Tape 21 - Side 2 - 910 to end
Tape 22 - Side 2 - 729 to end
Tape 24 - Side 1 - 1 to end
Side 2 - 218 to 682

COMMITTEE ON JUDICIARY

Sixth Meeting, September 24 and 25, 1974

Minutes

September 24, 1974

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

Excused: Senator George Eivers

House Members Present: Representative Robert P. Marx, Chairman
Representative Lewis B. Hampton

Excused: Representative Stan Bunn
Representative Norma Paulus

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

Others Present: Mr. Jack Frost, Linn County District Attorney, representing Oregon District Attorneys' Association
Mr. L. E. George, Traffic Engineer, Department of Transportation
Mr. W. Michael Gillette, Solicitor General, Department of Justice
Miss Vinita Howard, Public Information and Publications, Motor Vehicles Division
Hon. Herbert M. Schwab, Chief Judge, Court of Appeals
Hon. Wayne Thompson, Municipal Judge, Salem
Capt. John Williams, Traffic Division, Oregon Department of State Police

Agenda: September 24, 1974

Agenda (Cont'd): GRADING OF OFFENSES

September 24, 1974

The meeting was called to order at 10:45 a.m. in Room 14 of the State Capitol by Representative Robert Marx, Presiding Chairman.

Approval of Minutes of Meeting of August 29 and 30, 1974

Sen. Browne moved to approve without revision the minutes of the meeting of the full committee on August 29 and 30, 1974. Motion carried unanimously.

CLASSES OF OFFENSES; DISPOSITION OF OFFENDERS (Amendments drafted as a result of committee action at meeting of 8/30/74)

Section 8. Counsel for state and defendant. Mr. W. Michael Gillette and Mr. Jack Frost were present to introduce proposed amendments for the committee's consideration.

Mr. Gillette first distributed a proposal, prepared by Mr. John Moore of the Department of Justice, to amend section 8 of the Article on Classes of Offenses. A copy is attached to these minutes as Appendix A. He called attention to the provisions of ORS 8.660 which statutorily obligated the district attorney to attend the terms of all courts having jurisdiction of public offenses within his county. Similarly, ORS 9.320 required the state to appear by attorney in all actions to which it was a party. Under this latter statute the trial court would not have jurisdiction to hear a matter when the district attorney was not present unless the state were somehow relieved of the obligation of appearing by attorney. The phrase, "Notwithstanding any other provision of law," in the proposed amendment would make allowance for these two contingencies. The amendment further provided a relatively restricted procedure whereby a defendant could appear by counsel by filing notice of such appearance not less than 10 days prior to the time set for trial.

Mr. Paillette pointed out that subsection (2) of the amended section 8 which he had prepared following the committee's August meeting dealt with the last matter discussed by Mr. Gillette and required that the district attorney be given "timely notice" whereas the Attorney General's recommendation stated a specific time limitation (10 days) plus a provision that would bar appearance by counsel when notice was not given.

Mr. Paillette asked Mr. Gillete if he was satisfied that there would be no constitutional problem with respect to right to counsel under his proposal and was told that if the appellate courts were satisfied that this was a civil proceeding, there would be no constitutional problem.

Sen. Browne pointed out that under the Attorney General's proposal the district attorney could appear whether or not there was counsel for the defense, and both sides would be required to give notice.

Sen. Carson observed that the legislature was quite critical of bills beginning, "Notwithstanding any other provision of law." He urged that specific ORS sections be inserted to replace that phrase. Mr. Paillette suggested it would be preferable to correct the nonconforming sections by amending them rather than by a blanket disclaimer in section 8. ORS 9.320, he said, could be amended to conform in the same manner as he had amended ORS 8.660.

The committee further discussed the fact that the proposed amendments to section 8 would change the basic policy decision made by the committee at its meeting on August 30 with respect to the appearance by the district attorney. Some members objected to the specific requirement for 10 days notice and were apprehensive about the proscription in paragraph (b).

Judge Schwab pointed out that in terms of passage of the vehicle code, anything which tended to foreclose the right of lawyers to appear could invite unneeded opposition, and he believed opponents to this plan should not be given an unnecessary avenue of attack on the whole body of work the committee had done for the comparatively minor purpose of saying a defendant had no right to counsel unless he went through certain motions. Regarding the 10-day time limitation, Judge Schwab said he envisioned the day when traffic infractions would be routinely heard and disposed of in less than 10 days after arrest. He indicated his preference for the amendments prepared by Mr. Paillette over those offered by the Attorney General's office.

Rep. Hampton requested Judge Schwab's opinion of subsection (1) of section 8. Judge Schwab replied that he believed it was a necessary provision. Mr. Gillette said he would agree entirely. The Federal Constitution did not obligate the state to provide counsel at public expense and, as he understood Stevenson v. Olson, neither was the state obligated by the State Constitution to provide counsel.

After further discussion, Sen. Browne moved the adoption of section 8 as amended by Mr. Paillette at the direction of the committee at its meeting on August 30. (Page 5 of amendments.) Motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Rep. Hampton, Chairman Marx.

Section 9. Former jeopardy, res judicata and collateral estoppel not applicable in traffic infraction cases. Mr. Gillette said that although his office had no objection to the present version of section 9, a question had arisen with respect to it. He asked if the committee had considered the fact that an attorney for one side or the other in a negligence action following a traffic infraction hearing, might show up with a court reporter and seize upon that opportunity to get some rather candid statements from one of the parties to an accident. He asked if the committee felt this was a concern that would warrant a prophylactic rule barring such testimony in other proceedings.

Judge Schwab indicated that the Advisory Committee had discussed this possibility and decided to recommend what appears in this draft -- i.e., that no plea, finding or proceeding shall be used for the purpose of blowing up minor traffic infraction hearings into full dress rehearsals for tort actions. However, if someone wanted to go in and privately make a record of what a witness affirmatively said or denied, that could not, and should not, be prevented. A situation should not be created where a man can make one statement under oath for one purpose and another statement later for another purpose. The Advisory Committee felt that while this was not a perfect solution, it would go a long way toward ending the practice of using traffic infraction cases as full dress rehearsals for major tort actions.

Chairman Marx then put the following policy question: Does the committee want a section that would prohibit the evidence or testimony in a hearing to be used later? Rep. Hampton was of the opinion that it should be permissible to use the testimony later and expressed approval of the section as it appeared on page 9 of the amendments dated 8/30/74. The balance of the committee concurred.

Rep. Hampton moved to adopt section 9 as amended by Mr. Paillette at the direction of the committee at its August meeting. (Page 7 of amendments.) Motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Rep. Hampton, Chairman Marx.

Mr. Gillette asked if any problem would arise under subsection (2) as it would apply to the habitual traffic offender statute. Mr. Paillette explained that section 9 was concerned primarily with the doctrine of collateral estoppel and res judicata. He said he knew of no case authority saying that for the purposes of application of the old habitual criminal Act, which would be analagous to this situation, collateral estoppel did not apply. Section 9 dealt with proof of prior convictions being used for the purpose of an enhanced penalty. The discussion at the meeting of the committee on August 30 was directed at the problem of one traffic transaction where there was both a Class A infraction and a crime committed -- for example, dangerous driving along with DUIL. In that situation, being under the influence might be an element the state would want to establish in the trial for dangerous driving, and section 9 was intended to permit that practice. In other words, if the issue of being under the influence had been adjudicated at a trial for DUIL in the defendant's favor, he could not then say that DUIL was res judicata for the purpose of the trial for the other offense.

SERIOUS TRAFFIC OFFENSES (Amendments drafted as a result of committee action at meeting of 8/30/74)

Section 12. Use of chemical analysis to show intoxication. Mr. Paillette explained that the direction given to him by the committee on August 30 was to amend ORS 483.642. In order to take out everything

the committee wanted deleted, it appeared to be better drafting technique to delete all references to the presumptions concerning the various percentages of blood alcohol and restate the balance of the statute rather than to amend the existing statute. The new subsection (1) stated that if the blood alcohol content was .08 percent or less, it would be indirect evidence that could be used to determine whether or not the defendant was then under the influence. Subsections (2) and (3) were merely a restatement of the same subsections of ORS 483.642.

Mr. Gillette pointed out that section 2 of this Article was directed at the substantive offense of driving while under the influence whereas section 12 talked about using a particular kind of evidence to establish the substantive offense. His concern was that the trier of fact had been told that some use could be made of a blood alcohol content of .08 percent and lower as indirect evidence but he was not told what to do with evidence of .08 percent or higher. In addition to instructions as to what to do when the evidence was less than .08, his proposal would give the courts direction as to what to do when the analysis showed more than .08. He pointed out that the blood test was not contemporaneous with the driving; the test results were established at a later time. His answer to this problem as set out in his proposed revision (see Appendix B) was that a person who was shown to have .08 percent or higher at the time of the blood test was at least then under the influence, and from there it could be inferred backward that he was under the influence at the earlier time, even though the court could not be certain that his blood alcohol content at the time of driving was .08. His amendment was an attempt to give statutory validity to that additional evidentiary inference.

Sen. Browne commented that the proposed amendments virtually stated a conclusive presumption. Mr. Gillette said he did not like to use that term and to treat it otherwise would create an anomaly. If the statute said it was a disputable presumption, it would cast doubt on the legislative decision in section 2 stating it was unlawful to drive with .08 which in effect made driving with .08 a conclusive presumption by stating it was a crime to do so. His contention was that in order to be completely consistent with section 2, section 12, the evidentiary section, should spell out what was meant by .08 and offer the legislative conclusion that a person with .08 or higher is under the influence.

Sen. Browne asked Mr. Gillette if he believed that approach was constitutional and received an affirmative reply. He explained that it made a crime out of a condition. This the legislature could do if it could also show that the condition had a deleterious effect upon society at large.

Mr. Paillette agreed with Mr. Gillette's assessment that once the statute says it is a crime to drive with .08 or more, as it did in section 2, it was then consistent to state under section 12, from an evidentiary standpoint, what the effect would be when the blood alcohol content was more than .08.

In response to a further question by Sen. Browne concerning case law on this subject, Mr. Gillette said it was unconstitutional to make a medical condition a crime unless that medical condition was associated with some further behavior, such as driving. Once the condition had been associated with driving and a person's ability to drive was perceptibly impaired because he had imbibed alcohol, there was then nothing unconstitutional about making that act illegal, which is what the legislature did when it passed both the DUIL statute and the .15 statute.

Following further discussion, Chairman Marx indicated that vote on section 12 would be postponed until the following day when more members were present. [Note: See page 47 of these minutes for final action on section 12.]

ORS 483.640. Administering blood test. Mr. Frost distributed a proposed amendment to ORS 483.640, a copy of which is attached to these minutes as Appendix C. He recalled that this section had been discussed at the August 30 meeting and the committee had shown some interest in the matter but was not enthusiastic about the amendment presented at that time. In the amendment before the committee today, he had resorted to the language in Schmerber v. California and used the phrase, "in a medically acceptable manner."

Sen. Browne pointed out that as the amendment was drawn, the nurse would in effect be practicing medicine and would be in violation of another statute which said she could puncture human tissue only under the direction of a licensed physician. Mr. Gillette and Mr. Frost acknowledged this was correct.

In response to a question by Chairman Marx, Mr. Gillette said the section would not protect the person drawing blood from a suit for negligence but would require him to follow a medically acceptable procedure. If he failed to do so, he would be subject to liability.

Chairman Marx moved the adoption of the proposed revision to ORS 483.640 with deletion of the references to "registered nurse." As amended, the section would read:

> 483.640. In conducting a chemical test of the blood, only a duly licensed physician or a person acting under his direction or control may withdraw blood or pierce human tissues. A licensed physician or a qualified person acting under his direction or control shall not be held civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer.

Motion carried unanimously. Voting: Chairman Browne; Rep. Hampton, Chairman Marx.

Section 14. Appeals. Mr. Frost recalled that the committee had requested comments from the Oregon District Attorneys' Association concerning the appeals section in the Classes of Offenses Article, Preliminary Draft No. 4. The matter had been turned over to the Solicitor General in the Department of Justice, he said, who had indicated satisfaction with the section, recognizing there were no specific appellate provisions in the revision at this point and relying upon the representations made by this committee about how appeals would be handled as explained at the August 30 meeting.

The committee recessed for lunch and reconvened at 1:00 p.m. with Chairman Marx presiding.

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

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

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

Others Present: Mr. L. E. George, Traffic Engineer, Department of Transportation
Miss Vinita Howard, Public Information and Publications, Motor Vehicles Division
Hon. Wayne Thompson, Municipal Judge, Salem
Capt. John Williams, Traffic Division, Oregon Department of State Police

Section 3. Fines for traffic infractions. Mr. Paillette advised that the range of penalties in section 3 of the amendments to the Article on Classes of Offenses had been revised and approved at the August 30 meeting and required no further action by the committee. [Note: The fine schedule was subsequently amended. See page 18 of these minutes.]

Section 4. Certain offenses not classified as traffic infractions. Mr. Paillette explained that the amendments he had prepared to section 4 were in the nature of housekeeping amendments to accommodate revisions in section 10 of the Article on Serious Traffic Offenses that were approved by the committee in August and spelled out certain offenses classified as crimes and others classified as Class A infractions. He asked the committee to consider the two sections together.

