



PROPOSED REVISION

OREGON VEHICLE CODE

Rules of the Road • Procedures • Penalties

COMMITTEE ON JUDICIARY

January 1975 • Interim Report • 14 State Capitol • Salem

TABLE OF CONTENTS

	Page
Membership of the Committee	XII
Foreword	XIII
Table Showing Disposition of Existing Statutes	XVI
Table Showing Source of Proposed Draft Sections from Existing Statute Sections	XVIII
The New York Administrative Adjudication System	XX
Traffic Offense Classification Charts	XXIII
Tables Showing Results of District Court Survey (Tables I through VIII)	XXIX
Table Showing Traffic Case Convictions Reported to Motor Vehicles Division	XXXVI

PART I. RULES OF THE ROAD

ARTICLE 1. GENERAL PROVISIONS

Section

1. Adding certain sections to ORS chapter 483	1
2. Definitions	1
3. Provisions uniform throughout state	4
4. Provisions of chapter refer to vehicles upon the highways and ocean shore; exceptions	5
5. Application of new vehicle code provisions to prior and subsequent actions	6
6. Permitting unlawful operation of vehicle	6
7. Failing to obey police officer	7
8. Uniform or badge required	7
9. Public officers and employes	7
10. Persons working on highways; exceptions	8
11. Application of speed regulation and traffic signals to emergency vehicles	8
12. Application of speed regulations and traffic signals to ambulances	10

TABLE OF CONTENTS

ARTICLE 2. TRAFFIC SIGNS, SIGNALS AND MARKINGS

Section	Page
13. Obedience to and required traffic control devices	12
14. Traffic control signals	13
15. Vehicle turns at intersections with red traffic control light	15
16. Pedestrian control signals	15
17. Flashing signals	16
18. Lane direction control signals	17
19. Unlawful display of signs, signals or markings	17
20. Unlawful interference with official traffic control device or railroad sign or signal	18

ARTICLE 3. DRIVING ON RIGHT SIDE OF ROADWAY; OVERTAKING AND PASSING; USE OF ROADWAY

21. Driving on right side of roadway	19
22. Slow driver duty to drive on right	20
23. Duty to drive on right on two-way four lane roadway	20
24. Slower driver duty to yield	21
25. Duty of driver of certain vehicles to drive to right	21
26. Passing vehicles proceeding in opposite direction	22
27. Overtaking a vehicle on the left	23
28. Overtaking on right	24
29. Further limitations on driving on left of center of roadway	24
30. No passing zone	25
31. One-way roadways and rotary traffic islands	26
32. Driving on roadways laned for traffic	27
33. Following too closely	28
34. Driving on divided highways	29

TABLE OF CONTENTS

ARTICLE 4. RIGHT OF WAY

Section	Page
35. Right of way at uncontrolled highway intersection	29
36. Driver turning left	30
37. Stop signs and yield signs	31
38. Right of way at merging lanes of arterial highway	32
39. Vehicle entering roadway from private road, alley or place	32
40. Operation of vehicle on approach of emergency vehicle or ambulance	33

ARTICLE 5. PEDESTRIANS' RIGHTS AND DUTIES

41. Pedestrian obedience to traffic control devices and traffic regulations	34
42. Pedestrian's right of way in crosswalk	35
43. Pedestrian tunnel or overhead crossing	36
44. Pedestrian leaving curb	36
45. Drivers not to overtake stopped vehicle	37
46. Crossing at other than crosswalks	37
47. Exercise of due care	38
48. Pedestrian's use of sidewalk, shoulder and roadway edge	38
49. Pedestrian must yield right of way	40
50. Pedestrians soliciting rides or business	40
51. Driving through safety zone prohibited	41
52. Pedestrian's right of way on sidewalks	41
53. Pedestrians yield to emergency vehicle or ambulance	42
54. "Blind person," "guide dog," "white cane," defined	42
55. Use of white cane restricted	43
56. Duty of driver to yield to blind pedestrian	43
57. Blind pedestrian in roadway with traffic control signals	44
58. Rights of blind pedestrian without white cane or guide dog	44
59. Unlawful use of bridge by pedestrian	45
60. Pedestrian crossing closed bridge or railroad grade crossing barrier prohibited	45

TABLE OF CONTENTS

ARTICLE 6. TURNING AND MOVING; SIGNALS ON STOPPING AND TURNING

Section	Page
61. Required position and method of turning	45
62. U-turns prohibited	47
63. Moving a stopped, standing or parked vehicle	47
64. Turning and stopping movements and signals required	48
65. Signals by hand and arm or by signal lamps	49
66. Method of giving required signals	50

ARTICLE 7. SPECIAL STOPS REQUIRED

67. Stopping at railroad crossings upon signal of approaching train	50
68. Certain vehicles must stop at all railroad grade crossings	52
69. Railroad grade crossings exempt from special stopping rule	53
70. Moving heavy equipment at railroad grade crossings	54
71. Overtaking and passing school bus	55
72. Stopping before driving onto sidewalk from alley, driveway or building	56

ARTICLE 8. SPEED RESTRICTIONS

73. Basic speed rule	57
74. Maximum speeds	57
75. Speeding; affirmative defense	59
76. Special speed limits set by the Transportation Commission	59
77. State Speed Control Board; appointment, vacancy, compensation and expenses of certain members	60
78. Powers and duties of State Speed Control Board	61
79. Payment of expenses of board and of expenses in establishing special speed limits	62
80. Designation of speed in complaint; arrest without warrant in radar cases	63
81. Impeding traffic	64
82. Maximum speeds for motor trucks and passenger transport vehicles	64
83. Speed races prohibited on public ways	66
84. Maximum speed on ocean shore	66

TABLE OF CONTENTS

ARTICLE 9. SERIOUS TRAFFIC OFFENSES

Section	Page
85. Definitions	67
86. Application of serious traffic offenses upon premises open to the public	68
87. Driving while under the influence of liquor or drugs	68
88. Use of chemical analysis to show intoxication	69
89. Dangerous driving in the second degree	69
90. Dangerous driving in the first degree	70
91. Fleeing or attempting to elude a police officer	70
92. Driving while suspended or revoked	71
93. Adding penalty section to ORS 483.602 to 483.612	73
94. Penalties for failure to perform duties required after accidents	73

ARTICLE 10. STOPPING, STANDING AND PARKING

95. Stopping, standing or parking outside business or residence districts	74
96. Stopping, standing or parking prohibited in specific places	75
97. Parking distance from curb or edge	77
98. Disabled vehicle exception	77
99. Obstruction of roadway by wrecker or tow car	78
100. Police officers authorized to move vehicles	78
101. Parking vehicle on state highway for vending purposes prohibited	79

ARTICLE 11. MISCELLANEOUS RULES

102. Unattended motor vehicle	79
103. Limitations on backing	80
104. Passengers in front seat; interfering with driver; in mobile home or travel trailer	80
105. Opening and closing vehicle door	81
106. Coasting prohibited	82
107. Following fire apparatus prohibited	82
108. Crossing fire hose	83

TABLE OF CONTENTS

Section	Page
109. Removing injurious substance from highway	83
110. Stop when traffic obstructed	83
111. Application of chapter to persons riding, driving or leading animal	84
112. Livestock on highway; duty of caution; yielding right of way to livestock	84
113. Duty of driver striking animal	85
ARTICLE 12. SPECIAL RULES FOR MOTORCYCLES	
114. Unlawful motorcycle operation	86
115. Motorcyclist's right to full traffic lane	86
116. Unlawful passing or moving in lane with vehicle	87
117. Clinging to other vehicles	87
118. Protective headgear and eye device required	88
119. Division to establish standards for protective headgear and eye-protective devices	88
120. Motorcycle head lamps required to be on	89
ARTICLE 13. OPERATION OF BICYCLES AND PLAY VEHICLES	
121. Parent or guardian prohibited from permitting child to violate bicycle equipment laws	89
122. Lamps and other equipment on bicycles	90
123. Unlawful bicycle operation	91
124. Clinging by persons on bicycles and toy vehicles	91
125. Riding on roadways, bicycle paths and lanes	91
126. Use of bicycle lane by vehicles restricted; right of way on bicycle lane	92
127. Use of bicycle path by vehicles prohibited	93
128. Bicyclists to yield right of way at intersections except to left turning and stopped vehicles; driver right of way to bicyclist	93
129. Bicyclists on sidewalks required to warn pedestrians; careless bicycle operation on sidewalk prohibited	94
130. Application of chapter to bicyclists	94

TABLE OF CONTENTS

PART II. PENALTIES AND PROCEDURES

ARTICLE 14. CLASSES OF OFFENSES; DISPOSITION OF OFFENDERS

Section	Page
131. Traffic infraction described	96
132. Classification of traffic infractions	99
133. Fines for traffic infractions	100
134. Class A traffic infraction classified as misdemeanor because of prior conviction	100
135. Penalty for offense not otherwise classified	101
136. Adding certain sections to ORS chapter 484	101
137. Trial; burden of proof; pre-trial discovery	101
138. Plea agreements limited	105
139. Counsel for state and defendant	106
140. Former jeopardy, res judicata and collateral estoppel not applicable in traffic infraction cases	106
141. Trial judge's authority to order suspension of license, permit or right to apply	107
142. Court ordered suspension to run concurrently	109
143. Searches and seizures restricted in certain traffic infraction arrests	109
144. Conviction of certain offenses as grounds for mandatory revocation or suspension	111
145. Permissive suspension or revocation	112
146. Suspension for refusing breath test; notice of suspension	112
147. Hearing on suspension under ORS 482.540	113
148. Notice of suspension, revocation or cancellation	114
149. Implied consent to chemical test; police report of refusal; evidence of refusal inadmissible	114
150. Administering blood test	115
151. Definitions for ORS 1.510 to 1.530 and 484.010 to 484.320	116
152. Traffic citation requirements; exceptions; uniform citation	117
153. Appearance by defendant	120
154. Impounding vehicles operated by driver convicted of driving while license revoked or suspended; redemption; suspension of registration; rights of security interest holders	120
155. Definitions for ORS 484.700 to 484.750	122
156. Penalties	123

TABLE OF CONTENTS

PART III. RESPECTIVE POWERS OF STATE AND LOCAL AUTHORITIES

ARTICLE 15. POWERS OF STATE AND LOCAL AUTHORITIES

Section	Page
157. Authority of Transportation Commission to mark highways and control traffic; authority of Public Utility Commissioner regarding railroad-highway crossings	124
158. Transportation Commission to adopt sign manual	124
159. Control of traffic control devices by local authorities	125
160. Regulation of pedestrian traffic by local authorities	126
161. Speed regulation in public parks by local authorities	127
162. Regulating use of freeway	127
163. Authority to designate through highways and stop intersections	128
164. Authority to designate no-passing zones	128
165. Authority to designate one-way highways, safety zones, turns and lanes	128
166. Authority of municipalities and counties to control parking on city, county and state highways	129
167. Authority of Transportation Commission to control parking on state highways	130
168. Entry of commission's parking regulations in official records; erecting appropriate signs; regulations as having force of law	131
169. Jurisdiction of courts	132

TABLE OF CONTENTS

PART IV. MISCELLANEOUS PROVISIONS

ARTICLE 16. MISCELLANEOUS SECTIONS

Section	Page
170. Attending court and prosecuting offenses	133
171. Necessity for employment of attorney; effect of employment	133
172. Application to traffic, boating, littering, hunting and fishing violations	133
173. "Offense" described	134
174. Captions and headings	134
175. Repealed sections	134
176. Effective date	134

MEMBERSHIP OF THE COMMITTEE

Senate Members

Chairman, Senator Elizabeth W. Browne, Oakridge
Senator John D. Burns, Portland
Senator Wallace P. Carson, Jr., Salem
Senator George Eivers, Milwaukie

House Members

Chairman, Representative Robert P. Marx, Monmouth^①
Chairman, Representative George F. Cole, Seaside^②
Representative Stan Bunn, Dayton
Representative Lewis B. Hampton, Beaverton
Representative Norma Paulus, Salem

Ex-Officio Members

Senator Jason Boe, President of the Senate
Representative Richard O. Eymann, Speaker of the House

Staff

Donald L. Paillette, Project Director
Marion B. Embick, Research Counsel
Mildred E. Carpenter, Chief Clerk
Anna McNeil, Clerk
Norma Schnider, Clerk
W. Eugene Hallman, Research Assistant

^① Appointed House Chairman August 21, 1974.

^② House Chairman until August 1, 1974. Resigned to accept appointment as Clatsop County District Court Judge.

FOREWORD

After the close of the 1973 Regular Session of the Oregon Legislative Assembly, and by authority of House Joint Resolution 11, the President of the Senate and Speaker of the House appointed members from their respective Committees on Judiciary to serve jointly as an interim committee.

The reconstituted Interim Committee on Judiciary was assigned the task of making a thorough and objective study of this state's motor vehicle and traffic laws, with two major objectives in mind: (1) To examine the feasibility of establishing an "administrative adjudication" system to replace the existing court system for handling traffic cases; (2) To prepare a revision of the Rules of the Road—those laws contained for the most part in ORS chapter 483—that govern the conduct of drivers and pedestrians.

The overriding purpose behind both objectives was to promote traffic safety by dealing with alleged offenders faster and more effectively—and by improving the driver's attitude through better laws and procedures.

Deficiencies abound in the existing vehicle code. Oregon is ranked forty-eighth among the states in terms of conformance with the Uniform Vehicle Code (UVC) by the National Highway Traffic Safety Administration. The UVC is a specimen set of motor vehicle laws developed over many years by the National Committee on Uniform Traffic Laws and Ordinances. It is intended as a comprehensive guide for state traffic laws and emphasizes the need for uniformity in basic traffic rules throughout the country. In large part, Oregon's lack of uniformity results from out-worn statutes, many of which were enacted in 1931. Ironically, many of our vehicle code provisions were drawn from earlier versions of the UVC, but through the years our statutes have failed to keep abreast of its periodic revisions.

Another basic problem in the code involves its penalty provisions. Far too many penalty types—an assortment of almost 40 different combinations of fines and imprisonment—have made the laws inconsistent and confusing. Even the most minor traffic offense, such as illegal parking, now carries with it the possibility of imprisonment; and although a jail sentence is rarely if ever imposed in such cases, the fact that a motorist cited for a minor offense is exposed to that chance means that, under Oregon case law, he is granted the full panoply of procedural Due Process protections guaranteed to criminal defendants by the Constitution.

Procedurally, the traditional criminal treatment of traffic offenses has put severe stress upon Oregon's minor court system. Frequently, the heavy caseloads, particularly in district court (see Tables I - IX), have caused lengthy delays in bringing to trial the more serious cases such as those for driving under the influence of intoxicating liquor (DUIL). Whereas a person charged with a felony in this state in most cases is tried within 60 days of arrest, it is not unusual to find periods of six months or longer between arrest and trial in DUIL cases. The most significant result of such delays is that the problem driver continues to drive until and unless he is convicted.

The Committee proposes the following remedies for the major shortcomings in the existing code: First, describe each of the Rules of the Road in the same form and style as the Oregon Criminal Code to set forth a clear statement of the elements of and penalty for each offense. Second, either amend existing statutes or enact new provisions to make the Oregon Vehicle Code more consistent with the recommendations of the UVC, except in specifically limited situations where it appears that departure from the UVC is necessary or desirable. Third, create four classes of a new, noncriminal offense designated as a "traffic infraction," and reclassify all but the most serious traffic offenses from the present categories of crimes into the new category. Fourth, simplify and speed up court disposition of traffic infractions by eliminating most of the criminal procedures now pertaining to the existing method of handling all traffic offenses as crimes.

FOREWORD

Even though the Committee strongly endorses the concept of removing criminal penalties from most traffic offenses, nonetheless, it believes that the cases should continue to be processed in the courts. The Committee thoroughly examined all facets of the "administrative adjudication" system devised by the State of New York whereby minor traffic offenses (major offenses remain in the criminal courts) have been entirely removed from the courts and are adjudicated before hearings officers within the Motor Vehicles Department. Although administrative adjudication may merit further consideration by this state in the future, we believe that such a scheme is not appropriate for Oregon's needs, at least for the present time. Our geography, population and traffic case volume all differ strikingly from New York's, and the fact that administrative adjudication appears to work impressively there is no assurance it would be equally effective here. The Committee's view, then, represents a middle position which, while incorporating many of the procedural advantages of an administrative adjudication system, retains the traditional role of the traffic judge and is designed to alleviate the caseload problems now facing him. Simplifying the procedures for traffic offenses may also result in saving tax dollars while still providing a fair and equitable system of justice.

During this interim period the Committee conducted its research, drafting and hearings by operating a Subcommittee on Adjudication and a Subcommittee on Revision, chaired respectively by the House and Senate Chairman. A total of 24 subcommittee meetings was held, along with six meetings of the full committee, five of which were two-day meetings. Preliminary drafts and staff research and background materials were circulated among some 200 interested groups and individuals throughout Oregon. We have met with judges, prosecutors, law enforcement officials, representatives of state agencies and local government authorities. We have heard testimony from lawyers, bus drivers, auto club spokesmen and private citizens. And though a conscientious effort was made to accommodate the many divergent views in the final Committee product, not all persons will agree with everything found in it.

The pivotal question to be decided by the Committee was whether to include the first offense DUIL case within the Class A traffic infraction category or to continue to classify it as a crime. Testimony given by district judges before the Committee, as well as the survey of the selected district courts (see Tables I - VIII), clearly showed that most of the district courts' time is taken up by major traffic offenses and, particularly, trials for driving under the influence.

A classification and adjudication system limited to the so-called "minor" traffic cases would not measurably reduce the volume of docketed traffic cases in the district courts. Consequently, the Committee urges that the suggested traffic infraction classification of offenses include the first offense DUIL if no element of dangerous driving is involved. By no means should this proposal be misread as de-emphasizing the serious nature of the offense or as being "soft" on the drinking driver. A traffic infraction, not being punishable by imprisonment, would not demand criminal procedures and could be tried by the court without a jury and with the standard of proof being a preponderance of the evidence instead of proof beyond a reasonable doubt. The draft provides, however, for substantial fines to be levied in such cases, which would be in addition to administrative and court-imposed license sanctions and alcoholic treatment and driver improvement programs for dealing with this urgent problem. Repeat offenders would be prosecuted criminally for a Class A misdemeanor, punishable by a maximum of a year's imprisonment and a \$1,000 fine. The draft sections further provide for increased sentencing flexibility in all traffic cases to enable the judge to have maximum effectiveness by means of the sentence he imposes and the enforcement of his orders. Plea agreements, whereby a defendant charged with DUIL now can plead guilty to a lesser offense, would be specifically prohibited.

During the course of the interim project the Committee and its staff were aided immensely by the expertise and advice of various agencies, organizations and individuals. Special mention

FOREWORD

is due to Herbert M. Schwab, Chief Judge of the Oregon Court of Appeals, Consulting Committee Chairman, and the following members of his committee: Philip Abraham, Multnomah County District Court Judge; Nita Bellows, Justice of the Peace, Ontario; Barnes H. Ellis, Attorney at Law, Portland; Jackson L. Frost, Linn County District Attorney; Douglas G. Houser, Attorney at Law, Portland; James M. Mattis, Legal Consultant, Bureau of Governmental Research and Service, Eugene; Lt. Paul Miner, Roseburg Police Department; and Jerry Orrick, Executive Secretary, Association of Oregon Counties, Salem.

We also record our full appreciation for the cooperation and helpfulness of many others, including: Chester W. Ott, Administrator, Motor Vehicles Division, and Vinita Howard, Public Information Representative; Holly V. Holcomb, Superintendent, Oregon State Police, and Captain John C. Williams, Traffic Division; L. E. George, Traffic Engineer, Highway Division, and Ralph B. Sipprell, Liaison Engineer, Public Affairs; Loren Hicks, State Court Administrator; Adell Johnson, Assistant State Court Administrator, and Douglas Bray, Statistician; and Gil W. Bellamy, Administrator, and the staff of the Oregon Traffic Safety Commission.

The New York Department of Motor Vehicles generously assisted the Committee with materials and information regarding that state's administrative adjudication system. We especially thank Robert J. Hogan, Director, Hearing and Adjudication Division, for his many courtesies.

This project for revision of the Oregon Vehicle Code was funded almost entirely by a grant from the National Highway Traffic Safety Administration through the Oregon Traffic Safety Commission. We gratefully acknowledge their support.

We respectfully submit this draft and report and commend the proposals set forth herein for further consideration by the Fifty-eighth Oregon Legislative Assembly.

COMMITTEE ON JUDICIARY

Senator Elizabeth W. Browne

Senate Chairman

Representative Robert P. Marx

House Chairman

DISPOSITION OF EXISTING STATUTES

TABLE SHOWING DISPOSITION OF EXISTING STATUTES

Column (1) lists each section of *Oregon Revised Statutes* which is either amended or repealed by the Proposed Vehicle Code. Column (2) shows whether the section is amended (A) or repealed (R). Column (3) shows, if the ORS section is amended, the draft section that accomplishes the amendment; and if the ORS section is repealed, the section of the draft that contains comparable matter.

(1)	(2)	(3)	(1)	(2)	(3)
8.660	A	170	483.214	R	54, 55, 56, 57, 58
9.320	A	171	483.216	R	.....
133.080	A	172	483.218	R	50
161.505	A	173	483.220	R	48
482.430	A	144	483.222	R	72
482.450	A	145	483.224	R	67
482.540	A	146	483.228	R	68, 69
482.550	A	147	483.230	R	70
482.570	A	148	483.236	R	.....
482.620	R	6	483.302	R	21
482.650	R	92	483.303	R	24
483.032	R	9, 10	483.304	R	21, 32, 34
483.034	A	111	483.305	R	25
483.036	R	3	483.306	A	26
483.040	A	157	483.308	R	21, 23, 27, 29
483.041	R	162	483.310	R	27, 28
483.042	R	3, 13, 159, 161	483.312	R	33
483.043	R	165	483.314	R	112
483.044	R	159	483.316	R	61, 165
483.046	R	6	483.318	R	62
483.048	R	7, 8	483.330	R	107
483.049	R	91	483.332	R	108
483.102	R	73	483.334	A	51
483.104	R	74, 75	483.336	R	106
483.106	A	76	483.338	R	.....
483.108	R	77, 78	483.343	R	.....
483.110	A	79	483.345	R	47
483.112	R	80	483.346	A	167
483.114	R	81	483.347	R	101
483.116	R	82	483.348	A	168
483.118	R	.....	483.350	R	166
483.120	R	11, 12	483.362	R	11, 12, 95, 98, 99, 100
483.122	R	83			
483.124	A	84	483.364	R	96
483.126	R	63, 64, 65, 66	483.366	R	102
483.128	R	13	483.443	R	118, 119
483.130	R	14	483.538	R	104
483.132	R	15	483.614	R	113
483.134	R	16	483.634	A	149
483.136	R	17	483.640	A	150
483.138	R	19	483.642	R	88
483.140	R	20	483.830	R	121
483.202	R	35, 36, 38	483.840	R	123
483.204	R	37, 163	483.845	R	124
483.206	R	13, 36, 39	483.850	R	125
483.208	R	40	483.855	R	123
483.210	R	42, 43, 44, 45, 46, 47, 160	483.860	R	126
			483.865	A	127
483.212	R	.....	483.870	A	129

DISPOSITION OF EXISTING STATUTES

(1)	(2)	(3)	(1)	(2)	(3)
483.992	R	87, 89, 90	484.190	A	153
483.993	R	.....	484.222	A	154
483.999	R	87	484.705	A	155
484.010	A	151	484.990	A	156
484.030	A	169	485.020	R	71
484.150	A	152			

SOURCE OF PROPOSED DRAFT SECTIONS

**TABLE SHOWING SOURCE OF PROPOSED DRAFT SECTIONS
FROM EXISTING STATUTE SECTIONS**

Column (1) lists each section of the draft code in numerical sequence. Column (2) shows whether the draft section is new (N) or an amendment of an existing section of *Oregon Revised Statutes* (A). Column (3) shows, in the case of a draft section derived from or continuing subject matter comparable to an existing ORS section, the number of that section; and, in the case of an amendment of an existing ORS section, shows the number of the ORS section.

(1)	(2)	(3)	(1)	(2)	(3)
1	N	-----	43	N	483.210 (2)
2	N	483.002, 483.006, 483.008, 483.010, 483.012, 483.014, 483.016, 483.020	44	N	483.210 (1)
			45	N	483.210 (3)
			46	N	483.210 (4)
			47	N	483.210 (5), 483.345
3	N	483.036, 483.042 (1)	48	N	483.220
4	N	-----	49	N	-----
5	N	-----	50	N	483.218
6	N	482.620, 483.046	51	A	483.334
7	N	483.048 (1)	52	N	-----
8	N	483.048 (2)	53	N	-----
9	N	483.032 (1)	54	N	483.214 (1)
10	N	483.032 (2)	55	N	483.214 (3)
11	N	483.120, 483.362	56	N	483.214 (2)
12	N	483.120, 483.362	57	N	483.214 (2)
13	N	483.042, 483.128, 483.206	58	N	483.214 (4)
			59	N	-----
14	N	483.130	60	N	-----
15	N	483.132	61	N	483.316 (1)
16	N	483.134	62	N	483.318
17	N	483.136	63	N	483.126 (1)
18	N	-----	64	N	483.126 (1), (4)
19	N	483.138	65	N	483.126 (2)
20	N	483.140	66	N	483.126 (3)
21	N	483.302, 483.304, 483.308	67	N	483.224
			68	N	483.228 (1)
22	N	-----	69	N	483.228 (2), (3)
23	N	483.308	70	N	483.230
24	N	483.303	71	N	485.020
25	N	483.305	72	N	483.222
26	A	483.306	73	N	483.102
27	N	483.308, 483.310	74	N	483.104
28	N	483.310	75	N	483.104
29	N	483.308	76	A	483.106
30	N	-----	77	N	483.108 (1), (2), (3)
31	N	-----	78	N	483.108 (4)
32	N	483.304 (2), (3)	79	A	483.110
33	N	483.312	80	N	483.112 (1), (2)
34	N	483.304 (4)	81	N	483.114
35	N	483.202 (2), (3)	82	N	483.116
36	N	483.202 (5), 483.206 (1)	83	N	483.122 (1)
37	N	483.204 (2), (3), (4)	84	A	483.124
38	N	483.202 (1)	85	N	-----
39	N	483.206 (1), (2)	86	N	-----
40	N	483.208 (1), (3)	87	N	483.992 (2), 483.999
41	N	-----	88	N	483.642
42	N	483.210 (1)	89	N	483.992 (1)

SOURCE OF PROPOSED DRAFT SECTIONS

(1)	(2)	(3)	(1)	(2)	(3)
90	N	483.992 (1)	133	N	-----
91	N	483.049	134	N	-----
92	N	482.650	135	N	-----
93	N	-----	136	N	-----
94	N	-----	137	N	-----
95	N	483.362 (1)	138	N	-----
96	N	483.364	139	N	-----
97	N	-----	140	N	-----
98	N	483.362 (3)	141	N	-----
99	N	483.362 (4)	142	N	-----
100	N	483.362 (2)	143	N	-----
101	N	483.347	144	A	482.430
102	N	483.366	145	A	482.450
103	N	-----	146	A	482.540
104	N	483.538	147	A	482.550
105	N	-----	148	A	482.570
106	N	483.336	149	A	483.634
107	N	483.330	150	A	483.640
108	N	483.332	151	A	484.010
109	N	-----	152	A	484.150
110	N	-----	153	A	484.190
111	A	483.034	154	A	484.222
112	N	483.314	155	A	484.705
113	N	483.614	156	A	484.990
114	N	-----	157	A	483.040
115	N	-----	158	N	-----
116	N	-----	159	N	483.042, 483.044
117	N	-----	160	N	483.210 (4), (6)
118	N	483.443 (1)	161	N	483.042 (3)
119	N	483.443 (2)	162	N	483.041
120	N	483.402	163	N	483.204 (1)
121	N	483.830	164	N	-----
122	N	483.404 (3), (4), 483.446 (5)	165	N	483.043, 483.316 (2), (3)
123	N	483.840, 483.855	166	N	483.350
124	N	483.845	167	A	483.346
125	N	483.850	168	A	483.348
126	N	483.860	169	A	484.030
127	A	483.865	170	A	8.660
128	N	-----	171	A	9.320
129	A	483.870	172	A	133.080
130	N	483.034	173	A	161.505
131	N	-----	174	N	-----
132	N	-----	175	N	-----
			176	N	-----

THE NEW YORK ADMINISTRATIVE ADJUDICATION SYSTEM*

INTRODUCTION:

As noted elsewhere in this report, the Committee closely examined the operation of the New York administrative adjudication method for handling minor traffic offenses. Although the members decided not to recommend such a system for Oregon, this outline is included in this report in order to explain at least the basic elements of the New York procedures. An understanding of the fundamentals of a purely administrative adjudication approach will help to place the Committee's proposals into perspective by showing the differences and the similarities between these two alternatives. See Commentary to Article 14 for a discussion of the traffic offense procedures of California, Minnesota, Wisconsin, Pennsylvania, Ohio and Vermont.

I. PREVIOUS SYSTEM

Before July 1, 1970, traffic cases in New York City were handled by procedures that were applicable to all misdemeanors or other violations of law below the level of felony. Jurisdiction over such offenses, including "traffic infractions" (a non-criminal offense that was created in 1934), lay with the Criminal Court of the City of New York. This court was processing annually over 800,000 cases involving moving traffic infractions and some 3.2 million cases involving non-moving traffic infractions.

II. LEGISLATIVE HISTORY

In 1969 the New York Legislature passed a bill that transferred responsibility for adjudicating "moving" traffic infractions to the Department of Motor Vehicles effective July 1, 1970 (Ch 1074, NY Laws 1969). A companion bill (Ch 1075, NY Laws 1969) made a similar transfer of "non-moving" traffic infractions such as parking, stopping, standing or jaywalking violations to the Parking Violations Bureau of New York City. The Vehicle and Traffic Law was amended by the New York Legislature in 1970 to further simplify the administrative adjudication procedures.

III. AUTHORITY OF DEPARTMENT OF MOTOR VEHICLES

The Vehicle and Traffic Law authorizes the Department of Motor Vehicles to adjudicate moving traffic infractions occurring in cities in the state with a population of 275,000 or more. Buffalo (population approximately 600,000) and Rochester (population approximately 275,000) requested the department to extend the administrative adjudication system to those cities and since early 1973 the system has been operational there as well as in New York City.

The commissioner of the Department of Motor Vehicles is authorized to promulgate "such regulations as shall be necessary or desirable to effect the purposes of" the traffic adjudication law, including regulations creating a schedule of fines. He is also granted authority to promulgate regulations governing the filing of complaints, entry of pleas, waiver of statutory security requirements and hearing procedures. The regulations have established an Administrative Adjudication Bureau within the department to carry out the purposes of the statutes, and set forth the rules and procedures governing the administrative adjudication of traffic infractions.

* Sources: Regulations, *Administrative Adjudication of Traffic Violations*, State of New York, January 1, 1973; *Improved Disposition of Traffic Cases*, Summary Volume, Final Report, University of Indiana Institute for Research in Public Safety, September 1972; *Final Report of the Ad Hoc Task Force on Adjudication*, National Highway Safety Advisory Committee, June 1973; *A Report of the Status and Potential Implications of Decriminalization of Moving Traffic Violations*, U.S. Department of Transportation, May 1973.

IV. HOW THE ADMINISTRATIVE ADJUDICATION SYSTEM WORKS

The summons and complaint is divided into three categories of offenses:

Moving traffic infractions. These violations are within the jurisdiction of the Administrative Adjudication Bureau in the counties in New York City and in the cities of Rochester and Buffalo.

Parking. Parking, stopping, standing and jaywalking violations are heard in the Parking Violations Bureau of the New York City, Rochester or Buffalo Transportation Administration.

Other offenses. Traffic misdemeanors such as reckless driving and driving while intoxicated are heard in the New York City Criminal Court or the City Court of Jurisdiction.

Traffic enforcement is handled by the law enforcement agencies of the city and a traffic case is ordinarily initiated by the issuance of a traffic ticket. Once the summons part of the ticket has been issued, the officer files the complaint with the Administrative Adjudication Bureau.

Uncontested cases. All complaints received are forwarded to the Albany office of the DMV to be placed in the computer-based information system. Cases are automatically scheduled to reduce demands on the officer time.

Defendants wishing to plead guilty may mail a plea to the Albany office or file a plea in person with the clerk of one of the five offices in New York City or the office in Rochester or Buffalo. A fixed fine is paid at that time and that is the end of the case. Regulations limit this process to minor offenses committed by persons with a good driving record. Serious offenses or those involving the possibility of license suspensions require a personal appearance before a hearing officer.

Any defendant who wants to plead guilty but make an explanation may do so at an "uncontested hearing." (Approximately 55% of all pleas filed are of this nature.) No "plea bargaining" is permitted regarding a traffic infraction charge.

Thirty-eight percent of all pleas are guilty pleas. Some 68% of such pleas are entered by mail. Accordingly, about 93% of the over-all cases are uncontested.

Contested cases. "Contested hearings" result from pleas of not guilty and make up about 7% of the caseload. Pleas of not guilty may be filed by mail or in person. Usually, the hearing is held on the date originally scheduled on the summons and occurs approximately one month after issuance of the summons and at the Hearing Office location in the Borough in which the summons was issued. A first postponement will be granted for reasonable cause and may be arranged by the defendant before the date of appearance, in person, by mail or by telephone. A second or subsequent postponement may be granted only at the discretion of the Hearing Officer, and the request must be made in person.

The hearing is very similar to a trial, although there is no "prosecutor" or "judge," and the rules of evidence don't apply. The officer presents his case, followed by the defendant's explanation. The "hearing officer" or "referee" must be a lawyer and a member of the New York Bar. He occupies a Civil Service position and after six months' probation can be fired only "for cause." The New York City Bureau employs 25 hearing officers.

At the contested hearing the defendant may be represented by a lawyer but none is appointed. The hearing officer actively participates in the proceedings by questioning the parties and any other witnesses involved. The hearing officer announces his decision at the end of the case at which time, if the charges against the accused are sustained, the information is instantly transmitted to the Albany computer information system. The driving record of the motorist in question is transmitted back to the hearing officer's visual display unit. Only if the defendant is found guilty is the driving record available to the hearing officer. Based upon the instant case and

NEW YORK ADMINISTRATIVE ADJUDICATION

the defendant's driving record, the hearing officer imposes an appropriate sanction. In addition to a fine the sanction may include other administrative action such as suspension or revocation of the driver's license. All sanctions are imposed on-the-spot and no further administrative action is necessary.

Failure to appear—"scofflaws". If a cited motorist fails to appear or plead by the initial scheduled date, the computer issues an automatic notice warning him that his driver's license will be suspended if he doesn't respond. If he then responds, his record is corrected accordingly; however, if he persists in not responding, the system places an automatic block against his license which prevents its renewal. If the offender receives a subsequent ticket, the citing officer is automatically informed by the computer that the license was suspended. The officer who observed the motorist driving while suspended then files a misdemeanor complaint and a warrant of arrest is issued. The DMV may request that a case of non-appearance be transferred to a criminal court for disposition, but in most cases the administrative procedure of denying license renewal is used. Once a person has become a scofflaw, all pleas, both guilty and not guilty, must be made in person at a Hearing Office location. Where a suspension is in effect, a scofflaw must post a \$15 security deposit upon entering a not guilty plea if he wishes to have the suspension terminated before final disposition of the charge. This deposit is refunded upon appearance on the hearing date.

Appeals. An appeal may be taken within 30 days after hearing to the Appeals Board of the Bureau, consisting of three lawyers, two of whom may be hearing officers. There is a \$10 fee required upon filing an appeal, plus \$15 deposit to cover cost of the transcript. An appeal may be submitted without a transcript only if no questions of fact are raised or in connection with a post-hearing application or if the only issue is the appropriateness of the penalty imposed. Where such an appeal is submitted, the decision of the Appeals Board is final. Most appeals are with transcript and no appeal is considered as finally submitted until a transcript of the hearing involved is submitted by the motorist and the charges for the transcript have been paid. Transcripts are made from master tape recordings which automatically record each day's hearings in each Hearing Office and are permanently retained. The Appeals Board is required to make a determination of the appeal, with at least two votes necessary for final action, within 60 days of the final submission of the appeal. Judicial review of appeals with transcripts is available under the New York Rules of Civil Practice.

OFFENSE CLASSIFICATION CHARTS

INTRODUCTION TO TRAFFIC OFFENSE CLASSIFICATION CHARTS

The three following charts show the classes of traffic infractions and authorized maximum fines (Chart I), the classification of specific traffic infractions (Chart II) and the classification of specific traffic crimes (Chart III).

In addition to the sanctions shown in the charts, a sentencing judge would have authority to order a defendant's driving privileges to be suspended or limited in order to enforce payment of a fine imposed on conviction for any traffic offense, to order suspension of driving privileges if a defendant is convicted of a traffic crime or Class A traffic infraction and to order a defendant to complete a driver improvement course or other rehabilitative program. (See Article 14.)

The charts cover only those offenses that are part of the rules of the road in the Revised Vehicle Code. Proposed penalty changes for vehicle equipment offenses (ORS ch 483), vehicle registration and licensing offenses (ORS ch 481), driver's license prohibitions (ORS ch 482) and assorted offenses relating to school busses, worker transport vehicles and emergency medical technicians (ORS ch 485) are not reflected by the charts. Although no substantive changes in the definitions of these other offenses are being proposed by the Judiciary Committee, it will include in its legislative bill subordinate amendments to classify such offenses under the "traffic infraction" classification system so that their penalties would be rational in comparison to those applying to the rules of the road. In the interest of printing economy these numerous penalty amendments are not set out in this draft.

OFFENSE CLASSIFICATION CHARTS

Chart I

Traffic Infractions and Authorized Fines

Class of Traffic Infraction	Authorized Maximum Fine
Class A	\$1,000
Class B	250
Class C	100
Class D	50

OFFENSE CLASSIFICATION CHARTS

Chart II

Rules of the Road

Specific Traffic Infractions and Classification

Article	Section	Offense	Classification	
1		General Provisions		
	6	Permitting unlawful operation of vehicle	Class B traffic infraction	
	7	Failing to obey police officer	Class C traffic infraction	
	11	Application of speed regulation and traffic signals to emergency vehicles	Class B traffic infraction	
	12	Application of speed regulations and traffic signals to ambulances	Class B traffic infraction	
2		Traffic Signs, Signals and Markings		
	13	Obedience to and required traffic control devices	Class B traffic infraction	
	14	Traffic control signals:	Driver failing to obey	Class B traffic infraction
			Pedestrian failing to obey	Class C traffic infraction
	15	Vehicle turns at intersections with red traffic control light	Class B traffic infraction	
	16	Pedestrian control signals	Class C traffic infraction	
	17	Flashing signals	Class B traffic infraction	
	18	Lane direction control signals	Class B traffic infraction	
	19	Unlawful display of signs, signals or markings	Class C traffic infraction	
	20	Unlawful interference with official traffic control device or railroad sign or signal	Class B traffic infraction	
	3		Driving on Right Side of Roadway; Overtaking and Passing; Use of Roadway	
21		Driving on right side of roadway	Class B traffic infraction	
22		Slow driver duty to drive on right	Class C traffic infraction	
23		Duty to drive on right on two-way four lane roadway	Class B traffic infraction	
24		Slower driver duty to yield	Class C traffic infraction	
25		Duty of driver of certain vehicles to drive to right	Class C traffic infraction	
26		Passing vehicles proceeding in opposite direction	Class B traffic infraction	
27		Overtaking a vehicle on the left	Class B traffic infraction	
28		Overtaking on right	Class B traffic infraction	
29		Further limitations on driving on left of center of roadway	Class B traffic infraction	
30		No passing zone	Class B traffic infraction	
31		One-way roadways and rotary traffic islands	Class B traffic infraction	
32	Driving on roadways laned for traffic	Class B traffic infraction		

OFFENSE CLASSIFICATION CHARTS

Chart II—Continued

Specific Traffic Infractions and Classification

Article	Section	Offense	Classification
3	33	Following too closely	Class B traffic infraction
	34	Driving on divided highways	Class B traffic infraction
4		Right of Way	
	35	Right of way at uncontrolled highway intersection	Class B traffic infraction
	36	Driver turning left	Class B traffic infraction
	37	Stop signs and yield signs	Class B traffic infraction
	38	Right of way at merging lanes of arterial highway	Class C traffic infraction
	39	Vehicle entering roadway from private road, alley or place	Class C traffic infraction
	40	Operation of vehicles on approach of emergency vehicle or ambulance	Class C traffic infraction
5		Pedestrians' Rights and Duties	
	41	Pedestrian obedience to traffic control devices and traffic regulations	Class C traffic infraction
	42	Pedestrian's right of way in crosswalk	Class B traffic infraction
	43	Pedestrian tunnel or overhead crossing	Class D traffic infraction
	44	Pedestrian leaving curb	Class C traffic infraction
	45	Drivers not to overtake stopped vehicle	Class B traffic infraction
	46	Crossing at other than crosswalk	Class C traffic infraction
	48	Pedestrian's use of sidewalk, shoulder and roadway edge	Class C traffic infraction
	49	Pedestrian must yield right of way	Class C traffic infraction
	50	Pedestrians soliciting rides or business	Class C traffic infraction
	51	Driving through safety zone prohibited	Class C traffic infraction
	52	Pedestrian's right of way on sidewalks	Class C traffic infraction
	53	Pedestrians yield to emergency vehicle or ambulance	Class C traffic infraction
	55	Use of white cane restricted	Class C traffic infraction
	56	Duty of driver to yield to blind pedestrian	Class B traffic infraction
57	Blind pedestrian in roadway with traffic control signals	Class B traffic infraction	
60	Pedestrian crossing closed bridge or railroad grade crossing barrier prohibited	Class C traffic infraction	
59	Unlawful use of bridge by pedestrian	Class C traffic infraction	
6		Turning and Moving; Signals on Stopping and Turning	
	61	Required position and method of turning	Class C traffic infraction
	62	U-turns prohibited	Class C traffic infraction
	63	Moving a stopped, standing or parked vehicle	Class C traffic infraction

OFFENSE CLASSIFICATION CHARTS

Chart II—Continued

Specific Traffic Infractions and Classification

Article	Section	Offense	Classification
6	64	Turning and stopping movements and signals required	Class C traffic infraction
	65	Signals by hand and arm or by signal lamps	Class C traffic infraction
	66	Method of giving required signals	Class C traffic infraction
7	Special Stops Required		
	67	Stopping at railroad crossings upon signal of approaching train	Class C traffic infraction
	68	Certain vehicles must stop at all railroad grade crossings	Class C traffic infraction
	70	Moving heavy equipment at railroad grade crossings	Class C traffic infraction
	71	Overtaking and passing school bus	Class B traffic infraction
	72	Stopping before driving onto sidewalk from alley, driveway or building	Class C traffic infraction
8	Speed Restrictions		
	73	Basic speed rule	Class C traffic infraction
	74	Maximum speeds	Class B traffic infraction
	81	Impeding traffic	Class C traffic infraction
	82	Maximum speeds for motor trucks and passenger transport vehicles	Class B traffic infraction
	83	Speed races prohibited on public ways	Class A traffic infraction
	84	Maximum speed on ocean shore	Class B traffic infraction
9	Serious Traffic Offenses		
	87	Driving while under the influence of liquor or drugs	Class A traffic infraction
	94	Penalties for failure to perform duties required after accidents:	
		Driver involved in accident resulting in damage to vehicle	Class A traffic infraction
		Driver involved in accident resulting in damage to unattended vehicle or property	Class A traffic infraction
		Driver involved in accident who fails to make required accident reports	Class B traffic infraction
Witness to an accident	Class B traffic infraction		
10	Stopping, Standing and Parking		
	95	Stopping, standing or parking outside business or residence districts	Class D traffic infraction
	96	Stopping, standing or parking prohibited in specific places	Class D traffic infraction
97	Parking distance from curb or edge	Class D traffic infraction	

OFFENSE CLASSIFICATION CHARTS

Chart II—Continued

Specific Traffic Infractions and Classification

Article	Section	Offense	Classification
10	99	Obstruction of roadway by wrecker or tow car	Class D traffic infraction
	101	Parking vehicle on state highway for vending purposes prohibited	Class D traffic infraction
11		Miscellaneous Rules	
	102	Unattended motor vehicle	Class C traffic infraction
	103	Limitations on backing	Class C traffic infraction
	104	Passengers in front seat; interfering with driver; in mobile home or travel trailer	Class C traffic infraction
	105	Opening and closing vehicle door	Class D traffic infraction
	106	Coasting prohibited	Class C traffic infraction
	107	Following fire apparatus prohibited	Class C traffic infraction
	108	Crossing fire hose	Class C traffic infraction
	109	Removing injurious substance from highway	Class C traffic infraction
	110	Stop when traffic obstructed	Class C traffic infraction
	112	Livestock on highway; duty of caution; yielding right of way to livestock	Class B traffic infraction
	113	Duty of driver striking animal	Class B traffic infraction
12		Special Rules for Motorcycles	
	114	Unlawful motorcycle operation	Class B traffic infraction
	115	Motorcyclist's right to full traffic lane	Class B traffic infraction
	116	Unlawful passing or moving in lane with vehicle	Class B traffic infraction
	117	Clinging to other vehicles	Class C traffic infraction
	118	Protective headgear and eye device required	Class C traffic infraction
	120	Motorcycle head lamps required to be on	Class B traffic infraction
13		Operation of Bicycles and Play Vehicles	
	121	Parent or guardian prohibited from permitting child to violate bicycle equipment laws	Class D traffic infraction
	122	Lamps and other equipment on bicycles	Class D traffic infraction
	123	Unlawful bicycle operation	Class D traffic infraction
	124	Clinging by persons on bicycles and toy vehicles	Class D traffic infraction
	125	Riding on roadways, bicycle paths and lanes	Class D traffic infraction
	126	Use of bicycle lane by vehicles restricted; right of way on bicycle lane	Class B traffic infraction
	127	Use of bicycle path by vehicles prohibited	Class B traffic infraction

OFFENSE CLASSIFICATION CHARTS

Chart II—Continued

Specific Traffic Infractions and Classification

Article	Section	Offense	Classification
13	128	Bicyclists to yield right of way at intersections except to left turning and stopped vehicles; driver right of way to bicyclist: Failure by bicyclist to yield Failure by driver to yield	Class D traffic infraction Class B traffic infraction
	129	Bicyclists on sidewalks required to warn pedestrians; careless bicycle operation on sidewalk prohibited	Class D traffic infraction

Chart III

Rules of the Road

Specific Traffic Crimes and Classification

Article	Section	Offense	Classification*
9		Serious Traffic Offenses	
	89	Dangerous driving in the second degree	Class B misdemeanor
	90	Dangerous driving in the first degree	Class A misdemeanor
	91	Fleeing or attempting to elude a police officer	Class A misdemeanor
	92	Driving while suspended or revoked (See exceptions below) Driving while suspended resulting from conviction of: Manslaughter or criminally negligent homicide Felony when motor vehicle was used in commission of crime Hit and run Dangerous driving Fleeing or attempting to elude a police officer Driving under influence of liquor, dangerous or narcotic drugs Reckless driving	Class A misdemeanor Class C felony Class C felony Class C felony Class C felony Class C felony Class C felony Class C felony
	94	Penalty for failure to perform duties required after accident resulting in injury or death to any person	Class C felony

* Imprisonment and fines for each class of crime as provided by Criminal Code. See ORS 161.605 to 161.685.

DISTRICT COURT CASE TABLES

INTRODUCTION TO TABLES I THROUGH VIII:

At the request of the Judiciary Committee, and with the cooperation of the courts involved, the State Court Administrator's office conducted a three-month study of the district courts in eight representative Oregon counties.

The objectives of the study were to determine:

- (1) The number and type of traffic cases filed in the courts involved.
- (2) The number of minor traffic cases terminated before trial.
- (3) The number of minor traffic cases terminated by trial.
- (4) The number of minor traffic cases tried with a jury.
- (5) The number of minor traffic cases tried without a jury.
- (6) The amount of judicial time spent monthly on minor traffic cases.

