Tape 16 - Side 1 - 448 to end (June 12, 1974)
Side 2 - 1 to 536
Tape 17 - Side 1 - 274 to end (June 13, 1974)
Side 2 - 1 to 295

COMMITTEE ON JUDICIARY

Fourth Meeting, June 12 and 13, 1974

Minutes

June 12, 1974

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

Excused: Senator George Eivers

Absent: Senator John D. Burns

House Members Present: Representative George F. Cole, Chairman
Representative Lewis B. Hampton
Representative Robert P. Marx
Representative Norma Paulus

Excused: Representative Stan Bunn

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

Others Present: Mr. James Dutoit, Automobile Club of Oregon
Hon. Robert L. Gilliland, District Judge, Corvallis
Miss Vinita Howard, Public Information and Publications, Motor Vehicles Division
Senator C. R. Hoyt, Corvallis
Hon. Herbert M. Schwab, Chief Judge, Court of Appeals; Chairman of Consulting Committee to Committee on Judiciary
Ms. Sherry Smith, Governor's Commission on Judicial Reform (Present at morning session only)
Capt. John Williams, Traffic Division, Oregon Department of State Police

Agenda: June 12, 1974 — Page

Page

Agenda (Cont'd): June 13, 1974

The meeting was called to order at 10:15 a.m. in Room 14, State Capitol, by Representative George F. Cole, Presiding Chairman.

Approval of Minutes of Meeting of May 7 and 8, 1974

Rep. Paulus moved that the minutes of the meeting of the full committee on May 7 and 8, 1974, be approved as submitted. There being no objection, the motion carried unanimously.

CLASSES OF OFFENSES; DISPOSITION OF OFFENDERS; Preliminary Draft No. 2; May 1974

Chairman Cole indicated that the format for today's meeting would be that Mr. Paillette would first brief the members on the draft prepared by the Subcommittee on Adjudication and following his presentation, Judge Schwab would add his comments. The committee would then be asked to discuss the draft and make recommendations as to the direction in which they wished to proceed.

By way of general background on the draft, Mr. Paillette advised that it was developed initially in the Consulting Committee of which Judge Schwab is the Chairman. The Adjudication Subcommittee had then worked on the draft and had also considered a draft which set out a straight administrative adjudication approach based on the New York Administrative Adjudication System in which the adjudication of so-called minor traffic offenses would be through a hearings procedure rather than through the courts. That particular draft did not attempt to classify which offenses would be major and which would be minor as did the draft before the committee.

Section 1 of the draft on today's agenda is similar to the definition in the Criminal Code of a violation (a non-criminal offense) which here is called a "traffic infraction." It would carry a civil penalty only and not give rise to any disability normally associated with conviction of a crime.

Section 2 takes the basic definition of "traffic infraction" and classifies that offense into four categories, again similar to the classifications in the Criminal Code. None of the four would carry a jail sentence, and the Class A infraction would be the most serious of the non-criminal offenses.

Section 3, Mr. Paillette continued, contains a range of penalties for each classification. Sections 2 and 3 are meant to serve only as guidelines for the consideration of the committee and any one of the ranges would be a maximum amount, not a mandatory penalty. The court would have discretion to fine any amount below the maximum in each category but not more than the maximum authorized.

Section 4 is one of the key sections (and probably one of the most difficult to resolve) because it contains a classification scheme with respect to Class A traffic infractions and also specifies certain offenses that would be crimes.

Subsection (1) sets out traffic crimes but does not include driving under the influence for the reason that the draft approach to classifying DUIL is to make that offense non-criminal for a first offense, non-reckless, non-accident or non-injury type of situation. It contemplates that reckless driving would be redefined in such a manner that it would no longer be considered, as it is now, a lesser included offense of DUIL but instead is classified in paragraph (c) of subsection (1) as a traffic crime.

Mr. Paillette noted that the committee may want to define paragraph (d) of subsection (1) more specifically with respect to moving violations resulting in suspension of a driver's license. He also pointed out that "restriction," as used in subsection (1) (d), referred to something other than what is commonly regarded as a driving restriction -- for example, corrective lenses. This "restriction" contemplates a condition imposed by the court, e.g., allowing the motorist to drive only to and from work in place of an outright license suspension.

Paragraph (e) of subsection (1) deals with the multiple offender and provides that when a defendant is charged with a Class A traffic infraction, if, within the previous five years, he has been convicted of one or more traffic infractions or traffic crimes, the Class A traffic infraction charge against him then would be considered for sentencing purposes as a traffic crime.

Subsection (2) provides that a Class A traffic infraction would include DUIL and driving with .15 blood alcohol content. Those two classifications, Mr. Paillette said, probably embody the major decisions facing the committee, particularly whether the offense of driving under the influence should be decriminalized to the point where it would be a Class A traffic infraction in the circumstance where it is a first offense not involving reckless driving, accident or injury.

Mr. Paillette pointed out that under paragraph (d) of subsection (2), driving while license is suspended as the result of failure to file proof of financial responsibility would be a Class A traffic infraction. He said the subcommittee had discussed at some length the advisability of making a distinction between the reasons for the suspension, and for the purposes of this draft, a distinction was drawn.

Subsection (3) of section 4 is an attempt to preclude prejudicing a jury in the circumstance where there is a trial for what would otherwise be a Class A infraction but, because of the defendant's record of previous convictions, he is being tried for a traffic crime. It provides that at the request of the defendant proof of previous convictions would be submitted only to the trial judge and would not be made known to the jury.

Section 5 continues the civil approach to traffic adjudication and provides in subsection (1) that the trial would be by the court without

a jury. Subsection (2) changes the burden of proof from the current reasonable doubt standard in criminal cases to a civil preponderance of the evidence test. Subsection (3) applies criminal pre-trial discovery rules.

Section 6 provides that in any trial involving a traffic infraction, counsel would not be provided at public expense. The defendant would be entitled to an attorney, but the state would not pay for it.

Section 7 would require the prosecutor to represent the state only if ordered by the trial judge. Mr. Paillette said the subcommittee had been told that many courts around the state were already following this procedure.

Under section 8 double jeopardy rules would not apply to traffic infractions and there would not be a bar to prosecution of an offense arising from the same criminal episode, regardless of whether the civil or criminal charge was prosecuted first.

Rep. Paulus suggested that it would be more accurate to use the phrase "same episode" rather than "same criminal episode" because the section referred to both a crime and a traffic infraction. Mr. Paillette replied that "criminal episode" was a term of art defined in the Criminal Code and was used for purposes of consistency.

Sen. Hoyt commented that it was unclear whether "evidence" as used in section 8 referred to evidence of conviction or evidence presented at the first trial. Mr. Paillette replied that it was intended to refer to the evidence of conviction.

Sen. Carson suggested that to avoid misinterpretation, "evidence of" could be omitted from the sentence entirely so it would read: " . . . the first conviction shall not be admissible . . . . " Mr. Paillette expressed approval of the proposal because the same evidence would be needed for the subsequent prosecution.

Mr. Paillette continued his explanation of the draft with section 9 which, he said, attempted to spell out a range of options for the court to consider in traffic cases.

Subsection (1) referred to situations where there was a conviction and the defendant refused to pay the fine or to comply with any other condition imposed by the court. Instead of or in addition to any other method authorized by law for enforcing a court order, the court would be authorized to order the defendant's driver's license, permit or right to apply to be suspended. Here again, as in section 4 (1) (d), the term "restricted" appeared, and the Motor Vehicles Division had some objections to the provision. He suggested the committee might want to consider clarification of the term.

As initially drafted and as discussed in the Consulting Committee, section 9 was not meant to repeal or take the place of any authority of the Motor Vehicles Division to suspend operator's licenses under existing law. That point should probably be made clear, he said, and it would also be necessary to reconcile section 9 with the existing statutes and make whatever amendments were necessary to spell out the interplay between the court and MVD on restrictions and suspensions.

Subsection (2) of section 9 offered an educational tool for the court in addition to the fine or imprisonment that would be authorized by law. It was limited to traffic crimes and Class A traffic infractions whereas subsection (1) covered any traffic offense and would include not only traffic crimes but the whole range of traffic infractions.

Subsection (3) was directed at a court order involving only the defendant and the court. For example, when the defendant pays his fine, the court will be the one who will know about it, and the provision attempted to avoid any unnecessary transfer or mailing of a driver's license if it did not seem to be the kind of thing MVD needed to be involved in. Motor Vehicles, he said, had made some comments regarding this provision, and their views would be considered further.

Senator Browne inquired if "offense" as used in the first phrase of section 9 included both a crime and an infraction and received an affirmative reply from Mr. Paillette.

Mr. Paillette advised that section 10 was the appeals provision. Judge Schwab and the members of the Consulting Committee strongly endorsed the concept embodied in Senate Bill 403 introduced at the 1973 regular session of the legislature. The bill did not pass but it dealt with district courts as a court of record. The bill that did pass delayed the effective date of Senate Bill 450 of the 1971 session which made the district courts a court of record. The most notable difference between SB 403 and SB 450, which will take effect July 1, 1975, is that SB 403 contemplates an appeal to the Court of Appeals from district court and also provides specifically for a recording device to be used for creation of the record. However, it applies only to district courts, and this committee will have to consider also appeals from justice and municipal courts.

Chairman Cole commented that the Subcommittee on Adjudication was satisfied that decriminalization of minor traffic offenses was necessary to simplify and expedite the handling of those cases in the courts. The problem they ran into, however, was that simplification of the handling of minor traffic offenses by a civil procedure would not solve the problem of congested dockets in the district courts, a problem caused primarily by requests for jury trials in DUIL cases. The Consulting Committee, in considering that problem, came up with the suggestion to include in the infraction category the first-time DUIL that did not involve accident, injury or some degree of reckless or dangerous driving. One of the questions the committee would have

to answer was whether a decriminalization of DUIL would downgrade that crime in the minds of the public to the extent that they would feel the legislature was backing away from its responsibility. Another question to be answered was whether the committee should distinguish between DUIL and .15 blood alcohol content as far as the seriousness of the charge was concerned, and the members might even want to reduce .15 to .10 and make that a separate crime.

Chairman Cole said that from testimony received in the subcommittee meetings, it was the members' belief as well as that of the Consulting Committee that few, if any, persons convicted of DUIL for the first time were being required to serve jail time. For this reason they had taken the position that it was unnecessary to burden the courts with a jury trial in those cases. However, statistics furnished to the committee today by the State Police appeared to challenge that belief. [See Appendix A attached.] Chairman Cole then invited Judge Schwab to speak to the committee.

Judge Schwab outlined the membership of the Consulting Committee and advised that they had unanimously approved the draft before the committee today. Their intention, he said, was not to make it easier on drunken drivers through a process of "decriminalization" but to provide for more effective law enforcement. They had tried to devise within the foreseeable limits of manpower, courtrooms, juries, district attorneys, policemen, motor vehicle budgets, etc. a more effective law enforcement system aimed at getting bad drivers off the road in all parts of the state, taking into consideration the differences between, for example, Harney County and Multnomah County.

Everyone agrees, Judge Schwab said, that effective law enforcement first depends upon police finding the violator and apprehending him. Long delays make the system break down and long delays in adjudication are completely incompatible with effective law enforcement. When the Court of Appeals sat in Medford two years ago, there were 500 drunken driving cases pending jury trial with one judge and one courtroom and it was impossible to deal with them. Less than a month ago the court sat in Eugene and Judge Beckett of the district court told him he was then setting drunken driving cases requesting a jury trial nine months ahead. Judge Schwab then checked with two of the district judges in Portland who said theoretically they were bringing cases to trial two months after arrest. Actually, however, they said any lawyer could maunipulate the system to 5 1/2 months, and they were only reaching that figure by virtue of plea bargaining and by reducing DUIL charges to reckless driving -- a practice which in Judge Schwab's opinion was not only widespread but an abortion of the intent of the legislature and a mockery of the drunken driving laws.

