

Committee on Judiciary
Reference Paper

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SUBJECT: RECKLESS DRIVING AND CRIMINAL LIABILITY

Proposed Draft Sections

Section 1. (Negligent driving.) (1) A person commits the crime of negligent driving if, with criminal negligence, he drives a vehicle upon a highway.

(2) Negligent driving is a Class B misdemeanor.

Section 2. (Reckless driving.) (1) A person commits the crime of reckless driving if he recklessly drives a vehicle upon a highway.

(2) Reckless driving is a Class A misdemeanor.

(Alternate) Section 1. (Dangerous driving in the second degree.)

(1) A person commits the crime of dangerous driving in the second degree if, with criminal negligence, he drives a vehicle upon a highway.

(2) Dangerous driving in the second degree is a Class B misdemeanor.

(Alternate) Section 2. (Dangerous driving in the first degree.)

(1) A person commits the crime of dangerous driving in the first degree if he recklessly drives a vehicle upon a highway.

(2) Dangerous driving in the first degree is a Class A misdemeanor.

COMMENTARY

The culpability definitions set forth in the Oregon Criminal Code would apply with respect to the terms "criminal negligence" and "recklessly" as used in the proposed sections.

ORS 161.085 (9). "'Recklessly,' when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

(10) "'Criminal negligence' or 'criminally negligent,' when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

ORS 161.125 (2) would also have a significant bearing on the reckless driver who is also intoxicated. It provides:

"When recklessness establishes an element of the offense, if the defendant, due to drug use, dependence on drugs or voluntary intoxication, is unaware of a risk of which he would have been aware had he been not intoxicated, not using drugs, or not drug dependent, such unawareness is immaterial."

"Reckless driving" is defined in existing law as driving "any vehicle upon a highway carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others." ORS 483.992 (1). The crime is punishable, for a first conviction, by imprisonment for not more than 90 days, or by a fine of not more than \$500, or both. A second or subsequent conviction is punishable by imprisonment for not more than six months or by a fine of not more than \$2,000, or both. These provisions would be repealed.

A Class A misdemeanor is punishable by not more than one year's imprisonment or \$1,000 fine, or both. A Class B misdemeanor has a penalty of not more than six month's imprisonment or \$500 fine, or both.

ORS 483.343 prohibits driving in "a careless manner," defined as meaning "in a manner that endangers or would be likely to endanger any person or property." The penalty is imprisonment for not more than 60 days or \$250 fine, or both. This statute would be repealed.

ORS 483.345 provides that the driver of any vehicle exercise "reasonable control of the vehicle he is driving as may be necessary to avoid colliding with any object." This offense is a Class C misdemeanor and would be punishable by a maximum fine of 30 day's imprisonment or \$250 fine, or both. The definition of the offense contains no culpability element, and, therefore, is a "strict liability" type of offense. Retention of this statute would not conflict with any of the proposed sections, although some redefinition of the offense might be desirable.

Adoption of the Criminal Code's culpability terms would be consistent with the objectives of limiting criminal culpability to four clearly defined types of culpability, i.e., "intentional," "knowing," "reckless" or "criminally negligent" conduct.

OREGON CASES:

State v. Wilcox, 216 Or 110, 337 P2d 797 (1959)

Defendant demurred to an indictment charging criminally negligent homicide. The indictment charged the defendant essentially in the language of the reckless driving statute. The defendant contended that the language of the reckless driving statute, when used in a homicide indictment, is unclear and could charge negligent homicide, manslaughter or second degree murder. The circuit court sustained the demurrer and the Supreme Court reversed.

Defendant contended that the term "wilful and wanton" in the reckless statute described intentional conduct or at least some degree of negligence higher than gross negligence. Thus the indictment actually charged him with a higher crime than negligent homicide.

The court held that ORS 483.992 (1) "is descriptive of grossly negligent conduct and nothing more nor less" The court agreed that in some contexts the term "wilful and wanton" had a meaning different than that of "gross negligence." However, the court held that it was not unreasonable to look upon wilful and wanton conduct short of an intent to do a particular harm as an aggravated form of negligence.

The court also pointed out that wilful and wanton, when used together, have a different meaning than when used separately. Thus reference to the definitions in the Criminal Code are not helpful in interpreting the reckless driving statute.

The court discussed some language in the statute which has since been removed ("without due caution and circumspection . . . "). This language could be construed as applying to simple negligence. However, the court regarded the reckless driving statute as requiring more than mere negligence to constitute a violation of the statute. The statutes defining manslaughter, negligent homicide and reckless driving are not violated where the motor vehicle is operated in an ordinary negligent manner.

The court summarized by saying that (1) simple negligence in operating a car is not subject to criminal punishment, (2) reckless driving statute is violated only by acts of gross negligence which, however, may include wilful and wanton misconduct as the term is used in civil cases (e.g., something more than gross negligence), and (3) the negligent homicide statute is the exclusive method of punishing a person for killing another as a result of driving a motor vehicle in a grossly negligent manner unless other specified circumstances are present (such as intoxication as provided in former ORS 483.992 (2) (b)).

Justice Sloan dissented. The indictment charged the defendant drove in a grossly negligent manner. It also charged his action was wilful and wanton. He felt that there is no such thing as "wilful negligence." Gross negligence means nothing more nor less than "great negligence." Wilful conduct, as used in the reckless statute, means advertent, intentional, or quasi-intentional. Thus the indictment in this case could charge either manslaughter or negligent homicide.

State v. Leverich, 97 Adv Sh 850, ___ Or App ___ (1973), 511 P2d 1265

The defendant was tried and convicted in district court of reckless driving. Prior to that trial he was charged by indictment with negligent homicide. The circuit court dismissed the indictment on the grounds of double jeopardy. The Court of Appeals affirmed.

Based on State v. Brown, the court held that the two charges arose out of the same transaction, the prosecutor knew of the second charge, and both charges could have been tried in circuit court.

With regard to both charges being tried in the same court, the court held that (1) both charges could have been initiated in circuit court or (2) the reckless driving charge could have been consolidated with the homicide charge in circuit court.

ORS 134.140 (2) provides that a dismissal of a charge is a bar to a later misdemeanor prosecution for the same crime. To consolidate the charges would require a dismissal of the reckless charge in district court. Brown by implication says that ORS 134.140 (2) is not a bar to a subsequent prosecution for the misdemeanor in circuit court if the dismissal is for consolidation.
