

See: Minutes of Subcommittee on
Grading & Sentencing
4/4/70, p. 1, Vol. X, Tapes 53 & 54

CRIMINAL LAW REVISION COMMISSION
311 Capitol Building
Salem, Oregon

ARTICLE 7 . CLASSES OF OFFENSES

Preliminary Draft No. 1; February 1970

Reporter: Donald L. Paillette

Subcommittee on
Grading and Sentencing

Note: See Article 1 for early drafts on "Classes of Crimes"

ARTICLE 7. CLASSES OF OFFENSES

Preliminary Draft No. 1; February 1970

Section 1. Offenses; definition. An offense is 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 or ordinance of a political subdivision of this state. An offense is either a crime or a violation.

Section 2. Crimes; definition. (1) A crime is an offense defined by any statute of this state for which a sentence of imprisonment is authorized.

(2) A crime is either a felony or a misdemeanor.

Section 3. Felonies; definition. 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.

Section 4. Felonies; classification. (1) Felonies are classified for the purpose of sentence into the following categories:

- (a) Class A felonies;
- (b) Class B felonies;
- (c) Class C felonies; and
- (d) Unclassified felonies.

(2) The particular classification of each felony defined in this code is expressly designated in the section defining the crime. An offense defined outside this code which, because of the express sentence provided is within the definition of section 3 of this Article, shall be considered an unclassified felony.

Section 5. Misdemeanors; definition. A crime is a misdemeanor 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 not more than one year.

Section 6. Misdemeanors; classification. (1) Misdemeanors are classified for the purpose of sentence into the following categories:

- (a) Class A misdemeanors;
- (b) Class B misdemeanors;
- (c) Class C misdemeanors;
- (d) Unclassified misdemeanors.

(2) ~~The~~ The particular classification of each misdemeanor defined in this code is expressly designated in the section defining the crime. An offense defined outside this code which, because of the express sentence provided is within the definition of section 5 of this Article, shall be considered an unclassified misdemeanor. ^(b) An offense defined by a statute of this state, but without specification as to its classification or as to the penalty authorized upon conviction, shall be considered ^{a Class C} ~~an unclassified~~ misdemeanor.

\ Section 7. Violations; definition. (1) An offense is a violation if it is so designated in the statute defining the offense, ^{the offense is punishable as provided in subsection 2.} 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.

(2) An offense may be made punishable by a fine, fine and forfeiture or other civil penalty, but a violation is not a crime. Conviction of a violation does not result in any disability or legal disadvantage based on conviction of a crime.

Section 8. Violations; classification. (1) Any violation defined in this code is expressly designated in the section defining the offense. Any offense defined outside this code which, because of the express sentence provided is within the definition of section 7 of this Article, shall be considered a violation.

(2) Violations are not classified.

Section 9. Crimes; classification determined by punishment.

(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 ^{under ORS 757.128} in the penitentiary or the Oregon State Correctional Institution.

(2) Notwithstanding the provisions of section 3 of this Article, 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:

^{as a consequence of conviction}
(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 ^{the} defendant.

COMMENTARY TO SECTIONS 1 - 9

A. Summary

Section 1 defines the term "offense." An offense includes both crimes and violations.

Section 2 defines a "crime."

Section 3 defines one of the two kinds of crime, i.e., a "felony."

Section 4 classifies felonies into four separate categories for purposes of sentence. Subsection (2) of this section is to provide for offenses defined outside the criminal code itself that might, because of the penalties imposed, come within the definition of felony.

Section 5 defines the other kind of crime, i.e., a "misdemeanor."

Section 6 classifies misdemeanors into four separate categories for purposes of sentence. Subsection (2) of this section is the misdemeanor counterpart of the felony provision in section 4 (2).

Section 7 defines a "violation" for which imprisonment is not authorized and which does not constitute a crime.

Section 8 covers offenses outside the criminal code which come within the definition of violation. There are no separate categories for violations.