Tables I, IV, V and VIII are particularly significant because they indicate that although minor cases make up the overwhelming majority of total traffic cases handled by these district courts (88%), they consume only about 32 hours per month of judicial time. In other words, most of the judges' time occupied by traffic matters is spent on approximately 12% of the total number of traffic cases. The greatest number of these, in turn, are DUIL cases.

DISTRICT COURT CASE TABLES

TABLE I

**A Comparison of Major and Minor Traffic Cases
Filed in Eight District Courts**

JANUARY, 1974

District Court	Total No. of Traffic Cases	Total No. of Minor Traffic	Total No. of Major Traffic
Clackamas	780	680 (87.2)	100 (12.8)
Coos	669	617 (92.3)	52 (07.7)
Klamath	934	782 (83.7)	152 (16.3)
Lane	1,491	1,387 (93.0)	104 (07.0)
Marion	1,273	1,178 (92.5)	95 (07.5)
Multnomah	6,088	5,236 (86.0)	852 (14.0)
Umatilla	496	472 (95.2)	24 (04.8)
Washington	1,011	804 (79.5)	207 (20.5)
Total	12,742	11,156 (87.6)	1,586 (12.4)

FEBRUARY, 1974

Clackamas	919	795 (86.5)	124 (13.5)
Coos	577	532 (92.2)	45 (07.8)
Klamath	981	810 (82.6)	171 (17.4)
Lane	1,471	1,374 (93.4)	97 (06.6)
Marion	1,378	1,253 (90.9)	125 (09.1)
Multnomah	5,975	5,155 (86.3)	820 (13.7)
Umatilla	626	572 (91.4)	54 (08.6)
Washington	[No Report for February, 1974]		-----
Total	11,927	10,491 (88.0)	1,436 (12.0)

MARCH, 1974

Clackamas	1,143	1,049 (91.8)	94 (08.2)
Coos	923	839 (90.9)	84 (09.1)
Klamath	1,171	1,050 (89.7)	121 (10.3)
Lane	2,273	2,156 (94.9)	117 (05.1)
Marion	2,180	2,049 (94.0)	131 (06.0)
Multnomah	7,345	6,380 (86.9)	965 (13.1)
Umatilla	823	758 (92.1)	65 (07.9)
Washington	1,263	1,015 (80.4)	248 (19.6)
Total	17,121	15,296 (89.3)	1,825 (10.7)

DISTRICT COURT CASE TABLES

TABLE II

**A Comparison of Minor Traffic Cases Terminated
in Eight District Courts**

JANUARY, 1974

District Court	Minor Traffic Cases Terminated	Cases Terminated by Trial	Cases Terminated Prior to Trial w/Judicial Time	Cases Terminated Prior to Trial w/o Judicial Time
Clackamas	860	140 (16.3)	232 (27.0)	488 (56.7)
Coos	617	38 (06.1)	462 (74.9)	117 (19.0)
Klamath	891	82 (09.2)	255 (28.6)	554 (62.2)
Lane	1,446	72 (05.0)	785 (54.3)	589 (40.7)
Marion	1,441	87 (06.0)	928 (64.4)	426 (29.6)
Multnomah	5,811	444 (07.6)	2,852 (49.1)	2,515 (43.3)
Umatilla	668	32 (04.8)	173 (25.9)	463 (69.3)
Washington	785	57 (07.3)	504 (64.2)	224 (28.5)
Total	12,519	952 (07.6)	6,191 (49.5)	5,376 (42.9)

FEBRUARY, 1974

Clackamas	999	104 (10.4)	300 (30.0)	595 (59.6)
Coos	600	42 (07.0)	392 (65.3)	166 (27.7)
Klamath	821	99 (12.1)	267 (32.5)	455 (55.4)
Lane	1,295	42 (03.2)	690 (53.3)	563 (43.5)
Marion	1,420	50 (03.5)	991 (69.8)	379 (26.7)
Multnomah	4,579	361 (07.9)	2,495 (54.5)	1,723 (37.6)
Umatilla	526	12 (02.3)	170 (32.3)	344 (65.4)
Washington	[No Report for February, 1974]			
Total	10,240	710 (07.0)	5,305 (52.0)	4,225 (41.0)

MARCH, 1974

Clackamas	920	106 (11.5)	585 (63.6)	229 (24.9)
Coos	924	41 (04.4)	489 (53.0)	394 (42.6)
Klamath	1,070	93 (08.7)	259 (24.2)	718 (67.1)
Lane	1,540	45 (03.0)	722 (46.8)	773 (50.2)
Marion	1,764	76 (04.3)	1,306 (74.0)	382 (21.7)
Multnomah	6,418	425 (06.6)	3,281 (51.1)	2,712 (42.3)
Umatilla	728	22 (03.0)	228 (31.3)	478 (65.7)
Washington	792	45 (05.7)	546 (68.9)	201 (25.4)
Total	14,156	853 (06.0)	7,416 (52.4)	5,887 (41.6)

DISTRICT COURT CASE TABLES

TABLE III

**An Analysis of Minor Traffic Cases Concluded by Trial
in Eight District Courts**

JANUARY, 1974

District Court	Cases Tried	Cases Tried to a Jury	Cases Tried to the Court	Cases Appealed
Clackamas	140	13 (09.3)	127 (90.7)	4
Coos	38	1 (02.6)	37 (97.4)	0
Klamath	82	0 (00.0)	82 (100.0)	0
Lane	72	5 (07.0)	67 (93.0)	9
Marion	87	1 (01.1)	86 (98.9)	15
Multnomah	444	8 (01.8)	436 (98.2)	16
Umatilla	32	0 (00.0)	32 (100.0)	1
Washington	57	0 (00.0)	57 (100.0)	6
Total	952	28 (02.9)	924 (97.1)	51

FEBRUARY, 1974

Clackamas	104	12 (11.5)	92 (88.5)	3
Coos	42	1 (02.4)	41 (97.6)	7
Klamath	99	0 (00.0)	99 (100.0)	0
Lane	42	3 (07.1)	39 (92.9)	5
Marion	50	1 (02.0)	49 (98.0)	6
Multnomah	361	17 (04.7)	344 (95.3)	21
Umatilla	12	0 (00.0)	12 (100.0)	0
Washington		[No Report for February, 1974]	.....	.....
Total	710	34 (04.8)	676 (95.2)	42

MARCH, 1974

Clackamas	106	12 (11.3)	94 (88.7)	2
Coos	41	3 (07.3)	38 (92.7)	2
Klamath	93	1 (01.1)	92 (98.9)	3
Lane	45	4 (08.9)	41 (91.1)	3
Marion	76	0 (00.0)	76 (100.0)	7
Multnomah	425	28 (06.6)	397 (93.4)	28
Umatilla	22	0 (00.0)	22 (100.0)	0
Washington	45	0 (00.0)	45 (100.0)	6
Total	853	48 (06.0)	805 (94.0)	51

DISTRICT COURT CASE TABLES

TABLE IV**An Analysis of Hours of Judicial Time
Spent on Minor Traffic Matters
in Eight District Courts****JANUARY, 1974**

District Court	Number of Judges	Number of Hours Spent	Average Hours Spent Per Judge	No. of Cases Involving Judicial Time
Clackamas	2	33	16.5	
Coos	1	58	58.0	
Klamath	1	41	41.0	
Lane	3	118	39.3	
Marion	2	51	25.5	
Multnomah	11	377	34.3	
Umatilla	1	54	54.0	
Washington	2	56	28.0	
Total	23	788	34.3	

FEBRUARY, 1974

Clackamas	2	22	11.0	404
Coos	1	42	42.0	432
Klamath	1	50	50.0	366
Lane	3	87	29.0	732
Marion	2	35	17.5	1,041
Multnomah	12	335	27.9	2,856
Umatilla	1	49	49.0	182
Washington		[No Report for February, 1974]	.....	.....
Total	22	620	28.2	6,013

MARCH, 1974

Clackamas	2	18	9.0	691
Coos	1	60	60.0	530
Klamath	1	50	50.0	352
Lane	3	100	33.3	767
Marion	2	46	23.0	1,382
Multnomah	11	421	38.3	3,706
Umatilla	1	8	8.0	250
Washington	2	45	22.5	591
Total	23	748	32.5	8,269

DISTRICT COURT CASE TABLES

TABLE V

**An Analysis of Major and Minor Traffic Cases
Filed in Eight District Courts**

Three Months Ending March 31, 1974

District Court	Total No. of Traffic Cases	Total No. of Minor Traffic Cases	Total No. of Major Traffic Cases
Clackamas	2,842	2,524 (88.8)	318 (11.2)
Coos	2,169	1,988 (91.7)	181 (8.3)
Klamath	3,086	2,642 (85.6)	444 (14.4)
Lane	5,235	4,917 (93.9)	318 (6.1)
Marion	4,831	4,480 (92.7)	351 (7.3)
Multnomah	19,408	16,771 (86.4)	2,637 (13.6)
Umatilla	1,945	1,802 (92.6)	143 (7.4)
Washington	3,257	2,575 (79.1)	682 (20.9)
Total	42,773	37,699 (88.1)	5,074 (11.9)

TABLE VI

**An Analysis of Minor Traffic Cases Terminated
in Eight District Courts**

Three Months Ending March 31, 1974

District Court	Cases Terminated	Cases Terminated by Trial	Cases Terminated Prior to Trial w/Judicial Time	Cases Terminated Prior to Trial w/o Judicial Time
Clackamas	2,779	350 (12.6)	1,117 (40.2)	1,312 (47.2)
Coos	2,141	121 (5.7)	1,343 (62.7)	677 (31.6)
Klamath	2,782	274 (9.8)	781 (28.1)	1,727 (62.1)
Lane	4,281	159 (3.7)	2,197 (51.3)	1,925 (45.0)
Marion	4,625	213 (4.6)	3,225 (69.7)	1,187 (25.7)
Multnomah	16,808	1,230 (7.3)	8,628 (51.3)	6,950 (41.4)
Umatilla	1,922	66 (3.4)	571 (29.7)	1,285 (66.9)
Washington	2,310	145 (6.3)	1,487 (64.4)	678 (29.3)
Total	37,648	2,558 (6.8)	19,349 (51.4)	15,741 (41.8)

DISTRICT COURT CASE TABLES

TABLE VII

**An Analysis of Minor Traffic Cases Concluded by Trial
in Eight District Courts**

Three Months Ending March 31, 1974

District Court	Cases Tried	Cases Tried to a Jury	Cases Tried to the Court	Cases Appealed
Clackamas	350	37 (10.6)	313 (89.4)	9
Coos	121	5 (04.1)	116 (95.9)	9
Klamath	274	1 (00.4)	273 (99.6)	3
Lane	159	12 (07.5)	147 (92.5)	17
Marion	213	2 (00.9)	211 (99.1)	28
Multnomah	1,230	53 (04.3)	1,177 (95.7)	65
Umatilla	66	0 (00.0)	66 (100.0)	1
Washington	145	0 (00.0)	145 (100.0)	17
Total	2,558	110 (04.3)	2,448 (95.7)	149

TABLE VIII

**An Analysis of Hours of Judicial Time
Spent on Minor Traffic Matters
in Eight District Courts**

Three Months Ending March 31, 1974

District Court	Number of Judges	Number of Hours Spent	Average Hours Spent Per Judge	No. of Cases Involving Judicial Time
Clackamas	2	73	36.5	1,467
Coos	1	160	160.0	1,464
Klamath	1	141	141.0	1,072
Lane	3	305	101.7	2,356
Marion	2	132	66.0	3,438
Multnomah	11	1,133	103.0	9,858
Umatilla	1	111	111.0	637
Washington	2	141.5	70.75	1,632
Total	23	2,196.5	95.5	21,924

TRAFFIC CASE CONVICTION TABLES

INTRODUCTION TO TABLE IX:

This table is based upon statistics compiled by the Motor Vehicles Division from traffic case conviction records as reported by the various Oregon courts.

As the table reveals, district courts reported a far greater number of all convictions than any other court for both 1972 and 1973 (Item I). Of the major traffic offenses, district courts reported the greatest number of convictions for every offense except one for each of the two years (Item IV).

With respect to driving offenses involving liquor, district court led all courts by an overwhelming margin in the total convictions each year for both driving while under the influence of intoxicating liquor and driving with .15 or more blood alcohol content. More than twice as many convictions were reported from district courts for these two major offenses than from any other court (Item IV, 2, 3). The figures for major traffic offenses also show that, except for justice court, each of the courts reported more DUIL cases than any other major traffic offense.

TABLE IX

**Traffic Case Convictions
Reported to Motor Vehicles Division
1972 and 1973**

	1972	1973
I. MAJOR TRAFFIC OFFENSES (including vehicular homicides)		
Circuit court	279	322
District court	11,643	14,751
Justice court	1,972	2,092
Municipal court	6,317	7,279
Total	20,211	24,444
II. MINOR TRAFFIC OFFENSES		
Circuit court	1,114	804
District court	170,811	208,321
Justice court	43,560	51,246
Municipal court	99,765	101,394
Total	315,250	361,765
III. ALL OFFENSES		
Circuit court	1,391	1,126
District court	182,454	223,072
Justice court	45,532	53,338
Municipal court	106,082	108,673
Total	335,459	386,209

TRAFFIC CASE CONVICTION TABLES

IV. BREAKDOWN OF MAJOR TRAFFIC OFFENSES

	1972	1973
1. Driving under influence of drugs		
Circuit court	0	1
District court	15	12
Justice court	2	1
Municipal court	9	12
	26	26
2. Driving under influence of liquor		
Circuit court	116	141
District court	4,747	6,044
Justice court	505	580
Municipal court	2,085	2,629
	7,453	9,394
3. Driving with a .15% or more blood alcohol content		
Circuit court	18	21
District court	1,486	1,370
Justice court	476	467
Municipal court	722	578
	2,702	2,436
4. Driving while suspended		
Circuit court	26	47
District court	3,183	4,591
Justice court	737	803
Municipal court	1,900	2,385
	5,846	7,826
5. Eluding a police officer		
Circuit court	25	26
District court	151	169
Justice court	34	26
Municipal court	182	154
	392	375
6. Failure to leave name and address at scene of accident		
Circuit court	27	23
District court	482	529
Justice court	38	33
Municipal court	425	367
	972	952

TRAFFIC CASE CONVICTION TABLES

IV. BREAKDOWN OF MAJOR TRAFFIC OFFENSES (Cont'd)

	1972	1973
7. Criminally negligent homicide		
Circuit court	17	12
8. Manslaughter		
Circuit court	0	2
9. Reckless driving		
Circuit court	50	49
District court	1,579	2,036
Justice court	180	182
Municipal court	994	1,154
	<hr/>	<hr/>
Total	2,803	3,421

PART I. RULES OF THE ROAD

ARTICLE 1. GENERAL PROVISIONS

Section 1. Sections 2 to 12 of this Act are added to and made a part of ORS chapter 483.

Section 2. (Definitions.) As used in this 1975 Act, unless the context otherwise requires:

(1) "Ambulance" means any privately or publicly owned motor vehicle that is regularly provided or offered to be provided for the emergency transportation of persons suffering from illness, injury or disability. Police, fire, funeral home and other vehicles which serve a dual purpose, one of which meets the definition of "ambulance," when actually used for ambulance purposes, are ambulances.

(2) "Controlled-access highway" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.

(3) "Crosswalk" means:

(a) Except as provided in paragraph (b) of this subsection, that portion of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the street or highway measured from the curbs or, in the absence of curbs, from the edges of the traveled roadway to the property lines; or the prolongation of the lateral lines of a sidewalk, to the sidewalk on the opposite side of the street, if the prolongation would meet such sidewalk; or, if there is no sidewalk, that portion of a roadway at an intersection measuring not less than six feet in width that would be included within the prolongation of the lateral lines of the sidewalks on the opposite side of the street or highway if there were a sidewalk.

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface of such roadway, conforming in design to standards prescribed by the commission. Whenever marked crosswalks have been indicated, such crosswalks and no other shall be deemed lawful across such roadway at that intersection.

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

(5) "Emergency medical technician" means a person who attends any ill, injured or disabled person in connection with his transportation by ambulance. Policemen, firemen, funeral home employes and other personnel serving in a dual capacity one of which meets the definition of "emergency medical technician" are "emer-

gency medical technicians” within the meaning of ORS 483.120, 483.121, 483.437, 485.500 to 485.595 and 485.992.

(6) “Emergency vehicle” means a vehicle equipped as required by paragraph (c) of subsection (1) of ORS 483.423, subsections (5) and (6) of ORS 483.432 and subsection (4) of ORS 483.446 and which is used by a publicly maintained fire or police department or airport security police or a vehicle of a federal agency which is designated as an emergency vehicle by that agency, or other vehicle authorized in writing by the Administrator of the Motor Vehicles Division. The term does not include an ambulance as defined in subsection (1) of this section.

(7) “Highway,” “road” or “street” means every public way, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of this state, used or intended for the use of the general public for vehicles except that as used in those provisions relating to size and weight restrictions on vehicles, the terms do not include any road or thoroughfare or property in private ownership or any road or thoroughfare, other than a state highway or county road, used pursuant to any agreement with any agency of the United States or with a licensee of such agency, or both.

(8) “Intersection” means the area embraced within the prolongation or connection of the lateral curb lines or, if none, then of the lateral boundary lines of two or more roadways which join one another at an angle, whether or not one roadway crosses the other. The junction of an alley with a roadway shall not constitute an intersection. Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event the intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(9) “Local authorities” means every county, municipal and other local board or body having authority to adopt and administer local police regulations under the Constitution and laws of this state.

(10) “Motorcycle” means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

(11) “Official traffic control devices” means all signs, signals, markings and devices not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction, for the purpose of guiding, directing, warning or regulating traffic.

(12) “Park or parking” means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

(13) "Pedestrian" means any person afoot.

(14) "Protective device" means a sign, signal, gate or other device to warn or protect the public, installed at a railroad-highway crossing.

(15) "Right of way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.

(16) "Roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

(17) "Shoulder" means that portion of the highway, whether paved or unpaved, contiguous to the roadway primarily for the accommodation of stopped vehicles, for emergency use and for lateral support of base and surface courses.

(18) "Stand or standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

(19) "Stop" when required means complete cessation from movement.

(20) "Stop or stopping" when prohibited means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

COMMENTARY

The section proposes a set of terms that are of general application in the proposed revision of the rules of the road.

(1) "Ambulance" is defined to distinguish between it and an emergency vehicle for the reason that the privileges of the two types of vehicles to disregard certain driving rules are, under the proposed code as well as under ORS 483.120, materially different from each other. The definition of "ambulance" in ORS 485.500 is in exact conformity with the proposed definition except for the recitation of statutory citations applying to ambulances. It was adopted by the 1973 legislature in ch 407 as a part of a program requiring certification of ambulances as well as their drivers and operators, emergency medical technicians.

(2) "Controlled-access highway" is defined for

the first time to distinguish it from a freeway or throughway. The term has special application in the rules for overtaking and passing a school bus.

(3) "Crosswalk" is defined to include the unmarked and marked crosswalk, and to provide an unmarked crosswalk of at least six feet in width at intersections where there is not a pedestrian walk on each of the opposite sides of the street. This expansion of the definition makes obsolete the findings of the court in *Leap v. Royce*, 203 Or 566, 279 P2d 887 (1955).

(4) "Driver" is defined to apply to a person in control of a vehicle irrespective of whether the vehicle is on a highway.

(5) "Emergency medical technician" is defined in ORS 485.500 in exact conformity with this defi-

dition and, like the definition of "ambulance," is a part of the laws requiring certification of ambulances and their crews.

(6) "Emergency vehicle" is defined as a vehicle used by a publicly maintained agency for emergency purposes or one that is authorized to be so classified by the Motor Vehicles Division Administrator. It is equipped with lights and audible device under statutes regulating the standards in these matters. The term specifically excludes ambulances.

(7) "Highway" is defined in the same terms as in ORS 483.010 except the specific statutory references are replaced by a statement of their general subject matter.

(8) "Intersection" is defined in the same terms as the UVC definition except that the word "roadway" is used instead of "highway." The definition excludes the junction of an alley with a roadway.

(9) "Local authorities" is expanded from the present ORS ch 483 definition of a body having authority to adopt police regulations to include authority to administer them.

(10) "Motorcycle" is defined in accordance with the UVC definition.

(11) "Official traffic control devices" is defined in accordance with the UVC. Under ORS 483.016, official traffic signs and signals are defined in identical language.

(12) "Park or parking" is defined for the first time. The definition is based on the UVC definition.

(13) "Pedestrian" is defined for the first time.

(14) "Protective device" is defined in the same terms in ORS 763.010. The term has special applica-

tion in ORS 483.040, granting the Public Utility Commissioner exclusive jurisdiction over railroad-highway grade crossings.

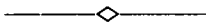
(15) "Right of way" incorporates the definition used in the UVC.

(16) "Roadway" incorporates the definition used in the UVC. It clearly delineates a specific part of the highway by excluding that part of the highway defined as the shoulder. The term has special application in the rule related to passing on the right and the rule prohibiting hitchhiking by a person standing in the roadway.

(17) "Shoulder" is a term not previously defined in the rules of the road. The definition is derived from the 1970 proposed revision and recodification of the Motor Vehicles Code of Michigan, § 1-188, with the addition of the language "paved or unpaved" to clarify that the shoulder includes the highway outside the fog line which is primarily intended for emergency vehicle use as compared to pedestrian use.

(18) "Stand or standing" is a new definition drawn from the UVC and of special application in the rules on parking, standing and stopping.

(19) and (20) "Stop" and "stopping" have not previously been defined in the statutes. Under the rules for stopping, standing and parking, a stopping, no matter how brief, is prohibited in certain specified areas. Whereas "standing" is defined as not including a temporary halting to load or unload passengers and "parking" as not including a temporary standing to load or unload passengers or property, stopping when prohibited is any momentary halting except as required by traffic or in compliance with law.



Section 3. (Provisions uniform throughout state.) The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and on the ocean shore which has been or may hereafter be declared a state recreation area, and no local authority may enact or enforce any rule or regulation in conflict with the provisions of this chapter except as specifically authorized in this chapter.

COMMENTARY

A. Summary

This section is a restatement of ORS 483.036 that traffic law is to apply throughout the state and to ocean shore which is state recreation area and that rules in conflict with the provisions of the Act may not be enacted by local authorities unless specifically authorized.

B. Derivation

This section is based on UVC § 15-101 (Revised 1971).

C. Relationship to Existing Law

ORS 483.036 and 483.042 would be repealed. The provisions of subsections (1) and (2) of ORS 483.036

and subsection (1), ORS 483.042, are restated in this draft section. The provisions of subsection (2), ORS 483.042, granting power to local authorities to regulate traffic where it is heavy or continuous, to require one-way traffic and to regulate highway use by assemblages and those of subsection (3), ORS 483.042, related to speed regulation in public parks, are covered in sections of the draft Article on Powers of State and Local Authorities.

The rule of this section allows local authorities to enact regulations which are not in conflict with the provisions of ORS ch 483. Supplementary, but nonconflicting provisions, are common. Furthermore, cities can duplicate state laws by ordinance under the rule of ORS 483.042. Prohibition of enactment of a conflicting rule would preclude a local authority from imposing a penalty for violation of a traffic regulation greater than the penalty imposed under state law for commission of the same prohibited act. A lesser penalty imposed by the local authority would not be in conflict.

The provisions of both ORS 483.036 and 483.042 were interpreted in *Winters v. Bisailon*, 152 Or 578, 54 P2d 1169 (1936). The court held that a municipal ordinance restricting motor vehicle speed within the city limits was in conflict with the state statute requiring reasonable speed, and hence invalid. Local

authorities may not curtail, infringe upon or annul state law regulating traffic.

This principle was further developed in *Ceccacci v. Garre*, 158 Or 466, 76 P2d 283 (1938), a case which involved a parking ordinance prohibiting parking more than one foot from the curb. The court held that since there was no legislation prescribing the manner in which motor vehicles should be parked in a business district in a city, a city ordinance in this area did not curtail, infringe upon or annul any general law, was not inconsistent with state statute, and therefore valid.

The analogous UVC provision prohibits the local authority from enacting or enforcing any ordinance on a matter covered by the UVC rules. Hence, ordinances duplicating any subject covered by a state law would be invalid.

A state recreation area is defined by subsection (3) of ORS 390.605 as meaning a land or water area, or combination thereof, under jurisdiction of the State Highway Commission (now the Department of Transportation) used by the public for recreational purposes. All motor vehicle traffic other than emergency traffic may be prohibited under ORS 390.655 in those parts or zones of the ocean shore which the department, after the required notice and hearing, establishes as zones of no motor vehicle traffic.

◆

Section 4. (Provisions of chapter refer to vehicles upon the highways and ocean shore; exceptions.) The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways and the ocean shore which has been or may hereafter be declared to be a state recreation area, except where a different place is specifically referred to in a given section.

COMMENTARY

A. Summary

This section restricts application of the rules of the road to vehicles operated on the highway and on the portions of the ocean shore declared state recreation areas, unless another place is specifically referred to in another section of the statutes.

B. Derivation

The section is based on the UVC § 11-101 (Revised 1971). Oregon has not had a comparable provision.

C. Relationship to Existing Law

Oregon has not had a statute restricting the application of the vehicle laws to operation of vehicles on the highways. The offenses of reckless driving, driving under the influence of intoxicating liquor,

dangerous drugs or narcotic drugs, and driving with .15 percent blood alcohol level, do require proof of the driver's operation of the vehicle on a highway and, in the case of driving under the influence, a street or thoroughfare within this state, under ORS 483.992 and 483.999. Proof of this element was an issue in *State v. Brown*, 5 Or App 412, 485 P2d 444 (1971). Several other offenses can be committed only upon a "highway."

Section 2 includes general definitions, one of which is a definition of the term "highway." ORS 483.010 defines "highway" in terms of the ORS 481-020 definition with certain exceptions in relation to size and weight statutes and the related penalty provisions. The definition includes every public way and place used or intended for use by the general

public for vehicles. The highway need not be publicly maintained as is required under the UVC definition. Size and weight restrictions do not, however, apply on highways under private ownership which are nonetheless used by the public.

Section 86 of the draft makes certain serious offenses applicable on other areas in the state that are open to the general public for the use of motor vehicles, and will be an exception to the general rule of § 4.



Section 5. (Application of new vehicle code provisions to prior and subsequent actions.) (1) Sections 2 to 169 of this 1975 Act shall govern the construction of and punishment for any vehicle code offense defined in this 1975 Act and committed after the effective date of this 1975 Act, the construction and application of any defense to a prosecution for such an offense and any administrative proceedings authorized or affected by this 1975 Act.

(2) Sections 2 to 169 of this 1975 Act shall not apply to or govern the construction of or punishment for any vehicle code offense committed before the effective date of this 1975 Act or the construction and application of any defense to a prosecution for such an offense.

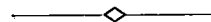
(3) When all or part of a vehicle code statute is amended or repealed, the statute or part thereof so amended or repealed remains in force for the purpose of authorizing the accusation, prosecution, conviction and punishment of a person who violated the statute or part thereof before the effective date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

(4) The provisions of sections 2 to 169 of this 1975 Act do not impair or render ineffectual any court or administrative proceedings or procedural matters which occurred before the effective date of this 1975 Act.

COMMENTARY

This section sets forth the rules under which the revised vehicle code will be applied to particular actions and proceedings in order to provide for an

orderly transition from the old to the new statutes. The section covers the application of substantive as well as procedural provisions.



Section 6. (Permitting unlawful operation of vehicle.) (1) A person who is an owner, lessor or lessee of a motor vehicle, or who employs or otherwise directs the driver of a motor vehicle, commits the offense of permitting the unlawful operation of a vehicle if he knowingly permits or requires the operation of the vehicle in violation of:

- (a) The rules of the road; or
- (b) The laws governing equipment of motor vehicles; or
- (c) The laws governing weight of motor vehicles.

(2) Knowingly permitting or requiring the operation of a motor vehicle in violation of subsection (1) is a Class B traffic infraction.

COMMENTARY

This section restates ORS 483.046, which would be repealed, to be consistent in form and style with the revision. This section also removes the ambiguity in ORS 483.046 which gives responsibility both to the owner of a motor vehicle and to the employer of a driver of a motor vehicle for illegal operation of the vehicle by the driver, based solely on permission being given to the driver to operate the ve-

hicle on a public highway. This draft section limits the responsibility of the person permitting or requiring the operation of a motor vehicle to the circumstance that the person giving permission does so with knowledge that the driver is operating the vehicle in violation of the rules of the road, the equipment statutes or the weight regulations.

◆

Section 7. (Failing to obey police officer.) (1) A person commits the offense of failing to obey a police officer if he refuses or fails to comply with any lawful order, signal or direction of a police officer displaying his star or badge and having lawful authority to direct, control or regulate traffic.

(2) Failing to obey a police officer is a Class C traffic infraction.

COMMENTARY

A. Summary

This section describes the offense of failure to obey a police officer, qualifying the offense with the requirement that the police officer display his badge and have lawful authority to direct traffic.

B. Derivation

This section is similar to UVC § 11-103 (Revised 1971), as well as to subsection (1), ORS 483.048.

C. Relationship to Existing Law

ORS 483.048 would be repealed. A police officer is defined in ORS 483.018 to mean a member of the Oregon State Police, a sheriff or his deputy, or a city policeman.

◆

Section 8. (Uniform or badge required.) Any police officer attempting to enforce the traffic laws of this state shall be in uniform or have conspicuously displayed upon his person a badge or star showing his lawful authority.

COMMENTARY

The section restates subsection (2) of ORS 483.048 and also expands the scope of the requirement that an enforcing officer be in uniform or display his badge to cover all "traffic" laws. The statute is now

limited to enforcement of "speed" laws. The policy of giving visual notice to a citizen of an officer's authority should apply equally to any traffic law. ORS 483.048 would be repealed.

◆

Section 9. (Public officers and employes.) The provisions of this Act applicable to drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, district or any other political subdivision of this state, subject to such specific exceptions as are set forth in this Act.

COMMENTARY

A. Summary

This section provides that drivers of government-owned vehicles, whether federal, state or local, are subject to the motor vehicle laws, unless there is a specific exception.

B. Derivation

The section is based on UVC § 16-103. The 1930 edition of the analogous UVC section is identical to ORS 483.032. It makes an exception for highway construction workers, vehicles and equipment from motor vehicle law in the same section that specifically requires federal, state and local government vehicle drivers to obey the rules of the road.

C. Relationship to Existing Law

This section is a more concise statement of subsection (1) of ORS 483.032. The enumeration of specific statutory sections relating to operation of motor vehicles to which drivers of government-owned vehicles are subject is deleted and replaced by a general descriptive statement. ORS 483.032 would be repealed.

The provisions of subsection (2) of ORS 483.032 are restated in the following section and those of subsection (3) will be relocated with the rules relating to motor vehicle equipment.

—◆—

Section 10. (Persons working on highways; exceptions.) Unless otherwise specifically provided, the provisions of this Act, except those relating to a serious traffic offense, do not apply to persons, motor vehicles and other equipment while operated within the immediate construction project, as described in the governmental agency contract, in the construction or reconstruction of a street or highway, but shall apply to such persons and vehicles when traveling to or from such construction project.

COMMENTARY

A. Summary

Persons, motor vehicles and equipment working on highways are not subject to motor vehicle law while operating within the immediate construction project, except for the laws relating to serious traffic offenses. "Serious traffic offenses" are defined in Art. 9.

B. Derivation

This section is based on subsection (2), ORS 483.032.

C. Relationship to Existing Law

This section restates the provisions of subsection (2) of ORS 483.032 and further provides that the rules relating to serious traffic offenses do apply to highway construction workers. Under existing law highway construction workers are not subject to the laws concerning reckless driving, driving under the influence, driving with a .15 percent blood alcohol level and accident reports. The UVC serious traffic offense laws apply to highway construction workers. ORS 483.032 would be repealed.

—◆—

Section 11. (Application of speed regulation and traffic signals to emergency vehicles.) (1) The driver of an emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from an emergency, is subject to the privileges and conditions set forth in this section.

(2) The driver of the emergency vehicle may:

(a) Park or stand, in disregard of a statute, regulation or ordinance prohibiting that parking or standing;

(b) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(c) Exceed the designated speed limits so long as he does not endanger persons or property; and

(d) Disregard regulations governing direction of movement or turning in specified directions.

(3) (a) The privileges granted to the driver of an emergency vehicle in paragraphs (a), (c) and (d) of subsection (2) of this section, apply only when the driver of the vehicle is making use of a visual signal meeting the requirements of paragraph (c) of subsection (1) of ORS 483.423 and subsections (5) and (6) of ORS 483.432.

(b) The privileges granted to the driver of an emergency vehicle in paragraph (b) of subsection (2) of this section, apply only when the driver of the vehicle is making use of both a visual signal as described in paragraph (a) of this subsection, and an audible signal meeting the requirements of subsection (4) of ORS 483.446.

(c) A driver of an emergency vehicle, which is parked or standing in disregard of a regulation or ordinance prohibiting that parking, stopping or standing, shall not use the audible signal.

(d) The driver of an emergency vehicle, which is operated as an emergency police vehicle, is not required to use either visual signal or the audible signal as described in paragraphs (a) and (b) of this subsection (3) in order to exercise the privileges granted in subsection (2) of this section when it reasonably appears to the driver that the use of either or both would prevent or hamper the apprehension or detection of a violator of a statute, ordinance or regulation.

(4) The provisions of this section shall not relieve the driver of an emergency vehicle from the duty to drive with due regard for the safety of all other persons, nor are they a defense to the driver in an action brought for criminal negligence or reckless conduct.

(5) Violation by an emergency vehicle driver of any provision of this section is a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that emergency vehicles have certain privileges when they are responding to an emergency call, in pursuit of an actual or alleged law violator, and when going to an emergency.

Subsection (2) states the privileges of emergency vehicles with respect to parking and standing regulations, stop signals, speed and traffic direction regulations and signals and signs.

Subsection (3) requires use of visual signal by the emergency vehicle when the traffic regulations gov-

erning parking and standing, speed, direction of movement and turns are disregarded, and use of both visual and audible signals by the emergency vehicle proceeding past a stop sign or signal after it slowed down. Use of the audible signal is prohibited by the driver of the emergency vehicle exercising the privilege of parking or standing in disregard of statute, regulation or ordinance prohibiting same. The driver of an emergency vehicle operated as a police emergency vehicle need not use either type of signal if its use would prevent or hamper apprehension of a violator of the law.

Subsection (4) provides that the driver is not relieved of the duty of due care, and the privileges are not a defense in an action for reckless conduct.

B. Derivation

Subsections (1) and (2) are based on UVC § 11-106. Subsection (3) is based on 13 Alaska Adm Code § 02.585 and UVC § 11-106. Subsection (4) is based on UVC § 11-106.

C. Relationship to Existing Law

ORS 483.120 which combines the privileges of all authorized emergency vehicles, including ambulances, would be repealed. Section 11 relates to emergency vehicles, not including ambulances. The section following relates to ambulances.

The definition of an authorized emergency vehicle in ORS 483.002 does not include ambulance. It is defined as a separate kind of emergency vehicle. ORS 483.002 defines an authorized emergency vehicle as a fire department, fire patrol, police, municipal department or public service corporation emergency vehicle, and ambulances while being used for emergency purposes and displaying required lights and making an audible signal. The definition was interpreted in *Dodson v. Lemon*, 197 Or 444, 253 P2d 900 (1953), to mean that a police car not operating its audible warning device is not an emergency vehicle within the definition.

Subsection (1), stating the privileges apply only when the emergency vehicle is on the way to an emergency or pursuing, is new, replacing the qualification of ORS 483.002 that an emergency vehicle is one only when on the way to an emergency.

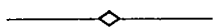
ORS 483.002 provides the requirement that an authorized emergency vehicle use a visual and an audible signal but specifies no type of signals and makes no provision that any type of driving regulation may be disregarded without the use of both signals. ORS 483.002 seems to require that the vehicle parking or standing in violation of the rules applicable to parking or standing, when not using both types of signals, is not an emergency vehicle with any of the driving privileges.

The maximum speed limit of 25 miles per hour of ORS 483.124 applicable to ocean shore is not included in the speed regulations from which the emergency vehicle is exempt. Under this section the emergency vehicle may exceed the maximum speed of the ocean shore as well as other maximum speeds.

ORS 483.120 contains the provision, repeated in four separate paragraphs, that compliance with the particular paragraph or subsection does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

Subsection (4) of this section states the duty of the emergency vehicle driver to drive with due regard for the safety of all persons as does ORS 483.120. In *Siburg v. Johnson*, 249 Or 556, 439 P2d 865 (1968), the court held that the driver must not only use his siren and display the required lights, but must also drive with due care for the safety of all persons using the highway.

The provision that the privileges of the driver of the emergency vehicle are not a defense in an action for criminal negligence or reckless conduct is new.



Section 12. (Application of speed regulations and traffic signals to ambulances.) (1) The driver of an ambulance when responding to an emergency call, subject to the conditions of this section, may, with due regard to the safety of all persons, exercise the following privileges:

- (a) Park or stand in disregard of a statute, regulation or ordinance prohibiting that parking or standing;
- (b) Proceed past a red or stop signal or stop sign but only after slowing down as may be necessary for safe operation;
- (c) Exceed the designated speed limits by not more than 10 miles an hour, so long as he does not endanger persons or property;
- (d) Disregard regulations governing direction of movement or turning in specified directions.

(2) The privileges granted under this section to the driver of an ambulance shall apply only when a person who, in accordance

with ORS 485.550, is a certified emergency medical technician or has been granted an exemption from the requirement of obtaining E.M.T. certification:

(a) Has reasonable grounds to believe that delay of an ambulance will jeopardize human life; and

(b) Operates or directs the operation of an audible signal or a visual signal meeting the requirements of the Transportation Commission in accordance with ORS 483.437.

(3) The provisions of this section shall not relieve the driver of an ambulance from the duty to drive with due regard for the safety of all persons, nor are they a defense to the driver in an action brought for criminal negligence or reckless conduct.

(4) Violation by an ambulance driver of any provision of this section is a Class B traffic infraction.

COMMENTARY

A. Summary

An ambulance and an emergency medical technician are defined in § 2 in the exact language used in the definitions of these terms in ORS 485.500.

Subsection (1) provides that an ambulance driver on the way to an emergency may disregard parking regulations, exceed the designated speed limits by not more than 10 miles an hour, proceed past a red signal after stopping, and disregard traffic regulations on directions and turning, under certain conditions.

Subsection (2) states the conditions to be that an emergency medical technician or an ambulance driver believes that delay of the ambulance will jeopardize life, and that an audible or a visual signal is in operation.

Subsection (3) states the driver's duty of due care to all persons, and that the provisions of the section are not a defense to an action for criminal negligence or reckless conduct.

B. Derivation

Subsection (1) is derived from UVC § 11-106 (a) and (b) which, however, apply to all authorized emergency vehicles. Subsection (1) also incorporates the special rules for ambulances regarding speed, stops, speed at controlled intersections, and turns of ORS 483.120 (2) and (3). Subsection (2) restates the provisions of ORS 483.002 defining an emergency vehicle as one using audible and visual signals, in the terms of UVC § 11-106 (c). Subsection (3) is based on UVC § 11-106 (d) but uses different culpability terms.

C. Relationship to Existing Law

ORS 483.120 describes the privileges of authorized emergency vehicles and the related and more restricted privileges of ambulances. The more limited privileges of ambulances are stated in this section. The conditioning of the exercise of the privileges on a reasonable belief that life would be jeopardized by delay and use of signals, either audible or visual, is new. ORS 483.120 (3) limits the use of audible and visual signals to the circumstance that delay of the ambulance will jeopardize life, but makes no positive requirement for their use. In the emergency vehicle definition of ORS 483.002, an emergency vehicle can only be such if the driver is operating the signals as well as if the vehicle is on the way to an emergency.

The "person" charged with the responsibility of determining when signals are to be used by ORS 483.120 (3) is changed to the "emergency medical technician" of ORS 485.500. He is the person who attends those transported in ambulances and is the named person to determine when the enumerated privileges may be exercised except when there is no E.M.T.

The existing requirement that the privileges be exercised only with due regard for the safety of all persons using the highway is broadened to include all persons rather than only persons using the highway. The provision that the privileges are not a defense to a legal action for criminal negligence or reckless conduct is new.

ARTICLE 2. TRAFFIC SIGNS, SIGNALS AND MARKINGS

Section 13. (Obedience to and required traffic control devices.)

(1) A driver commits the offense of failure to obey an official traffic control device if he does not obey the directions of an official traffic control device except when:

- (a) He is otherwise directed by a police officer; or
- (b) He is driving an authorized emergency vehicle or ambulance and lawfully exercising the related privileges granted by section 11 or 12 of this Act.

(2) A person shall not be convicted of violating a provision of this chapter for which an official traffic control device is required if the device is not in proper position and legible to a reasonably observant person at the time and place of the alleged violation. Whenever a particular section defining a vehicle rule does not state that official traffic control devices are required, the section shall be effective even though no devices are erected or in place.

(3) When an official traffic control device is placed in position approximately conforming to the requirements of the traffic regulations or other laws of this state, the device is presumed to have been placed by an official act or at the direction of lawful authority, unless the contrary is established by competent evidence.

(4) An official traffic control device placed under the provisions of this Act or other laws or regulations of this state and purporting to conform to the lawful requirements pertaining to that device is presumed to comply with the requirements of this Act, unless the contrary is established by competent evidence.

(5) A person who fails to obey an official traffic control device commits a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a driver must obey the directions of official traffic control devices, except when otherwise directed by a police officer, or when the driver has the privileges pertaining to an authorized emergency vehicle or ambulance.

Subsection (2) provides that when a person allegedly violates a section of this Act requiring an official traffic control device and there is no device reasonably visible to an ordinarily observant person, the person will not be convicted. If a particular traffic rule does not expressly require a traffic control device, that rule must be obeyed and is enforceable even though no device is present or visible.

Subsection (3) provides for a presumption that an official traffic control device placed in conformity with the requirements of traffic law has been so placed at the direction of lawful authority.

Subsection (4) provides that an official traffic control device placed pursuant to the provisions of the Act is presumed to comply with the requirements of this Act, unless the contrary is established by competent evidence.

B. Derivation

This section is based on UVC § 11-201.

C. Relationship to Existing Law

Subsection (1) contains the provisions of ORS 483.128 and modernizes its language by substituting the term "official traffic control device" for "traffic marker, button, channelizing island, sign or signal," and by deleting the reference to a "motorman of any streetcar." The term "official traffic control device" was adopted by the National Committee on Uniform Traffic Laws and Ordinances to replace the

word "signs" and is used in the 1968 UVC revision. It is defined by UVC § 1-139 as follows:

"All signs, signals, markings and devices not inconsistent with this act placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic."

The term, "official traffic signs and signals," defined by subsection (1) of ORS 483.016, is identical to the UVC official traffic control device definition.

"Traffic control signal" is defined by subsection (2) of ORS 483.028 as "any device, whether manually, electrically or mechanically operated, by which traffic is directed."

An official traffic control device is defined in § 2 in conformity with the UVC definition.

ORS 483.128 has been interpreted to mean that a highway sign is not lawfully placed unless it is

visible, and when not lawfully placed, violation of the direction of the sign is not negligence *per se*. *Savage v. Palmer*, 204 Or 257, 280 P2d 982 (1955).

Subsections (2), (3) and (4) have no counterpart in existing Oregon law. The presumption of legality which subsection (3) of this draft section creates in favor of official traffic control devices in place in conformity with this chapter was held to exist in *Schoenborn v. Broderick*, 202 Or 634, 277 P2d 787 (1954), where it appeared a traffic sign had been installed by private parties at the request and under the supervision of public authorities. The presumption is not raised in the absence of evidence showing installation by or under the aegis of public authority. *Nichols v. Union Pacific R.R. Co.*, 196 Or 488, 250 P2d 379 (1952). Under the provision of subsection (3), a sign appearing to be an official traffic control device in an appropriate location is presumed to be official. ORS 483.128 would be repealed.

◆

Section 14. (Traffic control signals.) Whenever traffic is controlled by a traffic control signal showing different colored lights or colored lighted arrow lights successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend. The lights indicate and apply to drivers and pedestrians as follows:

(1) A driver facing a green light may proceed straight through or turn right or left unless a sign at that place prohibits either turn. A driver shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the green light is shown. A pedestrian facing this light may proceed across the roadway within any marked or unmarked crosswalk, unless prohibited from doing so by other official traffic control devices.

(2) A driver facing a green arrow signal light, shown alone or in combination with another signal, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other signals shown at the same time. A driver shall yield the right of way to pedestrians lawfully within an adjacent crosswalk. A pedestrian facing a green arrow signal light may proceed across the roadway within any marked or unmarked crosswalk unless prohibited from doing so by other traffic control devices.

(3) A driver facing a steady yellow signal light is thereby warned that the related right of way is being terminated and that a red or flashing red light will be shown immediately. A driver facing the light shall stop at a clearly marked stop line, but if none, shall stop before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection. If a driver

cannot stop in safety, he may drive cautiously through the intersection. A pedestrian facing a steady yellow light shall not enter the roadway unless otherwise directed by a pedestrian control signal.

(4) A driver facing a steady red signal light alone shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection. Except as provided in section 15 of this Act, the driver shall remain standing until a green light is shown alone. A pedestrian facing a steady red light shall not enter the roadway unless otherwise directed by a pedestrian control signal.

(5) If an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable. A required stop shall be made at a sign or marking on the roadway indicating where the stop shall be made, but in the absence of such sign or marking the stop shall be made at the signal.

(6) A driver failing to obey a traffic control signal commits a Class B traffic infraction.

(7) A pedestrian failing to obey a traffic control signal commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsections (1), (2), (3) and (4) provide the rules for drivers and pedestrians facing green, green arrow, steady yellow and steady red traffic signal lights.

Subsection (5) provides that the rules of the section are applicable when an official traffic control signal is erected and maintained other than at an intersection.

B. Derivation

Subsections (1) and (2) are a restatement of existing law provisions in subsections (1) and (5) of ORS 483.130. Subsection (3) is based both on subsection (b) of UVC § 11-202 and on subsection (2) of ORS 483.130. Subsection (4) is based on paragraphs 1 and 3 of subsection (c), UVC § 11-202, and subsection (3) of ORS 483.130. Subsection (5) is based on subsection (d) of UVC § 11-202.

C. Relationship to Existing Law

The provisions of ORS 483.130 are changed primarily in the terminology used. The word signals "Go," "Caution" and "Stop" are deleted. Word legends on traffic control signals have not been used for several years to convey instructions to drivers. They were eliminated from the UVC in 1962.

The provisions of ORS 483.130 are in large part

based on the 1934 edition of the UVC. The UVC subsection "Red with Green Arrow" was deleted by the 1962 code revision and replaced by the provision set out in subsection (2) of this section, so as to cover the circumstances of a green arrow used in combination with a red signal, yellow signal, by itself, or with other green arrows.

There has not been any specific provision on traffic control by traffic control signals placed other than at intersections. The rules of ORS 483.130 are consistently stated with reference to intersections. Subsection (5) would make the rules of the section apply when a traffic control signal is located other than at an intersection.

The provisions relating to the motorist's duty to stop when a yellow light appears have been held to mean that when a stop cannot be made where the stop should be made because of the short notice, the driver can, without violating the statute, drive cautiously through the intersection. *Miller v. Harder*, 240 Or 418, 402 P2d 84 (1965).

This draft section adopts the language used in the UVC to state the line at which a driver confronting a red light or yellow light must stop. The language of ORS 483.130 describing the stopping point does not include any stopping point for the intersection at which there is lacking a pedestrian walk on one or more sides of the intersecting streets. ORS 483.130 would be repealed.

