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COMMITTEE ON JUDICIARY
Subcommittee on Revision

October 10, 1973

Minutes

Senate Members Present: Senator Elizabeth W. Browne, Chairman
Senator Wallace P. Carson, Jr.

House Members Present: Representative Stan Bunn
Representative Robert Marx

Staff Present: Mr. Donald L. Paillette, Project Director
Mrs. Marion B. Embick, Research Counsel

Others Present: Chief Judge Herbert M. Schwab, Chairman,
Consulting Committee
Ms. Vinita Howard, Public Information and
Publications, Motor Vehicles Division
Lt. Marvin L. Acheson, Traffic Division,
State Department of Police
Mr. Gil W. Bellamy, Administrator, Traffic
Safety Commission
Mr. Ralph Sipprell, Highway Division
Mr. Lawrence George, Highway Division
Mr. Phil Roberts, District Attorneys'
Association

Agenda: Public Hearing to take testimony regarding
the Motor Vehicle Code.

Senator Elizabeth W. Browne, presiding Chairman, called the meeting
to order at 9:15 a.m. in Room 14, State Capitol.

Chairman Browne indicated that the Subcommittee on Revision would be studying the revision of the substantive law of ORS chapter 483. She mentioned that there seems to be some misunderstanding regarding certain press articles that have been published recently, which give the impression that definite decisions have been reached in relationship to some of the provisions of Chapter 483. She further indicated that, at this point, the committee is just beginning work on the project and intends to hear everyone's point of view. The decisions will be made later.

Mrs. Embick announced that anyone interested in speaking to the subcommittee on any matters that have come up in regard to the publicity, or anyone who wishes to speak on the code, may do so today.

Ms. Vinita Howard testified that not everything mentioned in the press has come out as intended. Although the Motor Vehicles Department has testified in the past regarding the maximum speed limit as opposed to the basic speed law, the department has no particular desire to put a priority on changing the speed law. The primary concern of her department is to look at the entire rules of the road section and compare it with the Uniform Vehicle Code, compare provisions of other states, and make changes the committee believes will be needed to either bring the Oregon code into conformity or to leave it as is. Ms. Howard indicated that the penalties section of the vehicle code is especially involved and should probably be clarified and simplified. She mentioned that the feeling is sometimes expressed that the UVC is the federal government's idea of what the states should have in the way of traffic laws. While the federal government has indicated that it would like the states to be in conformity with the UVC, or certainly move in that direction, the UVC is actually the outgrowth of the efforts of many organizations, both private and governmental. The state agency, through the American Association of Motor Vehicles, the International Association of Chiefs of Police, the insurance industry and automobile clubs are some of the organizations interested in the UVC. The code is being constantly revised. She stated that Oregon is sometimes ahead and sometimes behind.

In answer to a question by Chairman Browne as to whether the federal government rates Oregon according to how the state code correlates with the UVC, Ms. Howard stated that a rating has been taking place for years, before the federal government came into the picture, by the National Committee on Uniform Traffic Laws and Ordinances. The National Highway Traffic Safety Administration also has been rating. About a year ago it came out with a proposed revision of its highway safety standards and has been very specific, stating that states shall conform with the UVC except where the National Highway Traffic Safety Administration has a provision that is different from the UVC. In that case, the provision of the NHTSA takes precedence. That was a proposed provision, which was submitted

over a year ago, and has not been adopted. There is some indication that it may not be adopted. However, the NHTSA manuals stress the need for uniform traffic laws.

Chairman Browne asked what would the position of the NHTSA be if a state's statutes are more strict or better than the UVC. Ms. Howard mentioned that Oregon had a statute dealing with eluding a police officer before the UVC adopted such a statute. Ms. Howard also indicated that it makes no difference if a state has statutes that are more strict. The area of greater concern is in the operating rules.

Judge Schwab asked if the area of concern is strictly with the substantive rules or does it extend to the penalties. Ms. Howard replied that in the revised proposed standards reference is made to administrative adjudication and penalties are referred to in generalities. The UVC is more concerned with the substantive matter than the uniform application of the definition of a red light, speed law, right-of-way, etc. The UVC does not spell out criminal offenses as opposed to civil offenses, although it is moving in that direction.

