

Common Behavioral Crimes and Punishments

CRIMES

Criminal Trespass II – ORS 164.245

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. Class C misdemeanor.

Scenario #1 - A homeless male sits down next to your business along the sidewalk wall and stays there for hours. He does not block pedestrians or physically interfere with your business, but his presence makes customers nervous and several have not come in or have left quickly because of him.

He has not committed any crime at this point and cannot be trespassed from the public right of way for merely sitting there.

Scenario #2 – A person is found sleeping inside the closed alcove of your business entrance. There are no trespassing signs and the person has been warned before about being on your property.

The person has committed trespassing as long as the alcove is private and no other person with ownership of that entrance provides him permission to be there. As a general rule – the offender is usually given a chance to leave by police, but with a previous warning they are more likely to get arrested.

Criminal Mischief – ORS 164.345

Third Degree: A person commits the crime of criminal mischief in the third degree if, with intent to cause substantial inconvenience to the owner or to another person, and having no right to do so nor reasonable ground to believe that the person has such right, the person tampers or interferes with property of another. Class C misdemeanor.

Second Degree: If that conduct results in property damage exceeding \$500; or, if, having no right to do so nor reasonable ground to believe that the person has such right, the person intentionally damages property of another, or, the person recklessly damages property of another in an amount exceeding \$500: Class A misdemeanor.

Scenario #1 – a customer witnesses a passerby spray some substance (later identified as paint) over the store's security camera. A few minutes later a person matching that description is contacted by police and found to be in possession of a matching spray-paint can a block away from the store.

The police department would like called on any criminal mischief calls and many of occurred much earlier and with few or no witnesses. A citizen cannot arrest unless the crime occurs in

their presence, but police can arrest on probable cause. The person can be arrested for Criminal Mischief 3 or 2 depending if there was monetary damage.

Scenario #2 – An intoxicated group walks out of a local bar and gets in a minor argument as they are walking down the street. One of the group pushes another against the window of your store. The window cracks but does not fall. They walk on down the sidewalk and you discover the damage the next morning. It costs \$650.00 to replace the damaged window. Fortunately your store has good video surveillance and you can share video with law enforcement and other merchants. The subject that pushed his associate into the window is identified and located.

The person that caused the damaged window by pushing his friend can be charged with Criminal Mischief 2 for recklessly damaging your property.

Disorderly Conduct – ORS 166.025

A person commits the crime of disorderly conduct in the second degree if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

- (a) Engages in fighting or in violent, tumultuous or threatening behavior;
- (b) Makes unreasonable noise;
- (c) Disturbs any lawful assembly of persons without lawful authority;
- (d) Obstructs vehicular or pedestrian traffic on a public way;
- (e) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or
- (f) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

Disorderly conduct in the second degree is a Class B misdemeanor.

Scenario #1 – a couple gets into a verbal argument on a downtown sidewalk. During the argument they become extremely loud and their argument causes nearby customers and staff to clear the area and to call 911 because of their concern about the incident

The crime of disorderly conduct has been committed by the couple by their excessive noise and the alarm they cause to other citizens.

Scenario #2 – a small group gathers at the corner of an intersection in order to share their religious views. The group completely prevents other citizens from walking through on the sidewalk. When asked to provide a way for other people to get through the group, the group leader refuses.

The group as a whole and each individual within the group has committed Disorderly Conduct by blocking pedestrian traffic in a public right of way.

Scenario #3 – a couple young musicians stop on the sidewalk and start playing music with the hopes of receiving donations. They take a portion of the sidewalk, but do not completely block the sidewalk.

They have not committed Disorderly Conduct because pedestrians can still pass them by using the rest of the public right of way.

Scenario #4 – an intoxicated male becomes disruptive in front of a store and causes alarm because of his unpredictable movements and yelling. Several people call about the disturbance. Then the male walks out into the roadway and blocks vehicular traffic heading Eastbound.

He has committed Disorderly Conduct by causing alarm among other citizens and by blocking vehicular traffic on a roadway.

Menacing – ORS 163.190

A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury. Class A misdemeanor.

Scenario #1 – a group of teens are hanging out behind a store, another kid walks by and they yell insults at him and then threaten to beat him up if he comes close to them again. The other kid walks by the group and nothing happens – no crime because there has to be an imminent threat or some obvious action toward committing an assault or injury.

Scenario #2 – a couple of young men take a particular interest in a female store employee. The owner confronts the two males and tells them to leave. One of the males brandishes a knife and tells the owner to let them continue their advances with the female or they will stab him. The crime of menacing occurs by their using a visible weapon to threaten the owner with imminent harm.

Harassment – ORS 166.065

A person commits the crime of harassment if the person intentionally harasses or annoys another person by subjecting such other person to offensive physical contact or publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response. Class B misdemeanor.

Scenario #1 – Business owner asks person on sidewalk to stop verbally harassing female customers and staff members by using obscene and sexually offensive comments or requests. The person then pushes the business owner. The owner walks back in store and calls police.

The crime of harassment is committed when someone subjects someone else to offensive physical contact (pushing owner). No criminal activity in the derogatory or offensive comments – free speech protected by 1st Amendment rights.

Scenario #2 – Individual walks into a store and starts berating the owner for something the owner has for sale. The owner tells the person to leave and the person becomes angrier and refuses to leave. The person threatens to damage the property. The owner puts his hand on the

individuals shoulder and physically escorts the person from the business. The individual then calls the police and asks to have the owner arrested for touching him illegally (harassment).

The owner has a legal right to protect his property and the individual had committed trespass by refusing to leave. The owner had the right to use **reasonable** force to protect himself and his property. The owner did not commit harassment. **DISCLAIMER** – we do not recommend or encourage individuals taking enforcement action or becoming physical with other individuals – we would suggest calling the police to deal with the situation if at all possible.

Offensive Littering – ORS 164.805

A person commits the crime of offensive littering if the person creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by intentionally discarding or depositing any rubbish, trash, garbage, debris or other refuse upon the land of another without permission of the owner, or upon any public way or in or upon any public transportation facility. Class C misdemeanor.

Scenario #1 – An employee observes a transient dropping his trousers and leaving excrement on the steps of the business.

She will need to provide a reasonable description of the subject and his clothing in order to prove the crime. but he has committed the crime of littering as well as a city ordinance violation for Public Elimination of Human Waste.

Scenario #2 – a group of teens and young adults are standing around the rear of a store and smoking. The owner calls the police and wants them arrested for the cigarette butts that were left on the ground by the group.

The police cannot arrest anyone as the owner did not witness a specific person littering and the “group” cannot be arrested. If a single individual is witnessed and identified for any form of littering, then they can get arrested.

PUNISHMENTS

All of the crimes listed above are misdemeanors, as opposed to more serious felonies or less serious violations. The maximum jail time and fines for each type of misdemeanor is listed below. The actual punishment imposed will generally be less, and will vary based on a number of factors including negotiated plea, prior criminal history, aggravated nature of crime, etc.

Misdemeanor	Max Jail	Max Fine
Class A	1 year	\$6,250
Class B	6 months	\$2,500
Class C	30 days	\$1,250