

***Chapter 1.16 GENERAL PENALTY; VIOLATIONS AND FINES; PROCEDURE IN
CRIMINAL MATTERS GENERALLY***

Violations

Classes of Offenses

VIOLATIONS

~~1.16.010 Definitions.~~

As used in this chapter:

"Enforcement officer" means:

- A. ~~— A member of the Oregon State Police.~~
- B. ~~— A sheriff or deputy sheriff.~~
- C. ~~— A city marshal or a member of the police of a city, municipal or quasi-municipal corporation.~~
- D. ~~— A police officer commissioned by a university under ORS 352.383.~~
- E. ~~— An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state.~~
- F. ~~— An investigator of the Criminal Justice Division of the Department of Justice of the state of Oregon.~~
- G. ~~— A Port of Portland peace officer.~~
- H. ~~— An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011.~~
- I. ~~— Any other person specifically authorized by law to issue citations for the commission of violations.~~

~~"Traffic offense" has the meaning given that term in ORS 801.555.~~

~~"Violation" means an offense described in ORS 153.008.~~

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

~~(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)~~

~~1.16.010[A] Definitions [2015].~~

~~Note: The amendments to 153.005 by section 45, chapter 644, Oregon Laws 2011, become operative July 1, 2015. See section 58, chapter 644, Oregon Laws 2011, as amended by section 77, chapter 644, Oregon Laws 2011. The text that is operative on and after July 1, 2015, is set forth for the user's convenience.~~

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 - G. — A Port of Portland peace officer.
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(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

1.16.020 Violations described.

- A. — Except as provided in subsection B. of this section, an offense is a violation if any of the following apply:
 - 1. — The offense is designated as a violation in the statute defining the offense.
 - 2. — 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.
 - 3. — 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.
 - 4. — 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.
 - 5. — 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.
- B. — Conviction of a violation does not give rise to any disability or legal disadvantage based on conviction of a crime.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

1.16.030 Violation categories.

Violations are classified for the purpose of sentencing into the following categories:

- A. — Class A violations;
- B. — Class B violations;
- C. — Class C violations;
- D. — Class D violations;

E. — Unclassified violations as described in ORS 153.015; and

F. — Specific fine violations as described in ORS 153.015.

(Ord. No. 7 2013, § 3(Exh. A), 11-18-2013)

~~1.16.040 Unclassified and specific fine violations.~~

A. — An offense described in the Oregon Revised Statutes that is designated as a violation but does not specify the classification of the violation is an unclassified violation. An unclassified violation is a Class B violation.

B. — A specific fine violation is any offense described in the Oregon Revised Statutes that is designated as a specific fine violation or:

1. — Is not designated as a crime or as a Class A, B, C or D violation;

2. — Is not punishable by a term of imprisonment as a penalty for committing the offense; and

3. — Is punishable by a specific fine as the penalty for committing the offense.

(Ord. No. 7 2013, § 3(Exh. A), 11-18-2013)

~~1.16.050 Maximum fines.~~

A. — 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.

B. — Except as otherwise provided by law, the maximum fine for a violation committed by an individual is:

1. — Two thousand dollars (\$2,000.00) for a Class A violation.

2. — One thousand dollars (\$1,000.00) for a Class B violation.

3. — Five hundred dollars (\$500.00) for a Class C violation.

4. — Two hundred fifty dollars (\$250.00) for a Class D violation.

5. — Two thousand dollars (\$2,000.00) for a specific fine violation, or the maximum amount otherwise established by law for the specific fine violation.

C. — If a special corporate fine is specified in the law creating the violation, the sentence to pay a fine shall be governed by the law creating the violation.

Except as otherwise provided by law, if a special corporate fine is not specified in the law creating the violation, the maximum fine for a violation committed by a corporation is:

1. — Four thousand dollars (\$4,000.00) for a Class A violation.

2. — Two thousand dollars (\$2,000.00) for a Class B violation.

3. — One thousand dollars (\$1,000.00) for a Class C violation.

4. — Five hundred dollars (\$500.00) for a Class D violation.