Judge Schwab quoted a number of statistics which in effect showed that of the number of arrests made for drunken driving, a very small percentage were found guilty as charged and there was wholesale reduction of charges in order to bring the cases to a conclusion of some kind, which lead him to believe the system was breaking down. He recommended that a provision be added to the draft stating that there shall be no plea bargaining or reduction of charges from the charge of drunken driving.

Recognizing that the primary duty of this committee is to revise the system so that it works and, secondly, to get dangerous drivers off the road, Rep. Paulus said the committee should also recognize that the disease of alcoholism is the primary cause of drunken driving and for that reason she suggested that the draft should, in conjunction with its other provisions, impose mandatory attendance at some type of alcohol school upon conviction of the first civil offense. Judge Schwab advised that the draft provides much broader powers than judges now have which is probably as far as the statute can go because it would be nearly impossible to require mandatory attendance at alcohol schools on a state-wide basis when many of the smaller communities are not in a position to provide such schools.

Judge Schwab noted that one of the improvements over present law appearing in the draft is that judges would have the power to suspend and not just to recommend suspension. When a man is before the judge and the judge tells him he is suspended as of that time, there would no longer be any notification problem. Judge Schwab discussed some of the problems inherent in the present law requiring personal service and the amount of police time involved in finding these individuals to notify them of their suspension. He expressed the hope that the committee would recommend a change in ORS 482.570 to get back to a situation consistent with a recent Court of Appeals decision which held that it was a person's duty to keep the Motor Vehicles Division advised of his latest address and proof that notification was mailed to that address was considered to be proof of notice of suspension.

Chairman Cole commented that the tests and burdens of reckless driving were fairly severe in this state and the act of driving a little on the left of the center line or driving a little too fast didn't quite rise to the status of the crime of reckless driving. Judge Schwab said that when such acts were combined with being drunk, he believed it would be reckless driving.

The problem of the district courts, he said, is that they have no body of law for guidance. Their appeals are handled by the circuit courts, published opinions are few, and there are 60 different rules of law depending upon the circuit judge in each district. Recently the legislature provided that appeals from administrative agency decisions would go directly to the Court of Appeals. That law has had a profound impact upon the administrative agencies, he said, because the Court has written a few opinions laying down a few rules and those rules are now uniform. This same effect would undoubtedly extend to this draft. After a few opinions were written, at least the rules laid down by the Court would be uniform in application throughout the state. He also pointed out that since the DUIL cases would be civil, they could be appealed by the state. Judge Schwab stated that no one was sure what reckless driving means any more because there have been so many decisions and so much massaging of the law by various courts for various purposes that there is no standard and there will not be until some uniformity is imposed through appellate court decisions.

Chairman Cole asked if the Consulting Committee had considered including as a traffic crime the first time DUIL involving a moving violation. Judge Schwab said they had not, but it was a possibility. His opinion, however, was that it would be better to call a given act a crime. Then if the man is under the influence and has also committed that crime, those acts would be two separate offenses and they would be tried separately -- one civil and one criminal.

He suggested that reckless driving be redefined as a new crime to be known as "dangerous driving." In response to a question by Rep. Hampton, Judge Schwab explained that for the purposes of the guest passenger statute, reckless driving had been interpreted out of all reasonable meaning to comply with the gross negligence standard. This was one of the reasons he believed it would be advisable to create a new crime of "dangerous driving" to supersede reckless driving and make it clear that it was not concerned with guest passenger law.

Chairman Cole asked if the Consulting Committee had considered distinguishing between the first time DUIL and .15 and perhaps making .15 a traffic crime. Judge Schwab said they had not, but the suggestion was not without merit.

Something the Consulting Committee had missed, Judge Schwab said, was that unless the present Breathalyzer law was changed, people were going to refuse to take the test. He proposed to increase the suspension period to six months in place of 90 days by amendment to section 4, subsection (1) (d), which could be revised to read:

> "Driving a motor vehicle in violation of any driver's license restriction or suspension resulting from moving violations or from refusal to take a Breathalyzer test or from failure to comply with a court order."

If that amendment were adopted, anyone whose license was suspended for refusal to take the test who was then found driving would be chargeable with a major criminal infraction.

Miss Howard proposed to broaden that provision even more by adding "or from any order from the Motor Vehicles Division" which would take in the people suspended for other purposes. Judge Schwab disagreed and explained that there were two kinds of suspensions. One was the suspension based on proof of dangerous driving, and he included in that a refusal to take the breath test, and the other was suspension for failure to file proof of financial responsibility or something of that nature. The Consulting Committee elected to treat the second category as a civil Class A infraction the first time. It could be made a crime the first time by treating all violations of suspended licenses alike, but the attempt was to draw a fine line to bring about a more effective law enforcement system and to draw one that would be "saleable." As far as the public is concerned, there are those who want to put everyone in jail for a first offense of driving while suspended regardless of the reason for the suspension, and on the other hand there

are those who who are extreme civil libertarians who believe it is a God-given right to drive an automobile and a man's driver's license should not be taken away except by proof beyond a reasonable doubt and a jury trial. The committee's attempt was to thread between the two positions.

Chairman Cole recalled that Judge Schwab had discussed the fact that under this draft, the first time a person was caught and charged with DUIL he would not go to jail. He called attention to the statistics brought to the committee today by Capt. Williams (see Appendix A) and asked Judge Schwab to comment on them. Judge Schwab noted that the State Police statistics showed there were 34 cases in Jackson County with seven first offenders serving jail sentences. He pointed out, however, that the statistics did not indicate whether there was accident or injury involved or how heinous the driving was in those cases. The same was true of the other counties in the survey. He stated that in his discussions with Judge Abraham and Judge Unis in Multnomah County, theyhad told him that given the set of facts where there was no injury, no accident and no bad driving, DUIL's were never sent to jail in that jurisdiction. Capt. Williams expressed agreement with the Judge's statement.

With the emphasis on this draft being to get dangerous drivers off the road, Judge Schwab noted that it provided that if a person were cited for a moving violation while driving suspended, it would be a Class A misdemeanor. He said he would see nothing wrong with saying that if that person did the same thing a second time within five years, it would be a felony inasmuch as statistics show that the really dangerous drivers are the ones who, despite repeated convictions and repeated suspensions, continue driving.

The committee recessed for lunch and reconvened at 1:30 p.m. with the same persons present as attended the morning session. Others attending the afternoon session were Hon. L. A. Cushing, District Judge from Grants Pass, and Mr. Gil Bellamy, Administrator of the Traffic Safety Commission.

Capt. Williams indicated that the Adjudication Subcommittee had asked him to prepare statistics on first-time offenders and those were the statistics before the committee today (Appendix A). He said he had added some information to aid in understanding the reasons why the courts are clogged and why this created so many problems for police officers. The state-wide figures showing the increase in DUIL arrests on page 2 indicated that in 1969 and 1970 the numbers were fairly constant but with the lowering of the blood alcohol content to .10 by the 1971 legislature, there had been a steady increase to the 1973 level of 13,328 total convictions -- a 123% increase. The State Police arrests listed below that figure showed almost the same pattern, partly due to the .10 statute and partly due to the educational program the State Police had conducted aimed at getting the drunk driver off the road.

Sen. Hoyt asked if the increased number of arrests was good or bad. Capt. Williams replied that the State Police would like to take credit for some of the 25% decrease in fatalities that occurred last year by saying it was brought about by the program where a squad of officers was sent into a given area to concentrate on the drunk driver problem. However, the 55 mph reduction in speed should be given part of the credit, but the State Police did believe their program was showing results.

Sen. Browne called attention to the information on page 1 of Appendix A showing that Marion County had reduced a number of their DUIL cases to reckless or careless driving and asked if it could be inferred from that information that other counties had no plea bargaining. Capt. Williams said it could not. On the previous day, he said, he had talked with Judge Schwab and at the Judge's suggestion he had looked at conviction rates for DUIL within the department. He found that in 1971 the State Police showed an 88% conviction rate for those who ended up with a DUIL conviction, in 1972 it was 87% and in 1973 it dropped to 78% for a three year average of 84%. Even more meaningful was that for the first five months of this year the conviction rate dropped to 69% which takes into consideration the cases where charges have been reduced to reckless driving and other lesser charges.

Mr. Paillette asked Capt. Williams if the percentages he quoted included .15 cases and received an affirmative reply. Capt. Williams added that with the system jammed up the way it is, and these figures bear out that it is jammed up, a reduction of cases, dismissals and long delays could be corrected by the system proposed by the draft. If plea bargaining is eliminated, he suggested that it not apply to DUIL's except those under .15. Assuming the injury or accident involvement with DUIL would still be a crime and with the state's right to appeal, the State Police would support the concept of the proposed system. They would also support the concept that a reduction of cases to a lesser charge be eliminated from DUIL. Obviously, that was one of the reasons for the weakening of cases at the present time.

Chairman Cole next introduced Judge Cushing who indicated he was currently President of the District Judges' Association but was not speaking for that association except to report that they had taken a vote at their last meeting and those present unanimously approved the suggestions of the Consulting Committee.

Josephine County, he said, had been a leader in tackling alcohol problems. It was the first area west of the Mississippi River to have a detoxification center, the second in the State of Oregon to have a Halfway House and their alcohol school was the first in the state.

Judge Cushing said his court handled between 13,000 and 14,000 filings in a 12 month period yet his docket was current. Today he could set a case for trial in August and if anyone were in a hurry, he could set it in the next week or two. The reason was that he did not

receive a great many requests for jury trials. The word had gotten around, he said, that if a person would attend the alcohol school, he would not be put in jail. Judge Cushing said that at one time he did impose jail sentences for drunk driving but had since decided that it did little, if any, good, and education was more successful. In response to a question by Rep. Hampton, Judge Cushing said this educational concept was not necessarily limited to first offenders although in some cases he raised the suspended sentence from 30 to 60 days or increased the fine for second offenders.

He said he had one of the best probation programs in the state which enabled him to keep track of probationers. He received a report on each probationer once a month concerning a weekly, or sometimes more frequent, contact. This was done with a staff of three paid employes plus nearly 100 volunteers. The alcohol school covered a period of five weeks and he did not sentence offenders until after they had completed the school which accounted for their successful attendance rate. Tuition, he said, was $25 and there were usually 40 to 50 people in a class. This money had been used to hire a counselor who was expected to make a report to the judge following completion of the school as to the type of help or further counseling needed by each individual.

Judge Cushing said he was not able to quote statistics on the success of the approach used in Josephine County, but his opinion was that it was working well because they were having a very small rate of return of those who had gone through the school.

Judge Cushing discussed with the committee the method of funding the alcohol school and the screening process used in choosing volunteers.

Chairman Cole asked if the district attorney in Josephine County, as a matter of practice, accepted a complaint for both .15 and DUIL arising out of the same incident. Judge Cushing replied that until very recently he had not, but a case had come up which had caused him to reverse his position. The judge said he personally was opposed to the two charges because it was too close to double jeopardy. He believed it would be all right to have an enhanced penalty for more serious charges but it was an injustice to try a man for both charges. At the present time the two charges were being made for the purpose of using one as a lever, but one charge was always dismissed when there was a plea. Chairman Cole asked what impact that practice had on the docket as far as reducing the number of jury trials and was told by Judge Cushing that it was not much of a factor because for practical purposes the second case was rarely, if ever, tried.

Chairman Cole next asked the judge if he, as a matter of course, granted a restricted license to the suspended driver. Judge Cushing said he generally did so but he depended somewhat on the Motor Vehicles Division to screen out the ones they believed should not have a restricted license.

Chairman Cole asked Judge Cushing's opinion on whether the additional tools given to the judge by this draft should replace the automatic suspension by the Motor Vehicles Division or whether they should work together. Judge Cushing's view was that they should work together. He said he felt strongly about persons who drove while suspended and he believed it would be a vast improvement if the judge could, as provided in the draft, tell the defendant he was suspended while he was in the courtroom and thereby avoid the notice problem.