Section 15. (Vehicle turns at intersections with red traffic control light.) (1) Unless otherwise directed by an official traffic control device or a police officer, a driver intending to turn at an intersection where there is a traffic control signal showing a red light, after stopping as required with care to avoid accident, may:

- (a) Make a right turn into a two-way street; or
- (b) Make a right or left turn into a one-way street in the direction of traffic upon the one-way street.

(2) The driver making a turn under subsection (1) of this section shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully within the intersection or approaching so close as to constitute an immediate hazard.

(3) A person violating subsection (1) or (2) of this section commits a Class B traffic infraction.

COMMENTARY

A. Summary

This section provides that a driver confronting a red light may turn after stopping. He may turn right if the intersecting street is two-way and may turn in the direction of the traffic if the intersecting street is one-way. He shall yield the right of way to pedestrians lawfully in an adjacent crosswalk and other traffic lawfully within the intersection or approaching so close as to constitute an immediate hazard.

B. Derivation

The provisions of this section on right to turn at a red traffic light are not derived from the law of

any other state as Oregon was an initiator of this traffic rule. The provision of subsection (2) on duty to yield right of way is derived from paragraph 2, subsection (c) of UVC § 11-202.

C. Relationship to Existing Law

ORS 483.132 would be repealed. This draft section contains the same substantive rule on turning but eliminates the obsolete reference to motorman of a streetcar or trolley bus, and eliminates the direction to the driver confronting a green traffic light which is already provided in § 14. The direction to yield the right of way to pedestrians and vehicles lawfully using the intersection is new.

Section 16. (Pedestrian control signals.) (1) When a pedestrian control signal showing the words "Walk" and "Wait" or "Don't Walk" is in place, the signal indicates and applies as follows:

(a) A pedestrian facing a "Walk" signal may proceed across the roadway in the direction of the signal and shall be given the right of way by drivers.

(b) A pedestrian shall not start to cross the roadway in the direction of a "Wait" or "Don't Walk" signal. A pedestrian who has started his crossing on the "Walk" signal shall proceed with dispatch to a sidewalk or safety island while the "Wait" or "Don't Walk" signal is showing.

(2) A person failing to obey a pedestrian control signal commits a Class C traffic infraction.

COMMENTARY

A. Summary

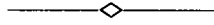
This section states the rules for a pedestrian facing the "Walk," "Wait" and "Don't Walk" signals.

B. Derivation

This section is based on UVC § 11-203.

C. Relationship to Existing Law

The provisions of ORS 483.134 are restated in this section without substantive change. This section retains the word legend "Wait" along with "Don't Walk." The UVC pedestrian control provisions specify only "Walk" and "Don't Walk" in their word legend directions. ORS 483.134 would be repealed.



Section 17. (Flashing signals.) (1) When a driver approaches a flashing red light used in a traffic signal or with a traffic sign, he shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. The right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(2) When a driver approaches a flashing yellow light used in a traffic signal or with a traffic sign, he may proceed through the intersection or past the signal only with caution.

(3) This section shall not apply at railroad grade crossings. Conduct of a driver approaching a railroad grade crossing is governed by section 67 of this Act.

(4) A driver who fails to obey a flashing red or yellow signal commits a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a driver of a vehicle confronted with a flashing red signal must stop before entering the nearest crosswalk at an intersection or at such other place as is designated by the proper traffic authority, and proceed after making a stop in accordance with rules governing stops at stop signs. A driver confronting a flashing yellow signal may proceed only with caution. Subsection (3) states that these rules do not apply to railroad grade crossings.

B. Derivation

This section is based on UVC § 11-204.

C. Relationship to Existing Law

ORS 483.136, which would be repealed, is identical to UVC § 11-204 as it appeared in the 1934 Code. The introductory paragraph of the UVC section, through amendments in 1948 and 1971, was changed from a general reference to flashing red

and yellow signals, to illuminated signals used in a traffic signal or with a traffic sign. Since these signals are often not within the boundaries of a sign, this draft section uses the UVC wording to cover both types of flashing light traffic signals.

This draft section adopts the UVC language to state the line at which a driver confronting a flashing red light must stop. The language of ORS 483.136 does not state a line or point at which a driver must stop his vehicle in the situation where there is no crosswalk.

The rule of subsection (2) of this draft section that a driver proceed through an intersection where there is a flashing yellow light has been held to mean that a driver must stop at this signal when not to do so might endanger the safety of others. *Lehr v. Gresham Berry Growers*, 231 Or 202, 208, 372 P2d 488 (1962).

The rule of subsection (3) does not have a counterpart in existing law.



Section 18. (Lane direction control signals.) (1) When lane direction control signals are placed over the individual lanes of a street or highway, a person may drive a vehicle in any lane over which a green signal light is shown, but shall not enter or travel in any lane over which a red signal light is shown.

(2) A person failing to obey a lane direction control signal commits a Class B traffic infraction.

COMMENTARY

A. Summary

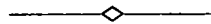
This section makes provision for vehicles proceeding in traffic lanes over which there are lane direction control signals.

B. Derivation

This section is based on UVC § 11-204.1.

C. Relationship to Existing Law

There is no comparable provision in existing law.



Section 19. (Unlawful display of signs, signals or markings.)

(1) Unless authorized by and acting under ORS 483.040, 483.045, sections 159, 161, 162 or 165 of this Act, no person shall place, maintain or display upon or in view of any highway any sign, signal, marking or device which:

(a) Purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal; or

(b) Attempts to direct the movement of traffic; or

(c) Hides from view or interferes with the effectiveness of an official traffic control device or railroad sign or signal.

(2) No person shall place or maintain upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(3) This section does not prohibit the placing and maintaining of signs, markers or signals bearing thereon the name of an organization authorized to place the same by the appropriate public authority.

(4) Every prohibited sign, signal, marking or device is hereby declared to be a public nuisance, and the authority having jurisdiction over the highway may remove it, or cause it to be removed, without notice.

(5) A person who violates subsection (1) or (2) of this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) describes the offense of unlawful highway sign placement, maintenance or display. Subsection (2) prohibits placing or maintaining on

a highway a traffic sign or signal on which there is commercial advertising. Subsection (3) provides that putting up a sign with the name of an organization which has been authorized to put up the sign

by the appropriate public authority is not prohibited. Subsection (4) declares prohibited signs are a public nuisance and may be removed without notice by the authority having jurisdiction over the highway.

B. Derivation

This section is similar in most respects to UVC § 11-205.

C. Relationship to Existing Law

This section restates the provisions of ORS 483.138 by definition of the offense and classification of the offense. ORS 483.138 would be repealed.

In subsection (1) the term "official traffic control device" is substituted for "official traffic sign or signal" of ORS 483.138, and the term "railroad sign or signal" is added. Official traffic control device is defined by UVC § 1-139 in words almost identical to those of subsection (1) of ORS 483.016 defining "official traffic signs and signals" and is defined in § 2.

The definition of "traffic" in subsection (1) of ORS 483.028 is "pedestrians, ridden or herded animals, vehicles, streetcars, trolley and motor busses and other conveyances, either singly or together, using any street or highway for purposes of travel." A railroad sign or signal is not included in the traffic control device definition under this definition of traffic. It is added to the provisions of subsection

(1) of this draft section so that neither railroad signs and signals nor traffic control devices may be imitated. UVC § 11-205 includes both types of devices in its prohibition against imitation.

The definition of official traffic control device includes the word legends of traffic signs "Stop," "Go Slow," "Caution," "Danger" and "Warning" and similar words the use of which has been specifically prohibited by ORS 483.138.

The word "device" as used in ORS 483.138 (1) was interpreted in the case *Ashland v. Pacific P. & L. Co.*, 239 Or 241, 246, 395 P2d 420, 397 P2d 538 (1964), to mean "any contrivance which would tend to mislead the traveler to believe the contrivance had official status in directing the movement of traffic, whether it resembles an official sign or not."

This draft section concerns signs erected as permanent fixtures and not such signs or signals as are used by persons in an emergency situation on a highway.

A signal which was installed by a private party under the direct supervision of a State Highway Commission official was held presumed to be lawfully installed and not unauthorized and a public nuisance under ORS 483.138. *Schoenborn v. Broderick*, 202 Or 634, 277 P2d 787 (1954).

Section 20. (Unlawful interference with official traffic control device or railroad sign or signal.) (1) A person commits the offense of unlawful interference with an official traffic control device or railroad sign or signal if without lawful authority and with criminal negligence he attempts to or does alter, deface, injure, knock down or remove any official traffic control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof.

(2) A person who unlawfully interferes with an official traffic control device or railroad sign or signal commits a Class B traffic infraction.

COMMENTARY

A. Summary

This section prohibits a person from interfering without lawful authority with an official traffic control device or railroad sign or signal.

B. Derivation

This section is based on UVC § 11-206.

C. Relationship to Existing Law

ORS 483.140 would be repealed. The draft provision relates to railroad signs and signals as well as traffic control devices and, unlike ORS 483.140, limits

the application of the prohibition to persons without lawful authority.

The section also sets a requirement of culpability by the addition of the words "criminal negligence." There is no requirement relating to culpable mental state in ORS 483.140 which this draft section replaces. Criminal negligence is defined in section 85 of the draft. It is important to note that any of the acts proscribed by subsection (1) of § 20 would be punishable also if they were committed recklessly, knowingly or intentionally. See ORS 161.115 (3).

ARTICLE 3. DRIVING ON RIGHT SIDE OF ROADWAY; OVERTAKING AND PASSING; USE OF ROADWAY

Section 21. (Driving on right side of roadway.) (1) A driver commits the offense of failing to drive on the right if he fails to drive on the right half of a roadway of sufficient width, except:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing this movement;

(b) When preparing to turn left at an intersection, alley or private road or driveway;

(c) When an obstruction or condition exists making it necessary to drive to the left of the center of the roadway, provided that a driver doing so shall yield the right of way to all vehicles traveling in the proper direction upon the unobstructed portion of the roadway within a distance as is an immediate hazard;

(d) Upon a roadway divided into three marked lanes for traffic under the rules applicable on it; or

(e) Upon a roadway restricted to one-way traffic.

(2) Failure to drive on the right is a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a driver shall drive on the right half of a roadway of sufficient width except when passing, when making a left turn, when the roadway is obstructed or in a condition that makes driving on the left necessary, when it is marked into three lanes of traffic, or when it is one-way.

B. Derivation

This section is based on subsection (a) of UVC § 11-301 and 13 Alaska Adm Code § 02.050. In the UVC the provisions dealing with driving on the right are included in a single section. The rules of UVC § 11-301 are stated in this section and the two following.

C. Relationship to Existing Law

ORS 483.302, 483.304 and 483.308 would be repealed. The requirements for driving on the right stated in this section and those which follow are in terms of position on a roadway and not in terms of position on a highway as is existing law.

“Roadway” is defined in subsection (4), ORS 483.020 to mean “that portion of a street or highway improved, designed or ordinarily used for vehicular traffic.” This definition is identical to the 1934 UVC definition. It was revised in 1944 as follows:

1-158. Roadway. That portion of a highway improved, designed or ordinarily used for ve-

hicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways the term “roadway” as used herein shall refer to any such roadway separately but not to all such roadways collectively.

“Roadway” is used in subsection (4) of ORS 483.304 to mean the parts of a divided highway, which is the meaning of the UVC definition. It is the term used in ORS 483.218, the statute prohibiting persons from standing in a roadway to solicit rides from the driver of a private car. Roadway was held to include the shoulder area of the roadway which is used for temporary or emergency travel. 35 Atty Gen Op 833 (1971). The opinion recognizes that the purpose of the hitchhiking law is to protect the safety of motorists and hitchhikers and not prohibit hitchhiking entirely.

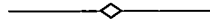
“Roadway” is defined in § 2 in the language used in the UVC.

ORS 483.302 would be repealed. It does not include the exceptions of the one-way roadway or the roadway divided into three marked lanes of this section. A driver is therefore required to keep a position in the right curb lane at all times except when passing or getting ready to turn left, or when the right half is out of repair.

The duty to drive on the right has been held to apply only to the circumstance of vehicles approaching each other from opposite directions in a single roadway. *Lindner v. Ahlgren*, 257 Or 127, 477 P2d

219 (1970). When oncoming vehicles meet, a party not driving on the right half of the road is not necessarily negligent if he acts as a reasonably prudent person. *Mennis v. Highland Trucking, Inc.*, 261 Or

233, 492 P2d 464 (1972); *Raz v. Mills*, 231 Or 220, 226, 372 P2d 955 (1962); *Harrison v. Avedovech*, 249 Or 584, 588-590, 439 P2d 877 (1968); *Edwards v. State Military Dept.*, 8 Or App 620, 494 P2d 891 (1972).



Section 22. (Slow driver duty to drive on right.) (1) As used in this section, "slow driver" means a driver who operates a vehicle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing.

(2) A slow driver commits the offense of failure to drive on the right if he fails to drive in the right-hand lane available for traffic or as close as practicable to the right-hand curb or edge of the roadway except:

(a) When overtaking and passing another vehicle proceeding in the same direction under the rules governing this movement;

(b) When preparing to turn left at an intersection, alley or private road or driveway.

(3) A slow driver failing to drive on the right commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) defines a slow driver.

Subsection (2) provides that a slow driver who fails to drive in the right lane except when passing or preparing to turn left commits an offense.

B. Derivation

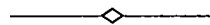
This section is based on subsection (b) of UVC § 11-301.

C. Relationship to Existing Law

ORS 483.302, which would be repealed, provides that a driver must drive on the right side of the highway and as close as practicable to the right edge unless passing or turning left. ORS 483.304 pro-

vides this same duty to drive in the right-hand lane on highways marked into lanes for traffic. The driver proceeding on a highway outside city limits and passing traffic is excepted from the duty to drive on the right. Hence, the driver within a city on a laned highway, including a one-way highway, must stay right unless passing or turning left. In the UVC, the duty is restricted to slow drivers. This draft section restricts the duty to drive in the right curb lane to the slow driver.

ORS 483.303 provides that on a two lane two-way highway a slower vehicle shall move off the highway when a safe turnout exists to allow a driver driving according to the basic speed rule to pass. This rule is retained. It is stated with form and style changes in § 24.



Section 23. (Duty to drive on right on two-way four lane roadway.) (1) A driver commits the offense of failure to drive on the right if he drives to the left of the center line of a two-way roadway having four or more lanes for moving traffic, except:

(a) When authorized by an official traffic control device designating certain lanes to the left side of the center of the roadway for use by traffic; or

(b) When permitted under paragraph (c) of subsection (1) of section 21 of this Act; or

(c) When making a left turn at an intersection, alley or private road or driveway.

(2) Failure to drive on the right of a two-way four lane highway is a Class B traffic infraction.

COMMENTARY

A. Summary

This section states the rule that a driver must be on the right of a two-way roadway having four or more lanes for traffic except when an official traffic control device otherwise directs, when there is an obstruction or when the driver turns left.

B. Derivation

This section is based on subsection (c) of UVC § 11-301. (See Commentary to § 21.)

C. Relationship to Existing Law

Paragraph (b), subsection (2) of ORS 483.308,

provides that on a highway of four or more lanes a driver shall not drive to the left of the center line unless more than two lanes are allocated to traffic proceeding in a single direction and it is so sign-posted. This rule differs from that of subsection (c), UVC § 11-301, in that it is expressed in terms of a highway and not a roadway. Also, the requirement of posting signs to give notice is omitted.

ORS 483.308 relates both to rules for passing on the left and to exceptions which permit proceeding on the left of the center line of a highway. As previously noted, ORS 483.308 would be repealed. Passing on the left is covered by § 27.

Section 24. (Slower driver duty to yield.) (1) A driver commits the offense of failure to yield to an overtaking vehicle if he fails to move his vehicle off the main traveled portion of the highway into an area sufficient for safe turnout when:

(a) The driver of the overtaken vehicle is proceeding at a speed less than a maximum speed under section 74 of this Act;

(b) The driver of the overtaking vehicle is proceeding at a speed in conformity with section 74 of this Act;

(c) The highway is a two directional two lane highway; and

(d) There is no clear lane for passing available to the driver of the overtaking vehicle.

(2) Failure of slower driver to yield to overtaking vehicle by use of safe turnout is a Class C traffic infraction.

COMMENTARY

This section restates the rule of ORS 483.303, which would be repealed, in a form and style consistent with the other sections.

Section 25. (Duty of driver of certain vehicles to drive to right.) (1) A driver of a vehicle having a gross weight of not less than 8,000 pounds, a camper or a vehicle with trailer commits the offense of failure to drive on the right if he does not drive in the right lane of all roadways having two or more lanes for traffic proceeding in a single direction, except:

(a) When overtaking and passing another vehicle proceeding

in the same direction under the rules governing this movement when such movement can be made without interfering with the passage of other vehicles;

(b) When preparing to turn left; or

(c) When reasonably necessary in response to emergency conditions.

(2) A driver who violates subsection (1) of this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

This section provides that a driver of a vehicle weighing over 8,000 pounds gross weight or with camper or a trailer must drive in the right lane of a roadway having two or more lanes for traffic proceeding in one direction except when passing another vehicle if passing can be done without interfering with other vehicles, or when preparing to turn left or in response to an emergency.

B. Derivation

This section restates ORS 483.305.

C. Relationship to Existing Law

This section would replace ORS 483.305 which would be repealed. The provision of ORS 483.305 prohibiting drivers of vehicles of gross weight over

8,000 pounds to use the left lane of a roadway having three lanes for traffic proceeding in one direction, subject to certain enumerated exceptions, is deleted from this section.

Subsection (c) of UVC § 11-309 provides that official traffic control devices may be erected directing specified types of traffic to use a designated lane as well as designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway. Oregon traffic law has no similar provision.

Cal Vehicle Code §§ 21655 and 21655.5 (1960, Supp 1971) provide for designation of specific lanes for vehicles of particular classes and for exclusive or preferential use of freeway lanes for high-occupancy vehicles. The purpose of this section is similar to the California statutes cited.



Section 26. (Passing vehicles proceeding in opposite direction.)
ORS 483.306 is amended to read:

483.306. (1) Drivers of vehicles proceeding in opposite directions shall pass each other to the right, *[each giving]* **and upon roadways having width for not more than one lane of traffic in each direction, unless otherwise directed by an official traffic control device, each driver shall give** to the other at least one-half of the main traveled portion of the roadway as nearly as possible.

(2) **A person violating subsection (1) of this section commits a Class B traffic infraction.**

COMMENTARY

A. Summary

Drivers of vehicles proceeding in opposite directions shall pass each other to the right. On a roadway wide enough for only one line of traffic in each direction a driver shall give at least half the traveled part of the roadway to the other driver unless otherwise directed by an official traffic control device.

B. Derivation

This section is based on UVC § 11-302. Thirty-four states and the District of Columbia have laws in conformity with this section.

C. Relationship to Existing Law

ORS 483.306 provides the give way to the right rule but without the qualification of this section that

on a two-way two lane roadway a driver must give at least half of the main traveled portion to the other driver. This section modifies the analogous UVC section requiring a driver to give at least half the main traveled portion of the roadway to the

oncoming vehicle by the additional proviso that the driver give a different share of the roadway when so directed. This proviso allows the Highway Division to apportion roadway lane use unevenly when circumstances require.

—◇—

Section 27. (Overtaking a vehicle on the left.) (1) A driver overtaking a vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

(3) A driver shall not drive to the left side of the center of the roadway in overtaking and passing a vehicle proceeding in the same direction unless authorized by the provisions of this chapter and unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completed without interfering with the operation of a vehicle approaching from the opposite direction or a vehicle overtaken. The overtaking vehicle shall return to an authorized lane of traffic as soon as practicable.

(4) A person who violates this section commits a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) restates the rule of subsection (1) of ORS 483.310 by substituting "roadway" for "highway" so that a driver passing on the left shall not again drive to the right side of the roadway until he has clearance. Subsection (2) restates the rule of subsection (2) of ORS 483.310 that the driver of the overtaken vehicle must give way to the right and adds the proviso except when being passed on the right.

Subsection (3) states the limitation on passing on the left that the left lane used as the passing lane is clear, and requires the driver to return to an authorized lane of travel as soon as practicable.

B. Derivation

This section is based on UVC § 11-303 and § 11-305, and on 13 Alaska Adm Code § 02.065.

C. Relationship to Existing Law

ORS 483.310 would be repealed. It states rules both for passing on the left and on the right. The

rules for passing on the left are in subsections (1) and (2) of this section and the rules for passing on the right are in § 28.

Subsection (3) is similar to the provisions of subsection (1) of ORS 483.308 which is identical to the provisions of the 1930 edition of the UVC. The current revised UVC provision, § 11-305, also includes a duty to return to the authorized lane of traffic as soon as practicable and requires 200 feet clearance for an oncoming vehicle. This 200 feet clearance requirement was considered and rejected as being impossible for a driver to measure. The duty to return to an authorized lane is incorporated in subsection (3) of this section. The duty of the overtaking driver to make sure there is sufficient clearance distance ahead exists whether or not an oncoming driver has himself violated the law by increasing speed.

Because the rule of subsection (3) relates to passing on the left, it is included in this section. ORS 483.308 would be repealed. Those parts of ORS 483.308 not concerned with left turn rules are covered in later sections.

Section 28. (Overtaking on right.) (1) A driver may overtake and pass upon the right of another vehicle if:

(a) The overtaken vehicle is making or the driver has signaled his intention to make a left turn;

(b) The roadway is of sufficient width to allow two or more lines of vehicles to proceed lawfully in the same direction as the overtaking vehicle; and

(c) The roadway ahead of the overtaking vehicle is unobstructed for a sufficient distance to permit passage of the overtaking vehicle to be made in safety.

(2) A driver may overtake and pass upon the right of another vehicle if the overtaken vehicle is proceeding along a highway in the left lane of two or more clearly marked lanes allocated exclusively to vehicular traffic moving in the same direction as the overtaking driver.

(3) A driver shall not overtake and pass upon the right by driving off the roadway.

(4) A driver who violates this section commits a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides passing on the right may be done if the overtaken vehicle is turning left and the roadway is wide enough for two lines of vehicles proceeding in the same direction and the roadway ahead is unobstructed for a safe distance.

Subsection (2) provides the passing on the right may be done when the overtaken vehicle is in the left lane of two or more clearly marked lanes proceeding in the same direction as the overtaking driver.

Subsection (3) prohibits passing on the right by driving off the roadway.

B. Derivation

This section is based on UVC § 11-304.

C. Relationship to Existing Law

ORS 483.310, which would be repealed, allows

passing on the right when the highway has space for two lanes moving in the direction of the passing vehicle and the overtaken vehicle is turning left, and when there are two or more clearly marked lanes allocated to traffic moving in the same direction as the overtaking vehicle. There is no Oregon code provision comparable to the rule of subsection (3) of this section that passing on the right may not be made by driving off the roadway. Thirty-six states and the District of Columbia do prohibit such a maneuver.

The laws of 42 states and the District of Columbia authorize passing on the right of a vehicle making or about to make a left turn when the roadway is wide enough for two lines of vehicles. This section makes a material change in that passing on the right of a left-turning vehicle would be permitted on a roadway wide enough for two lines of vehicles. There need not be clearly marked lanes. The shoulder cannot be utilized for the passing maneuver.

Section 29. (Further limitations on driving on left of center of roadway.) (1) Upon any two-way roadway where traffic is permitted to move in both directions simultaneously a driver shall not drive on the left side of the center of the roadway:

(a) Upon any part of a grade or upon a curve in the roadway where the driver's view is obstructed for such a distance as to create

a hazard in the event another vehicle might approach from the opposite direction;

(b) When approaching an intersection or railroad grade crossing where the driver's view is obstructed for such a distance as to create a hazard in the event another vehicle might approach from the opposite direction; or

(c) At any intersection or railroad grade crossing.

(2) The limitations in subsection (1) do not apply:

(a) When the right half of the roadway is obstructed or closed to traffic while under construction or repair; or

(b) When a driver makes a lawful left turn.

(3) A driver who violates this section commits a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) prohibits a driver on a two-way roadway from driving on the left side of a roadway, on a hill or curve when the driver's view is obstructed, when approaching an intersection or railroad grade crossing and the driver's view is obstructed or at an intersection or railroad grade crossing.

Subsection (2) provides that these restrictions do not apply when the roadway is obstructed or closed for repairs or when a driver is making a lawful left turn.

B. Derivation

This section is based on UVC § 11-306.

C. Relationship to Existing Law

Paragraph (a), subsection (2) of ORS 483.308, restricts driving on the left in terms of the left side of the center line of a highway rather than the left side of the roadway as done in this section. The center of the roadway is the marked center or, if unmarked, the physical center.

Subsection (3), ORS 483.308 prohibits passing a vehicle proceeding in the same direction at a railroad crossing or highway intersection unless passing can be done safely. Under the provisions of UVC § 11-306 there is no passing within 100 feet of railroad crossings or intersections. The right to pass in an intersection when safe as provided in ORS 483.308

is removed by this section, and the right to pass on approaching an intersection or railroad grade crossing would depend on whether the driver's view is obstructed.

Case law has interpreted subsection (3) of ORS 483.308 as follows:

Whether passing at an intersection is safe is judged under the reasonably prudent person standard. *Jepsen v. Magill*, 243 Or 34, 411 P2d 267 (1966); *Valdin v. Holteen and Nordstrom*, 199 Or 134, 260 P2d 504 (1953). The statute is not limited in its application to situations where cross traffic is present at an intersection but also applies where a vehicle attempts to pass a left turning vehicle. *Perdue v. Pac. Tel. & Tel. Co.*, 213 Or 596, 326 P2d 1026 (1958).

The term "intersection," is defined in § 2 as defined in the revised version of UVC § 1-126, except that "roadway" is substituted for "highway" in the provisions comparable to subsections (a) and (c) of UVC § 1-126.

A junction where a road meets but does not cross a highway is an intersection. *Perdue v. Pac. Tel. & Tel. Co.*, *supra*. "At" an intersection has been interpreted to mean "near." *Id.* at 605.

ORS 483.308 would be repealed. The provisions of subsection (1) of ORS 483.308 governing passing on the left are stated in subsection (3) of § 27. The provisions of paragraph (b), subsection (2), are stated in § 23. Those of paragraph (a), subsection (2) are incorporated in this section.

Section 30. (No passing zone.) (1) A driver shall not drive on the left side of a roadway when the Transportation Commission or local authority having jurisdiction of the roadway has determined

that the roadway or section thereof is especially hazardous for overtaking and passing or driving on the left side of the roadway and has prohibited these movements by appropriate signs or markings on the roadway which show the beginning and end of a no passing zone.

(2) The provisions of subsection (1) of this section do not apply:

(a) When the roadway is obstructed as described in subsection (1) of section 21 of this Act; or

(b) When a driver turns left into or from an alley, private road or driveway.

(3) A driver who drives on the left side of a roadway in violation of signs and markings in place to define a no passing zone commits a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a driver shall not drive on the left side of a roadway when a no passing zone has been established on the roadway by the Transportation Commission or by the local authority having jurisdiction over it.

Subsection (2) excepts the situation of an obstructed roadway and the left turning driver from the application of the no passing zone rules.

B. Derivation

This section is based on subsections (b) and (c), UVC § 11-307.

C. Relationship to Existing Law

This provision has no counterpart in existing Oregon motor vehicle laws. The authorization of the state and local authorities to establish no passing zones is included in the Article on Powers of State and Local Authorities.



Section 31. (One-way roadways and rotary traffic islands.) (1)

A driver who proceeds upon a roadway designated for one-way traffic in a direction other than that indicated by an official traffic control device commits a Class B traffic infraction.

(2) A driver proceeding around a rotary traffic island shall drive only to the right of the island. A person who fails to drive only to the right of a rotary traffic island commits a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a person driving not in the direction indicated by an official traffic control device commits a Class B traffic infraction.

Subsection (2) provides that a driver proceeding around a rotary traffic island must drive to the right and provides that failing to do so is a Class B traffic infraction.

B. Derivation

This section is based on UVC § 11-308.

C. Relationship to Existing Law

There is no provision in existing law comparable to subsection (1) of this section requiring a driver on a one-way roadway to proceed only as directed by the traffic signs, whether at all times or at certain times.

There is no provision in existing law stating a duty to stay right around a rotary traffic island. Anyone entering a circle having two lanes of traffic proceeding in the same direction has a duty to get into the right or outside lane of traffic before exiting

from the circle. *Williams v. Donohoe*, 222 Or 578, 353 P2d 521 (1960). The court held that subsection (1) (a) of ORS 483.316, which governs turns at intersections, was applicable to vehicles proceeding around a circular island and making turns out from the circular drive to an intersecting street. The circular drive was held to be a separate street with a T-shaped intersection where each street came into it.

Subsection (a) of UVC § 11-308 is an authorization clause, authorizing state and local governments having jurisdiction to designate highways or sections or lanes thereof for use by vehicular traffic to proceed in one direction at all times or at certain times as directed. A comparable authorization provision is located in the Article on General Provisions.



Section 32. (Driving on roadways laned for traffic.) (1) When a roadway is divided into two or more clearly marked lanes for traffic, the following rules apply:

(a) A driver shall drive his vehicle as nearly as practicable entirely within a single lane and shall not move from that lane until he has first made certain that the movement can be made with safety.

(b) When two-way movement of traffic is provided on a roadway divided into three lanes, a driver shall not drive in the center lane except:

(A) When the center lane is allocated exclusively to traffic moving in the same direction that the driver is proceeding by an official traffic control device directing the lane allocation; or

(B) When the driver is overtaking and passing a vehicle proceeding in the same direction and the center lane is clear of traffic within a safe distance; or

(C) When the driver is making a left turn.

(2) A person violating subsection (1) of this section commits a Class B traffic infraction.

COMMENTARY

A. Summary

This section provides that when a roadway is divided into two or more lanes a driver shall stay in one lane as much as practicable, and on a two-way three lane roadway shall not drive in the center lane unless passing, turning left or allowed by an official traffic control device.

B. Derivation

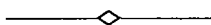
This section is based on UVC § 11-309.

C. Relationship to Existing Law

ORS 483.304 in subsections (2) and (3) thereof provides the rules of subsection (1) of this draft section, the basic differences being that the rules for a two-way three lane roadway are stated in ORS

483.304 in terms of a highway rather than a roadway and secondly, that the exception made for passing does not include provision that passing be done only when the center lane is clear and, thirdly, there is no exception for turning left. The provisions of subsections (2) and (3) of ORS 483.304 are generally the same as the 1930 edition of the UVC. ORS 483.304 would be repealed.

There are no provisions in existing law or in this section comparable to paragraphs (c) and (d) of UVC § 11-309. General authority for installation of traffic control devices for the purpose of directing traffic in the use of lanes is granted in ORS 483.040 in relation to state highways and in the Article on Powers of State and Local Authorities in relation to county and city highways.



Section 33. (Following too closely.) (1) A driver shall not follow a vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon and condition of the highway.

(2) A driver of a truck, motor bus or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district or upon a freeway within the corporate limits of a city and which is following another truck, motor bus or motor vehicle drawing another vehicle shall, when conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy the space without danger. This rule shall not prevent a truck, motor bus or motor vehicle drawing another vehicle from overtaking and passing a vehicle or combination of vehicles.

(3) Except in the case of a funeral procession motorcade, a driver traveling upon a roadway outside of a business or residence district or upon a freeway within the corporate limits of a city in a caravan or motorcade whether or not towing another vehicle shall operate his vehicle so as to leave sufficient space between vehicles to enable a vehicle to enter and occupy the space without danger.

(4) A person who violates this section commits a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) prohibits a driver from following another vehicle more closely than is reasonable and prudent under the traffic and highway conditions.

Subsection (2) provides that a driver of a truck, motor bus or motor vehicle drawing another vehicle going along a roadway outside a business or residential area or on a freeway in city limits and following another like vehicle shall, when possible, leave enough space for an overtaking vehicle to occupy without danger. This provision does not prevent a truck, bus or motor vehicle drawing another vehicle from passing.

Subsection (3) requires a driver outside a business or residential district or on a freeway in city limits, traveling in a caravan or motorcade which is not a funeral procession, to leave sufficient space between vehicles so that a vehicle may enter the space without danger.

B. Derivation

Subsection (1) is almost in verbatim conformity with subsection (1) of ORS 483.312. Subsections (2) and (3) are based on subsections (b) and (c) of UVC § 11-310.

C. Relationship to Existing Law

There is no material difference between subsection (1) of this section and subsection (1) of ORS 483.312.

Subsection (2) enlarges the prohibition against following too closely of ORS 483.312 to include motor vehicles drawing another vehicle, and to set the standard for following too closely not in terms of a specific measurement between vehicles, such as the 300 feet of ORS 483.312, but sufficient space for an overtaking vehicle to occupy safely. Unlike the analogous UVC rule, motor busses are included in the rule as they are in ORS 483.312. The UVC proviso that a driver leave sufficient space when conditions permit, which is not a part of ORS 483.312, is included in this section.

Most states limit the application of this rule on trucks, busses and motor vehicles drawing other vehicles to areas outside business and residence districts. Twenty-seven states establish specific distances, such as the 300 feet of ORS 483.312, to be left between vehicles. Fourteen states require the sufficient space for an overtaking vehicle to occupy.

The prohibition against following too closely is not only for the car ahead but others as well, in-

cluding the occupants of an oncoming vehicle. *Rough v. Lamb*, 240 Or 240, 401 P2d 10 (1965); *Garland v. Wilcox*, 220 Or 325, 348 P2d 1091 (1960).

There is no counterpart in existing law for the

provisions of subsection (3) of this section. Twenty-four states have provisions in conformity with language of this subsection. ORS 483.312 would be repealed.

Section 34. (Driving on divided highways.) (1) When driving upon a highway divided into two or more roadways by means of an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, a driver shall drive only upon the right-hand roadway unless directed or permitted to use another roadway by an official traffic control device or police officer.

(2) When driving upon a divided highway as described in subsection (1) of this section, a driver shall not drive over, across or within a dividing space, barrier or section except:

- (a) At an authorized crossover or intersection; or
- (b) When specifically directed otherwise by state or local authority.

(3) A person violating this section commits a Class B traffic infraction.

COMMENTARY

A. Summary

This section requires a driver on a highway divided into two or more roadways by an intervening space to drive only on the right unless otherwise directed by a traffic control signal or police officer, and not to drive on or over the dividing space unless at an authorized crossover or directed otherwise.

B. Derivation

This section is based on UVC § 11-311.

C. Relationship to Existing Law

Subsection (4) of ORS 483.304 provides that on

a highway separated into two or more roadways by means of an unpaved or paved section a vehicle must proceed only on the right and not cross except through an opening established for vehicle use by public authority.

The section follows the provision of subsection (4), ORS 483.304, in the statement of allowed crossover of the intervening space. ORS 483.304 would be repealed. This section is not intended to apply to a median indicated only by paint.

ARTICLE 4. RIGHT OF WAY

Section 35. (Right of way at uncontrolled highway intersection.) (1) Subject to the provisions of sections 37 and 38 of this Act, a driver when approaching an uncontrolled highway intersection shall look out for and give right of way to any driver on the right simultaneously approaching a given point, regardless of which driver first reaches and enters the intersection.

(2) A driver entering an intersection at an unlawful speed shall forfeit any right of way he would otherwise have under subsection (1) of this section.

(3) Failure to yield the right of way at an uncontrolled intersection is a Class B traffic infraction.

COMMENTARY

The section states the rules of subsections (2) and (3), ORS 483.202, in a form and style consistent with the revised code. ORS 483.202 would be repealed.

The section retains the rule that right of way is forfeited by a driver proceeding at an unlawful speed. This forfeiture provision was included in the original 1926 UVC rules but was deleted in the 1930 revision.

ORS 483.202 has been held to mean that the favored driver at an uncontrolled intersection has a duty to exercise due care and be on the lookout for other drivers who would take the right of way. *Johnson v. Rexius*, 249 Or 465, 439 P2d 11 (1968); *Wilson v. Overbey*, 223 Or 256, 354 P2d 319 (1960). The statutory right of way is not absolute. *Stahl v. Tobiasson*, 257 Or 445, 479 P2d 751 (1971). It must be exercised reasonably with due regard to existing circum-

stances. *Hess v. Larson*, 259 Or 282, 486 P2d 533 (1971). The unfavored driver charged with failure to yield the right of way at an uncontrolled intersection which he approached to the left of the favored driver, must introduce evidence of excessive speed of the favored vehicle to refute the charge. *Medina v. Mayo*, 98 Adv Sh 216, — Or —, 516 P2d 1297 (1973).

The right of way forfeited by excessive speed under subsections (2) and (3) of ORS 483.202 is not thereby transferred to the unfavored driver. *Dorey v. Myers*, 211 Or 631, 317 P2d 515 (1957).

The driver on the left who makes a reasonably careful observation to his right and sees no car approaching so closely that there is a reasonable likelihood of collision is not required to stop or wait but may proceed. *Id.*

◆

Section 36. (Driver turning left.) (1) A driver intending to turn to the left within an intersection or into an alley, private road or driveway from a highway shall yield the right of way to a vehicle approaching from the opposite direction which is within the intersection or so close as to constitute an immediate hazard.

(2) Failing to yield the right of way when turning left is a Class B traffic infraction.

COMMENTARY

A. Summary

This section provides that a driver who intends to make a left turn, whether at an intersection or into an alley, private road or driveway from a highway, shall yield the right of way to a vehicle coming from the opposite direction which is so close as to be either in the intersection or an immediate hazard.

B. Derivation

This section is based on UVC § 11-402.

C. Relationship to Existing Law

Under subsection (5) of ORS 483.202 a driver who is within an intersection and intends to turn left, yields to oncoming traffic in the intersection or so close as to be an immediate hazard, whereupon under the further provision called the "shifting right of way," the right of way shifts from the oncoming driver to the left turning driver after the latter has so yielded and has signaled his intention to turn.

The shifting right of way rule was deleted from the UVC in the 1962 revision of that code. The duty

to yield of a driver when turning left at an intersection was expanded to include turning into an alley, private road or driveway.

Subsection (1), ORS 483.206, requires that a driver turning left to enter a private road or driveway yield the right of way to oncoming traffic.

ORS 483.202 and 483.206 would be repealed. The provisions of subsection (5) of ORS 483.202, deleting the shifting right of way rule, and subsection (1), ORS 483.206, are in this section.

The rule of subsection (2), ORS 483.206, relates to the right of way of the driver entering a public highway from a private road. These provisions are covered in § 39.

The rule of subsection (3), ORS 483.206, relates to the duty to follow the direction of traffic control signals or other devices. This rule is already covered in § 13 of the draft.

The rule for the driver turning left at an intersection has been interpreted to mean that the driver

intending to turn left must yield the right of way to any approaching vehicle within the intersection or so close as to constitute an immediate hazard. *Dare v. Garrett Freight Lines, Inc.*, 234 Or 61, 380 P2d 119 (1963); *Bostwick v. Logsdon*, 234 Or 226, 380 P2d 982 (1963). A driver intending to turn left at

an intersection and having yielded, must signal before turning left. *Dare v. Garrett Freight Lines, Inc.*, 234 Or at 64. Having yielded and signaled, he is permitted to turn and when turning and clearing the intersection, approaching vehicles must yield to him. *Bostwick v. Logsdon*, 234 Or at 229.

◆

Section 37. (Stop signs and yield signs.) (1) If the Transportation Commission or local authority with respect to highways under their respective jurisdictions designates a highway or section thereof as a through highway or an intersection as a stop intersection and erects stop signs or yield signs at specified entrances to the through highway and at one or more entrances to the stop intersection, a driver shall obey the stop signs and the yield signs as follows:

(a) Except when directed to proceed by a police officer, a driver approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching so closely as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.

(b) A driver approaching a yield sign shall slow his vehicle to a speed reasonable for the existing conditions and, if necessary for safety, shall stop at a line as stated in paragraph (a), subsection (1) of this section, and shall yield the right of way to any vehicles in the intersection or approaching so closely as to constitute an immediate hazard.

(2) An official traffic control device placed under subsection (1) of this section shall conform to specifications approved by the Transportation Commission, and shall be illuminated at night or be so placed as to be illuminated by the headlights of approaching vehicles or by street lights.

(3) Failing to yield the right of way at a stop sign or yield sign is a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that when the Transportation Commission or local authority designates a highway as a through highway and an intersection as a stop intersection and erects signs giving notice, a driver shall obey the signs as required by this section.

Subsection (2) provides that an official traffic

control device placed pursuant to subsection (1) shall be of the approved size, shall be lit at night or so placed as to be lit by headlights or street lights.

B. Derivation

This section is based on UVC § 11-403 and also retains the provisions of subsection (4) of ORS 483-204.

C. Relationship to Existing Law

Subsection (1) of ORS 483.204 authorizes the commission to designate through highways by placing stop or yield right of way signs at the entrances notifying drivers, and to designate intersections by placing stop or yield signs at the entrances.

Subsection (2) of ORS 483.204 directs a driver to stop in obedience to stop signs and subsection (3) directs a driver to reduce speed and yield to traffic on the intersecting highway the right to safely proceed.

Subsection (4) of the statute directs that signs placed according to this section conform to department specifications and be illuminated at night or be illuminated by approaching headlights.

ORS 483.204 would be repealed. Its provisions are restated in this section with the material change that an exact line is established at which drivers must stop.

ORS 483.204 does not describe at what point in relation to the intersection or stop line a driver should stop when approaching a stop or a yield sign. Oregon is classified by *Traffic Laws Annotated*, 1972, as among the 10 jurisdictions that do not describe where to stop for a stop sign. ORS 483.204 was interpreted to mean that a driver entering a public road from a private road is required to stop before any part of his vehicle protrudes over any portion of the public road. *Biddle v. Mazzocco*, 204

Or 547, 284 P2d 364 (1955). The comparable provision of an earlier code, OCLA 115-351, included the additional provision that the stop should be made at the place where a cross street meets the prolongation of the nearest property line of the through highway. This clause was interpreted to mean that a driver approaching a through highway on a lateral should stop where he can see not only the cars in the intersection but also those approaching upon the trunk highway. *Cameron v. Goree*, 182 Or 581, 189 P2d 596 (1948).

Rules setting out how a driver is to proceed after stopping or yielding at the entrance to a through highway are stated in subsection (4) of ORS 483.202. It provides that a driver who has stopped or yielded the right of way shall yield to vehicles within the intersection or approaching so close as to be a hazard, and thereafter proceed. The so-called "shifting right of way" rule then takes over and the right of way transfers to the driver who has either stopped or yielded. In *Bledsoe v. Vaughan*, 264 Or 105, 504 P2d 120 (1972), the court held that subsection (4) of ORS 483.202 does not apply to a driver who has stopped at an intersection and then, while traversing the intersection, is stopped for several minutes by left-turning traffic advancing from the opposite direction. That driver's right of way no longer is based on subsection (2) of ORS 483.202 but arises from common law principles.

There would be no shifting right of way at through highways and stop intersections under the provisions of this proposed section.

Section 38. (Right of way at merging lanes of arterial highway.)

(1) A driver entering a freeway or other arterial highway where an acceleration or merging lane is provided for his use shall look out for and give right of way to vehicles on the freeway or other arterial highway.

(2) A driver entering a freeway or other arterial highway who fails to yield the right of way as provided in subsection (1) of this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

The section provides that the driver entering a freeway or other arterial highway on an acceleration or merging lane must yield the right of way to vehicles on the highway.

B. Derivation

This section is a restatement of subsection (1) of ORS 483.202.

C. Relationship to Existing Law

ORS 483.202 would be repealed.

Section 39. (Vehicle entering roadway from private road, alley or place.) (1) Except where the movement of traffic is otherwise directed by an official traffic control device, a driver who is about

to enter or cross a roadway from any private road or driveway, alley or place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed.

(2) Failing to yield the right of way before entering or crossing from a private road, alley or place is a Class C traffic infraction.

COMMENTARY

A. Summary

This section provides that a driver about to leave a private road or place shall yield the right of way to vehicles on the roadway onto which the driver is proceeding, except when there is an official traffic control device directing otherwise.

B. Derivation

This section is based on UVC § 11-404.

C. Relationship to Existing Law

Subsections (1) and (2) of ORS 483.206, which would be repealed and replaced by this draft section, relate to right of way of drivers turning left into a private road and drivers entering a public highway from a private road. Subsection (3) provides that the rules of the first two subsections do not apply where there is a traffic control device.

The rule of subsection (1) is included in § 36 of this Article. The rule of subsection (2) is set out in this section, changed in the respect that the term

“roadway” is used rather than the term “public highway,” and the application to drivers emerging from a private road or driveway is expanded to include drivers emerging also from a place. Use of the term “place” makes the rule applicable to all-terrain vehicles such as dune buggies, snowmobiles and minibikes.

Subsection (3) of ORS 483.206 was held to mean that when a traffic signal is installed with the approval of the county court at the intersection of a private road and public highway, and the signal indicates the driver can proceed without stopping, the driver may do so without violating this section. *Schoenborn v. Broderick*, 202 Or 634, 277 P2d 787 (1954). The rule of subsection (3) of ORS 483.206 is incorporated in this draft section.

A school bus entering from a graveled parking space onto the highway should yield the right of way to a vehicle approaching along the highway from the left. *Bowerman v. Motor Coach System*, 132 Or 106, 284 P 579 (1930).

Section 40. (Operation of vehicles on approach of emergency vehicle or ambulance.) (1) Upon the approach of an emergency vehicle or ambulance using a visual signal or an audible signal or both according to requirements of sections 11 and 12 of this Act, the driver of every other vehicle shall yield the right of way, and except as provided in subsection (2) of this section, shall immediately drive to a position as near as possible and parallel to the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the emergency vehicle or ambulance has passed, except when otherwise directed by a police officer.

(2) This section does not relieve the driver of an emergency vehicle or ambulance from the duty to drive with due regard for the safety of all persons using the highway, nor does it protect the driver of any such vehicle from the consequence of an arbitrary exercise of such right of way.

(3) Failure to yield the right of way to an emergency vehicle or ambulance is a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides the rule of yielding right of way and moving to the right lane when an emergency vehicle approaches.

Subsection (2) provides that the driver of an emergency vehicle or ambulance is not relieved of the duty of due care.

B. Derivation

This section is based on UVC § 11-405.

C. Relationship to Existing Law

Subsection (1) of ORS 483.208 provides for yielding right of way and moving to the right of the highway when an authorized emergency vehicle approaches and gives audible signal. This section incorporates the rules of §§ 11 and 12 which state the

special privileges of emergency vehicles and ambulances in relation to use of either or both audible and visual signals. Police vehicles not using audible or visual signals would not have the right of way under this draft section.

Subsection (2) of ORS 483.208 covers the right of way rules for a motorman of a streetcar when an authorized emergency vehicle approaches.

ORS 483.208 would be repealed. The provisions of this draft section replace those of subsections (1) and (3) of ORS 483.208.

The cases interpreting this statute do not relate to it in its latest form with the exception of *Siburg v. Johnson*, 249 Or 556, 439 P2d 865 (1968), which states the duty of the driver of an emergency vehicle to drive with regard to the safety of others.

ARTICLE 5. PEDESTRIANS' RIGHTS AND DUTIES

Section 41. (Pedestrian obedience to traffic control devices and traffic regulations.) (1) Except when he is otherwise directed by a police officer, a pedestrian commits the offense of failure to obey an official traffic control device if he does not obey the instructions of:

(a) An official traffic control device specifically applicable to him; or

(b) A traffic or pedestrian control signal as provided in sections 14 and 16 of this Act.

(2) A pedestrian shall be granted the privileges and shall be subject to the restrictions stated in this chapter.

(3) A pedestrian who fails to obey an official traffic control device or pedestrian signal commits a Class C traffic infraction.

COMMENTARY

A. Summary

This section provides that pedestrians shall obey official traffic control devices and shall have the privileges and be subject to the restrictions stated in the chapter.

B. Derivation

This section is based on UVC § 11-501.

C. Relationship to Existing Law

There is no comparable provision in existing Oregon traffic law. *Yarbrough v. Carlson*, 102 Or 422, 202 P 739 (1921), held that the rules of the road were enacted for the guidance of vehicular traffic

and do not apply to pedestrians. Under § 4 of the draft, the provisions of the chapter apply to the operation of vehicles upon highways and the ocean shore.

