Tape 18, Side 2, 1500 to end
Tape 26, Side 1, 1 to 1340

COMMITTEE ON JUDICIARY

Subcommittee on Adjudication

July 30, 1974

Members Present: Rep. George F. Cole, Chairman
Sen. Elizabeth W. Browne
Rep. Lewis B. Hampton
Rep. Norma Paulus

Absent: Sen. John D. Burns
Sen. George Eivers

Staff Present: Mr. Donald L. Paillette, Project Director

Others Present: Mr. Gil Bellamy, Administrator, Oregon Traffic Safety Commission
Mrs. Edgar Tibbits, Women's Christian Temperance Union
Lt. Marvin Acheson, Oregon State Police
Mr. Ralph Sipprell, Highway Division, Department of Transportation
Ms. Kathleen Nachtigal, American Civil Liberties Union
Mr. Phil Roberts, Oregon District Attorneys' Association

Agenda:

(1) Approval of Minutes of meeting of June 25, 1974

(2) SERIOUS TRAFFIC OFFENSES; Preliminary Draft No. 1; June 1974 and Subcommittee amendments of June 25, 1974

(3) DANGEROUS DRIVING (Reckless and criminally negligent driving)

(4) TRAFFIC OFFENSE PROCEDURES (ORS ch 484) (Citation and arrest procedures for traffic infractions)

Rep. George F. Cole, Chairman, called the meeting to order at 10:00 a.m. in Room 14, State Capitol.

Minutes of meeting of June 25, 1974

Rep. Paulus moved that the minutes of the meeting of June 25, 1974, be adopted. There being no objections, the motion carried unanimously.

SERIOUS TRAFFIC OFFENSES, Preliminary Draft No. 1; June 1974, and Subcommittee amendments of June 25, 1974

Mr. Paillette, at the request of Chairman Cole that he brief the members on the draft on Serious Traffic Offenses and the subcommittee amendments, explained that as a result of the action of the subcommittee at its previous meeting three sections needed to be amended. Subsection (1) of section 2, continued Mr. Paillette, defines the offense of driving with .10 percent or more blood alcohol content, and subsection (2) classifies the offense as a Class A traffic infraction. The amended section would replace the one that appears on pages 2 and 3 of preliminary draft no. 1, and ORS 483.999 would be repealed.

Rep. Paulus made reference to a previous discussion dealing with penalties for drivers under 18 years of age involved in serious traffic offenses, which would conform with penalties for adults. She suggested that the subject be brought before the full committee for discussion, and Senator Browne agreed. Sen. Browne explained that some counties remand all offenders under 18 to adult court unless specifically sent to juvenile court. However, most counties, she continued, refer all offenders under 18 to juvenile authorities and will then remand some to adult court. Rep. Paulus stated that it was important for juvenile offenders to be under the jurisdiction of a judge so they would be subjected to all training programs available.

Mr. Paillette agreed to include the subject on the agenda for the next full committee meeting.

Rep. Hampton asked if the district attorneys were concerned about proof of .10 after a time lapse of perhaps a half hour to an hour and a half. Phil Roberts answered that there was no more of a problem with the draft than with present law and that a change in law would be required to cover the question referred to by Rep. Hampton to provide either a presumption or prima facie case for when a particular time period had elapsed after driving occurred. Rep. Hampton added that if the district attorneys were not concerned that he wouldn't push for a change in the law at this time.

Section 6 appears on page 9 of the draft, and the purpose of the amendment, said Mr. Paillette, was to state in the "notice of suspension" provided for in 482.570 whether the suspension was ordered by the court. It was the belief of the subcommittee, continued Mr. Paillette, that a defendant should be apprised whether or not a suspension was court ordered or by action of the Motor Vehicles Division. The wording "in the case of a suspension" was added, said Mr. Paillette, because it would be the only type of court action with which the division would be concerned.

Chairman Cole recalled that there had been previous discussion regarding a judge taking the license of a driver at the time of suspension while the driver would still be in the courtroom. He commented that an amendment could be added to section 3 to give the court the authority.

Rep. Hampton and Rep. Paulus were both under the impression that after previous discussions that there would be no constitutional problem regardless of the appeal rights.

Rep. Hampton stated that if there definitely would be an appeal, the picking up of the license certificate could negate the reasons for an appeal. If the suspension were for 60 days and it would take 90 days to appeal, the reason for appeal would no longer be relevant. Sen. Browne suggested that the "notice of appeal" could serve as a license to drive during the appeal period.