Mr. Paillette advised that he had left section 4, subsection (1), in its present form because the committee did not affirmatively change the distinction between an infraction and a crime for the purposes of

section 4. Their intent was to make it a Class C felony to drive while suspended if the original suspension was for certain enumerated offenses. Section 10 (4) of the Serious Traffic Offenses Article said, "Except as provided in subsection (5) of this section, driving while suspended or revoked is a Class A misdemeanor." The committee had not acted on that particular provision and if they decided to approve it, it would be necessary to make a conforming amendment in section 4 (2) (c) of the Classes of Offenses Article for purposes of consistency. Subsection (5) of section 10 listed offenses that would be Class C felonies when the suspension or revocation was the result of one of those offenses. Paragraph (g) of subsection (5) added "reckless driving," an offense not included in the revised code, but it appeared here for the purpose of covering anyone convicted of that offense under the old code. Before amending section 4, Mr. Paillette said he wanted to confirm the fact that section 10 accomplished what the committee had in mind.

Chairman Marx commented that a Class C felony carried a maximum penalty of five years and he was of the opinion that this was a heavy penalty for driving while suspended in comparison to other crimes carrying the same classification. There was a discussion of other crimes similarly classified in the Criminal Code. Rep. Hampton pointed out that under ORS 161.705 a person convicted of a Class C felony could be sentenced as for a Class A misdemeanor, and this would also apply to these DWS situations. Mr. Paillette confirmed this statement and added that the maximum penalty was not necessarily the prime consideration. Even more important was the fact that when an offense was classified as a felony, procedurally all those cases would have to go to the grand jury, be filed either by indictment or under a waiver of indictment and be tried in circuit court.

Rep. Hampton asked Mr. Paillette if he contemplated that if a felony were charged on a Uniform Traffic Citation, the court would have authority to hold a preliminary hearing on the matter. Mr. Paillette replied that probably a preliminary hearing could not be held on a UTC alone; it would first be necessary that a district attorney's information be filed. Rep. Hampton commented that this provision could cause some procedural headaches. The officer might be able to determine that a person was driving while suspended without too much trouble, but it might be more difficult to find out why he was suspended.

Sen. Carson suggested this might be resolved by coding the suspension reports to show that Category A was for a certain reason, Category B for another, etc. Miss Howard said this probably could be done, but a routine check by an officer usually didn't get into the details of why a person's license was suspended.

Capt. Williams pointed out that DWS was one of the major traffic offenses in which the defendant would be required to appear in court personally. Therefore, the judge would in all likelihood know the reason for the suspension before he appeared. The circumstances of his pleading guilty before a record check had been made just should not occur. He also outlined that ORS chapter 484 required the Uniform

Traffic Citation to be used for all traffic offenses which included the offenses in ORS chapters 481, 482 and 483. Anything contained in those chapters, therefore, had to be cited on the UTC, including felony charges.

Miss Howard asked if classification of DWS as a felony was apt to slow down the process by putting all such cases into the circuit court, the grand jury, etc. Rep. Hampton said it might have that result but statistics showed that many of the serious accidents are caused by suspended drivers which he believed was sufficient reason for imposing a more severe penalty.

Chairman Marx reiterated his earlier objection to the penalty classification for DWS and maintained it should be reduced to a misdemeanor. Sen. Carson asserted that this issue would be well debated by the 1975 legislature, just as it was at the August meeting of the committee when other members shared Chairman Marx' sentiments. However, the draft fairly represented the majority view of the committee and he urged that it not be revised at this time.

With respect to section 4 of the Classes of Offenses Article, Mr. Paillette asked if it was the feeling of the committee that all driving while suspended offenses should be categorized as traffic crimes and then leave it to section 10 to actually classify the offenses by making driving while suspended for failure to file proof of financial responsibility a Class A misdemeanor, with all the other reasons for suspension listed in subsection (5) of section 10 classified as Class C felonies.

After further discussion, Rep. Paulus moved to adopt section 4 of the Classes of Offenses Article subject to the amendments explained by Mr. Paillette which, in essence, would make all driving while suspended offenses a crime. Section 10 of the Serious Traffic Offenses Article would then say that driving while suspended for failure to file proof of financial responsibility was a Class A misdemeanor and driving while suspended for the other reasons listed in subsection (5) of section 10 would be Class C felonies. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Reps. Hampton, Paulus, Chairman Marx.

Section 6. Plea agreements limited. Capt. Williams distributed proposed amendments to section 6 of the Article on Classes of Offenses, a copy of which is attached as Appendix D. He explained that this amendment was the result of recent meetings he had attended with traffic safety organizations and of discussions with law enforcement personnel. They approved the committee's efforts to limit plea bargaining but wanted to go a step further and make the section applicable to Class A traffic infractions. The reason for this was that if plea bargaining were limited just to those cases where an infraction becomes a crime by reason of a prior conviction, there might never be a first conviction for a Class A traffic infraction because

all the charges could be bargained away. In other words, if all charges for DUIL against a person were reduced to something less than a Class A infraction, the first conviction for a Class A infraction would never occur. The amendment, he said, specifically referred to Class A traffic infractions but his major concern was first time DUIL cases. Inasmuch as DWS had been changed by the committee to a Class A misdemeanor, that offense would not be affected by this amendment.

Sen. Browne moved to adopt Capt. Williams' amendments to section 6 with the understanding that the second sentence as shown in the draft prepared by Mr. Paillette would remain undisturbed. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Reps. Hampton, Paulus, Chairman Marx.

Section 6 was then unanimously approved as amended. [Note: This section was further amended. See page 53 of these minutes.]

Section 8. Counsel for state and defendant. This section was approved at the morning meeting of the committee. [See page 4 of these minutes.]

Section ___. Attending court and prosecuting offenses. This section was discussed in connection with section 8. [See page 4 of these minutes.] The amendments to ORS 8.660 were approved by common consent.

Section 9. Former jeopardy, res judicata and collateral estoppel act applicable in traffic infraction cases. Section 9 was also approved at the morning meeting. [See page 5 of these minutes.]

Section 12. Conviction of certain offenses as grounds for mandatory revocation or suspension. Mr. Paillette explained that the amendment in subsection (1) (d) had been directed by the committee in August as was the addition of paragraph (c) to subsection (2). Under this latter revision dangerous driving in either the first or second degree would be under the suspension provisions, whereas subsection (1) referred to revocations. The third change made in the section since the committee last reviewed it was the additional phrase at the end of subsection (4), "or on the date otherwise ordered by the court." This would accommodate situations where the defendant didn't have the license or permit in his possession at the time he appeared in court.

Chm. Marx commented that the committee had previously agreed to these amendments and moved to approve the amended section 12. Motion carried without opposition with the same five members voting as voted on the previous motion.

Rep. Paulus moved to adopt the Article on Classes of Offenses; Disposition of Offenders as amended. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Reps. Hampton, Paulus, Chairman Marx.

SERIOUS TRAFFIC OFFENSES (Amendments drafted as a result of committee action at meeting of 8/30/74)

Section 1. Application of serious traffic offenses upon premises open to the public. Mr. Paillette explained that he had been asked by the committee to draft a section making certain serious traffic offenses applicable to areas other than a highway. The language he had chosen was taken in part from the Massachusetts and Wisconsin codes. It used the phrase "premises open to the public" and defined that term in subsection (2). The intended effect was to say that those offenses in subsection (1) could all be committed on premises defined in subsection (2). The definition of "premises open to the public" was, he said, broad enough to include highways, roadways, etc. that were otherwise defined in the Rules of the Road.

Rep. Paulus asked if the definition of "motor vehicles" included recreational vehicles and was told by Mr. Paillette that they would be included if they were motorized. He said he believed section 1 would be applicable to parking lots for such places as taverns, department stores, supermarkets, etc.

Miss Howard asked if the reference to "duties of a driver involved in an accident or collision" would require all accidents at such locations to be reported, assuming damages exceeded $200, and whether the drivers or owners would then be subject to the financial responsibility law. Mr. Paillette acknowledged this would be the result. Miss Howard commented that it would substantially increase the number of accidents reported and the number of drivers subject to the financial responsibility law.

Capt. Williams observed that when the committee first discussed this subject, their principal concern centered on hit and run drivers who damaged cars in parking lots and failed to leave their name and address. The intent was to avoid those situations rather than to require accident reports to be filed. He suggested it might be possible to confine the section to hit and run and not include all of the duties of a driver involved in an accident. Mr. Paillette confirmed that it would be possible to write around the reporting requirements as suggested by Capt. Williams by making specific reference to particular subsections of ORS 483.602 and 483.604.

Chairman Marx asked if this section would be applicable to areas where motorcycle or automobile races were held and was told that it would not.

Chairman Marx moved to amend subsection (1) of section 1 to exclude the accident reporting requirements from the duties of a driver involved in an accident. The precise language would be subject to revision by Mr. Paillette, but the amended subsection would read substantially as follows:

" . . . failure to perform the duties of a driver involved in an accident or collision as required by ORS 483.602 and subsection (1) and paragraphs (a) and (b) of subsection (2) of ORS 483.604 apply upon any premises open to the public."

Motion carried without objection.

ORS 483.008 (2). Definition of "driver." Mrs. Embick was of the opinion that unless ORS 483.602 and 483.604 were amended, a person would not qualify as a "driver" having an accident when he was not on the highway. Her contention was that there would be no accident and no driver when a person was off the highway because the rules of those two sections applied only to a driver on the highway.

Following further discussion of the question raised by Mrs. Embick, Chairman Marx moved to amend the definition of "driver" in subsection (2) of ORS 483.008 to read:

"(2) 'Driver' or 'operator' means any person who is in actual physical control of a vehicle."

His amendment deleted the last phrase of the above sentence, "upon the highways or streets of this state" to make a person a driver whether driving on a highway or any other place so long as he was in control of the vehicle. The committee had previously deleted the phrase ", other than a chauffeur," in this definition. Motion carried unanimously.

Section 1. Returning to the amended section 1 of Serious Traffic Offenses, Chairman Marx asked if subsection (2) should contain a reference to right of access and asked if a long driveway to a person's home would be "open to the public." Rep. Hampton replied that the answer to that question would depend upon how the property was used. If it were held out as being generally open to the public by business invitation, for example, this section would be applicable. A long private driveway to someone's home, however, was not generally "open to the public."

Judge Thompson commented that one type of area that did not appear to be covered by the section was the so-called private parking areas for apartments or condominiums. Even though the parking lots might be of substantial size, they were often posted with signs limiting parking to residents or guests and would not therefore be "open to the public." Sen. Carson agreed that an apartment house complex posting a sign at the entrance saying it was private property and not open to the public would take itself out from under the provisions of section 1. However, he believed this was preferable to a provision saying that even when posted, the property would be considered to be open to the public.

Chairman Browne moved adoption of section 1. as amended. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Reps. Hampton, Paulus, Chairman Marx.

Section 2. Driving while under the influence of alcohol or drugs. Mr. Paillette explained that the revised version of section 2 followed the approach of the Uniform Vehicle Code with respect to DUIL except that paragraph (a) used .08 percent and (b) retained the language of existing law, "under the influence of intoxicating liquor, a dangerous drug or narcotic drug." The effect was to provide an optional method of violating the DUIL statute and to classify it as a Class A traffic infraction.

Chairman Marx commented that he would prefer to set the blood alcohol content at .10 percent rather than .08, but other members of the committee evinced no interest in his suggestion.

Section 2 was approved as set out in the amendments dated 8/30/74. Voting: Chairman Browne; Reps. Paulus, Hampton, Chairman Marx.

Section 4. Class A traffic infraction classified as misdemeanor because of prior conviction. Mr. Paillette explained that section 4 dealt with the Class A infraction that becomes a crime because of a prior conviction. It restated the provision that appeared in Preliminary Draft No. 4 of the Classes of Offenses Article but went one step further and stated in subsection (1) that if the crime would otherwise be punishable as a Class A infraction and the defendant was a prior offender, the offense would then be punishable as a Class A misdemeanor.

Rep. Hampton asked if a person charged with a traffic infraction would be subject to extradition and Mr. Paillette said he would not. He added that under existing law it was extremely difficult to extradite for misdemeanors. Technically, he said, it could be done, but it was almost impossible to get the warrant approved by the Governor's office.

Chairman Marx moved approval of section 4 and the motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Reps. Hampton, Paulus, Chairman Marx.

Section 10. Driving while suspended or revoked. Mr. Paillette indicated that the committee had discussed section 10 at the morning session while considering section 4 of the Article on Classes of Offenses. [See page 9 of these minutes.]

Sen. Browne moved to adopt section 10. Motion carried unanimously with the same five members voting as voted on the previous motion.

Section 12. Use of chemical analysis to show intoxication. [See page 6 of these minutes for discussion of section 12 and page 47 for further discussion and final action.]

Section 13. Definitions. Mr. Paillette indicated that the amendments to section 13 were of a housekeeping nature to delete references to statutes being repealed and to conform definitions to the revised code.

Sen. Browne moved adoption of section 13. Motion carried unanimously with all five members voting.