The term, "pedestrian," is defined in § 2. There is no definition of "pedestrian" in Oregon statutory law. *Maletis v. Portland Traction Co.*, 160 Or 30, 83 P2d 141 (1938), used the definition of Webster's New International Dictionary of "going on foot," "one who journeys on foot," and held that a child walking on the sidewalk is as much a pedestrian as if walking on the street. The UVC definition is "Any person afoot."

Section 42. (Pedestrian's right of way in crosswalk.) (1) When a pedestrian is crossing a roadway within a marked or unmarked crosswalk where there are no traffic control signals in place or in operation, a driver shall stop before entering the crosswalk and yield the right of way to the pedestrian:

(a) If the pedestrian is on the half of the roadway on and along which the driver is proceeding; or

(b) If the pedestrian is approaching the half of the roadway along which the driver is approaching so closely as to be in a position of danger.

(2) A pedestrian crossing a roadway within a crosswalk where there are no traffic control signals in place or in operation who is closely approaching or has reached the center of the roadway is in a position of danger under subsection (1) of this section.

(3) A driver is not required to stop and yield the right of way to a pedestrian under subsection (1) of this section:

(a) Upon a roadway with a safety island, if the driver is proceeding along the half of the roadway on the far side of the safety island from the pedestrian; or

(b) Where a pedestrian tunnel or overhead crossing has been provided at or near a crosswalk.

(4) A driver who fails to stop and yield the right of way to a pedestrian crossing within a crosswalk under subsection (1) of this section commits a Class B traffic infraction.

COMMENTARY

A. Summary

This section states the rules for pedestrian-driver right of way at crosswalks uncontrolled by traffic control signals. A crosswalk is defined in § 2.

Subsection (1) restates the rule of subsection (1) of ORS 483.210, whereby the pedestrian has the right of way in the crosswalk over the driver approaching in the half of the roadway where the pedestrian is, and over the driver in the other half of the roadway when the pedestrian has approached that half so closely as to be in danger.

Subsection (2) provides that the pedestrian who is closely approaching or has reached the center of the roadway while crossing in the crosswalk is in a position of danger under subsection (1).

Subsection (3) provides that the driver is not required to stop and yield the right of way to the pedestrian when there is a safety island and the driver is on the far side of the safety island from the pedestrian or there is a tunnel or overhead crossing near.

B. Derivation

Subsection (1) of this section restates the rule of the initial provision of subsection (1) of ORS 483.210. The rules of subsection (3) are the same as subsection (c) of UVC § 11-502.

C. Relationship to Existing Law

This section makes no change in the pedestrian-driver right of way rules of the present Oregon traffic code except to expand or make more specific the duty of the driver to yield to a pedestrian in the far half of the roadway who has crossed half or almost half of the roadway. Under subsection (2), the pedestrian is in a position of danger and has the right of way when he is closely approaching or has reached the center of the roadway.

The section retains the requirement of Oregon law that the driver stop as well as yield the right of way to the pedestrian in a crosswalk. The analogous UVC section requires that the driver yield and that he stop only if need be.

The provision of subsection (1), ORS 483.210, that the pedestrian crossing a roadway shall not suddenly leave a curb or other place of safety is stated in § 44. This rule is similar to subsection (b), UVC § 11-502.

The provisions of subsection (3), ORS 483.210, which are the same as subsection (d) of UVC § 11-502, are the subject of § 45. ORS 483.210 would be repealed and its provisions, with changes as described, restated in §§ 42, 43, 44 and 45.

Section 43. (Pedestrian tunnel or overhead crossing.) (1) A pedestrian commits the offense of failure to use pedestrian tunnel or overhead pedestrian crossing if he crosses a roadway other than by means of a pedestrian tunnel or overhead pedestrian crossing when a tunnel or overhead crossing serves the place where the pedestrian is crossing the roadway.

(2) A pedestrian who fails to use pedestrian tunnel or overhead pedestrian crossing commits a Class D traffic infraction.

COMMENTARY

A. Summary

This section places an affirmative duty on the pedestrian to use a pedestrian tunnel or overhead crossing which is located at the place where the pedestrian is crossing the roadway.

B. Derivation

This section may be compared to a traffic regulation of the District of Columbia, *D.C. Traffic and Motor Vehicle Regs.*, Pt 1, § 53 (b) (1966), which provides that no pedestrian shall cross a specified street between certain streets "other than by proceeding

over designated overpasses or through designated underpasses."

C. Relationship to Existing Law

The section requires a pedestrian to use a pedestrian overpass or tunnel that serves the place where the pedestrian is crossing the roadway. The pedestrian, under subsection (2) of ORS 483.210, is required to yield the right of way to vehicles, but after so doing may cross the roadway and avoid the overpass or tunnel. The rule of subsection (b) of UVC § 11-503 is identical to that of subsection (2), ORS 483.210. The rule of this section is new and not comparable to that of any other state except as noted above.

Section 44. (Pedestrian leaving curb.) (1) A pedestrian shall not suddenly leave a curb or other place of safety and move into the path of a vehicle which is so close as to constitute an immediate hazard.

(2) A pedestrian who moves into the path of a vehicle in violation of subsection (1) of this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

The section provides that a pedestrian shall not suddenly leave a curb and move into the path of a vehicle close enough to be a hazard.

B. Derivation

This section is based on subsection (b) of UVC § 11-502 (Revised 1971).

C. Relationship to Existing Law

The "other place of safety" of this rule as stated in this draft section and in subsection (1) of ORS 483.210 has been interpreted to include the center line area of the roadway. *Plasker v. Fazio*, 259 Or 171, 485 P2d 1075 (1971).

With the rule of § 42 enlarging on the present statutory phrase of subsection (1), ORS 483.210, which determines the right of way of the pedestrian traversing a crosswalk in relation to his position of danger, so as to include the center of the roadway as a position of danger, the holding of *Plasker v. Fazio* would be modified in respect to the center line area being a place of safety.

Under subsection (1), ORS 483.210, the pedestrian's duty not to leave the curb or other place of safety is stated with reference to the pedestrian who is proceeding to cross or crossing the roadway. This section and the analogous UVC rule omit this qualifying phrase.

Section 45. (Drivers not to overtake stopped vehicle.) (1) When a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, a driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

(2) A driver who overtakes and passes a vehicle which has stopped under subsection (1) of this section commits a Class B traffic infraction.

COMMENTARY

A. Summary

The section provides that when a vehicle is stopped at a crosswalk for a pedestrian, a vehicle approaching from the rear shall not pass the stopped vehicle.

B. Derivation

This section is based on subsection (d) of UVC § 11-502.

C. Relationship to Existing Law

This section contains the same rule for not passing a vehicle which is stopped to allow a pedestrian to

cross on a crosswalk as is stated in subsection (3) of ORS 483.210, except that it utilizes the simpler UVC language to describe the point beyond which the driver is not to advance. The UVC language states that the vehicle shall not pass the stopped vehicle whereas ORS 483.210 (3) states that the driver "shall not cause or allow the front end of his vehicle to pass beyond the front end of the stopped vehicle."

The intent of this provision is to establish a duty on the part of the drivers of all vehicles approaching from the rear in all lanes of the roadway not to overtake or pass a vehicle stopped to permit a pedestrian to cross.

Section 46. (Crossing at other than crosswalks.) (1) A pedestrian commits the offense of failure to yield the right of way if he fails to yield the right of way to a vehicle upon a roadway when he is crossing the roadway at any point other than within a marked crosswalk or an unmarked crosswalk at an intersection.

(2) A pedestrian who fails to yield the right of way commits a Class C traffic infraction.

COMMENTARY

A. Summary

The section provides that a pedestrian must yield the right of way to a vehicle when the pedestrian is crossing a roadway not at a crosswalk.

B. Derivation

The rule of this section is stated in subsection (4) of ORS 483.210 and in subsection (a) of UVC § 11-503.

C. Relationship to Existing Law

It was held in *DeWitt v. Sandy Market, Inc.*, 167 Or 226, 115 P2d 184 (1941), to mean that a pedestrian crossing a street not in a crosswalk and therefore required to yield to vehicular traffic violates this duty as much by colliding with the rear part of the vehicle as by walking in front. The rule does

not mean that a pedestrian is prohibited from crossing at other than a crosswalk. *Martin v. Harrison*, 182 Or 121, 180 P2d 119, 186 P2d 534 (1947); *Simpson v. Hillman*, 163 Or 357, 97 P2d 527 (1940). A motorist is not thereby relieved of the duty of care. *Ibid.*

The rule of subsection (b), UVC § 11-503, and subsection (2), ORS 483.210, giving the driver the right of way over the pedestrian at those portions of roadways served by pedestrian bridges and tunnels is not included in this draft section. It is duplicative and redundant in light of the provision of § 43 requiring pedestrians to use overhead bridges and tunnels when the area that the pedestrian is intending to cross is served by such a structure designed for pedestrian use.

Section 47. (Exercise of due care.) The provisions of sections 42 to 46 of this Act do not relieve a driver or a pedestrian from the duty to exercise due care.

COMMENTARY

The duty to use due care is stated in subsection (5) of ORS 483.210 in the same terms as in this draft section. ORS 483.210 includes many of the Oregon traffic code rules for pedestrians. It would be repealed.

The more specific detailed provisions of UVC § 11-504, relating the duty of due care to the child and the obviously confused, incapacitated or intoxicated person, were examined and rejected by the committee as being an ill-advised attempt to state each separate possible application of the general rule of due care.

The provision is parallel to the UVC § 11-504 requirement of precaution on observing an intoxicated person. Added to the code in 1971, it prohibits intoxicated persons from walking on a highway except on a sidewalk. Its adoption was rejected on the basis that its treatment of public drunkenness as a crime conflicts with the recent legislative decision to decriminalize Oregon laws on this subject. (See ORS 430.305 to 430.335.)

The requirement of UVC § 11-504 that a driver use his horn when necessary to give a pedestrian warning was considered as potentially causing more

hazard than would be averted by not using the horn. This UVC requirement is therefore omitted from the draft section.

Subsection (1) of ORS 483.345 requires that a driver exercise reasonable control of a vehicle as may be necessary to avoid colliding with any object and states that a collision is not necessary to be in violation of this rule. Subsection (2) provides that the rules of pleading and evidence related to negligence and contributory negligence are not changed by the provisions of subsection (1). Subsection (3) makes the offense a Class C misdemeanor. This section, with certain minor changes, was part of the basic rule stated in ORS 483.102 until deleted by amendment of that section by ch 340, Oregon Laws 1971. The amendment provides that § 1, which was compiled as, and in the existing code is, ORS 483.345, was to be added to and made a part of ORS 483.114 to 483.118. Hence ORS 483.345 is not located in that portion of the rules of the road directed by the enacting law.

Phillips v. Ocker, 250 Or 30, 440 P2d 365 (1968), held that the duty of control implies also the ability to swerve reasonably so as to avoid a collision.

Section 48. (Pedestrian's use of sidewalk, shoulder and roadway edge.) (1) A pedestrian commits the offense of failure to use a sidewalk if he proceeds along and upon the roadway where there is an adjacent usable sidewalk.

(2) A pedestrian commits the offense of failure to use highway shoulder if he does not proceed along and upon the shoulder improved for pedestrian use and as far as practicable from the roadway edge on a highway which has no paved sidewalk and which does have an adjacent shoulder area on one or both sides improved and intended for use by pedestrian traffic.

(3) Except in the case of the divided highway, a pedestrian commits the offense of failure to use left highway shoulder if he does not proceed along and upon the left shoulder and as far as practicable from the roadway edge on a two-way highway which has no paved sidewalk and which does have an adjacent shoulder area, paved or unpaved, intended for use by disabled vehicles and for emergency parking.

(4) A pedestrian shall proceed along the right highway shoulder, as far as practicable from the roadway edge, on a divided

highway which has no sidewalk and does have a shoulder area intended for use by disabled vehicles and for emergency parking.

(5) A pedestrian commits the offense of unlawful use of roadway if he fails to proceed along and upon a highway which has neither sidewalk nor shoulder available, as near as practicable to an outside edge of the roadway, and, if the roadway is a two-way roadway, only on the left side of it.

(6) On a freeway on which pedestrian traffic is prohibited, the driver and passengers of a disabled vehicle stopped on the freeway may walk to the nearest exit, in either direction, on that side of the freeway upon which the vehicle is disabled, from which telephone or motor vehicle repair services are available.

(7) A pedestrian who proceeds on a highway in violation of this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a pedestrian must proceed on a sidewalk when there is a sidewalk.

Subsection (2) provides that a pedestrian must proceed on the highway shoulder improved and intended for pedestrian use when there is no sidewalk. Subsection (3) provides that except in the case of the divided highway, a pedestrian must proceed on the left shoulder of a two-way highway that has neither sidewalk nor shoulder improved for disabled vehicle and emergency parking use.

Subsection (4) provides that a pedestrian must use the right shoulder on a divided highway which has no sidewalk and the shoulder is intended for disabled vehicle and emergency parking use. Subsection (5) provides that a pedestrian must proceed along the outside edge of the roadway of a highway which has no sidewalk or shoulder and, if the roadway is two-way, on the left side of it. Subsection (6) provides that on a freeway where pedestrian traffic is prohibited, the driver and passengers of a disabled vehicle may proceed to the nearest exit on the side of the freeway where the vehicle is disabled, where assistance can be obtained.

B. Derivation

Subsections (1), (2) and (5) are based on subsections (a), (b) and (c) of UVC § 11-506 (Revised 1971). Subsection (6) is based on Cal Vehicle Code § 21960 as amended by ch 498, Stats 1972.

C. Relationship to Existing Law

Under ORS 483.220, which would be repealed, pedestrians are required to use the left side of highways outside of incorporated cities. There are no Oregon statutes providing rules analogous to those

of subsections (a) and (b) of UVC § 11-506, requiring use of sidewalk or shoulder, or the outside edge of the roadway when there is no sidewalk or shoulder as is provided in subsection (c) of UVC § 11-506.

The rule of UVC § 11-506 (a) is stated in subsection (1) of this section. The rule of UVC § 11-506 (b) is modified so as to distinguish between "shoulder improved and intended for pedestrian use" and "shoulder intended for disabled parking." If the shoulder is intended for pedestrian use, under subsection (2) of the draft section the pedestrian must use it, regardless of which side of the highway has the improved shoulder. If only one side is improved for pedestrian use, it is intended that pedestrians use it. Under subsection (3), if the highway shoulder is not intended for pedestrian use, the pedestrian must proceed on the left shoulder. This rule is at variance with that of UVC § 11-506 (b), which allows use of the shoulder on either side, with no distinction between shoulder intended for pedestrians and that intended for a vehicle emergency. The rule of UVC § 11-506 (c) is the same as that of subsection (5).

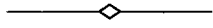
The section represents a major change from the rule of ORS 483.220 which has been interpreted to give a driver the right to use the entire traversable right-hand side of the highway including the shoulder. A person walking must use the left side and, if on the right-hand shoulder, is on the wrong side. *Zahara v. Brandli*, 162 Or 666, 94 P2d 718 (1939). A pedestrian on the left side of a highway under ORS 483.220 was not required to be on the shoulder as opposed to the paved traveled part. *Kellye v. Greyhound Lines, Inc.*, 249 Or 14, 436 P2d 727 (1968). The holdings of these cases would no longer be valid with enactment of this section.

"Sidewalk," "roadway" and "shoulder" are defined in § 2. In this section, the terms "roadway"

and "shoulder," with a distinction drawn between "shoulder improved for pedestrians" and "shoulder for disabled vehicles," are the terms which by their definitions determine what part of the highway right of way a pedestrian must use and not use.

The rule of subsection (d), UVC § 11-506 (New

1971), is stated in the following section. The additional rule of pedestrian use of sidewalk of UVC § 11-505, requiring pedestrians to move on the right half of the sidewalk, is stated in ORS 483.216. It was considered of little value and application in Oregon. ORS 483.216 would be repealed.



Section 49. (Pedestrian must yield right of way.) (1) Except as otherwise provided in this chapter, a pedestrian upon a roadway shall yield the right of way to all vehicles upon the roadway.

(2) A pedestrian who fails to yield the right of way upon a roadway to all vehicles under subsection (1) of this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

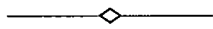
The section provides that a pedestrian on a roadway must yield the right of way to all vehicles except where provided otherwise in the chapter.

B. Derivation

This section is based on subsection (d) of UVC § 11-506 (New 1971).

C. Relationship to Existing Law

There is no provision in the existing code analogous to this rule. It would delimit the pedestrian's right to the right of way to the provisions specifically giving this right.



Section 50. (Pedestrians soliciting rides or business.) (1) A person commits the offense of unlawful hitchhiking if he stands in a roadway for the purpose of soliciting a ride.

(2) A person commits the offense of unlawful solicitation of employment, business or contributions from vehicle occupants if he:

(a) Stands on a highway to solicit employment or business or contributions from persons in a vehicle; or

(b) Stands on or near a highway for the purpose of soliciting the watching or guarding of a vehicle while parked or about to be parked on a highway.

(3) A person who violates this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) prohibits soliciting a ride by a person standing in a roadway.

Subsection (2) prohibits soliciting employment, business or contributions from vehicle occupants by a person standing on a highway and prohibits soliciting the watching or guarding of a vehicle while parked or about to be parked on a highway by a person standing on or near a highway.

B. Derivation

This section is based on UVC § 11-507 (Revised 1968).

C. Relationship to Existing Law

Under the rule of ORS 483.218, which relates to hitchhiking, as does subsection (1) of this section, soliciting a ride from a private vehicle by a person

standing in a roadway is prohibited. "Roadway" is defined in subsection (4), ORS 483.020, as follows:

"Roadway" means that portion of a street or highway improved, designed or ordinarily used for vehicular travel.

"Roadway" is interpreted to be that portion of a street or highway on which vehicles travel including the shoulder used for temporary or emergency travel. 35 Atty Gen Op 833 (1971). This opinion, in addition to defining "roadway" to include the highway shoulder, concludes that ORS 483.218 prohibits hitchhiking by persons standing in the regularly traveled traffic lanes and on the paved or graveled shoulder, but "does not prohibit hitchhiking while standing off the shoulder, or on a shoulder which, because of its slope, different level, softness or other characteristics, is not designed for and cannot conveniently be used by vehicles."

The UVC definition of "roadway" excludes the shoulder. It is the definition stated in § 2. Its use in this section, defined to exclude the shoulder, is a major change from the existing rule.

According to *Traffic Laws Annotated*, 1972, standing in a roadway to solicit a ride is prohibited by the laws of 39 states and the District of Columbia. Seven states prohibit hitchhiking by persons on the highway.

There are no provisions in existing law comparable to subsection (2) of this section. It prohibits a commercial activity by a person on the highway rather than on the roadway as in subsection (1). Parking a vehicle on a right of way of a state highway for the purpose of advertising or selling merchandise is prohibited by ORS 483.347. That section is considered in the Article on Stopping, Standing and Parking. ORS 483.218 would be repealed.

Section 51. (Driving through safety zone prohibited.) ORS 483.334 is amended to read:

483.334. (1) [The] A driver [of a vehicle] shall not at any time drive through or [over] within a safety zone.

(2) A person who violates subsection (1) of this section commits a Class C traffic infraction.

COMMENTARY

A driver is defined in § 2. "Safety zone" is defined in ORS 483.020, subsection (5), in the same terms as used in UVC § 1-159:

"Safety zone" means the area or space officially set apart within a roadway for the ex-

clusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

The same definition is retained in the revised code.

Section 52. (Pedestrian's right of way on sidewalks.) (1) A driver commits the offense of failure to yield the right of way to a pedestrian if he does not yield the right of way to any pedestrian on a sidewalk.

(2) A driver failing to yield the right of way to a pedestrian on a sidewalk commits a Class C traffic infraction.

COMMENTARY

A. Summary

The section provides that a driver shall yield the right of way to pedestrians on a sidewalk.

B. Derivation

This section is based on UVC § 11-504 (Revised 1971).

C. Relationship to Existing Law

There is no comparable provision in existing Oregon law. Under ORS 483.222 a driver in a business or residence district emerging from an alley or driveway or building must stop before driving onto a sidewalk. This section will be amended to con-

form to the analogous section of the UVC in its most current revision and will be located in Article 7.

With no provision in existing law similar to this section, there is no superior right of way between the driver who has stopped pursuant to ORS 483.222 and the pedestrian on the sidewalk. *Leite v. Sambo's Restaurants, Inc.*, 264 Or 498, 506 P2d 176 (1973).

"Sidewalk" is defined in subsection (1) of ORS 483.024 and in the UVC in almost the same words. In Oregon law it is for use of pedestrians and in UVC by pedestrians. It is defined in § 2. The *Leite* case held that sidewalks are part of the street although intended for use by pedestrians.

This section applies equally to vehicles emerging from or entering an alley, private road or driveway.

Section 53. (Pedestrians yield to emergency vehicle or ambulance.) (1) Upon the approach of an emergency vehicle or ambulance using a visual signal or an audible signal or both according to requirements of sections 11 and 12 of this Act, every pedestrian shall yield the right of way to the emergency vehicle or ambulance.

(2) This section does not relieve the driver of an emergency vehicle or ambulance from the duty to:

(a) Drive with due regard for the safety of all persons using the highway; and

(b) Exercise due care to avoid colliding with any pedestrian.

(3) A pedestrian who fails to yield the right of way to an emergency vehicle or ambulance commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a pedestrian must yield the right of way to an emergency vehicle or ambulance which is using the visual or audible signals required under §§ 11 and 12 which relate to emergency vehicles and ambulances and state when emergency vehicles and ambulances may disregard specified rules of the road on the way to an emergency.

Subsection (2) provides that the driver of an

emergency vehicle or ambulance is not relieved of his duty to drive with due care.

B. Derivation

This section is based on UVC § 11-510 (New 1971).

C. Relationship to Existing Law

There is no comparable provision in the Oregon traffic code. According to *Traffic Laws Annotated*, 1972, only three states have provisions comparable to this section.

Section 54. ("Blind person," "guide dog," "white cane," defined.) As used in sections 54 to 58 of this Act:

(1) "Blind person" means a person who is totally or partially blind.

(2) "Guide dog" means a dog which is wearing a guide dog harness and is trained to lead or guide a blind person.

(3) "White cane" means a cane or walking stick which is white in color or white with a red tip.

COMMENTARY

The provisions of ORS 483.214 include the definitions of this draft section, the rules requiring drivers to stop and yield to blind persons, the rule that vehicular traffic must yield to a blind pedestrian in the roadway notwithstanding the provisions regulating traffic flow where there are traffic control signals, the rule prohibiting use of white cane by sighted persons, and the rule that none of the foregoing provisions deprive a blind person without a cane or guide dog of the rights of all pedestrians.

These rules are restated for consistency of style with the other sections of the draft Article and are separated into five sections for greater facility in indexing and reference. The definitions are identical to those of subsection (1), ORS 483.214, except the term "dog guide" is amended to read "guide dog." This term is recognized nationally to describe a dog trained to lead a blind person. ORS 483.214 would be repealed.

Section 55. (Use of white cane restricted.) (1) A blind person may carry and use a white cane on the highways and other public places of this state for the purposes of identification and protection.

(2) A person who is not a blind person shall not use or carry a white cane on the highways and other public places of this state.

(3) A person who carries a white cane in violation of subsection (2) of this section commits a Class C traffic infraction.

COMMENTARY

This section restates ORS 483.214 (3) for consistency of style.

Section 56. (Duty of driver to yield to blind pedestrian.) (1) A driver approaching a blind pedestrian carrying a white cane in a raised or extended position or accompanied by a guide dog, who is crossing or about to cross a roadway, shall immediately stop and yield the right of way to the blind pedestrian. He shall not move his vehicle until the blind pedestrian has vacated the roadway.

(2) A driver who fails to stop and yield to a blind pedestrian under subsection (1) of this section commits a Class B traffic infraction.

COMMENTARY

Subsection (2) of ORS 483.214 requires a driver approaching a blind pedestrian to stop, with no language setting out where this blind pedestrian must be in relation to the approaching driver. It also requires a driver to yield and stop when a blind pedestrian

is in the roadway where traffic is directed by traffic control signals, regardless of the usual rules for vehicular traffic direction by traffic control signals.

This section limits the duty of the driver to stop

and take precautions in the situation where the blind pedestrian is crossing or about to cross a roadway, and extends the right of way of the pedestrian in the roadway to include both roadways where traffic is directed by a signal and where there is no traffic control signal. This extension is done by removing from the right of way of the blind pedestrian crossing or about to cross the roadway the condition that he be in a roadway where there are traffic control signals. The additional rule of subsection (2) of ORS 483.214, that the traffic rules related to traffic control signals do not apply when a blind pedestrian is in the roadway, is stated in § 57.

Under the UVC provision added to the Code in 1971, which is comparable to ORS 483.214, a driver must yield the right of way to a blind pedestrian carrying a clearly visible white cane or accompanied by a guide dog. The rule of subsection (1) of this draft section is similar to the UVC provision but goes further by requiring the driver to stop. The requirement of ORS 483.214 to take precautions to prevent accident or injury are not included in this section as they are implied in the duty to stop and yield the right of way.

Section 57. (Blind pedestrian in roadway with traffic control signals.) (1) Notwithstanding sections 14 to 17 of this Act, where the movement of vehicular traffic is regulated by traffic control signals, if a blind pedestrian has entered the roadway and is carrying a white cane in a raised or extended position or is accompanied by a guide dog, a driver approaching the blind pedestrian shall yield the right of way to the pedestrian and stop or remain stationary until the pedestrian has vacated the roadway.

(2) A driver who fails to yield the right of way to a blind pedestrian under subsection (1) of this section commits a Class B traffic infraction.

COMMENTARY

This section is a restatement of the second sentence of subsection (2), ORS 483.214. Only the statutory references are changed to the section numbers of the draft that replace the cited statutes. The rule of the section is that notwithstanding the usual

rules of vehicular traffic at locations where vehicular traffic is regulated by traffic control signs, if a blind pedestrian enters a roadway, all drivers must stop until he has vacated the roadway.

Section 58. (Rights of blind pedestrian without white cane or guide dog.) A blind pedestrian who is not carrying a white cane or not accompanied by a guide dog has all the rights and privileges granted by law to all pedestrians.

COMMENTARY

This section restates the rule of subsection (4), ORS 483.214.

Section 59. (Unlawful use of bridge by pedestrian.) (1) A pedestrian commits the offense of unlawful use of a bridge if he enters or remains upon a bridge or approach to a bridge beyond the bridge signal, gate or barrier after a bridge operation signal has been given.

(2) Unlawful use of a bridge by a pedestrian is a Class C traffic infraction.

COMMENTARY

A pedestrian is prohibited from entering or remaining upon a bridge or its approach beyond the signal, gate or barrier after a signal is given.

This section is based on subsection (a) of UVC § 11-513. This section was added to the code in the 1971 revision.

This rule appeared in the *Model Traffic Ordinance* from 1952 to 1968 when it was deleted from the ordinance and added to the UVC. There now is no comparable provision in Oregon laws.

Section 60. (Pedestrian crossing closed bridge or railroad grade crossing barrier prohibited.) (1) A pedestrian commits the offense of unlawful crossing of bridge or railroad grade crossing barrier if he passes through, around, over or under any crossing gate or barrier at a bridge or railroad grade crossing while the gate or barrier is closed or being opened or closed.

(2) Passing a closed bridge or railroad grade crossing gate or barrier is a Class C traffic infraction.

COMMENTARY

This section prohibits a pedestrian from moving past a closed or closing gate or barrier at a bridge or railroad grade crossing. This section is based on UVC § 11-513 (b).

ARTICLE 6. TURNING AND MOVING; SIGNALS ON STOPPING AND TURNING

Section 61. (Required position and method of turning.) (1) A driver intending to turn right shall proceed as close as practicable to the right-hand curb or edge of the roadway:

- (a) In making the approach for a right turn; and
- (b) In making the right turn.

(2) A driver intending to turn left shall:

(a) Approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the turning vehicle;

(b) Make the left turn to the left of the center of the intersection whenever practicable; and

(c) Leave the intersection or other location in the extreme left-hand lane lawfully available to traffic moving in the same direction as such vehicle on the roadway being entered.

(3) A driver who makes a turn in violation of this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a right turn and the approach to it should be made as close as practicable to the right curb or edge of the roadway.

Subsection (2) provides that a left turn should be made from the left lane available to traffic moving in the same direction as the turning vehicle, that the turn be made to the left of the center of the intersection, and after the turn the vehicle proceed in the available left lane of the roadway onto which the turn has been made.

B. Derivation

This section is based on UVC § 11-601 (Revised 1971).

C. Relationship to Existing Law

ORS 483.316 applies only to the left and right turns at an intersection whereas this section and the 1971 revision of UVC § 11-601 apply to a driver making a turn at any place or location where the rules of the road apply. A turn from a highway onto a private road is not governed by ORS 483.316. *Clark v. Fazio*, 191 Or 522, 230 P2d 553 (1951); *Black v. Stith*, 164 Or 117, 100 P2d 485 (1940).

Paragraph (a), subsection (1) of ORS 483.316 requires that the approach for a right turn be made in the lane for traffic nearest the right-hand side of the highway. It is identical to the analogous 1930 UVC provision. This section and UVC § 11-601 (1971 revision) require the approach to be as close as practicable to the right curb or roadway edge. The ambiguity of ORS 483.316 and possible requirement that the approach be made in the emergency travel lane of a highway is removed because roadway, as it is defined in this draft, excludes shoulder and emergency parking lane. ORS 483.316 requires that the left-hand turn be made by proceeding beyond the center point of the intersection, to the right of the centerline of the highway entered on completing the

turn. *Austin v. Portland Traction Co.*, 181 Or 470, 182 P2d 412 (1947).

This draft section and UVC § 11-601 on which this section is based, require the left-turning driver to pass to the left of the centerpoint of the intersection whenever this is practicable. This rule would bring about a major change in driving procedure. Under existing law a driver turning left by cutting the corner and traveling thereby on the wrong side of the street is negligent. *Ordeman v. Watkins*, 114 Or 581, 236 P 483 (1925).

The rules of ORS 483.216 relating to right turns requiring the approach in the lane for traffic nearest the right-hand edge of the highway apply whether or not there are marked lanes of travel on the highway. *Williams v. Nelson*, 229 Or 200, 366 P2d 894 (1961). The rules for right turns were held to apply to vehicles proceeding around a circular island and making turns to the right out from the circular drive onto intersecting streets. *Williams v. Donohoe*, 222 Or 578, 353 P2d 521 (1960).

Subsections (2) and (3) of ORS 483.316 authorize the State Highway Commission or local authorities by placing markers, buttons and other types of signals to direct drivers to proceed other than by the left and right turn rules of subsection (1) and to prohibit left and right turns at intersections. Similar authorization language, substituting the term "official traffic control device" for buttons, markers, etc. of the Oregon statute, is used in subsection (c) of UVC § 11-601 (1971 revision). These authorization rules are located in the Article on Powers of State and Local Authorities.

Under paragraph (b), subsection (1), ORS 483.316 the left-turning passenger vehicle loading or unloading passengers prior to turning left is exempted from the rules governing left turns. This provision is deleted in this draft section on the basis of hazard and unworkability. ORS 483.316 would be repealed.

Section 62. (U-turns prohibited.) (1) A driver commits the offense of making an illegal U-turn if he turns his vehicle so as to proceed in the opposite direction:

- (a) Upon any curve;
 - (b) Upon the approach to or near the crest of a grade;
 - (c) Upon a highway within the limits of an incorporated city between intersections; or
 - (d) At any place upon a highway where the vehicle cannot be seen by another driver approaching from either direction within a distance of:
 - (A) 500 feet within the incorporated limits of a city; or
 - (B) 1,000 feet outside a city.
- (2) Making an illegal U-turn is a Class C traffic infraction.

COMMENTARY

This section makes no substantive change in ORS 483.318 but restates it for consistency in form. ORS 483.318 would be repealed. The analogous UVC provision allows U-turns when they can be made in safety rather than prohibiting them in specified situ-

ations as does this section and ORS 483.318. The committee considered that the provisions of Oregon law promote safer, more effective traffic regulation.

Section 63. (Moving a stopped, standing or parked vehicle.) (1) A person commits the offense of unlawfully moving a stopped, standing or parked vehicle if he moves a vehicle so stopped, standing or parked when the movement cannot be made with reasonable safety.

(2) A person who moves a vehicle in violation of this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

This section prohibits a person from moving a vehicle from a stopped, standing or parked position unless such movement can be done with reasonable safety.

B. Derivation

This section is based on UVC § 11-603.

C. Relationship to Existing Law

The provisions of ORS 483.126 cover the duties of lookout and signals of the driver when starting a vehicle as well as when stopping, changing lanes or turning from a direct line. Under ORS 483.126 the driver who is starting a vehicle has the same duty as the turning and stopping driver. He must see if the movement can be made in safety, sound his

horn if a pedestrian would be affected and give a proper plainly visible signal of his intention to any driver who may be affected by the movement. The analogous UVC §§ 11-603 and 11-604 distinguish between the duties of the person starting a stopped, standing or parked vehicle from those of the driver turning or moving left or right or stopping or suddenly decreasing speed. The requirement of this section that the vehicle be moved from a stopped position only if it can be done with safety changes the rule of subsection (1), ORS 483.126, as it pertains to the stopped vehicle, to the UVC rule. ORS 483.126 would be repealed.

Oregon cases

Lee v. Hoff, 163 Or 374, 97 P2d 715 (1940), held that a driver who has stopped on private property adjoining a highway and who thereafter proceeds

in a straight line across the highway, is not within the application of the rule requiring signals by drivers who stop, start or turn their vehicles upon a highway.

A driver positioned at the curb under ORS 483.126 must give an audible signal by horn if the movement

of his vehicle backward would affect a pedestrian. *Sears v. Goldsmith*, 136 Or 151, 298 P 219 (1931). By extension, the case means that the driver moving his vehicle in reverse is subject to the same duties of care and of giving a signal as the driver moving his vehicle forward.



Section 64. (Turning and stopping movements and signals required.) (1) A driver commits the offense of unlawful turn or change of lane if he turns or moves right or left upon a highway when:

(a) The movement cannot be made with reasonable safety; or

(b) He fails to give an appropriate signal as provided in section 65 of this Act continuously during not less than the last 100 feet traveled by the vehicle before turning.

(2) A driver commits the offense of unlawful stop or deceleration if he stops or suddenly decreases the speed of a vehicle without first giving an appropriate signal as provided in section 66 of this Act to the driver immediately to the rear when there is opportunity to give the signal.

(3) A driver who turns or changes lanes or stops in violation of this section commits a Class C traffic infraction.

(4) A driver commits the offense of unlawful use of signals if he flashes any lights as a courtesy or "do pass" signal to other drivers approaching from the rear.

(5) Unlawful use of signals is a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a driver shall not turn or change lanes unless such movement can be made in safety and a signal is given continuously for the last 100 feet before the movement is made. Subsection (2) provides that a driver who stops or suddenly decelerates must give a signal when there is an opportunity to do so. Subsection (4) prohibits the use of any lights as a courtesy or "do pass" signal.

B. Derivation

This section is based on UVC § 11-604.

C. Relationship to Existing Law

Under this section and the 1971 revision of UVC § 11-604 a signal must be given by a driver turning or moving left or right, whereas under the rule of subsection (1), ORS 483.126, the signal need be given only if a pedestrian or the operation of another

vehicle may be affected. The requirement of existing law that the driver turning or changing lanes is to sound his horn if a pedestrian would be affected is deleted. This requirement was in the earliest versions of the UVC and deleted in 1944.

Both this section and ORS 483.126 require that the turning and left and right movements be made only if they can be made in safety. This section and the comparable UVC rule qualify this phrase by using the term, "reasonable safety."

The requirement of a continuous signal for at least 100 feet of subsection (4), ORS 483.126, applies only to a vehicle turning left or right. Under this section, the requirement applies also to the vehicle moving left or right.

Under UVC § 11-604 the signals need only be given by a driver on a roadway. This draft section, by using the term "highway" as does ORS 483.126, requires that a signal be made by a driver using the shoulder, parked in a parking lane, as well as using

a publicly owned parking lot. All these areas are included in the definition of "highway."

The rule that a signal must be given to the driver of a vehicle in the rear when a driver stops or suddenly decreases speed, if there is an opportunity to signal, changes the analogous rules of existing law which make no differentiation in the requirements of signaling for a driver turning as compared to a driver stopping. The signal required of intention to suddenly decelerate is not required when a driver decelerates gradually. *Jones v. Mitchell Bros.*, 97 Adv Sh 530, — Or —, 511 P2d 347 (1973). ORS 483.126 (1) as applied to the requirement that a driver not stop unless the movement can be made safely was interpreted by *McPherson v. Cochran*, 243 Or 399, 414 P2d 321 (1966), to be in part for the benefit of the vehicle approaching from the rear. Under this section the signal is directed to the driver of the vehicle in the rear of the stopping vehicle.

Subsection (4) states with modification the rule

of subsection (d), UVC § 11-604, which prohibits using signals not only as a courtesy or "do pass" but also on one side only on a disabled vehicle and one side only of a parked vehicle except as necessary to comply with the rules of the section. Currently there are many vehicles not equipped with signals other than the flashing turn signals. It appeared that use of a flashing signal on one side of a disabled vehicle in that circumstance would promote safety and outweigh any potential misleading nature of the signal.

The requirement of giving a signal under ORS 483.126 was held applicable to drivers backing a vehicle as well as those proceeding forward. *Carter v. Lester*, 210 Or 209, 309 P2d 1001 (1957). The requirement does not apply unless the motion is intended. *Lee v. Caldwell*, 229 Or 174, 366 P2d 913 (1961). It does not apply on private premises. *Kroft v. Grimm*, 225 Or 247, 357 P2d 499 (1960). ORS 483.126 would be repealed.

—◆—

Section 65. (Signals by hand and arm or by signal lamps.) (1)

Except as provided in subsection (2) of this section, a driver shall give a stop or turn signal by activating signal lamps as described in section 66 of this Act.

(2) Notwithstanding subsection (1) of this section, a driver shall give a stop or turn signal either by means of signal lamps or by means of the hand and arm if:

(a) He is driving only in daylight hours between a half hour before sunrise until a half hour after sunset and there is sufficient light to discern clearly persons and vehicles at a distance of 1,000 feet ahead; and

(b) He is driving a vehicle or combination of vehicles in which the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of the motor vehicle is less than 24 inches, or the distance from the center of the top of the steering post to the rear limit of the body or load is less than 14 feet.

(3) A driver who fails to give a stop or turn signal by activating signal lamps in violation of subsection (1) of this section commits a Class C traffic infraction.

(4) A driver who fails to give a stop or turn signal in violation of subsection (2) of this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a driver shall give a stop or turn signal by signal lamps, except as provided in subsection (2).

Subsection (2) authorizes a driver to signal either by signal lamp or by hand and arm when it is daylight and when his vehicle or combination of vehicles is less than a stated width or length.

B. Derivation

This section is based on UVC § 11-605 (Revised 1956).

C. Relationship to Existing Law

The requirements of subsection (2), ORS 483.126, that a signal be by mechanical or electrical signal device under certain circumstances is changed to the UVC language of "signal lamp," to eliminate mechanical devices.

The condition of paragraph (a), subsection (2), ORS 483.126, that a mechanical or electrical signal

be given if the vehicle is so constructed or loaded as to prevent a hand and arm signal from being visible is eliminated by this section. The UVC included this rule until its 1952 revision which states exact width and length dimensions.

Unlike either the provisions of existing law or UVC § 11-605, the driver has an affirmative duty to use a signal lamp rather than a choice of lamp or hand signal for turning or stopping. He is allowed to signal by hand and arm only in daylight and if his vehicle does not exceed specified width and length dimensions.



Section 66. (Method of giving required signals.) (1) A driver shall give the hand and arm signals required under sections 64 and 65 of this Act from the left side of the vehicle in the following manner and the signals shall indicate as follows:

- (a) Left turn—hand and arm extended horizontally;
- (b) Right turn—hand and arm extended upward;
- (c) Stop or decrease speed—hand and arm extended downward.

(2) A driver giving the signals for turning or moving right or left upon a highway required under sections 64 and 65 of this Act by use of signal lamps shall activate both the front and rear lamps of that side of the vehicle toward which the turn is made.

(3) A driver who stops or suddenly decreases the speed of a vehicle shall activate the stop lamps required by ORS 483.407.

(4) A driver who fails to make a signal in the manner required in this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

This section states the manner of giving signals by hand and arm and by signal lamps both for turning movements and for sudden deceleration.

B. Derivation

This section is based on UVC § 11-606 and § 13 Alaska Adm Code 02.225.

C. Relationship to Existing Law

The language for use of hand and arm signal of UVC § 11-606 is used in this section. ORS 483.126 would be repealed. Subsection (3) of ORS 483.126 states the manner of giving hand and arm signals. The Alaska code provision noted above provides for giving a turning signal by activating signal lamps. The provision of subsection (3) for activating stop lamps to show a stop or sudden deceleration is new.



ARTICLE 7. SPECIAL STOPS REQUIRED

Section 67. (Stopping at railroad crossings upon signal of approaching train.) (1) A driver approaching a railroad grade crossing commits the offense of failure to stop at a railroad grade crossing if he does not stop his vehicle at a clearly marked stop line on the

near side of the crossing or, if none, not less than 10 feet nor more than 50 feet from the nearest rail of the crossing when:

(a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(b) A crossing gate is lowered;

(c) A flagman gives a signal of the approach or passage of a railroad train;

(d) An approaching railroad train gives an audible signal and because of its speed or nearness to the crossing is an immediate hazard; or

(e) An approaching train is clearly visible and because of its nearness to the crossing is an immediate hazard.

(2) Failure to stop at a railroad grade crossing is a Class C traffic infraction.

(3) A driver who has stopped for the passing of a train at a railroad grade crossing in accordance with the provisions of subsection (1) of this section shall not proceed across the railroad tracks until he can do so safely.

(4) A driver who proceeds in violation of subsection (3) of this section commits a Class C traffic infraction.

(5) A driver commits the offense of unlawful crossing of a railroad crossing gate or barrier if he drives any vehicle through, around or under a crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

(6) Unlawful crossing of a railroad crossing gate is a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a driver must stop at a railroad grade crossing at a clearly marked stop line or, if none, not less than 10 nor more than 50 feet from the nearest rail when he is made aware of an approaching train either by the warning of a signal device or lowering of a crossing gate or flagman signal, audible signal, or when the approaching train is clearly visible and close enough to be an immediate hazard. Subsection (3) provides that the driver who has stopped for the passing train shall not proceed across the tracks until it is safe. Subsection (5) prohibits a driver from driving through, around or under a crossing gate or barrier.

B. Derivation

This section is based on UVC § 11-701.

C. Relationship to Existing Law

This draft section would replace ORS 483.224 which is verbatim the analogous 1930 UVC section.

ORS 483.224 would be repealed. This section states in specific terms the several means by which a driver is made aware of an approaching train and requires the driver to stop at a specific marked stop line on the near side of the crossing or, if none, at a specific distance from the nearest rail. ORS 483.224 simply requires the driver to stop before traversing the crossing if he is approaching a railroad grade crossing or interurban railway grade crossing and a signal gives warning of an approaching train. There is no exact delineation of stopping place, no rule stating when the driver may proceed again, and no prohibition against going through, around or under a closed gate.

ORS 483.224 applies both to railroad and interurban railway grade crossings in that it uses both terms. This draft provision, although not using the term "interurban railway," likewise is applicable to both in that the definition of "railroad" would include an interurban railway.

Section 68. (Certain vehicles must stop at all railroad grade crossings.) (1) As used in this section:

(a) "Passenger transport vehicle" means a school bus, worker transport bus, a bus operated for transporting children to and from church or an activity or function authorized by a church, or any vehicle used in the transportation of persons for hire by a non-profit entity as provided in subsection (11) of ORS 767.035.

(b) "School bus" means a vehicle as defined in subsection (4) of ORS 485.010.

(c) "Worker transport bus" means a vehicle as defined in subsection (5) of ORS 485.010.

(2) Except as provided in section 69 of this Act, the driver of a motor vehicle described in subsection (3) of this section before crossing at grade any railroad tracks shall:

(a) Stop the vehicle at a clearly marked stop line or, if none, not less than 10 nor more than 50 feet from the nearest rail of the railroad and, while stopped, listen and look in both directions along the tracks for approaching trains and signals indicating approaching train; and

(b) Proceed across the tracks after stopping only when he can do so safely in the gear of the motor vehicle that does not require manually changing gears while proceeding, and without manually changing gears.

(3) This section applies to:

(a) A passenger transport vehicle.

(b) A motor bus designated for, or carrying passengers for hire.

(c) A motor truck carrying explosive substances or inflammable liquids as a cargo or part of a cargo.

(4) A driver of a motor vehicle described in subsection (3) of this section who fails to stop, remain stopped, or proceed after stopping at railroad tracks as required by subsection (2) of this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) defines the term "passenger transport vehicle" as including a school bus, worker transport bus, bus operated for transporting children on church functions or activities, and a vehicle used to transport persons for hire by a non-profit entity. It defines "school bus" and "worker transport bus" in terms of the existing ORS ch 485 definitions.

Subsection (2) provides that a driver of a vehicle described in subsection (3) must stop at a marked stop line or, if none, from 10 to 50 feet from the nearest rail, look carefully and proceed thereafter,

when it is safe to do so, without changing gears. Subsection (3) specifies the types of vehicles which must stop at railroad grade crossings.

B. Derivation

This section is based on subsection (a), UVC § 11-703 (Revised 1971). It also retains portions of subsection (1), ORS 483.228.

C. Relationship to Existing Law

ORS 483.228 and UVC § 11-703 provide that drivers of certain types of vehicles must stop before traversing a railroad grade crossing. The UVC sec-

crossing gates, from paragraph (3), subsection (b), UVC § 11-703. The exceptions of subsection (b), UVC § 11-703, are stated in paragraph (f), subsection (1) of this section, in language similar to that used in paragraph (f), subsection (2), ORS 483.228.

Under ORS 483.040 the Public Utility Commissioner is vested with exclusive jurisdiction over the installation of protective devices at railroad-highway grade crossings. References to "Public Utility Commissioner" are in conformance with ORS 483.040.

Section 70. (Moving heavy equipment at railroad grade crossings.) (1) A person who operates or moves any crawler-type tractor, steam shovel, derrick, roller or any equipment or structure having a normal operating speed of 10 miles per hour or less or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing shall:

(a) Give notice of an intended crossing to a responsible officer of the railroad in time for protection to be given before crossing the tracks; and

(b) Stop before making the crossing at a clearly marked line or, if none, not less than 10 feet nor more than 50 feet from the nearest rail and, while so stopped, shall look and listen in both directions along the tracks for approaching trains and shall not proceed unless the crossing can be made safely.

(2) A person who operates or moves a vehicle, equipment or structure as described in subsection (1) across a railroad grade crossing without giving notice or fails to stop before crossing or proceeds over the crossing when it is unsafe commits a Class C traffic infraction.

(3) A person who operates or moves any vehicle, equipment or structure as described in subsection (1) over a railroad grade crossing where the railroad has provided a flagman shall obey the direction of the flagman.

(4) A person operating or moving any vehicle, equipment or structure across a railroad grade crossing who fails to obey the direction of a flagman provided by the railroad commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that an operator of certain types of heavy vehicles or structures having a normal speed of 10 miles per hour or less and a vertical clearance of less than nine inches must give notice of the intended crossing to a responsible railroad official, stop before traversing a railroad grade crossing at a clearly marked line or, if none, then not less than 10 nor more than 50 feet from the crossing, look and listen for approaching trains and not proceed unless the crossing can be made safely.

Subsection (3) requires the person operating or moving the vehicle or equipment described in subsection (1) to follow the directions of a flagman when the railroad has provided one.

B. Derivation

This section is based on UVC § 11-704.