In answer to a question by Chairman Browne regarding penalties for nonconforming states, Ms. Howard replied that no penalties have ever been imposed. Although, a penalty of 10 percent could be imposed on highway construction funds. Eventually this penalty could apply to nonconformity of any of the 18 standards of the UVC. She stressed that the penalty would not be applied to funds used for highway safety programs.

Rep. Bunn asked if a penalty had ever been imposed for other reasons than nonconforming. Ms. Howard answered that she wasn't sure. She recalled that something had come up regarding billboards, but that she wasn't really positive.

Mr. Gil Bellamy mentioned that the Traffic Safety Commission is imposing time limits on some of the larger items in the federal standards, and, as an example, he cited the adoption of legislation to require the implementation of a drivers' reexamination program. This stipulation would need to be in effect one calendar year after the 1977 legislative session. Other deadlines are July 1, 1975, for mandatory vehicle inspection and 1977 for classified drivers' licenses. Mr. Bellamy stressed that he would keep the committee informed on important deadlines. He also said that it is important - to include these in a comprehensive plan or the state will lose some of its safety money.

Senator Carson mentioned that, in his opinion, all uniform laws are not necessarily better and that he was interested in knowing whether there have been any studies to indicate that the adoption of uniform standards have had any effect on traffic safety. Mr. Bellamy answered that he is sure there have been no studies. However, he wanted to point out that there are eighteen federal standards that

are quite involved and that the UVC was in existence before the federal government became involved. The UVC has essentially been the product of a committee composed of state people and agencies. The federal agency has been superceding the UVC. Senator Carson pointed out that it is difficult to sell a program on the basis that the federal government says we have to and that we will lose federal money if we don't. Hopefully, other reasons, such as increased traffic safety and the saving of lives, can be found.

Rep. Bunn asked what needs to be done to have funds reinstated if they are withheld. Mr. Bellamy answered that no state has yet lost any funds, and only Congress can hold back any money. However, it is a real possibility now with the implementation of deadlines, which are new. Mr. Bellamy said that he had never gotten to the point where funds were withheld and wasn't sure what would need to be done to have them continued.

Mr. Paillette asked where Oregon stood in respect to the federal standards, and Mr. Bellamy answered that Oregon is number 20 on a list of 52. Because of legislation passed during the 1973 session, Oregon should move higher on the list, unless some other states have moved up on the scale. He also mentioned that the standards were issued through the National Highway Safety Act of 1966 and the NHTSA is under the U.S. Department of Transportation. Also, Congress passed in August, 1973, under the NHSA, the provision for a bonus for a mandatory seat belt law and for reducing the death rate.

In answer to a question by Mrs. Embick, Mr. Bellamy stated that under the UVC, which is not federal, Oregon ranks 47th.

Ms. Howard mentioned that it is almost a physical impossibility to compare traffic death rates and determine what causes the difference. Oregon has a 14 percent decrease so far this year, and it isn't really known why and can only be assumed that it might be due to slower speeds, stricter enforcement, more patrolmen at certain hours and even the gasoline shortage. These facts don't necessarily prove anything. Washington ranks high in conforming and has always had a lower mileage death rate than Oregon. This could be due to a higher level of enforcement, court operations, drivers' education or a number of other factors and not necessarily because of a high rating in respect to the UVC. Mr. Bellamy stated that although Oregon rates 47th in conforming to the UVC, the state is in the upper half rating for mileage death rate.

Senator Browne mentioned that Mr. Bellamy referred to nonconforming and the loss of funds for traffic safety programs, and Ms. Howard referred to loss of funds for highway construction only. It was explained that if deadlines are not met there is a loss of highway safety funds on an annual basis, but the penalty provision is different, which involves a 10 percent loss in highway construction funds.

Everyone seemed to be in agreement that Oregon has done well in the type of signs used, color of lines and general highway markings.

Mr. Ralph Sipprell mentioned that the Minor Court Rules Committee should be kept informed of what this subcommittee is seeking to do and was told that it was on the mailing list.

Mr. Lawrence George stated that his department has worked with the UVC for many years, and that it was originally set up as a guide or reference and was not intended to be an absolute mandate. The fact that Oregon deviates from the UVC is not necessarily a drawback. In fact, Oregon has been way ahead of the UVC in some instances as in the right hand turn on red, which was used in Oregon for many years before it was adopted by the UVC. Some of the UVC laws are very controversial such as the right-of-way and speed laws. Some parts of 483 are old and need to be revised. In answer to a question by Mr. Paillette, Mr. George stated that the Oregon right-of-way law is easier to understand than the UVC proposal and that it can be understood by new drivers.