Section 9 is designed to cover the "indictable misdemeanor" type of crime in which a crime that is punishable by imprisonment in the penitentiary or Correctional Institution is classed as a misdemeanor because the court imposes a lesser sentence. Subsection (2) spells out the different alternatives that will be available to the sentencing court.

Paragraph (a) covers a sentence of imprisonment to a facility other than the penitentiary or OSCI with no probation involved.

Paragraph (b) deals with another situation involving no probation but merely the imposition of a fine.

Paragraph (c) covers the probation revocation situation in which a jail sentence other than to the penitentiary or OSCI is imposed.

Paragraph (d) covers imposition of a fine following revocation of probation.

Paragraph (e) treats the case in which the court expressly declares the crime to be a misdemeanor.

Paragraph (f) covers probation without imposition of sentence and a subsequent discharge of the defendant without sentence.

Paragraph (g) is similar to (f) except no probation is involved.

B. Derivation

Section 1 is based on section 135 (a) of Michigan Revised Criminal Code.

Section 2 partly restates ORS 161.020 and 161.030 except that the definition is limited to offenses punishable by imprisonment.

Section 3 is similar to section 135 (d) of Michigan Revised Criminal Code and, in its effect, is basically the same as ORS 161.030 (2).

Section 4 is based on Michigan Revised Criminal Code section 1201 (1) and section 26 of the Connecticut Penal Code (1969).

Section 5 (1) is derived from Michigan Revised Criminal Code section 135 (c) and, in its effect, is substantially the same as the existing Oregon definition in ORS 161.030 (3). Subsection (2) is similar to Michigan section 1205 (3).

Section 6 is based on Michigan Revised Criminal Code section 1201 (2) and section 27 of the Connecticut Penal Code (1969).

The source of the concept of a non-criminal classification termed a violation in section 7 is section 1.04 (5) of the Model Penal Code and section 135 (b) of the Michigan Revised Criminal Code. "Violation" in the Michigan code means an offense for which a sentence to a term not in excess of 15 days is authorized, or for which no sentence of imprisonment can be imposed. Section 7 makes no provision for imprisonment, following the reasoning of the Model Penal Code Commentary, Tentative Draft No. 2, page 8, which states:

"If a sentence of imprisonment is authorized . . . it is an inadmissible semantic manipulation to declare that the offense is not a crime. Imprisonment, it is submitted, ought not be available as a punitive sanction, unless the conduct that gives rise to it warrants the type of social condemnation that is and ought to be implicit in the concept of 'crime'."

The proposed section 7 is thus in the language of the Model Penal Code.

Section 8 is based on Connecticut Penal Code section 28.

Section 9 continues the somewhat unusual feature of Oregon law which gives the sentencing judge discretion to sentence for certain crimes either to the penitentiary (or to the Oregon State Correctional Institution) or to the

county jail for a term of a year or less, and which classifies the crime as a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the penitentiary or in the Oregon State Correctional Institution is generally continued. ORS 161.030 (2). This plan is followed by present California and Idaho law. California Penal Code, section 17; Idaho Code, section 18.111. On the other hand, Iowa, Washington and Massachusetts (apparently representing a majority of all the states) determine the classification of a specific crime as a felony or misdemeanor by the punishment that may be given and not by what is actually given. See, for example, State v. Sayward, 65 Wash2d 698, 404 P2d 783 (1965). The reference to the county jail has been deleted with the idea in mind that the code should anticipate the use of county correctional camps and perhaps state correctional facilities (other than the penitentiary and Oregon State Correctional Institution) for minor offenders.

Paragraph (e) of subsection (2) of section 9 is derived from the 1963 amendment to section 17 of the California Penal Code.

Paragraph (f) of subsection (2) of section 9 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.

Paragraph (g) of subsection (2) of section 9 is based on Rubin, The Law of Criminal Correction, Ch. 5, s. 21, pp. 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."

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.

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.

