

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 14.    CLASSES OF OFFENSES;  
DISPOSITION OF OFFENDERS

Preliminary Draft No. 1

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INTRODUCTORY NOTE: This staff draft contains preliminary proposals dealing with classification of traffic offenses, penalties and certain procedural provisions. The classification and penalty scheme ultimately approved by the Judiciary Committee will, to a large degree, dictate the type of adjudication system to be proposed. Conversely, the grading of the offenses will be influenced by the nature of the system available to handle those offenses. For these reasons this Article will be considered separately by both subcommittees in connection with their individual drafting assignments before any draft on this subject is submitted to the full committee.

Reporter: Donald L. Paillette      Subcommittee on Adjudication

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

ARTICLE \_\_\_\_ . CLASSES OF OFFENSES;

DISPOSITION OF OFFENDERS

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

A. Summary

This section describes a "traffic infraction," the basic term proposed for the purpose of classifying the majority of vehicle code offenses in a noncriminal category.

The Oregon Criminal Code now defines two kinds of "offense" -- "crimes" and "violations." (See ORS 161.505, 161.515 and 161.565.) A traffic infraction, while it would be an offense inasmuch as it would be punishable by a fine or other civil penalty, would not be a crime because no imprisonment would attach to it. It would be the same as a violation because of the nature of the penalty, and were the proposed draft to be adopted by the committee, it would be necessary to amend ORS 161.505, defining an offense, to include the new term.

Although the generic term, "violation," could be employed for grading and "decriminalizing" the Vehicle Code, the new term, "traffic infraction," is suggested instead. For one thing, even though by definition it would be a type of offense, the term is instantly identifiable as being non-criminal in nature. Furthermore, it also is clearly separated from criminal code offenses and would carry no criminal onus. The classification of the offense, nevertheless, would be consistent with the concept incorporated in the Oregon Criminal Code that imprisonment ought not be available as a punitive sanction unless the conduct that gives rise to an offense warrants the type of social condemnation that is and should be implicit in the concept of "crime."

#### B. Derivation

"Traffic infraction" is a term that undoubtedly will be used with increasing frequency throughout the country in the near future. The National Advisory Commission on Criminal Justice Standards and Goals has endorsed a proposal that most traffic offenses should be handled administratively rather than criminally. The recommendation by the Task Force on Courts, named by the U. S. Law Enforcement Assistance Administration, was similar to a plan for administrative adjudication offered by a task force of the National Highway Safety Advisory Committee in 1973. Both reports recommend retention of criminal procedures for "serious" offenses and both recommend that other traffic offenses be reclassified as "infractions."

Irrespective of whether traffic case procedures are administrative or judicial, the reclassification of most traffic offenses along the lines set forth in this draft would be one way to simplify and streamline the handling of many such cases.

#### C. Relationship to Existing Law

Most traffic offenses, including minor offenses, are misdemeanors because they carry penalties providing for imprisonment up to one year or fine or both. (E.g., ORS 483.990, 483.991.) A few of the serious offenses, such as hit and run involving injury are felonies. This traditional criminal classification of traffic violations is used by an overwhelming majority of states. The infraction classification for all but the most serious traffic offenses is being considered by the District of Columbia, Florida, Maryland, Michigan and Rhode Island. Only New York, California, New Jersey, Pennsylvania and Minnesota have classified most moving traffic offenses as noncriminal. These states reserve criminal classification for the kind of crimes that are characterized by Oregon law as "major" traffic offenses, such as DUIL, eluding a police officer, hit and run, and a few others.

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; and
- (3) Class C traffic infractions.

#### COMMENTARY

##### A. Summary

The section classifies traffic infractions into three separate categories for purpose of sentence. Each traffic offense, excepting those to be classed as crimes, would be graded in one of the classes of traffic infractions.

##### B. Derivation

The classification technique is the same as that used in the Oregon Criminal Code. (See ORS 161.505 et. seq.)

##### C. Relationship to Existing Law

The existing vehicle code does not classify offenses, but for the most part uses the cumbersome and confusing "990" section method for assigning penalties for particular offenses.

Section 3. (Fines for traffic infractions.) (1) Except as otherwise expressly provided 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) \$250 for a Class A traffic infraction.
- (b) \$100 for a Class B traffic infraction.
- (c) \$50 for a Class C traffic infraction.

#### COMMENTARY

##### A. Summary

This section limits the penalty for a traffic infraction to a fine only and establishes the maximum fines for each of the three categories of traffic infractions. The amount of the fine is to be fixed by the court (or hearings officer) within the applicable limit. The section does not require the court to impose a mandatory fine, but would allow flexibility in fitting the offense to the particular case.

##### B. Derivation

The section is based on the Oregon Criminal Code provisions.

##### C. Relationship to Existing Law

This kind of penalty provision would be new for the vehicle code.

Section 4. (Contested cases; burden of proof.) (1) A person who contests a traffic infraction charge shall have the case heard without a jury.

(2) The burden of proof shall be upon the state, municipality or political subdivision to prove the charge by clear and convincing evidence.

