Tape 8, Side 2 0 to end

COMMITTEE ON JUDICIARY

Subcommittee on Adjudication

March 6, 1974

Minutes

Members Present: Representative George F. Cole, Chairman
Senator George Eivers
Representative Lewis B. Hampton
Representative Norma Paulus

Absent: Senator John D. Burns

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

Others Present: Albin W. Norblad, Marion County District Court Judge
Chester W. Ott, Administrator, Motor Vehicles Division
Bernard Hawes, Director, Traffic Safety Programs, Motor Vehicles Division
Senator Dick Hoyt

Agenda: Administrative Adjudication of Certain Traffic Offenses
Discussion of California "traffic infraction" statutes

The meeting was called to order by Chairman Cole at 10 a.m. in Room 14, State Capitol.

Approval of Minutes of Meeting of January 9, 1974

Representative Paulus moved the adoption of the minutes dated January 9, 1974. There being no objections, the minutes were approved as submitted.

Administrative Adjudication of Certain Traffic Offenses

Mr. Paillette called attention to the term "traffic infraction" which is used throughout the draft and explained that it contemplates a decriminalization of most of the rules of the road. He mentioned that this may not be the term which will finally be used as some other such as "violation" could be determined more appropriate and would also indicate a non criminal offense. The Subcommittee on Revision also contemplates this same approach and Mr. Paillette advised that the other subcommittee, when redefining the substantive offenses, is not attaching any penalty provisions and that the full committee will classify the offenses either as traffic infractions or misdemeanors at the completion of the revision. "Traffic infraction" has not been

defined but would be interpreted as a violation of the traffic code which does not amount to a criminal offense. The draft is adapted from the New York law although some changes have been made with respect to Oregon procedures and is intended to set forth a pure administrative adjudication approach within the Motor Vehicles Division for minor traffic offenses.

Section 2. Traffic infractions; jurisdiction. Mr. Paillette called attention to the phrase in subsection (1) "except for parking, standing, stopping or pedestrian offenses," and stated that if these were to be left out of the system they would necessarily have to be considered in some other manner. The New York approach does not consider these offenses in the administrative adjudication system but had a separate system created to handle this situation.

Representative Hampton stated there could be the question as to whether courts would be called upon to decide whether this approach would give rise to all the rights to search a person when stopping him for a traffic offense.

Section 3. Adjudication of offenses; hearing officers. Subsection (1) would require the Administrator of MVD, after having made a determination that the offense is other than a traffic infraction and belongs in the court, to notify the appropriate court and request removal of the case to that court for disposition.

Subsection (3) contains one of the major provisions with respect to procedure and would authorize the Administrator to appoint hearing officers to carry out the provisions of the bill and also promulgate rules and regulations as has been done under the New York system and which would include a schedule of fines. Mr. Paillette pointed out that the Administrator could not have a regulation providing for a fine in excess of that authorized by statute.

Section 4. Summons. The section gives authority to the Administrator to prescribe the form for the summons and complaint and further provides that such summons and complaint may be the same as the uniform traffic citation.

Section 5. Answer generally. The section is a general provision with respect to answering the summons and contemplates that the summons and complaint be very specific with respect to the date and time the motorist is to appear.

Representative Hampton referred to section 4 and asked if ORS 484.150 would remain in the statutes. Mr. Paillette advised that it would be retained for major traffic offenses and that conforming amendments would be necessary.

Section 6. Answer by mail; admitting charge. Mr. Paillette called attention to the last sentence in the section and stated that there may be situations other than those given in the section which would require a personal appearance by the motorist.

The Chairman asked if it was contemplated that if the charge is for a fourth or fifth violation, for example, the division would return the check to the violator with the notation that he must appear before the hearings officer and Mr. Paillette answered in the affirmative. Representative Hampton asked the division's rule for discretionary suspension and Mr. Ott explained that the division examines the severity of the circumstances and does not actually work on a point system and suspend the license once the offender has reached a certain number of points.

Mr. Ott stated that the New York system provides that the referee hearing the case and reaching a finding of guilty will immediately receive the record of the driver and at that time determine whether or not the driver has accumulated a record which would justify the discretionary suspension. If he believes it does, he then orders the suspension immediately and has it entered on the record at that time.

The Chairman explained that the section would allow the division to discover the violation at the time the driver sends in his plea of guilty rather than waiting for a certain period of time and becoming aware of it when the record of conviction is mailed to its office. Mr. Paillette stated that section 6 does not concern itself with the application of the suspension but in requiring the individual who may be subject to suspension to make a personal appearance.

