

COMMITTEE ON JUDICIARY
Room 14, State Capitol
Salem, Oregon

O R E G O N V E H I C L E C O D E

ARTICLE 17. CLASSES OF OFFENSES;
DISPOSITION OF OFFENDERS

Preliminary Draft No. 3

June 1974

INTRODUCTORY NOTE: At its June 12, 1974, meeting the Committee on Judiciary made certain policy decisions with respect to Preliminary Draft No. 2. This draft shows amendments to the text to reflect those decisions. Deleted material is bracketed and new material is underscored. For basic Commentary, see Preliminary Draft No. 2.

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Subcommittee on Adjudication

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Section 1. (Traffic infraction described.) (1) An offense defined in the Oregon Vehicle Code is a traffic infraction if it is so designated in the statute defining the offense or if the offense is punishable only by a fine, forfeiture, suspension or revocation of a license or other privilege, or other civil penalty.

(2) A person who commits a traffic infraction shall not suffer any disability or legal disadvantage based upon conviction of a crime.

(3) Except as a statute relating to a traffic infraction otherwise expressly provides, the criminal and criminal procedure laws of this state relating to a violation as described in ORS 161.505 and 161.565 apply with equal force and effect to a traffic infraction.

Section 2. (Classification of traffic infractions.) Traffic infractions are classified for the purpose of sentence into the following categories:

- (1) Class A traffic infractions;
- (2) Class B traffic infractions;
- (3) Class C traffic infractions; and
- (4) Class D traffic infractions.

Section 3. (Fines for traffic infractions.) (1) Except as otherwise provided in section 4 of this Article or in the statute defining the offense, the penalty for committing a traffic infraction shall be a fine only.

(2) A sentence to pay a fine for a traffic infraction shall be a sentence to pay an amount not exceeding:

- (a) \$1,000 for a Class A traffic infraction.
- (b) \$250 for a Class B traffic infraction.
- (c) \$100 for a Class C traffic infraction.
- (d) \$50 for a Class D traffic infraction.

Section 4. (Certain offenses not classified as traffic infractions.) (1) Each of the following vehicle code offenses is classified as a traffic crime:

- (a) Failure to perform the duties of a driver involved in an accident or collision which results in injury or death to any person.
- (b) Fleeing or attempting to elude a police officer.
- (c) Reckless driving.
- (d) [Driving a motor vehicle in violation of any driver's license restriction or suspension resulting from moving violations or from failure to comply with a court order.] Driving a motor vehicle in violation of any driver's license suspension resulting from accumulated traffic infractions, from failure to comply with a court ordered suspension, from any order issued by the Motor Vehicles Division under authority of ORS chapter 482 or from failure to file proof of future financial responsibility as set forth in subsections (1), (2) and (4) of ORS 486.211.

(e) Driving with .10 percent or more blood alcohol content.

[(e)] (f) A Class A traffic infraction, if the defendant has been convicted of one or more Class A traffic infractions or traffic crimes within a five-year period immediately preceding the commission of the offense and the previous conviction was not part of the same transaction as the present offense. In applying this paragraph, any conviction of a Class A infraction or a traffic crime as described in this section, or any conviction before the effective date of this Act of the statutory counterparts of these offenses which occurred within the immediate five-year period before the commission of the present offense shall be included, regardless of whether the previous conviction occurred before or after the effective date of this Act.

(2) As used in paragraph [(e)] (f) of subsection (1) of this section, "Class A traffic infraction" includes:

(a) Driving under the influence of intoxicating liquor, dangerous drugs or narcotic drugs;

[(b) Driving with .15 percent or more blood alcohol content;]

[(c)] (b) Failure to perform the duties of a driver involved in an accident or collision which results only in damage to the property of another; and

[(d) Driving a motor vehicle while license is suspended or revoked as the result of failure to file proof of future financial responsibility as required under ORS chapter 486.]

(c) Driving a motor vehicle in violation of a license restriction imposed by a court or the Motor Vehicles Division, or driving while suspended for failure to file proof of future financial responsibility as required by ORS 486.021.

(3) In any jury trial of a traffic crime as described in paragraph [(e)] (f) of subsection (1) of this section, at the request of the defendant, proof of any previous conviction shall be submitted only to the trial judge, and the fact of the previous conviction shall not otherwise be made known to the jury.

