

9/24/74

JUDICIARY COMMITTEE AMENDMENTS

August 30, 1974

Classes of Offenses; Disposition of Offenders

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) \$500 for a Class B traffic infraction.
- (c) \$250 for a Class C traffic infraction.
- (d) \$100 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) Dangerous driving.

(d) Driving a motor vehicle in violation of a license suspension ordered by a court or in violation of a suspension or revocation issued by the Motor Vehicles Division under ORS chapter 482 or under subsections (4) and (5) of ORS 486.211.

(e) A Class A traffic infraction, if the defendant has been convicted of any Class A traffic infraction or traffic crime 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) 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) 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

(c) Driving a motor vehicle while suspended for failure to file proof of future financial responsibility as required by ORS 486.021.

Section 6. (Plea agreements limited.) Notwithstanding ORS 135.405 to 135.445, a person charged with a traffic crime under subsection (1) of section 4 of this Article shall not be allowed to plead "guilty" or "no contest" to any other offense in exchange for a dismissal of the offense charged. No district attorney shall be permitted to make any motion and no judge shall be permitted to enter any order in derogation of this section.

COMMENTARY

The purpose of this section is to ensure that the classification of the offenses of DUIL and driving with .08 percent or more blood alcohol content as Class A traffic infractions will be limited to first offenders, as intended under section 4. One of the basic policies of the draft would be thwarted if a prior offender were permitted to have the criminal charge for which he should be prosecuted reduced to an infraction.

Section 8. (Counsel for state and defendant.) (1) At any trial involving a traffic infraction only, defense counsel shall not be provided at public expense.

(2) At any trial involving a traffic infraction only, the district attorney shall not appear unless counsel for the defendant appears. The court shall ensure that the district attorney is given timely notice if defense counsel is to appear at trial.

(3) As used in subsection (2) of this section, "district attorney" includes, where appropriate, a city attorney and county counsel.

*Art 16
Misc Sections*

Section 170. (Attending court and prosecuting offenses.) ORS

8.660 is amended to read:

8.660. The district attorney shall attend the terms of all courts having jurisdiction of public offenses within his county, and, except as provided for traffic infractions under section ___ of this 1975 Act, conduct, on behalf of the state, all prosecutions for such offenses therein.

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Section 9. (Former jeopardy, res judicata and collateral estoppel not applicable in traffic infraction cases.) (1) Notwithstanding 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.

(2) Notwithstanding ORS 43.160, no plea, finding or proceeding upon any traffic infraction shall be used for the purpose of res judicata or collateral estoppel in any other civil or criminal proceeding.

144,
Section 12. (Conviction of certain offenses as grounds for mandatory revocation or suspension.) ORS 482.430 is amended to read:

482.430. (1) The division forthwith shall revoke any person's permit or license to operate motor vehicles upon receiving a record of the conviction of such person of any of the following offenses:

(a) Manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle.

(b) Perjury or the making of a false affidavit to the division under this chapter or any other law of this state requiring the registration of motor vehicles or regulating their operation on highways.

(c) Any crime punishable as a felony in the commission of which a motor vehicle is used.

(d) Conviction or forfeiture of bail upon [three] two charges of [reckless driving] dangerous driving in the first degree all within the preceding [12] 24 months.

(e) A conviction of a driver of a motor vehicle involved in an accident resulting in the death or injury of another person, upon a charge of failing to stop and disclose his identity at the scene of the accident.

(2) The division forthwith shall suspend any person's permit or license to operate motor vehicles upon receiving a record of the conviction of such person for the following offenses:

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

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- (b) Fleeing or attempting to elude a [traffic or] police officer.
- (c) Dangerous driving in the first or second degree.
- (3) The period of suspension shall be:
 - (a) First conviction within a 10-year period, 30 days.
 - (b) Second conviction within a 10-year period, one year.
 - (c) Third or subsequent conviction within a 10-year period, three years.

(4) If a defendant is before the court for sentencing upon conviction for any offense that is grounds for mandatory revocation or suspension under this section and the defendant has a driver's license or permit, the judge shall take possession of the license or permit and immediately send it and notice of the conviction to the division. Any suspension or revocation of the defendant's license or permit or right to apply shall become effective on the date on which the court takes possession of the license or permit or on the date otherwise ordered by the court.

CLASSES OF OFFENSES; DISPOSITION OF OFFENDERS

Proposed Amendments

Section ____ . (Adding provision relating to review by Court of Appeals.) Section ____ of this Act is added to and made a part of ORS 2.510 to 2.600.

Section ____ . (Scope of review by Court of Appeals in traffic infraction cases.) (1) Upon an appeal from a district court judgment in a traffic infraction case, the scope of review by the Oregon Court of Appeals shall be as provided in section 3, Article VII (Amended), of the Oregon Constitution.

(2) No judgment shall be reversed or modified under subsection (1) of this section, except for error substantially affecting the rights of a party.

(3) Upon an appeal to the Court of Appeals from a justice court or municipal court judgment in a traffic infraction case, the cause shall be tried anew upon the record.

Section ____ . (Appeals from justice and municipal courts.) (1)

A justice court or municipal court, at its option, may elect to provide for appeals in traffic infraction cases to be on the record as provided by law for appeals from district court. Otherwise, an appeal from a justice or municipal court shall be tried de novo in the circuit court for the county in which the traffic infraction conviction occurs.

(2) If a justice or municipal court elects to follow district court appeal procedures, it shall provide for a record to be made of any trial of a traffic infraction in the same manner as provided by law for the trial of a traffic infraction in district court.

Art. 14

Limitation on Searches and Seizures

Section 143. (Searches and seizures restricted in certain traffic infraction arrests.) (1) Searches and seizures otherwise authorized by law incidental to an arrest shall not be authorized if the arrest is on a charge of committing a Class B, C or D traffic infraction.

(2) Nothing in subsection (1) of this section shall be construed to forbid a frisk for dangerous or deadly weapons authorized under ORS 131.605 to 131.625.

Art. 14
S. 150

ORS 483.640. In conducting a chemical test of the blood, only a duly licensed physician, registered nurse or a person acting under his direction or control may withdraw blood or pierce human tissues. A licensed physician, registered nurse or a qualified person acting under their direction or control, shall not be held civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer.

COMMENTARY:

This section immunizes medical personnel so long as they act in a medically acceptable manner. The phrase "medically acceptable manner" is drawn from Schmerber v. California, 384 US 757, ___, 86 Sct 1826, 16 LEd 2d 908, 913 (1966).