Chapter 168

1963 REPLACEMENT PART

Habitual Criminals

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168.010 [Repealed by 1955 c.663 §1 (ORS 168.011, 168.021 and 168.031 enacted in lieu of ORS 168.010, 168.020 and 168.030)]

168.011 [1955 c.663 §2 (ORS 168.011, 168.021 and 168.031 enacted in lieu of ORS 168.010, 168.020 and 168.030); repealed by 1961 c.648 §13]

168.015 Definitions for ORS 168.015 to 168.085. As used in ORS 168.015 to 168.085, unless the context requires otherwise:

(1) "Conviction" means an adjudication of guilt upon a plea, verdict or finding in a criminal proceeding in a court of competent jurisdiction, but "conviction" does not include an adjudication which has been expunged by pardon, reversed, set aside or otherwise rendered nugatory.

(2) "Principal offense" means the offense upon conviction of which a court may impose an enhanced penalty based upon former conviction of an offense. "Principal felony" means a principal offense that is a felony.

(3) Except as provided in subsection (4) of this section, "former conviction of a felony" means:

(a) Former conviction of a felony in a court of this state;

(b) Former conviction in a court of the United States, other than a court-martial, of an offense which at the time of conviction of the offense was and at the time of conviction of the principal offense is punishable under the laws of the United States by death or by imprisonment in a penitentiary, prison or similar institution for a term of one year or more; or

(c) Former conviction by a general court-martial of the United States or in a court of any other state or territory of the United States, or of the Commonwealth of Puerto Rico, of an offense which at the time of conviction of the offense was punishable by death or by imprisonment in a penitentiary, prison or similar institution for a term of one year or more and which offense also would at the time of conviction of the principal offense have been a felony if committed in this state.

(4) Except under ORS 166.230 and 167.050, a conviction is not a "former conviction of a felony" if:

(a) The offense was committed when the defendant was under 16 years of age;

(b) That conviction was rendered after the commission of the principal felony;

(c) It is the defendant's most recent conviction described in subsection (3) of this section, and the defendant was finally and unconditionally discharged from all resulting imprisonment, probation or parole more than seven years before the commission of the principal felony; or

(d) That conviction was by court-martial of an offense denounced only by military law and triable only by court-martial.

[1961 c.648 §1]

168.020 [Repealed by 1955 c.663 §1 (ORS 168.011, 168.021 and 168.031 enacted in lieu of ORS 168.010, 168.020 and 168.030)]

168.021 [1955 c.663 §3 (ORS 168.011, 168.021 and 168.031 enacted in lieu of ORS 168.010, 168.020 and 168.030); repealed by 1961 c.648 §13]

168.025 Scope of ORS 168.015 to 168.080; principal offenses committed before August 9, 1961. (1) The sentence under any statute which prescribes an enhanced penalty because of former conviction of an offense shall be determined in accordance with the procedures prescribed in ORS 168.015 to 168.080.

(2) The enhanced penalty for a principal offense committed before August 9, 1961, shall be enforced in accordance with the law in effect at the time of the commission of that offense.

[1961 c.648 §§2, 14]

168.030 [Repealed by 1955 c.663 §1 (ORS 168.011, 168.021 and 168.031 enacted in lieu of ORS 168.010, 168.020 and 168.030)]

168.031 [1955 c.663 §4 (ORS 168.011, 168.021 and 168.031 enacted in lieu of ORS 168.010, 168.020 and 168.030); repealed by 1961 c.648 §13]

168.040 [Amended by 1955 c.663 §5; repealed by 1961 c.648 §13]

168.050 Peace officer's duty to report former convictions. When any warden or prison, probation, parole or police officer, or other peace officer knows or has reason to believe that any person charged with, or convicted of a principal felony has been previously convicted of a felony, within the meaning of subsection (3) of ORS 168.015, that officer shall immediately report such knowledge or belief to the district attorney of the county where the person is charged with or convicted of the principal felony. The requirements of this section shall not require any warden or prison, probation or parole officer to report information on prior felony convictions which is available at the central bureau of criminal identification.