Sen. Hoyt asked what would happen if the judge's decision to suspend were appealed and was told by Judge Schwab that under the existing law he believed the suspension would stand pending appeal and the suspension would take effect immediately.

With respect to the holding of the Court of Appeals that proof of mailing to the last address shown in the records of the Motor Vehicles Division created a presumption that the notice of suspension was received, Mr. Paillette asked what happened to that presumption when the notice was returned undelivered to the MVD. Judge Schwab said that as he recalled, the Court said that was just too bad because under the law it was the licensee's duty to keep the MVD advised of his last address and if a person didn't receive his notice, it was because he failed to comply with the statute. The consequences of one law could not be avoided by disobeying another.

Rep. Paulus asked Judge Cushing how he would feel about requiring all first offenders cited for drunken driving to attend an alcohol school, assuming schools were available in every part of the state. Judge Cushing replied that he would favor such a statute.

Miss Howard, in connection with section 4, said she had earlier in this meeting proposed to broaden the language of paragraph (d) of subsection (1) to include license suspensions issued by the Motor Vehicles Division under the authority of ORS chapter 482. Those, she said, would be suspensions having nothing to do with financial responsibility. They had to do with failure to pass an examination, medical suspensions, failure to report an accident and other acts of a fairly serious nature which she believed should be treated on the same level as failure to comply with a court order.

On the question of suspension, her position was that whatever suspension was meted, and she tended to believe it should be a mandatory suspension even if only for a period of two weeks on the first conviction, the judge before whom the man was convicted should give notice of the suspension at that point. MVD would not then have to go through the process of giving notice all over again.

Miss Howard commented that it was much too soon to tell specifically what the experience was going to be as a result of the legislation from the last session concerning rehabilitation programs. That statute provided for earlier reinstatement, at least on a partial basis, of a driver who had his second or third DUIL conviction, providing he went

into a program aimed at problem drinkers. Some place in this draft, she said, provision should be made for a longer suspension period than 90 days if rehabilitation was going to work for some of the hard core, problem drinkers. In other words, 90 days was not sufficient as a maximum.

Judge Schwab said his understanding of that provision was that the judge could suspend for 90 days and send the person to alcohol school. If that person dropped out of school, his license would not have to be reinstated until such time as he returned to the school and completed the course, even if it were five years later. Mr. Paillette confirmed this statement and explained that the 90 day suspension was in addition to any fine or imprisonment. The court could also order a suspension under paragraph (a) of subsection (2) of section 9 until such time as the individual completed the program, which might be more than 90 days, or the license could be suspended if the person did not successfully complete the program.

Miss Howard believed this was a critical provision because some of the problem drinkers would need quite a long time in the program to achieve success. Mr. Paillette suggested that the committee might want to expand the language of section 9 (2) to specifically refer by name to some of the rehabilitation programs.

Miss Howard said she was speaking for the Motor Vehicles Division in urging that when a license was suspended by the court, even when the suspension was for failure to pay a fine or to comply with the terms of a court order, that license should be sent to MVD and be reinstated from there. Miss Howard also expressed approval of the direction the committee seemed to be headed in making a distinction in the more serious offenses. She said that many of her other concerns with the draft were procedural and mechanical in nature and she believed they could be worked out satisfactorily.

Sen. Browne asked why personal service for suspension notices was not working. Miss Howard replied that they were finding that it was just as hard to find someone in person as to find him when notice was mailed by certified mail. These people for the most part knew what was coming and they had many methods to avoid receiving notice. Up until about a month and a half ago, the division found that each successful personal service was costing about $40. The legislature increased the reinstatement fee to $8 to help pay for the cost of personal service but this was not covering the cost. Also, sheriffs did not like to take the time. MVD had explored the possibility of trying to get private companies to run these people down on a low bid basis, but this was not an effective procedure either.

Sen. Browne asked if the State Police were cooperating in this program and was told by Capt. Williams that the program for service was taken care of by an agreement between MVD and the sheriffs. Miss Howard said there was also the question of the wisdom of using the

time of a State Police officer to make these services when his time could be better utilized. At the present time the division was using the services of the sheriff's offices, but it was simply not working. As Judge Schwab pointed out, Miss Howard said, the law requires notification of a change of address to the MVD and if a person moved and didn't notify the division, he was guilty of a violation, and that should not be used as an excuse to avoid notification. These people, she said, constituted a difficult segment of the population.

Rep. Paulus commented that from a political standpoint this draft could probably not be enacted at the next session of the legislature without the complete cooperation of the Motor Vehicles Division, the State Police and the Traffic Safety Commission. Apparently, Motor Vehicles and the State Police were now generally agreed that they would support the draft and she asked if the Traffic Safety Commission would also lend its support to the draft.

Mr. Bellamy replied that he had not intended in any of his testimony to leave the impression that because the Traffic Safety Commission believed in certain penalties, they did not believe in rehabilitation. Their concept was that punishment plus anything that would prevent a person from repeating his crime were both elements of rehabilitation. He added that he would personally volunteer his time to teach alcohol schools in Marion and Polk County for those convicted of DUIL.

Rep. Paulus asked Mr. Bellamy if he would agree that the proposed system would do more to get the dangerous driver and the drunk driver off the road than did the present law with its mandatory jail sentence. Mr. Bellamy said he did not have that many solid ideas on the real answer to the problem. He was, however, open to suggestions, change and to trying something new. As for the mandatory jail sentence, he said it was just one part of the solution and if the proposed system of enhanced penalties would work better, it would be great.

Rep. Hampton commented that in his area one of the district judges had been spreading some alarm among the electorate by talking frequently about the proposal to take away the right to jury trial. He asked Mr. Bellamy if he would agree that by making DUIL, not involving any other violation or infraction, an infraction and not a traffic crime, and subjecting that offender to a trial before a judge without a jury, it would add a pretty significant prong to traffic law enforcement. Mr. Bellamy said it appeared to him it would be a good move, and with the Court of Appeals decisions that would be imposed on all courts, he believed it might prove to be a better system. The only thing the Commission would be concerned about, he said, was making the first DUIL offense, with no aggravation, an infraction. It would be necessary to take some pains in the statutes to prevent the second, third and fourth offense from being reduced to an infraction also. Once that was done, he said there should be no problem.

Rep. Hampton asked what would happen under the draft in a hypothetical case where the defendant had one DUIL conviction. On the second charge he is automatically charged with a crime. He appears in front of "Judge Friendly," who is known to be lenient with drinkers, and the prior offense is charged but the judge refuses to find it. The state has no right of appeal because it is a criminal charge. He asked if that was such a remote posibility that it should be of no concern to the committee. Judge Schwab replied that a similar thing could happen in any criminal case. The district attorney has one way of getting at that kind of situation. He can also charge a civil offense separately and if the judge gives the criminal charge the treatment outlined by Rep. Hampton, the state could appeal on the civil charge.

Mr. Bellamy said that when the Traffic Commission talked about certain penalties, they were not limited to jail sentences. If the draft provided for a significant suspension period that would be enforced and that would be obnoxious to the degree that it would alter attitudes, he said he would approve of it.

Judge Cushing recalled that the committee had discussed increasing the penalty for refusal to take the Breathalyzer test. He asked if they had also discussed the possibility of using the evidence of that refusal in a DUIL case against the individual. He was of the opinion that it should be admissible evidence. Chairman Cole replied that the subject had been brought up once or twice but had not been thoroughly discussed.

Following a brief recess, Chairman Cole asked the members if they believed the Subcommittee on Adjudication was generally going in the right direction and if they approved of classifying a first DUIL charge as a traffic infraction. The members were in unanimous agreement that the first DUIL charge, minus aggravating circumstances, should be a traffic infraction.

Chairman Cole next indicated that it had been suggested that the crime of driving with .15 blood alcohol content be reduced to .10 and that .10 would then be a crime separate from DUIL. The .10 charge could be classified either as a Class A traffic infraction or a traffic crime, depending upon the direction the committee wanted to go.

Sen. Carson said it appeared to him that if the .15 crime were dropped to .10, everyone would be well advised not to take the Breathalyzer test because if the test turned out .10, the charge would go from an infraction to a crime on that point alone. Chairman Cole pointed out that as the draft was written, .15 was a traffic infraction and .10 would still be an infraction unless the committee increased it to the traffic crime category.

Sen. Carson suggested dropping the .10 presumption in the present law to .08. Mr. Paillette agreed that if .15 were dropped to .10, it would be necessary to drop the .10 presumption. Sen. Carson said his preference would be to leave .15 alone and drop the presumption to .08.

Rep. Paulus said her reason for wanting to drop .15 to .10 was that the available scientific data showed it to be a reasonable approach because the judgment of a person driving with .10 was definitely impaired.

Mr. Paillette said one possible approach would be to repeal the separate statute of driving with .15 and write in .10 as part of the basic offense with an enhanced penalty. Another approach would be to leave that statute as is and if the committee felt it was not desirable to have the "double charging" that was taking place under the present law, i.e., charging a person with both .15 and DUIL when they were both part of the same offense, other procedural provisions could be written in to prohibit that practice.

Rep. Hampton said he would feel more comfortable if the presumptive level were .08; .10 as a separate crime would then be completely workable. In response to Sen. Carson's earlier comment concerning the Breathalyzer test, he said the incentive to take the test could be a six months suspension of the individual's driver's license for refusal to take it.

Chairman Cole next asked the committee if they wanted to prevent "double barreling" of the .10 and the DUIL charges, assuming the presumptive level were .08 and .10 was a separate crime. Rep. Hampton said that if double charging were not permitted and the district attorney chose to charge the defendant with .15, there could well be instances where the state would lose its case because of a challenge to the machine's accuracy or for any of a number of other reasons. In some of those cases there might be no question in the mind of a reasonable judge that the defendant was driving under the influence yet he could not be convicted. One way to get around that, he said, would be to make DUIL a lesser included offense of .10.

Sen. Carson commented that under present law the policy adopted by the legislature was that driving with .15 blood alcohol content was a crime, regardless of how well a person was driving his car. Perhaps the way to get rid of the double charging was to apply that same policy to driving with .10 and forget about DUIL. Instead of a DUIL charge, the officer could cite the offender for reckless driving, dangerous driving, impeding traffic or any of the other acts that result from bad driving. In other words, the policy statement would be that it was not unlawful to drive under the influence, but it would be unlawful to have a blood alcohol content of .10 or higher.

Judge Schwab suggested that another approach would be to retain DUIL and then say that .10 is conclusive proof of that charge. If that were done, .15 could be retained and the statute could provide that the first offense of drunken driving would be an infraction but if coupled with either other aggravated driving or .15 or above, it would be a crime.

Rep. Hampton said he would be in favor of Sen. Carson's proposal so long as the person took the Breathalyzer test, but if he did not, the prosecution should still be in a position to prove that he was driving under the influence circumstantially. There were some cases, he said, where a person with .04 to .06 was under the influence and he believed it should be possible to convict him when that was the case.

Judge Schwab stated one reason for not emasculating the civil infraction concept was that the prosecution was more certain of a conviction when a civil infraction was charged, and, once convicted, he would at least be suspended. The aggravated case, he said, should be a crime, but it should not merge with the civil infraction.

Sen. Carson expressed some concern for the intoxicated driver who was in an accident through no fault of his own where the fact of his intoxication in no way contributed to the accident. He felt it was not right to charge him with DUIL plus the aggravation of an accident and thereby subject him to a higher penalty than if he were merely charged with DUIL. Judge Schwab explained that a driver in that circumstance would not fall into the aggravation category under the draft. The mere fact that there was an accident or an injury would not make it an aggravated offense; it would have to be an accident or injury involving negligent driving. When it was a first offense in the circumstance described by Sen. Carson, he would be charged with a civil infraction under the draft proposal.