#### COMMENTARY

##### A. Summary

This section provides for hearings in contested cases, but subsection (1) eliminates the jury trial. The language is purposely broad to accommodate whatever type of adjudication system is selected, either judicial or administrative.

Subsection (2) establishes a "clear and convincing" burden of proof standard inasmuch as the traffic infraction classification is noncriminal and for that reason a "reasonable doubt" standard does not appear necessary. Nonetheless, the classification system is punitive in nature, the state or political subdivision is the accuser and for these reasons a standard of proof somewhat greater than the civil "preponderance" test seems appropriate.

##### B. Derivation

The section is based on provisions in the New York administrative adjudication statutes, Ch 1074, N.Y. Laws, 1969. California, Minnesota and Pennsylvania also do not allow a jury trial for minor traffic offenses.

##### C. Relationship to Existing Law

The question of whether the elimination of the jury trial in the adjudication of traffic offenses that are not punishable by imprisonment is constitutional is discussed at length by your reporter in Judiciary Committee Reference Paper, "Constitutionality of Administrative Adjudication," (December 1973).

It is submitted that neither the United States Constitution nor the Oregon Constitution demand a jury trial in this kind of case where there is no possibility of imprisonment. See, Duncan v. Louisiana, 391 US 145 (1968); Baldwin v. New York, 399 US 66 (1970).

Section 5. (Representation by counsel.) At any hearing involving a traffic infraction the person charged may be represented by his counsel or other personal representative of his choice, but 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, 92 S Ct 2006 (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 6. (Issuing officer to present facts.) (1) At any contested hearing involving a traffic infraction only, the peace officer who issued the citation shall present the facts concerning the alleged offense.

(2) The district attorney, upon request of the law enforcement agency involved, may advise the agency regarding any question of law in a particular traffic infraction case, but he shall not otherwise prosecute a traffic infraction.

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

#### COMMENTARY

This section, based on the New York Administrative Adjudication System, would remove the prosecutor from the case and provide that any hearing concerning a traffic infraction would involve only the issuing officer. This would not preclude other witnesses for either side from appearing and giving testimony, however. As with other sections in this draft, the section could apply to hearings before either a judge or a hearings officer.



TEXT OF LAWS OF OTHER STATES

Minnesota Motor Vehicle and Traffic Laws

**169.89 PENALTIES. Subdivision 1. Violation.** Unless otherwise declared in this chapter with respect to particular offenses, it is a petty misdemeanor for any person to do any act forbidden or fail to perform any act required by this chapter; except that: (a) a violation which is committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property; or (b) exclusive of violations relating to the standing or parking of an unattended vehicle, a third or subsequent violation of any of the provisions of this chapter, classified therein as a petty misdemeanor, within the immediate preceding 12 months period; is a misdemeanor to which the provisions of subdivision 2 of this section shall not apply.

**Subd. 2. Penalty; jury trial.** A person charged with a petty misdemeanor shall not be entitled to a jury trial but shall be tried by a judge without a jury. If convicted, he shall be punished by a fine of not more than \$100.

**Subd. 3. Retroactivity.** The provisions of this section and section 45 of this act, defining a petty misdemeanor, shall operate not only prospectively but retroactively to include therein all acts and violations, committed prior to the effective date of this act, which are pending before the courts of this state but not to include any matter which has been heard, tried and determined by the courts.

**Subd. 4. Driver's record.** When a person is arrested for a violation of any provision of this chapter, or a violation of any provision of a city or village ordinance regulating traffic, the court before whom the matter is heard shall determine the driver's record of the person from the commissioner of public safety before pronouncing sentence and the expense incident to the procurement of this information is taxable as costs upon the conviction.

**Subd. 5. Driver improvement clinics; attendance.** In conjunction with or in lieu of other penalties provided by law for violation of this chapter or a municipal ordinance enacted in conformance thereto, the trial court may in its judgment of conviction order the convicted person to attend and satisfactorily complete a course of study at an approved driver improvement clinic. The commissioner of public safety may, upon his own motion or upon recommendation of the court, suspend, for a period of not to exceed 30 days, the operator's license or permit or non-resident operating privilege of any person who fails or refuses to comply with an order to attend a driver improvement clinic. The requirement of attendance at a driver improvement clinic is not a fine, imprisonment, or sentence within the meaning of section 609.02. The court may not order a convicted person to attend a driver improvement clinic which is located more than 35 miles from the person's residence. For the purposes of this section "an approved driver improvement clinic" means a clinic whose curriculum and mode of instruction conform to standards promulgated by the commissioner of public safety.

**169.891 JURISDICTION; LIMITATION OF ACTIONS. Subdivision 1.** Courts which heretofore have had jurisdiction over misdemeanors have the same jurisdiction over petty misdemeanors.

**Subd. 2.** The period for commencing an action against any person for a petty misdemeanor shall be the same as that for a misdemeanor.

