

CRIMINAL LAW REVISION COMMISSION
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CRIMINAL PROCEDURE

PART I. GENERAL PROVISIONS

ARTICLE 1. PRELIMINARY

State Criminal Jurisdiction

Preliminary Draft No. 2; October 1971

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Subcommittee No. 1

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Section 1. <u>Jurisdiction; generally.</u> Except	(Existing
as otherwise provided in this Article, a person	(Law
is subject to prosecution under the laws of this	(ORS
state for an offense that he commits by his own	(131.210
conduct or the conduct of another for which he is criminally liable if:	(131.220
	(131.230

(1) Either the conduct that is an element of the offense or the result that is an element occurs within this state; or

(2) Conduct occurring outside this state is sufficient under the law of this state to constitute an attempt to commit an offense within this state; or

(3) Conduct occurring outside this state is sufficient under the law of this state to constitute a conspiracy to commit an offense within this state and an overt act in furtherance of the conspiracy occurs within this state; or

(4) Conduct occurring within this state establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit an offense in another jurisdiction which also is an offense under the law of this state; or

(5) The offense consists of the omission to perform a legal duty imposed by the law of this state with respect to domicile, residence or a relationship to a person, thing or transaction in this state; or

(6) The offense violates a statute of this state that expressly prohibits conduct outside this state affecting a legislatively protected interest of or within this state and the actor has reason to know that his conduct is likely to affect that interest.

Section 2. Jurisdiction; exceptions. (1) Subsection (1) of section 1 of this Article does not apply if:

(a) Either causing a specified result or an intent to cause or danger of causing that result is an element of an offense; and

(b) The result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless in the statute defining the offense a legislative intent clearly appears to declare the conduct criminal, regardless of the place of the result.

(2) Subsection (1) of section 1 of this Article does not apply if causing a particular result is an element of an offense and the result is caused by conduct occurring outside this state that would not constitute an offense if the result had occurred there, unless the actor intentionally or knowingly caused the result within this state.

Section 3. Jurisdiction; criminal homicide. (1) If the offense committed is criminal homicide, either the death of the victim or the conduct causing death constitutes a "result" within the meaning of subsection (1) of section 1 of this Article.

(2) If the body of a criminal homicide victim is found within this state, it shall be prima facie evidence that the result occurred within this state.

Section 4. Jurisdiction; definition. As used in this Article, "this state" means the land and water and the air space above the land and water with respect to which the State of Oregon has legislative jurisdiction.

COMMENTARY TO SECTIONS 1 TO 4

A. Summary

The above sections establish a broad jurisdictional basis for the prosecution in Oregon of offenses involving persons, property or public interests of this state.

The purpose of these sections is to make it clear that (1) the Oregon Criminal Code covers conduct occurring outside the state that produces results that are prohibited inside the state, (2) the Code applies to criminal conduct intended to produce criminal results in some other jurisdiction, and (3) activity that is lawful where engaged in shall not be penalized in this state unless that activity is so adverse to a legislatively protected interest in this state that it must be made punishable here, or such activity is specifically meant by the actor to take effect here.

B. Derivation

The sections are based on Model Penal Code s. 1.03, Michigan Revised Criminal Code s. 140 and Illinois Criminal Code s. 1-5.

C. Relationship to Existing Law

Three existing statutes deal with state criminal jurisdiction, i.e., the "territorial applicability" of the laws of this state. Those are ORS 131.210, punishability of offenders under state law; ORS 131.220, where crime commenced outside state is consummated within state; and ORS 131.230, where death results within state from act done outside state. A fourth statute, ORS 131.240, relates to acts punishable in two jurisdictions and will be dealt with in the draft on double jeopardy.

131.210 Punishability of offenders under state law. Every person, whether an inhabitant of this state or any other state, territory or country, is liable to punishment by the laws of this state for a crime committed by him in this state, except where such crime is by law cognizable exclusively in the courts of the United States.

131.220 Where crime commenced outside state is consummated within state. When the commission of a crime commenced outside this state is consummated within its boundaries by the defendant, through the intervention of an innocent or guilty agent or by any means proceeding directly from himself, if the defendant is afterwards found in this state, he is liable to punishment therefor in this state although he was out of the state at the time of the commission of the crime charged.

