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 (Revised Alternate with Consulting Committee amendments of April 5, 1974) — April 1974

INTRODUCTORY NOTE: This staff draft is based on a memorandum dated February 22, 1974, in which Chief Judge Herbert M. Schwab, Chairman, Consulting Committee, outlines a number of recommendations for classifying and adjudicating traffic offenses. The draft translates those recommendations into proposed statutory language in order that they might be further examined and discussed. Consulting Committee amendments to the text are shown by brackets for deleted material and underscoring for added material. Changes in the Commentary are shown in the same manner. Any errors or omissions are the responsibility of the reporter.

Reporter: Donald L. Paillette — Consulting Committee

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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

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.

The limitation on the types of penalties allowable for a traffic infraction as described in subsection (1) is not meant to infringe upon the general authority of the court to place an offender on probation. See ORS 137.010. The intent of the draft is to provide the judge with the greatest possible number of sentencing options. See s 9 infra.

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;

(3) Class C traffic infractions; and

(4) Class D traffic infractions.

COMMENTARY

A. Summary

The section classifies traffic infractions into four separate categories. Each traffic offense, excepting those to be classified as crimes, would be graded into one of the classes. The offense category of "Class A traffic infraction," while not a "crime," would be reserved for the more serious or "major" type of infraction. This category would be subject to a substantially greater fine than other traffic infractions (see section 3, infra) and, in the case of repeated offenses (see section 4, infra), would elevate into the crime classification.

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 generally uses the cumbersome and confusing "990" section method for assigning penalties to particular offenses.

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

A. Summary

This section limits the penalty for a traffic infraction to a fine only and establishes the maximum fines for each of the four categories of traffic infractions. The amount of the fine is to be fixed by the court within the applicable limit. The section does not require the court to impose a mandatory fine, even for the Class A category, but would allow flexibility in fitting the penalty to the particular case.

B. Derivation

The section is based on Oregon Criminal Code provisions.

C. Relationship to Existing Law

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

Section 4. (Certain offenses not classified as traffic infractions.) (1) Each of the following vehicle code offenses shall be 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.

(e) [Conviction of a second Class A traffic infraction within five years.] A Class A traffic infraction, if the defendant has been convicted of one or more Class A traffic infractions 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.

(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 .15 percent or more blood alcohol content; and

(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.

(3) In any jury trial of a traffic crime as described in paragraph (e) 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.

COMMENTARY

Subsection (1) of this section classifies certain vehicle code offenses as traffic crimes. These offenses would 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.

With regard to driving in violation of a license restriction, the draft contemplates that this offense is serious enough to warrant the criminal label because it is ordinarily an intentional act. However, the vehicle code probably should draw a distinction between the person whose license is suspended because of failure to show financial responsibility and one whose license has been restricted or suspended because of a major violation or a series of minor moving violations. [It could well be that the statutory penalty for the first category of offender should be substantially less than the penalty for being a repeater in terms of moving violations.] The draft subscribes to the view that driving while suspended for failure to show financial responsibility would be a traffic infraction.

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) and (c) of subsection (2) would be included within the term "Class A traffic infraction" and, of course, presupposes that the three named offenses would be so classified in the substantive vehicle code. The type of case covered under paragraphs (a) and (b) would be the non-reckless DUIL or .15 driver who is a first offender. If he were driving recklessly, 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). If additional offenses were classified as Class A infractions in the substantive revision, they would automatically be included for the purpose of paragraph (e) of subsection (1).

Subsection (3) 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.

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.

COMMENTARY

Subsection (1) eliminates the jury trial for traffic infractions. Article III of the United States Constitution provides that the trial of all "crimes" shall be by jury, and the sixth amendment provides for jury trial "in all criminal prosecutions." These provisions have been construed as not applying to what are commonly referred to as "petty offenses." A violation, for which no imprisonment is authorized, would clearly be within the U. S. Supreme Court's concept of a petty offense. See, Duncan v. Louisiana, 391 US 145 (1968), and Baldwin v. New York, 399 US 66 (1970).

Subsection (2) establishes a "preponderance of the evidence" standard of proof. Inasmuch as traffic infractions would be civil in nature, the draft adopts a civil case standard of proof.

Subsection (3) adopts the pre-trial discovery provisions of the Criminal Procedure Code. Although a traffic infraction would not involve a "criminal prosecution," the nature and heavy volume of such cases could create a procedural nightmare if civil discovery rules were applied. The provision in ORS 135.805 that limits pre-trial discovery in which no charge is filed in circuit court to cases in which the defendant serves a written request for discovery is meant to apply to traffic infractions in lower courts.