Section 14. Traffic citation requirements; exceptions; uniform citation. Mr. Paillette explained that the major change in section 14 appeared in subsection (9) at the bottom of page 13. At the meeting in August the committee discussed the problem of how to cite a motorist for a Class A infraction and still give the district attorney time to run a records check to determine if the offender had a prior conviction. The committee discussed providing an optional manner of citation in addition to the Uniform Traffic Citation and contemplated leaving the decision to the individual counties to decide which system they wanted to use. The optional provision would get around the requirement that the officer must cite all traffic offenses on a UTC. Accordingly, subsection (9) provided that if the offense is a Class A traffic infraction, a citation in lieu of custody may be used. The officer could issue that type of citation to inform the motorist of the charge, but it would not form the basis for a race to the courthouse and a guilty plea before the district attorney had time to file some form of complaint if there were a prior conviction.

Another amendment was added at the bottom of page 12 to take care of an additional situation the committee wanted to cover, i.e., to indicate that the defendant could explain his side of the occurrence, either by letter or personally. He indicated that Judge Courson had written him a letter objecting to this provision, copies of which had been circulated to all committee members. Judge Courson's primary objection, however, was directed at section 15 (3) of the basic draft appearing on page 30 of Preliminary Draft No. 2 which would permit the defendant to make his explanation to the judge. He was upset about requiring the courts to spend their time listening to defendants' explanatory comments.

Chairman Marx moved to adopt section 14. Motion carried without objection.

Section ___. Application to traffic, boating, littering, hunting and fishing violations. Mr. Paillette advised that this section would amend ORS 133.080 to conform it to section 14, just adopted. Without this abrogation, citations in lieu of custody would not be applicable to traffic offenses.

Chairman Marx moved adoption of the unnumbered section on page 14 of the amendments to the Article on Serious Traffic Offenses. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Reps. Hampton, Paulus, Chairman Marx.

Section ___. Definitions for ORS 484.700 to 484.750. Mr. Paillette explained that the amendments to ORS 484.705 would conform the section to other revisions in the vehicle code. The amendments referred to the kinds of offenses that would be included under the Habitual Offender Act.

Sen. Carson moved to adopt the amendments to ORS 484.705. Motion carried unanimously with the same five members voting as voted on the previous motion.

SERIOUS TRAFFIC OFFENSES; Preliminary Draft No. 2; August 1974

Mr. Paillette advised that the committee had not completed its review of the Article on Serious Traffic Offenses at its August meeting and asked the committee to turn to page 30 of the basic draft for the purpose of considering the remaining sections.

Section 15. Appearance by defendant. Section 15, he said, contained the provision to which Judge Courson objected and which was discussed earlier. [See previous page.] The subcommittee wanted a specific provision requiring the judge to listen to the defendant's story. At the present time the defendant could tell his side of the story by mail, but there was nothing in the statute that said he could do so if he appeared in court personally.

Rep. Paulus moved the adoption of section 15. Motion carried unanimously with the same five members voting.

Section 16. Impounding vehicles operated by driver convicted of driving while license revoked or suspended; redemption; suspension of registration; rights of security interest holders. Mr. Paillette advised that section 16 contained a conforming amendment to delete reference to ORS 484.650 which would be repealed by this revision.

Sen. Browne moved the adoption of section 16. Motion carried unanimously with the same five members voting.

Section 17. Penalties. Mr. Paillette explained that section 17 deleted the culpability term of "willingly" and inserted "knowingly" in its place. It also classified the penalty in connection with false filing of a complaint.

Sen. Browne moved adoption of section 17. Motion carried without opposition.

Chairman Marx moved the adoption of the Article on Serious Traffic Offenses as amended. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Reps. Hampton, Paulus, Chairman Marx.

GRADING OF OFFENSES

Mr. Paillette called attention to the charts setting out staff recommendations for the grading of offenses in the Proposed Motor Vehicle Code. The recommendations were advisory only for purposes of discussion. He pointed out that the first chart, entitled "Proposed Penalty Classification," referred to the Rules of the Road and was based on the fine schedule in section 3 of the Article on Classes of Offenses, Preliminary Draft No. 4. Since the time the chart was prepared in August, however, the committee had adopted a new fine schedule:

	Old Schedule	New Schedule
Class A traffic infraction	$1,000	$1,000
Class B traffic infraction	250	500
Class C traffic infraction	100	250
Class D traffic infraction	50	100

Mr. Paillette asked the committee to bear in mind that when the staff recommendations were prepared, the old schedule was in effect. Probably, he said, the best way to proceed would be to reduce each offense by one degree to compensate for the difference in fines as set forth above. For example, where the staff recommended Class C, the recommendation in all likelihood would have been Class D had the offense been graded under the new fine schedule.

The committee then proceeded to classify each offense. As they did so, they encountered a great deal of difficulty in adapting the fine to the offense. It became apparent that the new fine schedule was in many instances too high for the type of offense involved and the original schedule appeared to coincide with the committee's objectives better than did the revised schedule. It was pointed out that some of the very minor offenses, such as those dealing with pedestrians and bicycles, would carry a maximum penalty of $100 under the lowest available classification (Class D) which most members concluded was too high.

Rep. Paulus recommended that the committee return to the original fine schedule, but Rep. Hampton's contention was that $250 for a Class B traffic infraction was too low. Mr. Paillette said that when he first recommended the amounts in the schedule of fines, he tried to introduce some correlation with violations and low grade misdemeanors in the Criminal Code where the penalty for a violation, unless otherwise specifically provided, is $250, a violation being the counterpart of a noncriminal offense in the vehicle code. The maximum fine for a misdemeanor in the Criminal Code is also $250 although a Class C misdemeanor carried provision for a jail sentence.

Sen. Browne moved that the original fine schedule be reinstated in section 3 of the Article on Classes of Offenses; Disposition of Offenders:

Class A traffic infraction:	$1,000 fine
Class B traffic infraction:	$250 fine
Class C traffic infraction:	$100 fine
Class D traffic infraction:	$50 fine

Motion carried. Voting for the motion: Chairman Browne; Rep. Paulus, Chairman Marx. Voting no: Rep. Hampton.

The committee then returned to the beginning of the Classification Chart and rescinded all previous action on offenses they had graded up to this point.

Mr. Paillette called attention to a letter he had received from Miss Howard recommending certain revisions in the proposed classifications as set out by the staff. A copy of the letter is attached as Appendix E. He asked the committee to bear the recommendations of the Motor Vehicles Division in mind while going through the offenses in the Rules of the Road.

The committee approved the following penalty classifications:

GENERAL PROVISIONS

Permitting unlawful operation of vehicle	Class B infraction
Failing to obey police officer	Class C infraction
Application of speed regulations and traffic signals to emergency vehicles	Class B infraction
Application of speed regulations and traffic signals to ambulances	Class B infraction

SPEED RESTRICTIONS

Basic speed rule	Class C infraction
Maximum speeds	Class B infraction
Impeding traffic	Class C infraction
Maximum speeds for motor trucks and passenger transport vehicles	Class B infraction
Speed races prohibited on public ways	Class A infraction
Maximum speed on ocean shore	Class B infraction

TRAFFIC SIGNS, SIGNALS AND MARKINGS

Obedience to and required traffic control devices	Class B infraction
Traffic control signals	Class B infraction
Vehicle turns at intersections with red traffic control light	Class B infraction
Pedestrian control signals	Class C infraction
Flashing signals	Class B infraction
Lane direction control signals	Class B infraction
Unlawful display of signs, signals or markings	Class C infraction
Unlawful interference with official traffic control device or railroad sign or signal	Class B infraction

DRIVING ON RIGHT SIDE OF ROADWAY

Driving on right side of roadway	Class B infraction
Slow driver duty to drive on right	Class C infraction
Duty to drive on right on two-way four lane roadway	Class B infraction
Slower driver duty to yield	Class C infraction
Duty of driver of 8,000 pound vehicle, vehicle with trailer or camper to drive on right	Class C infraction
Passing vehicles proceeding in opposite direction	Class B infraction
Overtaking a vehicle on the left	Class B infraction
Overtaking on right	Class B infraction
Further limitations on driving on left of center of roadway	Class B infraction
No passing zone	Class B infraction
One-way roadways and rotary traffic islands	Class B infraction
Driving on roadways laned for traffic	Class B infraction
Following too closely	Class B infraction
Driving on divided highways	Class B infraction

RIGHT OF WAY

Rep. Paulus noted that the Motor Vehicles Division recommended raising the penalty for the first three sections in the Right of Way Article and the committee concurred that all three should be increased to a Class B traffic infraction.

Vehicle approaching or entering intersection	Class B infraction
Driver turning left	Class B infraction
Stop signs and yield signs	Class B infraction
Right of way at merging lanes of arterial highway	Class C infraction
Vehicle entering roadway from private road, alley or place	Class C infraction
Operation of vehicles on approach of emergency vehicle or ambulance	Class C infraction

TURNING AND MOVING; SIGNALS ON STOPPING AND TURNING

Required position and method of turning	Class C infraction
U-turns prohibited	Class C infraction
Moving a stopped, standing or parked vehicle	Class C infraction
Turning and stopping movements and signals required	Class C infraction
Signals by hand and arm or by signal lamps	Class C infraction
Method of giving required signals	Class C infraction

SPECIAL STOPS REQUIRED

Stopping at railroad crossings upon signal of approaching train	Class C infraction
Certain vehicles must stop at all railroad grade crossings	Class C infraction
Railroad grade crossings exempt from special stopping rule	Class C infraction
Moving heavy equipment at railroad grade crossings	Class C infraction
Overtaking and passing school bus	Class B infraction
Stopping before driving onto sidewalk from alley, driveway or building	Class C infraction

STOPPING, STANDING AND PARKING

Stopping, standing or parking outside business or residence districts	Class D infraction
Stopping, standing or parking prohibited in specific places	Class D infraction
Parking distance from curb or edge	Class D infraction
Obstruction of roadway by wrecker or tow car	Class D infraction
Parking vehicle on state highway for vending purposes prohibited	Class D infraction

PEDESTRIANS' RIGHTS AND DUTIES

Mrs. Embick explained that most of the offenses in this Article were classified as Class C infractions except for the ones having to do with a motorist which were generally classified as Class B. She questioned whether it was appropriate in section 7 to give the pedestrian a lower duty of due care so far as the penalty was concerned than that placed on the driver.

Chairman Marx was of the opinion that the penalties for pedestrians were generally too high and moved adoption of the following classifications:

Sec. 4.	Pedestrian leaving curb	Class D infraction
Sec. 7.	Exercise of due care	Class C infraction
Sec. 8.	Pedestrian's use of sidewalk	Class D infraction
Sec. 9.	Pedestrian must yield right of way	Class D infraction

Motion failed. Voting for the motion: Chairman Marx. Voting no: Sen. Carson, Chairman Browne; Reps. Hampton and Paulus.

Chairman Marx then moved to change the classification in section 7 from Class B to Class C. Motion carried with Rep. Hampton voting no.

The following classifications for the Pedestrian Article were adopted:

Pedestrian obedience to traffic control devices and traffic regulations	Class C infraction
Pedestrian's right of way in crosswalk	Class B infraction

Pedestrian tunnel or overhead crossing	Class D infraction
Pedestrian leaving curb	Class C infraction
Drivers not to overtake stopped vehicle	Class B infraction
Crossing at other than crosswalk	Class C infraction
Exercise of due care	Class C infraction
Pedestrian's use of sidewalk, shoulder and roadway edge	Class C infraction
Pedestrian must yield right of way	Class C infraction
Pedestrians soliciting rides or business	Class C infraction
Driving through safety zone prohibited	Class C infraction
Pedestrian's right of way on sidewalks	Class C infraction
Pedestrians yield to emergency vehicle or ambulance	Class C infraction
Use of white cane by blind person	Class C infraction

Rep. Paulus noted that the caption to the above section left the impression that a blind person was prohibited from using a white cane. Mrs. Embick indicated she would revise the caption.

Duty of driver to yield to blind pedestrian	Class B infraction
Blind pedestrian in roadway with traffic control signals	Class B infraction
Unlawful use of bridge by pedestrian	Class C infraction
Pedestrian crossing closed bridge or railroad grade crossing barrier prohibited	Class C infraction

MISCELLANEOUS RULES

Unattended motor vehicle	Class C infraction
Limitations on backing	Class C infraction
Passengers in front seat; interfering with driver; in mobile home or travel trailer	Class C infraction
Opening and closing vehicle doors	Class D infraction
Coasting prohibited	Class C infraction

Following fire apparatus prohibited	Class C infraction
Crossing fire hose	Class C infraction
Removing injurious substance from highway	Class C infraction
Stop when traffic obstructed	Class C infraction

SPECIAL RULES FOR MOTORCYCLES

Mr. Paillette noted that the Motor Vehicles Division had recommended that section 1 (unlawful motorcycle operation) and section 6 (protective headgear and eye device required) be classified as Class B infractions.

Rep. Hampton moved to raise the classification of section 1 from a Class C infraction to a Class B. Motion carried. Voting for the motion: Sen. Carson; Reps. Hampton and Paulus. Voting no: Chairman Browne and Chairman Marx.

Rep. Hampton next moved to raise the classification in section 6 from a Class C infraction to Class B. Motion failed. Voting for the motion: Chairman Browne and Rep. Hampton. Voting no: Sen. Carson; Rep. Paulus, Chairman Marx.