Mr. Phil Roberts stated that the District Attorneys' Association is interested in the revision of the vehicle code and will form a committee of DAs to keep in touch with what this committee is doing and to offer suggestions. The DAs would generally like to see an administrative process set up for handling of minor traffic offenses.

Senator Browne and Senator Carson both mentioned that they felt it would be important for the DAs to offer suggestions and work with the committee in its early stages of planning rather than wait until all prospective changes have been written up, or are being submitted to the legislature, and then criticize. Mr. Roberts indicated that the DAs do not have any suggestions at this time. They do feel, however, that the current penalties provision is terribly worded. The DAs do not have any objections to the basic rule other than some of the statutory wording, nor do they have any objections or are aware of any problems in the administration of the basic rule that need to be corrected. Mr. Paillette pointed out that in 1971 the legislature took out the old subsection 2, violation of the basic rule, and made a separate crime out of it. He was wondering if the DAs had expressed an opinion as to whether this has been effective or desirable. Mr. Roberts replied that he has had no reaction whatsoever.

Senator Carson stated that one of his concerns relates to mandatory automobile inspections and that the state has to have it by 1975. He was interested in knowing if there were any figures to indicate that the automobile that is in poor running condition would be likely to be involved in a greater number of offenses. Lt. Acheson indicated that no studies have been made, but it is estimated that one percent of all accidents are due to mechanical failure. Senator Carson also asked if there is any indication that bright beams

contribute to violations or accidents, and he was told that there have been no studies on this. He felt that it is going to be difficult to sell the public on a program that is going to involve the expense of going to a local garage to have a car inspected unless it can be shown that there is some correlation between getting a car fixed and public safety.

Ms. Howard stated that the federal government indicates that we have to have motor vehicle inspection and, on the other hand, its own administrator has, until last spring, been saying that there is no proof that motor vehicle inspection does anything for a highway safety program. The MVD has been saying this for quite a few years. The concept has been that there are three elements to the highway safety program--the vehicle, the driver, and the highway--and all three need to be on the same level to achieve a maximum effect on a highway safety program. She stated that Oregon has been way ahead in highway planning, but has been reluctant to implement a reexamination of drivers and automobile inspection program. Most accidents are not investigated to the degree that an automobile will be taken apart to learn of any mechanical defects that might have contributed to the accident. Some states are doing in-depth investigations that involve a psychiatrist, mechanical engineer, a physician, etc. and hope to find out what cause might play the most important role in an accident. Ms. Howard indicated that she isn't convinced that their questions will be answered.

Chairman Browne asked Ms. Howard what she thought of bio-rhythms involving mental, emotional and physical well-being. Ms. Howard replied that the Ford Motor Company is developing a device, which it would like to promote with motor vehicle divisions, that is installed in an automobile and registers a heartbeat and other reactions. Another fact that would relate to Senator Carson's question is that the Motor Vehicles Division has been able to compile information as to what kind of convictions have been imposed for various violations and information relating to the time the officers must spend on making stops for defective vehicle equipment, which is quite high. If equipment violations are lumped together, the result is a high percentage of the traffic violations. If the state had a vehicle inspection program then perhaps less time would be spent by police officers in stopping automobiles that are in violation.

In answer to a question by Judge Schwab, Lt. Acheson said there have been no studies to show how much time officers spend in courtrooms waiting for trials to begin for the purpose of being witnesses. Mr. Paillette said that he has talked to Superintendent Holcomb about this, and this is the type of information the committee will try to develop through the state police. Lt. Acheson stated that the state police traffic division spent about one and one-half percent of its time in court, and this includes travel to and from the trial.

Lt. Acheson further stated that if a trial happens to be scheduled on an officer's day off, he is given comparable time off at a later date. If trial is scheduled on a working day, he simply attends as part of his working day.

Rep. Bunn asked if there is a particular emphasis on apprehending a driver for a certain type of violation--a violation that may occur more frequently. Lt. Acheson replied that his department feels that the driver is the main cause of a violation, and they do emphasize the importance of apprehending the driver responsible for a moving violation.