Section 6. (Counsel for defendant.) At any trial involving a traffic infraction [the defendant 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, 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 7. (Counsel for state.) (1) At any trial involving a traffic infraction only, [the state may be represented by] the district attorney [, but with the consent of the trial judge, the state may waive counsel.] 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.

COMMENTARY

This section would [permit the prosecutor to be removed from traffic infraction trials with the court's consent] require the prosecutor to represent the state in traffic infraction trials only if required by the trial judge. This would permit routine traffic infractions to be presented by the issuing officer, but provide for the presence of the prosecutor if the nature of the case required it.

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.

COMMENTARY

This section removes the traffic infraction from the operation of the former jeopardy statutes and would allow a criminal charge and a later traffic infraction charge or vice versa out of the same criminal episode. If the Class A traffic infractions were the ones contemplated by this draft (see s 4, supra), even though relatively serious, they would still be considered as civil offenses. As a result, if a criminal episode involved both a first offender DUIL and reckless driving, for example, a prosecution for DUIL would not bar the subsequent prosecution for the criminal charge.

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 [payment of a fine] a court order, may order the defendant's driver's license, permit or right to apply to be suspended or restricted 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; 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.

(3) 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 to the division.

(4) 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) 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.

COMMENTARY

This section would specifically empower the trial judge to order a suspension of a license, permit or right to apply to enforce payment of a fine or requirement that the defendant complete an MVD driving course or otherwise comply with the court's order. Implicit in the section is the recognition of a judge's authority to suspend payment of any fine.

Subsection (1) would apply to any traffic offense -- crimes or traffic infractions -- in which a fine has been imposed or the payment thereof has been suspended.

Subsection (2) would apply to traffic crimes or Class A traffic infractions -- the more serious offenses -- which would warrant remedial action such as the defendant's compulsory completion of a driving course. Under both subsection (1) and paragraphs (a) or (b) of subsection (2) the judge would take the defendant's license from him. Paragraph (c) spells out the authority of the judge to order the defendant to complete an appropriate driving course or other rehabilitative program on pain of having his license suspended for noncompliance.

Subsection (3) distinguishes between the two reasons for the suspension, and provides that if nonpayment of the fine is the grounds for the suspension, the judge would retain possession of the license. The license would be returned by the court when the fine is paid. The judge would notify MVD by a copy of the respective order when the suspension is ordered and when the license is reinstated.

Subsection (4) requires the judge to forward the license itself along with the suspension order inasmuch as the condition imposed here would be within the control of MVD rather than the court. The reinstatement of the defendant would be by action of MVD instead of the court, although the division would be required to advise the judge when the defendant completes the driving course.

Subsection (5) merely spells out the obvious necessity for the MVD to make the proper changes in its records regarding the suspension or reinstatement of any driver.

The Consulting Committee has not tried to set forth a system of uniform orders and procedures that would eliminate uncertainty as to the day to day license status of a driver. It's important that this be done, but the Consulting Committee considered it advisable that this be by appropriate rules of the Minor Court Rules Committee rather than by statute.

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

COMMENTARY

Appeals could be handled in whatever manner the legislature authorizes for minor court appeals generally, although this draft strongly recommends SB 403.

Chapter 623, Oregon Laws 1971, increased the jurisdiction of the district court and made it a court of record, effective July 1, 1973. Chapter 134, Oregon Laws 1973, (Senate Bill 593) delays the effective date of the 1971 law until July 1, 1975. Another bill, SB 403, introduced during the 1973 legislative session also would make district court a court of record, but provides for appeal on the record to the Court of Appeals instead of circuit court. This bill failed in the Senate Judiciary Committee which supported SB 593 instead. The 1975 Legislature undoubtedly will be taking another look at this area, particularly in connection with the recommendations to come out of the Committee on Judiciary regarding the Vehicle Code and adjudication procedures.

The draft assumes that in the case of traffic infractions either side could appeal and, further, that appeal should be to the Court of Appeals as provided in SB 403.

Were this draft or a similar approach adopted by the Judiciary Committee, the procedural provisions relating to appeals could be submitted by the committee to the Legislature as a separate bill. For while this draft strongly recommends SB 403 which was drafted and approved by the district judges in 1973, it deals only with district courts, and the Judiciary Committee will need to consider procedures for appeals from both municipal courts and justice of the peace courts.

Justice of the peace courts could well be covered by the same system as district courts. It might be that each municipality could elect at its option to adopt SB 403 and be subject to the same appellate procedure or continue its court as a nonrecord court. In the latter case it might be well to consider allowing for de novo appeals from such municipal courts to the district court, from which point on the matter would be handled as if it originated in the district court.