The following classifications for the Motorcycle offenses were approved:

Unlawful motorcycle operation	Class B infraction
Motorcyclist's right to full traffic lane	Class B infraction
Unlawful passing or moving in lane with vehicle	Class B infraction
Clinging to other vehicles	Class C infraction
Protective headgear and eye device required	Class C infraction

OPERATION OF BICYCLES AND PLAY VEHICLES

[Note: See page 38 of these minutes for discussion and classification of offenses in this Article.] At that time the offenses were classified as follows:

Parent or guardian prohibited from permitting child to violate bicycle equipment laws	Class D infraction
Lamps and other equipment on bicycles	Class D infraction
Unlawful bicycle operation	Class D infraction

Clinging by persons on bicycles and toy vehicles	Class D infraction
Riding on roadways and bicycle paths	Class D infraction
Use of bicycle lanes by vehicles	Class B infraction
Bicyclists to yield right of way at intersections except to left turning and stopped vehicles; driver right of way to bicyclist	
Subsection (2)	Class D infraction
Subsection (4)	Class B infraction
ORS 483.865. Use of bicycle path by vehicles prohibited	Class B infraction
ORS 483.870. Bicyclists on sidewalks required to warn pedestrians; careless bicycle operation on sidewalk prohibited	Class D infraction

ORS CHAPTER 482, OPERATORS' AND CHAUFFEURS' LICENSES

Mr. Paillette explained that when the staff prepared recommendations for classifying the offenses in ORS chapters 481, 482 and 483, they attempted not only to make them comparable with the penalty classifications in the Rules of the Road but also to correlate them with penalties in the existing statutes. Generally speaking, the staff recommendations corresponded to the lowest penalty in the existing law. Some exceptions were: ORS 482.610 which he recommended be treated as a criminal matter rather than an infraction because of the fraudulent nature of the crime; ORS 482.935 also contained a fraudulent aspect and he proposed to classify it as a crime (Class B misdemeanor) to correspond to the existing penalty; ORS 482.990 (3) for which he recommended reduction to a Class A misdemeanor.

Rep. Hampton moved to raise the classification of ORS 482.990 (3) to a Class C felony, the same as the existing penalty. Motion carried unanimously. Voting: Chairman Browne; Reps. Hampton, Paulus, Chairman Marx.

The balance of the offenses in ORS chapter 482 were approved as follows:

482.198. Prohibition against furnishing motorcycle unless license endorsement displayed	Class B infraction
482.290, (2) Licensed persons to notify division of change of name or address	Class D infraction

482.300.	Licensee required to sign and possess license	Class D infraction
482.610.	Misuse of license; fraud in securing license	Class B misdemeanor
482.620.	Causing or permitting illegal driving	Class B infraction
482.630.	Minors prohibited from driving school and passenger busses	Class B infraction
482.640.	Employment of unlicensed chauffeur	Class B infraction
482.925.	Cardholder required to notify division of change of name or residence; issuance of new cards	Class D infraction
482.935.	Effect of cancellation of card; prohibited acts with card	Class B misdemeanor
482.990.		
(3)	False affidavit or false swearing	Class C felony
(4)	Unlawfully publishing licenses	Class A misdemeanor

ORS CHAPTER 483, MOTOR VEHICLE TRAFFIC AND EQUIPMENT

Mr. Paillette advised that ORS 483.432, 483.434 and 483.444 were all listed as Class A infractions in the chart prepared by the staff and he proposed to reduce all three to Class B infractions.

He indicated that ORS 483.445 dealt with the quality of the brake fluid sold to the public and there a criminal penalty appeared to be appropriate. Rep. Hampton pointed out that ORS 483.445 was currently a Class A misdemeanor and he would prefer to raise the classification of that offense to a Class A misdemeanor under the revised code also. A faulty product could, he said, cost someone his life.

Mr. Paillette said ORS 483.466 again went to the quality of the product, window safety material. He also suggested that the committee might want to reduce ORS 483.472 and 483.482 to Class B infractions rather than Class A to make them consistent with other equipment violation penalties.

Rep. Hampton moved to revise the staff recommendations with respect to ORS chapter 483 in the following manner:

ORS 483.432: Class B infraction
ORS 483.434: Class B infraction
ORS 483.444: Class B infraction
ORS 483.445: Class A misdemeanor

ORS 483.466: Class A misdemeanor
ORS 483.472: Class B infraction
ORS 483.482: Class B infraction

Motion carried unanimously. Voting: Reps. Hampton, Paulus, Chairman Marx.

Miss Howard suggested that ORS 483.402, 483.403, 483.404 and 483.406 be dropped to Class C infractions. Mr. Paillette commented that there were distinct safety aspects to those sections. The first one, for example, required a driver to drive with his lights on and to fail to do so was fairly serious from a traffic safety standpoint. The committee concurred that they should remain as Class B infractions.

The offenses in ORS chapter 483 were classified as follows:

483.050.	Unlawful to drive defectively or unlawfully equipped vehicle; police permitted to stop vehicles and make inspections	Class B infraction
483.402.	When lights are required to be on; application of visibility and height provisions	Class B infraction
483.403.	Driving with parking lights lighted prohibited when head lights required	Class B infraction
483.404.	Head lights required; lighting and braking equipment on bicycles	Class B infraction
483.406.	Tail lights required	Class B infraction
483.407.	Stop lamps required	Class C infraction
483.408.	Rear reflectors required	Class C infraction
483.410.	Reflectors, clearance and marker lamps, and stop lights on various vehicles	Class B infraction
483.412.	Color of lamps and reflectors; when certain lamps need not be lighted	Class C infraction
483.414.	Mounting reflectors and clearance lamps	Class C infraction
483.416.	Visibility of reflectors, clearance and marker lamps, and stop lights	Class C infraction
483.418.	Lighting required for a combination of vehicles	Class B infraction

483.420.	Lights required on parked vehicles	Class C infraction
483.422.	Lights required on miscellaneous vehicles	Class C infraction
483.423.	Warning lights	Class B infraction
483.424.	Intensity and distribution requirements for head lamps	Class C infraction
483.426.	Light indicator visible to driver	Class D infraction
483.428.	Distribution and intensity of head lights when on road and when meeting vehicle	Class B infraction
483.430.	Requirements when single distribution used	Class C infraction
483.432.	Limitations on lights at front of vehicles or equipment	Class B infraction
483.434.	Spot, auxiliary driving, stop, signal, fender, running board and back-up lamps permitted	Class B infraction
483.444.	Brakes required	Class B infraction
483.445.	Specifications for hydraulic brake fluid	Class A misdemeanor
483.446.	Horns and other sound equipment	Class C infraction
483.448.	Mufflers; unnecessary noise prohibited	Class B infraction
483.450.	Rearview mirror	Class C infraction
483.452.	Obstruction of windows prohibited; windshield wiper required	Class C infraction
483.454.	Light or flag at end of load	Class C infraction
483.456.	Flares and similar warnings for trucks and busses	Class B infraction
483.457.	Slow-moving vehicle emblem; division regulation of design, mounting	Class D infraction
483.458.	Fenders or covers on motor vehicles	Class B infraction
483.460.	Standards for fenders and covers	Class B infraction

483.462.	Speedometers required on vehicles carrying passengers for hire	Class B infraction
483.466.	Approved safety glazing materials required in windows and windshields	Class A misdemeanor
483.470.	Limitation on use of television viewers in motor vehicles	Class B infraction
483.472.	Binders on log loads	Class B infraction
483.474.	Minimum clearance from roadway for passenger motor vehicles	Class B infraction
483.482.	New passenger vehicles to be equipped with safety belts or harnesses	Class B infraction
483.499.	Operation of recreational vehicle with unsealed disposal system prohibited	Class B infraction

OTHER OFFENSES AND PENALTIES IN ORS CHAPTER 483

Mr. Paillette pointed out that he had proposed no changes for the penalties in ORS chapter 483 dealing with specialized fields such as overload violations. The penalties were set out beginning on page 4 of the chart for the committee's information. He said he preferred to be very cautious about changing penalties where the fines were based on poundage and excess weight because these were specialized kinds of offenses geared to the seriousness of the offense.

The committee unanimously agreed to leave unchanged the penalties in this category.

ORS CHAPTER 485, SCHOOL BUSSES; WORKER TRANSPORT VEHICLES; AMBULANCES

Rep. Hampton moved to raise the penalty for ORS 485.580 to a Class A misdemeanor consistent with the existing penalty and other crimes of a fraudulent nature. Motion carried unanimously. Voting: Chairman Browne; Reps. Hampton, Paulus, Chairman Marx.

The balance of the staff recommendations for penalties in ORS chapter 485 were approved without revision:

485.020. (3)	Duty to stop when bus loading or unloading	Class C infraction
485.030.	School bus markings	Class C infraction
485.320.	Safe operation and maintenance required	Class C infraction

485.510.	Unlawful to operate uncertified ambulance on highway	Class B infraction
485.520. (5)	Display of certificates	Class C infraction
485.550.	Emergency medical technicians required to be certified	Class C infraction
485.580.	False statements and misrepresentations regarding certificates prohibited	Class A misdemeanor

ORS CHAPTER 481, MOTOR VEHICLE REGISTRATION AND LICENSING; DEALERS, WRECKERS AND TRANSPORTERS; MOTOR VEHICLES DIVISION

In response to a comment by Rep. Hampton concerning his doubts about the advisability of reducing penalties to an infraction for offenses having to do with registration, Mrs. Embick advised that every offense having to do with making any kind of a false statement had not been reduced to an infraction. If it involved a misstatement of anything material, it was classified as it would be in the Criminal Code. Mr. Paillette added that provisions directed at stolen vehicles, traffic in stolen vehicles, false registrations and certificates or destruction of records all retained criminal penalties, many of which were adopted by the last session of the legislature.

Rep. Hampton commented that ORS 481.107 was in a sense the cornerstone of a great deal of law enforcement. If the Motor Vehicles Division had everyone's correct address, it would simplify law enforcement in many instances. Capt. Williams agreed this was very important from a law enforcement standpoint and recommended that failure to notify the Motor Vehicles Division of change of address should at least be graded on a par with the statutes dealing with registration which would make it a Class C infration. Sen. Carson said if he thought it would do any good, he would move to raise it to a Class A infraction, but he doubted that it would accomplish anything to do so.

> To bring it in line with other statutes, Sen. Carson moved to raise the classification of ORS 483.107 to a Class C infraction. Motion carried unanimously.

Some members of the committee indicated that a Class C infraction carried a maximum fine of $100 which appeared to be quite a reduction from the penalties in existing law for many of the offenses dealing with registration in Chapter 481. Sen. Carson questioned whether there was a public policy reason to set the fines at $250 as opposed to $100. He asked if anyone had ever been arrested for any of these offenses. Miss Howard replied that with the exception of registration expirations, the number of citations issued was very small.

Sen. Carson said a relevant element was, as explained earlier by Capt. Williams, that the courts and police officers were inclined to judge the seriousness of an offense by its penalty classification. The grading of these offenses had a great deal of policy implications in addition to philosophical ones because officers would be more inclined, for example, to go after a violator of a Class A offense than a Class B. He said he would be inclined to leave the registration offenses as Class C infractions unless upgrading them to a Class B would aid law enforcement. The committee concurred.

> Rep. Hampton moved to raise the penalties in ORS 481.305 and 481.310 from the staff recommendation of a Class A infraction to a Class A misdemeanor, consistent with the existing penalties. Motion carried unanimously.

Rep. Hampton then indicated he would like to see parallel treatment given to ORS 481.312. Mr. Paillette pointed out that ORS 481.312 was an exception to ORS 481.305 and 481.310 and no penalty was needed in that statute.

> Sen. Browne moved to approve the penalty recommendations in ORS chapter 481 with the exception of those noted above. Motion carried without opposition. Voting: Sen. Carson, Chairman Browne; Reps. Hampton, Paulus, Chairman Marx.