Mr. Paillette reported that the staff had made a survey of DUIL statutes of other states. Delaware, Minnesota, Nebraska, New York and Oregon specifically prohibit driving with a fixed percentage of blood alcohol. Oregon is the only state where the percentage is a separate statute, and the cut-off point in all the others is .10.

Chairman Cole asked if the committee was agreed that the .15 statute should be reduced to .10, and that was the consensus. The Chairman next asked if the presumption should be retained. Rep. Hampton favored lowering the presumption to .08. It was both workable and fair to a defendant, he said, in view of evidence to the effect that a person is impaired at .06 or even below. Miss Howard commented that tests had shown that a person's judgment began to deteriorate at .03.

It was the committee's decision, then, to lower .15 to .10, retain DUIL as an infraction and drop the presumption to .08.

With respect to the "double barreling" question, Rep. Hampton favored the continuation of the practice of double charging with the added provision that the court may sentence only on one charge or the other. Mr. Paillette indicated that this was the law at the present time.

Chairman Cole's next question was whether the committee wanted to treat .10 as a traffic infraction or as a traffic crime on the first offense and pointed out again that under the draft it would be a

traffic infraction. Rep. Hampton said that perhaps the test for aggravated circumstances should be whether a person's driving exposed another person or property to an immediate risk or high probability of injury. His suggestion was to keep .10 and DUIL as traffic infractions unless the person's driving exposed another to the immediate risk of injury. Chairman Cole said that if that proposal were accepted, it would then be necessary to incorporate a definition of the added elements and to decide what elements should be added to .10 and to DUIL to raise those offenses to the traffic crime category.

Rep. Paulus said she would be in favor of removing the term "reckless driving" and redefining that act as "dangerous driving." If that were done, Judge Schwab's suggestion could then be followed and, other than for a first offender, the defendant could be charged with dangerous driving which might include the element of intoxication. She was concerned that the basic concept of the draft might be lost if .10 and .08 were raised to the traffic crime category.

"Double charging" was again discussed and Rep. Hampton asked what the basic opposition was to that practice. Chairman Cole replied that it centered on the plea bargaining aspect plus the fact that individuals were being charged with two crimes arising out of the same set of facts. Rep. Hampton was of the opinion that if the defendant could be sentenced only on one count, there was nothing wrong with it. It was, he said, comparable to the multiple count indictments commonly charged by district attorneys. Chairman Cole believed that the district attorney should be required to make a choice between the two charges. Rep. Hampton said he didn't mind asking him to make a choice after he had the proof, but his preference was to have DUIL as a lesser included offense of .10. He said he could not see that a policy of law was served by forcing the district attorney to choose between the two charges.

Sen. Carson said there was more reason for Rep. Hampton's position when the charge was reduced from .15 to .10 but it still seemed to him to be basically unfair to charge two counts for the same act, and it was very close to double jeopardy. Rep. Cole was in agreement with Sen. Carson and added that .10 was an identifiable crime on the basis of a scientific test and if the jury didn't believe it, the case was gone.

Rep. Hampton was not persuaded there was any vice in making DUIL a lesser included offense of .10. Chairman Cole commented that the penalty for the first offense on a .10 charge and on a DUIL charge would be the same under the proposal which destroyed the necessity for plea bargaining between the two. Mr. Paillette was of the opinion that it was illogical to say that DUIL was a lesser included offense of .10 from a legal standpoint because the greater offense would have fewer elements than the lesser offense.

Rep. Paulus asked what the difference in the outcome of the case would be if both charges were permitted. Mr. Paillette replied that the difference was that there would be two convictions instead of one.

Rep. Hampton said he understood the committee had agreed that the defendant could only be sentenced on one count. Chairman Browne asked Miss Howard how the abstracts of convictions were entered on a person's driving record under present law and was told that in some cases offenders were sentenced on both counts, but only one was entered on his driving record.

Rep. Hampton and Rep. Paulus were in agreement that if there was no Court of Appeals decision holding that a defendant could not be sentenced on both counts, that provision should be written into the statute. They believed, however, that it should be possible either to charge a person on both counts or that DUIL should be a lesser included offense of .10. Sen. Carson held the opposing view that DUIL should not be a lesser included offense of .10 and, secondly, he preferred to require the district attorney to decide on one charge based on the evidence of the Breathalyzer test.

Chairman Cole commented that this particular point would not be a part of the draft under consideration and could be settled later.

Senator Browne noted that subsection (3) of section 1 of the draft referred to violations of ORS 161.505 and 161.565 and allowed arrest for a violation. She said she would like to see the minor classifications of infractions subject to citation only and not to arrest. This matter was discussed, and it was decided that the final determination would be made after the crimes were classified.

Rep. Paulus commented that if license suspensions were going to be as effective as contemplated, it would be necessary either by resolution or by some other method to give the state police authority to make spot checks for valid licenses. Capt. Williams advised that the state police were currently conducting vehicle inspections under a federal rule at which time driver's licenses were being checked, and in some instances stops were made for the sole purpose of checking operator's licenses. As a result of that program and other stops, he said, last year over 6,000 suspended driver citations were issued.

The committee next discussed raising the penalty for refusal to take the breath test to six months, and the members were in agreement that this should be done.

Chairman Cole recalled that the suggestion had been made to raise the time period in paragraph (1) (e) of section 4 from five to ten years. Sen. Carson asked how long records were retained in the Motor Vehicles Division and was told by Miss Howard that they were kept on the computer for ten years. She commented that at the present time some of the statutes referred to convictions within a ten year period. Her recommendation was that the period be reduced to five years for all of them.

Rep. Hampton asked about convictions prior to the effective date of the proposed law and asked if it was intended to cover convictions

five years prior to the effective date of enactment. Miss Howard advised that there was a recent Attorney General's opinion directed at the question of how to count DUIL's before October 5, 1973, which said that if a person had 10 DUIL's before that date, they could only be counted as one for the purposes of the habitual offender Act. Rep. Hampton commented that this point should be cleared up in the present law. His opinion was that every conviction should be counted, and other members of the committee concurred.

Rep. Hampton next indicated that he would personally favor ten years in section 4 (1) (e) and pointed out that the provision was directed at Class A infractions, not minor infractions. Sen. Carson concurred.

Chairman Cole's next question to the committee concerned the judge's authority on suspensions, whether or not a time limit should be imposed and whether it should or should not be tied in with mandatory suspensions which were statutory at the present time. Miss Howard recommended that the judge should have discretion to impose a suspension up to a period of a year rather than 90 days. Chairman Cole asked Miss Howard if her recommendation was that the judge could invoke a mandatory suspension and in addition could add another time period up to a maximum of one year. Miss Howard confirmed this interpretation and added that whatever was adopted in the way of suspension as a result of a conviction, it should be invoked by the judge and there should be some mandatory suspension at a level higher than just 90 days in section 9 (2) (b).

Mr. Paillette remarked that his understanding of the draft was that additional time should be tied in with a rehabilitation program. Sen. Browne commented that under the draft the rehabilitation period couldn't run longer than 90 days. Mr. Paillette explained that the judge could require it to run longer under section 9 (2) (a).

Chairman Cole indicated that the committee was discussing two different things: first, that there was no apparent time limit under section 9 (2) (a) and, second, the outright authority to invoke a suspension longer than 90 days that was not tied in with a rehabilitation program. Miss Howard's recommendation was that the judge should have the prerogative to invoke a year's suspension which would be concurrent with any mandatory suspension that might be invoked by the Motor Vehicles Division. Miss Howard reiterated that MVD should not be required to send a notice when the judge was right there at the time of conviction and could pick up the license on the spot.

Senator Carson asked whether the defendant's license should be suspended during the time he was appealing the judge's decision. Rep. Hampton recalled that Judge Schwab had proposed to impose the suspension during the course of appeal, and the committee agreed to this concept. Rep. Hampton added that he would have no objection to that course so long as it was possible to get to the Court of Appeals within a two and a half month period. Sen. Carson concurred and observed that

unless such a requirement was imposed, everyone would give notice of appeal so he could keep his license that much longer.

Rep. Paulus commented that the tougher the law was on suspensions, the more people would realize that driving was a privilege and not a right. Sen. Carson said he agreed but was concerned about the rare case where a person might be suspended unjustly. One way to get around that possibility would be to have a license exchange whereby the individual's driver's license would be picked up by the judge and in exchange he would receive a license that would self-destruct in 90 days. In other words, he would have a temporary driving permit during the period of appeal. He was, he said, bothered by a provision that said conviction in a district court was tantamount to conviction without appeal. His proposal would merely postpone the inevitability of suspension unless the defendant won his appeal and would mean that the person would lose his license but he would have a reprieve in the form of a temporary permit saying he could drive for 90 days. Rep. Hampton said he would go along with Sen. Carson's suggestion with the added provision that if the defendant elected to do so, he could ask the suspension to begin running on a given date which would be earlier than the 90 day period.

Chairman Cole asked the committee if they had any thoughts about special restrictions the judge might want to impose. Rep. Hampton replied that he would trust Mr. Paillette, Miss Howard and Capt. Williams to draft something along the lines the committee had been discussing. Inasmuch as "restriction" was not intended to refer to a restriction such as requiring the driver to wear eyeglasses while driving, perhaps they could find a better term.

Chairman Browne asked if there was any possibility of requiring the Motor Vehicles Division to evaluate rehabilitation programs, for example, every ten years. Chairman Cole questioned whether such a provision should be a part of this draft inasmuch as it was directed to the right of the judge to sentence a person to attend a given program as a part of his sentence. If this draft required approval of a program, it might be competing with the authority granted the judge to send a person to a certain program, regardless of whether it was good or bad. Mr. Paillette commented that it was inevitable that some jurisdictions would have more and better programs than others. Rep. Hampton said that the guarantee of good programs was something that would have to be deferred for a time because it was unworkable at this time to require state-wide uniformity and expect Vale or Nyssa to have the same type of programs as those conducted in, for instance, Portland or Eugene.

Senator Carson called attention to subsection (1) of section 7 which said that "the district attorney shall not appear unless required by the trial judge" and asked if the subcommittee really intended for the trial judge to make that determination. Mr. Paillette said that was the subcommittee's intent. In the original draft, he said, discretion was vested in the district attorney. Rep. Marx commented

that there was no opportunity for appointed counsel in trials involving traffic infractions so if the district attorney were in court, the case would be weighted in the state's favor. He approved of the draft approach. Rep. Paulus agreed that the judge was in a better position to decide which side was weighted than was the district attorney. Mr. Paillette added that, if anything, the defendant would come out ahead in this approach. The subcommittee's expectation was that the courts would not ask the district attorney to be present except in the more complex cases.

Chairman Cole commented that it seemed to him to be unnecessary to discuss Senate Bill 403 because he understood the district attorneys were working on that area as was the District Judges' Association. Mr. Paillette remarked that whatever the district judges recommended would be limited, as was SB 403, to district courts, whereas this committee would have to be concerned with justice and city courts as well.

Chairman Cole said it was his thought, and also Judge Schwab's, that municipal and justice of the peace court appeals should go to district court as a court of record and should be handled in much the same manner as under present law where the appeals are to circuit court.

The committee adjourned at 4:15 p.m.

Appendix A
Committee on Judiciary
6/12/74

In 1972, State Police checked the status of 117 arrests for D.U.I.L. or .15 [or higher] B.A. These checks were made by visiting the District Courts in Jackson County, Klamath County, Washington County, Marion County, and Umatilla County.

Of the 117 cases with final dispositions, 33 had been given jail sentences ranging from two days to one year. Twenty-four of those sentences to jail were persons with no prior conviction for D.U.I.L. [The majority of cases are first time offenders.]