C. Relationship to Existing Law

These sections retain the traditional felony-misdemeanor classification but add a non-criminal offense termed a violation.

Section 9 retains the feature of Oregon law which provides that certain crimes may be prosecuted as felonies but that the sentencing judge may sentence as for a misdemeanor, and that the crime shall be deemed a misdemeanor for all purposes, after a judgment imposing a punishment other than imprisonment in the penitentiary or in the Oregon State Correctional Institution. The section would clarify existing law by providing, in crimes which are felonies or misdemeanors at the discretion of the sentencing judge, that the judge shall, if he grants probation, at the time of granting probation declare the offense to be a felony or, in the discretion of the court, declare the offense to be a misdemeanor.

"ORS 161.020. Crime defined. A crime or public offense is an act or omission forbidden by law and punishable upon conviction by any of the following punishments:

"(1) Imprisonment.

"(2) Fine.

"(3) Removal from office.

"(4) Disqualification to hold and enjoy any office of honor, trust or profit under the Constitution or laws of this state."

"ORS 161.030. Felonies and misdemeanors defined. (1) Crimes are divided into felonies and misdemeanors.

"(2) A felony is a crime which is punishable by imprisonment in the penitentiary of this state. When a crime punishable by imprisonment in the penitentiary is also punishable by a fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes, after a judgment imposing a punishment other than imprisonment in the penitentiary or in the Oregon State Correctional Institution.

"(3) Every crime not included in subsection (2) of this section is a misdemeanor."

The new classification of violation is to give room for flexibility in the drafting of the sentencing provisions of the code. The violation category is added for the further reason that the reporter feels that the use of the criminal law as an attempted cure-all for every social problem has been notoriously ineffective and has tended to bring the criminal law into disrepute. In a day when major crime is increasing at a sobering rate we should direct our scarce and overburdened police and correctional resources to areas of real concern and not to enforcement of regulatory measures.

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

"ORS 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."

ORS 137.510 should be amended to conform with section 9.

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.

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.

The technique of classifying felonies and misdemeanors into separate categories for grading and sentencing purposes follows the approach recommended by the Model Penal Code, New York Revised Penal Law, Michigan Revised Criminal Code and other recent state criminal law revisions. This method of classifying the crimes represents a departure from the traditional legislative technique of providing a separate and distinct penalty for each individual offense. The existing method results in unnecessary duplication of penalties, inconsistencies among penalties imposed for similar crimes and disparate sentences.

Each of the specific offenses defined by the proposed code can be assigned to one of the felony or misdemeanor categories, with the sentencing and penalty options for each category set forth in the Articles on Authorized Disposition of Offenders and Authority of the Court in Sentencing.

As Judge William Beckett observed, as of 1960 there were 466 "penalty types" and 1,413 separate criminal penalties provided for in Oregon Revised Statutes. He defines "penalty" as meaning "a statement of a precise penalty whether the statement appears in the statutory section establishing the conduct to which the penalty applies or whether it is set forth in a separate section stating penalty limits for conduct described in another section (or sections)." He defines the term "penalty type" as denoting "a penalty that is distinct from all other penalties and that may be prescribed for one or many crimes." See, Beckett, Criminal Penalties in Oregon, 40 Or L Rev 1 (Dec. 1960).

The proposed crime classification system will, of course, greatly reduce the number of "penalty types." This, consequently, will more precisely proportion the penalty to the offense (and to the offender) and reduce the possibility of disparity among sentences imposed for similar offenses. The problem of unnecessary duplication of offenses already has been remedied to a great extent by the proposed code's Articles on specific offenses which attempt to substitute a single definition of criminal conduct for a multiplicity of definitions and to recommend repeal of all statutes which needlessly duplicate the criminal code provisions.

Classifying the crimes, assigning a range of penalties for each category of crimes and then assigning each specific offense to one of the categories will follow through on the ultimate objective of the revision project -- a comprehensive and consistent criminal code.