In answer to how long he had been with the state police and what his personal opinion of the Oregon MVC is, Lt. Acheson said that he had been with his agency for 18 years. He agreed generally with what Ms. Howard had mentioned, and he definitely felt that a maximum speed law would be helpful and easier to enforce than the basic rule. He was also asked to express his opinion in regard to the right-of-way statutes, and he answered that it is easily understood, easy to explain and very workable. Senator Carson commented that he hoped the state police would express their opinion regarding revisions. He hoped that they would point out areas that need changing and offer suggestions as to what can be done and how. The state police, according to Lt. Acheson, do not advocate the abolishment of the basic rule but do feel that a maximum speed law, along with the basic rule, would be very workable.

Mr. Paillette said that essentially the UVC approach is a basic rule for speeds under the maximum speed, and the maximum speed is for the upper limit.

Judge Schwab said he felt it would be interesting to see what the frequency of accidents on the Salem-Portland freeway might be. There seem to be fewer accidents since construction has necessitated slower speeds.

Penalties

Mr. Paillette mentioned that the information on the sheet passed out to committee members regarding penalties had been compiled by Ms. Howard, and an attempt had been made to correlate the penalties in the 990 provisions with the substantive offenses. He pointed out the inconsistencies in the penalties. Assuming the committee comes up with a decriminalization of some sort where minor offenses are dealt with in a noncriminal fashion, it would presumably be possible to have one penalty section. This would make it possible to classify offenses as traffic infractions, violations or some other noncriminal designation. The major offenses could be dealt with on an individual basis.

Judge Schwab stressed that imposing penalties and seeking convictions is not the primary goal, instead, getting the incompetent driver off the highway is the objective to work for. It takes a long

time to get a drunk driver off the highway because of the many appeals that can be made. More drunk drivers are returned to the highway, when they are dealt with criminally, than would be possible if their cases were dealt with administratively. A great deal of time and effort goes into enforcing suspensions. The number of accidents involving drivers with suspended licenses is high, and driving with a suspended license should be considered a serious offense and handled criminally. In answer to a question, Judge Schwab said that if a drunk driver were dealt with administratively, he could be kept off the highway only if there is a method of enforcing the license suspension by checking drivers at roadblocks or parking lots. Although there are parole officers and probation officers checking up on every other type of criminal, there is no method used to check a driver to be sure his license hasn't been suspended until he has committed another offense. Judge Schwab added, fear of punishment or fear of apprehension is what works. He further cited, as an example, the lower accident rate on the Portland-Salem freeway where patrolling has been increased.

Rep. Bunn pointed out that the public is becoming more insistent that the drunk driver receive a stiff prison sentence, and probably a jury would be more willing to convict a drunk driver under these circumstances. Judge Schwab replied that a drunk driver can wait as long as six months for his case to come to trial, it can then be moved to the circuit court for a new trial, then appealed to the Court of Appeals and from there a review can be requested from the Supreme Court. If the present system is to be kept and made to work, the people involved will need to be increased by at least three times.

Chairman Browne mentioned that she has talked to a number of people, and they all favor retaining major violations as criminal offenses. Judge Schwab replied that he feels dealing with minor offenses administratively would be a tremendous improvement, and as far as the majors are concerned, he asks only they be considered for possible change.

Ms. Howard mentioned that for years many people have thought that a patroman is out to collect fines, and they need to be convinced that traffic laws are made to save lives and not to enrich the city treasury.

Senator Carson mentioned that rude drivers are a problem and that if a car were required to have some kind of identifying symbol or name on the outside in a conspicuous place, people would not lose their identity when getting behind the wheel. Another requirement, which might be considered, would be to post a driver's license on the corner of a windshield. Another consideration would be to color-code a driver's license.

Rep. Bunn, in response to a statement made by Ms. Howard regarding the fact that patrolmen were not out to enrich a treasury, asked if she believed that a type of warning ticket could be issued, rather than a fine being imposed, and still be effective. There are times, according to Ms. Howard, when warnings can be very effective. At times, an errant driver needs something more specific because of the actions he has taken. According to Ms. Howard, there has been discussion regarding the reporting of warnings and the use of these warnings as a part of driver improvement programs. Lt. Acheson added that over a period of time when 222,000 drivers were arrested, 134,000 were warned. He also mentioned that his department uses verbal warnings and written warnings. A written warning can be checked to make sure the driver doesn't have a suspended license.