C. Relationship to Existing Law

This draft section states the provisions of UVC § 11-704 as to normal speed and clearance of the

tion specifies the types of vehicles by providing that authorization be given to the appropriate state agency to adopt regulations in conformance with the most recent U. S. Department of Transportation regulations and these list certain vehicle types. This draft section retains the approach of ORS 483.228 in listing each type of motor vehicle required to stop. It augments the list by adding busses used for transporting children on church functions and activities and those vehicles of non-profit corporations whose operation conforms to the provisions of subsection (11) of ORS 767.035.

The exceptions to the requirement of stopping which are contained in subsection (2), ORS 483.228, are stated in the next section. The UVC requirements that the driver traverse the crossing in a gear which does not require shifting, and not manually shift during the crossing are not contained in ORS 483.228. The provisions of ORS 483.228 and UVC § 11-703 that the driver stop not less than 10 feet or, in the case of the UVC, 15 feet, nor more than 50 feet from the railing are changed to require stopping at a clearly marked line or, if none, not less than 10 feet nor more than 50 feet from the rail. ORS 483.228 would be repealed.

—◇—

Section 69. (Railroad grade crossings exempt from special stopping rule.) (1) The special stopping requirements of section 68 of this Act do not apply:

- (a) At a crossing of a street or highway and street railway tracks;
- (b) To interurban electric tracks where official traffic control signals are in operation and give indication to approaching vehicular traffic to proceed;
- (c) To any railway tracks upon which operation has been abandoned and for which the Public Utility Commissioner has plainly marked that no stop need be made;
- (d) To industry track crossings across which train operations are required by law to be conducted under flag protection;
- (e) To industry track crossings within districts in which the maximum speed of vehicles is 20 miles per hour;
- (f) To any crossing where an officer directs traffic to proceed, or where an operating official traffic control signal indicates that other traffic may proceed; or
- (g) To any crossing protected by crossing gates.

(2) Except when a train is approaching, a driver of a motor bus carrying passengers for hire is not required to stop at crossings where the Public Utility Commissioner has determined and plainly marked that no stop need be made.

COMMENTARY

A. Summary

Subsection (1) states the exceptions to the rule of draft § 68 that certain vehicles must stop at all railroad grade crossings.

Subsection (2) provides that except when a train is approaching, a driver of a motor bus carrying passengers for hire is not required to stop at crossings which have been plainly marked by the Public Utility Commissioner as not requiring a stop.

B. Derivation

This section is based on subsections (2) and (3) of ORS 483.228 and subsection (b) of UVC § 11-703 (Revised 1971).

C. Relationship to Existing Law

The exceptions to the requirement of stopping by certain types of vehicles enumerated in draft § 68 are stated as listed in subsection (2), ORS 483.228, with the addition of railroad crossings protected by

vehicles and equipment which are required by the UVC to stop before crossing at a railroad grade crossing, except that the language of ORS 483.230 requiring notice to be given to a responsible officer of the railway is used instead of the UVC which says notice is to be given to a station agent.

The stopping distances of §§ 67 and 68 of not less than 10 feet nor more than 50 are used for the

instances when there is no clearly marked stop line on the roadway.

The requirement of subsection (d), UVC § 11-704, that a person shall not cross when there is warning of an approaching train is deleted as redundant because this rule has already been stated in § 67. ORS 483.230 would be repealed.

Section 71. (Overtaking and passing school bus.) (1) Except as provided in subsection (2) of this section, when a driver meets or overtakes from either direction a school bus or worker transport bus stopped or stopping on a highway and on which flashing red lights are operating, the driver shall stop before reaching the school or worker transport bus and remain standing until the flashing red lights are no longer actuated.

(2) A driver need not stop his vehicle when he meets or overtakes a school or worker transport bus stopped or stopping on the highway and on which flashing red lights are operating:

(a) On a highway with separate roadways when the bus is on a different roadway; or

(b) On a controlled-access highway when the school or worker transport bus is stopped in a loading zone which is part of or adjacent to the highway and pedestrians are prohibited from crossing the roadway.

(3) Failure to stop before reaching a school or worker transport bus is a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a driver meeting a school bus or worker transport bus from either direction which is either stopped or stopping and on which red lights are flashing shall stop before reaching the bus and remain so until the flashing red lights are turned off.

Subsection (2) states two exceptions to the requirement for stopping: on a highway with separate roadways when the bus and the driver meeting the stopped bus are on different roadways; and on a controlled-access highway when the bus is stopped in a loading zone and pedestrian crossing of the roadway is prohibited.

B. Derivation

This section is based on UVC § 11-706 (Revised 1971).

C. Relationship to Existing Law

Provisions defining and regulating the school bus

and worker transport bus are located in ORS ch 485. The rule of ORS 485.020 requiring a driver to stop when meeting a school bus or worker transport bus stopped on a highway with red lights flashing is in that chapter and applies equally to both types of busses.

This section is a direction to the driver of a vehicle meeting a stopped or stopping bus, whether school or worker transport. Unlike both the UVC rule and the rule of ORS 485.020, the draft section provides that a driver must stop when he overtakes or meets a school or worker transport bus which is stopping, as well as stopped, on the highway with its red lights flashing. Present law limits the requirement to the stopped bus.

The rule of subsection (d), UVC § 11-706, stating an exception to the stopping requirement for the highway having two roadways, and the controlled-access highway where pedestrian crossing is prohibited, is contained in the draft section. The provision of subsection (2), ORS 485.020, making an

exception for a highway having two or more lanes for travel in each direction would be deleted.

ORS 485.020 would be repealed. The provision of subsection (7), ORS 485.020, forbidding school bus drivers from activating flashing red lights except when stopped or stopping to load or unload children or workers is retained in ORS ch 485.

Oregon cases

Burke v. Olson, 206 Or 149, 291 P2d 759 (1955), interpreted ORS 485.020 to exclude from its purview the school child who crosses a highway for a purpose which is neither to board nor leave a bus. The child so doing may not claim a right to cross the highway with motor vehicles stopped to allow such crossing.

When a driver following a school bus fails to stop as the bus stops, moves into the incoming lane and collides with another vehicle which has also failed to stop as required by ORS 485.020, neither driver of the colliding vehicles can claim a right arising out of ORS 485.020. *Johnson v. Hansen*, 237 Or 1, 389 P2d 330, 390 P2d 611 (1964).

When a driver drives his vehicle into the rear end of an automobile stopped in response to a warning light on a stopped school bus, his failure to stop as required by ORS 485.020 (1) is not a violation of a duty owed to the stopped automobile. *Coburn v. Miller*, 248 Or 47, 432 P2d 314 (1967).

Under ORS 485.020 a driver of a school bus was held not authorized to stop the bus on a public highway as opposed to the shoulder of the highway, and the limitations on the right to leave a vehicle standing on the highway of ORS 483.362, prior to its amendment by ch 76, Oregon Laws 1971, were held applicable to school busses. A school bus driver stopped on the public highway at an area where the shoulder was sufficient for parking was therefore in violation of ORS 483.362. *McLain v. Lafferty*, 257 Or 553, 480 P2d 430 (1971).

An administrative regulation authorizing school bus drivers to stop on the highway contrary to the rule of ORS 483.362 (prior to its amendment by ch 76, Oregon Laws 1971), although issued pursuant to ORS 485.050, was invalid insofar as it conflicted with ORS 483.362. *McLain v. Lafferty*, supra.

A school district does not have a duty to deliver each child to his respective home in such a manner that no child would be required to cross the street. When a school bus parks in a private parking lot for the discharge of passengers, and a school child so discharged crosses the street and is struck by a vehicle, the school district is not liable for the child's injuries because the bus stopped in the parking lot instead of in the roadway where it would have activated its flashing red lights. *Sanderlin v. Central School Dist. 13J*, 6 Or App 429, 487 P2d 1399 (1971).



Section 72. (Stopping before driving onto sidewalk from alley, driveway or building.) (1) A driver commits the offense of failure to stop if he does not stop before driving onto a sidewalk or sidewalk area when he emerges from an alley, building, private road or driveway in a business or residence district.

(2) In the event there is no sidewalk or sidewalk area, a driver emerging from an alley, building, private road or driveway, as described in subsection (1) of this section, shall stop at the point nearest the roadway to be entered where the driver has a view of approaching traffic.

(3) Failure to stop on emerging from an alley, building, private road or driveway is a Class C traffic infraction.

COMMENTARY

A. Summary

This section requires a driver emerging from an alley, building, private road or driveway in a business or residence district to stop before driving on the sidewalk or sidewalk area, or, if none, where he can see approaching traffic.

B. Derivation

This section is based on UVC § 11-705 (Revised 1968).

C. Relationship to Existing Law

This section restates the rule of UVC § 11-705 in

a form and style consistent with that of the revised code. The major change made by the 1968 revision of this UVC section from its 1930 version was the addition of the rule of subsection (2) of this draft section. Under UVC § 11-705, the requirement of the driver emerging from an alley or driveway to stop when there is no sidewalk is stated in terms of the point nearest the street to be entered where he has a view of approaching traffic. The word "roadway" has been substituted for "street" in this draft section. "Street" is defined both in UVC § 1-172 and ORS 483.010 to be synonymous with "highway," and includes the sidewalk areas.

Oregon cases

Durkoop v. Mishler, 233 Or 243, 378 P2d 267 (1963), held that ORS 483.222 requires a driver emerging from a driveway to stop and by lookout ascertain whether pedestrians are on the sidewalk before proceeding.

Leite v. Sambo's Restaurants, Inc., 264 Or 498, 506 P2d 176 (1973), held that ORS 483.222, the basis of this draft section, simply requires a duty to stop by the motorist and grants no superior right of way of one party or the other, motorist or pedestrian, while crossing a sidewalk. A sidewalk is a part of the street albeit intended for pedestrian use. ORS 483.222 would be repealed.

ARTICLE 8. SPEED RESTRICTIONS

Section 73. (Basic speed rule.) (1) A person commits the offense of violating the basic speed rule if he drives a vehicle upon a highway at a speed greater than is reasonable and prudent, having due regard to the traffic, surface and width of the highway, the hazard at intersections, weather, visibility and any other conditions then existing.

(2) Violating the basic speed rule is a Class C traffic infraction.

COMMENTARY

A. Summary

This provision restates the basic rule as it is found in ORS 483.102 in a form that states, first, the definition of the offense, and second, its classification for penalty purposes. Weather and visibility have been added as specific factors to be considered in the determination of a reasonable and prudent speed.

B. Derivation

This section restates ORS 483.102.

C. Relationship to Existing Law

The ORS 483.102 statement of the basic speed rule covers by implication all the varying conditions, whether roadway type, traffic, highway conditions or any other which is specifically listed in the basic

rule stated in UVC § 11-801. Washington, Wyoming, Idaho and Alaska are among the 22 states with a basic speed rule taken from UVC § 11-801.

The issue in a charge of violation of the basic rule is whether the driver was traveling faster than was reasonable and prudent, and not whether he was traveling faster than the speed designated under ORS 483.104 for the particular location. *Raww v. Huling and Sparks*, 199 Or 48, 259 P2d 99 (1953); *Lemons v. Holland*, 205 Or 163, 284 P2d 1041, 286 P2d 656 (1955); *Hess v. Larson*, 259 Or 282, 486 P2d 533 (1971).

ORS 483.102 and 483.104 would be repealed. The provisions of ORS 483.104, with amendment, are stated in section 74.

Section 74. (Maximum speeds.) (1) Except where a special hazard exists that requires a lower speed for compliance with section 73, the speed limits designated under this section or section 76 or 78 of this Act shall be maximum lawful speeds. The speeds designated in this section are:

(a) Fifteen miles per hour when driving on an alley.

(b) Twenty miles per hour:

(A) When passing school grounds when children are present, or a school crosswalk when children are present, if notice of the grounds or crosswalk is indicated plainly by signs or signals conforming to ORS 483.044.

(B) In any business district.

(c) Twenty-five miles per hour:

(A) In any residence district.

(B) In public parks, unless a different speed is designated by state or local authorities, as authorized by law, and duly posted.

(d) Fifty-five miles per hour in other locations unless a greater or lesser speed is designated in accordance with section 76 or 78 of this Act which shall be effective when appropriate signs giving notice thereof are erected upon the highway.

(2) A person who drives a vehicle at a speed greater than any of the speed limits specified under subsection (1) of this section commits the offense of speeding.

(3) Speeding is a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that speed limits designated under this section or under §§ 76 and 78 are maximum speeds. The maximum speed is 20 miles when passing school grounds or a crosswalk with children if there is notice and in business districts. The maximum speed is 25 miles per hour in a residence district or in public parks except when a different speed is designated. The maximum speed in other locations is 55 miles per hour unless a greater or lesser speed is designated under § 76 or 78. The maximum speed is 15 miles per hour when driving on an alley.

Subsection (2) provides that a person driving faster than any of these speeds commits the offense of speeding.

B. Derivation

This section is based on UVC § 11-801.1.

C. Relationship to Existing Law

ORS 483.104 would be repealed. Its provisions, with amendments, are stated in this section. Maximum speeds of 20, 25 and 55 miles per hour are designated respectively for the school and school crosswalk area, the business and residence districts and other locations. Under ORS 483.104, any speed in excess of the designated speed is prima facie a violation of the basic speed rule, which is to say, raises a disputable presumption of violation of the basic

speed rule. This section establishes maximum speeds and provides that a person exceeding the specified speeds commits the offense of speeding.

There is no designated speed for drivers proceeding on an alley in ORS 483.104. Designated speed on alleys under existing law is the same as that on the streets and highways in the particular area involved and is set according to the alley's location in a business or residence district or otherwise, except where a different speed is set on a case-by-case basis under ORS 483.108.

Where conditions require a lower speed than specified, the basic speed rule would be violated by a driver proceeding at a maximum designated speed. The basic speed rule stated in § 73 is not altered by this draft section for the driver proceeding at a speed designated as maximum under conditions which require a lesser speed. The basic speed rule does not apply under this draft section to the driver proceeding at a speed greater than one of the designated maximums. He commits the offense of speeding. He has an affirmative defense to a charge of speeding under the provisions of § 75 if he is able to show his speed was reasonable and prudent under the conditions then existing.

Notwithstanding the use of the words "maximum lawful speed," this draft section when read with the one following, does not establish the absolute maximum speeds of UVC § 11-801.1.

According to *Traffic Laws Annotated* 1972, the code has since 1956 provided what is known as the "absolute speed limit rule. Thirty-two states and the District of Columbia provide maximum speed limits that are absolute. Nine states provide that driving faster than a speed limit specified in the law is prima facie evidence that the speed is not reasonable and is unlawful. Oregon is categorized now as having generally prima facie speed limits, with absolute limits for trucks and busses and in the case of posted bridges. Washington, Alaska, Montana and Wyoming are among the 32 states with absolute limits. California has generally prima facie speed

limits, with an absolute maximum of 65 miles per hour. There are many variations among the states in the speeds set for urban and rural school zones; day and night driving conditions and type of vehicle.

This section eliminates the 100 foot distance of ORS 483.104 for the 20 miles per hour speed at grade crossings, and eliminates the references to interurban railway and street railway which are obsolete. It also eliminates the 25 miles per hour speed when approaching within 50 feet of intersections with obstructed views.

◆

Section 75. (Speeding; affirmative defense.) It is an affirmative defense to the offense of speeding that, having due regard to the traffic, weather, visibility, highway and other conditions then existing, the speed at which the person was driving was reasonable and prudent.

COMMENTARY

A. Summary

This section provides for an affirmative defense to the offense of speeding. The term "affirmative defense" is used in the same context as in the Oregon Criminal Code.

B. Derivation

This section has no counterpart in traffic law of any other state.

C. Relationship to Existing Law

The affirmative defense that under the conditions then existing, a person charged with speeding was driving at a reasonable and prudent speed is similar

to the right of the person charged with violating the basic speed rule under ORS 483.102 to rebut the disputable presumption that arises on a showing that the person was driving at a speed greater than a speed designated under ORS 483.104. The effect of these three sections governing speed will be to restrict the charge of violating the basic speed rule to the driver proceeding at a speed which is imprudent because of the conditions. The person charged with speeding has an affirmative defense under § 75 whereby he may show that a speed greater than a maximum designated in § 74 is reasonable and prudent because of the conditions such as good visibility, minimal traffic, etc. ORS 161.055 (2) provides that when an affirmative defense is raised at trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

◆

Section 76. (Special speed limits set by the Transportation Commission.) ORS 483.106 is amended to read:

483.106. Whenever the [*Department of*] Transportation **Commission** determines, upon the basis of an engineering and traffic investigation, that any **maximum** speed designated in [*ORS 483.104*] **section 74 of this 1975 Act** is greater or less than is reasonable or safe under the conditions found to exist upon any state highway, or section thereof, not within the corporate limits of any city, the [*department*] **commission** may designate a [*different*] **reasonable and safe maximum** speed thereupon, which shall be effective when appropriate signs giving notice thereof are erected upon such highway.

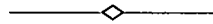
COMMENTARY

This section is amended to give the Transportation Commission rather than the Department of Transportation the authority to set speeds which vary from the speeds designated in § 74. The wording, "maximum speed," is used in conformance with the provisions of § 74 designating maximum speeds.

The authority in UVC § 11-802 to establish different speed limits depending on time of day, type of vehicle and weather conditions was considered by

the committee and rejected on the ground that this broad authority belongs with the legislature and should not be granted to an administrative agency.

Under ORS 483.118 the Department of Transportation has authority to determine and declare maximum speed limits on any public bridge, causeway or viaduct. This section would be repealed as the authority specified is already provided in ORS 483.106.



Section 77. (State Speed Control Board; appointment, vacancy, compensation and expenses of certain members.) (1) There hereby is created the State Speed Control Board. The board shall consist of the Administrator of the Motor Vehicles Division of the Department of Transportation, the Superintendent of the Department of State Police, the Administrator of the Highway Division, and two additional members appointed by the Governor as provided in subsection (2) of this section for a term of two years. The Administrator of the Motor Vehicles Division of the Department of Transportation, the Superintendent of the Department of State Police and the Administrator of the Highway Division may each designate a representative to serve in his place.

(2) In appointing the two additional members of the State Speed Control Board, the Governor shall choose a representative of the interests of cities and a representative of the interests of counties. The League of Oregon Cities and the Association of Oregon Counties may each nominate five persons for appointment as the board member representing the interests of the cities and counties respectively. The Governor shall appoint one of the persons nominated by the League of Oregon Cities and one of the persons nominated by the Association of Oregon Counties as the two board members representing city and county interests respectively. A vacancy in the office of the additional member shall be filled by appointment by the Governor as provided in this subsection for a two-year term.

(3) The board members appointed under subsection (2) of this section are entitled to compensation and expenses as provided in ORS 292.495.

COMMENTARY

A. Summary

Subsection (1) provides for the establishment and composition of the State Speed Control Board.

Subsection (2) provides the method of selection of the board member representing cities and the board member representing counties. Subsection (3)

provides that board members are entitled to compensation and expenses under ORS 292.495.

B. Derivation

This section has no UVC counterpart but is similar to ORS 483.108.

C. Relationship to Existing Law

ORS 483.108 would be repealed and the provisions of this section and § 78 would replace it. This section changes existing board membership provisions by adding a representative of the counties and by

substituting for the Chairman of the State Highway Commission the Administrator of the Highway Division. Powers and duties of the board set out in subsection (4) of ORS 483.108 are stated in the following section.

◆

Section 78. (Powers and duties of State Speed Control Board.)

(1) The board may make or cause to be made an engineering and traffic investigation with respect to the maximum speeds provided in section 74 of this Act applicable to any highway or section of highway upon which the Transportation Commission is not authorized by section 76 of this Act to designate any maximum speed. If requested by a state or local authority or federal agency having jurisdiction over a highway to make such an investigation, the board shall make the investigation or authorize the state or local authority or federal agency having jurisdiction of the highway to proceed with the investigation and make a report thereof to the board. When a state or county highway lies within the corporate limits of a city and is under the jurisdiction of the Transportation Commission or a county, the city governing authority may request the board to make an investigation with respect to the maximum speed on the highway. The board shall make the investigation or authorize the city to proceed with the investigation and make a report thereof to the board. In any event the authority or agency requesting an investigation shall be allowed to participate with the board in the investigation.

(2) When a state or local authority or federal agency having jurisdiction of a highway or a city within whose incorporated limits is located a state or county highway requests an investigation by the board with respect to speed of the highway, it shall do so by written application and shall state in the application the maximum speed recommended by the requesting authority for the highway or section of highway in question.

(3) When an investigation is made in accordance with subsections (1) and (2) of this section, if the board finds that the maximum speed is greater than is reasonable or safe or less than is reasonable under the conditions found to exist at the area investigated, after due notice and opportunity for hearing to the authority or agency affected thereby, it shall give written notice to the authority or agency of any proposed deviation from the maximum designated speed. Within 30 days after receipt of the written notice the state or local authority or federal agency shall file with the board a written statement of objections, if any, to the proposed deviation and may request a hearing thereon. The board shall hold a hearing after giving written notice thereof to the affected agency or authority. The hearing shall be called not less than five days after giving the written notice. The board shall not order a deviation until after consideration of written objections and a hearing if the objecting authority or agency has so requested.

(4) After due consideration of written objections or after hearing if a hearing has been requested the board may designate different maximum speeds on the highways or sections thereof considered pursuant to subsections (1), (2) and (3) of this section. The speeds designated shall be effective when appropriate signs giving notice thereof are erected upon the highway or section of highway.

COMMENTARY

A. Summary

Subsection (1) provides that the board is authorized to make an engineering and traffic study regarding speed on any highway or stretch of highway not in the jurisdiction of the Transportation Commission. The state or local authority or federal agency having jurisdiction or the city in which the highway is located may make the investigation and report the results to the board, and in every case, whether it or the board makes the investigation, has the right to participate with the board in the investigation. It shall make an investigation when so requested by the state or local authority or federal agency having jurisdiction over the particular highway, or by the city within whose corporate limits the highway lies.

Subsection (2) provides that the authority or agency requesting an investigation of the speed on a highway shall do so by written application and state in the application the speed it recommends.

Subsection (3) provides that the board, on receipt of written notice of objections to the speed deviation it recommends, shall consider these objections and if requested hold a hearing.

Subsection (4) provides that the board, after considering the objections and holding a hearing if requested, may order the speed on the highway under consideration changed from the speed designated under § 74, and the speed is effective when signs giving notice are erected.

B. Derivation

The section is similar to ORS 483.108 (4).

C. Relationship to Existing Law

The provisions of subsection (4) of ORS 483.108, which the section replaces, are contained in this section with certain changes. The authority of the Transportation Commission to set speeds under § 76 is limited to state highways exclusive of those in city limits. This authority is exactly parallel to that given in ORS 483.106 to the Highway Commission. The authority of the State Speed Control Board under ORS 483.108 extended only to county and city streets, thus omitting jurisdiction over state highways within city limits, as well as highways on federal lands within the state. This section will allow the board to set speeds on state and county highways in city limits when a city so requests, and on federal agency highways, as well as on city and county highways as authorized under ORS 483.108. The board will be required to investigate when a city so requests. The requesting authority or agency may make the investigation and must in any event be allowed to participate with the board. The requesting agency or authority must state the speed which it recommends that the board set.

The authority to set designated speeds is reworded for consistency with § 74 to give authority to set maximum speeds.



Section 79. (Payment of expenses of board and of expenses in establishing special speed limits.) ORS 483.110 is amended to read:

483.110. The per diem, travel and other expenses of the additional [*member*] **members** of the State Speed Control Board authorized to be paid by [*ORS 483.108*] **section 77 of this 1975 Act** and the expense of any engineering and traffic investigation made pursuant to ORS 483.106 or [*483.108*] **section 78 of this 1975 Act** shall be borne by the department and paid for from the State Highway Fund. The expense of erecting any signs pursuant to such sections shall be borne by the agency having jurisdiction over the street or highway. All such signs shall comply with ORS 483.044.

COMMENTARY

ORS 483.110 is amended to conform to section 77.

Section 80. (Designation of speed in complaint; arrest without warrant in radar cases.) (1) In every charge of violation of the law as to speed consisting of or including violating the basic speed rule or the offense of speeding, the complaint and the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven and the maximum speed designated for the district or location.

(2) When the speed of a vehicle has been checked by radio-micro waves or other electrical device, the driver of the vehicle may be arrested without a warrant if the arresting officer is in uniform and has either:

(a) Observed the recording of the speed of the vehicle by the radiomicro waves or other electrical device; or

(b) Based upon a description of the vehicle or other information received from the officer who has observed the speed of the vehicle recorded, has probable cause to make the arrest.

COMMENTARY

A. Summary

Subsection (1) of this section provides that in every charge of violation of speed law the summons or notice must state the speed at which the person is alleged to have driven and the maximum speed for the location.

Subsection (2) provides that when speed has been checked by an electrical device there may be a warrantless arrest by a uniformed police officer who has observed the electrical recording of the speed, or has probable cause to make the arrest based on the vehicle description or other information received from the officer viewing the recording of speed.

B. Derivation

This section restates portions of ORS 483.112.

C. Relationship to Existing Law

Subsection (3) of ORS 483.112 defines a speed trap as marking off a distance on a highway and calculating speed of a vehicle in relation to time elapsed while the vehicle travels the marked distance. Subsection (2) of ORS 483.112 prohibits admission in evidence of vehicle speed obtained by use of a speed trap as defined. Subsection (4), ORS 483.112, specifically excludes the use of radar or other elec-

trical device from the speed trap definition and authorizes a warrantless arrest by a uniformed officer using radar and observing the speed recording, or receiving a vehicle license number from the officer who did record the speed.

ORS 483.112 would be repealed. The requirements of subsection (1), also found in UVC § 11-807, that a complaint for speed violation state alleged speed is stated in subsection (1) of this section.

The further provision of subsection (1), ORS 483.112, that if a charge also is made of a violation of any other provision of the chapter (meaning other than violation of the basic rule), the complaint and summons shall so specify, is not included in this section as it appeared to authorize the charging of two violations in a single complaint.

The existing provisions defining speed trap and prohibiting its use in evidence are not included in this section as the protection afforded is in fact a sham only because of the obsolete definition which excludes radar.

The term "recorded," as it relates to recording of speed by a police officer using an electrical device is intended to cover the reading by the officer of the speed made by the electrical device and not necessarily a printout of the reading.

Section 81. (Impeding traffic.) (1) A person commits the offense of impeding traffic if he drives a motor vehicle, or combination of motor vehicles, at such a slow speed as to impede or block the normal and reasonable movement of traffic except when he must proceed at a reduced speed for safe operation or in compliance with law or because of emergency.

(2) Impeding traffic is a Class C traffic infraction.

COMMENTARY

A. Summary

The section describes the offense of impeding traffic.

B. Derivation

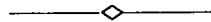
This section is based on subsection (a) of UVC § 11-804.

C. Relationship to Existing Law

ORS 483.114 would be repealed by this section. Its application was restricted to arterial highways. The standard of ORS 483.114 allows the driver to impede traffic when necessary for safe operation under the conditions, or in compliance with law or with police direction. The phrase "in compliance with

law," as used in this draft section, includes the direction of the police officer and adds emergency as an additional ground for impeding. The application of the rule to all highways is expanded.

The provision of the UVC which establishes the offense of impeding, subsection (b), UVC § 11-804, also authorizes state or local authorities on the basis of an engineering and traffic investigation to determine and declare a minimum speed for any highway or section of highway. The committee rejected this concept based on its consideration that the offense of impeding traffic, together with provisions regulating position on highway for trucks and trailers and slow vehicle turnout, cover the problem of the slow driver.



Section 82. (Maximum speeds for motor trucks and passenger transport vehicles.) (1) As used in this section:

(a) "Interstate highway" means a highway that is part of the National System of Interstate and Defense Highways established pursuant to section 103 (d), Title 23, United States Code.

(b) "Passenger transport vehicle" means a school bus, worker transport bus, a bus operated for transporting children to and from church or an activity or function authorized by a church, or any vehicle used in the transportation of persons for hire by a non-profit entity as provided in subsection (11) of ORS 767.035.

(c) "School bus" means a vehicle as defined in subsection (4) of ORS 485.010.

(d) "Worker transport bus" means a vehicle as defined in subsection (5) of ORS 485.010.

(2) A person commits the offense of violating the maximum speed limit for motor trucks if he drives a motor truck at a speed greater than:

(a) Sixty miles per hour or such lesser speed as has been designated on an interstate highway on which a speed greater than the speed designated by section 74 of this Act has been designated under section 76 or 78 of this Act; or

(b) Fifty-five miles per hour on any street, road or highway not an interstate highway.

(3) A person commits the offense of violating the maximum speed limit for passenger transport vehicles if he drives a passenger transport vehicle on any highway at a speed greater than 55 miles per hour.

(4) A person violating subsection (2) or (3) of this section commits a Class B traffic infraction.

(5) This section does not apply to ambulances.

(6) Notwithstanding any other provision of this section, the motor vehicles referred to in this section are subject to the provisions of section 73 of this Act.

COMMENTARY

A. Summary

Subsection (1) defines "interstate highway," "passenger transport vehicle," "school bus" and "worker transport bus."

Subsection (2) provides maximum speed limits for motor trucks which are absolute. Subsection (3) provides a maximum speed limit for passenger transport vehicles of 55 miles per hour. Subsection (5) provides that ambulances are not subject to this section. Subsection (6) provides that the basic speed rule applies to the motor vehicles having the special maximum speed limits of this section.

B. Derivation

This section restates the absolute maximum speed limits for motor trucks, increasing from 50 to 55 miles per hour this limit on highways not interstate highways, and for school and worker transport busses, and adds another category of bus subject to an absolute maximum speed limit, namely, those busses transporting children on church activities.

C. Relationship to Existing Law

ORS 483.116 would be repealed. The provisions of subsections (1) and (2) of ORS 483.116 setting maximum speeds for vehicles with solid tires and metal tires are obsolete. The provisions of subsection (3) of ORS 483.116 setting absolute maximum speeds for motor trucks equipped with pneumatic tires are restated in subsection (2) of this section with deletion of the pneumatic tire proviso as being obsolete. The maximum speed on a highway not a state highway for motor trucks is increased from 50 miles per hour to 55. The absolute speeds set for

motor busses by subsection (4) of ORS 483.116 are not restated in this section. Motor busses will be subject to the same speed laws as passenger vehicles of other types, namely, the basic speed rule, the maximums related to locations and the affirmative defense.

The absolute maximum speed for school busses and worker transport busses of subsection (4), ORS 483.116, is restated in subsection (4) of this section and its application expanded to cover a vehicle defined in subsection (1) of this draft section as a "passenger transport vehicle." This is a new term defined to include with the school and worker transport bus the bus transporting children on church activities, and the vehicle transporting persons for hire by a non-profit entity as provided in subsection (11), ORS 767.035.

The exclusion of hearses from the application of the absolute speed rules of ORS 483.116 has been omitted from this draft section.

Under UVC § 11-806, special speed limits are set for vehicles towing house trailers and for vehicles equipped with solid rubber tires. The laws of 35 states contain one or more lower speed limits applicable to vehicles that exceed a certain size or weight, all or certain combinations of vehicles, busses or vehicles in use for a particular purpose.

The UVC provides absolute maximum speed limits which relate to the type of area, business or rural, and similar factors. Section 11-805 sets forth a special speed limit for the motor-driven cycle. There is no special speed limit in the UVC for busses of the types covered in this section or for trucks.

Section 83. (Speed races prohibited on public ways.) (1) As used in this section, "drag race" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.

(2) As used in this section, "racing" means the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.

(3) A person commits the offense of speed racing on a highway if he drives a vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or makes a speed record, or participates in any manner in any such race, competition, contest, test, or exhibition upon any road, street or highway in this state.

(4) Speed racing on a highway is a Class A traffic infraction.

COMMENTARY

A. Summary

Subsection (1) defines the term "drag race." Subsection (2) defines the term "racing." Subsection (3) establishes the offense of racing and prohibits racing, drag racing and exhibitions of speed on any road or highway of the state, and any manner of participation in racing or speed exhibitions.

B. Derivation

Subsections (1), (2) and (3) are based on UVC § 11-808.

C. Relationship to Existing Law

Oregon law has no definition of drag race or

racing. Of the 15 states which define "drag racing," eight states including Arizona and Idaho duplicate the UVC provision. The definition is not intended to include the organized motoring activities known as rallies where speed or acceleration is not an objective of the contest.

ORS 483.122 (1) prohibits holding a race or speed contest on a road or highway. This draft section is directed to any person driving a vehicle in a race or in any manner participating in a speed race or contest. Liability of a participant in a race prohibited by ORS 483.122 was interpreted in *Lemons v. Kelly*, 239 Or 354, 397 P2d 784 (1964), to extend to third parties injured as a result of the race. ORS 483.122 would be repealed.

Section 84. (Maximum speed on ocean shore.) ORS 483.124 is amended to read:

483.124. [(1) Notwithstanding any other provision of law by which the speed of motor vehicles using the public highways is fixed and determined, the maximum speed of any vehicle or conveyance on any part of the ocean shore is 25 miles per hour.]

(1) Subject to the provisions of law relating to emergency vehicles and ambulances and subject to the basic speed rule, a person commits the offense of violating the maximum speed limit on the ocean shore if he drives a vehicle or conveyance on any part of the

ocean shore in this state at a speed greater than 25 miles per hour or at a lesser speed if designated and posted under subsection (2) of this section.

(2) Whenever the [*Department of*] Transportation **Commission** determines upon the basis of an [*engineering and traffic*] investigation that the speed of 25 miles an hour is greater than is reasonable or safe under the conditions found to exist with respect to any part of the ocean shore, the [*department*] **commission** may establish a maximum speed of less than 25 miles per hour on any specified section of such shore, and that limit shall be effective when posted upon appropriate fixed or variable signs.

(3) Violating the maximum speed limit on the ocean shore is a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides the maximum speed for vehicles on the ocean shore is 25 miles per hour or a lesser speed if designated and posted by the Transportation Commission. Emergency vehicles and ambulances are an exception under the special rules applicable to them. The basic speed rule applies to drivers of all vehicles on the ocean shore.

Subsection (2) provides for the Transportation Commission setting speeds less than 25 miles per hour.

B. Derivation

This section amends ORS 483.124.

C. Relationship to Existing Law

ORS 483.124 is amended to state the offense of violating the maximum speed limit on the ocean shore and to classify the offense. ORS 483.124 did not provide an exception to the speed limit for emergency vehicles as does this draft section. It authorized setting a lower speed after an engineering and traffic study. This section allows a lower speed limit to be set after an investigation which is not limited to traffic and engineering but may include a study of such factors as public safety.

ARTICLE 9. SERIOUS TRAFFIC OFFENSES

Section 85. (Definitions.) As used in this Act, unless the context requires otherwise:

(1) "Criminal negligence" and "recklessly" have the meaning provided for those terms in ORS 161.085.

(2) "Serious traffic offenses" includes:

(a) Dangerous driving as set forth in sections 89 and 90 of this Act.

(b) Driving under the influence of intoxicating liquor, dangerous drugs or narcotic drugs as set forth in section 87 of this Act.

(c) Failure to perform the duties of a driver involved in an accident or collision as set forth in ORS 483.602, and subsection (1) and paragraphs (a) and (b) of subsection (2) of ORS 483.604.

(d) Fleeing or attempting to elude a police officer as set forth in section 91 of this Act.

(e) Driving while suspended or revoked as set forth in section 92 of this Act.

COMMENTARY

(1) The culpability definitions set forth in the Oregon Criminal Code would be adopted by the proposed draft. See, especially, §§ 89 & 90.

ORS 161.085. "(9) 'Recklessly,' when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

"(10) 'Criminal negligence' or 'criminally negligent,' when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross

deviation from the standard of care that a reasonable person would observe in the situation."

ORS 161.125 (2) would also have a significant bearing on the reckless driver who is also intoxicated. It provides that if recklessness is an element of an offense if the defendant, due to drugs or voluntary intoxication, is unaware of a risk of which he would have been otherwise aware, such unawareness is immaterial.

(2) "Serious traffic offenses" include those named offenses, which under the code's classification system are graded as Class A traffic infractions or crimes. Although the term is not necessarily limited in its usage to the sections of this Article, it has particular significance here, and, thus, is located in this Article for convenience of the reader. Vehicular homicides are not included in this definition inasmuch as such crimes are covered by the Criminal Code and would be either manslaughter or criminally negligent homicide, depending upon the degree of culpability involved. See ORS 163.005 to 163.415.

Section 86. (Application of serious traffic offenses upon premises open to the public.) (1) The provisions of this Act relating to the serious traffic offenses defined in subsection (2) of section 85 of this Act apply upon any premises open to the public.

(2) As used in subsection (1) of this section, "premises open to the public" includes any premises open to the general public for the use of motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for the use of the premises.

COMMENTARY

A. Summary

The section applies the provisions relating to serious traffic offenses to "premises open to the public" which would include locations such as parking lots and other areas off the highway. This broadens the application of these provisions beyond the general provision of § 4 which would otherwise apply the rules only to vehicles operated on the highway. The Committee believes that the named offenses, most of which are traffic crimes, involve the kind of conduct that is so flagrant and dangerous as to warrant prohibition of such conduct on non-highway

locations that are open to the general public for the use of motor vehicles.

B. Derivation

The rationale of the section is the same as UVC § 11-101. The definition of "premises open to the public" is based on Wisc Stat Ann § 346. California, Connecticut, Massachusetts and several other states have similar laws.

C. Relationship to Existing Law

There is now no comparable provision.

Section 87. (Driving while under the influence of liquor or drugs.) (1) A person commits the offense of driving while under the influence of liquor or drugs if he drives a vehicle while:

(a) He has .08 percent or more by weight of alcohol in his blood

as shown by chemical analysis of his breath, blood, urine or saliva made under ORS 483.634 to 483.646; or

(b) He is under the influence of intoxicating liquor, a dangerous drug or narcotic drug.

(2) Driving while under the influence of liquor or drugs is a Class A traffic infraction.

COMMENTARY

A. Summary

This section describes the offense in terms of either driving a vehicle with a blood alcohol content of .08 percent or more or while under the influence of liquor or drugs. See Article 14 for further discussion of the penalty for the offense.

B. Derivation

The section is based on UVC § 11-902 (1971). Delaware, Minnesota, Nebraska and New York have laws prohibiting driving with a specified amount of

alcohol in the blood. New York specifies .12 percent or more, while the other three states set the amount at .10 percent.

C. Relationship to Existing Law

ORS 483.992 (2) prohibits driving a vehicle while being under the influence of intoxicating liquor, dangerous drugs or narcotic drugs. ORS 483.999 describes the separate offense of driving a vehicle upon a highway while having .15 percent or more by weight of alcohol in the blood. Both statutes would be repealed.

Section 88. (Use of chemical analysis to show intoxication.)

(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, if the amount of alcohol in the person's blood at the time alleged is less than .08 percent by weight of alcohol as shown by chemical analysis of the person's breath, blood, urine or saliva, it is indirect evidence that may be used to determine whether or not he was then under the influence of intoxicating liquor.

(2) Not less than .08 percent by weight of alcohol in a person's blood constitutes being under the influence of intoxicating liquor.

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

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

COMMENTARY

This section replaces ORS 483.642 which would be repealed. The section is consistent with the newly stated provisions on DUIL in § 87.

Section 89. (Dangerous driving in the second degree.) (1) A person commits the crime of dangerous driving in the second de-

gree if, with criminal negligence, he drives a vehicle in a manner that endangers the safety of persons or property.

(2) Dangerous driving in the second degree is a Class B misdemeanor.

COMMENTARY

See Commentary under § 90.

Section 90. (Dangerous driving in the first degree.) (1) A person commits the crime of dangerous driving in the first degree if he recklessly drives a vehicle in a manner that endangers the safety of persons or property.

(2) Dangerous driving in the first degree is a Class A misdemeanor.

COMMENTARY TO §§ 89 AND 90

A. Summary

These sections propose two degrees of a new traffic crime, "dangerous driving," to replace the existing reckless driving statute. This approach embodies two objectives: Primarily, to eliminate the old crime which is frequently used for plea negotiation purposes in DUI cases; and, secondly, to redefine the crime in the context of criminal culpability in accord with the Criminal Code.

B. Derivation

The proposed sections are new.

C. Relationship to Existing Law

"Reckless driving" is defined in existing law as driving "any vehicle upon a highway carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others." ORS 483.992 (1). The crime is punishable, for a first conviction, by imprisonment

for not more than 90 days, or by a fine of not more than \$500, or both. A second or subsequent conviction is punishable by imprisonment for not more than six months or by a fine of not more than \$2,000, or both. These provisions would be repealed.

ORS 483.343 prohibits driving in "a careless manner," defined as meaning "in a manner that endangers or would be likely to endanger any person or property." The penalty is imprisonment for not more than 60 days or \$250 fine, or both. This statute would be repealed.

A Class A misdemeanor is punishable by not more than one year's imprisonment or \$1,000 fine, or both. A Class B misdemeanor has a penalty of not more than six month's imprisonment or \$500 fine, or both.

For a discussion of the reckless driving statute and "wilful and wanton" misconduct, see *State v. Wilcox*, 216 Or 110, 337 P2d 797 (1959).

Section 91. (Fleeing or attempting to elude a police officer.)

(1) A driver of a motor vehicle commits the crime of fleeing or attempting to elude a police officer if, when given visual or audible signal to bring the vehicle to a stop, he knowingly flees or attempts to elude a pursuing police vehicle.

(2) The signal given by the police officer may be by hand, voice, emergency light or siren.

(3) As used in this section, "police officer" means a sheriff, municipal policeman or member of the Oregon State Police in uni-

form, prominently displaying his badge of office and who is operating a vehicle appropriately marked showing it to be an official police vehicle.

(4) Fleeing or attempting to elude a police officer is a Class A misdemeanor.

COMMENTARY

This section defines the offense so as to follow UVC § 11-904 more closely. ORS 483.049 would be repealed. Existing Oregon law, the UVC and the pro-

posed section are all very similar, although the penalties differ considerably among the three versions.



Section 92. (Driving while suspended or revoked.) (1) A person commits the crime of driving while suspended or revoked if he drives a motor vehicle upon a highway during a period when his license or permit to drive a motor vehicle or his right to apply for a license to drive a motor vehicle in this state has been suspended by a court or by the division or revoked by the division.

(2) In a prosecution under subsection (1) of this section, it is an affirmative defense that:

(a) An injury or immediate threat of injury to human or animal life and the urgency of the circumstances made it necessary for the defendant to drive a motor vehicle at the time and place in question; or

(b) The defendant had not received notice of his suspension or revocation as required by ORS 482.570.

(3) The affirmative defense under paragraph (b) of subsection (2) of this section shall not be available to the defendant if:

(a) The defendant refused to sign a receipt for the certified mail containing the notice;

(b) The notice could not be delivered to the defendant because he had not notified the division of a change in his residence as required by subsection (2) of ORS 482.290; or

(c) At a previous court appearance, the defendant had been informed by a trial judge that the judge was ordering a suspension of the defendant's license, permit or right to apply.

(4) Except as provided in subsection (5) of this section, driving while suspended or revoked is a Class A misdemeanor.

(5) Driving while suspended or revoked is a Class C felony if the suspension or revocation was the result of conviction for any of the following offenses:

(a) Manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle.

(b) Any crime punishable as a felony in the commission of which a motor vehicle was used.

- (c) Failure to perform the duties of a driver involved in an accident or collision which results in physical injury to any person.
- (d) Dangerous driving in the first or second degree.
- (e) Fleeing or attempting to elude a police officer.
- (f) Driving while under the influence of intoxicating liquor, dangerous drugs or narcotic drugs.
- (g) Reckless driving.

COMMENTARY

A. Summary

Subsection (1) restates the crime of driving while suspended or revoked. Subsection (2) sets forth two affirmative defenses to the charge. Paragraph (a) is cast under the existing statute as an exception and has been restated in the draft section.

Paragraph (b) places the burden on the defendant to prove by a preponderance of the evidence that he did not receive the required notice of suspension or revocation. See ORS 161.055. The most vexatious problem that has plagued officials in their attempts to enforce the prohibition against driving while suspended has been their inability to locate the licensee to notify him of the suspension or to prove at trial that notice was received.

Subsection (3) deals with this dilemma by making the defense unavailable if the certified mail containing the notice has been refused or if the defendant has not kept the division advised of his residence as required by statute. This approach to the notice problem is consistent with *State v. Buen, infra*. ORS 482.570 is amended to delete the provision for mandatory personal service when the certified mail is returned, receipt unsigned. Paragraph (c) takes away the defense if the defendant was previously put on notice by a judge that a suspension of the license was to be ordered by the judge.

Subsections (4) and (5) classify the offense on the basis of the underlying reason for the suspension or revocation. If the defendant's driving privileges have been removed because of conviction for one of the serious offenses stated, his subsequent act of driving while suspended or revoked would be a Class C felony instead of a Class A misdemeanor.

The Committee fully understands the procedural implications involved in classifying the crime as a felony; however, it believes that a person who continues to drive after his license has been taken from him for conviction of a serious traffic offense exhibits such a flagrant disregard for the law and the rights and safety of others as to deserve felony sanctions.

B. Derivation

The section is based, in part, on ORS 482.650, which would be repealed, but the affirmative defenses and penalties are new.

C. Relationship to Existing Law

Oregon Cases

In *State v. Buen*, 13 Or App 426, 509 P2d 865 (1973), the defendant was convicted in three separate trials of DWS. A certified copy of suspension was mailed to his address, return receipt requested. The receipt was returned, signed by another, with the defendant's name written below the signature. In district court defendant was sentenced to four days, eight days and sixteen days. In circuit court the defendant was sentenced to thirty days, six months and one year, to run consecutively. The Court of Appeals affirmed.

The defendant first contended that he had not received adequate notice of suspension. The court noted that prior to 1971 ORS 482.570 provided that notice by mailing is afforded a disputable presumption of receipt. In 1971 the legislature removed the disputable presumption language and said that notice is given by mailing the notice by certified mail, return receipt requested, or by personal service. Proof of the following of this procedure by the MVD alone is sufficient to support conviction. Further, ORS 482.290 (2) requires a driver to notify the MVD of a change of address. With regard to the sentence, the court relied on *State v. Madden*, 10 Or App 643, 501 P2d 71 (1972), in holding the sentence legal.

State v. Cesaro, 8 Or App 273, 494 P2d 255 (1972), was a case in which the defendant was cited for speeding in Medford. The citation contained the statutory notice that failure to appear could result in a warrant for arrest or suspension or both. ORS 484.150 (7) (a). Defendant failed to appear in municipal court. The court sent him notice to appear on a certain date. Defendant claimed he never received the notice. After the second date, the court sent notice to MVD and defendant's license was suspended. Defendant was convicted three times of

driving while suspended. The Court of Appeals affirmed.

Defendant contended the procedure violated due process in that it did not give him notice and an opportunity to be heard prior to suspension. The court held that the defendant had been given notice and an opportunity to be heard through the statutory notice on the citation. Defendant conceded that an arrest warrant could issue without additional notice and an opportunity to be heard. The same is true of suspension. This is similar to forfeiture of bail, ORS 484.130, or a default judgment in a civil case, ORS 18.080.

In *State v. Miles*, 8 Or App 189, 492 P2d 497 (1972), the defendant was convicted of DUIL, driving while suspended and driving with no operator's license in possession (discussion of DUIL issues omitted). Defendant contended that he could not be convicted of DWS and no operator's license based on the same act of driving. The Court of Appeals reversed as to this issue and vacated the no operator's license charge.

ORS 482.650 (DWS) and 482.300 (2) (no operator's license) are two separate offenses. One may not, however, be convicted of both. No operator's

license presumes the driver had a valid license. DWS presumes the nonexistence of a valid license to operate a motor vehicle. Thus the two charges are incompatible.

In *City of Oakland v. Moore*, 1 Or App 80, 457 P2d 659 (1969), the defendant was convicted of driving while his right to apply was suspended. The officer checked "no licensed operator" and "suspended" boxes on the Uniform Traffic Citation. The Court of Appeals affirmed.