Chairman Cole asked whether, under the contemplated procedure, the notice of suspension and license would be immediately sent to MVD, and Mr. Paillette answered that they would.

Rep. Hampton stated that perhaps Senator Browne's suggestion would make a good foundation. If the court is authorized to pick up the certificate, the goal of achieving irrefutable notice would be accomplished, and then, if the defendant wished to appeal, he would need to make contact with MVD. The notice of appeal would have to be received by MVD and then a temporary license could be issued, said Rep. Hampton. Notice of appeal could be filed also with MVD, added Sen. Browne.

Mr. Paillette stated that as set out in the draft on Classification of Offenses; Disposition of Offenders, the court would forward the license as well as the notice to MVD immediately on suspension. Chairman Cole commented that a problem could exist in that notice of appeal could be received by MVD almost immediately upon sentencing or it might be as long as 30 days. Rep. Hampton added that perhaps a minimum period of time could be allowed on a suspension regardless of whether the suspension would be appealed. Mr. Paillette pointed out that one of the amendments on the agenda deals with the question of "notice of suspension". The offense of driving while suspended and the lack of notice in terms of an affirmative defense have been restructured. It would be clearly up to the defendant to establish that he did not receive notice rather than requiring the state or prosecution to prove that he had.

Chairman Cole commented that it might be simpler for the court to issue a permit for a certain period of time if notice of appeal is made, and at that time MVD would be advised of the action and would then have the time to adjust their records. The question would still exist as to how long the permit should be effective. Rep. Hampton added that the temporary permit would state that it would be in effect only so long as the appeal is pending and the trial court decision is not affirmed.

Chairman Cole made reference to page 13 of the Minutes of June 25, 1974, and specifically to the paragraph dealing with section 3 of the draft wherein reference is made to a suggestion by Miss Howard to amend the section to allow a judge to impose a suspension. Mr. Paillette remarked that the statute deals strictly with MVD authority and that he did not write an amendment to the section with respect to what a judge

might do. If a person is convicted, the court would pick up his license at that time, said Chairman Cole. Mr. Paillette added that the requirements in section 3 are mandatory and whatever action the court takes would have no effect on the statutory requirements of the Motor Vehicles Division.

Chairman Cole added that if a judge does not impose a suspension himself upon a conviction of a DUIL, he knows there will be a mandatory suspension of 30 days, and he should have the authority to pick up the license. Rep. Paulus recalled that in a discussion with Judge Schwab the picking up of a driver's license by the court had been discussed. Rep. Hampton added that existing law allows a license to be picked up by the court under some situations. Gil Bellamy remarked that the law states a judge can pick up a license and that it isn't done because of the time lapse between conviction and appeal. Rep Hampton commented that it is being done in Washington County.

Rep. Cole suggested that perhaps the court should be required to pick up a license on conviction so the system would be uniform. The objective is to give the driver notice, he continued, and the best way to accomplish it would be to pick up the license. Rep. Hampton said he agreed and the question as to whether a driver is reinstated on appeal could be handled independently.

Mr. Bellamy referred to ORS chapter 482.470, subsection (3), and pointed out that authority is given the court to pick up a license upon conviction. The problem, he continued, is that even though the license is taken by the judge the opinion exists that there is no suspension until an official notice is received. He suggested that the law could be written to state that the automatic suspension would go into effect when the judge picks up the license, which would be the official notice. Rep. Hampton commented on the statute that refers to a driver having the license in his possession, but that if he didn't, proving that he had it, in effect, would be a defense.

Chairman Cole added that there is a need to be specific as to when the suspension period would begin and stated that it should begin when the judge picks up the license regardless of how much time would lapse before the division receives the notice of suspension.

Mr. Paillette agreed to check further and make a decision as to whether the provision should be included in section 3 or in ORS 482.470. He commented that perhaps there should be an amendment written into the draft and also a corresponding provision in the draft on Classification of Offenses; Disposition of Offenders.

Section 7. Mr. Paillette stated that in paragraph (c) of sub-paragraph (3) the provision had been added that the affirmative defense would not be available if the defendant had been told by a judge in a previous court appearance that a suspension had been ordered by the court. Subsection (3) had been restructured, and in the affirmative defense portion of subsection (2) there are two types of affirmative defense, he said. The basic substantive change made by the amendment,

continued Mr. Paillette, is under subsection (3), which takes away the affirmative defense, which a defendant might have for reasons listed in paragraphs (a), (b) and (c).

