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CRIMINAL LAW REVISION COMMISSION
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ARTICLE 7. CLASSES OF OFFENSES

Preliminary Draft No. 2; May 1970

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Subcommittee on
Grading and Sentencing

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ARTICLE 7. CLASSES OF OFFENSES

Preliminary Draft No. 2; May 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 for which a sentence of imprisonment is authorized.

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

Section 3. Felonies; definition. Except as provided in section 9 of this Article, a crime is a felony if it is so designated in any statute of this state or if a person convicted ^{under a statute of this state} 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, except murder under section _____ and treason under section _____, 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; and
- (d) Unclassified misdemeanors.

(2) (a) 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 misdemeanor.

Section 7. Violations; definition. An offense is a violation if it is so designated in the statute defining the offense or if the offense is punishable only by a fine, forfeiture, fine and forfeiture or other civil penalty. Conviction of a violation does not give rise to 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 is punishable as provided in 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 as a felony 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 137.124.

(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:

(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, upon suspension of 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

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 as a felony 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 thus follows the recommendation 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.

TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code

Section 1.04. Classes of Crimes; Violations.

(1) An offense defined by this Code or by any other statute of this State, for which a sentence of [death or of] imprisonment is authorized, constitutes a crime. Crimes are classified as felonies, misdemeanors or petty misdemeanors.

(2) A crime is a felony if it is so designated in this Code or if persons convicted thereof may be sentenced [to death or] to imprisonment for a term which, apart from an extended term, is in excess of one year.

(3) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto.

(4) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto or if it is defined by a statute other than this Code which now provides that persons convicted thereof may be sentenced to imprisonment for a term of which the maximum is less than one year.

(5) An offense defined by this Code or by any other statute of this State constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction or if it is defined by a statute other than this Code which now provides that the offense shall not constitute a crime. A violation does not

(4) When a person is convicted of any offense and not sentenced to a period of probation or conditional discharge, or when a sentence of probation or conditional discharge is revoked, the following sentences may be imposed:

(a) A term of imprisonment authorized by chapter 14.

(b) A fine authorized by chapter 15. The sentence is tentative to the extent it may be modified or revoked in accordance with chapter 15, but for all other purposes it is a final judgment of conviction. If the conviction is of a Class A or B felony or of an offense under chapter 60, the sentence cannot consist solely of a fine.

(c) Both imprisonment and a fine.

(d) Unconditional discharge as provided in section 1335.

(5) Costs may be assessed in any case as authorized by chapter 15.

(6) If a person has been sentenced to a period of probation and a fine, and the part of the sentence that provides for probation is revoked, the court shall sentence him to imprisonment.

(7) When a corporation is convicted of any offense, the following sentences may be imposed:

(a) A fine authorized by chapter 15.

(b) A period of conditional discharge authorized by Section 1315.

(c) Unconditional discharge as provided by section 1335.

(8) If a corporation is sentenced to a period of conditional discharge and the sentence is revoked, the court shall sentence the corporation to pay a fine.

(9) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Any appropriate order exercising that authority may be included as part of the judgment of conviction.

[Presentence Investigation]

Sec. 1215. (1) No defendant convicted of a felony shall be sentenced or otherwise disposed of before a written report of presentence investigation has been presented to and considered by the court. The court may in its discretion order a presentence investigation for a defendant convicted of a misdemeanor.

(2) The report shall be prepared, presented and utilized as provided by rule of court.

[Diagnostic Commitment]

Sec. 1220. (1) If after presentence investigation required by section 1215 upon a conviction for a felony, the court desires more detailed information as a basis for determining the sentence to be im-

constitute a crime and conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(6) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a misdemeanor.

(7) An offense defined by any statute of this State other than this Code shall be classified as provided in this Section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code.

Section 1.05. All Offenses Defined by Statute; Application of General Provisions of the Code.

(1) No conduct constitutes an offense unless it is a crime or violation under this Code or another statute of this State.

(2) The provisions of Part I of the Code are applicable to offenses defined by other statutes, unless the Code otherwise provides.

(3) This Section does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

Text of Michigan Revised Criminal Code

[Classification of Felonies and Misdemeanors]

Sec. 1201. (1) Felonies are classified, for the purpose of sentence, into the following 3 categories:

- (a) Class A felonies.
- (b) Class B felonies.
- (c) Class C felonies.

(2) Misdemeanors are classified, for the purpose of sentence, into the following three categories:

- (a) Class A misdemeanors.
 - (b) Class B misdemeanors.
 - (c) Class C misdemeanors.
- (3) Violations are not classified.

[Designation of Offenses]

Sec. 1205. (1) The particular classification of each felony defined in this code, except murder in the first degree under section 2005, is expressly designated in the section or chapter defining it. Any offense defined outside this code which is declared by law to be a felony without specification of the classification thereof and of the penalty therefor is a Class C felony.

(2) The particular classification of each misdemeanor defined in this code is expressly designated in the section or chapter defining it. Any offense defined outside this code which is declared by law to be

a misdemeanor without specification of the classification thereof and of the penalty therefor is a Class C misdemeanor.

(3) Every violation defined in this code is expressly designated as such. Any offense defined outside this code without specification as to felony or misdemeanor and of the penalty therefor is a violation.

[Authorized Dispositions of Offenders]

Sec. 1210. (1) Every person convicted of any offense defined in this code or defined outside this code shall be sentenced in accordance with chapters 12, 13, 14, and 15 of this Code, unless otherwise specifically provided by law.

