

See: Minutes of Subcommittee No. 3
8/7/68, p. 8, Vol. XI, Tape #16

Minutes of Commission
6/17/69, p. 34, Vol. IX, Tape #68

CRIMINAL LAW REVISION COMMISSION
309 Capitol Building
Salem, Oregon

ARTICLE 1 . PRELIMINARY

Section 2. Purposes; Principles of Construction
Preliminary Draft No. 1; July 1968

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Subcommittee No. 3

ARTICLE 1. PRELIMINARY

Purposes; Principles of Construction

Preliminary Draft No. 1; July 1968

Section 2. Purposes; principles of construction.

(1) The general purposes of the provisions of this Code are:

(a) To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.

(b) To give fair warning of the nature of the conduct declared to constitute an offense and of the sentences authorized upon conviction.

(c) To define the act or omission and the accompanying mental state that constitute each offense and limit the condemnation of conduct as criminal when it is without fault.

(d) To differentiate on reasonable grounds between serious and minor offenses.

(e) To ensure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the correction and rehabilitation of those convicted, and their confinement when required in the interests of public protection.

(f) To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.

(g) To safeguard offenders against excessive, disproportionate or arbitrary punishment.

(2) The rule that a penal statute is to be strictly construed shall not apply to this Code or any of its provisions. All provisions

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of this Code shall be construed according to the fair import of their terms, to promote justice and to effect the purposes stated in subsection (1) of this section.

COMMENTARY - PRELIMINARY:

PURPOSES; PRINCIPLES OF CONSTRUCTION

A. Summary

The section is intended to state the general philosophy of the Code and to lay down principles for the construction of the Code.

B. Derivation

The section is based on section 105 of the Michigan Revised Criminal Code, section 1.05 of the New York Penal Law, section 1-2 of the Illinois Criminal Code, on Art. I, section 15, of the Oregon Constitution, on ORS 161.050, and on section 1.02 of the Model Penal Code.

The reporter felt that the Model Penal Code formulation was excellent, but was longer than necessary and that while it was actually noncontroversial, that it was stated in language that might stir up unnecessary disagreement. The draft includes deterrence and protection of the public, which are included in the New York and Michigan statutes but are not found in the Model Penal Code nor Illinois statements of purposes.

C. Relationship to Existing Law

The purposes or philosophy of Oregon's criminal law are not now expressed in our statutes. The only expression of purpose we now have is the provision of Article I, section 15, of the Oregon Constitution that: "Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice." It is vital that the constitutionally expressed purpose be expressed and carried out in the Code, but it seems totally unrealistic not to verbalize deterrence and the protection of society as additional purposes of the criminal law, since there is common consent that those are important purposes of any penal system.

One of the important reasons for criminal law revision is to prevent minor crimes from being assigned more severe

penalties than those prescribed for more serious offenses. That idea is expressed in subsections (f) and (g).

Subsection (c) is intended to make it clear that there is a legislative policy against creating liability without fault crimes (the so-called regulatory, public welfare, public tort or absolute liability crimes), with heavy penalties. This provision should be considered in connection with section 4 (5), which sets up the violation classification, and in connection with the general requirements for culpability set out in section 2.02 of the Model Penal Code, and in connection with section 2.05 of the Model Penal Code.

The other purposes expressed in the section are largely self-explanatory.

No major change is made in the principles of construction. The current Oregon statute provides as follows:

"161.050. Construction of penal statutes.

The rule of the common law that penal statutes are to be strictly construed has no application to the criminal and criminal procedure statutes of this state. Their provisions shall be construed according to the fair import of their terms with a view to effect their objects and to promote justice."

The draft simply adds the principle of construction that the provisions of the Code are to be construed to effect the purposes set out in section 2 (1). One of those purposes is to give fair warning of the nature of the conduct declared to constitute an offense. It is not intended that this provision should lead back to strict construction in favor of the defendant. While some courts have in effect closed their eyes to statutes abolishing the common law rule of strict construction, the Oregon Supreme Court has given the statute a liberal rather than a narrow construction. State v. Gilmore, 236 Or 349, 354, 388 P.2d 451, 453 (1963). It is not intended that the draft should make any change in that regard.

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PRELIMINARY: Purposes; Principles of Construction

ORS 161.050. Construction of penal statutes. The rule of the common law that penal statutes are to be strictly construed has no application to the criminal and criminal procedure statutes of this state. Their provisions shall be construed according to the fair import of their terms with a view to effect their objects and to promote justice.

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Constitution of Oregon, Article I, Section 15.

Reformation the basis of criminal law. Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice.

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TEXT OF REVISIONS OF OTHER STATES

Text of Michigan Revised Criminal Code - Final Draft - September 1967:

Section 105. General Purposes

The general purposes of the provisions of this act are:

(a) To proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests.

(b) To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction.

(c) To define the act or omission and the accompanying mental state that constitute each offense.

(d) To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each.

(e) To ensure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, and their confinement when required in the interests of public protection.

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Text of Illinois Criminal Law and Procedure:

Section 102. General Purposes

The provisions of this Code shall be construed in accordance with the general purposes hereof, to:

(a) Forbid and prevent the commission of offenses;

(b) Define adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault;

(c) Prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders;

(d) Prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

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Text of New York Revised Penal Law:

Section 1.05. General purposes

The general purposes of the provisions of this chapter are:

1. To proscribe conduct which unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;
2. To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;
3. To define the act or omission and the accompanying mental state which constitute each offense;
4. To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties therefor; and
5. To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, and their confinement when required in the interests of public protection.

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Text of Model Penal Code:

Section 1.02. Purposes; Principles of Construction.

(1) The general purposes of the provisions governing the definition of offenses are:

- (a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;
- (b) to subject to public control persons whose conduct indicates that they are disposed to commit crimes;
- (c) to safeguard conduct that is without fault from condemnation as criminal;
- (d) to give fair warning of the nature of the conduct declared to constitute an offense;
- (e) to differentiate on reasonable grounds between serious and minor offenses.

PRELIMINARY: Purposes; Principles of Construction
Text of Revisions of Other States

Text of Model Penal Code (Cont'd):

(2) The general purposes of the provisions governing the sentencing and treatment of offenders are:

- (a) to prevent the commission of offenses;
- (b) to promote the correction and rehabilitation of offenders;
- (c) to safeguard offenders against excessive, disproportionate or arbitrary punishment;
- (d) to give fair warning of the nature of the sentences that may be imposed on conviction of an offense;
- (e) to differentiate among offenders with a view to a just individualization in their treatment;
- (f) to define, coordinate and harmonize the powers, duties and functions of the courts and of administrative officers and agencies responsible for dealing with offenders;
- (g) to advance the use of generally accepted scientific methods and knowledge in the sentencing and treatment of offenders;
- (h) to integrate responsibility for the administration of the correctional system in a State Department of Correction [or other single department or agency].

(3) The provisions of the Code shall be construed according to the fair import of their terms but when the language is susceptible of differing constructions it shall be interpreted to further the general purposes stated in this Section and the special purposes of the particular provision involved. The discretionary powers conferred by the Code shall be exercised in accordance with the criteria stated in the Code and, insofar as such criteria are not decisive, to further the general purposes stated in this Section.

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Text of Model Sentencing Act (National Council on Crime & Delinquency)

ARTICLE I. CONSTRUCTION AND PURPOSE OF ACT

Section 1. Liberal Construction

This act shall be liberally construed to the end that persons convicted of crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities as revealed by case studies; that dangerous offenders shall be correctively treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the offender, or shall be committed for a limited period.

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