Senator Eivers asked what type of case creates the greatest volume under the New York system and Mr. Paillette advised that the bulk of the cases are minor moving violations of one form or the other. Mr. Ott thought that these violations would include improper turns, improper lane changes, failing to stop at a stop sign, and going through a red light.

Representative Paulus thought the basic problem would be in implementing the suspension. Mr. Ott stated that if a suspension is mandatory under the New York system, the referee takes the license from the driver at that time and gives him a temporary permit lasting until midnight so the driver may take his car to a place of safe keeping. With respect to the Oregon courts, he noted that the driver often claims he has not received the notice. Mr. Paillette explained that this was one of the reasons for the implementation of section 6. If the driver were likely to be suspended, the hearings officer would be able to remove his license at the time of the hearing. With respect to removing the suspended drivers from the road, he said he did not believe the New York system was any more effective than that of other states.

It was Senator Eivers' contention that it has not been entirely effective in merely taking away a person's license and that when it has been found, at the time of stopping the driver, that his license has been suspended he believed the car should be taken at this point. Mr. Paillette remarked that this problem had been discussed at the meeting of the Consulting Committee and that Judge Schwab's view was

that one of the best ways to enforce suspension is through periodic road checks. In New York, Paillette said, after a motorist is stopped and cited, the complaint and summons is mailed to Albany immediately and if the driver is identified by the computer as being suspended, a misdemeanor complaint is filed in criminal court, and a warrant issued for the motorist's arrest.

Section 7. Answer by mail; denial of charges. Mr. Paillette called attention to the security amount left blank in the draft and stated that New York provides for a $15 security deposit. If it appears unnecessary to require posting of security, the Administrator would have the authority to suspend that requirement.

In response to Representative Hampton's question, Mr. Paillette reported that under the uniform traffic citation the driver can either appear in court at the time cited in the summons and request a hearing, or mail the summons together with a check in the amount of the bail indicated on the summons. The driver can also sign the guilty plea and return it to the court with a check for the amount of bail. It was the Chairman's understanding that the court was suppose to require at least one appearance on a major traffic offense although he believed the statutes were silent on requiring an appearance on a non-major offense.

Judge Norblad told the members that the violator's record is examined at the time the bail forfeiture arrives in the mail and if the records appear to contain several citations, the staff will notify the person that his appearance in court is required and the bail cannot be forfeited. He mentioned that most people do not sign the back of the tickets but enclose a letter stating they wish the bail forfeited or that they are guilty. He spoke of letters which were difficult to determine what plea was intended and in these instances where there is a question, the court notes the person not guilty and a trial date is set.

The Chairman spoke to the security amount proposed in the draft and thought that with the procedure of setting the security less than what the fine would be, an additional burden would be placed on the division if the person changes his mind as additional moneys would then have to be collected. If the security amount would be set at the actual amount of the fine, the person could either appear or forfeit, whichever he wished to do.

Under the New York regulation, Mr. Paillette advised that a personal appearance is required if there is a possibility of revocation or suspension or other charges such as speeding 25 miles or more over the speed limit, DUIL, a speeding offense and the motorist has two speeding violations prior to that, and two misdemeanors relating to traffic or any combination committed within an 18 month period preceding the date of the alleged offense.

In answer to Representative Paulus' question, Mr. Paillette stated that subsection (3) of section 3 states that "The regulations may provide for a schedule of fines to be used where an answer is made, other than before a hearing officer . . . . " It is contemplated that a schedule of fines would be established for traffic infractions and he pointed out that it may be desired to have more than one degree of traffic infractions. California, he said, has a three-tiered approach ranging from $50 to $250. Each offense under the proposed Oregon system, whether called a traffic infraction or misdemeanor, would be graded accordingly with a schedule of fines or jail sentence, if the case were appropriate. It is contemplated in the draft that the Administrator could set a schedule of fines which could be less than the maximum fines provided by law and that they would be other than those imposed at a hearing. The hearings officers could impose a fine which would be maximum under the law but this schedule of fines might be less.

Section 8. Failure to answer or appear. Subsection (3), Mr. Paillette advised, allows the Administrator to withhold the suspension if it has not gone into effect, if the person appears and posts security to guarantee his appearance at any required hearing. The subsection takes into account that if the license has been suspended and the case transferred to court, the suspension shall remain in effect until the driver answers the charge in that court and is a further way to compel the appearance of the motorist.