Penalties adopted for ORS chapter 481 were:

481.105.	Application for registration; agents to accept applications and fees	Class C infraction
481.107.	Notice of change of address or name	Class C infraction
481.110.	Certificate of title required	Class C infraction
481.115.	Contents and effect of certificate of title	Class C infraction
481.125.	Registration of government-owned vehicles	Class C infraction
481.130.	Registration of specially constructed or imported vehicles	Class C infraction
481.150.	Denial or cancellation of registration or certificate of title; falsifying registration application	Class A misdemeanor
481.165.	Law applicable to foreign vehicles; display of foreign licenses	Class C infraction

481.170.	Surrender of foreign title certificates and evidences of registration investigation; temporary plate	Class D infraction
481.177.	Permit to operate unregistered vehicle over highway; trip permits for mobile home movements	Class D infraction
481.195.	When display of certificate required; exception	Class C infraction
481.200.	Prohibited acts relating to certificate of compliance	Class C infraction
481.202.	Required fee must be paid	Class C infraction
481.205.	When fees are payable; fees for motor bicycles, motorcycles, disaster units and antique vehicles	Class D infraction
481.220.	When certificates of weight and passenger capacity are required	Class D infraction
481.225.	Special license for farm vehicles	
(7)		Class C infraction
(8)		Class C infraction
(10)		Class C infraction
481.230.	Issuance of license plates, stickers and registration card; keeping in or on vehicle	Class C infraction
481.232.	Special license plates for amateur radio operators	Class D infraction
481.255.	Display of license plates required	Class B infraction
481.257.	Combined weight required to be painted on or near doors of vehicle	Class C infraction
481.260.	Issuance and display of temporary permits	Class B infraction
481.265.	Size, color, design, material and contents of plates	Class D infraction
481.305.	Procedure for obtaining a license to carry on business of buying and selling vehicles	Class A misdemeanor
481.310.	Dealer's bond	Class A misdemeanor

481.312.	When dealer's license and bond required of manufacturer of vehicles	No penalty
481.315.	Issuance of dealer's license; supplemental licenses and records required of dealers	Class C infraction
481.325.	Dealer's fees, certificates and plates	Class B infraction
481.330.	Use of dealer's plates in other branches or on unauthorized vehicles	Class C infraction
481.335.	Use of windshield permits to move vehicles; mobile home movements excepted	Class C infraction
481.345.	Wrecker's license; application; supplemental license	Class A misdemeanor
481.350.	Wrecker's fees and bond	Class A misdemeanor
481.355.	Issuance of wrecker's license certificate and plates	Class A misdemeanor
481.360.	Wrecker to keep records and evidence of ownership	Class A misdemeanor
481.370.	Conduct of wrecking business	Class A misdemeanor
481.385.	Motor vehicle transporter's permit and transit plate	Class C infraction
481.395.	Issuance of transit plate	Class C infraction
481.405.	Transfer of ownership in registered vehicles	Class B infraction
481.410.	Creation, satisfaction or assignment of security interest in vehicle	Class C infraction
481.420.	Transfer of unregistered vehicle by a dealer or manufacturer	Class C infraction
481.430.	Notice of wrecking of vehicles and transfer of engines or vehicles	Class A misdemeanor
481.435.	When certificate of title record is to be destroyed	Class A misdemeanor
481.440.	Procedure when person possesses vehicle with altered or defaced serial or identification numbers	Class C infraction

481.444.	Destroyed vehicles; transfer; retention; disposition of plates and title certificate	Class A misdemeanor
481.448.	Acquiring vehicles for salvage purposes	Class A misdemeanor
481.775.	Operation of unregistered snowmobile prohibited	Class C infraction
481.785.	Application for registration; registration term; transfers; nonresident registration permits; fees; fees in lieu of taxes on snowmobile; local registration and license fees prohibited	Class C infraction
481.790.	Registration of dealers; fees; registration numbers and plates; sales or demonstrations by unregistered dealers prohibited	Class C infraction
481.800.	Vehicle registration numbers to be permanently affixed	Class C infraction
481.990.		
(3)	Alteration or forgery of certificate of title or registration	Class C felony
(4)	Unauthorized printing of certificate of title or registration	Class C felony
(5)	Unlawfully publishing title forms	Class C felony
(6)	False statement with knowledge in title certificate application; transfer of possession of stolen vehicle	Class C felony
(7)	Dealing with, concealing or possession of vehicle with identifying number removed to conceal vehicle identity	Class B misdemeanor
(8)	Failure to forward title certificate to Motor Vehicles Division	Class D infraction
(11)	Sale of vehicle without obtaining title certificate	Class C felony
(12)	False affidavit	Class C felony

The meeting was adjourned at 5:15 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Committee on Judiciary

September 25, 1974

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

House Members Present: Representative Robert Marx, Chairman
Representative Stan Bunn
Representative Lewis B. Hampton
Representative Norma Paulus

Absent: Senator John D. Burns
Senator George Eivers

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

Others Present: Miss Vinita Howard, Public Information and Publications, Motor Vehicles Division
Mr. Ralph Sipprell, Liaison Engineer, Department of Transportation
Mr. Bruce Bishop, Legislative Research
Capt. John Williams, Traffic Division, Oregon Department of State Police

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

APPLICATION OF PENALTY PROVISION TO UNCLASSIFIED OFFENSES

Chairman Browne called attention to a general penalty section to be considered by the Committee, and Mr. Paillette explained that the section would cover any statute that might not have a penalty provision. If there is an offense that has not been specifically classified as a crime or a traffic infraction, he continued, it would be a Class A traffic infraction and the problem of having no penalty at all would be avoided.

> Rep. Hampton moved the adoption of the section: "An offense defined in the Oregon Vehicle Code which is not classified as a crime or traffic infraction, or for which a penalty is not otherwise specifically provided, shall be considered a Class A traffic infraction." There being no objections, the motion carried.

TRAFFIC INFRACTION APPEAL PROCEDURES

With respect to the question of appeal procedures for traffic infractions, commented Mr. Paillette, since the inquiry into the adjudication procedure the version that has been discussed most often has been the one set forth in Senate Bill 403. The Consulting Committee and Judge Schwab have felt that it is superior to SB 450 passed in 1971, which ultimately became chapter 623 of the Oregon Session Laws of 1971.

Mr. Paillette explained that an attempt had been made two different times to get together a group of district judges to discuss SB 403. There are a number of district judges who are acting as an ad hoc committee of the District Judges Association who are attempting to draft amendments to recommend to SB 403, he continued. Since the amendments were not ready, Mr. Paillette explained that he wished for the committee to consider what was available and to reach a decision as to what course to take.

He had made some housekeeping amendments to SB 403, said Mr. Paillette, to eliminate some obsolete statutory references that would no longer apply because of legislation that had been enacted last session. The amendments were strictly mechanical and did not include any policy amendments.

In answer to a question by Chairman Browne, Mr. Paillette stated that he believed SB 403, or a version of it, should be introduced as a committee bill. For the purpose of the interim committee report, it was Mr. Paillette's suggestion, in order to avoid later reworking of the bill with the district judges, to defer any action on an appeals bill at this time and in its place include in the committee report a statement along the lines set out in the commentary attached as Appendix F , which would appear as part of the Article on Classification of Offenses; Disposition of Offenders. Mr. Paillette also suggested including in the committee report sections dealing with the question of appeals from municipal court and justice court. This would, he said, clearly indicate the committee's views on an appeals bill, that the district court should become a court of record with the appeals going to the Court of Appeals, as suggested in SB 403, rather than circuit court, which would be the case under chapter 623. Attached as Appendix G and H are copies of proposed amendments.

Chairman Browne suggested giving the Consulting Committee the opportunity to study SB 403 and make suggestions. Mr. Paillette agreed that this could be done and stated that his only concern at this time would be to include some kind of a statement in the committee report. Also, he said, this would give the committee the opportunity to prepare a separate bill to introduce in January, which would initially have the support of the district judges.

Mr. Paillette stated that there might be a constitutional question in Appendix H from the standpoint of equal protection with the court having the option to elect to provide for appeals in traffic infraction cases to be on the record as provided by law for appeals from district court, and if not, an appeal from municipal court or justice court shall be tried de novo in the circuit court. It was the opinion of the Consulting Committee that the justice court and municipal court should have the option, said Mr. Paillette. Rep. Hampton asked about the constitutionality of giving the defendant, who is charged in a justice or municipal court the option to elect to remove the case to district court, or to circuit court if there is no district court, and if the defendant fails to make a choice, then an appeal would be directed de novo to the Court of Appeals. Mr. Paillette commented that it could

eliminate a possible problem and that the defendant would need to have full knowledge that he would have one type of appeal whether he elected to stay in justice court or take his case to district court.

Chairman Browne pointed out that there would be a cost problem for the justice court and municipal court in securing proper equipment to make tapes of trials. Rep. Hampton agreed that there would be a cost involved and a possible problem in covering the cost of the equipment. Sen. Carson indicated that there might be a saving in that a police officer wouldn't be involved in a trial in circuit court and that there would be a saving in his salary since he would be involved in only one trial.

The members were in agreement that the defendant should have only one appeal. Sen. Carson stated that once a process on the record is set up then most problems would be solved.

Sen. Carson stated that there could be a three step process for a defendant. If he were arrested in the justice court, he would have the choice of removing the case to the district court, if there is one, and from there directly to the Court of Appeals. If there is no district court, continued Sen. Carson, then the defendant would go directly to the circuit court and from there directly to the Court of Appeals. This would automatically parallel the district court with the circuit court.

Rep. Hampton explained that it was his opinion that it would be best to provide for de novo review on the record of all cases to the Court of Appeals regardless from which court the case originated.

If the Legislature takes no further action, chapter 623 will become effective on July 1, 1975, which will make district court a court of record with appeals going to circuit court rather than the Court of Appeals, said Mr. Paillette.

It was the consensus that until the justice court would also be a court of record besides the district court that the defendant should have an option as to where to have his case heard and that appeals should be de novo on the record.

The committee agreed to:

(1) Include language dealing with de novo appeals in the Article Classification of Offenses; Disposition of Offenders as proposed sections,

(2) Deal with appeals in a separate bill,

(3) Submit SB 403 to the Consulting Committee for review and suggestions.

APPLICATION OF NEW VEHICLE CODE PROVISIONS TO PRIOR AND SUBSEQUENT ACTIONS

Mr. Paillette explained that the proposed section, attached as Appendix I would tie together the existing vehicle code with the revised vehicle code. He explained that it would be included in the General Provisions Article and that in subsection (1) of the proposed section the section numbers of the final bill that deal with any aspect of the vehicle code revision would be included. It would provide, he said, that those sections shall govern the construction of punishment for any vehicle code offense defined in the Act and committed after the effective date of the Act, the construction and application of any defense to a prosecution for such an offense and any administrative proceedings authorized or affected by the Act. The "administrative proceedings", said Mr. Paillette, would particularly cover the Motor Vehicles Division in dealings with license suspensions, revocations or any other action that is authorized by statute for the division to handle.

Under subsection (2), the same sections would not apply to any vehicle offense committed before the effective date of the Act, said Mr. Paillette.

Under subsection (4), any occurrence before the effective date of the Act, such as habitual offenders or anything on a driving record that would have an ultimate effect on the status of a driver's license, would be covered, said Mr. Paillette. Miss Howard replied that such a provision would be needed.

> Sen. Carson moved the adoption of the proposed section. There being no objections, the motion carried.

Mr. Paillette asked whether the members might wish to suggest a date when the revised vehicle code would go into effect if adopted by the Legislature. Sen. Carson added that he would strongly recommend suggesting an effective date. Since the law won't be printed until October or November following the legislative session, said Sen. Carson, he suggested July 1976 as the date when the measure should go into effect. Miss Howard explained that the Motor Vehicles Division will definitely need time to print information material and see that it is distributed to the public, and she also supported the July 1976 date for the revised vehicle code to go into effect.

> Sen. Carson moved the committee suggest July 1, 1976, as the effective date of the revised vehicle code. There being no objections, the motion carried.

OPERATION OF BICYCLES AND PLAY VEHICLES; Preliminary Draft No. 1; September 1974

Section 1. Parent or guardian prohibited from permitting child to violate bicycle equipment laws. Mrs. Embick explained that section 1 makes the parent or guardian responsible when a child is permitted to operate an unlawfully equipped bicycle. This would not include how a bicycle is ridden on the highway but would cover how it is equipped. In

answer to a question by Chairman Browne, Mrs. Embick answered that headlights are not required in the daytime.

> Sen. Carson moved to amend section 1 to insert "minor" before the word "child". There being no objections, the motion carried.

Violation of section 1 is a Class D infraction with a maximum fine of $50, said Mrs. Embick.

Section 2. Subsection (1) has the requirement that a bicycle be equipped with a white light visible to the front and a red reflector to the rear, explained Mrs. Embick.

Sen. Carson pointed out that the language "100 feet to 600 feet" gives the impression the red reflector on the rear of a bicycle would not be visible under 100 feet. Rep. Marx explained that at times a reflector seems to disappear because of the direction of the light. Sen. Carson agreed that it could be a possibility but that ideally it should be visible 0 to 500 feet, and that the best way to state the fact would be "so mounted as to be visible from all distances up to and including 500 feet". Mrs. Embick stated that the language in the section is from the UVC.

Miss Howard explained that it is her understanding that the reason for the 100 feet is because the reflectors that are used when directly in front of lowered beams on headlights there is a problem.

Subsection (2), explained Mrs. Embick, provides that a person operating a bicycle must not operate it unless it has a brake of prescribed quality.

The provision is made in subsection (3), said Mrs. Embick, that no person shall install or use any siren or whistle upon a bicycle, and in answer to a question she stated that there is no present problem with bicycles with sirens on them.

Sen. Carson explained that there have been great improvements in red reflecting devices and that he would prefer using language such as "reflector or reflecting device of such size or characteristic so that it would be seen from the rear at 600 feet regardless of the type of device it might be."

> Sen Carson moved to delete all language in subsection (1) after the word "reflector" in line 8 and insert "device or material of such size or characteristic and so mounted as to be visible from all distances up to 600 feet." There being no objections, the motion carried.

Penalty classification of section 2 is Class D traffic infraction.

