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CRIMINAL LAW REVISION COMMISSION
311 Capitol Building
Salem, Oregon

ARTICLE 1. PRELIMINARY

Tentative Draft No. 1; May 1970

Reporter: Donald L. Paillette

Subcommittees No. 1
and No. 3

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ARTICLE 1. PRELIMINARY

Tentative Draft No. 1; May 1970

Section 1. Short title. This Act shall be known and may be cited as Oregon Criminal Code of 1971.

Section 2. Purposes; principles of construction. (1) The general purposes of the provisions of this Act are:

(a) 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.

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

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

(d) 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.

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

(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 Act or any of its provisions. All provisions

of this Act 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 - 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 Revised Penal Law, on Article I, section 15, of the Oregon Constitution, on ORS 161.050 and on section 1.02 of the Model Penal Code.

The section 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 in the 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 paragraphs (f) and (g) of subsection (1).

Subsection (d) 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 Article 7 which sets up the violation classification and in connection with the general requirements for culpability set out in Article 2.

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:

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.

The section 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 P2d 451, 453 (1963). It is not intended that the Code should make any change in that regard.

Section 3. General definitions. As used in this Act, except as the context may require otherwise:

(1) "Dangerous weapon" means any instrument, article or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.

(2) "Deadly weapon" means any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury.

(3) "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

(4) "Person" means a human being and, where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(5) "Physical injury" means impairment of physical condition or substantial pain.

(6) "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(7) "Possess" means to have physical possession or otherwise to exercise dominion or control over property.

COMMENTARY - GENERAL DEFINITIONS

This section provides a new set of terms for general use throughout the proposed Code. There are, of course, other definitions in the Code, either as a part of the specific section in which they appear or in the definitional sections of the particular Articles to which they apply. For example, the definitions of "crime," "felony," "misdemeanor" and "violation" appear in Article 7.

The definitions of some terms that are employed generally in our present criminal statutes are located in ORS 161.010, most of which deal with language that will be replaced by new definitions set out in Article 2. Except for the definition of "person," none of the proposed terms are now defined by statute.

The definitions are derived from New York Revised Penal Law s. 10.00, but differ therefrom in certain particulars of both form and substance. Michigan Revised Criminal Code s. 135 contains basically the same list as New York. The Model Penal Code also contains a long list of definitions, most of which deal with culpability requirements.

Subsections (1) "dangerous weapon" and (2) "deadly weapon" must be considered together because these definitions attempt to distinguish between those instruments, articles or substances that are specifically designed to be used as "weapons" and those which, because of the circumstances in which they are used or attempted to be used, become "weapons." The definition of "dangerous weapon" is substantially the same as the definition of "dangerous instrument" in section 10.00 (13) of the New York Revised Penal Law. The draft does not use the New York definition of "deadly weapon" which is merely an itemized list of well-known weapons, but nevertheless uses the same rationale.

"Weapon" is defined in Words and Phrases as "an instrument of offensive or defensive combat." The courts generally have not drawn a clear distinction between a deadly weapon and a dangerous one. A deadly weapon is often defined as a weapon likely, from the manner of its use, to produce death or great bodily injury. (The draft definition of "dangerous weapon" is closer to this one.) But, as one court observed in Pittman v. State, 25 Fla 648, 6 So 437, ". . . any weapon is a deadly weapon which is likely to produce death, but a weapon capable of producing death is not necessarily likely to produce death."

State v. Rosever, 8 Wash 43, 35 P 357, indicates a basis of distinction between "deadly" and "dangerous" weapons in this statement:

"Some weapons are per se deadly; others, owing to the manner in which they are used, become deadly."

This is the foundation on which the draft definitions are laid: A deadly weapon is labeled so because of the nature of the instrument itself, whereas a dangerous weapon is one which has become such due to the use it is put to. This, then, places the determination of the former on the court as a matter of law, the latter on the jury as a question of fact to be decided under proper court instructions.

The Oregon cases and, indeed, the statutes appear to employ "deadly" and "dangerous" interchangeably. (See ORS 41.350 (1), 163.240, 163.250, 163.280, 162.380, 162.400.) The early case of State v. Godfrey, 17 Or 300 (1889), stated that a dangerous weapon is one by the use of which death or great bodily injury may be inflicted. This definition is broad enough to include lethal weapons such as guns, knives and the others that are deemed dangerous weapons as a matter of law and also those things which become dangerous weapons owing to the manner in which they are employed. The Oregon court has consistently adhered to the above definition, which is adequate in the assault area, but which is unsatisfactory when applied to robbery or burglary while armed with a "deadly" weapon. See Articles 15, 16.