(Ord. No. 7 2013, § 3(Exh. A), 11-18-2013)

~~1.16.060 Presumptive fines; generally.~~

A. — Except as provided in ORS 153.020, the presumptive fines for violations are:

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1. ~~Four hundred thirty five dollars (\$435.00) for a Class A violation.~~
 2. ~~Two hundred sixty dollars (\$260.00) for a Class B violation.~~
 3. ~~One hundred sixty dollars (\$160.00) for a Class C violation.~~
 4. ~~One hundred ten dollars (\$110.00) for a Class D violation.~~

B. ~~The presumptive fine for a specific fine violation is:~~

1. ~~The amount specified by statute as the presumptive fine for the violation; or~~
2. ~~An amount equal to the greater of twenty (20) percent of the maximum fine prescribed for the violation, or the minimum fine prescribed by statute for the violation.~~

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

~~1.16.070 Presumptive fines; highway work zones, school zones and safety corridors.~~

A. ~~If an individual is charged with a traffic violation, as defined in ORS 801.557, and the enforcement officer issuing the citation notes on the citation that the offense occurred in a highway work zone and is subject to the provisions of ORS 811.230, occurred in a posted school zone and is subject to the provisions of ORS 811.235, or occurred in a safety corridor and is subject to the provisions of ORS 811.483, the presumptive fine for the violation is:~~

1. ~~Eight hundred seventy dollars (\$870.00) for a Class A violation.~~
2. ~~Five hundred twenty dollars (\$520.00) for a Class B violation.~~
3. ~~Three hundred twenty dollars (\$320.00) for a Class C violation.~~
4. ~~Two hundred twenty dollars (\$220.00) for a Class D violation.~~

B. ~~The presumptive fine for a specific fine violation that is subject to this section is an amount equal to twice the presumptive fine determined for the violation under ORS 153.019(2).~~

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

~~1.16.080 Minimum fines.~~

A. ~~Except as otherwise provided by law, a court may not defer, waive, suspend or otherwise reduce the fine for a violation that is subject to the presumptive fines established by ORS 153.019 (1) or 153.020 (1) to an amount that is less than:~~

1. ~~Two hundred twenty dollars (\$220.00) for a Class A violation.~~
2. ~~One hundred thirty dollars (\$130.00) for a Class B violation.~~
3. ~~Eighty dollars (\$80.00) for a Class C violation.~~
4. ~~Sixty dollars (\$60.00) for a Class D violation.~~

B. ~~Except as otherwise provided by law, a court may not defer, waive, suspend or otherwise reduce the fine for a specific fine violation to an amount that is less than twenty (20) percent of the presumptive fine for the violation.~~

C. ~~This section does not affect the manner in which a court imposes or reduces monetary obligations other than fines.~~

D. — The Department of Revenue or Secretary of State may audit any court to determine whether the court is complying with the requirements of this section. In addition, the Department of Revenue or Secretary of State may audit any court to determine whether the court is complying with the requirements of ORS 137.289 to 137.297 and 153.640 to 153.680. The Department of Revenue or Secretary of State may file an action under ORS 34.105 to 34.240 to enforce the requirements of this section and of ORS 137.289 to 137.297 and 153.640 to 153.680.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

~~1.16.090 Authority of agency to specify rule violation as particular level of violation.~~

If a statute provides that violation of the rules of an agency constitutes an offense, as described in ORS 161.505, the agency may by rule specify that violation of a specific rule of the agency is subject to a specific fine, or a specific maximum fine, that is less in amount than the maximum fine for the offense specified by the statute. In addition, the agency may specify that violation of the specific rule is a Class A, B, C or D violation under the provisions of ORS 153.012 as long as the class specified in the rule is lower than the statutory classification for the offense.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

~~1.16.100 Authority of political subdivision to specify ordinance violation as particular level of violation.~~

A. — If a statute provides that violation of the ordinances of a political subdivision of this state constitutes an offense, as described in ORS 161.505, the political subdivision may by ordinance specify that violation of a specific ordinance of the political subdivision is subject to a specific fine, or a specific maximum fine, that is less in amount than the maximum fine for the offense specified by the statute. In addition, the political subdivision may specify that violation of the specific ordinance is a Class A, B, C or D violation under the provisions of ORS 153.012 as long as the class specified in the ordinance is lower than the statutory classification for the offense.