Section 3. Mrs. Embick explained that subsection (1) provides that a bicyclist must not ride a bicycle other than astride or upon a permanent and regular seat, carry no more persons on the bicycle than it is designed for, carry any package that prevents him from keeping one hand on the handlebar and from having constant, full control. The words "upon or", suggested Mrs. Embick, could be deleted. In answer to a question by Rep. Hampton, Mrs. Embick stated that as long as a person sat on the seat of a bicycle he would still be astride even if he raised his feet to the handlebars.

Penalty classification of section 3 is Class D traffic infraction.

Section 3 was approved as drafted.

Section 4 prohibits a person riding upon a bicycle, and other toy vehicles, to cling to another vehicle if he attaches himself or the bicycle to any other vehicle on a roadway, said Mrs. Embick. She explained that the section is the same as ORS 483.845 and has been restated. A bicycle, she continued, is not defined as a vehicle so that it does not prohibit a bicyclist from attaching himself or his bicycle to another bicycle.

Penalty classification of section 4 is Class D traffic infraction.

A question arose as to whether to refer to "motor vehicle" rather than "vehicle" in section 4. After Mrs. Embick read the definition of vehicle in ORS 483.030, it was decided to make no changes in the language.

Mr. Paillette suggested that the commentary should include the definition of vehicle.

Section 4 was approved as drafted.

Section 5. Mrs. Embick explained that section 5, subsection (1), deals with where on a roadway a bicyclist is allowed to operate and whether he may ride beside another bicyclist or single file. The restrictions pertain to the roadway and not to a bike path or the shoulder, continued Mrs. Embick.

Subsection (2) is the exception for the one-way roadway within a city. A person operating a bicycle shall then ride either on the left or as near to the edge as possible, explained Mrs. Embick.

Subsection (3), continued Mrs. Embick, specifies that when a bicycle lane has been provided adjacent to a roadway, a bicycle rider shall use that lane and shall not use the roadway. She suggested that subsection (3) be changed to include the language "usable bicycle lane" to cover such a situation when a bicycle lane may be so narrow that it would be impossible for bicycles to travel two ways on it.

Chairman Browne asked whether cars may park on a bicycle lane, and Mrs. Embick answered that there are no specific provisions that pertain to the question but that it is done in emergency situations and there

are no penalty provisions. In answer to another question by Chairman Browne, Senator Carson replied that there are provisions to prohibit driving on a bicycle lane but there are no penalty provisions. Mrs. Embick indicated that penalty provisions have been drafted.

Rep. Bunn made the statement that using the word "usable" in subsection (3) to describe lane would be too broad. Mr. Sipprell added that the heading in section 5 uses the language "roadways and bicycle paths" while the language in the section simply refers to bicycle lane.

In answer to a question by Captain Williams, Senator Carson stated that a lane is part of a roadway and separated by a painted line and that a path is separated from the roadway. Mrs. Embick added that bicycle lane and bicycle path are defined.

Senator Carson explained that if a bicycle lane is on the right side of a roadway and a bicyclist is traveling in the opposite direction, he should not have the choice of riding with the traffic in the other direction. This, he continued, should especially apply to a bicycle path. With a narrow lane, he said, a bicycle rider could be forced out on the highway, but this would not be true on a bicycle path and there could be a provision that if there is a path, bicycles should stay off the highway. There is no affirmative requirement that a bicycle rider stay on the path, he continued. Any provision requiring a bicycle rider to stay in a bicycle lane should apply equally to a bicycle path, said Sen. Carson.

Mr. Bruce Bishop informed the members that he had made the suggestion to Mrs. Embick that when a bicycle lane is narrow it might be better to allow the bicycle riders traveling against the traffic to travel in the same direction on the highway.

Rep. Bunn asked if there is a provision that stipulates a bicycle rider cannot use the roadway when there is a bicycle path how would the stipulation be tied in with a particular roadway if the bicycle path does not follow the roadway. Senator Carson conceded that the question would be difficult to resolve and added that he would hate to see a bike lane on a busy roadway with some bicyclists using it and some not with the decision of whether to use it left entirely up to the judgment of the bicycle riders as to whether the lane would be wide enough. He suggested that the language "near or adjacent to the highway" could be used and the bicyclists would have to use the lane or path even though they would have to slow down to pass each other.

Senator Browne explained that in Lane County there are bicycle paths 20 feet wide and that it wouldn't make sense to require bicycle riders to travel single file and pointed out that section 5 refers only to lanes and not paths.

Rep. Bunn made the suggestion that all bicycle riders be required to use a bike lane or path unless it is posted one-way with the authority to do the posting left to the Highway Division. If the lane or path is posted one-way, then the bicycle riders traveling in the opposite

direction would use the roadway, continued Rep. Hampton. Sen. Carson added that it would be better to widen the lane rather than posting it one-way.

Captain Williams pointed out that the shoulder is not included in the definition of roadway and that if bicycles are prohibited from being ridden on the roadway, there would be no stipulation that they could not use the shoulder. Senator Carson agreed with Capt. Williams and explained that subsection (1)(c) would not apply to the area outside the fog line.

Rep. Bunn suggested that if the definition of roadway were changed to highway, it would then include the shoulder. If it wouldn't include the bicycle lane, it would then solve a problem. Mrs. Embick stated that bicycle lane is included as part of the highway. Rep. Bunn then suggested using the language "highway except bicycle lane", and Rep. Hampton agreed.

> After further discussion, Sen. Carson moved section 5, subsection (3), be amended to read: "When a bicycle lane has been provided or a bicycle path provided adjacent to or near a roadway, bicycle riders shall use that lane or path and shall not use the roadway." There being no objections, the motion carried.

Penalty classification of section 5 is Class D traffic infraction.

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

Pages 35 through 42 reported by:

Anna McNeil, Clerk
Committee on Judiciary

The meeting reconvened at 1:30 p.m., Chairman Elizabeth W. Browne presiding.

Senate Members Present: Senator Elizabeth W. Browne, Chairman

Delayed: Sen. Wallace P. Carson

House Members Present: Representative Robert P. Marx, Chairman
Representative Stan Bunn
Representative Lewis B. Hampton
Representative Norma Paulus

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

Others Present: Mr. L. E. George, Traffic Engineer, Department of Transportation
Mr. W. Michael Gillette, Solicitor General, Department of Justice
Miss Vinita Howard, Public Information and Publications, Motor Vehicles Division
Mr. John G. Meyer, Administrative Assistant, Interim Committee on State and Federal Affairs
Mr. Ralph Sipprell, Liaison Engineer, Department of Transportation
Mrs. Laura Smith, Portland
Capt. John Williams, Traffic Division, Oregon Department of State Police
Mr. William Wiswall, Attorney at Law, Springfield

OPERATION OF BICYCLES AND PLAY VEHICLES; Preliminary Draft No. 1; September 1974

Section 6. Use of bicycle lanes by vehicles. Mrs. Embick explained that under present law a driver of a motor vehicle is prohibited from using a bicycle lane, i.e., a painted lane next to and part of the roadway, except when passing another vehicle on the right. Under the proposed code revision the Article on Driving on Right Side of Roadway will prohibit passing on the right by driving off the roadway onto the shoulder. Section 6 stated exceptions to the rule requiring drivers to stay off bicycle lanes and would permit them to be in those lanes in certain specified instances. Subsection (2), however, required drivers to yield the right of way to bicycles on bicycle lanes.

Miss Howard commented that there could be times when a driver might be making a left turn that would require him to cross a bicycle lane, and this contingency was not covered by the proposed statute. Mr. George agreed and added that the draft also did not make provision

for a mailman delivering mail, traveling parallel to a bicycle lane and occasionally having to go on the bicycle lane to reach a mailbox.

Chairman Browne suggested that the problem raised by Miss Howard could be resolved by deleting "right" from paragraph (b) of subsection (1). The question to which Mr. George spoke might be corrected by an exception stating that a person could drive on a bicycle lane if his official duty required him to do so. There could be occasions where an emergency vehicle would need to travel on a bicycle lane and this latter proposal would take care of that situation also. Mrs. Embick observed that the General Provisions contained an exception for emergency vehicles by permitting them to ignore traffic signs, but it would not extend to the mailman.

By common consent the committee agreed to delete "right" in paragraph (b) of subsection (1) and to add an exception for persons who find it necessary to cross or travel upon a bicycle lane in the course of their official duty.

Mr. Paillette suggested that in view of the committee's decision to grade the first three sections of the Right of Way Article as Class B traffic infractions, the same classification would be appropriate for section 6. The penalty, he said, should be at least equally severe for failure to yield the right of way to a bicyclist on a bicycle lane as to fail to yield right of way to another vehicle.

The committee unanimously agreed to classify section 6 as a Class B traffic infraction.

Section 7. Bicyclists to yield right of way at intersections except to left turning and stopped vehicles; driver right of way to bicyclist. Mrs. Embick explained that section 7 was an outgrowth of the subcommittee's decision not to give the bicyclist all the rights of a driver. For this reason it seemed appropriate to go through the Rules of the Road and decide which rights should be given to a bicyclist. These were set out in section 7. At the present time, she said, the bicycle rider had no rights whatsoever because he qualified as neither a vehicle nor a pedestrian.

Rep. Bunn asked how section 7 fit in with section 8. Mrs. Embick explained that section 8 was the general provision giving the bicyclist a duty of due care just as the Pedestrian Article placed the same duty on a pedestrian. She added that it might be more appropriate to move section 8 to the section 1 position in this Article.

Rep. Bunn asked if there were court decisions spelling out which duties would apply to the bicyclist. Mrs. Embick replied that there were two or three cases, the thrust of which was that the duties of a driver applied to bicyclists but not the rights. Rep. Bunn asked if there was any confusion as to which duties applied and was told by Mrs. Embick that the matter had not been tested thoroughly, but there appeared to be a modicum of confusion in that area.

Rep. Hampton asked if there was good reason for withholding from bicyclists the application of the right of way rule at uncontrolled intersections. Mrs. Embick said that at the subcommittee meeting Sen. Carson was of the opinion that any time a bicyclist was given the right of way, there was a good chance he would soon be dead. For that reason she had tried to pick out for purposes of section 7 right of way situations where the bicyclist was particularly visible and where the driver could be expected to see the bicyclist.

Rep. Hampton said he would prefer to apply the same right of way rules to both the bicyclist and the motorist thus avoiding the problem of requiring young people to learn two sets of rules. He was extremely dubious about the provisions of section 7. Rep. Bunn said he shared Sen. Carson's concern that such an approach would result in a dead bicyclist who had the right of way.

Miss Howard suggested making the language in paragraph (a) of subsection (1) more precise by substituting the following:

> " . . . from the opposite direction which have signaled their intention to make a left turn . . . . "

This would resolve the problem of how a bicyclist could know the intent of a motorist unless he had given a signal indicating his intent.

Miss Howard also proposed that paragraph (b) of subsection (1) might be easier to understand if it were amended to read:

> "(b) When vehicles approaching the intersection must stop to comply with a stop sign."

It was her opinion that it was important to move that provision closer to the beginning of the sentence.

The committee agreed to adopt the two amendments proposed by Miss Howard as set forth above and to reverse the order of the clauses in paragraph (b) of subsection (1).

Rep. Hampton indicated he could not support section 7 without giving equivalent right of way treatment to both automobiles and bicycles, particularly in view of the automatic response of a driver to the fact that he has the right of way when he is on the right, but he would not have that same right of way when he is on a bicycle. In his view it would create a very dangerous situation to tell drivers that bicyclists do not have the same right of way as motorists.

By common consent the committee agreed to classify subsection (2) as a Class D traffic infraction and subsection (4) of section 7 as a Class B traffic infraction.

Section 8. Application of chapter to bicyclists. Mrs. Embick explained that section 8 would make the bicyclist subject to the Rules of the Road except for those rules which had no application to bicycles.

Rep. Hampton remarked that section 7 was intended to overcome section section 8 on the right of way question, but he had some question as to whether it actually accomplished that purpose.

[Note: Section 8 was also discussed in connection with section 7. See above.]

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ORS 483.865. Use of bicycle path by vehicles prohibited. ORS 483.870. Bicyclists on sidewalks required to warn pedestrians; careless bicycle operation on sidewalk prohibited. Mrs. Embick indicated there were other provisions in present law directed at bicycles which did not appear in this draft because no consideration was given to redrafting them. Two such sections were ORS 483.865 which she proposed to classify as a Class B infraction and ORS 483.870 for which she recommended a Class D classification.

The committee approved the two classifications recommended by Mrs. Embick even though Rep. Hampton was of the opinion that ORS 483.870 should be a Class C infraction.

ORS 483.002 (5). Definition of "bicycle". Mrs. Embick then called attention to the definition of "bicycle" in current law as set out on page 14 of the draft. She indicated it appeared to be suitable and would include the adult tricycle as well as those vehicles with a wheel diameter greater than 14 inches. She also called attention to a paragraph recommended by the National Committee on Uniform Traffic Laws and Ordinances which the committee might want to add to the ORS definition as a provision that would exempt children from the impact of the bicycle Article:

> "The provisions of this article shall apply to any person at least 14 years of age propelling any conveyance by feet acting upon pedals."

Mr. Paillette commented that the age of 14 was consistent with criminal liability under the Criminal Code. He thought it would be a good idea to include something with respect to age to clarify any ambiguity.