The Chairman thought that the important factor in subsection (2) was that the motorist receive his notice requiring his appearance. He said the procedure is workable in New York inasmuch as they immediately discover by their computer the past record of the violator and can notify the driver at that time that he must appear.

Section 9. Hearings; findings. The section establishes the hearing procedures held before a hearings officer. Mr. Paillette pointed out that subsection (1) places the burden of proof upon the state and the evidence must be "clear and convincing." He indicated this would be a policy question and that it could be a lesser burden or require a criminal standard of proof beyond a reasonable doubt. The subcommittee, he said, may wish to use broader language when speaking about the burden of proof upon the state and which would clearly indicate that in some cases the state would be involved and in others, a city.

Subsection (2) states that all testimony at the hearing on contested cases shall be recorded by such as a cassette or tape recorder, and is the approach taken in New York. No written transcript is made unless there is an appeal situation and the appellant is then responsible for absorbing the cost, which Mr. Paillette stated was in New York at the rate of $1.50 per page plus payment of a $15 deposit.

Representative Paulus wondered if it was contemplated to have the legislature pass an Act allowing these records to be destroyed after a five or six year period and suggested the draft incorporate this provision. Representative Hampton raised the question as to whether a written transcript should be required if neither party requests it. He noted that Judge Schwab had indicated some willingness to undertake judicial review of administrative agency determinations without a written record but merely with a written summary plus the audio.

The Chairman called attention to subsection (3) which makes reference to contested and uncontested cases where there is an appearance. Section 7 of the draft, he said, provides that the person complete a form when denying part or all of the charge and he asked if it was contemplated to allow the person to appear before the hearings officer and explain the circumstances. The New York system provides for a guilty plea with an explanation in an attempt to mitigate the fine and Representative Hampton believed this could be an important aspect. Representative Paulus asked if the mitigating circumstances are introduced in the record and was informed by the Chairman that by pleading guilty there would be no appeal and therefore he believed no record was made. In future examinations of his record to determine his past history the only way there would be any knowledge of mitigating circumstances would be if a lesser fine had been imposed because of the explanation given by the defendant, and this could not be certain in all cases, Representive Paulus commented.

Representative Hampton asked if there was a provision for a review of an excessive fine and the Chairman explained that New York has maximums and no provisions for such. Representative Hampton next asked if the top fine on a guilty plea is set in such a way that the person could attack the system as being coercive. If the statutory authorized fine is so much higher than what it would be on a guilty plea a person might be induced to plead guilty in order that he might receive a lesser fine. The Chairman stated there was a difference but the same thing could be said about the present bail schedule. Mr. Paillette indicated that further study would be done on this subject to determine what difference there might be.

Representative Paulus asked if it is contemplated attempting to identify the drivers with poor records through a computerized system and if this were the case she believed that the record must show the mitigating factors. The Chairman thought that to do this it would be necessary to preserve the record permanently and Mr. Paillette advised that by entering a plea with an explanation it could, in effect, be enough to persuade the hearings officer not to suspend the license, although the conviction would be retained on his record. He believed it to be an impossible situation to attempt to maintain a record of all the different explanations. He stated that the New York system holds some hearings at night and that approximately 90% of those appearing then are there to give their explanations and perhaps have the fine lessened. Representative Paulus was of the opinion that

perhaps 85% of those appearing believe that by their appearance and by their explanation they have mitigated the damage done to their driving record and which would not be true, she said. Representative Hampton thought a large part of those attending were there to protect their self-image and explain just why they were violating, to which there was general concurrence by the members.

With respect to subsection (4) which provides that the charge shall be civil in nature but treated as a conviction only for the purpose of the Act, Representative Hampton asked the rationale for the use of the term "conviction" and Mr. Paillette thought another term could be used which would not have the criminal connotation that "conviction" has.

Subsection (5), Mr. Paillette reported, would give the hearings officer the discretion to delay the effective date for 30 days of any suspension and takes into account possible appeals. This, in effect, gives the motorist the opportunity to arrange his affairs before going into the suspension period. Representative Hampton asked if an administrative review of the determination that "a substantial traffic safety hazard would result" was contemplated and Mr. Paillette replied that to his knowledge that provision was not contained in the New York statute.