B. — Nothing in this section requires a political subdivision to use the classifications established by ORS 153.012 or to use the presumptive fines established under ORS 153.019 and 153.020 for violations of ordinances adopted by the political subdivision.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

CLASSES OF OFFENSES

~~1.16.110 "Offense" described.~~

An offense is conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law or ordinance of a political subdivision of this state. An offense is either a crime, as described in ORS 161.515, or a violation, as described in ORS 153.008.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

~~1.16.120 "Crime" described.~~

A. — A crime is an offense for which a sentence of imprisonment is authorized.

B.— A crime is either a felony or a misdemeanor.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

~~1.16.130 "Felony" described.~~

Except as provided in ORS 161.585 and 161.705, a crime is a felony if it is so designated in any statute of this state or if a person convicted under a statute of this state may be sentenced to a maximum term of imprisonment of more than one year.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

~~1.16.140 Classification of felonies.~~

A.— Felonies are classified for the purpose of sentence into the following categories:

- 1.— Class A felonies;
- 2.— Class B felonies;
- 3.— Class C felonies; and
- 4.— Unclassified felonies.

B.— The particular classification of each felony defined in the Oregon Criminal Code, except murder under ORS 163.115 and treason under ORS 166.005, is expressly designated in the section defining the crime. An offense defined outside this code which, because of the express sentence provided is within the definition of ORS 161.525, shall be considered an unclassified felony.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

~~1.16.150 "Misdemeanor" described.~~

A crime is a misdemeanor if it is so designated in any statute of this state or if a person convicted thereof may be sentenced to a maximum term of imprisonment of not more than one year.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

~~1.16.160 Classification of misdemeanors.~~

A.— Misdemeanors are classified for the purpose of sentence into the following categories:

- 1.— Class A misdemeanors;
- 2.— Class B misdemeanors;
- 3.— Class C misdemeanors; and
- 4.— Unclassified misdemeanors.

B.— The particular classification of each misdemeanor defined in the Oregon Criminal Code is expressly designated in the section defining the crime. An offense defined outside this code which, because of the express sentence provided is within the definition of ORS 161.545, shall be considered an unclassified misdemeanor.

C. — An offense defined by a statute of this state, but without specification as to its classification or as to the penalty authorized upon conviction, shall be considered a Class A misdemeanor.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

1.16.170 Misdemeanor treated as violation; prosecuting attorney's election.

A. — Except as provided in subsection D. of this section, a prosecuting attorney may elect to treat any misdemeanor as a Class A violation. The election must be made by the prosecuting attorney orally at the time of the first appearance of the defendant or in writing filed on or before the time scheduled for the first appearance of the defendant. If no election is made within the time allowed, the case shall proceed as a misdemeanor.

B. — If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this section, the court shall amend the accusatory instrument to reflect the charged offense as a Class A violation and clearly denominate the offense as a Class A violation in any judgment entered in the matter. Notwithstanding ORS 153.018, the fine that a court may impose upon conviction of a violation under this section may not:

1. — Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or
2. — Exceed the amount provided in ORS 161.635 for the class of misdemeanor receiving violation treatment.

C. — If a prosecuting attorney elects to treat a misdemeanor as a Class A violation under this section, and the defendant fails to make any required appearance in the matter, the court may enter a default judgment against the defendant in the manner provided by ORS 153.102. Notwithstanding ORS 153.018, the fine that the court may impose under a default judgment entered pursuant to ORS 153.102 may not:

1. — Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or
2. — Exceed the maximum fine for the class of misdemeanor receiving violation treatment.

D. — A prosecuting attorney may not elect to treat misdemeanors created under ORS 811.540 or 813.010 as violations under the provisions of this section.

E. — The election provided for in this section may be made by a city attorney acting as prosecuting attorney in the case of municipal ordinance offenses, a county counsel acting as prosecuting attorney under a county charter in the case of county ordinance offenses, and the attorney general acting as prosecuting attorney in those criminal actions or proceedings within the jurisdiction of the attorney general.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

1.16.180 Misdemeanor treated as violation; court's election.

A. — Except as provided in subsection D. of this section, a court may elect to treat any misdemeanor as a Class A violation for the purpose of entering a default judgment under ORS 153.102 if:

1. — A complaint or information has been filed with the court for the misdemeanor;
2. — The defendant has failed to make an appearance in the proceedings required by the court or by law; and
3. — The court has given notice to the district attorney for the county and the district attorney has informed the court that the district attorney does not object to treating the misdemeanor as a Class A violation.