Rep. Bunn's view was that the statute should be very clear that the bicycle rules and procedures apply to everyone, regardless of age, even though juveniles offenders would not be dealt with in the same way as adults. The criminal law, he said, would take care of the question of whether or not they were criminally responsible, but young children should know that they were required to follow these rules.

Mr. Paillette conceded this was desirable but pointed out there was a distinction between following the rules from an educational standpoint and imposing legal liability, either civil or criminal.

Capt. Williams asked if there would be recourse through the parent or guardian under the proposed Article and was told by Mr. Paillette

that there would because of a general statute making the parent or guardian liable for the action of the child.

Rep. Hampton believed it was unnecessary to state an age below which there would be no criminal liability because the subject was treated adequately by the Criminal Code. If a provision were included stating that below a certain age, there was no liability, then the juvenile court wouldn't even have jurisdiction. Mr. Paillette said he was not suggesting that anything in this Article created criminal liability because it did not.

The committee's decision was to retain the definition of "bicycle" as set forth in subsection (5) of ORS 483.002 without amendment.

At a later point in the meeting Sen. Carson moved to adopt the Article on Operation of Bicycles and Play Vehicles, Preliminary Draft No. 1, as amended. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Reps. Bunn, Paulus.

SERIOUS TRAFFIC OFFENSES (Amendments drafted as a result of committee action at meeting of 8/30/74)

Section 12. Use of chemical analysis to show intoxication. Mr. Gillette again explained the amendments he had proposed the previous day to section 12 of the Serious Traffic Offenses Article. [Note: See Appendix B and page 6 of these minutes.] The purpose was to add a subsection to section 12 stating that a person who had a blood alcohol content of .08 or greater was under the influence of intoxicating liquor. He acknowledged that section 12 as drafted by Mr. Paillette was superior to the section he proposed and asked only that it be supplemented by a subsection stating the evidentiary effect of having .08 percent or more blood alcohol content at the time of the blood test.

Rep. Paulus asked what the scientific basis was for concluding that the blood alcohol percentage would be higher an hour and a half after a person had stopped drinking. Mr. Gillette replied that it depended upon when the alcohol was ingested and the period of time over which it was ingested. The speed at which alcohol is absorbed into the blood is fairly constant, he said, whether or not a person has eaten. If a person ingested enough alcohol over a short period of time so that the body was still in fact absorbing it, the blood alcohol content could still be climbing an hour and a half later.

Chairman Browne said she still did not understand why the proposed amendment could not be stated as a disputable presumption instead of a conclusive presumption. Mr. Gillette explained that if it were made a disputable presumption, it would disagree with the substantive crime. On the one hand the statute would say that driving with .08 was against the law but on the other hand it would say the legislature was not entirely sure of that in some circumstances. This approach, he said, could concede unconstitutionality of the substantive offense.

Rep. Paulus moved to add the new paragraph (b) of subsection (1) of the amendment proposed by Mr. Gillette to section 12 as set out on page 7 of the amendments dated August 30, 1974. Motion carried.

Chairman Browne asked Mr. Wiswall if he had any comment to make on section 12. Mr. Wiswall introduced himself and advised that he had been a deputy district attorney in Lane County from 1963 to 1965 and since that time had been primarily engaged as a defense attorney. He said he had prosecuted or defended between 1,300 and 1,500 DUIL cases. Ordinarily he had between 50 and 110 such cases pending for trial and he tried or settled two or three per week.

Mr. Wiswall said the Breathalyzer machine is usually operated by the arresting police officer outside the presence of any other individual. The defendant has no right to see the results of that test. The test result is not automatically recorded but is a visual observation made by the officer who then records the results. In addition, the officer has the opportunity to manipulate the results of the test and make it any result he chooses simply by adjusting the knobs. For example, instead of starting the machine at .00 he can start it at .06 or .10, and he gave an example of a case in which such manipulation was suspected because the results of the tests by one particular officer were always between .26 and .31 -- none lower and none higher. He added that in all the cases he had tried in the last two years, there was only one case in which the Breathalyzer result was less than .10. For these reasons, he objected to section 12 together with the committee's proposal to eliminate the jury trial in DUIL cases.

Rep. Bunn asked Mr. Wiswall if he was objecting to the committee's policy of making .08 the point of illegality rather than the amendment to section 12. Mr. Wiswall replied that it was his understanding that the committee was recommending that the percentage be reduced from .10 to .08 and also planned to make it permissible to establish guilt by either proving that the defendant was under the influence of intoxicating liquor based upon his condition as observed by the police officer or others, or, alternatively, that he could be prosecuted and convicted if it were shown that he had a blood alcohol content of .08 or higher. His comments, therefore, were directed toward that part of the committee's proposal that would allow a person to be convicted of having a blood alcohol content of .08 or greater solely because that was what happened to be in his blood at the time of the blood test.

Mr. Wiswall then outlined the changes in the DUIL law since 1966 and how they had continually been strengthened to enhance the possibility of conviction. This was also true in part, he said, of the committee's proposal to eliminate the jury trial in DUIL cases for first time offenders. His particular concern was that the .08 percentage was too low.

Rep. Paulus pointed out that testimony heard during the 1971 legislative session was that the percentage could properly be set at .05, based on facts and on tests run by the committee itself.

Rep. Bunn commented that it was necessary to rely upon the police officer's veracity in many instances in addition to those where he administered Breathalyzer tests. One such example, he said, would be the officer's use of radar to arrest speeders. Mr. Wiswall said that in that instance the defendant at least had the opportunity to say that his speedometer read 45 mph when the officer said he was doing 60. For the Breathalyzer test he had no way to dispute the officer's reading of the machine.

Rep. Paulus stated that it had been demonstrated to her as a legislator that the problem of the drunk driver is serious enough to warrant some extraordinary remedies. It was her opinion that the legislature should state as a matter of public policy that they were going to take a very tough stand against drunk driving, and she had seen evidence that this approach had produced some reduction in the number of drunk drivers on the road.

Mr. Wiswall said the ramifications to a person convicted of DUIL would be the same under the present law and under the proposal, regardless of whether or not the offense carried the possibility of a jail sentence, with the proposal adding some disabilities not present in current law, one of which was the loss of the right to a jury trial. He believed they were all added in an effort to increase the conviction rate.

Sen. Carson asked Mr. Wiswall if he was only objecting to the fact that the jury trial had been eliminated for the first time DUIL by placing that offense in the infraction category or if he was advocating that a person should be entitled to a jury trial for all infractions, including improper turns. Mr. Wiswall replied that he was not so opposed to the proposal as it applied to minor infractions as he was for the major traffic offenses. He added that he had no objection to the elimination of the trial de novo, but he did object to allowing convictions by a preponderance of the evidence.

Rep. Paulus commented that the purpose of the whole revision was not to get more convictions but to get the really bad drivers off the road, and the present system was not accomplishing that goal. The committee, she said, was trying to get the driver off the road who had been apprehended before, was driving with a suspended license and who had a chronic drinking problem.

Rep. Marx asked Mr. Wiswall if he could estimate how many DUIL cases he had defended and the answer was 1,200 to 1,300. Rep. Marx then asked how many of those individuals had been acquitted. Mr. Wiswall said he had won a substantially larger number than he had lost and guessed it would be between 70 and 85 percent. He added, however, that the recent conviction rate was higher than it had been in the past.

Mrs. Laura Smith told the committee that her son and one of his friends were the victims of a drunk driver. Her position was that if a person wants to drink, he has every right to do so, but he does not have a right to go out on the road after he has been drinking and infringe upon the rights of others who are using the highways legitimately.

In response to a question by Rep. Hampton as to the percentage level he would consider to be fair, Mr. Wiswall said he would not object to .10 as supporting a disputable presumption. His principal objection, he said, was not to section 12 but to the percentage drop to .08 which position, he said, was supported by a number of members of the judiciary.

The committee recessed briefly at this point and Rep. Hampton was excused for the balance of the meeting.

HOUSE BILL 2553 (1973 Regular Session) relating to arrests for parking violations

Mr. Paillette advised that Mr. John Meyer had asked the Judiciary Committee to consider HB 2553 and the purpose behind it.

Mr. Meyer indicated that he was appearing as a private citizen and his appearance was in no way related to his legislative employment. During the last session, he said there were several occasions when the Salem city police came to the Capitol to arrest employes for nonpayment of parking tickets and this had also occurred at least once during the interim. It appeared to him that this was a convenient method of collecting bills, and therefore, at his suggestion, Rep. Gilmour had introduced HB 2553. He believed the practice of using the power of arrest for a ticket which could be for as little as $3 was rather extreme. To the general public who neither had the experience to deal with such a situation and/or did not have the money to pay the ticket, this was a frightening experience. He had no quarrel with being sued in small claims court or to a garnishment proceeding, he said, but he did believe that the power of arrest was too stringent for such a minor violation.

Sen. Carson said he shared the same concern but was of the opinion that the reference in the bill to "a nonmoving traffic violation" was too broad. Mr. Meyer agreed and suggested the bill be amended to refer specifically to "parking tickets."

SECTION ___. SEARCHES AND SEIZURES RESTRICTED IN CERTAIN TRAFFIC INFRACTION ARRESTS

Sec. 143 Final Draft

Mr. Paillette indicated that he had drafted a section relating to limitations on searches and seizures, a copy of which is attached hereto as Appendix J. The decision of the committee thus far was to continue the existing statute authorizing a police officer to either arrest or issue a traffic citation for any traffic offense, including crimes as well as traffic infractions. The primary concern in

connection with such an arrest was the prospect of a full blown search of the motorist who was taken into custody for a traffic infraction. In his opinion there was no doubt that in the absence of a specific limiting statute, the law with respect to searches incidental to arrest would apply. Chairman Browne had therefore asked him to draft a section limiting this type of search. The ALI Model Code of Pre-Arraignment Procedures had a similar provision except that it was directed at minor offenses. The intent behind the ALI proposal was much the same as this one -- in the minor offenses there would not be, except for the stop and frisk authority that would otherwise apply, a full blown search and seizure. The attempt was to get at the pretext arrest. Subsection (1) of the section he drafted was limited to a Class B, C or D infraction so that for any of the serious offenses, including Class A infractions, the general rules relating to searches would apply.

Sen. Carson asked Mr. Paillette if in his opinion a search and seizure would be authorized, for example, in an incident pursuant to a burned out headlamp, in the absence of a statement in the statute such as the one he was explaining. Mr. Paillette affirmed that this was his opinion in the absence of limiting language or in the absence of case law limiting searches in such instances. There was, however, a difference of opinion as to the present state of the case law. He said he had been told that the State Police do not conduct this type of search. Following the recent Robinson opinion, Supt. Holcomb made the statement publicly that their search procedures in traffic cases would be no different than they had ever been.

In response to Sen. Carson's request for his comments on this section, Capt. Williams said it would not change the State Police operating procedure, but as a general observation, he said he disliked seeing restrictions of this type added to the law. It was just one more thing for police officers to learn in their training sessions.

Sen. Carson said that from the standpoint of sheriffs and city police, it might be easier for the training officer not to have to depend on case law. Perhaps it would be better, so long as the proposal did not interfere with State Police practice, for the officer to know that on arrests for B, C and D infractions he was limited to a search for dangerous and deadly weapons. Capt. Williams said he could not disagree with Sen. Carson's statement.

Sen. Carson's opinion was that it was desirable to set out search and seizure law in the statute primarily so law enforcement officers could know precisely what they could and could not do in this area.

Rep. Bunn moved adoption of the section entitled "Searches and seizures restricted in certain traffic infraction arrests." Motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Reps. Bunn, Paulus.

VEHICLE OFFENSE PROCEDURES FOR JUVENILES; Reference Paper; August 1974

Mr. Paillette explained that the reference paper on juvenile procedures set out the existing relevant Oregon statutes with respect to the jurisdiction of juvenile courts generally. It also set forth the text and commentary of House Bill 2050 from the 1973 Legislative Session as well as the UVC approach. ORS 419.533 on page 3 of the reference paper was the basic remand statute and generally used the age of 16 years or older. Subsection (2) of that statute set out the blanket remand authority which was exercised, so far as he knew, in all counties in this state for traffic offenses. The effect of that procedure was that the courts were placing all traffic cases involving juveniles into the municipal court, district court, etc.

The Proposed Juvenile Code (HB 2050) on page 5 of the reference paper took a somewhat middle position. Under the proposed section 15, if the youngster was under 15, he would go to juvenile court in all cases. This would apply not only to traffic offenses but also to boating and hunting offenses. Between the ages of 15 and 18, the child would originally go into adult court, and the court was granted authority to transfer the matter to the juvenile court. Certain major traffic offenses would remain in the juvenile court and be considered as delinquent acts, regardless of the age of the child.

Rep. Paulus and Sen. Carson supported the adoption of section 15 of HB 2050, reserving to Mr. Paillette the authority to make appropriate changes.

Mr. Paillette next asked the committee to look at section 50 of HB 2050 on page 8 of the reference paper which was a companion section setting out specific authorization for the court to levy extraordinary kinds of penalties not ordinarily found in the juvenile court. The language with respect to hunting and fishing in section 50 could be eliminated, he said.

