

OREGON VOTING GUIDELINES FOR LAW ENFORCEMENT



Oregon voters have a right to keep their vote private, access official ballot boxes and voting booths without interference, and vote without intimidation or threats. This short guide was created to provide local law enforcement officers with a general understanding of state elections laws and criminal statutes that are most relevant to election related situations they may encounter. Keep in mind when responding to reports of election law violations that all criminal statutes still apply and should be considered by investigating officers.

VOTER PRIVACY

Oregon voters have a right to keep their votes private. For example, near the ballot box or voting booth, conduct such as asking about who person intends to vote for, examining a voter's ballot, or improperly collecting ballots is prohibited. A person, except an elections official in performance of their duty, may not:

- Ask a voter at a ballot drop box or voting booth for whom that voter intends to vote, or examine the voter's ballot, unless the person is providing assistance to the voter because of a physical disability or an inability to read or write as provided in ORS 254.445. ORS 260.695(7)
- Do anything to a ballot to permit identification of the person who voted. ORS 260.695(9)
- Provide elections advice or attempt to collect voted ballots at any ballot drop box or within 100 feet from the entrance to the building. ORS 260.695(14).

Additionally, a voter may not:

- Willfully leave anything at the ballot drop box or voting booth that will show how the voter's ballot was marked. ORS 260.695.

The Secretary of State or Attorney General may impose a civil penalty not to exceed \$1,000 for each violation of these provisions. ORS 260.995(1).

Free Expression, Campaigning, and Electioneering

Wearing or displaying badges, buttons, political insignia etc.

Under the Oregon Constitution the right to free speech protects the wearing of badges, buttons, or other political insignia at polling places. For example, the following would be considered protected speech:

- Wearing a badge, button, hat or t-shirt with a candidate's name or political party
- Wearing a badge, button, hat or t-shirt with a political slogan such as "Build Back Better" or "Make America Great Again"
- Having a bumper sticker or sign with a candidate's name or political slogan.

Law enforcement officers should carefully document all incidents involving violations of election laws and voter's rights in a report. Not only will this help to document their actions but will also provide a written record should there be an election integrity issue later.

IN SUMMARY

- Interfering with a voter's privacy near the ballot box or voting booth is unlawful.
- Damaging or tampering with ballot drop boxes, election materials, and ballots is unlawful.
- The wearing of political insignia and campaigning/electioneering at ballot boxes and voting booths is protected speech.
- Trespassing statutes may apply if the ballot drop box is located on private property.
- Preventing or attempting to prevent a person from voting or forcing them to vote in a particular way is unlawful.
- Intentionally obstructing or impairing access to ballot boxes or voting booths is unlawful.
- Possession of a firearm near a ballot box or voting booth may cause voters to leave without casting their ballot. When responding to such reports, consider whether state, local, or private property owner prohibitions apply.
- When responding to reports of election law violations, all criminal statutes still apply and should be considered by investigating officers.



Campaigning, petitioning, or electioneering at a ballot drop box or voting booth location.

ORS 260.695(3) states that a person may not do any “electioneering, including circulating any cards or handbills, or soliciting of signatures to any petition.” However, the Attorney General has concluded that the statute's ban on electioneering with regard to campaigning near a ballot drop box or voting booth location may violate the Oregon Constitution's right to free speech. Thus, conduct such as campaigning or soliciting signatures for a petition at a ballot drop box site or voting booth is likely protected speech. For example, the following would likely be considered protected speech:

- Circulating cards or handbills
- Soliciting signatures for a petition
- Voicing support or opposition to a candidate
- Campaigning for a candidate.

Trespass statutes may apply: A property owner can grant a license or privilege to enter a premises that is conditioned on or restricted to specified conduct. For example, if the ballot drop box is located on private property, such as in a grocery store or privately owned parking lot, then the owner of the property can direct the person to stop activities such as campaigning, petitioning, or electioneering and leave the premises.

- Criminal Trespass in the Second Degree: A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully in or upon premises. Criminal trespass in the second degree is a Class C misdemeanor. ORS 164.245.

Damaging or Tampering with Ballot Boxes, Election Materials, and Ballots

Damaging or tampering with ballot drop boxes, election materials, and ballots is prohibited. Unless a person is an election official in the performance of their duties, a person may not:

- Remove a ballot from a place designated for the deposit of ballots. ORS 260.695(11)
- Deface, remove, alter or destroy a posted election notice. ORS 260.695(12)
- Remove, alter or destroy election equipment or supplies. ORS 260.695(13)
- Open any sealed package containing election supplies. ORS 260.695(13).

The Secretary of State or Attorney General may impose a civil penalty not to exceed \$1,000 for each violation of these provisions. ORS 260.995(1).

Additionally, it is a Class C felony for a person to:

- Willfully place a fraudulent ballot among the genuine ballots. ORS 260.715(6)
- Commit theft of a ballot. ORS 260.715(8)
- Manufacture or knowingly use a fraudulent ballot return identification or secrecy envelope. ORS 260.715(9)(a)(A)
- Sell, purchase or make an offer to sell or purchase an official ballot, replacement ballot, ballot return envelope, or secrecy envelope. ORS 260.715(9)(a)(B)
- Alter or destroy a ballot cast at an election. ORS 260.715(5).