131.230 Where death resulted within state from act done outside state. When the crime of murder or manslaughter has been committed by means of a mortal wound given, injury inflicted or poison administered without this state and the person so wounded, injured or poisoned dies therefrom within this state, the person committing such crime is liable to punishment therefor in this state if he is found or comes into this state.

The proposed sections spell out the circumstances under which Oregon legislation can be applied, and are concerned not only with the obvious situations wherein the conduct takes place inside the state, but also with the more complicated instances in which the conduct occurs in whole or in part outside the state.

Subsection (1) of section 1 would not change the effect obtainable under present law, that if one of the elements of the offense or if the result that is an element of the offense occurs within the state, a criminal prosecution may be maintained here, with venue to be determined by the draft sections on that subject.

Subsection (2) of section 1 covers the situation in which the actor engages in conduct outside the state for the purpose of bringing about a certain result in Oregon, but fails to complete the substantive offense in this state.

Subsection (3) of section 1 sets out the universal rule that all conspirators may be tried in the forum state if an overt act by one of them occurs there, although the others may have been elsewhere at the time of the overt act.

Subsection (4) of section 1 is the "other side of the coin" in comparison with subsection (3) and covers inchoate crimes that are meant to culminate in an offense in another jurisdiction. However, it requires that the crime intended would also have to be a crime in this state.

Subsection (5) is designed to cover omissions outside the borders of this state that affect persons or interests within the state.

Subsection (6) is a further extension of the "protected interest" principle and is aimed at statutes expressly prohibiting conduct outside the State of Oregon that affects a legislatively protected interest in this state. A mens rea limitation is included so that the actor would need to have "reason to know" that his conduct is likely to affect the Oregon interest.

Section 2 contains two exceptions to help resolve any conflict of laws problems that might arise when an Oregon statute attempts to penalize activity occurring outside this state that is lawful where done but criminal here.

Section 3 would allow a criminal prosecution in Oregon if the death blow were struck in another state and the victim died in Oregon, or if the death blow were struck in Oregon and the victim died elsewhere. Of course, the usual case would be of the first variety, although the proposed section would add a flexibility that ORS 131.230 does not now contain.

Subsection (2) of section 3 incorporates a prima facie evidence provision to take care of the case in which the dead body is first found in this state but there is no proof as to where the actual death took place.

Section 4 proposes a definition of "this state" which is consistent with the concept of territory used in applying the territorial principle to matters of criminal jurisdiction.

Oregon cases:

In State v. Barnett, 15 Or 77, 14 P 737 (1887), the Oregon Court held that property stolen outside the state, brought into and converted to the defendant's use within the state, constituted larceny. The state will inquire into the ownership of property within the state, regardless of whether the owner is a foreigner or citizen, present or absent. If a person, either personally or by the hand of another, does acts which amount to larceny within the state, he may be indicted and punished if found within the state. The Court also stated that when a person employs innocent agents to commit a crime, that person is guilty of the crime where it was committed.

The case of State v. Owen, 119 Or 15, 224 P 516 (1926), held that under the statute (now ORS 131.220) it was a crime for one outside the state to aid and abet another person in the state in the commission of an offense. The defendant drew a check in California on an Oregon bank in which he had no funds. The check was unlawfully paid by a bank officer and the defendant was charged with aiding and abetting him in committing the crime of embezzlement.

Whether state courts had jurisdiction under existing statute (ORS 131.210) to try an Indian for a crime committed on an Indian Reservation was held to be a state question in Anderson v. Gladden, 293 F2d 463 (1961) cert. den. 36 US 949. See, also earlier case, Anderson v. Britton, 212 Or 1, 318 P2d 291 (1957).

Once the state has custody of a prisoner, habeas corpus is not available to inquire into the method by which the defendant came within the jurisdiction of the court. Anderson ex rel Poe v. Gladden, 205 Or 535, 288 P2d 823 (1955); Knowles v. Gladden, 227 Or 408, 362 P2d 763 (1961), cert. den. 368 US 999.

TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code

Section 1.03. Territorial Applicability.