[Amended by 1955 c.663 §6; 1961 c.648 §9; 1963 c.245 §1]

168.055 District attorney to investigate former convictions; filing information; notice to defendant. (1) Within two years after conviction of the principal offense the district attorney in the county of conviction of the principal offense shall:

(a) If he has reason to believe there has been a conviction which would justify an enhanced penalty for the principal offense under any applicable law, immediately investigate to determine whether there has been such a conviction; and,

(b) If he obtains competent evidence of the conviction described in paragraph (a) of this subsection, immediately file with the court of conviction of the principal offense an information alleging that conviction.

(2) If the district attorney files the information described in paragraph (b) of subsection (1) of this section, he shall immediately inform the defendant of the proceeding by having a copy of the information served personally upon the defendant by any person who is 21 years of age or older.
[1961 c.648 §3]

168.060 [Amended by 1955 c.663 §7; 1961 c.648 §10; renumbered 168.090]

168.065 Hearing on allegation of former convictions; imposition of new sentence. After 15 days from the service of the copy of the information under ORS 168.055 the court of conviction of the principal offense shall:

(1) Cause the defendant, whether imprisoned or otherwise, to be brought before it.

(2) Orally inform the defendant of:

(a) The allegations in the information and the defendant's right to a hearing on the truth of the allegations.

(b) The defendant's right to the aid of counsel.

(3) Require the defendant, after he has a reasonable time to consult counsel, to admit or deny the allegations in the information.

(4) If the defendant denies the allegations in the information, refuses to answer or remains silent, enter of record the defendant's response or the fact of his silence and proceed to hear, determine and make a written finding on the allegations.

(5) If the defendant admits the truth of the allegations in the information, enter of record the defendant's response.

(6) If the defendant admits, or the court otherwise finds, the former conviction alleged, vacate any sentence imposed upon conviction of the principal offense, impose any new sentence permitted or required by law, and, unless the new sentence is for the defendant's natural life, deduct from the new sentence the period of imprisonment on the sentence so vacated.
[1961 c.648 §4]

168.070 [1955 c.660 §4; repealed by 1959 c.550 §4]

168.075 Effect of failure by defendant to claim certain exceptions at hearing. Unless the proof shows the exception of a former conviction under subsection (1) or (4) of ORS 168.015, the defendant waives the exception by failure to claim it at the hearing on the allegations of the information.
[1961 c.648 §6]

168.080 Proof of former convictions. (1) The court shall consider as prima facie evidence of the former conviction alleged:

(a) A copy of the judicial record of that conviction which copy is authenticated under ORS 43.110 or 43.120;

(b) A copy of the fingerprints of the subject of that conviction which copy is authenticated under ORS 43.330; and

(c) Testimony that the fingerprints of the subject of that conviction are those of the defendant.

(2) This section does not prohibit proof of former conviction by any other procedure.
[1961 c.648 §5]

168.085 Penalties for subsequent convictions. Except where any other statute of this state prescribes an enhanced penalty because of former conviction of a felony, any person who has been convicted of a principal felony and who, pursuant to ORS 168.015 to 168.080, is found by the court to have been formerly convicted of a felony, shall be sentenced as follows:

(1) Where one former conviction of felony is found by the court, imprisonment for a term not more than twice the longest term otherwise prescribed by statute for the principal felony.

(2) Where two former convictions of felony are found by the court, imprisonment for a term not more than three times the longest term otherwise prescribed by statute for the principal felony.

(3) Where three or more former convictions of felony are found by the court, imprisonment for any term not less than twice

the longest term otherwise prescribed by statute for the principal felony, or imprisonment for life.
[1961 c.648 §7]

168.090 Review of sentences. Sentences imposed under ORS 168.085 are reviewable upon appeal by the Supreme Court.
[Formerly 168.060]

168.100 to 168.200 [Reserved for expansion]

168.210 [1957 c.577 §1; repealed by 1961 c.648 §13]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1963.

Sam R. Haley
Legislative Counsel