

See: Minutes of Subcommittee No. 3
8/7/68, p. 1, Vol. XI
Tape 16

CRIMINAL LAW REVISION COMMISSION
309 Capitol Building
Salem, Oregon

ARTICLE 1 . PRELIMINARY

Classes of crimes; violations

Preliminary Draft No. 2; August 1968

Reporter: Professor Courtney Arthur,
College of Law
Willamette University

Subcommittee No. 3

Note: See Article 7 for subsequent drafts of this material

ARTICLE 1 . PRELIMINARY

Classes of Crimes; Violations

Preliminary Draft No. 2; August 1968

Section [1]. (1) An offense defined by any statute of this state and for which a sentence of imprisonment is authorized is a crime. Crimes are classified as felonies, misdemeanors and petty misdemeanors.

(Existing
(Law
(ORS
(161.020
(161.030
(

(2) A crime is a felony if it is so designated in any statute of this state or if a person convicted thereof may be sentenced to a maximum term of imprisonment of more than one year.

(3) A crime is a misdemeanor if it is so designated in any statute of this state or if persons convicted thereof may be sentenced to imprisonment in excess of 30 days but not more than one year.

(4) A crime is a petty misdemeanor if it is so designated in any statute of this state or if a person convicted thereof may be sentenced to imprisonment for a maximum term of 30 days or less.

(5) An offense is a violation if it is so designated in the statute defining the offense or if no sentence of imprisonment is authorized or if the offense is defined by any statute of this state as not constituting a crime. An offense may be made punishable by a fine or a fine and forfeiture or other civil penalty but a violation is not a crime and conviction of a violation does not result in any disability or legal disadvantage based on conviction of a crime.

(6) Any offense defined by any statute of this state but without specification as to its classification or as to the penalty authorized upon conviction is a misdemeanor.

Section [2]. (1) When a crime punishable by imprisonment in the penitentiary or the Oregon State Correctional Institution is also punishable by imprisonment for a maximum term of one year or by a fine, the crime shall be classed as a misdemeanor if the court imposes a punishment other than imprisonment in the penitentiary or the Oregon State Correctional Institution.

(2) Notwithstanding the provisions of subsections (2) and (3) of section [1], upon conviction of a crime punishable as described in subsection (1) of this section, the crime is a felony for all purposes until one of the following events occurs, after which occurrence the crime is a misdemeanor for all purposes:

(a) Without granting probation, the court imposes a sentence of imprisonment to a correctional facility other than the penitentiary or the Oregon State Correctional Institution.

(b) Without granting probation, the court imposes a fine.

(c) Upon revocation of probation, the court imposes a sentence of imprisonment to a correctional facility other than the penitentiary or the Oregon State Correctional Institution.

(d) Upon revocation of probation, the court imposes a fine.

(e) The court declares the offense to be a misdemeanor, either at the time of granting probation without imposition of sentence, or on application of defendant or his probation officer thereafter.

(f) The court grants probation to the defendant without imposition of sentence upon conviction and defendant is thereafter discharged without sentence.

(g) Without granting probation and without imposing sentence, the court declares the offense to be a misdemeanor and discharges defendant.

COMMENTARY - PRELIMINARY: CLASSES OF CRIMES; VIOLATIONS

A. Derivation

Section [2] (2) (e) is derived from the 1963 amendment to section 17 of the California Penal Code.

Section [2] (2) (f) is derived from section 609.13 of the Minnesota Criminal Code of 1963. It provides an additional reward for successful completion of probation and should have a definite rehabilitative effect.

Section [2] (2) (g) is based on Rubin, The Law of Criminal Correction, Chap. 5, Sec. 21, pages 173-174 (Unconditional Discharge). "One form or another of outright discharge should be available to a sentencing judge for use. Outright discharge, like suspended sentence and probation, adds to judicial authority, eases the correctional processes, and better protects public safety by affording the judge a wider selection of sentences." Rubin, The Law of Criminal Correction, 174. Unconditional discharge also provides a useful tool where the court desires to add no punishment to a person who is already under sufficient sentence on other charges.

Under this subsection (Section [2] (2) (g)) if the court discharges the defendant without probation and without sentence and without a declaration that the crime is a misdemeanor, then the conviction is a felony conviction. The subsection simply gives the judge the power to declare the conviction to be for a misdemeanor if he deems it appropriate or expedient.

It should be noted that present law does not expressly authorize discharge without sentence and without probation. ORS 137.510 reads as follows:

"137.510. Power of court to suspend imposition or execution of sentence or to place defendant on probation. (1) The courts having jurisdiction of criminal or quasicriminal actions, including actions for violation of municipal ordinances, when it appears that the best interests of the public as well as of the defendant will be subserved thereby, may:

"(a) Suspend the imposition or execution of sentence for any crime or offense for any period not to exceed five years; and may also

"(b) Place the defendant on probation for a definite or indefinite period not less than one nor more than five years.

"(2) The power of the judge of any court to suspend execution of sentence or to grant probation to any person convicted of a crime shall continue until such person is delivered to the executive head of the penal, reformatory or correctional institution designated in the judgment. [Amended by 1955 c.660 sec. 18; 1955 c.688 sec. 1]"

ORS 137.510 should be amended to conform with section [2] (2) (a) through (g).

The matter of commitment of persons who are sentenced to imprisonment will be dealt with in a section to be included in the article on "Disposition of Offenders" and will provide:

"Section ____ (1) The custody of persons convicted of felonies and sentenced to imprisonment shall be given to the Corrections Division of the Oregon State Board of Control for confinement in the penitentiary or the Oregon State Correctional Institution.

"(2) The custody of persons convicted of misdemeanors and petty misdemeanors and sentenced to imprisonment shall be given to the sheriff of the county in which the action was commenced for confinement in a correctional facility other than the penitentiary or the Oregon State Correctional Institution."

Although they are directly related to the court's treatment of a crime as a felony or misdemeanor, the provisions covering the place of imprisonment for the purposes of organization of the code logically belong in the other article. (See Model Penal Code, Article 6, section 6.11.)

#