New Jersey Motor Vehicle and Traffic Laws

2A:58-2. **Jurisdiction of proceedings.** Every county district court, County Court, and any court upon which, or any magistrate or other judicial officer upon whom, jurisdiction is conferred by the statute imposing the penalty, shall have jurisdiction of proceedings for the enforcement of any such penalty.

Source: C. 2:72A-2.

2A:58-3. **Hearing without jury.** Unless otherwise provided in the statute imposing the penalty, such hearing shall be without a jury.

Source: L. 1950, c. 314.

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California Vehicle Code

Chapter 1162

**SECTION 1.** Section 12810.5 is added to the Vehicle Code, to read:  
12810.5. Notwithstanding Section 12810, a person who drives 25,000 miles or more per year shall be prima facie presumed to be a negligent driver of a motor vehicle only if his driving record shows a violation point count of six or more points in 12 months, eight or more points in 24 months, or 10 or more points in 36 months.

**SEC. 1.5.** Section 40000.3 of the Vehicle Code is amended to read:  
40000.3. A violation expressly declared to be a felony, or a public offense which is punishable, in the discretion of the court, either as a felony or misdemeanor, or a willful violation of a court order which is punishable as contempt pursuant to subdivision (a) of Section 42003, is not an infraction.

**SEC. 2.** Section 40000.15 of the Vehicle Code is amended to read:  
40000.15. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

- Section 23102, relating to driving under the influence.
- Sections 23103 and 23104, relating to reckless driving.
- Section 23105, relating to driving under the influence.
- Section 23109, relating to speed contests or exhibitions.
- Section 23110, subdivision (a), relating to throwing at vehicles.
- Section 23253, relating to officers on vehicular crossings.
- Section 23332, relating to trespassing.

**SEC. 3.** Section 40000.25 of the Vehicle Code is amended to read:  
40000.25. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

- Section 40005, relating to owner's responsibility.
- Section 40504, relating to false signatures.
- Section 40508, relating to failure to appear or to pay fine.
- Section 40519, relating to failure to appear.
- Section 42005, relating to failure to attend traffic school.

California Vehicle Code (Cont'd)

SEC. 4. Section 40000.28 is added to the Vehicle Code, to read:  
40000.28. Any offense which would otherwise be an infraction is a misdemeanor if a defendant has been convicted of three or more violations of this code or any local ordinance adopted pursuant to this code within the 12-month period immediately preceding the commission of the offense and such prior convictions are admitted by the defendant or alleged in the accusatory pleading. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged.

SEC. 5. Section 42001 of the Vehicle Code is amended to read:  
42001. (a) Except as provided in Section 42001.5, every person convicted of an infraction for a violation of this code or of any local ordinance adopted pursuant to this code shall be punished upon a first conviction by a fine not exceeding fifty dollars (\$50) and for a second conviction within a period of one year by a fine of not exceeding one hundred dollars (\$100) and for a third or any subsequent conviction within a period of one year by a fine of not exceeding two hundred fifty dollars (\$250).

(b) Every person convicted of a misdemeanor violation of Sections 2800, 2801, and 2803 insofar as they affect failure to stop and submit to inspection of equipment or for an unsafe condition endangering any person, and Section 2815, shall be punished upon a first conviction by a fine not exceeding fifty dollars (\$50) or by imprisonment in the county jail for not exceeding five days and for a second conviction within a period of one year by a fine of not exceeding one hundred dollars (\$100) or by imprisonment in the county jail for not exceeding 10 days, or by both such fine and imprisonment and for a third or any subsequent conviction within a period of one year by a fine of not exceeding five hundred dollars (\$500) or by imprisonment in the county jail for not exceeding six months or by both such fine and imprisonment.

This section shall have no application to Article 2 (commencing with Section 42030) of Chapter 1 of this division relating to weight violations or to any violation punishable pursuant to Section 42001.7.

SEC. 6. Section 40000.15 of the Vehicle Code is amended to read:  
40000.15. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

- Section 23102, relating to driving under the influence.
- Sections 23103 and 23104, relating to reckless driving.
- Section 23105, relating to driving under the influence.
- Section 23109, relating to speed contests or exhibitions.
- Section 23110, subdivision (a), relating to throwing at vehicles.
- Section 23253, relating to officers on vehicular crossings.
- Section 23332, relating to trespassing.
- Section 27150.1, relating to sale of exhaust systems.

SEC. 7. It is the intent of the Legislature, if this bill and Assembly Bill No. 660 are both chaptered and become effective January 1, 1974, both bills amend Section 40000.15 of the Vehicle Code, and this bill is chaptered after Assembly Bill No. 660, that the amendments to Section 40000.15 proposed by both bills be given effect and incorporated in Section 40000.15 in the form set forth in Section 6 of this act. Therefore, Section 6 of this act shall become operative only if this bill and Assembly Bill No. 660 are both chaptered and become

California Vehicle Code (Cont'd)

effective January 1, 1974, both amend Section 40000.15, and this bill is chaptered after Assembly Bill No. 660, in which case Section 2 of this act shall not become operative.

SEC. 8. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

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