On June 6, 1974, at the request of the Committee, a random contact of several District Courts reflected the following information as to whether or not first time offenders for D.U.I.L. were being sentenced to jail:

Court	Jail for 1st D.U.I.L.
Astoria District Court	- Very rarely
Washington County	- 95% of the cases
Clackamas County	- 100% if .15 or higher 75% if under .15
Marion County	- Of 267 cases, 46 received jail 22 reduced to Reckless or Careless Dr.
Jackson County	- 34 cases, (7) 1st convictions served jail sentence
Coos County	- 34 cases, 12 served jail sentence, 10 of the 12 were for 1st conviction
Umatilla County	- Very rarely
Baker County	- Very rarely

Convictions for traffic violations on file at Motor Vehicles Division showing the increase since 1970.

All Violations

1970	1973	% Increase
341,240	421,822	23.6

D.U.I.L.

	1969	1970	1971*	1972	1973	
1st	4,588	4,547	6,452	7,972	9,766	
2nd	977	939	1,445	2,056	2,452	
3rd or more	429	380	516	819	1,020	
Total	5,994	5,866	8,413	10,847	13,238	123%

*Added emphasis on D.U.I.L. following legislation during the 1971 Session

State Police Arrests for D.U.I.L.

1969	1970	1971	1972	1973
2,730	2,635	3,332	5,142	6,467

Convictions for .15 [or higher] are down for the first five months of 1974, from 1,244 to 926. This could be related to the mandatory 6 day jail sentence.

It is interesting to note the Blood Alcohol level of some first time offenders.

.27, .21, .19, .32, .26, .18, .28, .26, .20, .23, .18, .18, .18, .32, .27, .18

Most authorities would class these persons as, "problem drinkers".

June 13, 1974

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

Absent: Senator John D. Burns

House Members Present: Representative George F. Cole, Chairman
Representative Lewis B. Hampton
Representative Robert P. Marx
Representative Norma Paulus

Delayed: Representative Stan Bunn

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

Others Present: Mr. James Dutoit, Automobile Club of Oregon
Mr. L. E. George, Traffic Engineer, Highway Division, Department of Transportation
Miss Vinita Howard, Public Information and Publications, Motor Vehicles Division
Mr. Ralph Sipprell, Liaison Engineer, Highway Division, Department of Transportation
Capt. John Williams, Traffic Division, Oregon Department of State Police

The meeting was called to order at 10:00 a.m. in Room 14, State Capitol, by Senator Elizabeth W. Browne, Presiding Chairman.

Proposed Amendments to PEDESTRIANS' RIGHTS AND DUTIES; Preliminary Draft No. 1; April 1974

Section 2. Pedestrian right of way in crosswalk where traffic not controlled by traffic control signals. Mrs. Embick explained that section 2 had been drafted in four alternatives for the committee's consideration in response to the various thoughts expressed by the members at its meeting on May 7. Alternative A set out the pedestrian's right of way on a one-way roadway without traffic control signals and would give him the right of way from one edge of the roadway to the other. It would require drivers to remain stopped until the pedestrian completed his crossing of the roadway.

Alternative B referred to a two-way roadway with no traffic control signals and would extend to the pedestrian the right of way on the half of the roadway he was traversing.

Alternative C required drivers to stop and remain stopped until the pedestrian completed his crossing, whether it be a one-way or a two-way roadway.

Alternative D again referred to an uncontrolled intersection and required a driver to yield right of way to a pedestrian crossing a highway. This proposal made no distinction between one-way and two-way streets or between marked and unmarked crosswalks.

Sen. Eivers asked if present Oregon law was similar to Alternative D and was told by Mrs. Embick that ORS 483.210 required the driver to stop when the pedestrian was on his half of the roadway or was so close as to constitute a danger if he did not stop. It was, therefore, closest to Alternative D. However, present law was more specific in that Alternative D did not specify how much right of way the pedestrian would have, and this point would probably require interpretation by the courts.

Chairman Browne asked which alternative most closely paralleled the UVC provision and Mrs. Embick replied that section 2 of the original draft was probably the closest. The committee at its last meeting had raised the question of visibility of a pedestrian on a one-way street as opposed to his visibility on a two-way street and there was some discussion that the visibility was better on a two-way street. Section 2 gave the right of way to the pedestrian regardless of whether the street was one-way or two-way.

Miss Howard indicated her preference for section 2 of the original draft. She was concerned about requiring cars to stop and remain stopped until pedestrians completed their crossings. Once the pedestrian has passed the stopped car and if no one else is coming through the crosswalk, drivers would in all probability proceed through the intersection regardless of what the law said. Mrs. Embick remarked that with the definition of "right of way" that would be incorporated into the new code, section 2 could not be interpreted to require drivers to remain stopped until the pedestrian was all the way across the street to the next curb. The change from present law was that section 2 would require the driver to stop as soon as the pedestrian entered the roadway, but he could proceed once the pedestrian had gone by.

Rep. Marx was of the opinion that the driver should be permitted to make a right turn through an intersection when the pedestrian was on the far side of the street. He was unconvinced that it was dangerous to permit a driver to make his right turn when the pedestrian was not even close to the vehicle. Furthermore, he said, this type of turn was not illegal at the present time and such a change in the law would cause an undue amount of confusion among drivers.

Mrs. Embick advised that the subcommittee's policy decision was to require all drivers to stop whereas present Oregon law and the UVC only required the driver to stop when the pedestrian was on the driver's half of the roadway. Their thought was that this would offer

protection to the pedestrian because under present law one side of the roadway is stopping for him and the other side is not.

Rep. Hampton said he was not sure that section 2 as it appeared in the draft was really different from existing law, but, unless it was stated more clearly, officers could interpret it as being a departure so that, for example, a driver making a right turn through an intersection when the pedestrian was on the far left could be subject to citation and conviction. Mr. Päillette agreed that under section 2 as drafted he could be cited for that act.

Rep. Cole said there was a question as to whether the pedestrian had the right of way for the entire distance across the road or merely for his immediate area. Chairman Browne said it appeared to be clear that having once yielded, the motorist could then proceed, but he would have to stop until the pedestrian passed him.

Rep. Hampton asked if the provision in section 4 which said that a driver could not pass a stopped vehicle would take care of the concern that the moving driver may not know or be able to see an oncoming pedestrian. Rep. Cole said section 4 would have to be interpreted to refer to all lanes so that the driver approaching from the rear would have to stop when other vehicles were stopped. In effect, it would mean "one stop, all stop."

Mr. Dutoit expressed the view that the greatest problem occurred on two-way arterial streets where there were four lanes, two in each direction. When the first two lanes of traffic stopped, the pedestrian then faced the problem of how to get the other two lanes to stop. He said he had sometimes seen people stranded in the middle of a street on two thin painted lines waiting for a break in the traffic so he could complete his crossing. Under present law drivers did not have to yield until a pedestrian entered his half of the roadway and it was difficult to enter that half with traffic whizzing by. To him, this was a more serious question than whether all cars should remain stopped once the pedestrian passed the driver.

Rep. Hampton suggested changing the rule that the middle of the road is a place of safety so that when a pedestrian was facing the oncoming traffic, those drivers would have a duty to stop.

Capt. Williams said that looking at the problem from the position of out-of-state motorists, the pedestrian right of way laws were a hodgepodge. In some states it was strictly "pedestrian beware" on the theory that the pedestrian is safest who watches out for himself and does not rely on motorists. The experience in Oregon with present law had not been bad and his recommendation was that the committee keep the law as simple as possible and as close as possible to present law to avoid confusion in the minds of the public and law enforcement. To block all traffic for a pedestrian in a crosswalk would bring on more problems and more confusion and more lack of enforcement than under present law.

Rep. Hampton repeated his earlier suggestion to require oncoming traffic to stop for a person in the middle of a roadway. Sen. Eivers said the phrase in present law, "approaching so close as to be in danger," would take care of the pedestrian in the middle of the road. Mrs. Embick said there was a problem in that area because of the Supreme Court decision which held the center line to be a place of safety. Plasker v. Fazio, 259 Or 171, 485 P2d 1075 (1971).

Chairman Browne asked if it was the consensus of the committee that present law be retained with a modification to nullify the case referred to by Mrs. Embick which made the center line a place of safety. Rep. Marx said he would prefer not to nullify the center line as a place of safety but rather to impose a duty to stop upon the driver when the pedestrian is coming across the street. Chm. Browne's position was that the center line should not be considered a place of safety because a pedestrian certainly was not safe when he was standing in the middle of the road.

Rep. Paulus read excerpts from Plasker, one of which was:

> " . . . The pedestrian has a right to expect a driver who can stop and yield to do so. On the other hand, the driver has a right to expect that a pedestrian will not move in front of his vehicle when the driver obviously cannot stop. . . This interpretation of the statute . . . imposes on both the driver and the pedestrian a continuing duty to exercise due care."

Rep. Cole said that in view of what Rep. Paulus had just read, he did not believe it was necessary to modify the decision. He understood it to say that the driver has a duty to yield if the pedestrian is on the center line if he can stop quickly enough to do so and the pedestrian likewise has the responsibility not to step out from the center line if the car is too close.

Rep. Hampton's recommendation was that once the pedestrian had the right of way over vehicles proceeding in one direction, he should also have the right of way over those proceeding in the opposite direction. There should be no question that once he has the right of way, it does not fade away when he reaches the center line. On the other hand, people should not be permitted to dart out in front of traffic.

> It was the consensus of the committee to retain present law with the modification stated by Rep. Hampton. Rep. Cole, however, was of the opinion that the case was in line with the statute. Mr. Paillette asked if it was the committee's intent that the statute should overrule the concept of the holding that the center line was a place of safety for all purposes. Under some conditions, he said, that might be a valid concept, and the committee concurred.

Section ___. Pedestrian tunnel or overhead crossing. Mrs. Embick recalled that at its last meeting the committee looked at the rules for right of way at a crossing where there was a pedestrian tunnel or overhead crossing and decided it would be appropriate to draft a section placing an affirmative duty on the pedestrian to use those devices when they were available. This section implemented that wish and while it did not set a specific distance as to how many feet away the tunnel should be to require the pedestrian to use it, it tied the distance down fairly well by means of the phrase, "serves the place where the pedestrian is crossing."

Rep. Paulus moved adoption of the section. Motion carried unanimously. Voting: Sen. Eivers, Chairman Browne. Reps. Hampton, Marx, Paulus, Chairman Cole.

Section 7. Pedestrian's use of sidewalk, shoulder and roadway edge. Mrs. Embick explained that section 7 set out specific portions of the highway where a pedestrian was supposed to travel, and it had been redrafted in the form of alternative provisions at the direction of the committee. The main issue in the committee's discussion had to do with whether the pedestrian should be on the right or the left under certain circumstances. Mrs. Embick outlined the provisions of Alternative A and, in reply to a question by Rep. Paulus, indicated it made no distinction between sidewalks in residential and rural areas. She also called attention to a proposed definition of "sidewalk" defining the term as an area intended for pedestrian use. Under that definition, she said, the area would not have to be paved to qualify as a sidewalk. Mrs. Embick then explained each of the other alternative sections she had drafted and noted that Alternative D was probably most compatible with current law.

Chairman Browne noted that under Alternative D a person would be required to walk on the left shoulder. In the circumstance where his car had broken down and he was going for help, it might be worth his life to cross the freeway to get to the left side and the crossing could be further complicated by a barrier down the middle of the freeway.

Speaking to Alternative A, Rep. Paulus said there were numerous residential areas where part of a block was paved on one side and part on the other with spaces between where there might be no sidewalk at all. If the pedestrian were required to go back and forth across the street to walk on the sidewalks, it could increase the hazard. Her concern was that if "adjacent" as used in Alternative A could be interpreted to mean either side of the street, it would increase the pedestrian's liability in this situation: His destination is at the end of the block on the right side so he decides to walk along the curb rather than crossing the street to walk on the sidewalk and crossing back again to reach his destination. At this point he is struck by a car and he would be liable because there was a sidewalk "adjacent" to his position when he was hit.

Mr. Paillette said he was sure "adjacent" would be applicable to both sides of the street and read the definition of that word from Webster: "may or may not imply contact but always implies absence of anything of the same kind in between." Chairman Browne suggested modifying the language to read "adjacent to the side of the roadway upon which he is progressing."