Chairman Browne asked Mr. Paillette in which direction, in his opinion, should the committee move next. He stated that a draft has been prepared to be used as something to start on for discussion purposes. It consists of general provisions. As was brought out previously, the committee does want original ideas and suggestions from interested people and agencies, and it is hoped that they will get in early and not merely react to what the staff and committee come up with. He also mentioned that the staff would proceed to gather as much as possible in the way of ideas and material, review the material, make it available to the subcommittees, put together a preliminary draft, and circulate that draft and have it available for discussion purposes. There are available, at this time, about 26 vehicle codes from other states. The drafts would be drawn up to include general provisions in one draft, and perhaps the next time rules of the road involving pedestrians, another draft would include right-of-way laws, and still another, speed. As an example, when the committee gets to the basic rule, it can thoroughly study and discuss it, thoroughly examine the Oregon basic rule with the case law, discuss what our experiences have been, and find out what police agencies and DAs think of it. Mr. Paillette emphasized that the staff would see that the committee members receive any material to be discussed at least a week before a meeting.

Rep. Bunn asked if the staff was doing anything about gathering statistics on charges, convictions and acquittals regarding some of the offenses on which courts were not keeping adequate records. Mr. Paillette replied that the staff was in the process of trying to set up the machinery so it will have statistics that are usable. The reporting being received now from the courts through the Supreme Court is not too helpful. Mr. Paillette said that he has discussed this with various individuals and feels the area in which the committee needs the most information is through the district courts. In a meeting at the Court Administrator's office, the type of report the committee would like to get was discussed, and it was decided to limit it to eight counties and get a three month survey, beginning with the first three months of next year. This will give us time

to meet with the judges in November and to develop the kind of form the committee will want to use. Counties selected are Clackamas, Coos, Klamath, Lane, Marion, Multnomah, Umatilla and Washington. They will be asked to keep accurate, thorough records of traffic offenses and to differentiate between the so-called major offenses and the minor offenses. They will be asked to let the committee know what their caseloads are and what percentage of their overall caseloads are accounted for by traffic offenses. They will also be asked to supply the committee with information as to how much judge time and court time is involved in the cases. This information is important if the committee is to try and come up with a figure as to how much court time and judge time will be saved.

Rep. Bunn stated that he believed we also need statistics as to how a case was disposed. It isn't enough to have records of convictions, but also records of acquittal are needed so the committee can know how well a law works. If judges are reluctant to convict drunk drivers, it is important to know how many are acquitted. This would also encompass charges, acquittals, reductions, etc. Rep. Bunn was wondering if any data would be current enough to give an accurate picture of the success of pertinent laws. Mr. Bellamy mentioned that records are available for the first three months in 1972, which state an original charge and what the defendant was actually tried on. The penalty imposed is also listed. Ms. Howard reported that the statistics at the Motor Vehicles Division show only convictions, and these do show the type of court where they originated. These records would not show what an offense might have been in the beginning--what a defendant was convicted for, but not what he was charged with originally.

Senator Carson and Mr. Paillette expressed the opinion that Judge William A. Beckett and Judge Richard L. Unis could be of great assistance to the subcommittee and that their opinions and suggestions should be most helpful. Mr. Paillette added that the subcommittee would be working with a spokesman for the judges and would try to coordinate this with the Judges' Association. It was agreed that the subcommittee should try to get the judges to attend the meetings.

Mr. Paillette announced that a meeting is scheduled with the District Judges' Association for November 8, and an effort will be made to get as much information as possible from the communications system that will be set up.

Chairman Browne asked if anyone wished to suggest any priorities to work on. She also added that the committee might as well go ahead with the basic rule. Senator Carson suggested that the committee eliminate as much as possible old laws that are impractical today. He also suggested that, through news releases and ads, the public could be invited to make suggestions.

Mr. Paillette asked the members about perhaps setting up meetings several places in the state to hear testimony and invite people to come and meet with the committee. This was agreeable with the members.

It was decided the next meeting of the Revision Subcommittee would be held on Tuesday, October 30.

The members decided to invite Sid King of the American Automobile Association to attend a meeting and speak on outdated, unnecessary laws.

The meeting was adjourned at 11:45.

Respectfully submitted,

Anna McNeil, Clerk
Subcommittee on Revision