Rep. Hampton asked whether the judge, at the time the license is picked up, would inform a defendant of a suspension orally or in writing. If the court is a court of record, there would be no concern, he said, and if not, a written notice of which delivery had been certified would be more appropriate. Chairman Cole suggested that a judgment order could be used to inform a defendant. Rep. Hampton added that a judgment order might very well serve the purpose of informing the defendant, besides the picking up of the license, so there will be no confusion on the part of the defendant as to exactly what occurred in the courtroom. He didn't believe a change needed to be made in the draft but wondered what would be the practical way of handling the notice.

Mr. Paillette stated that the judgment order would have to include the information as to the action that would need to be taken by the court. Chairman Cole commented that it would include the form or the court mandated suspension and that it would be part of the sentence and part of the judgment order, and it would be important to show that the judge picked up the license and that there was an automatic suspension.

Rep. Paulus referred to subsection (3) and asked about a distinction for the driver who might be driving while his license was suspended for financial responsibility. With respect to the classification draft, said Mr. Paillette, driving with a license which had been suspended by reason of financial responsibility would be a Class A infraction, otherwise the offense would be a Class A misdemeanor.

Chairman Cole asked whether subsection (3) should have an exception since no reference is made to financial responsibility. In answer to a question by Chairman Cole, Mr. Bellamy stated that a provision, which required that a suspension be extended for a year if the driver continued to drive, was repealed. It simply wasn't practical, he continued, because some individuals would end up with being suspended for as long as 12 or 14 years. Existing law, said Mr. Bellamy, recommends an extension of the suspension and whether this is done depends entirely on the judge. Rep. Hampton added that if the law isn't being abused, there is no need to be concerned with it.

Mr. Paillette, in answer to a question by Chairman Cole regarding the classification of a suspension on filing of notice of an unpaid judgment, referred to section 4, subsection (2), paragraph (c) of Clases of Offenses; Disposition of Offenders, P.D. No. 3. Chairman Cole stated that the first offense of driving with a license suspended for financial responsibility would be a traffic infraction, but that a repeat performance would be more serious.

Rep. Paulus raised the question of a constitutional problem in jailing an individual for driving a vehicle with a license which had been suspended for financial responsibility, which would in effect penalize poverty. A point is reached, added Rep. Hampton, where driving

is no longer penalized but poverty is. Chairman Cole suggested that perhaps a distinction should be made between refusal to purchase insurance and inability to do so.

Chairman Cole commented that a change could be made in subsection (4), section 7, and Mr. Paillette replied that two separate penalty provisions could be included. One would be a Class A infraction for driving while suspended as provided in section 4, subsection (2), of Classes of Offenses, and the other would be a Class A traffic misdemeanor as provided in subsection (1) of section 4.

Section 8, confirmed Mr. Paillette, is being omitted.

Section 9 will be section 8 in the amended Article.

Chairman Cole explained that the District Attorneys' Association requested allowing the refusal to take a breath test to be used as evidence. Mr. Paillette remarked that the Uniform Vehicle Code provides that evidence of refusal can be admissible against a defendant. There are a few states that use the provision, continued Mr. Paillette. Mr. Roberts added that if the Judiciary Committee doesn't cover this particular area, the District Attorneys' Association will probably present a separate bill relating to the implied consent law.

In answer to a question by Rep. Paulus, Mr. Paillette stated that suspension for refusal to take a breath test had been changed from 90 days to six months as provided in section 4, subsection (1).

Rep. Paulus moved the subcommittee adopt the draft Serious Traffic Offenses, subject to recommended changes, and that it be submitted to the full committee for consideration. Voting aye: Hampton, Paulus and Cole. Absent: Burns and Eivers.

At 12:00 noon the subcommittee recessed for lunch, reconvening at 1:30

Mrs. Edgar Tibbits, representing the Women's Christian Temperance Union, stated that she has been interested in the work of the Judiciary Committee and keeps her organization informed on the progress being made. She commented that she was particularly interested in enforcement of the laws that deal with driving suspensions and that offenders be urged to use public transportation. She stated further that judges should be given more authority to deal with drunk drivers.

RECKLESS DRIVING AND CRIMINAL LIABILITY, Reference Paper

Mr. Paillette explained that the reference paper contains two separate approaches dealing with the same subject in trying to designate culpability with respect to certain types of driving. In one approach the subject is dealt with as negligent driving and reckless driving. In another area, continued Mr. Paillette, the subject is dealt with in

two degrees as a new offense called "dangerous driving". Jack Frost, who had spoken to the subcommittee from the standpoint of the district attorneys, had agreed that it was a good idea to use criminal culpability terms, and Jim Mattis had suggested getting away from the old concept of "reckless driving". There also had been a good deal of discussion on the subject by the Advisory Committee, reported Mr. Paillette.