Oregon does not follow that line of case law which includes an unloaded gun in the classification of a "dangerous weapon" within the meaning of a statute denouncing robbery while armed with a dangerous weapon. But the use of a firearm within carrying distance of the threatened victim in Oregon allows an inference that the weapon was loaded and the burden of going ahead with the evidence to prove that the weapon was not loaded is on the defendant. State v. Noblen, 214 Or 60, 326 P2d 139 (1958); State v. Lanegan, 192 Or 691, 236 P2d 438 (1951). The result is that a robbery with an unloaded gun, not used to strike with, is not robbery while armed with a dangerous weapon. This rule would place in jeopardy a definition of a "deadly" weapon as one specifically designed or readily adaptable to produce serious bodily injury. A firearm is specifically designed for such

a purpose and although unloaded is readily adapted to that purpose by loading it. Therefore, to continue the necessity of the firearm being loaded before it would be considered a "deadly" weapon within the meaning of the "armed robbery" statute, it is necessary to adopt a definition which demands such a result, but which also does not disturb the inference that the gun is loaded. The New York Revised Penal Law and the Michigan Revised Criminal Code accomplish this by simply stating that a "deadly weapon" is "any loaded weapon." Both codes also enumerate several other instruments which are classed as "deadly." To avoid the difficulty of enumeration and the possibility of gaps which such a technique leaves, a more general definition is suggested. The requirement of "present capability" resolves the problem of an "unloaded" gun. The demand that the instrument be "specifically designed" for "the purpose of inflicting serious bodily injury" would encompass all firearms as well as other instruments designed for offensive or defensive purposes, such as metallic knuckles, billies, switchblade knives and gravity knives.

Subsection (3) "deadly physical force" is a new definition borrowed from the New York Revised Penal Law and has significance in the assault area and in connection with the defense of "justification." The term, as defined, would include the use of dangerous or deadly weapons, as well as other "physical force" of such magnitude so as to be "deadly" in nature.

Subsection (4) "person" is derived from New York Revised Penal Law s. 10.00 (7) and resembles the existing statutory definition in ORS 161.010 (11):

"Person" includes corporations as well as natural persons. Where "person" is used to designate the party whose property may be the subject of a crime it includes this state, any other state, government or country which may lawfully own any property in this state, and all municipal, public or private corporations, as well as individuals.

The draft continues the present legislative policy of including corporations within the sanction and protection of the criminal law and of protecting the property interests of governmental entities.

In addition to "corporations" the definition encompasses other business entities such as unincorporated

associations and partnerships, as do the New York and Michigan codes. The conditional phrase "where appropriate" will leave to the courts the determination of whether a particular entity should be held to be included within a specific statute. Such a provision obviates the necessity of expressly mentioning the business or governmental units in every instance where the text is meant to apply and allows the courts to apply the provision in fact situations as appropriate.

Subsection (5) "physical injury" and subsection (6) "serious physical injury" are taken from the New York statute and have particular importance in the assault and robbery areas. Use of the modifying adjective "physical" instead of "bodily" seems preferable in a criminal code because it is more precise. Both definitions impliedly recognize that the cause of such an injury is some form of external violence that produces a harmful effect upon the body. This is in accord with the case law definition of "bodily injury." See 117 ALR 733.

The meaning of "serious physical injury" is synonymous with "serious bodily harm" or "great bodily harm," according to 21A Words and Phrases. The proposed definitions furnish guidelines for distinguishing between minor and major injuries which are based on the same type of rationale found in the majority of cases on the subject. Most courts have said that an injury is "serious" when it gives rise to the apprehension of danger to life, health or limb. See, for example, Gonzales v. State, 146 Tex Cr R 108, 172 SW2d 97; Hall v. State, Okla Cr, 309 P2d 1096. Restatement, Torts, s. 63 (b) defines serious bodily harm as:

" . . . bodily harm, the consequence of which is so grave that it is regarded as differing in kind, and not merely in degree, from other bodily harm. A harm which creates a substantial risk of fatal consequences is a 'serious bodily harm' as is a harm, the infliction of which constitutes the crime of mayhem."

Subsection (7) "possess" is a term appearing frequently in the draft and has been defined to include the doctrine of constructive possession of property. It is identical to New York Revised Penal Law s. 10.00 (8).

Section 4. Defenses; burden of proof. (1) When a "defense," other than an "affirmative defense" as defined in subsection (2) of this section, is raised at a trial, the state has the burden of disproving the defense beyond a reasonable doubt.