Rep. Paulus said she had been approached by people who own homes on some of the lakes and rivers in Oregon who were concerned about children driving motor boats with a tremendous amount of horsepower that could go up to 60 mph. When no one else was on the water, that might be all right but it posed a very dangerous situation in crowded waters. She urged that the law be changed so that the ability to operate a boat would be the same as to drive a car. Section 50, she said, would go along with that approach and allow the judge more leeway in those situations.

With respect to the phrase in paragraph (a) of subsection (2) of section 15 which said, "The child's behavior or past motor vehicle record manifests a serious behavioral problem," Sen. Carson said he was not so sure he would want a case to go back to juvenile court simply because the child had a long record. In other words, if 15 VBR's could be construed to indicate a serious behavioral problem, he would not want that child remanded back to juvenile court for that reason alone. He felt certain this was not the intent of the section, but it could be interpreted to mean that a juvenile with a good motor

vehicle record could not be remanded, but if he had a long record and that record was used to demonstrate a serious behavioral problem and for that reason he would be remanded to juvenile court, it was the wrong result.

Mr. Paillette indicated he could redraft the two sections along with some commentary and mail them to committee members for their approval if that was the approach the members wanted to take.

Chairman Browne asked if a juvenile could be sent to MacLaren under the disposition permitted in section 50, subsection (3), which said, "a school or other training program related to the type of offense." Rep. Paulus said she understood that phrase to pertain to driver training courses and Chairman Browne indicated that was also her understanding of it.

Rep. Paulus moved the adoption of sections 15 and 50 of the Proposed Juvenile Code (HB 2050) with the understanding that Mr. Paillette would clarify section 15 to take care of the behavioral problem situation discussed by Sen. Carson and would make any other appropriate revisions to the statutes and commentary. Motion carried unanimously. Voting: Sen. Carson, Chairman Browne; Reps. Bunn, Paulus.

SPECIAL RULES FOR MOTORCYCLES; Preliminary Draft No. 1

Rep. Paulus moved to adopt the Article on Special Rules for Motorcycles as amended by the committee at its August meeting. Motion carried. Voting for the motion: Sen. Carson, Chairman Browne; Rep. Paulus. Voting no: Rep. Bunn.

CLASSES OF OFFENSES; DISPOSITION OF OFFENDERS (Amendments drafted as a result of committee action at meeting of 8/30/74)

Section 6. Plea agreements limited. Mr. Paillette indicated that Mr. Gillette had to leave the meeting but he wanted to be heard on behalf of the district attorneys regarding the amendments to section 6 adopted by the committee the previous day. [Note: See page 11 of these minutes.] Mr. Paillette said he was talking on the telephone at the time the committee acted on the amendments proposed by Capt. Williams (see Appendix D) which precluded plea negotiations or plea agreements in any traffic crime or Class A traffic infraction. As originally drafted, the section was limited to a prohibition for occasions where a person was charged with a crime because he had a prior conviction for a Class A traffic infraction or traffic crime. Inasmuch as Mr. Gillette could not be here at this time, he wanted to record their objections to the amendments adopted by the committee. The district attorneys wanted to limit the section to plea negotiations for DUIL cases instead of extending the bar on plea negotiations to all traffic crimes and Class A traffic infractions.

Capt. Williams indicated he would have no objection to that amendment. The DUIL cases, he said, were the chief concern in proposing the amendment.

Rep. Paulus moved to amend section 6 of the Classes of Offenses Article to provide that plea negotiations are forbidden only in DUIL cases. There was no objection and the motion was adopted.

FUTURE MEETINGS

Chairman Browne indicated that this completed the basic work on the revision of the Motor Vehicle Code and the staff could now prepare the final report. She said it might be necessary to hold a few more meetings on other matters which the committee might want to submit as bills separate from the vehicle code.

ORS 486.211. CAUSES FOR REVOCATION OR SUSPENSION OF LICENSE AND VEHICLE REGISTRATION

Miss Howard suggested that in preparing the final report, the staff should look at ORS 486.211 to see if it needed a housekeeping amendment to bring it into conformity with other sections of the code dealing with revocation and suspension.

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

Respectfully submitted,

Mildred E. Carpenter, Clerk
Committee on Judiciary

Section 8. (Counsel for state and defendant.) (1) At any trial involving a traffic infraction only, defense counsel shall not be provided at public expense.

(2) [At any trial involving a traffic infraction only, the district attorney shall not appear unless required by the trial judge.

(3) As used in subsection (2) of this section, "district attorney" includes, where appropriate, a city attorney and county counsel.] (a) Notwithstanding any other provision of law, no party to a case involving a traffic infraction only shall appear by counsel unless, not less than ten days prior to the time set for trial, notice of appearance by counsel is filed with the court and served on the opposing party.

(b) Failure to file the notice required by this section shall bar appearance by counsel and shall not constitute grounds for continuance of the time set for trial.

COMMENTARY:

Subsection (2)(a) contemplates, among others, ORS 8.660 (Attendance by district attorney of all terms of court having jurisdiction of public offenses within his county) and ORS 9.320 (State appears by attorney in all actions to which it is a party).

Section 12. (Use of chemical analyses to show intoxication.) ORS 483.642 is amended to read:

483.642. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts committed by a person driving a motor vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's breath, blood, urine or saliva shall [give rise to the following presumptions:] have the following evidentiary effect:

[(a) Not more than .05 percent by weight of alcohol in his blood, supports a disputable presumption that he was not then under the influence of intoxicating liquor.]

[(b)](a) [More than .05 percent but l]Less than [.10] .08 percent by weight of alcohol in his blood, is indirect evidence that may be used to determine whether or not he was then under the influence of intoxicating liquor.

[(c)](b) Not less than [.10] .08 percent by weight of alcohol in his blood, [supports a disputable presumption that he was then] constitutes being under the influence of intoxicating liquor.

(2) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood.

(3) Nothing in this section is intended to limit the introduction of any competent evidence bearing upon the question of whether or not a person has been under the influence of intoxicating liquor.

ORS 483.640. In conducting a chemical test of the blood, only a duly licensed physician, registered nurse or a person acting under his direction or control may withdraw blood or pierce human tissues. A licensed physician, registered nurse or a qualified person acting under their direction or control, shall not be held civilly liable for withdrawing any bodily subtance, in a medically acceptable manner, at the request of a peace officer.

COMMENTARY:

This section immunizes medical personnel so long as they act in a medically acceptable manner. The phrase "medically acceptable manner" is drawn from Schmerber v. California, 384 US 757, ___, 86 SCt 1826, 16 LEd 2d 908, 913 (1966).

SUBMITTED BY JOHN C. WILLIAMS, CAPTAIN, OREGON STATE POLICE

Appendix D
Committee on Judiciary
9/24/74

RE: CLASSES OF OFFENSES, DISPOSITION OF OFFENDERS PRELIMINARY DRAFT NO. 4, AUGUST, 1974.

SEC. 6 - PLEA AGREEMENTS LIMITED.

IN ORDER TO ENSURE THAT DUIL OFFENSES NOT BE REDUCED, SEC. 6 SHOULD APPLY TO FIRST TIME OFFENDERS AS WELL AS THOSE CHARGED UNDER PARA (e) OF SUBSECTION (1) OF SECTION 4.

A SUGGESTED AMENDMENT WOULD BE AS FOLLOWS:

NOTWITHSTANDING ORS 135,405 TO 135,445, A PERSON CHARGED WITH A (TRAFFIC OFFENSE UNDER PARAGRAPH (e) OF SUBSECTION (1) OF SECTION 4 OF THIS ARTICLE) <u>TRAFFIC CRIME OR A CLASS A TRAFFIC INFRACTION</u> SHALL NOT BE ALLOWED TO PLEAD "GUILTY" OR NO CONTEST TO ANY OTHER OFFENSE IN EXCHANGE FOR A DISMISSAL OF THE OFFENSE CHARGED.

Appendix E
Committee on Judiciary
September 24, 1974

MOTOR VEHICLES DIVISION

1905 LANA AVENUE N.E. • • SALEM, OREGON • • 97310

TOM McCALL
GOVERNOR

CHESTER W. OTT
Administrator

September 19, 1974

Mr. Donald Paillette
Project Director
Committee on Judiciary
Room 14, State Capitol
Salem, Oregon 97310

Dear Don:

We have reviewed the proposed penalty classifications in the reference paper prepared for August 1974; and have only a few comments or suggestions to offer.

I did comment in Bend that I hoped an effort could be made to relate penalties to those violations that figure most prominently as factors involved in accidents, realizing that this cannot be the only consideration.

On the whole, we believe the proposed classifications meet this need although we do have a few specific suggestions concerning some areas.

Rules of the Road

Failure to yield right-of-way is the leading driver error involved in all types of traffic accidents and also is one of the most frequent citations issued at the scene of traffic accidents. For that reason, we would suggest that violation of Sections 1, 2 and 3 of the Right of Way article be made a Class B infraction, rather than a Class C infraction.

We would also suggest that Sections 1 and 6 of the article on Motorcycles be made Class B infractions.

Equipment

We have some reservations about making violations of 483.402, .403, .404, and .406 Class B infractions. In view of the maximum penalties approved in Bend, we believe it would be sufficient to have these classified as Class C infractions.

Also, we question whether any equipment violations should be classed as Class A infractions on the same level as a first-time DUIL. Certainly, as an accident factor it would be difficult to place them on the same level as driving under the influence. Nor do we think it would convey to the public the seriousness of a DUIL if the maximum penalty were the same as for limitations on lights or even brakes.

We have no further comment although we would be happy to respond to questions the committee may wish to ask at the meeting on September 24 and 25.

Yours very truly,

Vinita Howard (Miss)
Public Information Officer

VH:rc

APPENDIX F

Committee on Judiciary
September 25, 1974

APPEALS IN TRAFFIC INFRACTION CASES

Commentary

The draft provisions relating to traffic infractions presuppose that appeals in such cases would be in the same manner as provided for minor court appeals generally.

Chapter 623, Oregon Laws 1971, as amended by the 1973 Legislature, makes district court a court of record effective July 1, 1975, but continues to provide that appeals from district court judgments shall be to the circuit court.

The Judiciary Committee, as part of its package of proposed vehicle code legislation, will introduce a bill patterned upon SB 403, which was introduced during the 1973 legislative session. The committee's bill also would make district court a court of record, would specifically authorize a taped record of the proceedings and would provide for appeal to the Court of Appeals.

Justice and municipal courts could elect to adopt the appeals procedures of district courts in traffic infraction cases, except that in the case of an appeal from such courts the cause would be tried de novo upon the record.

APPENDIX G

Committee on Judiciary
September 25, 1974

CLASSES OF OFFENSES; DISPOSITION OF OFFENDERS

Proposed Amendments

Section ___. (Adding provision relating to review by Court of Appeals.) Section ___ of this Act is added to and made a part of ORS 2.510 to 2.600.

Section ___. (Scope of review by Court of Appeals in traffic infraction cases.) (1) Upon an appeal from a district court judgment in a traffic infraction case, the scope of review by the Oregon Court of Appeals shall be as provided in section 3, Article VII (Amended), of the Oregon Constitution.

(2) No judgment shall be reversed or modified under subsection (1) of this section, except for error substantially affecting the rights of a party.

(3) Upon an appeal to the Court of Appeals from a justice court or municipal court judgment in a traffic infraction case, the cause shall be tried anew upon the record.

Section ___. (Appeals from justice and municipal courts.) (1) A justice court or municipal court, at its option, may elect to provide for appeals in traffic infraction cases to be on the record as provided by law for appeals from district court. Otherwise, an appeal from a justice or municipal court shall be tried de novo in the circuit court for the county in which the traffic infraction conviction occurs.

(2) If a justice or municipal court elects to follow district court appeal procedures, it shall provide for a record to be made of any trial of a traffic infraction in the same manner as provided by law for the trial of a traffic infraction in district court.

Committee on Judiciary
August 30, 1974

Committee on Judiciary
September 25, 1974

Section ___. (Application of new vehicle code provisions to prior and subsequent actions.) (1) Sections ___ to ___ of this Act shall govern the construction of and punishment for any vehicle code offense defined in this Act and committed after the effective date of this Act, the construction and application of any defense to a prosecution for such an offense and any administrative proceedings authorized or affected by this Act.

(2) Sections ___ to ___ of this Act shall not apply to or govern the construction of or punishment for any vehicle code offense committed before the effective date of this Act or the construction and application of any defense to a prosecution for such an offense.

(3) When all or part of a vehicle code statute is amended or repealed, the statute or part thereof so amended or repealed remains in force for the purpose of authorizing the accusation, prosecution, conviction and punishment of a person who violated the statute or part thereof before the effective date of the amending or repealing Act.

(4) The provisions of sections ___ to ___ of this Act do not impair or render ineffectual any court or administrative proceedings or procedural matters which occurred before the effective date of this Act.

Committee on Judiciary
August 30, 1974

Appendix J
Committee on Judiciary
September 25, 1974

Limitation on Searches and Seizures

Section ___. (Searches and seizures restricted in certain traffic infraction arrests.) (1) Searches and seizures otherwise authorized by law incidental to an arrest shall not be authorized if the arrest is on a charge of committing a Class B, C or D traffic infraction.

(2) Nothing in subsection (1) of this section shall be construed to forbid a frisk for dangerous or deadly weapons authorized under ORS 131.605 to 131.625.