The paper follows the discussion of the last subcommittee meeting to adopt the "dangerous driving" concept and have two degrees, said Mr. Paillette. The sections have been redrafted to write in an element of specific conduct. In the reference paper, said Mr. Paillette, driving with criminal negligence was dangerous driving in the second degree, or a Class B misdemeanor, and driving recklessly would be a Class A misdemeanor.

The first of the proposed amended sections provides that a person commits the crime of dangerous driving in the second degree if, with criminal negligence, he drives a vehicle in a manner that endangers the safety of persons or property. The language "in a manner that endangers the safety of persons or property" is new, said Mr. Paillette, and that it would be a Class B misdemeanor.

The second proposed amended section deals with dangerous driving in the first degree, continued Mr. Paillette. If a person recklessly drives a vehicle in a manner that endangers the safety of persons and property, the offense would be a Class A misdemeanor.

The two sections contemplate that the existing reckless driving statute would be repealed, reported Mr. Paillette. Commentary on the existing statute appears on pages 2 and 3 of the reference paper. It would be repealed, as well as the statute on careless driving, which is 483.343.

ORS 483.345, which requires the driver of a vehicle exercise reasonable control of the vehicle he is driving as may be necessary to avoid colliding with any object, would not be repealed. The statute deals with strict liability and the definition of the offense contains no culpability.

Mr. Paillette explained that "criminal negligence" and "recklessly" are terms of art and are both defined on page 2 of the reference paper, which are the definitions in the criminal code. Chairman Cole commented that "criminal negligence" under the criminal code is less culpable than "reckless", and Mr. Paillette agreed.

Rep. Hampton remarked that it was his impression that whether an offense was regarded as "criminal negligence" or "reckless" would depend on awareness and conscious disregard versus failure to be aware. If this is the case, he continued, and the proposal is adopted, a Class B misdemeanor, dangerous driving in the second degree, would be a less

serious crime than driving in the first degree, a Class A misdemeanor. In a case where an individual would be charged with one offense, and if the facts warranted, he asked if a jury could consider the second offense. Mr. Paillette answered that it could be done. It would be a jury question said Mr. Paillette. There is a statute, continued Mr. Paillette, that provides if the degree of culpability in a criminal offense is criminal negligence, for instance, the offense can be established by proving recklessness or some greater degree of culpability.

Rep. Hampton expressed concern that an officer might cite a driver for dangerous driving in the first degree and the jury could decide that the offense didn't equal the charge, but definitely believed there was failure to drive the vehicle under proper control, there would not be a third category with which the defendant could be charged. Careless driving would be repealed, commented Rep. Hampton, and there definitely would be room for a careless driving category, which would be a rough equivalent to the present statute. Dangerous driving in the third degree might be used, he continued. It was his opinion without the third category that something might be left uncovered.

In answer to a question by Rep. Hampton, Lt. Acheson stated that citations are issued for offenses that are less than reckless. Rep. Hampton asked whether these offenses would be for gross carelessness and not ordinary careless driving. Lt. Acheson remarked that a typical example would be rapid acceleration of an automobile to the point where the driver almost loses control.

In answer to a question by Sen. Browne, Mr. Paillette stated that "reasonable control" is a strict liability and a separate statute, ORS 483.345. There is no wantonness of any kind or culpability required under that particular statute, he said.

Mr. Paillette stated that "dangerous driving in the second degree", which refers to criminal negligence and failure to be aware and where a vehicle is driven in a manner that endangers the safety of persons and property, is, in fact, a counterpart of careless manner driving--driving in a manner that endangers, or would be likely to endanger any person or property.

Mr. Paillette informed the subcommittee that there are MVD statistics for 1972-73 on the number of careless driving citations and convictions.

Rep. Hampton stated that it was his opinion that the proposed statutes on dangerous driving would correspond well with the criminal code. It would give the court a body of law with some uniformity.

The draft would streamline the language and do away with all the excess wording of the old reckless driving statute and the reducing to a DUIL. Both of the offenses would be more serious in terms of the penalties provided than the DUIL.

Since there will be a new book on the new motor vehicle laws, stated Chairman Cole, some of the definitions from the criminal code could be duplicated for the motor vehicle code and thereby eliminate the necessity of referring to the statutes for definitions. Mr. Paillette added that some criminal code definitions are now included in the motor vehicle code such as "manslaughter" and "criminally negligent homicide" that have application to vehicle homicide.

