

COMMITTEE ON JUDICIARY
Room 14, State Capitol
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O R E G O N V E H I C L E C O D E

ARTICLE 14 . CLASSES OF OFFENSES;
DISPOSITION OF OFFENDERS

Preliminary Draft No. 4; August 1974

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Subcommittee on Adjudication

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ARTICLE ____ . CLASSES OF OFFENSES;

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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.

COMMENTARY

For Commentary, see Preliminary Draft No. 2, pp. 1 - 3.

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.

COMMENTARY

For Commentary, see Preliminary Draft No. 2, p. 4.

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.

COMMENTARY

For Commentary, see Preliminary Draft No. 2, p. 5.

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 from failure to file proof of future financial responsibility as set forth in subsections (1), (4) and (5) of ORS 486.211.

(e) 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) 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 .10 percent or more blood alcohol content;

(c) 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 suspended for failure to file proof of future financial responsibility as required by ORS 486.021.

COMMENTARY

Subsection (1) of this section classifies certain vehicle code offenses as traffic crimes. These offenses will be designated in the substantive code as a specific class of either felony or misdemeanor. As crimes, they would continue to be adjudicated under the traditional criminal procedures. (See Serious Traffic Offenses; Preliminary Draft No. 2; August 1974.)

Subsection (2) classifies certain offenses as Class A traffic infractions for the specific purpose of determining the crime described in paragraph (d) of subsection (1). The offenses named in paragraphs (a), (b), (c) and (d) of subsection (2) are included within the term "Class A traffic infraction." The type of case covered under paragraphs (a) and (b) would be the non-reckless DUIL or .10 driver who is a first offender. If he were driving recklessly or with criminal negligence, it would constitute a crime under paragraph (c) of subsection (1). If he were a repeat offender within a five-year period, it would be a crime by operation of paragraph (e). Convictions occurring before the effective date of this Act would be included. (See s 6, infra.)

The crimes of dangerous driving are defined in the Article on Serious Traffic Offenses and would replace the existing reckless driving statute.

Most "driving while suspended" offenses would be treated as traffic crimes under paragraph (d) of subsection (1). Driving while suspended for failure to file proof of

future financial responsibility as required by ORS 486.021 would be classified as a traffic infraction. The rationale for the difference in gravity of the respective offenses is based on the underlying grounds for the initial suspension with the "bad" driver drawing the heavier penalty.

Section 5. (Proof of previous conviction submitted only to trial judge.) In any jury trial of a traffic crime as described in paragraph (e) of subsection (1) of section 4 of this Article, at the request of the defendant, proof of any previous conviction for a Class A traffic infraction or traffic crime shall be submitted only to the trial judge, and the fact of the previous conviction shall not be made known to the jury.

COMMENTARY

This section is meant to prevent any previous conviction from prejudicing the jury in the trial of the instant offense. The previous conviction would serve only to classify the subsequent charge as a traffic crime for sentencing purposes. The subcommittee had divided views regarding this section as did the Consulting Committee. It was decided to submit the section to the full committee for further discussion.

Section 6. (Plea agreements limited.) Notwithstanding ORS 135.405 to 135.445, a person charged with a traffic offense under paragraph (e) of 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.

COMMENTARY

The purpose of this section is to try to ensure that the classification of the offenses of DUIL and driving with .10 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 7. (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.

COMMENTARY

For Commentary, see Preliminary Draft No. 2, p. 9.

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

COMMENTARY

A. Summary

This section permits counsel for any person charged with a traffic infraction, but not appointed counsel.

B. Derivation

The section adopts the New York, California, Minnesota and Pennsylvania view that because the penalty does not include imprisonment, there is no constitutional requirement for providing appointed counsel.

C. Relationship to Existing Law

The U. S. Supreme Court in a recent unanimous decision held that "[A]bsent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony, unless he was represented by counsel at his trial." Argersinger v. Hamlin, 407 U.S. 25 (1972). Justice Douglas, in the Court's opinion, noted that although "traffic charges" are technically criminal prosecutions, it "does not necessarily mean that many of them will be brought into the class where imprisonment actually occurs."

The Oregon Supreme Court had declared three years prior to Argersinger that "[N]o person may be deprived of his liberty who has been denied the assistance of counsel as guaranteed by the Sixth Amendment." Stevenson v. Holzman, 254 Or 94, 458 P2d 414 (1969).