Obstruction, Intimidation, Threats, and Disorderly Conduct

Law enforcement officers may find themselves in situations where a person's speech, conduct, and/or carrying a firearm crosses the line and illegally interferes with a voter's rights and the voting process. As a general rule:

- Law enforcement officers always retain the ability to address disorderly, threatening, or obstructive conduct, and possession of firearms under the applicable criminal statutes.



Obstructing Voter Access to Ballot Drop Boxes and Voting Booths

Preventing a voter from accessing a ballot drop box or voting booth is prohibited. For example, demonstrators or “ballot box integrity” watchers may not position themselves in such a way that blocks or prevents voters from accessing a ballot drop box or voting booth. Under ORS 260.695:

- A person may not obstruct a place designated as a ballot drop box location or where a voting booth is located. ORS 260.695(4).
 - Note: This law applies from the date when ballots are mailed to voters and ends on election day at 8 p.m. or when all persons who are in line waiting to vote or deposit their ballot have finished voting. ORS 260.695(4).

The Secretary of State or Attorney General may impose a civil penalty not to exceed \$1,000 for each violation of these provisions. ORS 260.995(1).

Intimidation, Threats, and Disorderly Conduct

Oregonians have a right to vote without being subjected to intimidation or threats. Preventing or attempting to prevent a person from voting or forcing them to vote in a particular way is prohibited. Some examples of voter intimidation and/or undue influence include:

- Verbal or physical threats, both express and implied
- Aggressive or harassing questions about whether a person is qualified to vote such as questioning citizenship status, criminal record, or residency
- Targeted surveillance of voters, such as following or tracking voters, copying license plates, taking videos or photos, done with the intent to dissuade the person from voting
- False or misleading statements about or accusations about voter fraud or criminal penalties meant to frighten away a voter.

Law enforcement officers may address disorderly, threatening, or intimidating conduct under the applicable criminal statutes. For example, consider:

- **Undue Influence:** Under ORS 260.665, a person may not directly or indirectly subject a person to undue influence with the intent to induce a person to refrain from voting or vote in a particular manner. “Undue influence” means force, violence, restraint or the threat of it, inflicting injury, damage, harm, loss of employment or other loss or the threat of it, or giving or promising to give money, employment or other thing of value. Violation of this section is a Class C felony.
- **Harassment:** Under ORS 166.065, a person commits the crime of harassment if the person intentionally harasses or annoys another person by subjecting them to offensive physical conduct or publicly insults a person by abusive words or gestures in a manner intended and likely to provoke a violent response. Harassment is a Class B misdemeanor. Additionally, harassment against an election worker who is performing official duties is a Class A Misdemeanor. ORS 166.065(4)(c).
- **Disorderly Conduct:** Under ORS 166.025, a person commits the crime of disorderly conduct in the second degree if, with the intent to cause public inconvenience, annoyance or alarm, the person:
 - Engages in fighting or in violent tumultuous or threatening behavior
 - Makes unreasonable noise
 - Disturbs any lawful assembly of persons
 - Obstructs vehicular or pedestrian traffic on a public way
 - Initiates or circulates a report, knowing it to be false, of an alleged crime
 - 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.



Intimidation Involving Firearms

Law enforcement may encounter situations where a person or group is carrying firearms near a ballot drop box or voting booth. This conduct may cause voters to leave without casting their ballot for fear of walking near the person or demonstrators. Being in possession of a firearm near a ballot box or voting booth is prohibited when:

- The person possesses the firearm in furtherance of any of the above identified crimes, such as to intimidate voters.
- State prohibition against possessing a firearm in a public building or courthouse.
 - Firearms may not be possessed in public buildings or their adjacent grounds (including parking lots). ORS 166.370. Violation of this section is a Class C felony.
 - Public buildings include: a hospital, a capitol building, a public or private school, a college or university, a city hall, building occupied by an agency of the state or by a city, a county, a district as defined, and court facilities. ORS 166.360.
- Local ordinance prohibits the possession of a firearm in the place.
 - A city or county may adopt ordinances to regulate, restrict, or prohibit the possession of loaded firearms in public places. ORS 166.173.
 - “Public place” means a place to which the general public has access and includes, but is not limited to, highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation ORS 161.015(10).
- Private property owner prohibits possession of firearms and the ballot drop box is located on their private property.
 - A property owner can grant a license or privilege to enter a premises that is conditioned on not being in possession of a firearm. For example, if a ballot drop box is located on private property and the property owner has prohibited firearms on the property by posting a sign, then the person may not bring a firearm on the property.
 - Criminal Trespass with a Firearm: A person commits the crime of criminal trespass while in possession of a firearm who, while in possession of a firearm, enters or remains unlawfully in or upon premises. ORS 164.265. Criminal trespass while in possession of a firearm is a Class A misdemeanor.