The defendant alleged that the citation was sufficient to charge only driving while suspended and not driving while right to apply suspended. The court first noted that the legislature, in adopting the Uniform Traffic Citation, intended a minimum of formality. The citation is effective even though the person must make reasonable inquiry of the officer or another person to determine the crime charged. *State v. Waggoner*, 228 Or 334, 365 P2d 291 (1961).

ORS 482.010 (7) (b) defines "license" to include "the privilege of any person to drive a motor vehicle whether or not such person holds a valid license." This broad definition would include driving while right to apply is suspended.

◆

Section 93. (Adding penalty section to ORS 483.602 to 483.612.)
Section 94 of this Act is added to and made a part of ORS 483.602 to 483.612.

COMMENTARY

See commentary under § 94.

◆

Section 94. (Penalties for failure to perform duties required after accidents.) (1) A driver involved in an accident which results in injury or death to any person and who fails to perform the duties required under ORS 483.602 commits a Class C felony.

(2) A driver involved in an accident which results only in damage to a vehicle which is driven or attended by any other person and who fails to perform the duties required under ORS 483.602 commits a Class A traffic infraction.

(3) A driver involved in an accident which results only in damage to an unattended vehicle or the property of another and who fails to perform the duties required under ORS 483.604 commits a Class A traffic infraction.

(4) A driver involved in an accident who fails to make the accident reports required under ORS 483.606 commits a Class B traffic infraction.

(5) A witness to an accident who fails to perform the duties required under subsection (3) of ORS 483.602 commits a Class B traffic infraction.

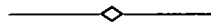
COMMENTARY TO §§ 93 AND 94

These sections establish penalties for the offenses committed by persons who fail to perform the af-

firmative duties required under the "hit and run" statutes.

SUPPLEMENTARY COMMENTARY

Related changes to numerous existing statutes in ORS chapters 482, 483 and 484 are made in Article 16, Miscellaneous Provisions.



ARTICLE 10. STOPPING, STANDING AND PARKING

Section 95. (Stopping, standing or parking outside business or residence districts.) (1) A person who parks or leaves standing any vehicle, whether attended or unattended, upon a roadway outside a business or residence district, when it is practicable to park or leave his vehicle standing off the roadway, commits the offense of unlawfully parking in a roadway.

(2) Unlawfully parking in a roadway is a Class D traffic infraction.

(3) A person shall not park or leave standing a vehicle, whether attended or unattended, on a highway unless:

(a) A clear and unobstructed width of the highway opposite the standing vehicle is left for the passage of other vehicles; and

(b) The standing vehicle is visible from a distance of 200 feet in each direction upon the highway.

(4) A person who violates subsection (3) of this section commits a Class D traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a person shall not park or leave standing a vehicle on a roadway outside a business or residence district when he can leave it off the roadway. Subsection (3) prohibits parking on a highway unless there is a clear unobstructed highway width for passage of other vehicles and the standing vehicle is visible for at least 200 feet in each direction.

B. Derivation

This section is substantially the same as subsection (1) of ORS 483.362 and UVC § 11-1001 (a) (Revised 1971).

C. Relationship to Existing Law

Subsection (a) of UVC § 11-1001 applies to the stopping or parking or leaving standing of a vehicle upon a roadway. Subsection (1), ORS 483.362, applies to the vehicle left standing upon the paved, improved or main traveled portion of a highway. The UVC definition of "roadway" is the part of a highway improved or ordinarily used for vehicular traffic, exclusive of the berm or shoulder. This section uses the term "roadway" as it is defined in the UVC and as defined in § 2. The term "roadway," defined to exclude the shoulder, will make the application of the rule of subsection (1) of the section more specific than present law which applies to the

paved or improved or main traveled portion of the highway.

The terms "parking" and "standing" have not been defined in the existing Oregon statutes but are defined in § 2.

Since the definitions of both terms exclude the temporary stop for loading and unloading passengers, the stopping of the school bus and worker transport bus for this purpose is not a violation of UVC § 11-1001 or this section. These exceptions are stated in subsection (3), ORS 483.362. The exception of subsection (3), ORS 483.362, for the emergency vehicle to the general rule is stated in §§ 11 and 12.

The provisions of subsection (3) of the draft section prohibiting leaving a vehicle on a highway unless there is an unobstructed width of highway available for passing traffic or an unobstructed view for 200 feet, is the same rule as existing Oregon law and UVC § 11-1001, except that the Oregon rule stipulates a width of not less than 16 feet.

"Parking" was defined in *Townsend v. Jaloff*, 124

Or 644, 649, 264 P 349 (1928), and *Dixon v. Jackson*, 256 Or 525, 474 P2d 522 (1970), as the voluntary act of leaving a car on the main traveled portion of the highway when not in use. The prohibition of ORS 483.362 against standing or parking in the main traveled portion of the highway does not apply to a vehicle stopped or standing preparatory to making a left turn. *Wells v. Washington County*, 243 Or 246, 412 P2d 798 (1966).

Where a disabled vehicle could have been moved so as to allow 16 feet clearance space for the passage of other vehicles, and there was a reasonable opportunity to move it, albeit by means other than its own power, the disabled vehicle may not obstruct the highway for a protracted length of time. *Shelton v. Lowell*, 196 Or 430, 249 P2d 958 (1952).

ORS 483.362 would be repealed. The provisions of subsection (1) are restated in this section. The provisions of subsection (2), with amendments, are in § 100, those of paragraph (a), subsection (3) in § 98, and those of subsection (4) in § 99.

◆

Section 96. (Stopping, standing or parking prohibited in specific places.) (1) A driver shall not stop, stand or park a vehicle:

- (a) On the roadway side of a vehicle stopped or parked at the edge or curb of a highway;
- (b) On a sidewalk;
- (c) Within an intersection;
- (d) On a crosswalk;
- (e) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs and markings;
- (f) Alongside or opposite a street excavation or obstruction when stopping, standing or parking would obstruct traffic;
- (g) Upon a bridge or other elevated structure upon a highway or within a highway tunnel;
- (h) On any railroad tracks;
- (i) On a controlled-access highway;
- (j) In the area between roadways of a divided highway, including crossovers; or
- (k) At any place where official signs prohibit stopping.

(2) A driver shall not stand or park a vehicle, except momentarily to pick up or discharge a passenger:

- (a) In front of a public or private driveway, except with the owner's permission;
- (b) Within 10 feet of a fire hydrant;

- (c) Within 20 feet of a crosswalk at an intersection;
 - (d) Within 30 feet upon the approach to an official flashing signal, stop sign, yield sign or traffic control signal located at the side of the roadway;
 - (e) Within 15 feet of the driveway entrance to a fire station and on the side of a street opposite the entrance to a fire station, within 75 feet of the entrance; or
 - (f) At any place where official signs prohibit standing.
- (3) A driver shall not park a vehicle except momentarily for the purpose of and while actually engaged in loading or unloading property or passengers:
- (a) Within 50 feet of the nearest rail of a railroad crossing; or
 - (b) At any place where official signs prohibit parking.
- (4) The restrictions and prohibitions of subsections (1), (2) and (3) of this section shall not apply when the driver's disregard thereof is necessary to avoid conflict with other traffic, or in compliance with law or at the direction of a police officer or an official traffic control device.
- (5) A driver who violates this section commits a Class D traffic infraction.

COMMENTARY

A. Summary

This section prohibits stopping, standing or parking by a driver in specific enumerated locations. Subsection (1) lists the locations where parking is at all times prohibited. Subsection (2) lists those locations where standing or parking is prohibited except momentarily to discharge or pick up a passenger. Subsection (3) lists those places or areas prohibiting parking except momentarily to unload or load property or passengers.

B. Derivation

This enumeration of areas prohibited for parking, stopping and standing is based on UVC § 11-1003. The prohibitions against all three types of actions of subsection (a) of UVC § 11-1003 are similar to ORS 483.364.

C. Relationship to Existing Law

The prohibitions of subsections (2), against standing or parking, and (3), against parking, of this section are based on UVC § 11-1003 and have no counterpart in the Oregon code. The distance from a fire hydrant of subsection (7), ORS 483.364, was retained at 10 feet rather than changed to the UVC distance of 15 feet as the committee believed that distance

to be ample for safety and the expense of changing all parking meters and signs relating to the distance of 15 feet was not justifiable.

Adoption of the UVC prohibition against parking on a bridge or other elevated structure of paragraph (g), subsection (1) of the section, was done with the realization that parking would be allowed on some bridges and notice would be given by appropriate signs.

The provision of subsection (b), UVC § 11-1003, against a person moving a vehicle not lawfully under the control of that person was not adopted because the illegal moving of a car is adequately covered by the criminal code. (See ORS 164.135).

Standing or parking in front of a public or private driveway is prohibited except when the owner gives permission under paragraph (a), subsection (2) of the section, other than momentarily to pick up or discharge passengers. Under present law, parking in front of a driveway is prohibited at all times if the driveway is private.

The prohibition against parking within 30 feet of a flashing signal, stop sign, yield sign or other traffic control signal of UVC § 11-1003 expands the similar subsection of ORS 483.364 by adding the yield sign to the other enumerated signs and signals.

Section 97. (Parking distance from curb or edge.) (1) Where parallel parking is permitted on a highway by the state or local authority having jurisdiction thereof, when a driver stops or parks a vehicle upon a two-way highway he shall position the vehicle so that the right-hand wheels are parallel to and within 12 inches of the right curb or, if none, as close as possible to the right edge of the right shoulder.

(2) Where parallel parking is permitted, and parking on the left side of the highway is permitted, a driver shall stop or park a vehicle on a one-way highway either on the right side thereof in accordance with the requirements of subsection (1) of this section or on the left side of the highway. When a driver stops or parks a vehicle on the left side, he shall position the vehicle so that the left-hand wheels are parallel to and within 12 inches of the left curb or, if none, as close as possible to the left edge of the left shoulder.

(3) A driver who violates this section commits a Class D traffic infraction.

COMMENTARY

A. Summary

This section requires the driver stopping or parking his vehicle on a highway, where parallel parking is permitted, to do so by positioning the vehicle parallel to the curb or right edge so that the wheels are 12 inches from the curb or right edge of the right shoulder. If he parks or stops on a one-way highway, the driver may park on the left or right side. The wheels must be 12 inches from whichever side of the highway the driver has elected. If local authorities prohibit parking on the left, then the driver may not do so.

B. Derivation

This section is based on subsections (a) and (b) of UVC § 11-1004 (Revised 1971).

C. Relationship to Existing Law

This draft section has no counterpart in existing Oregon law. Subsection (c), UVC § 11-1004, authorizes angle parking subject to obtaining permission on federal or state highways from the appropriate state agency based on a determination that the roadway is of sufficient width. Subsection (d), UVC § 11-1004, authorizes the state agency to control and regulate parking on state highways. Rules comparable to the subject matter of these two subsections are located in Article 15. The provisions of existing law stating where the authority over parking regulation reposes are ORS 483.346, 483.348 and 483.350. See §§ 166, 167 and 168.

—◇—

Section 98. (Disabled vehicle exception.) The provisions of sections 95, 96 and 97 of this Act do not apply to the driver of a vehicle which is disabled in such manner and to such extent that the driver cannot avoid stopping or temporarily leaving the disabled vehicle in a position prohibited by one or more provisions of sections 95, 96 or 97 of this Act.

COMMENTARY

A. Summary

This section allows the driver of a disabled vehicle to park or leave standing a vehicle in a manner prohibited by §§ 95, 96 and 97.

B. Derivation

The rule of this section is stated in subsection (3), paragraph (a), ORS 483.362, but with application only to the prohibition against parking or standing

in the roadway outside a business or residence district. Subsection (b), UVC § 11-1001, states this rule as it applies to all three sections on parking regulations.

C. Relationship to Existing Law

Under existing law the driver of a disabled vehicle may not park in any of the areas specifically

prohibited in ORS 483.364. This section allows the driver to stop or park or temporarily leave standing a disabled vehicle notwithstanding the fact that he may be violating the provisions of §§ 95, 96 or 97.



Section 99. (Obstruction of roadway by wrecker or tow car.)

(1) The operator of a wrecker or tow car engaged in the salvaging of another vehicle may stop the wrecker or tow car where it obstructs traffic proceeding along the roadway when the operator:

(a) Determines that the salvaging operation requires stopping the wrecker in the roadway;

(b) Places warning signs or signals as prescribed by the Transportation Commission at a suitable distance in each direction upon the roadway; and

(c) Activates the amber or red light of a revolving type as provided in subsection (1) of ORS 483.423.

(2) A person who violates this section commits a Class D traffic infraction.

COMMENTARY

A. Summary

This section restates the rule of subsection (4), ORS 483.362, authorizing a wrecker or tow truck operator to stop the vehicle in a way that obstructs traffic in a roadway.

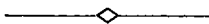
B. Derivation

This section is based on existing Oregon law.

C. Relationship to Existing Law

The present rule allows a wrecker or tow truck to stop in the roadway and obstruct traffic, if neces-

sary, to salvage a vehicle when suitable signs are put out. Paragraph (d), subsection (1), ORS 483.423, provides that a tow truck shall be equipped with an amber or red light of revolving type which the operator shall activate when connecting with another vehicle or while drawing a disabled vehicle onto a highway. Provisions for flares are stated in ORS 483.456.



Section 100. (Police officers authorized to move vehicles.) When a police officer finds a vehicle parked or standing upon a highway in violation of section 95, 96 or 97 of this Act, the officer may move the vehicle, cause it to be moved or require the driver or person in charge of the vehicle to move it to a position permitted under section 95, 96 or 97 of this Act.

COMMENTARY

A. Summary

This section authorizes a police officer to move or cause to be moved a vehicle parked or standing upon a highway in violation of any of the prohibitions or regulations of §§ 95, 96 or 97.

B. Derivation

This section is similar to subsection (2), ORS 483.362, and to subsection (a), UVC § 11-1002 (Revised 1971).

C. Relationship to Existing Law

Under the provision of subsection (2), ORS 483.362, a police officer finding a vehicle on a highway, meaning from one boundary of the right of way to the other boundary, in violation of subsection (1) of ORS 483.362, outside a business or residence district, may move the vehicle, or require the driver to move it, to a position not in violation of the rule of subsection (1), ORS 483.362.

The comparable UVC rule of subsection (a), UVC § 11-1002, authorizes a police officer to move a vehicle off the roadway when it is in violation of the rules of UVC § 11-1001. UVC § 11-1002 contains three additional subsections which relate respectively to authority to move an unattended vehicle illegally left standing on a highway where it obstructs traffic, to move a vehicle reported stolen or

which cannot be taken care of by the person in charge of the vehicle, and to move a vehicle when its driver has been arrested and must be taken before a magistrate forthwith. In these three subsections the police officer is authorized to move the vehicle to a place of safety and, in the situation of the unattended illegally parked vehicle, to a garage or other place of safety. Similar provisions of Oregon law are ORS 483.382, which authorizes the state police or sheriff to take custody of vehicles left parked or standing in excess of five days, and ORS 484.222, which authorizes impoundment of the motor vehicle of a driver convicted of driving with a suspended license in violation of ORS 482.650.

This section allows a police officer, finding a vehicle parked or standing in violation of the regulations or prohibitions of §§ 95, 96 or 97 to move or have moved the vehicle to a permitted position. The rule applies whether the vehicle is on the roadway or on a part of the highway such as the shoulder or bicycle lane which, depending upon the circumstances, may be illegal. It allows moving the vehicle if it is parked or standing either in a prohibited area under § 96, or not parallel to the road or highway edge and within 12 inches thereof under § 97. The rule of subsection (b), UVC § 11-1002, limits the authority of the police officer to move an unattended vehicle illegally left standing on a highway to the situation where it is obstructing normal traffic movement.

—◇—

Section 101. (Parking vehicle on state highway for vending purposes prohibited.) (1) A driver commits the offense of unlawful parking for vending purposes if he parks or leaves standing a vehicle on a right of way of a state highway for the purpose of advertising, selling or offering merchandise for sale.

(2) Unlawful parking for vending purposes is a Class D traffic infraction.

COMMENTARY

This section restates the provisions of ORS 483.347, which would be repealed, for the purpose of consistency of style and form.

—◇—

ARTICLE 11. MISCELLANEOUS RULES

Section 102. (Unattended motor vehicle.) (1) A person driving or in charge of a motor vehicle commits the offense of failure to secure a motor vehicle if he permits it to stand unattended on a highway without first stopping the engine, locking the ignition, removing

the key from the ignition, effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

(2) Failure to secure a motor vehicle is a Class C traffic infraction.

COMMENTARY

A. Summary

This section requires a person to lock and remove the key from a motor vehicle, set the brakes and turn the front wheels to the highway edge before leaving the motor vehicle unattended on a highway.

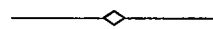
B. Derivation

This section is based on UVC § 11-1101 (Revised 1968).

C. Relationship to Existing Law

ORS 483.366 requires the person in control of a

motor vehicle to set the brakes and stop the motor and, on a grade, turn the front wheels to the curb side of the highway. This draft section incorporates the additional requirements of UVC § 11-1101 that the ignition be locked and the key removed and adds the specific requirement that the offense take place on a highway. The word "unattended" as used in this section applies when a driver or person in charge is not in the immediate vicinity of the vehicle. ORS 483.366 would be repealed.



Section 103. (Limitations on backing.) (1) A driver commits the offense of illegal backing if he backs his vehicle when it is not safe to do so or it causes interference with other traffic.

(2) Illegal backing is a Class C traffic infraction.

COMMENTARY

A. Summary

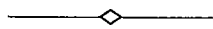
The section prohibits a driver from backing unless backing the vehicle can be done safely and without interfering with other traffic.

B. Derivation

This section is based on UVC § 11-1102 (New 1962).

C. Relationship to Existing Law

There is no comparable provision in the Oregon traffic laws.



Section 104. (Passengers in front seat; interfering with driver; in mobile home or travel trailer.) (1) A driver shall not operate a vehicle:

(a) Which is so loaded as to obstruct his view to the front or sides or to interfere with his control or with the driving mechanism; or

(b) When he has in his lap or in his embrace a person, baggage or encumbrance which prevents the free unhampered operation of the vehicle.

(2) A passenger in a vehicle shall not ride in a position that interferes with the driver's view to the front or sides or the driver's control of the driving mechanism.

(3) A driver shall not operate a vehicle on a highway while towing a mobile home or travel trailer, as defined by ORS 481.021, containing a passenger.

(4) A person violating this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) prohibits a driver from driving a vehicle loaded so that his view or control over the driving mechanism are interfered with or when he has in his lap or embrace a person or thing which interferes with his driving.

Subsection (2) prohibits a passenger in a vehicle from riding in such a position as to interfere with the driver's view or control.

Subsection (3) prohibits a driver from operating a vehicle while towing a mobile home or travel trailer as these terms are defined, while containing a passenger.

B. Derivation

This section is similar to UVC § 11-1104. It is basically identical to ORS 483.538 which would be repealed.

C. Relationship to Existing Law

The gist or basic thrust of subsection (1) is to prohibit any interference with a driver's operation of a vehicle, whether by a person or by baggage or load.

UVC § 11-1104 prohibits driving a vehicle when there are more than three persons in the front seat. Since trucks and pickups not uncommonly are designed for four persons in the front seat, this UVC rule was rejected.

UVC § 11-1106 prohibits persons from occupying a house trailer while being moved on the public highway. This provision was rejected in favor of retaining the rule of subsection (3), ORS 483.538, prohibiting a driver from operating a vehicle towing a mobile home or travel trailer with a passenger inside.

Section 105. (Opening and closing vehicle door.) (1) A person commits the offense of unlawful opening or closing vehicle door if he opens the door of a vehicle on the side available to moving traffic, except:

- (a) When it is reasonably safe to do so; and
- (b) When it can be done without interfering with the movement of traffic.

(2) A person shall not leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

(3) Unlawful opening or closing vehicle door or leaving vehicle door open is a Class D traffic infraction.

COMMENTARY

A. Summary

Subsection (1) prohibits opening or closing vehicle doors except when safe and not an interference with traffic. Subsection (2) prohibits leaving a vehicle door open on the vehicle side next to traffic longer than necessary for loading or unloading passengers.

B. Derivation

This section is based on UVC § 11-1105 (Revised 1962).

C. Relationship to Existing Law

There is no comparable provision in Oregon Law.

Section 106. (Coasting prohibited.) (1) A driver commits the offense of coasting if upon a downgrade he coasts with the gears or transmission of his motor vehicle in neutral or with the clutch disengaged.

(2) Coasting upon a downgrade is a Class C traffic infraction.

COMMENTARY

A. Summary

The section provides that a driver of any motor vehicle shall not coast on a downgrade with the gears or transmission in neutral or the clutch disengaged.

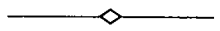
B. Derivation

This section is based on UVC § 11-1108 (Revised 1968).

C. Relationship to Existing Law

Under UVC § 11-1108 a driver of any motor ve-

hicle is prohibited from coasting with the gears or transmission in neutral. The bus or truck driver may not coast downhill with clutch disengaged. ORS 483.336 makes a similar distinction. The distinction in the UVC rules between "any motor vehicle" and trucks and busses is removed by this draft section which emphasizes the result that occurs from either act in any motor vehicle. ORS 483.336 would be repealed.



Section 107. (Following fire apparatus prohibited.) (1) A driver commits the offense of unlawfully following fire or emergency apparatus if:

(a) He follows any fire or emergency apparatus traveling in response to a fire alarm closer than 500 feet; or

(b) He drives or parks his vehicle in a manner which interferes with the fire or emergency apparatus responding to a fire alarm.

(2) Notwithstanding the provisions of subsection (1) of this section, a driver on official fire fighting, police or emergency business may follow within 500 feet of fire or emergency apparatus traveling in response to a fire alarm and drive into or park his vehicle in the area or vicinity where the apparatus has stopped in response to the alarm.

(3) A person who violates this section commits a Class C traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a driver shall not follow fire or emergency apparatus responding to a fire alarm closer than 500 feet, or drive or park in a manner that interferes with the fire or emergency apparatus.

Subsection (2) excepts the driver on official fire fighting, police or emergency business from the prohibitions of subsection (1).

B. Derivation

This section is similar to UVC § 11-1109 (Revised 1971), and ORS 483.330 in the prohibition against following fire apparatus closer than 500 feet. It differs from both in the guideline stated for driving into or parking in the area where fire apparatus has stopped in response to an alarm.

C. Relationship to Existing Law

ORS 483.330 sets a standard of two blocks from

where fire apparatus responding to an alarm has stopped or three blocks from a fire, for drivers not on official business coming close to a fire. The UVC standard is 500 feet from where fire apparatus has stopped. This section prohibits a driver from driving into or parking in the area according to whether

there is or would be any interference with the fire equipment.

The term, "official business," used to qualify the exceptions to the prohibition of subsection (1), is expanded to "fire fighting, police or emergency business."

Section 108. (Crossing fire hose.) (1) A driver commits the offense of unlawfully crossing a fire hose if he drives over unprotected hose of a fire department laid down on any highway, private road or driveway to be used at any fire or alarm of fire, unless he first obtains the permission of the fire department official in command.

(2) Unlawfully crossing a fire hose is a Class C traffic infraction.

COMMENTARY

This section contains the same substantive provisions as ORS 483.332 except that the reference to streetcars is deleted. ORS 483.332 would be repealed.

Section 109. (Removing injurious substance from highway.) (1) A tow truck operator removing a wrecked or damaged vehicle from a highway commits the offense of failure to remove injurious substance from a highway if he fails to remove any glass or other injurious substance dropped upon the highway from such vehicle.

(2) Failure to remove injurious substance from a highway is a Class C traffic infraction.

COMMENTARY

A. Summary

This section requires a person removing a damaged vehicle from a highway to remove whatever injurious substance fell off the vehicle onto the highway.

B. Derivation

The provision is drawn from subsection (c), UVC § 11-1111.

C. Relationship to Existing Law

ORS 164.805 defines the crime of offensive littering and prohibits an intentional act which degrades the appearance or detracts from the cleanliness or safety of property, including a public way. It does not include an unintended act or omission. This section establishes a positive duty to remove debris from a highway by the tow truck operator removing the wrecked vehicle, and a violation takes place regardless of the intention of the actor.

Section 110. (Stop when traffic obstructed.) (1) A driver commits the offense of obstructing cross traffic if he enters an intersection or a marked crosswalk or drives onto any railroad grade crossing when there is not sufficient space on the other side of the

intersection, crosswalk or railroad grade crossing to accommodate the vehicle he is operating without obstructing the passage of other vehicles, pedestrians or railroad trains, notwithstanding any traffic control signal indication to proceed.

(2) Obstructing cross traffic is a Class C traffic infraction.

COMMENTARY

A. Summary

This section provides that a driver shall not proceed through an intersection or marked crosswalk or railroad grade crossing regardless of signal to proceed, when there is insufficient clearance space on the far side.

B. Derivation

This section is based on UVC § 11-1112 (New 1971).

C. Relationship to Existing Law

There is no comparable section in existing state law.



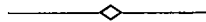
Section 111. (Application of chapter to persons riding, driving or leading animal.) ORS 483.034 is amended to read:

483.034. Every person riding [*a bicycle or*] an animal upon a roadway and every person driving or leading any animal is subject to the provisions of this chapter applicable to the driver of a vehicle, except those provisions which by their very nature can have no application.

COMMENTARY

This section amends ORS 483.034 to delete the reference to persons riding bicycles. A person leading or riding an animal is subject to the applicable rules of the road. This rule was interpreted in *Sertic v. McCullough*, 155 Or 216, 63 P2d 884 (1936),

to mean that a person is subject to the rules of the road when he is on foot or leading a horse along a highway, as a pedestrian, and is not subject to them as a vehicle driver would be who is required to proceed on the right side of the road.



Section 112. (Livestock on highway; duty of caution; yielding right of way to livestock.) (1) A person riding or leading a horse or other livestock on the highway shall keep a lookout for vehicles and use caution to keep the animal under control.

(2) A person in charge of driving a herd of livestock on or across a highway shall position a person at the front of the herd to warn drivers that the herd is approaching. A driver shall yield the right of way to the livestock being driven, but the person in charge of the livestock shall use reasonable care and diligence to open the roadway for vehicular traffic.

(3) A driver shall use caution when he approaches or passes a person riding, leading or herding livestock on the highway.

(4) If a horse or other livestock becomes frightened on the highway, the person riding or leading the animal shall give a distress signal to an approaching driver by raising his hand. A driver

upon seeing the distress signal shall promptly stop his vehicle, unless movement forward is necessary to avoid an accident, and shall, if requested, turn off the engine until the animal is under control.

(5) As used in this section, "livestock" means any animal of the species of horses, mules, donkey, cattle, swine, sheep or goat.

(6) A person who fails to perform any duty imposed by this section commits a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) requires a person riding or leading a horse or other livestock to keep a lookout and use caution to keep the animal under control.

Subsection (2) imposes a duty on a person in charge of driving a herd of livestock along or across a highway to post a person at the front of the herd. Drivers shall yield the right of way to the herd. The person in charge of the livestock shall use reasonable care to open the roadway to vehicular traffic.

Subsection (3) places the burden on a driver to use caution approaching a person riding, leading or herding livestock on the highway.

Subsection (4) directs the person riding or leading livestock which is badly frightened to signal an approaching driver by raising his hand. A driver so signaled must stop and, if requested, turn off the engine.

Subsection (5) defines the word "livestock."

B. Derivation

There is no comparable UVC provision. Wash Rev Code Ann § 16.24.070 provides that herding livestock along the right of way of a public highway without a sufficient number of persons to control the movement of the livestock is unlawful.

C. Relationship to Existing Law

ORS 483.314 would be repealed. This section includes its provisions and adds the additional rules placing on the person with the animal the burden to use caution and keep a lookout, placing on the driver the burden to use caution approaching or passing persons with livestock, and the duty of the herder to position a person in front of the herd.

"Livestock" is used rather than "animal," and the term is defined in accordance with the definition of ORS 607.005.

—◇—

Section 113. (Duty of driver striking animal.) (1) A driver who knowingly strikes and injures a domestic animal shall stop at once, make a reasonable effort to determine the nature of the animal's injuries and give reasonable attention to the animal, depending on the traffic hazards then existing. The driver shall immediately report the injury to the animal's owner, and if unable to contact the owner, shall notify an appropriate state, county or city peace officer.

(2) A driver who fails to perform any of the duties required under this section commits a Class B traffic infraction.

COMMENTARY

A. Summary

This section imposes a duty on a driver who knowingly strikes and injures a domestic animal to

give reasonable attention to the animal and to report the injury to its owner or an appropriate officer.

B. Derivation

There is no comparable UVC provision. Connecticut, Maryland, New York and Rhode Island have similar laws.

C. Relationship to Existing Law

ORS 483.614 would be repealed. Its provisions include the duty to give the injured domestic animal reasonable attention but include no duty to report to the owner or an officer.

ARTICLE 12. SPECIAL RULES FOR MOTORCYCLES

Section 114. (Unlawful motorcycle operation.) (1) A person operating a motorcycle commits the offense of unlawful motorcycle operation if he:

(a) Fails to sit on a permanent and regular seat attached to the motorcycle;

(b) Carries a person on a motorcycle who is not seated on a permanent and regular seat, if the motorcycle is designed to carry more than one person, or upon another seat attached to the motorcycle at the rear or side of the operator's seat;

(c) Fails to sit astride the motorcycle seat facing forward and with one leg on each side of the motorcycle;

(d) Carries a package, bundle or other article which prevents him from keeping both hands on the handlebars;

(e) Carries a person in a position that interferes with the operation or control of the motorcycle or the operator's view; or

(f) Carries a person, other than in a sidecar or enclosed cab, on a motorcycle with no footrests for that person.

(2) Unlawful motorcycle operation is a Class B traffic infraction.

COMMENTARY

This section would enact certain basic rules for motorcycle operation, and is based on those provisions of UVC §§ 11-1302 and 11-1305 which direct the operator. Those UVC prohibitions directed at the motorcycle operator's passengers were not adop-

ted by the Committee. A penalty should not be imposed on a passenger for an action that is properly the operator's responsibility.

There is no similar provision in the existing code.

Section 115. (Motorcyclist's right to full traffic lane.) (1) A person operating a motorcycle on a roadway has the right to full use of a lane thereof.

(2) Notwithstanding subsection (1) of this section, persons may operate motorcycles two abreast in a single lane.

(3) A driver commits the offense of depriving a motorcyclist of traffic lane if he drives his motor vehicle on a roadway laned for traffic in a manner that prevents a motorcyclist from full use of a lane.

(4) Depriving a motorcyclist of traffic lane is a Class B traffic infraction.

COMMENTARY

Subsection (1) provides that a person operating a motorcycle has the right to a full lane of the roadway. Subsection (2) allows motorcyclists to proceed two abreast in a single lane. Subsection (3) prohibits a driver from depriving a motorcyclist of use of a full traffic lane.

This section is based on subsections (a) and (d)

of UVC § 11-1303 which give the motorcyclist the right to a full traffic lane but also allow him to drive two abreast in a lane if he wishes, and prohibit a driver from depriving the motorcyclist of the full traffic lane use.

Oregon law has no comparable provision.

—◆—

Section 116. (Unlawful passing or moving in lane with vehicle.)

(1) A motorcycle operator commits the offense of unlawful passing if he:

(a) Overtakes and passes in the same lane occupied by the vehicle he is overtaking; or

(b) Operates a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(2) Subsection (1) of this section does not apply to a police officer in the performance of his official duties.

(3) A motorcycle operator who unlawfully passes commits a Class B traffic infraction.

COMMENTARY

Subsection (1) provides that a person operating a motorcycle commits the offense of unlawfully passing if when he passes another vehicle he uses the same lane as the vehicle he is passing or he proceeds between lanes of traffic or adjacent lines of vehicles.

Subsection (2) states exceptions to the rules of

subsection (1) for the police officer performing his official duties.

This section is based on subsections (b), (c) and (e) of UVC § 11-1303.

There is no similar provision in the existing code.

—◆—

Section 117. (Clinging to other vehicles.) (1) A person riding upon a motorcycle commits the offense of clinging to other vehicles if he attaches himself or the motorcycle to any other vehicle on a roadway.

(2) A person who violates this section commits a Class C traffic infraction.

COMMENTARY

There is no comparable Oregon provision pertaining to motorcycles although the rule against

clinging of ORS 483.845 which applies to bicycles, coasters, rollerskates and toy vehicles is similar.

Section 118. (Protective headgear and eye device required.)

(1) A person commits the offense of failure to wear protective headgear if he fails to wear protective headgear of a type approved by the Motor Vehicles Division while he operates or rides on a motorcycle.

(2) A person commits the offense of failure to wear eye-protective device if he fails to wear eye-protective device of a type approved by the Motor Vehicles Division while he operates a motorcycle with no windscreen.

(3) This section does not apply to any person who is either within an enclosed cab or is operating or riding on a vehicle designed to travel with three wheels in contact with the ground at speeds of less than 15 miles per hour.

(4) Failure to wear protective headgear or eye-protective device is a Class C traffic infraction.

COMMENTARY

A. Summary

The section requires persons operating or riding on a motorcycle to wear protective headgear and eye devices approved by the Motor Vehicles Division.

Subsection (3) states an exception to the requirements of headgear and eye-protective device for the person who is within an enclosed car or is operating or riding a three wheeled vehicle designed to travel at less than 15 miles per hour.

B. Derivation

The requirement for protective headgear of ORS 483.443 is restated in subsection (1). The requirement for eye-protective device of subsection (b), UVC § 11-1306, is stated in subsection (2) of this section.

C. Relationship to Existing Law

Protective headgear is required by subsection (1), ORS 483.443. The Oregon code has not pre-

viously required the operator of a motorcycle to wear an eye-protective device. Thirty-four states have such laws.

The provisions of subsection (2), ORS 483.443, directing the MVD to set up procedures for approval of headgear and eye-protective devices and establish standards are stated in § 119.

Under subsection (c), UVC § 11-1306, the requirements of headgear and eye-protective devices do not apply to persons riding within an enclosed cab or on a golf cart. The rule is similar to that of subsection (4), ORS 483.443, which exempts three wheeled vehicles designed to travel at less than 15 miles per hour from the protective headgear requirement. This section includes both exemptions. ORS 483.443 would be repealed.

NOTE: The bill will include a section prohibiting the operation of a motorcycle with handlebars so raised that the hands of the driver are at or above his shoulder height.

Section 119. (Division to establish standards for protective headgear and eye-protective devices.) (1) The Motor Vehicles Division shall:

(a) Set up a procedure, similar to the procedure provided by ORS 483.482 to 483.488, which will be followed for approval of protective headgear and eye-protective devices.

(b) Establish standards for safe protective headgear and eye-protective device to be worn by persons operating or riding on motorcycles as required by subsections (1) and (2) of section 118 of this Act.

(2) Standards established by the division under this section shall conform, in so far as practicable, to the safety standards for such headgear and eye-protective devices issued by the Federal Government and, to the extent there are no such federal standards, to the safety standards promulgated by the United States of America Standards Institute.

COMMENTARY

A. Summary

This section directs the MVD to set standards for approval of protective headgear and includes the eye-protective device required by § 118.

B. Derivation

This section is based on subsection (2), ORS 483.443, and subsection (d), UVC § 11-1306.

C. Relationship to Existing Law

ORS 483.443 would be repealed.



Section 120. (Motorcycle head lamps required to be on.) (1) Subject to the specific exceptions with respect to parked vehicles, lighted lamps and illuminated devices as specified in ORS 483.402 to 483.442 shall be displayed by every motorcycle upon a highway at all times.

(2) Failure to display lighted head lamps on a motorcycle at all times is a Class B traffic infraction.

COMMENTARY

ORS 483.402 would be amended to delete this rule now contained in that statute.



ARTICLE 13. OPERATION OF BICYCLES AND PLAY VEHICLES

Section 121. (Parent or guardian prohibited from permitting child to violate bicycle equipment laws.) (1) A parent or guardian commits the offense of permitting the operation of an unlawfully equipped bicycle if he authorizes or knowingly permits his minor child or ward to operate a bicycle equipped in violation of section 122 of this Act.

(2) Permitting the operation of an unlawfully equipped bicycle is a Class D traffic infraction.

COMMENTARY

A. Summary

This section prohibits a parent or guardian from permitting his minor child or ward to operate a bicycle which is not equipped as required by § 122 of this Article.

B. Derivation

This section is based on the rule of subsection (b), UVC § 11-1201, but is sharply limited in scope compared to the UVC rule which holds the parent or guardian responsible for a violation of any

bicycle rule if he authorizes or knows of the violation.

C. Relationship to Existing Law

ORS 483.830 states the same rule as UVC § 11-1201,

placing responsibility on parent or guardian for any authorization or knowing permission given a child or ward to violate bicycle law. ORS 483.830 would be repealed. Responsibility of the parent or guardian would be limited to a bicycle equipment violation.

Section 122. (Lamps and other equipment on bicycles.) (1)

When a person operates a bicycle upon a highway at any time from a half-hour after sunset to a half-hour before sunrise or at any other time when, due to insufficient light or unfavorable atmospheric conditions, persons and vehicles are not clearly discernible at a distance of 500 feet ahead, the bicycle or its rider shall be equipped with a lamp showing a white light visible from a distance of at least 500 feet to the front of the bicycle, and a red reflector or lighting device or material of such size or characteristics and so mounted as to be visible from all distances up to 600 feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle.

(2) Every bicycle shall be equipped with a brake that enables the operator to make the braked wheels skid on dry, level, clean pavement.

(3) No person shall install or use any siren or whistle upon a bicycle.

(4) A person who operates an unlawfully equipped bicycle commits a Class D traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a person operating a bicycle during the times or under the visibility conditions described in ORS 483.402 must have the bicycle equipped with a lamp emitting a white light visible to the front for 500 feet and a red reflector or lighting device or material visible to the rear for 600 feet.

Subsection (2) provides that a bicycle must be equipped with a brake of a prescribed quality. Subsection (3) forbids installation or use upon a bicycle of a whistle or siren.

B. Derivation

Subsections (1) and (2) are identical to subsections (a) and (c) of UVC § 11-1207.

C. Relationship to Existing Law

This section restates subsections (3) and (4) of ORS 483.404 and subsection (5), ORS 483.446. There

are two deviations from the UVC: First, there is no requirement as in the UVC that a bicycle be equipped with a bell or other device giving an audible signal. Second, under the UVC, the bicycle itself must be equipped with front and rear lights. Under ORS 483.404 and this section, the rider may carry the lights.

Landis v. Wick, 154 Or 199, 57 P2d 759, 59 P2d 403 (1936), held that a person riding a bicycle not equipped with proper lights is not thereby a trespasser on the highway nor has his failure to display the required reflector converted him to a nuisance so as to preclude recovery for injuries he sustains. The purpose of requiring head lamps and reflectors on bicycles is to make the presence of the bicycle known to drivers whereas head lamps on motor vehicles are mandatory for the purpose of affording good visibility to the driver. *Accord, Spence v. Rasmussen*, 190 Or 662, 226 P2d 819 (1951).

ORS 483.404 and 483.446 would be amended.

Section 123. (Unlawful bicycle operation.) (1) A person propelling a bicycle commits the offense of unlawful bicycle operation if he:

- (a) Rides other than upon or astride a permanent and regular seat attached to the bicycle; or
- (b) Carries more persons on the bicycle than the number for which it is designed and equipped; or
- (c) Carries a package, bundle or article which prevents him from keeping at least one hand upon the handlebar and having full control at all times.

(2) Unlawful bicycle operation is a Class D traffic infraction.

COMMENTARY

A. Summary

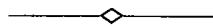
This section provides that a bicyclist must not ride a bicycle other than astride or upon a permanent and regular seat, carry no more persons on the bicycle than it is designed for, carry any package that prevents him from keeping one hand on the handlebar and from having constant, full control.

B. Derivation

The provisions of UVC §§ 11-1203 and 11-1206 are combined in this section.

C. Relationship to Existing Law

Subsection (1) combines the provisions of ORS 483.840 and 483.855 which would be repealed.



Section 124. (Clinging by persons on bicycles and toy vehicles.)

(1) A person riding upon a bicycle, coaster, roller skates, sled or toy vehicle commits the offense of clinging to another vehicle if he attaches himself or the bicycle to any other vehicle upon a roadway.

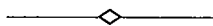
(2) Clinging to another vehicle is a Class D traffic infraction.

COMMENTARY

This section restates the provisions of ORS 483.845 which would be repealed. The rule is the same as UVC § 11-1204.

A vehicle is defined in ORS 483.030, as "every device in, upon or by which any person or property is or may be transported or drawn upon a public

highway, except devices moved by human power or used exclusively upon stationary rails or tracks." A bicycle under this definition is not a vehicle. A bicyclist is therefore not prohibited from clinging to another bicycle.



Section 125. (Riding on roadways, bicycle paths and lanes.)

(1) A person operating a bicycle upon a roadway shall:

- (a) Ride in single file;
- (b) Exercise due care when passing a standing vehicle or one proceeding in the same direction; and
- (c) Except on a one-way roadway within a city, ride as near to the right side of the roadway as practicable.

(2) On a one-way roadway within a city, a person operating a

bicycle shall ride as near to either the right or the left side of the roadway as practicable.

(3) When a bicycle lane adjacent to a roadway or a bicycle path adjacent to or near a roadway has been provided, bicycle riders shall use that lane or path and shall not use the roadway.

(4) A person who violates this section commits a Class D traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a bicyclist must ride single file on a roadway, exercise care when passing a standing vehicle and ride as near the right side of the roadway as possible except on a one-way roadway within a city.

Subsection (2) provides that on a one-way roadway in a city a bicyclist shall ride as near to either the right or left side as practicable.

Subsection (3) provides that a bicyclist must use a bicycle lane or path when there is one adjacent to or near the roadway, and not use the roadway.

B. Derivation

This section is based on UVC § 11-1205, Cal Vehicle Code § 21202 (b) (1972), and restates ORS 483.850 with changes.

C. Relationship to Existing Law

ORS 483.850 provides that bicyclists may not ride more than two abreast on a roadway and, if the

speed limit exceeds 25 miles per hour, only in single file. This section requires bicyclists on a roadway to proceed single file regardless of speed limit.

ORS 483.850 provides that a bicyclist on a roadway must proceed as near the right side as practicable except when on a one-way highway but provides no rule for the one-way highway. This section requires the bicyclist to proceed on the right except on a one-way roadway within a city limits when he may proceed on either side.

Both the UVC and ORS 483.850 require a bicyclist to use a bicycle lane when one has been provided. The UVC utilizes the term, "usable path for bicycles adjacent to a roadway." ORS 483.850 uses the term, "bicycle lane," which is defined by subsection (6) of ORS 483.002 as "that part of the highway, adjacent to the roadway, designated by official markings for use by persons riding bicycles." This section requires the bicyclist to travel in the bicycle lane or bicycle path when there is one adjacent to or near the roadway. ORS 483.850 would be repealed.



Section 126. (Use of bicycle lane by vehicles restricted; right of way on bicycle lane.) (1) A driver commits the offense of unlawful driving upon a bicycle lane if he drives upon a bicycle lane except when:

- (a) Making the approach for a right turn;
- (b) Making a turn;
- (c) Entering or leaving an alley or private road or driveway; or
- (d) Required in the course of official duty.

(2) A driver shall yield the right of way to a person operating a bicycle upon a bicycle lane.

(3) Unlawful driving upon a bicycle lane or failure to yield the right of way to a bicyclist upon a bicycle lane is a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) establishes the driver offense of unlawful driving on a bicycle lane, subject to the exceptions of making a turn, entering or leaving an alley or private road or driveway, or when required in the course of official duty. Subsection (2) provides that a driver yield the right of way to a bicyclist on a bicycle lane.

B. Derivation

There is no counterpart in the UVC for the rules of this section. Proposals by the National Committee

on Uniform Traffic Laws and Ordinances of November 15, 1973, suggest several alternatives for use of bicycle lane, roadway and traversing a bicycle lane.

C. Relationship to Existing Law

Under ORS 483.860, a driver is prohibited from using a bicycle lane except when passing on the right of another vehicle. ORS 483.860 would be repealed. Passing on the right by driving on a bicycle lane would be prohibited by § 28 which prohibits passing on the right by driving off the roadway.

—◇—

Section 127. (Use of bicycle path by vehicles prohibited.) ORS 483.865 is amended to read:

483.865. (1) [No] A driver [of a vehicle] shall **not** drive or park upon a bicycle path.

(2) **Driving upon a bicycle path is a Class B traffic infraction.**

COMMENTARY

There is no comparable UVC provision. A bicycle path as defined in subsection (7), ORS 483.002, is a public way maintained for exclusive use by persons

riding bicycles and designated as such by official signs or markings.

—◇—

Section 128. (Bicyclists to yield right of way at intersections except to left turning and stopped vehicles; driver right of way to bicyclist.) (1) A person riding a bicycle commits the offense of failure to yield the right of way if upon approaching or moving across an intersection he does not yield the right of way to all vehicles within or closely approaching the intersection except:

(a) Oncoming vehicles closely approaching from the opposite direction which are signaling an intent or starting to make a left turn at the intersection; or

(b) Vehicles approaching the intersection which must stop before entering it because of a stop sign.

(2) The provisions of subsection (1) do not apply when the bicyclist is required by an official traffic control device to stop or yield before traversing the intersection.

(3) Failure by bicyclist to yield the right of way is a Class D traffic infraction.

(4) A driver commits the offense of failure to yield the right of way to bicyclist if:

(a) He proceeds into an intersection and makes a left turn without first yielding the right of way to all oncoming persons riding

bicycles within or approaching the intersection from the opposite direction so closely as to constitute an immediate hazard; or

(b) After stopping at a stop intersection or through highway as required by section 37 of this Act, he fails to yield the right of way to any person on a bicycle approaching or within the intersection or approaching on a through highway so closely as to constitute an immediate hazard.

(5) Failure by driver to yield the right of way to bicyclist is a Class B traffic infraction.

COMMENTARY

A. Summary

Subsection (1) provides that a bicyclist must yield the right of way at intersections to all vehicles, with certain exceptions.

Subsection (3) establishes the offense of failure to yield by driver when he doesn't yield the right of way to a bicyclist in the circumstance that he, the driver, is turning left or has stopped at a through highway and a bicyclist is in the intersection or approaching so closely as to constitute a hazard.

B. Derivation

This section has no counterpart in the UVC. Section 5-24 of the city ordinance for Santa Maria, California, states a similar provision.

C. Relationship to Existing Law

There is no counterpart for this proposed section in existing Oregon law or the UVC.

—◇—

Section 129. (Bicyclists on sidewalks required to warn pedestrians; careless bicycle operation on sidewalk prohibited.) ORS 483.870 is amended to read:

483.870. (1) Any person operating a bicycle upon a sidewalk shall give an audible warning before overtaking and passing a pedestrian and shall yield the right of way to all pedestrians on the sidewalk.

(2) No person shall operate a bicycle on a sidewalk in a careless manner that endangers or would be likely to endanger any person or property.

(3) **A person who violates this section commits a Class D traffic infraction.**

COMMENTARY

This section has no counterpart in the UVC.

—◇—

Section 130. (Application of chapter to bicyclists.) Every person riding a bicycle upon a roadway is subject to the provisions of this chapter applicable to the driver of a vehicle, except those provisions which by their very nature can have no application.

COMMENTARY

A. Summary

This section states the rule of ORS 483.034, but excludes from it persons riding, driving or leading any animal.

B. Derivation

This section is based on ORS 483.034.

C. Relationship to Existing Law

Under UVC § 11-1202 a bicyclist on a roadway has the rights and is subject to the duties of a driver except those which are not applicable. This section uses the language in the 1930 UVC edition of this rule.