(4) Notwithstanding ORS 135.405 to 135.445, a person charged with a traffic crime under paragraph (f) of subsection (1) of this section shall not be allowed to engage in plea discussions or to plead "guilty" or "no contest" to any other offense in exchange for a dismissal of the crime originally charged.

Section 5. (Trial; burden of proof; pre-trial discovery.) (1)

The trial of any traffic infraction shall be by the court without a jury.

(2) The state, municipality or political subdivision shall have the burden of proving the alleged traffic infraction by a preponderance of the evidence.

(3) The pre-trial discovery rules in ORS 135.805 to 135.873 apply to traffic infraction cases.

Section 6. (Counsel for defendant.) At any trial involving a traffic infraction, counsel shall not be provided at public expense.

Section 7. (Counsel for state.) (1) At any trial involving a traffic infraction only, the district attorney shall not appear unless required by the trial judge.

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

(a) "State" includes, where appropriate, political subdivisions and municipalities.

(b) "District attorney" includes, where appropriate, a city attorney and county counsel.

Section 8. (Prosecution involving traffic infraction not a bar to subsequent charge.) Notwithstanding the provisions of ORS 131.505 to 131.535, if a person commits both a crime and a traffic infraction as part of the same criminal episode, the prosecution for one offense shall not bar the subsequent prosecution for the other. However, evidence of the first conviction shall not be admissible in any subsequent prosecution for the other offense.

Section 9. (Trial judge's authority to order suspension of license, permit or right to apply.) (1) If a defendant is convicted of any traffic offense and fails or refuses to pay a fine imposed by the judge or to comply with any condition upon which payment of the fine was suspended, the judge, in addition to or instead of any other method authorized by law for enforcing a court order, may order the defendant's driver's license, permit or right to apply to be suspended or [restricted] may limit the defendant's driving under conditions fixed by the court until he complies with the conditions of the order.

(2) If a defendant is convicted of a traffic crime or a Class A traffic infraction, in addition to any fine or imprisonment authorized by law, including probation and suspension of imposition or execution of any sentence upon conditions ordered by the court, the judge may also:

(a) Order the defendant's driver's license, permit or right to apply to be suspended until he successfully completes a defensive driving or other appropriate driver improvement course conducted by the Motor Vehicles Division or other rehabilitative program;

(b) Order the defendant's driver's license, permit or right to apply to be suspended [or restricted] for not more than [90 days] one year; or

(c) Order the defendant to successfully complete a defensive driving or other appropriate driver improvement course conducted by the Motor Vehicles Division or other rehabilitative program within a period of time fixed by the judge, with the penalty for failure to comply with the order a future suspension [or restriction] of the

defendant's driver's license, permit or right to apply or other future limitation on the defendant's driving.

(3) If the trial judge places any limitations on the defendant's driving under subsection (1) or (2) of this section, the judge shall immediately advise the Motor Vehicles Division in writing. Any limitation ordered by the judge shall be made part of the defendant driver's record and shall remain in effect until the division is notified in writing by the court that the limitation has ended.

[(3)] (4) If the trial judge orders a suspension under subsection (1) or paragraph (a) or (b) of subsection (2) of this section, he shall take possession of the defendant's driver's license or permit. If the judge orders a suspension under subsection (1) of this section, he shall retain the defendant's license or permit as part of the court's record of the case, and immediately forward a copy of the suspension order to the Motor Vehicles Division. When the defendant pays the fine as ordered, the judge shall [return the license or permit to the defendant and] immediately forward a copy of an order to reinstate the license or permit, along with the defendant's license or permit, to the division.

[(4)] (5) If the judge orders a suspension under paragraph (a) or (b) of subsection (2) of this section, he shall immediately forward the defendant's driver's license or permit along with a copy of the order of suspension to the Motor Vehicles Division. If the defendant successfully completes a defensive driving course or other rehabilitative program, the division shall reinstate the defendant's license, permit or right to apply, return any license or permit to the defendant

and notify the trial judge in writing that the defendant has complied with the judge's order.

[(5)] (6) Upon receipt of any order entered by a trial judge under this section, the Motor Vehicles Division shall immediately make proper entry in its files and records and take other action, as necessary, to implement the judge's order.

Section 10. (Appeals.) Appeals in traffic infraction cases shall be as provided in [Engrossed Senate Bill 403 (1973)].