Mr. Paillette agreed to add the definitions for the review of the full committee and the committee could then decide whether to accept the decision.

Rep. Paulus moved to adopt the reference paper Reckless Driving and Criminal Liability, as amended, with a "do pass" recommendation. The motion passed. Voting aye: Hampton, Paulus, Cole. Absent: Burns, Eivers.

TRAFFIC OFFENSE PROCEDURES (ORS ch 484) (Citation and arrest procedures for traffic infractions)

Other changes to consider with respect to procedural application had been discussed previously, reported Mr. Paillette, such as with the reclassification of some offenses from crimes into traffic infractions. He was interested in the opinions of the subcommittee members as to what should be done.

ORS 484.010 Definitions. The definitions, remarked Mr. Paillette, apply to the existing code. Subsection (5) deals with the definition of major traffic offenses, and although they are called offenses, in the criminal code there are offenses and crimes with offenses including both crimes and violations. Although the definition in subsection (5) applies to the vehicle code, the offenses set out are all crimes. It is important, he continued, to give some serious thought to the definitions, since some of the offenses will be changed and because there is a provision in the arrest statute of the criminal code pertaining to "probable cause arrest" for major traffic offenses. If the definition of "major traffic offense" is left unchanged except for the statutory references such as DUIL, for example, Mr. Paillette asked whether the subcommittee would wish to either delete the definition of "major traffic offense" or redefine it because of the application it would have with respect to probable cause arrest. In other words, he said, would there be a need to continue to allow probable cause arrest for certain Class A infractions, or for all Class A infractions, or for all infractions regardless of classification.

If a probable cause arrest is allowed for any Class A traffic infraction, DUIL and .10 offenses would be covered, stated Mr. Paillette.

Rep. Hampton asked whether it would be necessary to spell out the power of the police officer to limit the freedom of movement of the individual who is being cited for a Class B or C infraction. Except for the stop and frisk statute there is no statutory guideline on the power of the police officer or the duty of the individual to limit his motion while the citation is being issued.

In the criminal code, answered Mr. Paillette, "arrest" is defined as actual or constructive restraint, which allows for an officer to have someone under arrest without physically placing the individual under some kind of restriction. The mere act of the officer's presence, in some circumstances, can be construed as being an arrest, said Mr. Paillette.

Rep. Hampton commented that it would be all right to call that type of action an arrest if it were followed by hauling off to jail, posting bail or securing release or that kind of sequence. Then, he continued, arrest would have that kind of meaning. Rep. Hampton asked what procedure would be followed in connection with the issuance of citations for Class A, B and C infractions.

Mr. Paillette stated that Rep. Hampton's type of example was exactly what he was referring to. For a minor offense, a citation should be issued rather than the individual being taken into custody, and the officer should be limited to that type of action and would not have the authority to search the vehicle in connection with a minor infraction, he said.

Lt. Acheson informed the members that an officer, when stopping an individual for a traffic offense, cannot search the vehicle unless he is suspicious of another offense. In answer to a question by Chairman Cole, Lt. Acheson answered that the officer would have to see something that would make him suspicious.

In answer to a question by Rep. Hampton, Mr. Paillette, stated that he believed it would be advisable to allow the probable cause arrest for the Class A infractions, which would cover essentially all offenses on which probable cause arrests are now made. Everything else that is considered a major traffic offense now by definition would continue to be a crime. There is a collateral question, continued Mr. Paillette, that has nothing to do with the gravity of the offense but deals with the procedure in trying to get the defendant to appear in court when he is from out-of-town or out-of-state. Testimony had been presented that it is no longer practical to take an individual into custody to post bail, he said. However, his impression, said Mr. Paillette, was that the practice has been that when an out-of-town individual is issued a citation for an offense for which he normally would not be arrested, he is usually taken to the court to post bail.

Rep. Hampton asked whether the process would change if the offense is more than an infraction, and Mr. Paillette answered that a question exists whether there should be a change. The defendant should be subjected to some kind of penalty for violating the law, and whether he shows up or not is immaterial as long as he pays the fine, said Mr. Paillette. If an arrest cannot be made for a Class C infraction and an individual from out of town is cited for such an offense, a way is needed to make sure that the person pays his fine, continued Mr. Paillette. At present, he said, an officer can either issue a citation or arrest an individual.