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- B. — If the court treats a misdemeanor as a Class A violation under this section, the court shall amend the accusatory instrument to reflect the charged offense as a Class A violation and clearly denominate the offense as a Class A violation in the judgment entered in the matter.
- C. — Notwithstanding ORS 153.018, if the court treats a misdemeanor as a Class A violation under this section, the fine that the court may impose under a default judgment entered pursuant to ORS 153.102 may not:
1. — Be less than the presumptive fine established by ORS 153.019 for a Class A violation; or
 2. — Exceed the maximum fine for the class of misdemeanor receiving violation treatment.
- D. — A court may not treat misdemeanors created under ORS 811.540 or 813.010 as violations under the provisions of this section.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

1.16.190 Felony treated as misdemeanor.

- A. — As used in this section, "nonperson felony" has the meaning given that term in the rules of the Oregon Criminal Justice Commission.
- B. — A district attorney may elect to treat a Class C nonperson felony or a violation of ORS 475.752(3)(a), 475.854, 475.864(2) or 475.874 as a Class A misdemeanor. The election must be made by the district attorney orally or in writing at the time of the first appearance of the defendant. If a district attorney elects to treat a Class C felony or a violation of ORS 475.752(3)(a), 475.854, 475.864(2) or 475.874 as a Class A misdemeanor under this subsection, the court shall amend the accusatory instrument to reflect the charged offense as a Class A misdemeanor.
- C. — If, at some time after the first appearance of a defendant charged with a Class C nonperson felony or a violation of ORS 475.752(3)(a), 475.854, 475.864(2) or 475.874, the district attorney and the defendant agree to treat the charged offense as a Class A misdemeanor, the court may allow the offense to be treated as a Class A misdemeanor by stipulation of the parties.
- D. — If a Class C felony or a violation of ORS 475.752(3)(a), 475.854, 475.864(2) or 475.874 is treated as a Class A misdemeanor under this section, the court shall clearly denominate the offense as a Class A misdemeanor in any judgment entered in the matter.
- E. — If no election or stipulation is made under this section, the case proceeds as a felony.
- F. — Before a district attorney may make an election under subsection B. of this section, the district attorney shall adopt written guidelines for determining when and under what circumstances the election may be made. The district attorney shall apply the guidelines uniformly.
- G. — Notwithstanding ORS 161.635, the fine that a court may impose upon conviction of a misdemeanor under this section may not:
1. — Be less than the minimum fine established by ORS 137.286 for a felony; or
 2. — Exceed the amount provided in ORS 161.625 for the class of felony receiving Class A misdemeanor treatment.

(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)

1.16.200 Classification of certain crimes determined by punishment.

- A. ~~When a crime punishable as a felony is also punishable by imprisonment for a maximum term of one year or by a fine, the crime shall be classed as a misdemeanor if the court imposes a punishment other than imprisonment under ORS 137.124(1).~~
- B. ~~Notwithstanding the provisions of ORS 161.525, upon conviction of a crime punishable as described in subsection A. of this section, the crime is a felony for all purposes until one of the following events occurs, after which occurrence the crime is a misdemeanor for all purposes:~~
- ~~1. Without imposing a sentence of probation, the court imposes a sentence of imprisonment other than to the legal and physical custody of the Department of Corrections.~~
 - ~~2. Without imposing a sentence of probation, the court imposes a fine.~~
 - ~~3. Upon revocation of probation, the court imposes a sentence of imprisonment other than to the legal and physical custody of the Department of Corrections.~~
 - ~~4. Upon revocation of probation, the court imposes a fine.~~
 - ~~5. The court declares the offense to be a misdemeanor, either at the time of imposing a sentence of probation, upon suspension of imposition of a part of a sentence, or on application of defendant or the parole and probation officer of the defendant thereafter.~~
 - ~~6. The court imposes a sentence of probation on the defendant without imposition of any other sentence upon conviction and defendant is thereafter discharged without any other sentence.~~
 - ~~7. Without imposing a sentence of probation and without imposing any other sentence, the court declares the offense to be a misdemeanor and discharges the defendant.~~
- C. ~~The provisions of this section shall apply only to persons convicted of a felony committed prior to November 1, 1989.~~

~~(Ord. No. 7-2013, § 3(Exh. A), 11-18-2013)~~