Copenhaver v. Tripp, 187 Or 662, 213 P2d 450 (1950), interpreted the provision of ORS 483.034, formerly OCLA 115-305, to make applicable to bicyclists the rules of the road except those which by their very nature cannot apply. Under *Spence v. Rasmussen*, 190 Or 662, 226 P2d 819 (1951), the applicable provisions of the statute governing the overtaking and passing of vehicles were held to apply to a bicycle being overtaken and passed in the same manner as if the overtaken bicycle were a vehicle by virtue of the rule of ORS 483.034.

ORS 483.034 would be amended.



PART II. PENALTIES AND PROCEDURES

ARTICLE 14. CLASSES OF OFFENSES; DISPOSITION OF OFFENDERS

Section 131. (Traffic infraction described.) (1) An offense defined in the Oregon Vehicle Code is a traffic infraction if it is so designated in the statute defining the offense or if the offense is punishable only by a fine, forfeiture, suspension or revocation of a license or other privilege, or other civil penalty.

(2) A person who commits a traffic infraction shall not suffer any disability or legal disadvantage based upon conviction of a crime.

(3) Except as a statute relating to a traffic infraction otherwise expressly provides, the criminal and criminal procedure laws of this state relating to a violation as described in ORS 161.505 and 161.565 apply with equal force and effect to a traffic infraction.

COMMENTARY

A. Summary

This section describes a "traffic infraction," the basic term proposed for the purpose of classifying the majority of vehicle code offenses in a noncriminal category.

The Oregon Criminal Code now defines two kinds of "offense" — "crimes" and "violations." (See ORS 161.505, 161.515 and 161.565.) A traffic infraction, while it would be an offense inasmuch as it would be punishable by a fine or other civil penalty, would not be a crime because no imprisonment would attach to it. It would be the same as a violation because of the nature of the penalty.

The limitation on the types of penalties allowable for a traffic infraction as described in subsection (1) is not meant to infringe upon the general authority of the court to place an offender on probation. See ORS 137.010. The intent of the draft is to provide the judge with the greatest possible number of sentencing options.

Although the generic term, "violation," could be employed for grading the vehicle code offenses, the new term, "traffic infraction," is suggested instead. For one thing, even though by definition it would be a type of offense, the term is instantly identifiable as being noncriminal in nature. Furthermore, it also is clearly separated from criminal code offenses and would carry no criminal onus. The classification of the offense, nevertheless, would be consistent with the concept incorporated in the Oregon Criminal Code that imprisonment ought not be available as a punitive sanction unless the conduct that gives rise to an offense warrants the type of social condemna-

tion that is and should be implicit in the concept of "crime."

B. Derivation

"Traffic infraction" is a term that undoubtedly will be used with increasing frequency throughout the country in the near future. The National Advisory Commission on Criminal Justice Standards and Goals has endorsed a proposal that most traffic offenses should be handled administratively rather than criminally. The recommendation by the Task Force on Courts, named by the U. S. Law Enforcement Assistance Administration, was similar to a plan for administrative adjudication offered by a task force of the National Highway Safety Advisory Committee in 1973. Both reports recommend retention of criminal procedures for "serious" offenses and both recommend that other traffic offenses be reclassified as "infractions."

C. Relationship to Existing Law

Most traffic offenses, including minor offenses, are misdemeanors because they carry penalties providing for imprisonment up to one year or fine or both. (E.g., ORS 483.990, 483.991.) A few of the serious offenses, such as hit and run involving injury, are felonies.

ADJUDICATION PROCEDURES OF OTHER STATES

At the present time only the State of New York employs an "administrative adjudication" system for handling most moving traffic offenses. Since the middle of 1970 the New York Department of Motor Vehicles has had the responsibility for adjudicating

"traffic infractions," with that responsibility extended to the cities of Rochester and Buffalo since early in 1973. Similar procedures are being considered by the District of Columbia, Florida, Maryland, Michigan and Rhode Island.

Six other states, California, Minnesota, Wisconsin, Pennsylvania, Ohio and Vermont, have adopted traffic offense classification or procedural innovations that are departures from the traditional criminal approach used by most states, although they have not removed traffic cases from their courts.

CLASSIFICATION OF TRAFFIC OFFENSES

California

California adopted a system, effective January 1, 1974, whereby all violations of the vehicle code, unless otherwise specified, are "infractions." An infraction is not a crime under the California Penal Code. It is not punishable by imprisonment and the defendant is not entitled to a jury trial or a court appointed attorney. Penalties for infractions are not more than \$50 for first offense, \$100 for second offense within one year, and \$250 for third offense within one year.

While the vehicle code has a general scheme of classification of violations as infractions, there are numerous exceptions which are considered to be misdemeanors. Three or more violations, which otherwise would be infractions, within 12 months are misdemeanors, if the prior convictions are admitted by the defendant or alleged in the accusatory pleading. If a person convicted of an infraction fails to pay his fine, he may be held in contempt.

Minnesota

In 1971 Minnesota adopted a system of classification similar to California's whereby all violations of the vehicle code, unless otherwise specified, are "petty misdemeanors." Although not specifically stated, it appears that a petty misdemeanor is a crime; however, a defendant charged with a petty misdemeanor is not entitled to a jury trial and does not have the right to a court appointed counsel. There is no jail sentence authorized for a petty misdemeanor. A defendant may be fined not more than \$100.

Minnesota has substantially fewer exceptions to the petty misdemeanor classification than does California to its infraction classifications. A third conviction within a 12 month period is a misdemeanor. A violation, which would otherwise be a petty misdemeanor, if "committed in a manner or under circumstances so as to endanger or be likely to endanger any person or property" is a misdemeanor.

Pennsylvania

Pennsylvania's system of classification of vehicle code violations differs substantially from that of

either California or Minnesota. Most violations of the vehicle code are "summary offenses." Provisions for both a fine and a jail sentence are provided for all offenses; with the most common penalty a \$10 fine and/or 5 days imprisonment.

There is no right to a jury for a summary offense. There is a right to assigned counsel only in those cases where "there is a likelihood that imprisonment will be imposed."

Ohio

Generally, traffic violations are treated as "minor misdemeanors." The penalty for a minor misdemeanor is a fine of up to \$100, and no jail term is provided. A second violation within one year and certain speeding violations are treated as fourth degree misdemeanors. The penalty for a fourth degree misdemeanor is up to 30 days in jail or \$250 fine or both. A third violation within one year is treated as a third degree misdemeanor. The penalty is up to 60 days and \$500.

Certain serious offenses are first degree misdemeanors, with a maximum penalty of six months in jail or \$1,000 fine or both.

Vermont

A "traffic offense" is a violation of the motor vehicle code where no penalty is provided or where the penalty is less than \$100. Most statutes provide for specific fines of less than \$100. For example, the penalty for speed violations is up to \$50 for the first offense and \$100 for subsequent offenses (the statute merely states "subsequent offenses" and not offenses within one year as in most other statutes). Major violations provide for both fines and imprisonment.

Wisconsin

A "traffic regulation" is a provision of the vehicle code for which the penalty for violation is a forfeiture. With very few exceptions, Wisconsin has amended its vehicle code to provide for forfeitures rather than criminal fines for vehicle code violations. The criminal definitions for felony and misdemeanor specifically exclude motor vehicle offenses.

PROCEDURE FOR ADJUDICATION OF TRAFFIC OFFENSES

California

With regard to adjudication procedures, California appears to follow a traditional approach for getting the case into court. With the exception of an arrest for misdemeanor drunk driving or driving under the influence of narcotics, the officer has the option of citing the person and releasing him. A person cited is given a time to appear and generally the option to forfeit bail.

The defendant has no right to a jury or court appointed counsel when he is charged with an infraction. The California Penal Code makes special provisions when a defendant is charged with both an infraction and a crime. Both charges may be tried to the jury, or the court may make the decision on the infraction or the infraction may be separated from the crime and tried in a separate proceeding.

California provides for the appointment of traffic referees for municipal courts having more than three judges. If a court has more than three judges, it may appoint one referee. If it has more than 10 judges, it may appoint two referees. A traffic referee must be a member of the bar or have five years' experience within the last eight years as a justice of the peace.

For any misdemeanor or infraction violation of the vehicle code a referee may fix bail, grant continuances, arraign the defendant, hear and recommend orders on motions and demurrers, take pleas and set cases for trial. For statutes regarding vehicle inspections the referee may also impose a fine on a guilty plea and order the defendant to attend traffic school. He may not sentence the defendant to jail, although a jail sentence is provided in those statutes. For infractions the referee may impose a fine after a guilty plea and order the defendant to attend traffic school. A traffic referee may suspend payment of the fine but in no case may he impose express conditions of probation.

If the defendant pleads not guilty he apparently goes through a trial before a municipal judge with the same procedures (with the exception of no jury or court appointed counsel for infractions) as any other criminal trial.

Minnesota

Minnesota follows a traditional approach with regard to adjudication of traffic violations. When a person is charged with most traffic violations, either misdemeanors or petty misdemeanors, he is cited unless there is a reasonable ground for believing he will not appear or he has refused to sign the citation. In a few serious cases he must be brought before the magistrate. The defendant may plead guilty by mail and forfeit bail.

Courts having jurisdiction over misdemeanors also have jurisdiction over petty misdemeanors. A defendant charged with a petty misdemeanor has no right to a jury trial or appointed counsel, but in all other respects the trial of a petty misdemeanor follows misdemeanor trial procedures.

Pennsylvania

The trial of summary offenses in Pennsylvania is considerably less formal than the trial of other criminal actions. As in California and Minnesota the

procedure is begun with a citation. The defendant is allowed to plead guilty by mail.

If there has been no plea as of the time of trial the defendant shall be arraigned and plead immediately prior to trial. If the defendant pleads not guilty the trial is conducted as are trials where the jury has been waived.

At trial the defendant has a right to retained counsel, and, if there is a likelihood of imprisonment, a right to court appointed counsel. The state is represented by a prosecutor. If the defendant fails to appear at the time of trial he is considered to have consented to trial in his absence. The court then hears the evidence and makes its determination of guilt. If the defendant is found guilty, his security is forfeited.

Ohio

The Ohio Rules of Criminal Procedure provide that the court may assign counsel in petty cases. No sentence of confinement may be imposed unless counsel is assigned or waived.

Under Ohio Traffic Rule (Supreme Court Rules for traffic cases in inferior courts) a traffic case is initiated with the filing of a Uniform Traffic Ticket. Arraignment is then conducted in open court.

A court may create a traffic violation bureau and appoint a traffic referee. Except in certain specified serious offenses the referee may accept a waiver of trial and a plea of guilty and assess a fine in accordance with a fine schedule provided by the court.

If the volume of cases of a court exceeds 75 persons per day, the court may assign a referee who has the qualifications of a judge to take pleas, hear statements in explanation or mitigation and recommend fines in traffic cases. This may be done only with the consent of the defendant. In addition, if the burden on the traffic court is great the court may allow a referee to take evidence and make written reports and recommendations to the judge in contested cases. This also is only with the consent of the defendant.

Vermont

Prosecution for traffic offenses are commenced with the filing of a Uniform Traffic Complaint. A schedule of fines is established (apparently statewide) by three district judges appointed by the court administrator. The defendant may, with consent of the prosecutor, waive personal appearance and trial and plead guilty or nolo contendere and pay the fine in the schedule. The defendant shall not be fined more than \$100 and may be subjected to a 30 day suspension by the commissioner.

Vermont provides that the Supreme Court may make additional rules of procedure for traffic of-

fenses, although none appear to have been made. The Vermont Rules of Criminal Procedure are applicable in traffic cases.

Wisconsin

When a defendant is charged with violation of a traffic regulation he is subjected to a forfeiture proceeding. The procedure is set out generally in the vehicle code. If the procedure is not covered in the vehicle code the court is to follow the same procedure as for small claims actions.

When the defendant is arrested for violation of a traffic regulation the officer may release him. The officer shall release the defendant when the defendant makes a deposit, makes a stipulation of no contest and deposit, or deposits his license with the officer. The officer then issues a temporary license good until the appearance date. For a DUIL arrest the officer must hold the defendant for four hours unless the test shows less than .05% blood alcohol, or the defendant is released to parent, spouse, attorney, or other responsible adult.

A deposit is accomplished by the defendant, as directed by the officer, placing the scheduled amount in an envelope and mailing it at a mail box near a place authorized to accept deposits or by taking the amount in person to a place authorized to accept deposits. If the defendant does not appear, he is deemed to have pleaded no contest and submitted to a forfeiture.

A stipulation of no contest may accompany a deposit as above. The defendant may also mail the stipulation within five days to a place designated by the officer. If the defendant does make a stipula-

tion, the officer must inform him of certain suspension or revocation consequences. The court may relieve any person from a stipulation or subsequent judgment.

At arraignment the defendant is informed of his right to a continuance and to a jury trial. He may plead guilty, not guilty or no contest. If he pleads guilty, he may be immediately sentenced. If he pleads not guilty, he may be tried immediately with his consent and the consent of the plaintiff.

If the defendant fails to appear and has not made a deposit, a warrant may issue. If he has made deposit, the court may consider that the defendant has pleaded no contest, accept the plea and forfeit or reject the plea of no contest and issue a summons. If the defendant fails to appear for the summons, a warrant may issue. If the defendant has deposited his license the court shall order his license suspended for 30 days or until the completion of the case, whichever is longer. The defendant may move to vacate the suspension within 10 days.

A plea of no contest is not admissible as an admission against interest in any proceeding arising out of the same occurrence.

The defendant is entitled to a jury trial upon payment of jury fees.

If the defendant is found guilty he shall be ordered to pay an amount up to the maximum amount of forfeiture. He may be imprisoned for failure to pay. The defendant may be allowed work release and apply his earnings to the forfeiture. When the forfeiture is paid the defendant must immediately be released.

◆

Section 132. (Classification of traffic infractions.) Traffic infractions are classified for the purpose of sentence into the following categories:

- (1) Class A traffic infractions;
- (2) Class B traffic infractions;
- (3) Class C traffic infractions; and
- (4) Class D traffic infractions.

COMMENTARY

A. Summary

The section classifies traffic infractions into four separate categories. Each traffic offense, excepting those to be classified as crimes, would be graded into one of the classes. The offense category of "Class A traffic infraction," while not a "crime," would be reserved for the more serious or "major" type of infraction. This category would be subject

to a substantially greater fine than other traffic infractions and, in the case of repeated offenses, would elevate into the crime classification.

B. Derivation

The classification technique is the same as that used in the Oregon Criminal Code. (See ORS 161-505 *et. seq.*)

C. Relationship to Existing Law

The existing vehicle code does not classify offenses, but generally uses the cumbersome and con-

fusing "990" section method for assigning penalties to particular offenses.



Section 133. (Fines for traffic infractions.) (1) Except as otherwise provided in section 134 of this Act or in the statute defining the offense, the penalty for committing a traffic infraction shall be a fine only.

(2) A sentence to pay a fine for a traffic infraction shall be a sentence to pay an amount not exceeding:

- (a) \$1,000 for a Class A traffic infraction.
- (b) \$250 for a Class B traffic infraction.
- (c) \$100 for a Class C traffic infraction.
- (d) \$50 for a Class D traffic infraction.

COMMENTARY

A. Summary

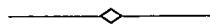
This section limits the penalty for a traffic infraction to a fine only and establishes the maximum fines for each of the four categories of traffic infractions. The amount of the fine is to be fixed by the court within the applicable limit. The section does not require the court to impose a mandatory fine, even for the Class A category, but would allow flexibility in fitting the penalty to the particular case.

B. Derivation

The section is based on Oregon Criminal Code provisions.

C. Relationship to Existing Law

This kind of penalty provision would be new for the vehicle code.



Section 134. (Class A traffic infraction classified as misdemeanor because of prior conviction.) (1) Any offense that would otherwise be punishable as a Class A traffic infraction shall be prosecuted and be punishable as a Class A misdemeanor if the defendant has been convicted of any Class A traffic infraction or traffic crime within a five-year period immediately preceding the commission of the offense, and the previous conviction was not part of the same transaction as the present offense.

(2) In applying subsection (1) of this section, any conviction of a Class A infraction or a traffic crime as described in subsections (3) and (4) of this section, or a conviction before the effective date of this Act of any of the statutory counterparts of these offenses which occurred within the immediate five-year period before the commission of the present offense, shall be included whether the previous conviction occurred before or after the effective date of this Act.

(3) As used in this section, "Class A traffic infraction" includes:

- (a) Driving while under the influence of intoxicating liquor, dangerous drugs or narcotic drugs.

(b) Failure to perform the duties of a driver involved in an accident or collision which results only in damage to the property of another.

(4) As used in this section, "traffic crime" includes:

- (a) Dangerous driving in the first or second degree.
- (b) Driving a motor vehicle while suspended or revoked.
- (c) Failure to perform the duties of a driver involved in an accident or collision which results in injury or death to any person.
- (d) Fleeing or attempting to elude a police officer.

COMMENTARY

This section classifies certain vehicle code offenses as traffic crimes. These offenses will be designated as a specific class of either felony or misdemeanor. As crimes, they would continue to be adjudicated under the traditional criminal procedures. (See Article 9.) "Manslaughter" or "criminally negligent homicide" committed by the driver of a vehicle would be considered to be "traffic crimes," but they are not listed in this section because they are not strictly vehicle code offenses, but, rather, are criminal code offenses and covered by the general criminal provisions of ORS 163.125 and 163.145.

The section classifies certain offenses as Class A

traffic infractions for the specific purpose of determining the crime described in subsection (2). The type of case covered under paragraph (a) of subsection (3) would be the non-reckless DUI driver who is a first offender. If he were driving recklessly or with criminal negligence, it would constitute a crime under paragraph (a) of subsection (4). If he were a repeat offender within a five-year period, it would be a crime by operation of subsection (1). Convictions occurring before the effective date of this Act would be included.

The crimes of dangerous driving are defined in the Article on Serious Traffic Offenses and would replace the existing reckless driving statute.

—◇—

Section 135. (Penalty for offense not otherwise classified.) 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.

COMMENTARY

This section would prevent the kind of anomaly that happens occasionally under the existing penalty provisions where an offense is defined, but no penalty provided. Of course, not all statutory pro-

hibitions are intended to carry penalties, and this section would be operative only on proscribed conduct that is meant to be punishable by specific sanctions.

—◇—

Section 136. (Adding certain sections to ORS chapter 484.) Sections 137 to 143 of this Act are added to and made a part of ORS chapter 484.

—◇—

Section 137. (Trial; burden of proof; pre-trial discovery.) (1) The trial of any traffic infraction shall be by the court without a jury.

(2) The state, municipality or political subdivision shall have the burden of proving the alleged traffic infraction by a preponderance of the evidence.

(3) The pre-trial discovery rules in ORS 135.805 to 135.873 apply to traffic infraction cases.

COMMENTARY

Subsection (1) eliminates the jury trial for traffic infractions. Subsection (2) establishes a "preponderance of the evidence" standard of proof. Inasmuch as traffic infractions would be civil in nature, the draft adopts a civil case standard of proof.

Subsection (3) adopts the pre-trial discovery provisions of the Criminal Procedure Code. Although a traffic infraction would not involve a "criminal prosecution," the nature and heavy volume of such cases could create a procedural nightmare if civil discovery rules were applied. The provision in ORS 135.805 that limits pre-trial discovery in which no charge is filed in circuit court to cases in which the defendant serves a written request for discovery is meant to apply to traffic infractions in lower courts.

CONSTITUTIONALITY OF ELIMINATING JURY TRIALS IN TRAFFIC INFRACTION CASES

Generally

The U. S. Supreme Court has consistently held that certain petty offenses not triable by jury at the time the Constitution was adopted may be tried in the same manner either by Act of Congress or state statute. The Court has drawn a distinction between "serious" and "petty" offenses based on the severity of punishment imposed, and has held that no offense can be considered as being petty for the purposes of the right to a jury trial if more than six months imprisonment is authorized.

With respect to Article I, Section 17 and Article VII, Section 3 of the Oregon Constitution, the "civil case" jury trial provisions, the Oregon Supreme Court has held that both provisions assure trial by jury in the classes of cases wherein the right was customary under common law. Regarding Article I, Section 11, the "criminal prosecution" jury trial provision, although the Oregon Supreme Court has not ruled directly on the question, its holdings relating to constitutional guarantees of right to counsel and protection against double jeopardy have been founded upon the principle that a proceeding is criminal in nature for the purposes of procedural due process if, as a consequence thereof, a person may be deprived of his liberty.

The Judiciary Committee's view is that an adjudication system providing for a non-jury method

of hearing traffic cases would violate neither the U. S. constitutional provisions relating to trial by jury nor those of the Oregon Constitution so long as the classification of the offenses or the penalties authorized thereunder does not include the possibility of imprisonment. A discussion of relevant cases follows.

Federal

Section 2, Article III of the United States Constitution provides that "the trial of all crimes, except in cases of impeachment, shall be by jury." The Sixth Amendment provides that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury."

Federal cases

It is well established that certain minor offenses can be excepted by Congress and the legislatures from the provisions requiring a jury trial in criminal cases. In dictum in *Callan v. Wilson*, 127 US 540 (1887), the Court said:

"According to many adjudged cases, arising under Constitutions which declare, generally, that the right of trial by jury shall remain inviolate, there are certain minor or petty offenses that may be proceeded against summarily, and without a jury; and, in respect to other offenses, the constitutional requirement is satisfied if the right to a trial by jury in an appellate court is accorded to the accused, *Byers v. Commonwealth*, 42 Pa 89, 94, affords an illustration of the first of the above classes. It was there held that while the founders of the Commonwealth of Pennsylvania brought with them to their new abode the right of trial by jury and while that mode of trial was considered the right of every Englishman, too sacred to be surrendered or taken away, summary convictions for petty offenses against statutes were always sustained and they were never supposed to be in conflict with the commonlaw right to trial by jury. So, in *State v. Glenn*, 54 Md 573, 600, 605, it was said that in England, notwithstanding the provision in the Magna Carta of King John, art. 46, and in that of 9 Hen. 3, chap. 29, which declares that no freeman shall be taken, imprisoned, or condemned but by lawful judgment of his peers, or by the law of the land, it has been the

constant course of legislation in that kingdom, for centuries past, to confer summary jurisdiction upon justices of the peace for the trial and conviction of parties for minor and statutory police offenses . . . And when it is declared that the party is entitled to a speedy trial by an impartial jury, that must be understood as referring to such crimes and accusations as have, by the regular course of the law and the established modes of procedure, as theretofore practiced, been the subject of jury trial. It could never have been intended to embrace every species of accusation involving either criminal or penal consequences. So, also, in New Jersey, where the Constitution guaranteed that the right of trial by jury shall remain inviolate, the court said: Extensive and summary police powers are constantly exercised in all the States of the Union for the repression of breaches of the peace and petty offenses, and these statutes are not supposed to conflict with the Constitutional provisions securing to the citizen a trial by jury."

In *Schick v. United States*, 195 US 65 (1903), a case involving prosecution for violation of an oleomargarine statute with a penalty of \$50, the Supreme Court said:

"So small a penalty for violating a revenue statute indicates only a petty offense. It is not one necessarily involving any moral delinquency. The violation may have been the result of ignorance or thoughtlessness"

The Court cited with approval the reference made in the *Callan* case to the "many decisions of state courts, holding that the trial of petty offenses was not within any constitutional provision requiring a jury in the trial of crimes."

In a reckless driving case, the Supreme Court in *District of Columbia v. Colts*, 282 US 63 (1930), citing both *Callan* and *Schick*, said that the constitutional guarantee of jury trial of all crimes

". . . is to be interpreted in the light of the common law, according to which petty offenses might be proceeded against summarily before a magistrate sitting without a jury . . . that there may be many offenses called 'petty offenses' which do not rise to the degree of crimes within the meaning of Article III, and in respect of which Congress may dispense with a jury trial, is settled. Whether a given offense is to be classed as a crime, so as to require a jury trial, or as a petty offense, triable summarily without a jury, depends primarily upon the nature of the offense. The offense here charged is not merely *malum prohibitum*, but in its very nature is *malum in se*."

The Court cited with approval the distinction made by the New Jersey Court of Errors and Appeals in *State v. Rodgers*, 102 Atl 433 (NJ 1917), "between

traffic offenses of a petty character, subject to summary proceedings without indictment and trial by jury, and those of a serious character, amounting to public nuisances indictable at common law."

The Court noted also that the defendant in *Colts* was "not charged merely with the comparatively slight offense of exceeding the 22 mile speed limit . . . or merely with driving recklessly . . . but with the grave offense of having driven at the forbidden rate of speed and recklessly, so as to endanger property and individuals" and held that such an offense is subject to the constitutional guarantee of trial by jury.

In *District of Columbia v. Clawans*, 300 US 617 (1937), the respondent was convicted of the statutory offense of engaging in a second-hand business without a license and sentenced to pay a fine of \$300 and spend 60 days in jail. Under the statute, no jury trial was provided for such cases except where the fine could be more than \$300 or imprisonment more than 90 days. The statute under which the respondent was convicted provided for a maximum penalty of \$300 fine and 90 days in jail. The respondent had demanded and was refused a jury trial. The Court ruled that the demand for jury trial had been properly denied.

The Court cited its earlier opinions which had settled that the right of jury trial under the U. S. Constitution does not extend to every criminal proceeding. The opinion noted that at the time the Constitution was adopted numerous petty offenses were tried summarily without a jury by justices of the peace in England and by police magistrates or corresponding judicial officers in the Colonies and punished by jail, workhouse or house of correction, and said that were it not for the severity of the punishment, the offender could not, under the Court's decisions, claim a trial by jury as a matter of right. With respect to the issue of whether 90 days in jail is sufficient penalty to bring it within the class of major offenses for which a jury trial may be demanded, the Court stated:

"If we look to the standard which prevailed at the time of the adoption of the Constitution, we find that confinement for a period of ninety days or more was not an unusual punishment for petty offenses, tried without a jury. Laying aside those for which the punishment was of a type no longer commonly employed, such as whipping, confinement in stocks and the like, and others, punished by commitment for an indefinite period, we know that there were petty offenses, triable summarily under English statutes, which carried possible sentences of imprisonment for periods from three to twelve months. At least sixteen statutes passed prior to the time of the American Revolution by the Colonies, or shortly after by the newly created States, authorized the sum-

mary punishment of petty offenses by imprisonment for three months or more. And at least eight others were punishable by imprisonment for sixth months.

"In the face of this history, we find it impossible to say that a ninety day penalty for a petty offense, meted out upon a trial without a jury, does not conform to standards which prevailed when the Constitution was adopted or was not then contemplated as appropriate notwithstanding the constitutional guaranty of a jury trial. This conclusion is unaffected by the fact that respondent is not entitled to an appeal as of right."

In these Supreme Court opinions, certain petty offenses not triable by jury at the time the Constitution was adopted may be tried in the same way under the authority of Congress and state legislatures, even where three months or more imprisonment is provided under summary convictions. Recent federal court cases have stressed the importance of the use of legislative authority in applying the rule. See, *U.S. v. Martinelli*, 240 F Supp 365 (1965); *U.S. v. Great Eastern Lines, Inc.*, 89 F Supp 839 (1950); *Smith v. U.S.*, 128 F2d 990 (5th Cir 1942).

Duncan v. Louisiana, 391 U.S. 145 (1968), and *Baldwin v. New York*, 399 U.S. 66 (1970), both deal with the right to a jury trial. In *Duncan*, the Supreme Court held that the states, even in certain misdemeanor cases, were bound to recognize an accused's right to a jury trial, and drew a distinction between "serious" and "petty" offenses, based on the severity of the possible punishment. *Baldwin* reaffirms the distinction between "petty" and "serious" as the basis for determining the right to a jury trial. The Court rejected the notion that a label such as "felony" or "misdemeanor" should control and noted that the most relevant criterion was the severity of the maximum authorized penalty. It concluded that "no offense can be deemed 'petty' for the purposes of the right to trial by jury where imprisonment for more than six months is authorized."

Oregon

Section 17 of Article I of the Oregon Constitution declares that "In all civil cases the right of Trial by Jury shall remain inviolate." Section 11 of Article I states "In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed . . ." Section 3 of Amended Article VII provides that "In actions at law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . ." ORS 136.001 provides that "The defendant in all criminal prosecutions shall have the right to public trial by an impartial jury." ORS 156.110 provides that "upon a plea other than a plea of guilty, if the defendant does not then demand a

trial by jury, the justice shall proceed to try the issue." (This statute is made applicable to district court by ORS 156.610.) ORS 221.349 (1) states: "In all prosecutions for any crime or offense defined and made punishable by any city charter or ordinance the defendant shall have the right of trial by jury, of six in number."

Oregon cases

In the early case of *Wong v. City of Astoria*, 13 Or 538, 11 P 295 (1886), the Supreme Court held that violation of a municipal ordinance was not considered a crime and constitutional guarantees, whether state or federal, applicable to criminal cases did not apply. Guarantees held to apply only to violations of state law.

The next case to consider a constitutional issue in regards to a municipal ordinance was *Portland v. Erickson*, 39 Or 1, 62 P 753 (1900). The Court held that where an accused is proceeded against by a complaint and warrant and the court is authorized to inflict the punishment of imprisonment, the proceeding is criminal in the sense that the accused cannot be jeopardized twice for the same offense, whether the proceeding be by the state or a municipality, saying:

"This court held in *Wong v. City of Astoria*, 13 Or 538 (11 P 295), a case under a city ordinance, whereby the defendant was sentenced to pay a fine, and to be imprisoned in default of payment, that such an action was not a criminal prosecution within the meaning of the state constitution, Article I, section 11, which accords to the accused the right of trial by jury. The holding is, however, by no means decisive of the present controversy. That decision was based upon the idea, promulgated in some other jurisdictions, that the proceeding must be regarded as a civil action for the recovery of a fine, penalty, or forfeiture. While this may be proper and regular, yet where, under statute and ordinances, enforcement is sought by resort to proceedings authorized and carried on in all respects as criminal cases are prosecuted—by complaint and warrant—and where the court is empowered to inflict upon the accused not only a fine, which may be followed by imprisonment for its nonpayment, but also imprisonment aside from any pecuniary penalty or forfeiture, such proceeding becomes so far criminal in its nature, and the violation of the ordinance such an offense, that a person acquitted thereof cannot again be put in jeopardy."

Then, in *Stevenson v. Holzman*, 254 Or 94, 102, 458 P2d 414 (1969), the Oregon Supreme Court held that an indigent person accused of violating a municipal ordinance has a constitutional right to the assistance of counsel at public expense. "We hold that no person may be deprived of his liberty who

has been denied the assistance of counsel as guaranteed by the Sixth Amendment. This holding is applicable to all criminal prosecutions, including prosecutions for violations of municipal ordinances. The denial of the assistance of counsel will preclude the imposition of a jail sentence."

State v. Mayes, 245 Or 179, 421 P2d 385 (1966), held that the statute making the order for dismissal of charge or action a bar to another prosecution for the same crime if it is a misdemeanor but not if it is a felony applies alike to city and state prosecutions whenever the case is dismissed in prosecution for offense carrying possibility of jail sentence and the same facts are alleged in both prosecutions. The opinion states:

"This court recognized in 1900 that when 'the court is empowered to inflict upon the accused not only a fine, which may be followed by imprisonment for its nonpayment, but also imprisonment aside from any pecuniary penalty or forfeiture * * *,' the proceeding is criminal in nature insofar as procedural due process is concerned (citing *Portland v. Erickson*). Despite inconsistent dicta in later cases, *Erickson* is still the law in this state." (At 184.)

The Oregon Court of Appeals recently said this about the *Wong* holding:

". . . [T]hat constitutional guarantees applicable to criminal cases do not apply to prosecutions for violations if a city ordinance having as a possible consequence loss of liberty can no longer be considered the law of Oregon." *Miller v. Jordan*, 3 Or App 134, 473 P2d 841 (1970).

Cornelison v. Seabold, 254 Or 401, 460 P2d 1009 (1969), involved a case in which the plaintiff claimed that in a case brought under the Workmen's Compensation Act the trial court erred by not allowing a jury to try the issue raised by the supplemental answers.

The statute (ORS 656.595 (3)) provided: "A challenge to the right to bring such third party action shall be made by supplemental pleadings only, and such challenge shall be determined by the Court as a matter of law." The plaintiff contended that this statute must be construed to permit the use of a

jury to try the factual aspects of the case; and, if not so construed would be contrary to Article VII, Section 3 of the Oregon Constitution.

The Supreme Court affirmed, holding that whether the plaintiff's sole remedy was that provided by the Workmen's Compensation Act was for trial by the Court without a jury. In part, the Court said:

"Article I, Section 17 and Article VII, Section 3 of the Oregon Constitution both preserve the right of jury trial. The language of these sections is not particularly helpful in determining their scope. We have held that both provisions 'assure trial by jury in the classes of cases wherein the right was customary at the time the Constitution was adopted,' *Moore Mill & Lbr. Co. v. Foster*, 216 Or 204, 225, 336 P2d 39, 337 P2d 810 (1959), or 'cases of like nature,' *State v. 1920 Studebaker Touring Car*, 120 Or 254, 263, 251 P 701, 50 ALR 81 (1927)." (At 404, 405.)

A number of previous similar cases and their holdings were reviewed in the opinion: A commitment for mental incompetency does not require a jury trial because the statute at the time of adoption of the Oregon Constitution did not so require; *In re Idleman's Commitment*, 146 Or 13, 27 P2d 305 (1934). Whether a relative is responsible for welfare payments made to another relative does not require a jury trial because such an issue had no common law antecedent; *Mallett v. Luihn*, 206 Or 678, 294 P2d 871 (1956). The Oregon Constitution does not require that the issue of necessity in a private condemnation proceeding be tried before a jury because a jury did not try this issue at common law; *Moore Mill & Lbr. Co. v. Foster*, supra.

The Court then noted that, "on the other hand, we held in *State v. 1920 Studebaker Touring Car* . . . that a statute authorizing a court to declare that an automobile be forfeit to the state was contrary to the Oregon constitutional guarantee of a right of trial by jury." The rationale in that holding was that a seizure of property as a penalty for the violation of a law was at common law triable by a jury and, therefore, in the statutory proceeding the Oregon Constitution preserved the right to trial by jury.

◆

Section 138. (Plea agreements limited.) Notwithstanding ORS 135.405 to 135.445, a person charged with the offense of driving under the influence of intoxicating liquor, dangerous drugs or narcotic drugs shall not be allowed to plead "guilty" or "no contest" to any other offense in exchange for a dismissal of the offense charged. No district attorney shall make any motion and no judge shall enter any order in derogation of this section.

COMMENTARY

The purpose of this section is to ensure that the classification of the offense of DUIL as a Class A traffic infraction will be limited to first offenders. One of the basic policies of the draft would be thwarted if a prior offender were permitted to have the criminal charge for which he should be prose-

cutted reduced to an infraction. The ban on plea agreements in DUIL cases would apply to the "offense" of driving under the influence, which would include the first offender *infraction*, as well as the offender who is charged with the *crime* of DUIL because of a prior conviction. (See §§ 87 and 134).

—◆—

Section 139. (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 counsel for the defendant appears. The court shall ensure that the district attorney is given timely notice if defense counsel is to appear at trial.

(3) As used in subsection (2) of this section, "district attorney" includes, where appropriate, a city attorney and county counsel.

COMMENTARY

A. Summary

Subsection (1) specifically precludes court appointed counsel in traffic infraction cases. Subsection (2) provides that the district attorney shall not appear at trials of traffic infractions unless the defendant is represented by counsel at trial. This means that in that type of case the officer who cited the defendant would present the facts to the court. It is intended that the courts adopt appropriate procedures to ensure that the state is notified in time to prepare for trial if counsel is to appear.

B. Derivation

Subsection (1) adopts the New York, California, Minnesota and Pennsylvania view that because the penalty does not include imprisonment, there is no constitutional requirement for providing appointed counsel. Subsection (2) follows the New York approach to presenting the case to the trier of fact, although contrary to that state's system, the judge would hear the case instead of a hearings officer.

C. Relationship to Existing Law

The U. S. Supreme Court in a recent unanimous decision held that "[A]bsent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony, unless he was represented by counsel at his trial." *Argersinger v. Hamlin*, 407 U.S. 25 (1972). Justice Douglas, in the Court's opinion, noted that although "traffic charges" are technically criminal prosecutions, it "does not necessarily mean that many of them will be brought into the class where imprisonment actually occurs."

The Oregon Supreme Court had declared three years prior to *Argersinger* that "[N]o person may be deprived of his liberty who has been denied the assistance of counsel as guaranteed by the Sixth Amendment." *Stevenson v. Holzman*, 254 Or 94, 458 P2d 414 (1969).

Because the penalty for committing a traffic infraction would not include the imposition of a jail sentence, it would not appear to violate either the *Argersinger* or *Stevenson* holdings.

—◆—

Section 140. Former jeopardy, res judicata and collateral estoppel not applicable in traffic infraction cases.) (1) Notwithstanding ORS 131.505 to 131.535, if a person commits both a crime and a traffic infraction as part of the same criminal episode, the prosecution for one offense shall not bar the subsequent prosecution for

the other. However, evidence of the first conviction shall not be admissible in any subsequent prosecution for the other offense.

(2) Notwithstanding ORS 43.130 and 43.160, no plea, finding or proceeding upon any traffic infraction shall be used for the purpose of res judicata or collateral estoppel in any other civil or criminal proceeding.

COMMENTARY

Subsection (1) removes the traffic infraction from the operation of the former jeopardy statutes and would allow a criminal charge and a later traffic infraction charge of vice versa out of the same criminal episode. Class A traffic infractions, even though relatively serious, would still be considered as civil offenses. As a result, if a criminal episode involved both a first offender DUIL and dangerous driving, for example, a prosecution for DUIL would not bar the subsequent prosecution for the criminal charge.

Subsection (2) abrogates the doctrines of res judicata and collateral estoppel with respect to issues adjudicated in traffic infraction hearings or trials. See, *Bahler v. Fletcher*, 257 Or 1, 474 P2d 329 (1970); *State v. George*, 253 Or 458, 455 P2d 609 (1969); *State v. Tremblay*, 4 Or App 512, 479 P2d 507 (1971).

—◇—

Section 141. (Trial judge's authority to order suspension of license, permit or right to apply.) (1) If a defendant is convicted of any traffic offense and fails or refuses to pay a fine imposed by the judge or to comply with any condition upon which payment of the fine or any part of it was suspended, the judge, in addition to or instead of any other method authorized by law for enforcing a court order, may order the defendant's driver's license, permit or right to apply to be suspended or may limit the defendant's driving under conditions fixed by the court until he complies with the conditions of the order.

(2) If a defendant is convicted of a traffic crime or a Class A traffic infraction, in addition to any fine or imprisonment authorized by law, including probation and suspension of imposition or execution of any sentence upon conditions ordered by the court, the judge may also:

(a) Order the defendant's driver's license, permit or right to apply to be suspended until he successfully completes a defensive driving or other appropriate driver improvement course conducted by the Motor Vehicles Division, or other rehabilitative program;

(b) Order the defendant's driver's license, permit or right to apply to be suspended for not more than one year; or

(c) Order the defendant to successfully complete a defensive driving or other appropriate driver improvement course conducted by the Motor Vehicles Division, or other rehabilitative program, within a period of time fixed by the judge, with the penalty for failure to comply with the order being a future suspension of the defendant's driver's license, permit or right to apply, or other future limitation on the defendant's driving.

(3) If the trial judge places any limitations on the defendant's driving under subsection (1) or (2) of this section, the judge shall immediately advise the Motor Vehicles Division in writing. Any limitation ordered by the judge shall be made part of the defendant driver's record and shall remain in effect until the division is notified in writing by the court that the limitation has ended.

(4) If the trial judge orders a suspension under subsection (1) or paragraph (a) or (b) of subsection (2) of this section, or if the conviction will result in mandatory revocation or suspension of the defendant's license or permit under ORS 482.430, the judge shall take possession of the license or permit. The judge shall immediately send the license or permit and a copy of any order entered by the court to the Motor Vehicles Division. Any suspension or revocation of the defendant's license or permit shall become effective on the date on which the court takes possession or orders suspension of the license or permit.

(5) If the judge ordered the suspension under subsection (1) of this section, upon payment of the fine as ordered, the judge shall immediately send a copy of an order to reinstate the defendant's license or permit to the division.

(6) If the judge ordered the suspension under paragraph (a) of subsection (2) of this section, when the defendant successfully completes a defensive driving course or other rehabilitative program, the division shall reinstate the defendant's license, permit or right to apply, return any license or permit to the defendant and notify the judge in writing that the defendant has complied with the judge's order.

(7) Upon receipt of any order entered by a judge under this section, the division shall immediately make proper entry in its files and records and take other action, as necessary, to implement the judge's order.

COMMENTARY

This section would specifically empower the trial judge to order a suspension of a license, permit or right to apply to enforce payment of a fine or requirement that the defendant complete an MVD driving course or otherwise comply with the court's order. Implicit in the section is the recognition of a judge's authority to suspend payment of any fine. The section distinguishes between a "limitation" placed on a person's driving by a judge and a "restriction" ordered by MVD.

Subsection (1) would apply to *any traffic offense*—crimes or traffic infractions—in which a fine has been imposed or the payment thereof has been suspended.

Subsection (2) would apply to traffic crimes or Class A traffic infractions—the more serious offenses

—which would warrant remedial action such as the defendant's compulsory completion of a driving course. Under both subsection (1) and paragraphs (a) or (b) of subsection (2) the judge would take the defendant's license from him. Paragraph (c) spells out the authority of the judge to order the defendant to complete an appropriate driving course or other rehabilitative program on pain of having his license suspended for noncompliance.

Subsection (3) requires the judge to advise MVD of his actions. The judge would notify MVD by a copy of the respective order when the suspension is ordered and when the license is to be reinstated.

Subsection (4) empowers the judge to take possession of the license and forward it along with the suspension order to MVD. The suspension or revoca-

tion would become effective on the date ordered or when the license is taken by the court. This would be a change from existing law under which the suspension or revocation is not effective until official notice from the division is received by the licensee. The action by the judge would be notice to the defendant that he is suspended as of that date.

The draft does not include a system of uniform orders and procedures that would eliminate uncertainty as to the day to day license status of a driver. It's important that this be done, but the Committee considered it advisable that this be by appropriate rules of the Minor Court Rules Committee rather than by statute.

Section 142. (Court ordered suspension to run concurrently.)

A suspension of a license or permit ordered by the court under section 141 of this Act shall run concurrently with any mandatory suspension ordered by the division under ORS 482.430 and arising out of the same conviction.

COMMENTARY

This section would make a court ordered suspension of a license run concurrently with any mandatory suspension otherwise provided by law. The

purpose is to prevent a double suspension being imposed upon a person as the result of a single conviction.

Section 143. (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.

COMMENTARY

Under the proposed offense classification scheme, both traffic crimes and traffic infractions would be considered to be "traffic offenses." ORS 484.100 authorizes a police officer to arrest or issue a citation to a person for committing a traffic offense. Admittedly, custodial arrests in such cases would be rare, but arrest authority is retained under ORS 484.100.

In the case of minor offenses, *i.e.*, the lower grades of traffic infractions, the Committee believes that a search incidental to an arrest should not be allowed. Subsection (2) is to ensure that a police officer may protect his own safety by frisking for weapons in the unlikely but possible event that an arrest for one of the traffic infractions is made under circumstances which would warrant a frisk under the "stop and frisk" statutes.

The section was prompted by the recent holdings of the United States Supreme Court in two cases involving traffic offenses, *U. S. v. Robinson*, 414 US

218 (1973), and *Gustafson v. Florida*, 414 US 260 (1973), that if a custodial arrest is lawful a full search of the person incident to the arrest is authorized without additional justification. Although Oregon case law appears to be more restrictive than the federal rule, subjecting such searches to certain limits, the Committee, nevertheless, recommends that a specific limitation be codified. See, *State v. O'Neal*, 251 Or 163, 444 P2d 951 (1968); *State v. Krogness*, 238 Or 135, 388 P2d 120, *cert den* 377 US 992 (1964); *State v. Chinn*, 231 Or 259, 373 P2d 392 (1962); *State v. Florance*, 15 Or App 118, 515 P2d 195 (1974).

In purpose, the section is similar to ALI, *Model Code of Pre-Arrest Procedure*, Official Draft No. 1, sec. SS 230.2 (1972).

(Ed. note: On October 17, 1974, the Oregon Supreme Court, overruling *State v. O'Neal* and other earlier decisions, reversed the Court of Appeals in *State v. Florance* and adopted the *Robinson* rule by a 5-1 majority, with O'Connell, C. J., dissenting.)

SUPPLEMENTARY COMMENTARY

APPEALS IN TRAFFIC INFRACTION CASES

The proposals 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 1975 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 directly to the Court of Appeals. A defendant would have the right to one trial and one appeal.

The bill will provide an option to a defendant who is charged in justice or municipal court to elect to remove the case for trial to the district court, or if there is none in the county, to the circuit court.

An appeal to the Court of Appeals from any trial court would be a *de novo* review (tried anew upon the record).

VEHICLE OFFENSE PROCEDURES FOR JUVENILES

Existing Oregon Law

All motor vehicle offenses involving a person who is under 18 years of age are under the exclusive original jurisdiction of the juvenile court. ORS 419.476. Individual cases may be remanded if the child is 16 or older. There are, also, "blanket" remand provisions under which the juvenile court can order a remand of all motor vehicle offenses to the appropriate adult court. Before the adult court hears the case, other than a parking violation, in which the defendant is or appears to be under 18, it must notify the juvenile court of that fact, and the latter court may direct that the case be sent to juvenile court for further proceedings. ORS 419.533 (2).

The Juvenile Code also contains special provisions for the handling and disposition of juvenile traffic offenders by the juvenile court. ORS 419.535 to 419.541.

Uniform Vehicle Code

The UVC recommends that jurisdiction over juvenile traffic offenders be vested in the traffic courts except where "juvenile delinquency" involves offenses in addition to or other than traffic offenses. In the latter event, the UVC suggests that jurisdiction should be vested in the juvenile court.

Judiciary Committee Recommendations

The proposed Juvenile Code (HB 2050) submitted to the 1973 Legislature by the Juvenile Code Committee recommended several changes in juvenile ve-

hicle offense procedures, from which the following are endorsed by the Committee on Judiciary:

(1) Traffic offenses committed by children under 15 years of age should be in the juvenile court, originally and exclusively. Under Oregon law ordinarily the minimum age required to qualify for a driving permit is 15. (See ORS 482.110, 482.160, 482.170). A child who is issued a license or permit is granted certain adult privileges; therefore, the responsibility for operating a vehicle in accordance with the rules of the road should likewise be that of an adult.

(2) Traffic offenses committed by children at least 15 years of age but under 18 should be in adult court originally, but with the court given authority to transfer the child to the juvenile court for disposition if it appears to the adult court that it would be in the best interest of society and the child to have the matter of sanctions in the case handled by the juvenile court. There may be exceptional cases where the nature and circumstances of the particular offense or the history and character of the child may indicate to the court the need for the specialized services of the juvenile court. Before transferring the case the court should give notice of its intention to the child and the parents and provide them with an opportunity to be heard if they should object to the proposed transfer.

(3) Provide the juvenile court with specific authority under the Juvenile Code to levy fines and order license suspensions in cases involving vehicle offenses in addition to the existing authority of the court under ORS 419.541 to require a child to attend traffic or driving school and to recommend suspension of licenses by the Motor Vehicles Division.

Section 144. (Conviction of certain offenses as grounds for mandatory revocation or suspension.) ORS 482.430 is amended to read:

482.430. (1) The division forthwith shall revoke any person's permit or license to operate motor vehicles upon receiving a record of the conviction of such person of any of the following offenses:

(a) Manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle.

(b) Perjury or the making of a false affidavit to the division under this chapter or any other law of this state requiring the registration of motor vehicles or regulating their operation on highways.

(c) Any crime punishable as a felony in the commission of which a motor vehicle is used.

(d) Conviction or forfeiture of bail upon [*three*] **two** charges of [*reckless driving*] **dangerous driving in the first degree** all within the preceding [*12*] **24** months.

(e) A conviction of a driver of a motor vehicle involved in an accident resulting in the death or injury of another person, upon a charge of failing to stop and disclose his identity at the scene of the accident.