Because the penalty for committing a traffic infraction would not include the imposition of a jail sentence, it would not appear to violate either the Argersinger or Stevenson holdings.

Section 9. (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.

COMMENTARY

For Commentary, see Preliminary Draft No. 2, p. 12.

Section 10. (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 or any part of it 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 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 for not more than 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 being a future suspension 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.

(4) If the trial judge orders a suspension under subsection (1) or paragraph (a) or (b) of subsection (2) of this section, or if the conviction will result in mandatory revocation or suspension of the defendant's license or permit under ORS 482.430, the judge shall take possession of the license or permit. The judge shall immediately send the license or permit and a copy of any order entered by the court to the Motor Vehicles Division. Any suspension or revocation of the defendant's license or permit shall become effective on the date on which the court takes possession of the license or permit.

(5) If the judge ordered the suspension under subsection (1) of this section, upon payment of the fine as ordered, the judge shall immediately send a copy of an order to reinstate the defendant's license or permit to the division.

(6) If the judge ordered the suspension under paragraph (a) of subsection (2) of this section, when 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 judge in writing that the defendant has complied with the judge's order.

(7) Upon receipt of any order entered by a judge under this section, the division shall immediately make proper entry in its files and records and take other action, as necessary, to implement the judge's order.

COMMENTARY

For Commentary, see Preliminary Draft No. 2, p. 15. The section has been further amended by the subcommittee to distinguish between "limitations" placed on a defendant's driving by the judge, and "restrictions" imposed by Motor Vehicles Division by statute.

Subsection (4) now empowers the judge to take up the defendant's license or permit at the time the court orders the suspension or if the conviction will result in mandatory suspension by the Motor Vehicles Division. The judge would forward the license to the division along with a copy of the court's order. The suspension or revocation would become effective on the date the license is taken by the court. This would be a change from existing law under which the suspension or revocation is not effective until official notice from the division is received by the licensee. The action by the judge would be notice to the defendant that he is suspended as of that date.

Section 11. (Court ordered suspension to run concurrently.) A suspension of a license or permit ordered by the court under section 10 of this Article shall run concurrently with any mandatory suspension ordered by the division under ORS 482.430 and arising out of the same conviction.

COMMENTARY

This section would make a court ordered suspension of a license run concurrently with any mandatory suspension otherwise provided by law. The purpose is to prevent a double suspension being imposed upon a person as the result of a single conviction.

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 charges of [reckless driving] dangerous driving in the first degree all within the preceding 12 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.

(b) Fleeing or attempting to elude a traffic or police officer.

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

(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, the judge shall take possession of the defendant's license or permit and immediately send it and a copy of the judgment order to the division. Any suspension or revocation of the defendant's license or permit shall become effective on the date on which the court takes possession of the license or permit.

COMMENTARY

This section amends the statute to conform with sections 4 and 10 of this Article and the Serious Traffic Offenses Article.

Section 13. (Permissive suspension or revocation.) ORS 482.450
is amended to read:

482.450. (1) The division immediately may suspend the license of any person without hearing and without receiving a record of the conviction of such person of crime, when the division has reason to believe that such person:

(a) Has committed any offense for the conviction of which mandatory revocation is provided in subsection (1) of ORS 482.430.

(b) Has, by incompetent, reckless, criminally negligent or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person or serious property damage.

(c) Is incompetent to drive a motor vehicle or is afflicted with mental or physical infirmities or disabilities rendering it unsafe for him to drive a motor vehicle upon the highways.

(d) Is a habitual incompetent, reckless or criminally negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws of this state.

(2) Whenever the division suspends the license of any person for any reason set forth in subsection (1) of this section, the division immediately shall notify the licensee and afford him an opportunity of a hearing before a representative of the division in the county wherein the licensee resides. The hearing shall be conducted as a contested case in accordance with ORS 183.310 to 183.500. Upon such hearing, the division either shall rescind the order of suspension,

or, good cause appearing therefor, may continue, modify or extend the suspension of such license or revoke such license.

COMMENTARY

The section is amended to conform with the Serious Traffic Offenses Article and the new proposed offense of dangerous driving.

Section 14. (Appeals.) Appeals in traffic infraction cases shall be as provided in (Engrossed Senate Bill 403 (1973)).

COMMENTARY

For Commentary, see Preliminary Draft No. 2, p. 16, and appendix thereto.