

November 5, 1974

COMMITTEE ON JUDICIARY

SUBJECT: PROPOSED OREGON VEHICLE CODE REVISION -
Summary of Offense Classification and
Adjudication Procedures Recommended by
Judiciary Committee.

I. CLASSIFICATION OF OFFENSES

A. Traffic infraction.

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.

A person who commits a traffic infraction shall not suffer any disability or legal disadvantage based upon conviction of a crime.

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.

B. Classification of traffic infractions.

Traffic infractions are classified for the purpose of sentence into the following categories:

- (a) Class A traffic infractions;
- (b) Class B traffic infractions;
- (c) Class C traffic infractions; and
- (d) Class D traffic infractions.

C. Fines for traffic infractions.

Except as otherwise specifically provided, the penalty for committing a traffic infraction shall be a fine only.

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.

D. Class A traffic infraction classified as a misdemeanor because of prior conviction.

Any offense that would otherwise be punishable as a Class A traffic infraction shall be prosecuted and be punishable as a Class A misdemeanor 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.

Any conviction of a Class A infraction or a traffic crime, or a conviction before the effective date of this Act of any 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 whether the previous conviction occurred before or after the effective date of this Act.

"Class A traffic infraction" includes:

- (a) Driving while 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.

"Traffic crime" includes:

- (a) Dangerous driving in the first or second degree.
- (b) Driving a motor vehicle while suspended or revoked.
- (c) Failure to perform the duties of a driver involved in an accident or collision which results in injury or death to any person.
- (d) Fleeing or attempting to elude a police officer.

II. TRIAL PROCEDURES FOR TRAFFIC INFRACTIONS

A. Trial; burden of proof; pre-trial discovery.

The trial of any traffic infraction shall be by the court without a jury.

The state, municipality or political subdivision shall have the burden of proving the alleged traffic infraction by a preponderance of the evidence.

The pre-trial discovery rules in ORS 135.805 to 135.873 apply to traffic infraction cases.

B. Plea agreements limited.

Notwithstanding ORS 135.405 to 135.445, a person charged with the offense of driving under the influence of intoxicating liquor, dangerous drugs or narcotic drugs 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 provision.

C. Counsel for state and defendant.

At any trial involving a traffic infraction only, defense counsel shall not be provided at public expense.

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.

"District attorney" includes, where appropriate, a city attorney and county counsel.

D. Former jeopardy, res judicata and collateral estoppel not applicable in traffic infraction cases.

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.

Notwithstanding ORS 43.130 and 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.

III. DISPOSITION OF OFFENDERS

Trial judge's authority to order suspension of license, permit or right to apply.

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.

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.

If the trial judge places any limitations on the defendant's driving, he 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.

If the trial judge orders a suspension, 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 or orders suspension of the license or permit.

If the judge ordered the suspension, upon payment of the fine as ordered, he shall immediately send a copy of an order to reinstate the defendant's license or permit to the division.

When the defendant successfully completes a defensive driving course or other rehabilitative program, as ordered by the judge, 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.

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

IV. APPEALS IN TRAFFIC INFRACTION CASES

The proposals relating to traffic infractions presuppose that appeals in such cases would be in the same manner as provided for minor court appeals generally.

Chapter 623, Oregon Laws 1971, as amended by the 1973 Legislature, makes district court a court of record effective July 1, 1975, but continues to provide that appeals from district court judgments shall be to the circuit court.

The Judiciary Committee, as part of its 1975 package of proposed vehicle code legislation, will introduce a bill patterned upon SB 403, which was introduced during the 1973 legislative session. The Committee's bill also would make district court a court of record, would specifically authorize a taped record of the proceedings and would provide for appeal directly to the Court of Appeals. A defendant would have the right to one trial and one appeal.

The bill will provide an option to a defendant who is charged in justice or municipal court to elect to remove the case for trial to the district court, or if there is none in the county, to the circuit court.

An appeal to the Court of Appeals from any trial court would be a de novo review (tried anew upon the record).

V. VEHICLE OFFENSE PROCEDURES FOR JUVENILES

The proposed Juvenile Code (HB 2050) submitted to the 1973 Legislature by the Juvenile Code Committee recommended several changes in juvenile vehicle offense procedures, from which the following are endorsed by the Committee on Judiciary:

1. Traffic offenses committed by children under 15 years of age should be in the juvenile court, originally and exclusively. Under Oregon law ordinarily the minimum age required to qualify for a driving permit is 15. (See ORS 482.110, 482.160, 482.170). A child who is issued a license or permit is granted certain adult privileges; therefore, the responsibility for operating a vehicle in accordance with the rules of the road should likewise be that of an adult.

2. Traffic offenses committed by children at least 15 years of age but under 18 should be in adult court originally, but with the court given authority to transfer the child to the juvenile court for disposition if it appears to the adult court that it would be in the best interest of society and the child to have the matter of sanctions in the case handled by the juvenile court. There may be exceptional cases where the nature and circumstances of the particular offense or the history and character of the child may indicate to the court the need for the specialized services of the juvenile court. Before transferring the case the court should give notice of its intention to the child and the parents and provide them with an opportunity to be heard if they should object to the proposed transfer.

3. Provide the juvenile court with specific authority under the Juvenile Code to levy fines and order license suspensions in cases involving vehicle offenses in addition to the existing authority of the court under ORS 419.541 to require a child to attend traffic or driving school and to recommend suspension of licenses by the Motor Vehicles Division.

VI. SERIOUS TRAFFIC OFFENSES

A. Driving while under the influence of intoxicating liquor.

The existing DUIL and ".15" statutes would be repealed. The new offense would consist of either driving while under the influence or with a blood alcohol content of .08 percent or more.

B. Reckless driving.

The existing reckless driving statute would be repealed and replaced with two degrees of a new offense entitled "Dangerous driving." Dangerous driving in the second degree would consist of driving with "criminal negligence," and be classed as a Class B misdemeanor. Dangerous driving in the first degree would be driving "recklessly" and be classed a Class A misdemeanor. The culpability definitions of the Criminal Code would apply.

C. Driving while license suspended or revoked.

The existing statute would be repealed and the crime restated. Failure to receive notice of suspension would be an affirmative defense, but not available if defendant failed to notify MVD of change of address. The Committee will recommend that this crime be a Class C felony if the underlying reason for the suspension were conviction for a serious traffic offense.

D. Hit and run injury would be a Class C felony. Hit and run property damage would be a Class A traffic infraction.

E. Attempting to elude a police officer would be a Class A misdemeanor.

F. Application of serious traffic offenses upon premises open to the public.

The provisions relating to DUIL, dangerous driving, attempting to elude, driving while suspended or revoked and failure to perform the duties of a driver involved in an accident (except requirement for filing accident reports) would apply upon any premises open to the general public for the use of motor vehicles.