

CRIMINAL LAW REVISION COMMISSION  
309 Capitol Building  
Salem, Oregon

ARTICLE 16. CRIMINAL MISCHIEF

Tentative Draft No. 1; July 1968

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Subcommittee No. 1

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Section 1. Criminal mischief in the 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 he has such right, he tampers or interferes with property of another.

Section 2. Criminal mischief in the second degree. A person commits the crime of criminal mischief in the second degree if:

(1) He violates section 1, and as a result thereof, damages property in an amount exceeding \$100; or

(2) Having no right to do so nor reasonable ground to believe that he has such right, he:

(a) Intentionally damages property of another; or

(b) Recklessly damages property of another in an amount exceeding \$100.

Section 3. Criminal mischief in the first degree. A person commits the crime of criminal mischief in the first degree if, with intent to damage property, and having no right to do so nor reasonable ground to believe that he has such right, he damages property of another:

(1) In an amount exceeding \$1,000; or

(2) By means of an explosive.

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COMMENTARY - CRIMINAL MISCHIEF

A. Summary

Section 1 is intended to cover the type of conduct that is not thievery, but, rather, amounts to unauthorized and unlawful interference with the property of another. Damage to property is not an element of this crime.

Section 2 defines three ways of committing the crime of criminal mischief in the second degree by damaging property of another.

Section 3 is the same basic offense as that described in section 2, except that it is aggravated by the amount of the damage or because explosives were used. An intent to damage property is a necessary element of the offense.

Taken as a whole, the presented draft combines the features of "criminal tampering or interference" with those of "malicious mischief."

B. Derivation

Section 1 is drawn from New York Revised Penal Law section 145.15, "Criminal tampering in the second degree." That state's statutes provide for three degrees of "criminal mischief" and two degrees of "criminal tampering." However, the Commission is of the opinion that it is unnecessary to have so many degrees of the offense, and that property rights will be amply protected by the proposal.

Section 2, excepting subsection (1), is comparable to New York section 145.00, "Criminal mischief in the third degree." Subsection (1) would apply to the defendant who illegally tampered or interfered with property of another, and as a result, damages the property in an amount over \$100, even though he had no original intent to do so. The culpability element would be reckless instead of intentional conduct. In that respect, subsection (1) is like paragraph (a) of subsection (2), although a person could violate the latter section without having tampered with the property.

As noted in earlier commentary, the terms "intentionally" and "recklessly" will be defined in the general definitions that will apply to the entire revision, and the Commission anticipates that such definitions will be similar to those set out in Model Penal Code section 2.02:

"(a) Purposely.

"A person acts purposely with respect to a material element of an offense when:

"(i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

"(ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist."

"(c) Recklessly.

"A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation."

Section 3 comes from section 145.10 of the New York Code, differing only in the dollar amount in subsection (1) which is \$500 in the New York version.

C. Relationship to Existing Law

As observed in the commentary to "Theft of Services" (T.D. #1), Oregon statutes prohibit "interference" or "tampering" with certain classes of property, such as public utilities and motor vehicles.

Statutes relating to malicious destruction or injury to property of another are:

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- 164.810 - Injuring or destroying boom or wharf
- 164.830 - Injury to person or property by explosive
- 164.840 - Tearing down or defacing posted notices
- 164.850 - Injuring mining claim or appurtenances
- 164.860 - Destroying mining claim monuments
- 164.871 - Injuring or destroying boundary monuments or signs, warning devices

- 164.880 - Destroying surveyor's markings
- 164.890 - Destroying records, documents or scientific instruments
- 164.900 - Malicious destruction of personal property

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TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code

Section 220.3. Criminal Mischief

(1) Offense defined. A person is guilty of criminal mischief if he:

(a) damages tangible property of another purposely, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means listed in Section 220.2 (1); or

(b) purposely or recklessly tampers with tangible property of another so as to endanger person or property; or

(c) purposely or recklessly causes another to suffer pecuniary loss by deception or threat.

(2) Grading. Criminal mischief is a felony of the third degree if the actor purposely causes pecuniary loss in excess of \$5,000, or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service. It is a misdemeanor if the actor purposely causes pecuniary loss in excess of \$100, or a petty misdemeanor if he purposely or recklessly causes pecuniary loss in excess of \$25. Otherwise criminal mischief is a violation.

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Text of Michigan Revised Criminal Code - Final Draft (1967)

Section 2705. Criminal Mischief in the First Degree

(1) A person commits the crime of criminal mischief in the first degree if, with intent to damage property, and having no right to do so or any reasonable ground to believe that he has such a right, he damages any property:

(a) Valued in an amount exceeding 1,000 dollars; or

(b) By means of an explosive.

(2) Criminal mischief in the first degree is a Class C felony.

Section 2706. Criminal Mischief in the Second Degree

(1) A person commits the crime of criminal mischief in the second degree if, with intent to damage property, and having no right to do so or any reasonable ground to believe that he has such a right, he damages any property valued in an amount exceeding 250 dollars.

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

Section 2707. Criminal Mischief in the Third Degree

(1) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe that he has such a right, he intentionally or recklessly damages property of any value not exceeding 250 dollars.

(2) Criminal mischief in the third degree is a Class B misdemeanor.

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Text of New York Penal Law

Section 145.00. Criminal mischief in the third degree

A person is guilty of criminal mischief in the third degree when, having no right to do so nor any reasonable ground to believe that he has such right, he:

1. Intentionally damages property of another person; or
2. Recklessly damages property of another person in an amount exceeding two hundred fifty dollars.

Criminal mischief in the third degree is a class A misdemeanor.

Section 145.05. Criminal mischief in the second degree

A person is guilty of criminal mischief in the second degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person in an amount exceeding two hundred fifty dollars.

Criminal mischief in the second degree is a class E felony.

Section 145.10. Criminal mischief in the first degree

A person is guilty of criminal mischief in the first degree when with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person:

1. In an amount exceeding one thousand five hundred dollars; or
2. By means of an explosive.

Criminal mischief in the first degree is a class D felony.

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