(1) Except as otherwise provided in this Section, a person may be convicted under the law of this State of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:

(a) either the conduct which is an element of the offense or the result which is such an element occurs within this State; or

(b) conduct occurring outside the State is sufficient under the law of this State to constitute an attempt to commit an offense within the State; or

(c) conduct occurring outside the State is sufficient under the law of this State to constitute a conspiracy to commit an offense within the State and an overt act in furtherance of such conspiracy occurs within the State; or

(d) conduct occurring within the State establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this State; or

(e) the offense consists of the omission to perform a legal duty imposed by the law of this State with respect to domicile, residence or a relationship to a person, thing or transaction in the State; or

(f) the offense is based on a statute of this State which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows or should know that his conduct is likely to affect that interest.

Text of Model Penal Code (Cont'd.)

(2) Subsection (1) (a) does not apply when either causing a specified result or a purpose to cause or danger of causing such a result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

(3) Subsection (1) (a) does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside the State which would not constitute an offense if the result had occurred there, unless the actor purposely or knowingly caused the result within the State.

(4) When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result," within the meaning of Subsection (1) (a) and if the body of a homicide victim is found within the State, it is presumed that such result occurred within the State.

(5) This State includes the land and water and the air space above such land and water with respect to which the State has legislative jurisdiction.

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Text of Michigan Revised Criminal Code

[Territorial Applicability]

Sec. 140. (1) Except as otherwise provided in this section, a person may be convicted under the law of this state of an offense committed by his own conduct or the conduct of another for which he is legally accountable if:

(a) either the conduct that is an element of the offense or the result that is an element occurs within this state; or

(b) conduct occurring outside the state is sufficient under the law of this state to constitute an attempt to commit an offense and is intended to take effect in Michigan; or

(c) conduct occurring outside the state is sufficient under the law of this state to constitute a conspiracy to commit an offense within the state and an overt act in furtherance of the conspiracy occurs within the state; or

(d) conduct occurring within the state establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this state; or

(e) the offense consists of the omission to perform a legal duty imposed by the law of this state with respect to domicile, residence or a relationship to a person, thing or transaction in the state; or

(f) the offense is a violation of a statute of this state that expressly prohibits conduct outside the state, the conduct affects a legislatively-protected interest of or within the state, and the actor knows that his conduct is likely to affect that interest.

(2) Subsection (1) (a) does not apply if either causing a specified result or an intent to cause or danger of causing that result is an element of an offense and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare the conduct criminal regardless of the place of the result.

(3) Subsection (1) (a) does not apply if causing a particular result is an element of an offense and the result is caused by conduct occurring outside the state that would not constitute an offense if the result had occurred there, unless the actor intentionally or knowingly caused the result within the state.

(4) When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result" within the meaning of subsection (1) (a). If the body of a homicide victim is originally discovered within the state, it shall be prima facie evidence that the result occurred within the state.

(5) "State" includes the land and water, and the air space above that land and water, with respect to which the state has legislative jurisdiction.

Text of Illinois Criminal Code of 1961

§ 1—5. State Criminal Jurisdiction

(a) A person is subject to prosecution in this State for an offense which he commits, while either within or outside the State, by his own conduct or that of another for which he is legally accountable, if:

- (1) The offense is committed either wholly or partly within the State; or
- (2) The conduct outside the State constitutes an attempt to commit an offense within the State; or
- (3) The conduct outside the State constitutes a conspiracy to commit an offense within the State, and an act in furtherance of the conspiracy occurs in the State; or
- (4) The conduct within the State constitutes an attempt, solicitation or conspiracy to commit in another jurisdiction an offense under the laws of both this State and such other jurisdiction.

(b) An offense is committed partly within this State, if either the conduct which is an element of the offense, or the result which is such an element, occurs within the State. In homicide, the "result" is either the physical contact which causes death, or the death itself; and if the body of a homicide victim is found within the State, the death is presumed to have occurred within the State.

(c) An offense which is based on an omission to perform a duty imposed by the law of this State is committed within the State, regardless of the location of the offender at the time of the omission. 1961, July 28, Laws 1961, p. 1983, § 1-5.

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