(2) When a defense, declared to be an "affirmative defense" by this code, is raised at a trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

COMMENTARY - DEFENSES; BURDEN OF PROOF

This section defines two types of defenses, an "affirmative defense" and a plain "defense" in terms of where the burden of proof lies with respect to each of them.

Every defense postulated in the proposed Code is expressly labeled either one or the other. Thus, "mental disease or defect" (Article 5) is an affirmative defense and the defendant has the burden of establishing the defense by a preponderance of the evidence, while "self-defense" (Article 4) is an ordinary defense and the state has the burden of disproving the defense beyond a reasonable doubt.

The section is based on New York Revised Penal Law s. 25.00.

Section 5. Application of provisions. (1) The provisions of this Act shall govern the construction of and punishment for any offense defined in this Act and committed after the effective date hereof, as well as the construction and application of any defense to a prosecution for such an offense.

(2) Except as otherwise expressly provided, or unless the context requires otherwise, the provisions of this Act shall govern the construction of and punishment for any offense defined outside this Act and committed after the effective date hereof, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this Act shall not apply to or govern the construction of and punishment for any offense committed before the effective date of this Act, or the construction and application of any defense to a prosecution for such an offense. Such an offense shall be construed and punished according to the law existing at the time of the commission of the offense in the same manner as if this Act had not been enacted.

(4) When all or part of a criminal statute is amended or repealed, the criminal statute or part thereof so amended or repealed remains in force for the purpose of authorizing the accusation, prosecution, conviction and punishment of a person who violated the statute or part thereof before the effective date of the amending or repealing Act.

COMMENTARY - APPLICATION OF PROVISIONS

This section is taken from New York Revised Penal Law s. 5.05 and Michigan Revised Criminal Code s. 120. The substance of it is that the revision applies only to conduct occurring after the effective date of the Code, and that the law in existence governs with respect to conduct occurring before that date. Subsection (4) is a restatement of ORS 161.040.

Section 6. Other limitations on applicability of this Act. (1)
Except as otherwise expressly provided, the procedure governing the accusation, prosecution, conviction and punishment of offenders and offenses is not regulated by this Act but by the criminal procedure statutes.

(2) This Act does not affect any power conferred by law upon a court-martial or other military authority or officer to prosecute and punish conduct and offenders violating military codes or laws.

(3) This Act does not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in the proceeding constitutes an offense defined in this Act.

(4) No conviction of a person for an offense works a forfeiture of his property, except in cases where a forfeiture is expressly provided by law.

COMMENTARY - OTHER LIMITATIONS ON
APPLICABILITY OF THIS ACT

This section sets forth other limitations of the proposed code. Subsections (1), (2) and (3) are taken from New York Revised Penal Law s. 5.10 and Michigan Revised Criminal Code s. 125. Subsection (3) is similar to ORS 161.060. Subsection (4) is a restatement of ORS 161.070.

TEXT OF REVISIONS OF OTHER STATES

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.

(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;

Text of Model Penal Code (Cont'd)

Sec. 1.02 (Cont'd)

(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.

Section 1.13. General Definitions.

In this Code, unless a different meaning plainly is required:

(1) "statute" includes the Constitution and a local law or ordinance of a political subdivision of the State;

(2) "act" or "action" means a bodily movement whether voluntary or involuntary;

(3) "voluntary" has the meaning specified in Section 2.01;

(4) "omission" means a failure to act;

(5) "conduct" means an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;

Text of Model Penal Code (Cont'd)

(6) "actor" includes, where relevant, a person guilty of an omission;

(7) "acted" includes, where relevant, "omitted to act";

(8) "person," "he" and "actor" include any natural person and, where relevant, a corporation or an unincorporated association;

(9) "element of an offense" means (i) such conduct or (ii) such attendant circumstances or (iii) such a result of conduct as

(a) is included in the description of the forbidden conduct in the definition of the offense; or

(b) establishes the required kind of culpability; or

(c) negatives an excuse or justification for such conduct; or

(d) negatives a defense under the statute of limitations; or

(e) establishes jurisdiction or venue;

(10) "material element of an offense" means an element that does not relate exclusively to the statute of limitations, jurisdiction, venue or to any other matter similarly unconnected with (i) the harm or evil, incident to conduct, sought to be prevented by the law defining the offense, or (ii) the existence of a justification or excuse for such conduct;

(11) "purposely" has the meaning specified in Section 2.02 and equivalent terms such as "with purpose," "designed" or "with design" have the same meaning;

(12) "intentionally" or "with intent" means purposely;

(13) "knowingly" has the meaning specified in Section 2.02 and equivalent terms such as "knowing" or "with knowledge" have the same meaning;

(14) "recklessly" has the meaning specified in Section 2.02 and equivalent terms such as "recklessness" or "with recklessness" have the same meaning;

(15) "negligently" has the meaning specified in Section 2.02 and equivalent terms such as "negligence" or "with negligence" have the same meaning;

(16) "reasonably believes" or "reasonable belief" designates a belief which the actor is not reckless or negligent in holding.