Capt. Williams said that Miss Howard had raised a question concerning the advisability of the approach being considered by the committee. It would permit people to make a choice as to the side they would walk on and there could be pedestrians walking on both sides of the highway which would be an unsafe situation.

Rep. Marx commented that pedestrians should not be forced to walk on the side of the road where the shoulder was narrowest or where traffic was heaviest. Capt. Williams agreed that this was the case under present law which required the pedestrian to walk on the left, but it was impossible to legislate good judgment. Somewhere along the line a procedure had to be established, and in the areas where it was unsafe for a pedestrian, he certainly would not be cited for taking the safer path.

Mr. Dutoit said that in Salem, because of topographical problems in certain areas, sidewalks were being laid on one side of the street only and these areas were creating districts and assessing the cost to both sides. It seemed inappropriate to go to all the trouble of creating districts and providing continuity of sidewalks and then have the law say that pedestrians didn't have to use them.

Mrs. Embick advised that Alternatives C and D were somewhat related to Mr. Dutoit's comments at the last meeting concerning a sidewalk on one side of Skyline Road in Salem. Alternative C said that if the adjacent shoulder area had been improved for pedestrian use, and it purposely omitted a reference to the right or left side, the pedestrian was required to proceed along that area. Alternative D was aimed at the situation where there was nothing intended for pedestrian use in the way of a sidewalk but where there was a paved shoulder for emergency parking. It conformed to present law and required the pedestrian to stay on the left.

Chairman Browne asked what effect these proposals would have on the hitchhiker and was told by Mrs. Embick there would be none. Under the proposal approved by the committee he would have to hitchhike from the shoulder; not from the roadway.

Sen. Carson asked if statistics were available as to whether pedestrians involved in accidents were hit more frequently from behind or head on. His personal opinion was that it was a great deal more dangerous to have a car approaching from the rear than from the front. Miss Howard said she did not have her statistical data with her, but in the majority of pedestrian accidents, they were hit while crossing in front of a car. The thing that frightened her about permitting

pedestrians to walk on either side of the road, she said, was that in rural areas, walking on the left side of a road was a well established practice. Should the statute suddenly permit pedestrians to walk on both sides of the road, the problem of trying to educate drivers would be tremendous. There was merit in saying that in a freeway situation, walking on the left was not a good idea, but on most rural highways, walking on the shoulder on the left side of the roadway would be safer than walking on either side.

In response to Sen. Carson's request for statistics, Capt. Williams provided information on pedestrian fatalities investigated by the State Police last year. (See Appendix B attached hereto.) He noted that 30.7% of those tested had a positive blood alcohol content.

At this point the committee recessed briefly during which time the alternatives to section 7 were discussed by Mrs. Embick and the agency representatives who were present. They determined that the only true "alternative" in the proposals presented to the committee was Alternative B. The other four sections, when taken together, formed a fairly complete package stating that the pedestrian shall use a sidewalk if one is available (A); that he may use the shoulder on either side when improved and intended for use by pedestrians (C); that he shall walk on the left on a highway without a sidewalk which has a paved shoulder area (D); and on a highway which has neither sidewalk nor shoulder, he shall walk on the left as near as practicable to the outside edge of the roadway (E). Mrs. Embick said these provisions were very close to existing law except that the pedestrian under the proposal would be required to stay off the roadway.

Rep. Hampton asked how important it was to retain "paved" in Alternative C. Mrs. Embick said it could be deleted. She further explained that Alternative C was intended to refer to a highway with a sidewalk. The language as drafted was an attempt to refer to a shoulder that had been widened for use by pedestrians, an example being an improved graveled strip on a rural highway installed for pedestrian use. Chairman Browne explained that if "paved" were retained in the section, there was no intent to circumvent the definition of "sidewalk" which included either a paved or an unpaved area.

Rep. Hampton asked if "paved" should be retained in Alternative D to be parallel with C. Mrs. Embick replied that Alternative C was intended to mean that just because there was pavement for use by vehicles, the pavement was not a sidewalk intended for pedestrians. In other words, where there was a paved shoulder, such as on a freeway, it was not placed there specifically for pedestrian use and the pedestrian in that case should stay on the left. Rep. Hampton said it would do no harm to retain "paved," providing the commentary made clear that it referred to an area with a paved shoulder but no paved sidewalk.

Rep. Hampton moved the adoption of Alternatives A, C, D and E to comprise one section. Motion carried unanimously. Voting: Senators Carson, Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

Section 16. Blind pedestrian in roadway with traffic control signals. Mrs. Embick explained that section 16 had been redrafted to use the language of the present code and to correct the draftsmanship in the original version.

Rep. Hampton asked if "vacated the roadway" as used in subsection (1) had a different meaning than "until the pedestrian has passed or is no longer an immediate hazard." Both Mr. Paillette and Sen. Carson believed there was a difference between the two. Mr. Paillette was of the opinion that "vacated" was purposely more strict as far as the motorist was concerned, and this was desirable when talking about a blind pedestrian.

Rep. Cole moved adoption of the redraft of section 16. Motion carried unanimously. Voting: Sens. Carson, Eivers, Chairman Browne. Reps. Bunn, Hampton, Paulus, Chairman Cole.

Proposed amendments to TURNING AND MOVING; SIGNALS ON STOPPING AND TURNING; Preliminary Draft No. 1; April 1974

Section 5. Signals by hand and arm or by signal lamps. Mrs. Embick explained that section 5 of the Turning and Moving Article had been redrafted to place an affirmative duty on the driver to activate his signal lamps. The exceptions in subsection (2) would permit him to use a hand and arm signal only in daylight hours when he was driving a vehicle of the dimensions stated in paragraph (b) of that subsection.

Miss Howard said she believed the UVC equipment section made a change in the distance requirement stated in draft paragraph (a) of subsection (2) relating to "sufficient light to discern clearly persons and vehicles." Mr. Paillette checked UVC s 12-201 and noted that the distance was 1,000 feet.

Rep. Bunn asked if agricultural vehicles such as tractors would fall under these provisions and was told by Mrs. Embick that generally that type of vehicle would be exempt.

Sen. Eivers asked if section 5 would mandate turn signals on all cars and Mrs. Embick explained that, in accordance with the committee's decision at its last meeting, the provision would keep cars off the highway at night if they did not have electric signals.

Rep. Bunn voiced his opposition to requiring all of the older cars to be equipped with turn signals. Rep. Marx and Sen. Eivers concurred, adding that the older cars would, in time, phase themselves out. Other members pointed out the hazards involved in allowing hand signals at night because of the likelihood that other drivers would not see the

signal. There was further discussion of the subject and final action on section 5 was deferred.

The committee recessed for lunch and reconvened at 1:30 p.m. with the same persons in attendance as at the morning session.

Proposed amendments to SPECIAL STOPS REQUIRED; Preliminary Draft No. 1; May 1974

Section 2. Certain vehicles must stop at all railroad grade crossings. Section 3. Railroad grade crossings exempt from special stopping rule. Mrs. Embick explained that sections 2 and 3 appeared in the original draft as one long section and for more efficient indexing it had been redrafted into proposed sections 2 and 3 with no substantive changes. At the last meeting, she said, there was some discussion as to whether the provisions now set out in section 3 would apply to taxicabs traversing a railroad grade crossing. Subsection (2) of section 3 incorporated a provision in current law (ORS 483.228 (3)) to answer that question. Under present law a taxi is not required to stop at railroad crossings nor would it be under this section. It would require motor busses to stop but not taxis because the definition of "motor bus" excludes taxis. Mr. George advised that the Highway Division had been operating on the interpretation that ORS 483.228 (3) did not apply to taxis even though they carried passengers for hire.

Mr. George then pointed out that section 3 (1) (c) referred to the marking by the Public Utilities Commissioner of railroad crossings where stops need not be made. Normally, he said, it was the Highway Division that posted those crossings. The same was true with respect to subsection (2) of section 3.

Mrs. Embick advised that the section had been drafted in this manner because of the amendment made by the 1973 legislature to ORS 483.040 (3) which said, "The Public Utility Commissioner is vested with exclusive jurisdiction over the installation of protective devices at railroad-highway grade crossings." A problem therefore existed as to how the Highway Division could be granted this authority.

Rep. Cole said that as he recalled, the committee had voted to include in this section the requirement that church school busses must stop at railroad crossings. Mrs. Embick advised that this provision was considered in conjunction with the Speed Restrictions Article. Rep. Hampton asked if the definition of "school bus" was broad enough to include church school busses and received a negative reply from Mrs. Embick.

The committee was unanimously agreed that church school busses should be included in section 2 to require them to stop at all railroad grade crossings. The addition was ordered by Chairman Browne.

Miss Howard was concerned about the use of the term "church school bus" because it was not specifically defined. She suggested that it be referred to as "a motor bus carrying passengers for hire or a bus used by a religious organization for the transport of passengers" rather than "church school bus." Mrs. Embick called attention to the next amendment to be discussed by the committee in section 9 of the Speed Restrictions Article wherein "passenger transport vehicle" was defined in paragraph (1) (b) to include "a bus operated for transporting children to and from church or an activity or function authorized by a church." That language, she said, would be incorporated into the amendment just approved by the committee.

Rep. Cole asked if the draft would require airport limousines to stop at railroad crossings and was told by Mrs. Embick that it would not.

Rep. Hampton questioned the use of the term "street railway tracks" as used in section 3 (1) (a). Mrs. Embick explained that the phrase appeared in present law and, while it was probably obsolete at the present time, there might be street railway tracks in the future.

Rep. Bunn moved the adoption of sections 2 and 3 as amended. Motion carried unanimously. Voting: Sen. Eivers, Chairman Browne. Reps. Bunn, Hampton, Marx, Paulus, Chairman Cole.

Proposed Amendments to SPEED RESTRICTIONS; Preliminary Draft No. 3; April 1974

Section 9. Maximum speeds for motor trucks and passenger transport vehicles. Mrs. Embick pointed out that the definition of "passenger transport vehicle" in subsection (1) (b) would include busses transporting children to and from church activities, as discussed earlier by the committee, and the speed limits for this type of bus would be 55 mph under subsection (3). Under subsection (6) all vehicles covered by section 9 would be subject to the basic speed rule, notwithstanding any of the maximum speed provisions in the section.

Chairman Browne asked if paragraph (b) of subsection (2) would be applicable to highways such as Highway 58 and was told by Mr. George that the Willamette Highway was an Oregon primary highway not on the interstate system and would therefore be subject to this provision. Mrs. Embick explained that the provision was in present law (ORS 483.116 (4)) and would apply to that type of highway unless it was posted for a higher speed. Chairman Browne said trucks were traveling faster than that at the present time, and she could see no reason why they should not.

Miss Howard recalled that sometime ago there was a discussion about raising the maximum speed for trucks and the trucking associations at that time preferred to leave the speed at 50 mph. Mr. George added that the Teamsters had objected because the drivers were paid on an

hourly basis and they didn't want them to travel at increased speeds. Chairman Browne pointed out that there was testimony to the contrary duringthe gas shortage that trucks operated more efficiently at higher speeds, and Mr. George agreed there was certainly a conflict in testimony in that respect. Mr. Sipprell advised that there was also the "splash and spray" problem, and tests had proven that the amount of splash and spray was related to speed which was another reason the truckers preferred the lower speed.

Mr. Paillette stated that in testimony before the subcommittee no one had mentioned increasing truck speeds, and if the committee was considering making a change, they should solicit some testimony from the trucking associations. Rep. Bunn commented that the rule of thumb seemed to be that trucks usually traveled a little beyond the speed limit and if the limit were increased, they would go faster still. He believed everyone was pretty well satisfied with the existing limit.

Capt. Williams advised that the present 55 mph speed limit applied to all vehicles including trucks on other than interstate highways. If and when that speed limit ended, there would undoubtedly be considerable testimony from truckers wanting to keep the speed limit at 55.