(2) When a person is convicted of any offense, the court, if authorized by chapter 13, may sentence him to a period of probation or conditional discharge as provided in that chapter. The sentence is tentative to the extent that it may be altered or revoked in accordance with chapter 13, but for all other purposes it is a final judgment of conviction.

(3) If the court imposes a sentence of probation it may also impose a fine authorized by chapter 15.

posed, it may commit the defendant to the custody of the department of corrections. The commitment shall be for a period of 60 days. The department during that period shall conduct a complete study of the prisoner and shall by the expiration of the period of commitment return the prisoner to the court and provide the court with a written report of the results of the study, including whatever recommendations the department believes will be helpful in determining disposition of the case. After receiving the report and recommendations, if the court does not order a further diagnostic commitment under subsection (2), it shall sentence the defendant as authorized by section 1210.

(2) If after presentence investigation required by section 1215 upon a conviction for a felony, the court desires more detailed information about the defendant's mental condition, it may commit or refer the defendant to the custody of the center for forensic psychiatry of the department of mental health, or to any other diagnostic facility certified by the department of mental health for the performance of forensic psychiatric evaluation. The commitment or referral shall be for a period not to exceed 60 days. Within that period the center or other facility shall return the prisoner to court and transmit to the court a diagnostic report, including whatever recommendations the center or other facility may wish to make. After receiving the report and recommendations, if the court does not order a further diagnostic commitment under subsection (1), it shall sentence the defendant as authorized by section 1210 or invoke the provisions of section 1225.

(3) In an appropriate case the court in its discretion may order diagnostic commitments under both subsections (1) and (2).

(4) If after receiving a diagnostic report under subsection (1) or (2) the court sentences the defendant to imprisonment, the period of commitment under either or both shall be credited against the maximum term and from the minimum term of imprisonment otherwise provided by law.

[Civil Commitment in Lieu of Sentence]

Sec. 1225. If on the basis of the report and recommendations submitted to the court under section 1220(2) the court believes that the defendant is suffering from a mental condition, or is addicted to the excessive use of intoxicating liquors, or to narcotics or noxious drugs, so that he is eligible for commitment by action of a probate court under sections 8 and 11 of Act No. 151 of the Public Acts of 1923, as amended, being sections 330.18 and 330.21 of the Compiled Laws of 1948, the court may certify its opinion to that effect, together with the report and recommendations which it received from the center for forensic psychiatry as provided in section 1220(2), to the probate court of the county in which the defendant was convicted. The probate court shall receive the certified opinion and the psychiatric report and recommendations as the equivalent to a petition and physician's report under section 11 of Act No. 151 of the Public Acts of 1923, as amended, being section 330.21 of the Compiled Laws of 1948, and shall proceed to determine the matter as provided in that section.

Text of Proposed Connecticut Penal Code

§ 25. Classification of offenses

1. **Offense.** The term "offense" means a breach of any law of this state, local law or ordinance of a political subdivision of this state, other than one that defines a motor vehicle violation, for which a sentence to a term of imprisonment or to a fine is

authorized upon conviction thereof an offense is either a crime or a violation.

2. **Crime.** The term "crime" comprises felonies and misdemeanors.

3. **Violation.** Every offense which is not a crime is a "violation." Conviction of a violation shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

4. Notwithstanding the provisions of subsection 1 of this section, the provisions of Article 4 (Authorized Disposition of Offenders), Article 5 (Sentence of Probation, Conditional Discharge and Unconditional Discharge) and Article 6 (Sentences of Imprisonment) shall be applicable to motor vehicle violations.

§ 26. Felony; definition, classification and designation

1. **Definition.** An offense is a felony if a person convicted thereof may be sentenced to a term of imprisonment which is in excess of one year.

Felonies

2. **Classifications.** ~~Misdemeanors~~ are classified for the purpose, into five categories as follows:

- (a) Class A felonies;
- (b) Class B felonies;
- (c) Class C felonies;
- (d) Class D felonies; and
- (e) unclassified felonies.

3. **Designation.** The particular classification of each felony defined in this chapter is expressly designated in the section or article defining it. Any offense defined outside this chapter which, by virtue of any expressly specified sentence, is within the definition set forth in subsection 1 of this section shall be deemed an unclassified felony.

§ 27. Misdemeanor; definition, classification and designation

1. Definition. An offense is a misdemeanor if a person convicted thereof may be sentenced to a term of imprisonment which cannot exceed one year.

2. Classifications. Misdemeanors are classified for the purpose of sentence, into four categories as follows:

- (a) Class A misdemeanors;
- (b) Class B misdemeanors;

- (c) Class C misdemeanors; and
- (d) unclassified misdemeanors.

3. Designation. The particular classification of each misdemeanor defined in this chapter is expressly designated in the section or article defining it. Any offense defined outside this chapter which, by virtue of an expressly specified sentence, is within the definition set forth in subsection 1 of this section shall be deemed an unclassified misdemeanor.

§ 28. Violation; definition and designation

1. Definition. An offense is a violation if the only sentence authorized for conviction thereof is a fine.

2. Designation. Every violation defined in this chapter is expressly designated as such. Any offense defined outside this chapter which is not expressly designated a violation shall be deemed a violation if, notwithstanding any other express designation, it is within the definition set forth in subsection 1 of this section.