Lt. Acheson stated that an officer may stop an individual for the purpose of issuing a citation and instead may change his mind and arrest the individual for a crime and take him into custody. He emphasized that it is important for an officer to have this kind of authority.

Mr. Paillette explained that it has never been the intention of the subcommittee to not allow probable cause arrest for Class A traffic infractions or any of the traffic crimes.

Very few agencies require a person to post bail since the enactment of the law providing for suspension for failure to respond to a summons, added Lt. Acheson. For an officer to take the time to take a person in to post bail is very time-consuming, and unless the individual involved is from out of state, it is seldom done.

The subcommittee recessed for lunch at 12:00 noon, reconvening at 1:30

By way of a review, Chairman Cole explained that the subcommittee members had been discussing whether there should be a change in authorizing custodial arrest on minor traffic infractions, whether the law should be left as it is now with the officer having the authority to take an individual into custody for any infraction, or whether a distinction should be made.

Mr. Paillette explained that since the traffic arrest statute, ORS 484.100, uses the term "offense", it could be left the way it is because offense would include both traffic crimes and traffic infractions.

The subcommittee members agreed to make no change in the law dealing with custodial arrest. Chairman Cole stated that probable cause arrest would remain applicable to Class A traffic crimes.

Mr. Paillette explained that ORS 484.010, subsection (5) will need to be restructured. Both crimes and infractions could be included in the definition of a major traffic offense. Also included would be the dangerous driving offenses, crimes such as "hit and run" and "eluding" and the traffic infractions of DUIL and .10. The offenses, he continued, would be included in the probable cause arrest statute in the criminal procedure code, because it incorporates by reference the definition of major traffic offense. Under these provisions, there would still be probable cause arrest authority for major traffic offenses, which would include traffic infractions. ORS 484.100, continued Mr. Paillette, does not give the officer probable cause arrest authority. It merely states that the officer can arrest or issue a citation; it sets out the procedure. If the offense were not a major traffic offense, it would have to be committed in the presence of the officer, as is presently the case. Even if committed in the officer's presence, continued Mr. Paillette, he would have the choice under 484.100 of either placing the person under arrest or issuing a citation.

Rep. Hampton asked whether this would preserve the right of the Court of Appeals and the Supreme Court to limit the admissibility of evidence on pretext arrest, and Mr. Paillette answered that it would.

Mr. Paillette was asked to draft an amendment for ORS chapter 484.010.

Senator Browne expressed concern regarding harassment and pretext arrest. Rep. Hampton stated that although there is no specific statute or proposed statute that deals with the subject, there is the authority with the Court of Appeals and Supreme Court to apply restrictions to individual cases. Senator Browne stated that many individuals may be searched unnecessarily whose cases never reach the Court of Appeals or Supreme Court. Rep. Hampton replied that if it can be established that a problem exists then some action can be taken.

Chairman Cole commented that the question is whether the subcommittee believes that law enforcement should have the right of custodial arrest in minor traffic matters when the reason for the arrest is something else. Senator Browne added she believed that a citation could be used for a Class B or C infraction and that failure to accept a citation could be a misdemeanor.

In answer to a question by Senator Browne, Lt. Acheson answered that out-of-state residents are treated the same as everyone else--they are merely cited and not arrested. The response to the citations, he added, is about the same as for Oregon residents.

Rep. Hampton explained that there is a question as to how an individual, such as an out-of-state resident, could be hauled in to post bail without his being arrested or how the episode could be called an arrest. Even though the state police do not haul in individuals to post bail, it was his opinion that sheriffs' departments do.

Chairman Cole suggested bringing the subject before the full committee to be considered, and in the meantime information can be compiled on the subject. Mr. Paillette volunteered to contact Jim Mattis for information on city procedures and practices. Chairman Cole suggested Mr. Paillette prepare in written form any suggestions he might wish to submit for consideration.

In regard to Senator Browne's concern, said Rep. Hampton, it could be written into the statutes that if the officer does not have a good reason to arrest, he cannot use the arrest as a pretext.

In answer to a question by Chairman Cole, Senator Browne replied that she had been contacted by the American Civil Liberties Union, which is concerned about harassment.

Kathleen Nachtigal, member, American Civil Liberties Union, informed the subcommittee her organization has been compiling affidavits on complaints received by young people on harassment to determine what action should be taken. She agreed to furnish the subcommittee with any information available that would be helpful in determining what action to take.

Chairman Cole suggested that ORS 484.100 not be changed at present and await receipt of information from the ACLU, cities and counties.