(2) The division forthwith shall suspend any person's permit or license to operate motor vehicles upon receiving a record of the conviction of such person for the following offenses:

(a) Driving while under the influence of intoxicating liquor, dangerous drugs or narcotic drugs.

(b) Fleeing or attempting to elude a [*traffic or*] police officer.

(c) **Dangerous driving in the first or second degree.**

(3) The period of suspension shall be:

(a) First conviction within a 10-year period, 30 days.

(b) Second conviction within a 10-year period, one year.

(c) Third or subsequent conviction within a 10-year period, three years.

(4) **If a defendant is before the court for sentencing upon conviction for any offense that is grounds for mandatory revocation or suspension under this section and the defendant has a driver's license or permit, the judge shall take possession of the license or permit and immediately send it and notice of the conviction to the division. Any suspension or revocation of the defendant's license or permit or right to apply shall become effective on the date on which the court takes possession of the license or permit or on the date otherwise ordered by the court.**

COMMENTARY

The statute is amended to conform with new provisions relating to dangerous driving and disposition of offenders.

Section 145. (Permissive suspension or revocation.) ORS 482.-450 is amended to read:

482.450. (1) The division immediately may suspend the license of any person without hearing and without receiving a record of the conviction of such person of crime, when the division has reason to believe that such person:

(a) Has committed any offense for the conviction of which mandatory revocation is provided in subsection (1) of ORS 482.430.

(b) Has, by incompetent, reckless, **criminally negligent** or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any other person or serious property damage.

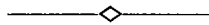
(c) Is incompetent to drive a motor vehicle or is afflicted with mental or physical infirmities or disabilities rendering it unsafe for him to drive a motor vehicle upon the highways.

(d) Is a habitual incompetent, reckless or **criminally negligent** driver of a motor vehicle or has committed a serious violation of the motor vehicle laws of this state.

(2) Whenever the division suspends the license of any person for any reason set forth in subsection (1) of this section, the division immediately shall notify the licensee and afford him an opportunity of a hearing before a representative of the division in the county wherein the licensee resides. The hearing shall be conducted as a contested case in accordance with ORS 183.310 to 183.500. Upon such hearing, the division either shall rescind the order of suspension, or, good cause appearing therefore, may continue, modify or extend the suspension of such license or revoke such license.

COMMENTARY

The section is amended to conform with the new proposed offense of dangerous driving.



Section 146. (Suspension for refusing breath test; notice of suspension.) ORS 482.540 is amended to read:

482.540. (1) Upon receipt of the report of a police officer as required in subsection (2) of ORS 483.634, and in accordance with subsection (2) of this section and subsection (1) of ORS 482.550, the division shall suspend the reported person's license, permit or privilege to drive a motor vehicle in this state for a period of [90] **180** days.

(2) Upon receipt of the report of the police officer, the division shall notify the reported person by mail of the intention to suspend and allow said person a 20-day period after the date of mailing said notice to request in writing a hearing before a representative of the division as provided in this section. If no request is filed within

the 20-day period, the division shall thereupon suspend the license, permit or privilege of the person to drive a motor vehicle.

(3) Notice of intention to suspend or notice of an order of suspension is presumed to have been received upon the expiration of five days after it is deposited in the United States mail with postage prepaid, addressed to the person at his last address as shown by his application for original, renewal or duplicate license, which mailing may be proved by the certificate of any officer or employe of the division over 18 years of age specifying the time and place of giving notice.

COMMENTARY

The statute is amended to increase the suspension period for refusal to take the breath test from 90 to 180 days. The proposed change further reflects

the Committee's concern about the drunk driver and its desire to improve the effectiveness of the laws dealing with this serious problem.

Section 147. (Hearing on suspension under ORS 482.540.) ORS 482.550 is amended to read:

482.550. (1) If a request for a hearing is filed, the hearing shall be before a representative of the division in the county where the alleged offense occurred unless there is an agreement between the person and the division that the hearing be conducted elsewhere. In connection with such hearing, the division or its authorized representative may administer oaths and shall issue subpoenas for the attendance of witnesses requested by the person or the division and the production of relevant documents. The hearing shall be recorded by whatever means may be determined by the division and shall include testimony and exhibits, if any. The record of the proceeding shall not be transcribed unless requested by a party to the proceeding. Upon an affirmative finding on each matter listed in subsection (2) of this section, the division shall issue an order suspending the license, privilege or permit of the person to drive a motor vehicle, effective as provided in ORS 482.560. Otherwise, no suspension shall be ordered.

(2) The scope of the hearing shall be limited to:

(a) Whether the person at the time he was requested to submit to a test was under arrest for driving a motor vehicle while under the influence of intoxicating liquor in violation of [subsection (2) of ORS 483.992] **section 87 of this 1975 Act** or of a municipal ordinance;

(b) Whether the police officer had reasonable grounds to believe, at the time the request was made, that the person refusing to submit to the test had been driving under the influence of intoxicating liquor in violation of [subsection (2) of ORS 483.992] **section 87 of this 1975 Act** or of a municipal ordinance;

(c) Whether the person refused to submit to a test;

(d) Whether such person was informed of the consequences, under ORS 482.540 to 482.560, of his refusal to submit to the test; and

(e) Whether such person was informed of his rights as provided in ORS 483.638.

COMMENTARY

This is a housekeeping amendment to insert the new statutory reference to driving while under the influence.



Section 148. (Notice of suspension, revocation or cancellation.)
ORS 482.570 is amended to read:

482.570. When the division, as authorized or required, suspends, revokes or cancels a license or the right to apply for a license to operate motor vehicles, it shall give notice of such action to the person whose license or right is affected. **The notice shall state the nature and reason for the action and, in the case of a suspension, whether it was ordered by a court.** Service of the notice is accomplished either by mailing the notice by certified mail, return receipt requested, **to the person's address as shown by division records**, or at the option of the division, by personal service in the same manner as a summons is served in an action at law. [*When notice sent by certified mail is returned, the receipt unsigned, service of notice shall be accomplished by personal service in the same manner as a summons is served in an action at law. Refusal of the service by the person whose license or right is suspended is prima facie evidence of receipt of the notice.*]

COMMENTARY

The amendments conform the statute with the new provisions of the crime of driving while suspended or revoked.



Section 149. (Implied consent to chemical test; police report of refusal; evidence of refusal inadmissible.) ORS 483.634 is amended to read:

483.634. (1) Any person who operates a motor vehicle upon the highways of this state shall be deemed to have given consent, subject to ORS 483.634 to 483.646, to a chemical test of his breath for the purpose of determining the alcoholic content of his blood if arrested for driving a motor vehicle while under the influence of intoxicating liquor in violation of [*subsection (2) of ORS 483.992*] **section 87 of this 1975 Act** or of a municipal ordinance. A test shall be administered upon the request of a police officer having reasonable grounds to believe the person arrested to have been driving

while under the influence of intoxicating liquor in violation of [*subsection (2) of ORS 483.992*] **section 87 of this 1975 Act** or of a municipal ordinance.

(2) If a person under arrest for driving a motor vehicle while under the influence of intoxicating liquor in violation of [*subsection (2) of ORS 483.992*] **section 87 of this 1975 Act** or of a municipal ordinance, refuses the request of a police officer to submit to a chemical test of his breath as provided in subsection (1) of this section, and if the person has been informed of the consequences of such refusal as provided by ORS 482.540 to 482.560 and of his rights as provided in ORS 483.638, no test shall be given, but the police officer shall prepare a sworn report of the refusal and cause it to be delivered to the division. The report shall disclose:

(a) Whether the person at the time he was requested to submit to a test was under arrest for driving a motor vehicle while under the influence of intoxicating liquor in violation of [*subsection (2) of ORS 483.992*] **section 87 of this 1975 Act** or of a municipal ordinance;

(b) Whether the police officer had reasonable grounds to believe, at the time the request was made, that the person refusing to submit to the test had been driving under the influence of intoxicating liquor in violation of [*subsection (2) of ORS 483.992*] **section 87 of this 1975 Act** or of a municipal ordinance;

(c) Whether the person refused to submit to a test;

(d) Whether such person was informed of the consequences, under ORS 482.540 to 482.560, of his refusal to submit to the test; and

(e) Whether such person was informed of his rights as provided in ORS 483.638.

(3) If a person under arrest refuses to submit to a chemical test of his breath under the provisions of subsection (2) of this section or refuses to consent to chemical tests as provided by ORS 483.636, evidence of his refusal shall not be admissible in any civil or criminal action, suit or proceeding arising out of acts alleged to have been committed while the person was driving a motor vehicle on the highways while under the influence of intoxicating liquor.

COMMENTARY

The amendments are of a housekeeping nature.



Section 150. (Administering blood test.) ORS 483.640 is amended to 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.

COMMENTARY

This section immunizes medical personnel who withdraw a person's blood for chemical tests so long as they act in a medically acceptable manner. The

phrase "medically acceptable manner" is drawn from *Schmerber v. California*, 384 US 757 (1966).

Section 151. (Definitions.) ORS 484.010 is amended to read:

484.010. As used in ORS 1.510 to 1.530 and 484.010 to 484.320, unless the context otherwise requires:

(1) "Bail" means money or its equivalent deposited by a defendant to secure his appearance for a traffic offense.

(2) "City court" means a municipal court, whether or not it is exercising authority under the charter or ordinances of a city or as a justice court under the laws of this state.

(3) "City policeman" includes a city marshall or a member of the police of a city, municipal or quasi-municipal corporation.

(4) "City traffic offense" means any violation of a traffic ordinance of a city, municipal or quasi-municipal corporation, except ordinances governing parking of vehicles.

(5) "Major traffic offense" means a violation of any of the following provisions of law or a city ordinance conforming thereto:

(a) [*Reckless driving, as defined in subsection (1) of ORS 483.992.*] **Dangerous driving as defined in sections 89 and 90 of this 1975 Act.**

(b) Driving while under the influence of intoxicating liquor, dangerous drugs or narcotic drugs, as defined in [*subsection (2) of ORS 483.992 or ORS 483.999*] **section 87 of this 1975 Act.**

(c) Failure to perform the duties of a driver involved in an accident or collision, as defined in subsections (1) and (2) of ORS 483.602 and subsection (1) and paragraphs (a) and (b) of ORS 483.604 [*, which would be punishable under subsection (1) of ORS 483.990*].

(d) Operating a motor vehicle while the operator's or chauffeur's license is suspended or revoked, as defined in [*ORS 482.650*] **section 92 of this 1975 Act.**

(e) Fleeing or attempting to elude a [*traffic or*] police officer, as defined in [*subsection (1) of ORS 483.049*] **section 91 of this 1975 Act.**

(6) "Owner" means the person having all the incidents of ownership in a vehicle or where the incidents of ownership are in different persons, the person, other than a security interest holder or

lessor, entitled to the possession of a vehicle under a security agreement, or a lease for a term of 10 or more successive days.

(7) "Police officer" includes a member of the Oregon State Police, a sheriff or deputy sheriff and a city policeman.

(8) "State court" means a circuit, district or justice court or magistrate.

(9) "State traffic offense" means a violation of any provision of law for which a [*misdemeanor*] **criminal or traffic infraction** penalty is provided in ORS chapter 481, 482, 483, ORS 485.010 to 485.420, 485.990 and ORS chapter 486 or 767.

(10) "Traffic offense" includes an offense mentioned in subsections (4), (5) and (9) of this section.

COMMENTARY

Housekeeping amendments are made in this section to make it consistent with the new provisions of the draft regarding serious traffic offenses. It is important to keep in mind that under ORS 133.310 a probable cause arrest by a peace officer is authorized for any "major traffic offense."

ORS 484.100, authority of police officer to arrest or issue citation, is not amended by the draft. The

statute describes situations in which a police officer may arrest or issue a citation for a "traffic offense." Inasmuch as traffic offenses under the proposed code will include both traffic crimes and traffic infractions, the statute cited is left unchanged to permit arrests for all classes of infractions. Most traffic offenses under the proposed code would be handled by Uniform Traffic Citation, as is presently the case.

Section 152. (Traffic citation requirements; exceptions; uniform citation.) ORS 484.150 is amended to read:

484.150. (1) Except for violation of laws governing parking of vehicles, **or unless otherwise provided in subsection (9) of this section**, a traffic citation conforming to the requirements of this section shall be used for all traffic offenses in this state.

(2) The citation shall consist of at least four parts. Additional parts may be inserted by law enforcement agencies for administrative use. The required parts are:

- (a) The complaint.
- (b) The abstract of record.
- (c) The police record.
- (d) The summons.

(3) Each of the parts shall contain the following information or blanks in which such information shall be entered:

- (a) The name of the court and the court's docket or file number.
- (b) The name of the person cited.
- (c) The offense of which the person is charged, the date, time and place at which the offense occurred, the date on which the citation was issued and the name of the complainant.

(d) The time and place at which the person cited is to appear in court.

(e) The bail fixed for the offense.

(4) Each of the parts shall also contain such identifying and additional information as may be necessary or appropriate for law enforcement agencies in the state.

(5) The complaint shall contain a form of certificate by the complainant to the effect that he certifies, under the penalties provided in ORS 484.990, that he has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. The certification if made by a police officer need not be made before a magistrate or any other person. A private person shall certify before a magistrate, clerk or deputy clerk of the court and this action will be entered in the court record. The reverse side of the complaint shall contain the substance of the matters appearing on the reverse side of the Uniform Traffic Ticket and Complaint promulgated by the American Bar Association, and set forth in the Model Rules Governing Procedure in Traffic Cases, approved by the National Conference of Commissioners on Uniform Laws, July 8-13, 1957. A certificate conforming to this section shall be deemed equivalent of a sworn complaint.

(6) The reverse side of the abstract of court record shall contain such matters and shall be in such form as may be prescribed by the Motor Vehicles Division for the purpose of carrying out the requirements of subsection (1) of ORS 484.240.

(7) The summons shall also contain a notice to the person cited that the complaint will be filed. The reverse side of the summons shall contain the following:

(a) A form substantially as follows:

READ CAREFULLY

You must appear in court at the time mentioned in this citation if you are charged with any of the following offenses:

1. [*Reckless*] **Dangerous** driving.
2. Driving while under the influence of intoxicating liquor [, *barbiturates*] or narcotic **or dangerous** drug.
3. Leaving the scene of an accident.
4. Operating a motor vehicle while your driver's license was suspended or revoked.
5. Attempting to flee or elude a [*traffic or*] police officer.

[6. *Driving with a .15 percent (or higher) level of alcohol in blood.*]

If you are charged with any OTHER offense, you MUST do ONE of the following:

1. Appear in court at the time mentioned in this summons and request a hearing. The court will then set a time for a hearing.

2. Mail to the court this summons, together with a check or money order in the amount of the bail indicated on the other side of this summons and tell the court you request a hearing. This summons and the bail must reach the court before the time when this summons requires you to appear in court. If you don't want a hearing, but wish to explain your side, send your explanation with the summons and bail. The court will then consider your explanation and may forfeit your bail, or part of it, on the basis of your explanation and what the officer tells the court.

3. Sign the plea of guilty below and send this summons to the court, together with check or money order in the amount of bail indicated on the other side of this summons. **If you wish to explain your side, you may send your explanation with the guilty plea, summons and bail.**

This summons and the bail must reach the court before the time when this summons requires you to appear in court.

NOTE: If you have already given bail or other security for your appearance, proceed as mentioned above but do not send in any additional sum as bail.

IF YOU FAIL TO COMPLY WITH THESE INSTRUCTIONS, THE COURT IS AUTHORIZED TO ISSUE A WARRANT FOR YOUR ARREST OR BY NOTICE TO THE MOTOR VEHICLES DIVISION TO CAUSE YOUR OPERATOR'S LICENSE TO BE SUSPENDED, OR BOTH.

THE COURT MAY IN ANY CASE, AFTER NOTICE, REQUIRE YOU TO APPEAR FOR A HEARING.

(b) A "Notice" and "Appearance, Plea of Guilty and Waiver" substantially in the form appearing on the reverse side of the summons in the form of Uniform Traffic Ticket and Complaint mentioned in subsection (5) of this section.

(8) The complaint shall be set aside by the court upon the motion of the defendant before plea when it does not conform to the requirements of this section. However, this section does not prohibit the use of a uniform citation for other offenses in addition to traffic offenses and containing other language in addition to that specified in this section.

(9) If the offense is a Class A traffic infraction, a citation in lieu of custody as provided by ORS 133.045 to 133.080 may be used.

COMMENTARY

The statute is amended to make it consistent with proposed changes in traffic offenses. Subsection (9) would authorize the use of the citation in lieu of custody if the offense is a Class A traffic infraction. This would enable the district attorney to run a check of the driving record to determine whether a complaint should be filed charging the defendant

with a crime because of a prior conviction for a Class A infraction or traffic crime. Use of the Chapter 133 citation would give notice to the motorist of the initial charge and would serve also to inform the prosecutor's office of the need to check further for a possible "prior offender" type of complaint.

—◇—

Section 153. (Appearance by defendant.) ORS 484.190 is amended to read:

484.190. (1) The defendant shall appear in court at the time mentioned in the summons if the citation is for:

- (a) A major traffic offense.
- (b) Any felony.

(2) In other cases, the defendant shall either appear in court at the time indicated in the summons, or prior to such time shall deliver to the court the summons, together with check or money order in the amount of the bail set forth in the summons, and inclosing therewith:

- (a) A request for a hearing; or
- (b) A statement of matters in explanation or mitigation of the offense charged; or
- (c) The executed appearance, waiver of hearing and plea of guilty appearing on the summons. **A statement in explanation or mitigation also may be inclosed with the guilty plea.**

(3) **In any case in which the defendant personally appears in court at the time indicated in the summons, if he desires to plead guilty and the judge accepts the plea, the judge shall hear any statement in explanation or mitigation that the defendant desires to make.**

COMMENTARY

The amendments provide for optional explanatory statements by the defendant if he so desires when pleading guilty either by mail or in person. The Committee believes that a cited motorist should

be given an opportunity to tell "his side of the story" even though he wants to plead guilty. This now may be the practice in most courts, but it is not spelled out in the statutes.

—◇—

Section 154. (Impounding vehicles operated by driver convicted of driving while license revoked or suspended; redemption; suspension of registration; rights of security interest holders.) ORS 484.222 is amended to read:

484.222. (1) (a) When a person is convicted for driving a motor vehicle [*in violation of ORS 482.650*] **while his license is suspended**

or revoked, the court shall order impounded for not more than 120 days from judgment any motor vehicle of which the convicted person is the owner and any motor vehicle which the convicted person is operating at the time of arrest for violation of [ORS 482.650] **section 92 of this 1975 Act**. He shall be liable for the expenses incurred in the removal and storage of the vehicle under this subsection, whether or not the vehicle is returned to him. The vehicle shall be returned to the person convicted or the owner only upon payment of such expenses.

(b) If the vehicle is not reclaimed within 30 days after the time set for the return of the vehicle in the impounding order, the vehicle may be disposed of in accordance with ORS 483.380 to 483.396.

(2) (a) When a person is convicted for driving a motor vehicle in violation of [ORS 482.650] **section 92 of this 1975 Act**, the court, instead of or in addition to impoundment under subsection (1) of this section, may order the Motor Vehicles Division to suspend for not more than 120 days the registration required under ORS chapter 481 of any vehicle of which the convicted person is the owner or any vehicle which the convicted person is operating at the time of his arrest [*for violation of ORS 482.650*]. The division shall forthwith suspend the registration and require the owner to return the registration card and plates. If the vehicle has not been impounded and the owner fails to return the registration card and plates to the division within 10 days after the date notice to do so is mailed to him, return receipt requested, the division shall forthwith direct any peace officer to secure possession thereof and return the registration card and plates to the division.

(b) The division shall return the registration card and plates to the owner upon expiration of the period specified by the court in its order provided in paragraph (a) of this subsection upon payment by the owner to the division of a restoration fee of \$10.

(3) The court may order that a motor vehicle of which the convicted person is not the owner be impounded or its registration suspended under this section only if the court is satisfied by clear and convincing evidence that the owner knew or had good reason to know that the convicted person did not have a valid operator's license and knowingly consented to the operation of the motor vehicle by the convicted person.

(4) The authority of the court under this section to impound any motor vehicle shall be subject to the rights of a holder of a security interest under a security agreement executed before an arrest for violation of [ORS 482.650] **section 92 of this 1975 Act**, and the vehicle shall be released for the purpose of satisfying a security interest if:

(a) Request in writing is made to the court; and

(b) If the vehicle has been impounded, the security interest

holder pays the expenses incurred in removal and storage of the vehicle; and

(c) If the registration of the vehicle has been suspended, the security interest holder takes possession of the vehicle subject to the suspension of the registration remaining in effect against the registered owner.

COMMENTARY

The housekeeping amendments are to conform with the new provisions on driving while suspended or revoked.

Section 155. (Definitions for ORS 484.700 to 484.750.) ORS 484.705 is amended to read:

484.705. (1) As used in ORS 484.700 to 484.750, unless the context requires otherwise, "habitual offender" means any person, resident or nonresident, who within a five-year period, has been convicted of or forfeited bail for the number and kinds of traffic offenses described by paragraphs (a) and (b) of this subsection, as evidenced by the records maintained by the division.

(a) Three or more of any one or more of the following offenses:

(A) Manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle;

(B) Driving while under the influence of intoxicating liquor, dangerous drugs or narcotic drugs as defined by [subsection (2) of ORS 483.992 or 483.999] **section 87 of this 1975 Act;**

(C) Driving a motor vehicle while his license, permit or privilege to drive has been suspended or revoked as defined by [ORS 482.650] **section 92 of this 1975 Act;**

(D) Reckless driving as defined by subsection (1) of ORS 483.992 or **dangerous driving as defined by sections 89 and 90 of this 1975 Act;**

(E) Failure of the driver of a motor vehicle involved in an accident resulting in the death of or injury to any person or damage to any vehicle being driven or attended by a person to perform the duties required by subsections (1) and (2) of ORS 483.602.

(b) Twenty or more of any one or more offenses involving the operation of a motor vehicle which violations are required to be reported to the division, including offenses enumerated in paragraph (a) of this subsection; however, no person shall be considered a habitual offender under this paragraph until his 21st conviction or bail forfeiture within a five-year period when the 20th conviction or bail forfeiture occurs after a lapse of two years or more from the last preceding conviction or bail forfeiture.

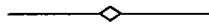
(2) The offenses included in paragraphs (a) and (b) of subsection (1) of this section include city traffic offenses, as defined

by ORS 484.010, and offenses under any federal law, or any law of another state, including subdivisions thereof, substantially conforming thereto but do not include nonmoving offenses as defined in ORS 483.346 to 483.545.

(3) As used in ORS 484.700 to 484.750, "division" means the Motor Vehicles Division of the Department of Transportation or a similar agency of another state.

COMMENTARY

The section contains housekeeping amendments to pick up the new provisions on DUIL and dangerous driving.



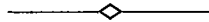
Section 156. (Penalties.) ORS 484.990 is amended to read:

484.990. Any person who in connection with the issuance of a citation, or the filing of a complaint, for a traffic offense, as defined in subsection (10) of ORS 484.010, [*wilfully*] **knowingly** certifies falsely to the matters set forth therein [*is punishable upon conviction by imprisonment in the county jail for a term not exceeding one year or by a fine of not more than \$5,000, or both*] **commits a Class A misdemeanor.**

COMMENTARY

The section amends the statute penalizing false certification of a traffic citation or complaint to insert the criminal culpability term of "knowingly" in place of "wilfully," and to classify the crime as a

Class A misdemeanor. This would make the penalty range the same as that provided under the Criminal Code for "false swearing," ORS 162.075.



PART III. RESPECTIVE POWERS OF STATE AND LOCAL AUTHORITIES

ARTICLE 15. POWERS OF STATE AND LOCAL AUTHORITIES

Section 157. (Authority of Transportation Commission to mark highways and control traffic; authority of Public Utility Commissioner regarding railroad-highway crossings.) ORS 483.040 is amended to read:

483.040. (1) The [*department*] **Transportation Commission** is authorized to classify, designate and mark both intrastate and interstate highways lying within the boundaries of this state and to provide a uniform system of marking and signing such highways under the jurisdiction of this state. Such system of marking and signing shall correlate with and so far as possible conform to the system adopted in other states.

(2) Except at railroad-highway grade crossings, the [*department*] **commission** is authorized to determine the character or type of traffic control signals to be used, and to place or erect them upon state highways, at places where the [*department*] **commission** deems necessary for the safe and expeditious control of traffic. So far as practicable, all such traffic control signals shall be uniform as to type and location. Except at railroad-highway grade crossings, no traffic control signals shall be erected or maintained upon any state highway by any authority other than the [*department*] **commission**, except with its written approval.

(3) The Public Utility Commissioner is vested with exclusive jurisdiction over the installation of protective devices at railroad-highway grade crossings.

COMMENTARY

The Transportation Commission is the appropriate body to exercise the authority on classification and

marking of highways. It is substituted for the Department of Transportation by this section.



Section 158. (Transportation Commission to adopt sign manual.)

The Transportation Commission shall adopt a manual and specifications of uniform standards for traffic control devices consistent with the provisions of this chapter for use upon highways within this state.

COMMENTARY

A. Summary

The Transportation Commission is required to adopt a manual and specifications of uniform standards for traffic control devices consistent with ORS ch 483.

B. Derivation

This section is based on UVC § 15-104 but does not include the UVC requirement that the standards conform as much as possible to the standards endorsed by the Federal Highway Administrator.

C. Relationship to Existing Law

This draft section would supplement and make more specific the general requirement of subsection (1), ORS 483.040, as amended by section 157 of this

Act, that the Transportation Commission provide a uniform system of marking and signing intrastate and interstate highways. The provisions of ORS 483.040 would be retained with the single amendment substituting the commission for the department.

—◇—

Section 159. (Control of traffic control devices by local authorities.) (1) Except at railroad-highway grade crossings and subject to the authority vested in the Transportation Commission, local authorities shall place and maintain traffic control devices upon highways, exclusive of state highways, under their respective jurisdictions as they consider necessary to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn or guide traffic. All traffic control devices shall conform to the state manual and specifications.

(2) Except at railroad-highway grade crossings, the Transportation Commission shall have general supervision with respect to the placing and constructing by local authorities of official traffic control devices for the purpose of obtaining, so far as practicable, uniformity as to type and location of such devices throughout the state.

(3) Official traffic control devices placed or constructed by local authorities after the effective date of this Act shall conform to specifications and location criteria approved by the commission.

(4) Any new or amended specifications and location criteria approved by the commission after the effective date of this Act for the placement or construction of an official traffic control device do not apply to official traffic control devices in place on the effective date of this Act. However, within a reasonable period after the effective date, official traffic control devices shall be altered or relocated to comply with the manual and specifications approved after the effective date of this Act.

(5) When the governing authority of a city makes a determination that placement or construction of a traffic control device on a city street or highway selected as the route of a state highway under ORS 373.010 is necessary to carry out the provisions of this chapter or to regulate, warn or guide traffic, it shall submit to the Administrator of Highways written findings and recommendation in support of placing or constructing the traffic control device on the state highway. If the administrator approves the findings and recommendation, he shall so notify in writing the city governing authority and proceed to place or construct the traffic control device in accordance with them. If the administrator does not notify the local authority of disapproval within 90 days after he receives the findings and recommendation, the findings and recommendation shall be considered approved.

COMMENTARY

A. Summary

Subsection (1) provides that subject to the authority vested in the Transportation Commission, local authorities shall place and maintain traffic control devices on highways under their respective jurisdictions as considered necessary to carry out the chapter provisions and regulate traffic. The devices shall conform to the state manual and specifications.

Subsection (2) gives the commission general supervision over the placing and constructing by local authorities of official traffic control devices to obtain statewide uniformity.

Subsection (3) provides that official traffic control devices placed or constructed by local authorities after the effective date of the Act must conform to commission specifications.

Subsection (4) provides that new or amended specifications approved by the commission after the effective date of the Act do not apply to official traffic control devices in place at that date, but such nonconforming devices must be altered to conform to the specifications within a reasonable time thereafter.

Subsection (5) provides that when a city determines that a traffic control device is needed on a city street over which a state highway is routed, the city shall submit its written findings and recommendation in favor of the device to the Highway Administrator. He must notify the city of disapproval within 90 days or approval is considered granted.

B. Derivation

Subsections (1) and (2) are based on UVC § 15-106. Subsections (3) and (4) contain the rule of

subsection (3), ORS 483.044, that local authorities shall not place or construct traffic control devices that do not conform to commission standards, with the addition of a grandfather clause allowing non-conforming devices in place on the effective date of the Act. Subsection (5) is new.

C. Relationship to Existing Law

The provisions of subsections (1) and (3), ORS 483.044, are almost verbatim the 1930 edition of UVC § 15-106. The draft section states the rule of subsection (1) in the present UVC form with the modification that the local authority is subject to the authority vested in the Transportation Commission and that the railroad-highway grade crossing is likewise not under local authority. The provisions of subsection (3), ORS 483.044, are broken down into those of subsections (3) and (4) of the draft section to incorporate a grandfather provision which allows local authorities a reasonable time in bringing their traffic control devices into conformity with state standards as set by the Transportation Commission after the Act's effective date.

The exception of subsection (3), ORS 483.044, for cities of population over 50,000 to the general supervisory authority of the state over signing is removed. The provision of subsection (2), ORS 483.044, categorizing sign erection and maintenance as an administrative act, is also deleted by the repeal of ORS 483.044 which this section replaces.

Subsection (5) sets up procedures for a city to obtain placement of a traffic device on a city street over which a state highway has been routed. There is no comparable provision in existing law.

◆

Section 160. (Regulation of pedestrian traffic by local authorities.) Local authorities may regulate the movement of pedestrians upon highways within their jurisdictions by:

- (1) Establishing marked crosswalks and designating them by appropriate marking;
- (2) Closing a marked or unmarked crosswalk and prohibiting pedestrians from crossing a roadway where a crosswalk has been closed by placing and maintaining signs giving notice of closure; and
- (3) Prohibiting pedestrians from crossing a highway at any place other than within a marked or unmarked crosswalk.

COMMENTARY

A. Summary

This section states the authority of local authorities over the regulation of pedestrian traffic.

B. Derivation

The section is based on UVC § 15-107 (Revised 1968) and UVC § 15-108 (New 1968).

C. Relationship to Existing Law

The authority to regulate pedestrian traffic of subsections (4) and (6), ORS 483.210, are stated in this draft section. Similar authorization is stated in UVC §§ 15-107 and 15-108. ORS 483.210 would be repealed.

Subsection (1), ORS 483.212, relates to pedestrian right of way at intersections where traffic is con-

trolled by police officers. Subsection (2), ORS 483-212, authorizes local authorities to require that pedestrians not cross a roadway against a "stop" signal at intersections controlled by police officers and further that where a signal change is augmented by a ringing bell the pedestrian shall proceed across the roadway with the first ring. ORS 483.212 would be repealed.

◆

Section 161. (Speed regulation in public parks by local authorities.) Local authorities may regulate the speed of vehicles in public parks under their jurisdictions and shall place and maintain at all park entrances signs giving notice of any special speed regulation.

COMMENTARY

A. Summary

The speed of vehicles in a public park may be regulated by the local authority having jurisdiction over the park. The local authority shall place signs giving notice of speed regulations.

B. Derivation

This section is derived from subsection (3), ORS 483.042.

C. Relationship to Existing Law

The rule of subsection (3) of ORS 483.042, which

is stated in this section, is an exception to the speed-setting authorization laws whereby the State Transportation Commission sets speeds on state highways and the State Speed Control Board on all other highways. Under subsection (1), § 74 of the Article on Speed Restrictions, the maximum speed in public parks is 25 miles per hour unless a different speed is designated by state or local authorities as authorized by law and duly posted. ORS 483.042 would be repealed. See §§ 3, 13 and 159.

◆

Section 162. (Regulating use of freeway.) (1) The commission and local authorities with respect to a freeway under their respective jurisdictions may prohibit or restrict the use of the freeway:

- (a) By parades; and
- (b) By persons riding bicycles, power driven cycles or motor bicycles or other nonmotorized traffic.

(2) A regulation enacted under subsection (1) of this section shall become effective when appropriate signs giving notice thereof are erected upon any freeway and the approaches thereto.

COMMENTARY

A. Summary

Use of a freeway by parades, persons riding bicycles, power driven cycles or other nonmotorized traffic may be prohibited or restricted by the state or local authority having jurisdiction when signs are posted giving notice of the restriction.

B. Derivation

This section is based on Wis Stat Ann § 349.105 and UVC § 11-313 (Revised 1968).

C. Relationship to Existing Law

The provision of the UVC comparable to ORS 483.041 authorizes regulation or prohibition of any class or kind of traffic found incompatible with the normal and safe movement of traffic.

ORS 483.041 would be repealed. The provision of subsection (1) of the statute allowing prohibition or restriction of freeway use by pedestrians except for emergency service is not included in this section.

Section 163. (Authority to designate through highways and stop intersections.) The Transportation Commission with reference to state highways, and local authorities with reference to highways under their respective jurisdictions, may designate main traveled or through highways by placing at the entrances thereto from intersecting highways traffic control devices notifying drivers to stop or yield the right of way before entering or crossing such designated highways, or may designate intersections or other roadway junctions at which vehicular traffic on one or more of the roadways should yield or stop before entering the intersection or junction.

COMMENTARY

A. Summary

This section authorizes designation of through highways and stop intersections by state and local authorities having jurisdiction of the highways.

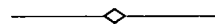
B. Derivation

This section is based on UVC § 15-109 (Revised 1971).

C. Relationship to Existing Law

The language is drawn from both the UVC and existing Oregon law provisions. The rule of subsection (1), ORS 483.204, authorizing the commission to designate through highways by placing signs was

interpreted in *Ashland v. Pacific P. & L. Co.*, 239 Or 241, 395 P2d 420, 397 P2d 538 (1964). The court held that the violation by an employe of the Highway Commission of a regulation adopted by the commission pursuant to the general authority of ORS 483.204, is not a violation of a safety regulation directed toward the safety of the public. The regulation made pursuant to ORS 483.204 does not have the force or effect of law. The commission's employe violating a regulation adopted pursuant to ORS 483.204 did not violate a duty owed to a member of the public. The duty is upon the commission employes, for the commission's benefit.



Section 164. (Authority to designate no-passing zones.) The Highway Division and local authorities with reference to highways under their respective jurisdictions may determine, in accordance with standards and procedures adopted by the division, where overtaking or passing or driving to the left of the center of the roadway would be especially hazardous and may, by appropriate signs or by a yellow unbroken line on the pavement on the right-hand side of and adjacent to the center line or a lane line of the roadway, indicate the beginning and end of the zones.

COMMENTARY

A. Summary

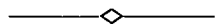
The designation of no-passing zones is authorized.

B. Derivation

The section is based on Wis Stat Ann § 349.12 and UVC § 11-307 (a) (Revised 1971).

C. Relationship to Existing Law

The section authorizes the setting of no-passing zones. There is no comparable provision in the existing Oregon traffic code.



Section 165. (Authority to designate one-way highway, safety zones, turns and lanes.) (1) The Transportation Commission with

reference to state highways and local authorities with reference to highways under their respective jurisdictions may:

(a) Designate by appropriate signs any highway or section or specific lanes thereof upon which vehicular traffic shall proceed in one direction at all or such times as may be indicated by official traffic control devices;

(b) Designate by official traffic control devices certain places on highways as safety zones and regulate and control traffic with respect to such safety zones;

(c) Where traffic conditions warrant, prohibit right or left turns at intersections or prohibit U-turns by all vehicles or by certain types of vehicles; and

(d) Place official traffic control devices within or adjacent to intersections and thereby require and direct that a different course from that specified in section 61 be traveled by vehicles making turning movements at, or proceeding through, intersections.

(2) A local authority shall not designate any highway within its incorporated limits as a one-way highway if the highway is under the jurisdiction of the Transportation Commission or of a county unless the local authority first obtains the written consent of the commission or the county.

COMMENTARY

A. Summary

This section authorizes the Transportation Commission and the local authorities having jurisdiction to designate one-way highways and lane directions, to designate and maintain safety zones, to prohibit turns at intersections and U-turns, to require a different course from the rules of proceeding at intersections of § 61 (Article on Turning and Moving; Signals on Stopping and Turning). A local authority may not designate a highway in its incorporated limits as one-way if the highway is under the Transportation Commission or county jurisdiction, without first obtaining written consent of the commission or county.

B. Derivation

This section is based on Wis Stat Ann § 349.10 and UVC §§ 11-309 (c) (New 1962) and 11-601 (c) (Revised 1971).

C. Relationship to Existing Law

Paragraph (a) of subsection (1) and subsection (2) of the section relate to authorization of one-way traffic. The provision of subsection (c), UVC § 11-

309, authorizing designation of direction of travel in particular lanes is also stated in paragraph (a) of subsection (1). ORS 483.042 and 483.043 would be repealed.

ORS 483.042 authorizes local authorities to regulate traffic by means of traffic officers, semaphores or other signals when traffic is heavy or continuous, and to prohibit "other than one-way traffic." The statute allows municipalities to designate one-way streets within the city limits. If the county or Department of Transportation has jurisdiction of the highway in the city limits, written consent must be obtained. The Transportation "Commission" is substituted for the "Department" as the appropriate state entity having the jurisdiction mentioned.

The rules of subsections (2) and (3), ORS 483.316, authorizing the placing of traffic signs to require a different course from the right and left turn rules of subsection (1), ORS 483.316, and to prohibit right or left turns, are contained in paragraphs (c) and (d) of subsection (1) of this section. ORS 483.316 would be repealed.

◆

Section 166. (Authority of municipalities and counties to control parking on city, county and state highways.) (1) Subject to the provisions of subsection (3) of this section, cities shall have ex-

clusive authority to regulate, control or prohibit the stopping, standing and parking of motor vehicles upon any city street or highway, including any city street selected and designated as the route of a state highway under ORS 373.010 and, subject to the provisions of ORS 483.346, upon any state highway within the corporate limits of a city.

(2) Counties shall have exclusive authority to regulate, control or prohibit the stopping, standing and parking of motor vehicles upon any county highway.

(3) Local authorities, city and county, may permit angle parking on any highway where parking is subject to their respective jurisdictions, including any city street selected and designated as the route of a state highway under ORS 373.010 and, subject to ORS 483.346, any state highway within the corporate limits of a city, except that angle parking on a state highway shall not be permitted if the Transportation Commission has determined that the highway is not of sufficient width to permit angle parking without interfering with the free movement of traffic.

COMMENTARY

A. Summary

Subsection (1) provides that subject to a different rule for angle parking, cities have exclusive authority to regulate stopping, standing and parking on city streets, including those designated as a state highway route under ORS 373.010, and on state highways within the incorporated limits of the cities, subject to the rules of ORS 483.346.

Subsection (2) provides that counties have jurisdiction over parking regulations on county highways.

Subsection (3) authorizes local authorities to permit angle parking except on the highways which are a part of the state highway system, in which case authorization is not permitted if the Transportation Commission has determined the highway is not sufficiently wide to allow angle parking.

B. Derivation

This section is based on ORS 483.350. The provision relating to jurisdiction of counties over county roads is new.

C. Relationship to Existing Law

ORS 483.350 provides authorization for cities to control and regulate parking on city streets designated as state highway routes, and on state highways within city limits, subject to the provisions of ORS 483.346 which states the authority of the Transportation Commission over parking regulations on state highways, within and outside of cities.

This section expands the jurisdiction over parking to include "stopping" and "standing," terms previously not defined in the vehicle code. It specifies the authority of the local government over regulation of stopping, standing and parking upon not only the city but also the county highways. The rule of ORS 483.350 on the relative jurisdictions of local authorities, vis-a-vis the Transportation Commission, is retained.

The authorization to county governing bodies to regulate parking on county roads is in conformance with the similar authorization of subsection (c), UVC § 11-1004. ORS 483.350 would be repealed.

Section 167. (Authority of Transportation Commission to control parking on state highways.) ORS 483.346 is amended to read:

483.346. (1) The [*Department of*] Transportation **Commission** shall have exclusive authority to regulate, control or prohibit the **stopping, standing and** parking of motor vehicles upon the right of way of any state highway outside the corporate limits of [*incorporated*] cities [*and towns*], and upon the right of way of any

section of any state highway within the corporate limits of any [incorporated] city [or town], if access to or from [said] the section of highway and real property abutting thereon was restricted, controlled or prohibited by the [department] **commission** before [said] the section of highway was included within the corporate limits of [an incorporated] the city [or town, and if said section of highway was included within the corporate limits of an incorporated city or town by incorporation, annexation or extension of corporate limits occurring after July 21, 1953].

(2) **The commission shall also have exclusive authority to control stopping, standing and parking on all state highways within the corporate limits of a city except where the highway is routed over a city street under ORS 373.010.**

COMMENTARY

The existing provisions of ORS 483.346 establish a formula for the jurisdiction of the Department of Transportation over state highways, both outside and within city limits. The jurisdiction over state highways within city limits exists if the access rights were controlled by the department, the successor agency to the Highway Commission, before that portion of highway was included within the city limits, and if that portion became included by annexation or incorporation after July 21, 1953.

This amendment substitutes "Transportation Commission" for the "Department of Transportation," and deletes the proviso that the Transportation Commission's jurisdiction over state highways within city limits relates to annexation or incorporation into a city after July 21, 1953. An additional subsection is added under which the commission has authority to control parking on state highways in city limits, except where the state highway is routed over a city street. The jurisdiction over parking includes jurisdiction over stopping and standing.

Section 168. (Entry of commission's parking regulations in official records; erecting appropriate signs; regulations as having force of law.) ORS 483.348 is amended to read:

483.348. (1) All regulations, restrictions or prohibitions imposed by the [Department of] Transportation **Commission** under authority of ORS 483.346 shall be by resolution or order entered in official records of the [Department of] Transportation **Commission**.

(2) The [department] **commission** shall place and maintain appropriate signs or markings giving notice of all [such] regulations, restrictions or prohibitions at such places as may be necessary to inform the public, and [such] the regulations, restrictions or prohibitions shall [be] **become** effective and shall have the force of law when the signs or markings giving notice thereof have been placed.

COMMENTARY

This section is amended to cite the Transportation Commission instead of Department of Transportation as the regulating agency.

Section 169. (Jurisdiction of courts.) ORS 484.030 is amended to read:

484.030. (1) A circuit or district court has concurrent jurisdiction of all state traffic offenses, except that the circuit court has exclusive jurisdiction of the trial of criminally negligent homicide and of felonies.

(2) A justice court, for offenses committed within the county, and a city court, for offenses committed within the jurisdictional authority of the city, have concurrent jurisdiction of all state traffic offenses, except that they do not have jurisdiction of the trial of [the following:] **any felony.**

[(a) *Any felony.*]

[(b) *Criminally negligent homicide.*]

[(c) *Violations of provisions of law for which a penalty is provided in subsection (12) of ORS 483.991.*]

[(3) *Paragraph (c) of subsection (2) of this section does not deprive a city court of jurisdiction of an offense against an ordinance conforming to provisions of law for which a penalty is provided in subsection (12) of ORS 483.991.*]

(3) The city attorney shall have authority to prosecute in the name of the state for a state traffic offense committed within the jurisdictional authority of the city as provided in subsection (2) of this section, and in any appeal therefrom.

COMMENTARY

A. Summary

This section amends ORS 484.030 to authorize a city attorney to prosecute in the name of the state for a state traffic offense committed in the city's jurisdictional authority. Paragraph (c) of subsection (2) and subsection (3) would be deleted. These references are to "hit and run" crimes in which injury or death of a person results, which crime is to be graded as a Class C felony.

B. Derivation

This amendment is based on previous legislative proposals, in particular House Bill 1612 introduced in the 1967 legislative session.

C. Relationship to Existing Law

Under the existing provisions of ORS 484.030 and 8.660, a city attorney cannot prosecute for a violation of state traffic law in city court. The result has been to encourage cities to pass ordinances duplicating many of the provisions of ORS ch 483.

PART IV. MISCELLANEOUS PROVISIONS

ARTICLE 16. MISCELLANEOUS SECTIONS

Section 170. (Attending court and prosecuting offenses.) ORS 8.660 is amended to read:

8.660. The district attorney shall attend the terms of all courts having jurisdiction of public offenses within his county, and, **except as provided for traffic infractions under section 139 of this 1975 Act**, conduct, on behalf of the state, all prosecutions for such offenses therein.

COMMENTARY

See Commentary under § 171.

Section 171. (Necessity for employment of attorney; effect of employment.) ORS 9.320 is amended to read:

9.320. Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, except that the state or a corporation appears by attorney in all cases, **unless otherwise specifically provided by law**. Where a party appears by attorney, the written proceedings must be in the name of the attorney, who is the sole representative of his client as between him and the adverse party, except as provided in ORS 9.310.

COMMENTARY TO §§ 170 AND 171

Under Article 14, the district attorney will not appear in traffic infraction cases unless the defendant's attorney appears. Appropriate conforming amendments are made in ORS 8.660 and 9.320 to avoid possible conflicts.

Section 172. (Application to traffic, boating, littering, hunting and fishing violations.) ORS 133.080 is amended to read:

133.080. **Except for Class A traffic infractions as provided by subsection (9) of ORS 484.150**, nothing in ORS 133.045 to 133.080, 133.110 and 156.050 applies to violations of law enforceable under ORS 484.010 to 484.320, to violations enforceable under ORS 488.210 to 488.300, to violations enforceable under ORS 496.905 to 496.950 or to violations enforceable under ORS 133.100 and subsection (5) of ORS 164.775.

COMMENTARY

The statute is amended to make it consistent with the proposed changes in ORS 484.150 regarding citations for Class A traffic infractions.

Section 173. ("Offense" described.) ORS 161.505 is amended to read:

161.505. An offense is conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law or ordinance of a political subdivision of this state. An offense is either a crime or a violation or a **traffic infraction**.

COMMENTARY

The statute is amended to conform with the new provisions relating to a traffic infraction.

SPECIAL NOTE: The vehicle code revision bill to be submitted to the 1975 Legislature will contain additional housekeeping amendments to many other

affected ORS sections to make them compatible with the proposed new provisions. In the interest of printing economy those subordinate amendments and related changes in existing law are not printed in this draft and report.

Section 174. (Captions and headings.) The part, article and section headings or captions used in this Act are used only for convenience in locating or explaining provisions of this Act and are not intended to be part of the statutory law of the State of Oregon.

Section 175. (Repealed sections.) ORS 482.620, 482.650, 483.032, 483.036, 483.041, 483.042, 483.043, 483.044, 483.046, 483.048, 483.049, 483.102, 483.104, 483.108, 483.112, 483.114, 483.116, 483.118, 483.120, 483.122, 483.126, 483.128, 483.130, 483.132, 483.134, 483.136, 483.138, 483.140, 483.202, 483.204, 483.206, 483.208, 483.210, 483.212, 483.214, 483.216, 483.218, 483.220, 483.222, 483.224, 483.228, 483.230, 483.236, 483.302, 483.303, 483.304, 483.305, 483.308, 483.310, 483.312, 483.314, 483.316, 483.318, 483.330, 483.332, 483.336, 483.338, 483.343, 483.345, 483.347, 483.350, 483.362, 483.364, 483.366, 483.443, 483.538, 483.614, 483.642, 483.830, 483.840, 483.845, 483.850, 483.855, 483.860, 483.992, 483.993, 483.999 and 485.020 are repealed.

Section 176. (Effective date.) This Act takes effect on July 1, 1976.

COMMENTARY

The Committee suggests the above effective date for the revised vehicle code. Experience of recent sessions of the Legislature would indicate a delay

of approximately one year between *sine die* adjournment and the effective date of the Act. This should allow a reasonable period of time for courts, prose-

cutors and law enforcement agencies to become familiar with the many changes in the law. Even more important, perhaps, it would give the Motor Vehicles Division adequate time in which to inform

Oregon motorists of the new provisions, to print and distribute new driving manuals and to make the many other changes in its records and procedures necessary to implement the Code.