Sen. Eivers said that if trucks were permitted to travel at 55 mph under the emergency speed law, he could see no reason to change it back to 50; they were going 60 and 65 at the present time. Chairman Browne and Rep. Hampton indicated their willingness to set the speed at 55.

Rep. Bunn said he would vote for an amendment to 55, but he was nevertheless concerned about raising it without any indication from the truckers that they wanted the speed increased. Rep. Hampton said he would also vote for a change to 55 because he was sure that when the bill reached the legislature, the truckers would make their views known.

Chairman Browne asked if there was any objection to revising the speed in paragraph (b) of subsection (2) to 55 mph. Rep. Cole expressed the only objection. The amendment was adopted.

Rep. Hampton moved the adoption of section 9 as amended. Motion carried unanimously. Voting: Sen. Eivers, Chairman Browne. Reps. Bunn, Hampton, Paulus, Chairman Cole.

Rep. Hampton left the meeting at this point.

STOPPING, STANDING AND PARKING; Preliminary Draft No. 1; June 1974

Section 1. Stopping, standing or parking outside business or residence districts. Mrs. Embick explained section 1 as set out in the commentary to that section.

Rep. Bunn moved adoption of section 1. Motion carried unanimously. Voting: Sen. Eivers, Chairman Browne. Reps. Bunn, Paulus, Chairman Cole.

Section 2. Stopping, standing or parking prohibited in specific places. Mrs. Embick outlined the provisions of section 2 and noted that it contained a few departures from existing law. One appeared in subsection (1) (g) which contained a UVC restriction against parking on a bridge. Some parking was currently permitted on bridges in Oregon and it was the subcommittee's thinking that those places could be posted to continue that practice. The same was true with respect to parking on a controlled-access highway as set out in subsection (1) (i). This provision would preclude any parking along a freeway unless the vehicle were disabled.

Rep. Cole commented that the proposed definition of "sidewalk" would include a graveled shoulder when it was intended for use by a pedestrian. He noted that subsection (1) (b) prohibited parking on a sidewalk and there were thousands of roads without sidewalks but they had shoulders on which the public could walk and also on which cars could park. Mrs. Embick noted that ORS 483.364 (9) also prohibited parking on a sidewalk. Rep. Cole said that perhaps the problem could be resolved when the committee considered the definition of "sidewalk" by narrowing it down to include only shoulders intended for the use of pedestrians. Mr. Paillette was of the opinion that while it would solve this particular problem to narrow the definition in that manner, it might create other problems.

Rep. Cole next pointed out that subsection (2) (c) prohibited parking within 20 feet of a crosswalk at an intersection which would eliminate a number of parking spaces in downtown areas. Mrs. Embick called attention to subsection (4) of ORS 483.364 which had the same type of restriction, "within 25 feet from the intersection of curb lines, or, if none, within 15 feet of the intersection . . . within a business or residence district . . . . "

Sen. Eivers was of the opinion that the distance might well be increased to 30 feet because it was difficult for a pedestrian to see the oncoming traffic when his view was blocked by parked cars. The following paragraph, he noted, required 30 feet, and he believed they should be consistent.

The committee discussed the fact that most cities permitted parking closer than 20 feet to an intersection and to do otherwise would cause a marked reduction in the number of parking spaces in a city block. Mr. Dutoit pointed out that the revenue per parking meter in downtown areas was figured at $10,000 per year in retail sales.

Mr. George commented that the restriction of sight distances at intersections in urban areas was one of the worst traffic hazards. The two major types of accidents were rear end collisions and right angle collisions, both of which could be directly traced to restricted sight

distances. Twenty feet, he said, would take out one average parallel parking stall and probably two angle parking spaces. Sen. Carson asked Mr. George if his recommendation went only to nonsignalized crosswalks and was told that his remarks were directed to every major intersection, controlled or not.

Discussion of section 2 was interrupted at this point by the special order of business scheduled at 3:00 p.m. When that was concluded, the committee resumed consideration of whether municipalities should be permitted to designate parking spaces closer than a given number of feet to an intersection.

Mrs. Embick explained that cities currently had control of parking within city limits, except on state highways, under ORS 483.350. That section would be included in the Article on Powers of State and Local Authorities. It was not contemplated it would change the effect of the existing law and would still allow this kind of local authority.

Rep. Cole asked if the authority extended to counties and was told by Mr. Paillette that ORS 483.350 was drawn in terms of incorporated cities and towns. Mrs. Embick advised that at the last meeting of the subcommittee when this was discussed, it was proposed to amend the section to allow counties to regulate parking on county roads which are not state highways or not a part of the secondary system under the control of the State Highway Division.

Rep. Cole suggested that if local control was to be allowed, perhaps there should be a subsection added to section 2 calling attention to that exception. The committee appeared to favor this proposal, but no vote was taken on the matter.

Capt. Williams stated that it had recently been called to his attention that in areas where there were parking meters close to intersections, it caused an extremely hazardous situation when campers and other high vehicles parked there. Regardless of the consequence of losing parking meters in various areas, he said he would like to see the committee recommend that this type of vehicle be prohibited in those areas. This possibility was discussed but no affirmative action taken.

Rep. Cole moved the adoption of section 2. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne. Reps. Bunn, Marx, Paulus, Chairman Cole.

SPECIAL ORDER OF BUSINESS: Temporary Leaves for Inmates of Oregon Penal and Correctional Institutions

Following a recess, Chairman Browne explained that the Judiciary Committee had been requested to examine the statutes relating to temporary leaves for inmates by the President of the Senate. She said she had received a request to hold an executive session in order to

furnish the committee with certain additional information. Unless the vote was unanimous that all members would participate in the executive session, she said she did not plan to proceed with it and the committee would then go on with the traffic code revision. There was no unanimity among the members on this subject and the committee returned to the draft.

Sen. Eivers left the meeting at this point.

STOPPING, STANDING AND PARKING; Preliminary Draft No. 1; June 1974

Section 3. Parking distance from curb or edge. Mr. George asked what purpose was served by the opening phrase of subsection (2), "Except where angle parking is indicated," inasmuch as there could be angle parking on both sides of a one-way street. Mrs. Embick advised that the intent was to make the provision parallel to subsection (1) which referred to parking on the right whereas subsection (2) dealt with parking on either side. Sen. Carson suggested that both subsections begin with the phrase, "Where parallel parking is required,". It was, he said, impossible to park 12 inches from a curb when angle parking.

After further discussion, the committee agreed to amend section 3 by beginning subsections (1) and (2) with the phrase, "Where parallel parking is permitted,".

Sen. Carson moved the adoption of section 3 with the above modification. Motion carried without opposition. Voting: Sen. Carson, Chairman Browne. Reps. Bunn, Marx, Paulus, Chairman Cole.

Section 4. Disabled vehicle exception. Mrs. Embick explained the purpose of section 4 as outlined in the commentary to that section.

Rep. Paulus asked if another section made provision for a situation where a driver pulled his car head-on against a disabled car parked alongside the highway for the purpose of using jumper cables to start the disabled vehicle.

Sen. Carson said many serious accidents had occurred when a "good Samaritan" had not moved his vehicle out of the way of other traffic while rendering assistance. Mrs. Embick advised that there was no specific provision permitting a person to stop on the roadway to offer assistance. Sen. Carson said he was not sure there should be and asked Capt. Williams for his opinion.

Capt. Williams said that in cases where someone was legitimately attempting to help someone, he would not be cited by an officer. His recommendation was that a provision permitting this type of practice should not be a part of the statutes.

Rep. Paulus asked if this draft contained a provision permitting a person to stop at the scene of an accident to help someone. Mrs. Embick

replied that there was a provision permitting a person to stop on the shoulder of the roadway so long as he left space for other traffic to pass.

Rep. Cole asked Capt. Williams if there was a provision in current law for removing vehicles from the highway that had been there for a given number of hours. Capt. Williams advised that there was an abandoned vehicle law that permitted cars to be picked up after 24 hours and required them to be picked up after five days. Mrs. Embick added that the subcommittee had looked at that provision and decided it did not fall under the Rules of the Road as such, and it would therefore not be included in this draft.

Rep. Cole questioned the meaning of "temporarily" as used in the phrase, "temporarily leaving." On a week-end, he said, it might be necessary to leave a disabled vehicle 48 hours or more before a repair service would be available and he asked if the State Police would haul the car off in that length of time. Capt. Williams replied that the State Police usually moved pretty rapidly to get cars off the road for two reasons: first, they were a hazard to other traffic and, particularly on the freeway system, they could be stripped overnight. Their first attempt, however, was to locate the owner and get him to move it or to find out why he left it there.

Sen. Carson asked if it would be advisable for Oregon to adopt some sort of a uniform emergency signal such as an open hood or a handkerchief tied to the aerial. Capt. Williams said that the State Police had mixed feelings on that subject. Females were very susceptible to troublemakers when they put up a disabled signal.

Rep. Bunn moved the adoption of section 4. Motion carried unanimously with the same six members voting as voted on the previous motion.

Section 5. Obstruction of roadway by wrecker or tow car. Mrs. Embick explained section 5 and advised that it was not in the UVC but was in present Oregon law. She noted that the reference in subsection (3) should be to subsection (1) of ORS 483.423 rather than subsection (d).

Rep. Paulus moved the adoption of section 5 with the correction noted by Mrs. Embick. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne. Reps. Bunn, Marx, Paulus, Chairman Cole.

Section 6. Police officers authorized to move vehicles. Following Mrs. Embick's explanation of section 6, Capt. Williams commented that under the abandoned vehicle law the State Police had authority to take a vehicle into custody, tow it off the road and a lien could be placed against it to assure that the wrecking company would receive its towing and storage fees. However, when a vehicle was creating a hazard, in the situation referred to in section 6 where it was parked in

violation of law, the present law only gave the officers authority to move the vehicle to a safe location. From a practical standpoint, the officer sometimes had to call a wrecker to move the vehicle and wreckers were not much inclined to move a vehicle a short distance when the owner was not there to pay him. What they were doing, therefore, was towing the car into the garage and when the owner came to get his car, he either paid the tow bill or he didn't get his car back. The State Police attempted to notify the owner as soon as possible that the vehicle had been towed in as a hazard and where it could be located. If the owner didn't reclaim it, it was treated as a vehicle abandoned on private property and the sheriff had authority to process the claim. It was, he said, a backdoor approach to the problem. In response to a question by Rep. Cole, Capt. Williams said the State Police had not yet been sued for payment of tow charges, but such a case was pending in Lincoln County at the present time. He suggested the committee consider giving more authority to the police officer in section 6 by expanding the phrase, "move it to a position permitted under section 1, 2 or 3 . . . . "

Chairman Browne said, and Senator Carson agreed, that it was unfair to permit a car to be moved away when it ran out of gas and the owner, when he returned with gas, would find his car gone and in addition find that he owed a $20 tow bill and sometimes $25 a day storage on top of that.

Capt. Williams said that some state police cars had a bumper pusher arrangement whereby vehicles could sometimes be moved out of a hazardous position, and usually when they were a hazard, they needed to be moved immediately. What the problem amounted to, he said, was that there were no funds to pay for safeguarding the highway by moving vehicles that are traffic hazards. It was not difficult to understand the wrecker's position because he didn't want to perform this service without payment and, once the vehicle was moved to a safe location, his chance of getting his money was slim.

In response to Chairman Browne's request for a specific recommendation, Capt. Williams said the language that would help most would be something to permit the car to be moved to a garage, if necessary. Chairman Browne said that wouldn't take care of the driver who had gone for gas. Capt. Williams admitted it was a difficult problem because the law permitted him to leave his car if it would move no further. The question was who paid for the wrecker, bearing in mind that the State Police had the responsibility to clear the highway.