Text of New York Revised Penal Law

§ 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.
- L.1965, c. 1030, eff. Sept. 1, 1967.

§ 10.00 Definitions of terms of general use in this chapter

Except where different meanings are expressly specified in subsequent provisions of this chapter, the following terms have the following meanings:

1. "Offense" means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state, or by any order, rule or regulation of any governmental instrumentality authorized by law to adopt the same.
2. "Traffic infraction" means any offense defined as "traffic infraction" by section one hundred fifty-five of the vehicle and traffic law.
3. "Violation" means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed.
4. "Misdemeanor" means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed.
5. "Felony" means an offense for which a sentence to a term of imprisonment in excess of one year may be imposed.
6. "Crime" means a misdemeanor or a felony.
7. "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

Text of New York Revised Penal Law (Cont'd)

8. "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property.

9. "Physical injury" means impairment of physical condition or substantial pain.

10. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

11. "Deadly physical force" means physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.

12. "Deadly weapon" means any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switch-blade knife, gravity knife, billy, blackjack, or metal knuckles.

13. "Dangerous instrument" means any instrument, article or substance, including a "vehicle" as that term is defined in this section, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury.

14. "Vehicle" means a "motor vehicle" as defined in the vehicle and traffic law, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail.

15. "Public servant" means (a) any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or (b) any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.

16. "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state or by any public servant authorized by law to impanel a jury. The term juror also includes a person who has been drawn or summoned to attend as a prospective juror.

17. "Benefit" means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary. L.1965, c. 1030; amended L.1967, c. 791, § 1, eff. Sept. 1, 1967.

Text of Michigan Revised Criminal Code

[General Purposes]

Sec. 105. 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.

[Definitions of Terms of General Use in This Act]

Sec. 135. Unless different meanings are expressly set out in subsequent provisions of this act, the following terms have the following meanings:

- (a) "Offense" means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state.
- (b) "Violation" means an offense for which a sentence to a term not in excess of 15 days is authorized by this act, or for which no sentence of imprisonment can be imposed.
- (c) "Misdemeanor" means an offense for which a sentence to a term of imprisonment in excess of 15 days but not in excess of 1 year is authorized by this act.
- (d) "Felony" means an offense for which a sentence to a term of imprisonment in excess of 1 year is authorized by this act.
- (e) "Crime" means a misdemeanor or a felony.
- (f) "Person" means a human being, and where appropriate a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.
- (g) "Possess" means to have physical possession or otherwise to exercise dominion over tangible property.
- (h) "Physical injury" means impairment of physical condition or substantial pain.
- (i) "Serious physical injury" means physical injury that creates a substantial risk of death, or that causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

Text of Michigan Revised Criminal Code (Cont'd)

(j) "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

(k) "Deadly weapon" means any loaded weapon from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, metal knuckles, or slungshot.

(l) "Dangerous instrument" means any instrument, article, or substance that under the circumstances in which it is used, attempted to be used, or threatened to be used is readily capable of causing death or serious physical injury, and includes a "vehicle" as that term is defined in subparagraph (m).

(m) "Vehicle" includes any vehicle as defined in section 79 of Act No. 300 of the Public Acts of 1949 as amended, being section 257.79 of the Compiled Laws of 1948, any vessel as defined in section 1 of Act No. 245 of the Public Acts of 1949 as amended, being section 281.651 of the Compiled Laws of 1948, and aircraft.

(n) "Burden of injecting the issue" means that the defendant must offer some competent evidence relating to all matters subject to the burden, but the state must then disprove the existence of these matters beyond a reasonable doubt.

(o) "Element of an offense" means conduct, attendant circumstances or results of conduct that are included in the description of the prohibited conduct in the definition of the offense, that establish the required kind of culpability, that negative an excuse or justification for conduct, that negative a defense relating to time limitations, or that establish territorial applicability or place of trial.

(p) "Material element of an offense" means an element that does not relate exclusively to time limitations, territorial applicability, place of trial or any other matter similarly unconnected with the harm or evil incident to conduct sought to be prevented by the law defining the offense, or with the existence of a justification or excuse for conduct.

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Text of Model Sentencing Act

§ 1: LIBERAL CONSTRUCTION

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

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