In answer to a question by Senator Browne, Chairman Cole answered that all offenses from VBR and lower would probably be Class B and C infractions. Mr. Paillette added that any charge that has any degree of culpability would either be a crime or Class A infraction.

A person refusing to accept a citation, explained Mr. Paillette, can be arrested under present statutes. Constructive restraint is included in the criminal procedure code as a form of arrest, continued Mr. Paillette. Another way to approach it, he said, would be from the standpoint of the limitation on searches incidental to arrest for minor offenses, which would statutorily limit the scope of the search, but the officer would still have arrest authority. Rep. Hampton expressed concern that a separate set of limitations would be confusing. If the officer witnesses another crime, then there is no problem, said Chairman Cole.

Under the "stop and frisk" statute, explained Mr. Paillette, an officer has the authority to stop an individual, if he has reasonably suspected a crime may have been committed, without arresting him and make reasonable inquiry and conduct a frisk. Wisconsin, he continued, has a law that enables an officer to detain an individual for a period of time for the purposes of taking a breath test in connection with a DUIL.

ORS 484.150. Traffic citation requirements; exceptions; uniform citation. Chairman Cole stated that some concern had been expressed in prior meetings regarding the language of the citation used and asked if there were any suggestions for revision. He explained that concern expressed related to the public perhaps not fully realizing the alternatives available other than appearing in court. Any changes that might be made, said Mr. Sipprell, would not warrant a change in the statutes. Also, he said, the Minor Courts Rules Committee accomplished a change in the 1974 special session in regard to the six major traffic offenses and that the committee has no plans for changes in the next session of the legislature.

Mr. Paillette indicated that an exception might be included in the statute for procedural purposes in dealing with the offender who has committed an infraction, and because a previous infraction had been committed, the second would be considered a crime.

It would be helpful to get the matter before the court to allow the district attorney or prosecutor to file a standard form complaint to get before the court the fact that there is a prior conviction, which the officer had no way of knowing at the time he issued the citation.

Rep. Paulus and Rep. Hampton expressed the belief that a judge should be more available to hear an explanation if a defendant does not want to plead guilty but would simply like to explain. At times a defendant does not fully understand why he may be guilty, explained

Rep. Hampton, and would like to talk to the judge before pleading. Senator Browne agreed and indicated that it could be particularly important to the defendant who has no lawyer.

Mr. Sipprell explained that he had received a copy of a letter Mr. Loren Hicks, State Court Administrator, had written in response to a letter from a parent on the subject of the importance of a judge being more readily available to talk to a defendant and that he would supply the subcommittee with a copy.

Chairman Cole explained that he knows of instances where individuals pleaded guilty and after explaining the circumstances to the judge, the judge refused to accept the guilty pleas.

ORS 484.190. Appearance by defendant. Mr. Paillette indicated that another subsection could be written into the statute regarding discretionary appearance for the defendant who wants to appear for the purposes of an explanation. Rep. Hampton pointed out that what he is talking about is the same as paragraph (b) of subsection (2) of chapter 484.190 except that it would occur orally in the presence of a judge instead of being put in writing.

Lt. Acheson informed the subcommittee that many courts in the state prefer a short statement from the police officer to be attached to the back of a complaint, which would briefly explain the officer's observations. This is done, he continued, only for the courts requesting the statement. Rep. Hampton explained he would object to the practice in a case where the defendant would not see the officer's statement or the officer.

Mr. Paillette agreed to write another subsection for ORS 484.190 that would give the defendant the right, at the discretion of the judge, to explain briefly his case before entering a plea or posting bail. This information would be included on the citation.

ORS 484.222. Impounding vehicles operated by driver convicted under ORS 482.650; redemption; suspension of registration; rights of security interest holders. Mr. Paillette explained that the statute is fairly new and deals with impounding of vehicles. It had been worked on extensively in 1971 by the legislature. The committee, he continued, has been informed that the statute isn't used much because of the difficulty of disposing of vehicles that have been impounded. Senator Browne indicated that it supposedly is possible to have the license plates removed and taken into custody rather than removing the vehicle. Lt. Acheson explained that if a person is involved in an uninsured accident, the licenses of all cars owned by the individual would be taken into custody.

Mr. Paillette explained that under subsection (2), when there is a conviction for driving while suspended, instead of impounding the vehicle, the court may order MVD to suspend the registration for not more than 120 days. This can be done only if the court issues the order, he said.

Chairman Cole stated that the statute is adequate and all that is needed is for it to be enforced. Lt. Acheson pointed out that there is no provision for expenses incurred for storage of the vehicles. Chairman Cole added that the simple way to handle the situation would be to take the license plates.