Chairman Browne remarked that it was the decision of the State Police to call the wrecker in the first place and if they believed the state should pay the charge, it was a question that should be taken to Ways and Means.

Rep. Marx asked if it would be possible to issue a citation for the amount of the tow bill. Sen. Carson said he supposed it would be possible to provide that a ticket could be issued for obstructing

traffic with the fine set at an amount based on a reasonable state-wide average tow bill, and it would cancel out the cost.

Sen. Carson commented that the problem was not unique to cars that ran out of gas or were disabled. Sometimes when an officer stopped a motorist and charged him with DUIL, if the car was not halted in a safe place, they called a wrecking company and impounded the car. Capt. Williams pointed out that any time the police took a car into custody where there was a crime involved, the district attorney was implicated and there was less of a problem in those cases.

Sen. Carson proposed to pass section 6 in its present form with the understanding that the staff would attempt to find a solution and bring the matter back before the committee because he believed it was a problem they were going to have to face sooner or later. Mr. Paillette agreed it was a legitimate problem from the standpoint of both the motorist and the police.

Sen. Carson advised that the San Francisco courts had been uniformly refusing to require owners to pay towing charges under the circumstances outlined by Capt. Williams. The result was that there were a lot of abandoned or illegally parked vehicles in downtown San Francisco. If Oregon residents started going to court when their cars were towed away and the Oregon courts ruled as did the San Francisco courts, then the towing companies would stop picking up the cars and there would be a serious problem.

Sen. Carson moved the adoption of section 6. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne. Reps. Marx, Paulus, Chairman Cole.

Section 7. Parking vehicle on state highway for vending purposes prohibited. Mrs. Embick advised that there was nothing comparable to section 7 in the UVC, but it was similar to a previous provision in the proposed code which prohibited persons from standing on the highway right of way to sell or solicit business or to solicit guarding cars.

Rep. Paulus moved the adoption of section 7. Motion carried unanimously with the same five members voting as voted on the previous motion.

Next Meeting

The next meeting of the Subcommittee on Revision was scheduled for July 2 and a meeting of the Subcommittee on Adjudication was set for June 25, 1974.

The meeting was adjourned at 4:30 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Committee on Judiciary

Appendix B
Committee on Judiciary
6/13/74

Case Number	Month	
#19547	January	Victim pushing unlighted motorcycle at night on rural two lane highway in unlighted area; struck from behind. Victim's age: 14 years — Blood alcohol - no test Driver's age: 54 years — Blood alcohol - no test Contributing Factors: Darkness Victim's age Victim's action
#20065	January	Victim standing in traffic lane at night on rural two lane highway in unlighted area wearing dark clothing. Victim's age: 77 years — Blood alcohol - no test Driver's age: 35 years — Blood alcohol - no test Contributing Factors: Darkness Dark clothing Victim's age
#20074	January	Victim (Flagman) in construction area during daylight on shoulder of highway; struck from behind by spare tire that fell from slow moving truck. Victim's age: 71 years — Blood alcohol - no test Driver's age: 43 years — Blood alcohol - no test Contributing Factors: None
#20839	March	Victim crossing two lane rural highway during daylight; struck by vehicle. Victim's age: 12 years — Blood alcohol - no test Driver's age: 24 years — Blood alcohol - .05% Contributing factors: Victim's age Drinking driver Driver's speed Driver with poor driving record

Case Number	Month	
#20980	March	Victim "jogging" along shoulder, with traffic, on rural two lane highway, daylight. Jogged into traffic lane and struck by vehicle. Victim's age: 12 years Blood alcohol - no test Driver's age: 42 years Blood alcohol - no test Contributing Factors: Victim's age Victim's action
#21048	March	Victim crossing four lane highway in rural area, daylight, struck by vehicle. Victim's age: 7 years Blood alcohol - no test Driver's age: 49 years Blood alcohol - no test Contributing Factors: Victim's age
#21201	March	Victim walking at night, against traffic, in traffic lane of four lane highway "against" traffic; struck by vehicle. Dressed in dark clothing and on crutches. Victim's age: 58 years Blood alcohol - no test Driver's age: 58 years Blood alcohol - no test Contributing Factors: Night Dark clothing Drinking driver
#21276	April	Victim crossing two lane highway in small community, daylight, struck in crosswalk by vehicle. Victim's age: 80 years Blood alcohol - .00% Driver's age: 26 years Blood alcohol - No test Contributing Factors: Victim's age
#21317	April	Victim crossing two lane rural highway, daylight; struck by vehicle. Victim's age: 4 years Blood alcohol - no test Driver's age: 39 years Blood alcohol - no test Contributing Factors: Victim's age

Case Number	Month	
#21408	April	Victim crossing two lane rural highway, daylight, struck by vehicle. Victim's age: 80 years — Blood alcohol - no test Driver's age: 47 years — Blood alcohol - no test Contributing Factors: Victim's age
#21744	April	Victim crossing two lane rural highway, daylight; struck by vehicle. Victim's age: 3 years — Blood alcohol - no test Driver's age: 16 years — Blood alcohol - no test Contributing Factors: Victim's age Driver's age
#22397	May	Victim crossing two lane rural highway, daylight; struck by vehicle. Victim's age: 7 years — Blood alcohol - no test Driver's age: 19 years — Blood alcohol - no test Contributing Factors: Victim's age Driver's speed
#22745	June	Two pedestrians leaving tavern and crossing two lane rural highway at night; struck by two vehicles. First vehicle struck both pedestrians. Second vehicle ran over one pedestrian. Victim's age: 38 — Blood alcohol - .22% Driver's age: 23 — Blood alcohol - no test #2 Driver's age: 60 — Blood alcohol - no test Contributing Factors: Victim intoxicated Darkness

Case Number	Month	
#22786	June	Victim working on highway in construction area, struck by truck when brakes failed, daylight, rural freeway. Victim's age: 62 years — Blood alcohol - .00% Driver's age: 35 years — Blood alcohol - no test Contributing Factors: Defective equipment Victim's age
#23750	July	Victim hitchhiking at night, in traffic lane of freeway (on entrance ramp), struck by vehicle entering freeway, lighted intersection. Victim's age: 25 years — Blood alcohol - no test Driver's age: 36 years — Blood alcohol - no test Contributing Factors: Entrance Ramp Darkness
#24181	August	Victim playing in yard during daylight, ran into street, a rural 2-lane highway, and struck by vehicle. Victim's age: 2 years — Blood alcohol - no test Driver's age: 29 years — Blood alcohol - no test Contributing Factors: Victim's age Victim's action
#24725	August	Victim crossing 4-lane rural highway at night, struck by vehicle in center lane. Victim's age: 63 years — Blood alcohol - no test Driver's age: 43 years — Blood alcohol - no test Contributing Factors: Victim's age Darkness

Case Number	Month	
#25114	September	Vehicle stalled in southbound traffic lane at night, victim-driver flagged down a northbound truck that stopped opposite victim's vehicle. A southbound vehicle could not see disabled vehicle because of truck headlights, swerved to miss stalled vehicle and struck victim as victim ran in same direction. Victim's age: 23 years — Blood alcohol - no test Driver's age: 17 years — Blood alcohol - no test Contributing Factors: Stalled vehicle Darkness Oncoming lights
#25127 #25128	September	Victim ran in front of vehicle at night on four-lane highway in rural area. Was knocked down by vehicle, arose and attacked vehicle with club. Vehicle left and victim then walked into side of passing truck and was killed. Victim's age: 25 years — Blood alcohol - .00% Driver's age: #1 24 years — Blood alcohol - no test #2 33 years — Blood alcohol - no test Contributing Factors: Darkness Victim's behavior
#25489	September	Victim, in group of pedestrians, in daylight, adjacent to two-lane rural highway, suddenly stepped into path of vehicle and struck. Victim's age: 16 years — Blood alcohol - no test Driver's age: 21 years — Blood alcohol - no test Contributing Factors: Victim's action
#25759	October	Victim chasing animal across two-lane rural highway, in daylight, ran into side of vehicle. Victim's age: 70 years — Blood alcohol - .00% Driver's age: 72 years — Blood alcohol - no test Contributing Factors: Victim's age Victim's action Driver's age

Case Number	Month	
#25737	October	Victim (Hitchhiking) crossing four lane highway at night, struck by vehicle in east lane. Victim's age: 22 years Blood alcohol - .39% Driver's age: 53 years Blood alcohol - no test Contributing Factors: Darkness Victim intoxicated
#25770	October	Victim crossing four lane highway at night; struck by vehicle. Victim's age: 61 years Blood alcohol - .18% Driver's age: 19 years Blood alcohol - no test Contributing Factors: Darkness Victim intoxicated
#25817	October	Victim wearing dark clothing and standing in traffic lane of two lane highway at night; struck by vehicle. Victim's age: Unknown Blood alcohol - .00% Driver's age: 46 years Blood alcohol - no test Contributing Factors: Darkness Dark clothing
#26106	October	Two pedestrians crossing four lane highway, at night in business area; struck by vehicle, one killed. Victim's age: 69 years Blood alcohol - .00% Driver's age: 63 years Blood alcohol - no test Contributing Factors: Darkness Victim's age Driver's age

Case Number	Month	
#26236	October	Victim assisting disabled vehicle on four lane freeway at night, struck by vehicle approaching from rear with driver blinded by lights from oncoming traffic. Victim's age: 48 years — Blood alcohol - no test Driver's age: 36 years — Blood alcohol - no test Contributing Factors: Darkness Stalled vehicle Oncoming lights
#26457	October	Unidentified victim struck on shoulder of rural four lane highway in darkness. Driver swerved to shoulder to avoid deer in traffic lane. Victim's age: 20 years — Blood alcohol - .00% Driver's age: 29 years — Blood alcohol - no test Contributing Factors: Darkness Driver drinking
#26407	November	Victim walking at night during rainstorm in traffic lane of rural two lane highway; struck by vehicle moving same direction. Victim wearing dark clothing. Victim's age: 16 years — Blood alcohol - no test Driver's age: 18 years — Blood alcohol - no test Contributing Factors: Darkness Rain Dark clothing Victim's action Driver's speed
#26489	November	Victim walking in traffic lane of rural two lane highway at night in light rain, struck by vehicle. Victim's age: 47 — Blood alcohol - .00% Driver's age: 17 — Blood alcohol - no test Contributing Factors: Darkness Rain Dark clothing Victim's action

Case Number	Month	
#26970	December	Victim in dark clothing crossing street at night, near intersection with four lane rural highway, struck by vehicle turning from highway onto street. Victim's age: 48 years Blood alcohol - .00% Driver's age: 28 years Blood alcohol - no test Contributing Factors: Darkness Dark clothing Intersection
#27301	December	Victim standing on shoulder of four lane rural highway at night near disabled vehicle, struck by truck with defective brakes that swerved to miss disabled vehicle. Victim's age: 17 years Blood alcohol - no test Driver's age: 36 years Blood alcohol - no test Contributing Factors: Darkness Disabled vehicle Defective equipment
#27421	December	Victim in dark clothing, struck at night in traffic lane of four lane rural highway. Victim's age: 45 years Blood alcohol - .30% Driver's age: 31 years Blood alcohol - no test Contributing Factors: Darkness Dark clothing Victim intoxicated

1. 59.3% During Darkness (19)

2. 53.1% Age Factor (17)
   25.0% - 14 years and under (8)
   28.1% - Over 60 Years (9)

3. 30.7% of Tested Victims had Positive B. A. (4)
   (13 tested) .18%
   .22%
   .30%
   .39%
   (12.5% of all victims)

4. 28.1% Crossing Two Lane Highway (9)

5. 15.6% Crossing Four Lane Highway (5)

6. 21.8% of Victims and Drivers Known Alcohol
   (Three drivers - Four pedestrians)

7. 6.25% Known to be Hitchhiking (2)
   18.75% Possibly Hitchhiking (6)

8. Of 19 victims not tested, 12 were under 21 years

9.* 15.6% on Interstate System (5)