arising out of riot, civil commotion or mob action or out of any act or omission
 24 in connection with the prevention of any of the foregoing, **unless the public body, officer, em-
 25 ployee or agent is grossly negligent in protecting persons or property.**

26 (f) Any claim arising out of an act done or omitted under apparent authority of a law, resolution,
 27 rule or regulation that is unconstitutional, invalid or inapplicable except to the extent that they
 28 would have been liable had the law, resolution, rule or regulation been constitutional, valid and
 29 applicable, unless such act was done or omitted in bad faith or with malice.

30 (7) This section applies to any action of any officer, employee or agent of the state relating to
 31 a nuclear incident, whether or not the officer, employee or agent is acting within the scope of em-
 32 ployment, and provided the nuclear incident is covered by an insurance or indemnity agreement
 33 under 42 U.S.C. 2210.

34 (8) Subsection (6)(c) of this section does not apply to any discretionary act that is found to be
 35 the cause or partial cause of a nuclear incident covered by an insurance or indemnity agreement
 36 under the provisions of 42 U.S.C. 2210, including but not limited to road design and route selection.

37 **SECTION 8. (1) Notwithstanding any other provision of Oregon law, and except as oth-
 38 erwise provided by federal law, a person is not eligible for public assistance if the person has
 39 been convicted of:**

40 (a) **Riot under ORS 166.015;**

41 (b) **A crime that has as an element the fact that the offense occurred during a violent
 42 or disorderly assembly; or**

43 (c) **A crime whose offense classification or sentence was enhanced based on the fact that
 44 the crime occurred during a violent or disorderly assembly.**

45 (2) **Notwithstanding any other provision of law, a person is not eligible for state employ-**

1 **ment if the person has been convicted of:**

2 (a) **Riot under ORS 166.015;**

3 (b) **A crime that has as an element the fact that the offense occurred during a violent**
 4 **or disorderly assembly; or**

5 (c) **A crime whose offense classification or sentence was enhanced based on the fact that**
 6 **the crime occurred during a violent or disorderly assembly.**

7 (3) **As used in this section:**

8 (a) **“Public assistance” has the meaning given that term in ORS 411.010.**

9 (b) **“Violent or disorderly assembly” means an assembly of two or more persons who**
 10 **cause damage to property or injury to other persons.**

11 **SECTION 9.** ORS 135.240 is amended to read:

12 135.240. (1) Except as provided in subsections (2), (4), [and] (5) **and (6)** of this section, a de-
 13 fendant shall be released in accordance with ORS 135.230 to 135.290.

14 (2)(a) When the defendant is charged with murder, aggravated murder or treason, release shall
 15 be denied when the proof is evident or the presumption strong that the person is guilty.

16 (b) When the defendant is charged with murder or aggravated murder and the proof is not evi-
 17 dent nor the presumption strong that the defendant is guilty, the court shall determine the issue of
 18 release as provided in subsection (4) of this section. In determining the issue of release under sub-
 19 section (4) of this section, the court may consider any evidence used in making the determination
 20 required by this subsection.

21 (3) The magistrate may conduct such hearing as the magistrate considers necessary to determine
 22 whether, under subsection (2) of this section, the proof is evident or the presumption strong that the
 23 person is guilty.

24 (4)(a) Except as otherwise provided in subsection (5) of this section, when the defendant is
 25 charged with a violent felony, release shall be denied if the court finds:

26 (A) Except when the defendant is charged by indictment, that there is probable cause to believe
 27 that the defendant committed the crime; and

28 (B) By clear and convincing evidence, that there is a danger of physical injury or sexual
 29 victimization to the victim or members of the public by the defendant while on release.

30 (b) If the defendant wants to have a hearing on the issue of release, the defendant must request
 31 the hearing at the time of arraignment in circuit court. If the defendant requests a release hearing,
 32 the court must hold the hearing within five days of the request.

33 (c) At the release hearing, unless the state stipulates to the setting of security or release, the
 34 court shall make the inquiry set forth in paragraph (a) of this subsection. The state has the burden
 35 of producing evidence at the release hearing subject to ORS 40.015 (4).

36 (d) The defendant may be represented by counsel and may present evidence on any relevant is-
 37 sue. However, the hearing may not be used for purposes of discovery.

38 (e) If the court determines that the defendant is eligible for release in accordance with this
 39 subsection, the court shall set security or other appropriate conditions of release.

40 (f) When a defendant who has been released violates a condition of release and the violation:

41 (A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into
 42 custody and shall order the defendant held pending trial without release.

43 (B) Does not constitute a new criminal offense, the court may order the defendant to be taken
 44 back into custody, may order the defendant held pending trial and may set a security amount of not
 45 less than \$250,000.

1 (5)(a) Notwithstanding any other provision of law, the court shall set a security amount of not
 2 less than \$50,000 for a defendant charged with an offense listed in ORS 137.700 or 137.707 unless the
 3 court determines that amount to be unconstitutionally excessive, and may not release the defendant
 4 on any form of release other than a security release if:

5 (A) The United States Constitution or the Oregon Constitution prohibits the denial of release
 6 under subsection (4) of this section;

7 (B) The court determines that the defendant is eligible for release under subsection (4) of this
 8 section; or

9 (C) The court finds that the offense is not a violent felony.

10 (b) In addition to the security amount described in paragraph (a) of this subsection, the court
 11 may impose any supervisory conditions deemed necessary for the protection of the victim and the
 12 community. When a defendant who has been released violates a condition of release and the vio-
 13 lation:

14 (A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into
 15 custody, shall order the defendant held pending trial and shall set a security amount of not less than
 16 \$250,000.

17 (B) Does not constitute a new criminal offense, the court may order the defendant to be taken
 18 back into custody, may order the defendant held pending trial and may set a security amount of not
 19 less than \$250,000.

20 **(6)(a) When the defendant is charged with an offense described in paragraph (c) of this**
 21 **subsection, the court may not release the defendant on any form of release, and the person**
 22 **is not eligible for security release, until the defendant's first appearance.**

23 **(b) At the first appearance, the court shall set a security amount of not less than \$50,000,**
 24 **and deny any other form of release, if the court finds:**

25 **(A) Except when the defendant is charged by indictment, that there is probable cause to**
 26 **believe that the defendant committed the crime; and**

27 **(B) By clear and convincing evidence that there is a danger that the defendant will:**

28 **(i) Fail to appear in court at all appropriate times;**

29 **(ii) Commit a new criminal offense; or**

30 **(iii) Pose a threat to public safety.**

31 **(c) The offenses to which this subsection applies are:**

32 **(A) Riot under ORS 166.015;**

33 **(B) A crime that has as an element the fact that the crime occurred during a violent or**
 34 **disorderly assembly; or**

35 **(C) A crime whose offense classification or sentence is enhanced based on the fact that**
 36 **the crime occurred during a violent or disorderly assembly.**

37 [(6)] (7) For purposes of this section, "violent felony" means a felony offense in which there was
 38 an actual or threatened serious physical injury to the victim, or a felony sexual offense.

39 **SECTION 10. A district attorney shall prosecute any felony involving the destruction of**
 40 **property if:**

41 **(1) A law enforcement agency has initiated charges by arrest or issuance of a citation;**
 42 **and**

43 **(2) The felony is supported by probable cause.**

44 **SECTION 11. Section 5 of this 2021 Act and the amendments to ORS 163.208, 164.365,**
 45 **166.023 and 166.065 by sections 1 to 4 of this 2021 Act apply to conduct alleged to constitute**

1 **a crime occurring on or after the effective date of this 2021 Act.**

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