

CRIMINAL LAW REVISION COMMISSION
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CRIMINAL PROCEDURE

PART I. GENERAL PROVISIONS

ARTICLE 1. PRELIMINARY

Preliminary Draft No. 1; September 1972

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Section 1. General definitions for Criminal Procedure Code. As used in ORS chapters 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 151, 156 and 157, except as otherwise specifically provided or unless the context requires otherwise:

(1) "Arraignment" means the occasion upon which a defendant against whom an accusatory instrument has been filed appears before the court in which the criminal action is pending, for the purpose of having the court acquire and exercise control over the defendant with respect to the accusatory instrument, and of setting the course of further proceedings in the action.

(2) "Bench warrant" means a process of a court in which a criminal action is pending, directing a peace officer to take into custody a defendant in the action who has previously been arraigned upon the accusatory instrument by which the action was commenced, and to bring him before the court. The function of a bench warrant is to achieve the court appearance of a defendant in a criminal action for some purpose other than his initial arraignment in the action.

(3) "Correctional facility" has the meaning provided for that term in ORS 162.135.

(4) "Criminal action" means an action at law by means of which a person is accused and tried for the commission of an offense.

(5) "Criminal proceeding" means any proceeding which constitutes a part of a criminal action or occurs in court in connection with a prospective, pending or completed criminal action.

(6) "District attorney," in addition to its ordinary meaning, includes a city attorney as prosecuting officer in the case of municipal ordinance offenses, and the Attorney General in those criminal actions or proceedings within his jurisdiction.

(7) "Trial court" means a court which by law has jurisdiction over an offense charged in an accusatory instrument and has authority to accept a plea thereto, or try, hear or otherwise dispose of a criminal action based on the accusatory instrument.

(8) "Ultimate trial jurisdiction" means the jurisdiction of a court over a criminal action or proceeding at the highest trial level.

(9) "Warrant of arrest" means a process of a court, directing a peace officer to arrest a defendant and to bring him before the court for the purpose of arraignment upon an accusatory instrument filed therewith by which a criminal action against the defendant has been commenced.

COMMENTARY

The section proposes nine definitions of terms that will appear in the criminal procedure code. Certain other terms have been defined in the individual draft articles, i.e., "indictment" and "information." Such terms that have been approved already are not restated in this draft, but may appear in this section in the final draft.

Section 2. Applicability of provisions to actions occurring before and after effective date. (1) The provisions of this Act apply to:

(a) All criminal actions and proceedings commenced upon or after the effective date of this Act and all appeals and other post-judgment proceedings relating or attaching thereto; and

(b) All matters of criminal procedure prescribed in this Act which do not constitute a part of any particular action or case, occurring upon or after the effective date of this Act.

(2) The provisions of this Act do not impair or render ineffectual any proceedings or procedural matters which occurred before the effective date of this Act.

COMMENTARY

This section sets forth the rules under which the Criminal Procedure Code will be applied to particular actions and proceedings.

The Code covers the procedural aspects of any action commenced upon or after the effective date of the Act even though the offense charged was committed prior thereto. The provisions of paragraph (a) differ from the applicability of the Oregon Criminal Code of 1971 which deals with substantive matters and applies only to offenses committed after its effective date.

Paragraph (b), dealing with general procedural matters not attached to any specific or existing criminal action or case, refers to rules and procedures such as those covering the formation of grand juries or the issuance of search warrants.

Subsection (2) makes clear that the new Code is not intended to have any effect upon procedural matters that occurred before the effective date of the Act.

Section 3. Parties in criminal action. (1) Except for offenses based on municipal or county ordinances, in a criminal action the State of Oregon is the plaintiff and the person prosecuted is the defendant.

COMMENTARY

This section is similar to ORS 131.020, which would be repealed, but specifically takes into account prosecutions based on municipal or county ordinances. In those cases the city or county, instead of the state, would be the plaintiff.

Section 4. Commencement and disposition of criminal action.

A criminal action:

(1) Commences with the filing of an accusatory instrument against a defendant in a court having jurisdiction over the offense charged;

(2) Includes the filing of any further accusatory instruments directly derived from the initial one, and all proceedings, orders and motions conducted by or made in a trial court in the course of disposing of the accusatory instrument, or which, regardless of the court in which they occurred or were made, could properly be considered as a part of the record of the case by an appellate court upon an appeal from a judgment of conviction; and

(3) Terminates with the imposition of sentence or some other final disposition in a trial court of the last accusatory instrument filed in the case.

COMMENTARY

This section is derived from New York Criminal Procedure Law s. 1.20 (16) and describes the course and content of a criminal action.

Section 5. When departures, errors or mistakes in pleadings or proceedings are material. No departure from the form or mode prescribed by law, error or mistake in any criminal pleading, action or proceeding renders it invalid, unless it has prejudiced the defendant in respect to a substantial right.

COMMENTARY

This section restates ORS 131.030, which would be repealed.