Senator Browne stated that she was concerned because of the hardship that would be imposed on a wife, for example, if the husband had his license removed. Chairman Cole replied that there doesn't seem to be a solution to this kind of problem, which is the reason the statute isn't enforced. Rep. Paulus explained that the suspended driver is such a hazard and that it is so extremely difficult to keep him from driving that the prime consideration should be to keep him from behind the wheel of a car.

Chairman Cole suggested that before an individual can get his car back, he might be required to pay a fee of $100, which would help cover cost of storage. Lt. Acheson added that if an automobile isn't picked up by the owner after 30 days from the time he is eligible to take possession, it becomes an abandoned vehicle and can be sold at public auction.

Mr. Sipprell explained that the $10 fee now collected from the defendant goes to MVD to cover costs involved in suspension and return of the registration card.

No action was taken on the statute.

ORS 484.705. Definitions for ORS 484.700 to 484.750 (Habitual Offenders). The statute was enacted during the last session of the legislature and lists certain offenses that are encompassed in the habitual offenders act, said Mr. Paillette. He explained that the members might wish to review the statute and discuss possible changes in view of the fact that the subcommittee is redefining DUIL and .10 with respect to penalties.

Senator Browne made reference to the 20 or more offenses referred to in paragraph (b), and Lt. Acheson commented that those type of offenses are excluded from the driving record. They used to be reported to MVD, but the statute was changed in 1969 or 1971, continued Lt. Acheson.

Mr. Paillette explained that there will need to be some housekeeping amendments. In the case of offenses that are being classified as infractions, he continued, the jury trial, right to counsel and procedural safeguards, that exist under present law, are being removed. His question was whether the subcommittee wished to continue the same offenses under a streamlined procedural approach where there will be applied an enhanced penalty.

Chairman Cole stated that since the second and subsequent Class A offenses would be crimes and they would be tried, the criminal safeguards

would be available. He had no objection to paragraph (a) relating to three or more major offenses, said Chairman Cole, and the defendant would not be denied the opportunity of having an attorney.

In answer to a question by Rep. Paulus, Mr. Paillette answered that to be declared a habitual offender under the statute could involve a revocation of 10 years. There are some exceptions, he said.

Mr. Paillette reported that the statute became effective October of 1973 and that there is an Attorney General's opinion that states it is legal to include one offense that was committed prior to the effective date. Lt. Acheson explained that 484.240 provides which offenses would be reported to MVD and provides for exceptions of violations due to size and weight and certain types of parking. Citations received for parking in prohibited areas such as fire zones and driveways are not considered exceptions. The vehicle code, commented Mr. Paillette, will include sections on parking offenses.

Lt. Acheson called attention to ORS 484.010(4), which defines "City traffic offense". Senator Browne replied that parking being considered by the committee to be reported to MVD applies to all areas, and Chairman Cole asked whether parking offenses committed in state parking lots are reported. Lt. Acheson answered that citations for parking offenses in state parking lots are handled through the city.

Mr. Paillette called attention to ORS 484.705, subsection (2) and pointed out that city traffic offenses as defined by ORS 484.010 would be included as those offenses to be reported under the habitual offenders. This would, by definition, he continued, exclude parking regulations and offenses under any federal law, or any law of another state, including subdivisions thereof, substantially conforming thereto but do not include nonmoving offenses as defined in 483.346 to 483.545. Those statutes, he continued, deal with the authority of the Department of Transportation to control parking on state highways, and none of those violations, which are nonmoving, are included for the habitual offender. Sen. Browne commented that the numbers will need to be cleared, and Mr. Paillette agreed.

Rep. Paulus asked if the statutes contained stipulations that would make it illegal for a police officer to use his office to gain information for private enterprise or from using his knowledge for remunerative purposes. Mr. Paillette answered that ORS 162.425 in the criminal code deals with misuse of confidential information by a public servant.

Senator Browne commented that most information a police officer would have would be of public record and not confidential. Chairman Cole stated that the information might be accessible to the police officer but not be made public. Lt. Acheson told that his department receives numerous requests every day for information on cars that have been repossessed that might be available for purchase, and in no way do the state police get involved.

Chairman Cole asked Mr. Paillette to prepare amendments for the statutes discussed to be presented to the full committee and to compile any information on arrest versus citation and any alternate provisions.

The meeting was adjourned at 3:00 p.m.

Respectfully submitted,

Anna McNeil, Clerk
Subcommittee on Adjudication