Section 10. Administrative review; appeals board. The section provides for the appointment of at least one appeals board consisting of at least three appeals officers on each board. The section does not set forth any requirements as to the type of expertise required of the officers and employes. The New York system places hearings officers under Civil Service, which Mr. Paillette said assures their independence, after serving their probationary period, and which he believed to be a good factor. Some of the appeals officers also could be hearings officers and is the approach taken in New York.

Section 11. Right of appeal. Mr. Paillette explained the section provides for two types of appellate review. Under subsection (3), if the only issue being raised is the penalty, the appellant may appeal without a transcript and the decision of the board would be based on the records maintained by the hearings officer, which in effect would be the driving record.

Representative Paulus expressed the opinion that a provision should be placed in the draft whereby the citizen could submit a written statement with his guilty plea if he wishes and which would be entered in the record. The Chairman did not believe the section contemplated an appeal from a penalty imposed on a guilty plea but pertains to a hearing before the hearings officer on a not-guilty plea. He recollected that under the New York system, the hearings officer would not impose a greater fine than what was on the summons but could impose a lesser one.

Representative Hampton called attention to subsection (3) and asked if it meant that the person could appeal the excessiveness of the sentence alone, even on a guilty plea. Mr. Paillette responded that this was not the intent. Penalties on guilty pleas range from $35 downward and as a practical matter the likelihood of an appeal for excessiveness of the fine is not great, he said.

The Chairman called attention to the last sentence in subsection (3) " . . . the decision of the appeals board may be based solely on the appeal papers and records . . . . " and suggested the work "shall" be substituted for "may" inasmuch as nothing else would be contemplated that they could look to.

Section 13. Time limit for appeal. Representative Hampton asked if the date of giving notice would be the date of mailing and Mr. Paillette indicated that this should be made more specific in the draft.

Judge Norblad inquired as to what court this would be appealed and Mr. Paillette advised it was not a court appeal but rather administrative. After the judicial review it would go to the Court of Appeals under ORS chapter 183. The driver could appeal the penalty to the Appeals Board but could not take it further.

Section 15. Transcript of hearings. Mr. Paillette noted that the word "department" should be changed to "division."

Section 17. Stays pending appeal. Mr. Paillette advised that the appeals board has 30 days to make a determination and if the decision has not been rendered at that time, any order which has been appealed from is no longer operative until there is a final determination. In answer to Representative Hampton's query, he said the order was not operative before the expiration of 30 days and that appeal does not automatically stay the suspension. If the subcommittee would wish to provide for an automatic stay at the time of notice of appeal, this would have to be specifically stated, he said.

Representative Hampton expressed concern that by not having an automatic stay, the suspension could be over with and could make the rights of appeal meaningless.

In response to Representative Hampton's query relating to section 2, Mr. Paillette explained that the draft contemplates the situation whereby the driver may be stopped for speeding, for example, which charge would automatically come under the administrative procedure - if at that time it is discovered that he had been driving while suspended, he would not qualify under the new charge to come under the administrative adjudication process and the charge is transferred to the court where a complaint is filed against him for driving while suspended and which is consolidated with the new offense. It could happen that the lesser charge may be dismissed when it reaches the court, he said. The range of penalties for traffic offenses or the

noncriminal offenses should be the same regardless of which body imposes the penalty and that it should be stated that the administrative penalty would be binding on the court although it could be lessened by the judge as well as the hearings officer.

Judge Norblad pointed out that by sending both charges to the court, he would assume one could be a jailable offense and which would create a double standard thereby requiring two trials, the vbr and the driving while suspended. Because of the two separate burdens of proof, this would lead to a great deal of difficulty, he explained.

Mr. Paillette stated that with respect to procedural law applying to the court, it could provide for a non jury trial for traffic infractions even though tried in the court. Section 2 was intended to be an accommodation to the motorist with the double citation and he said that the California system, which will be discussed later in the meeting, uses the traffic infraction approach but leaves it with the court.

Mr. Ott said that although he was not present to promote an administrative adjudication system, there are certain justifications for this type of system being placed in the MVD inasmuch as they have the statutory duty of handling all driver records. Suspension and revocation orders and reinstatements are also issued through the division and the administrative machinery for this is already in effect. Forty-five officers are employed throughout the state and could be beneficial in carrying out the program inasmuch as there could be hearings offices in the field offices where accommodations were such. He recalled that the New York system includes a video terminal combined with a printing terminal in each referee's hearing room by means of which he can obtain his information from Albany immediately. One particular use of this, he said, is that after the officer reaches a finding of guilty he can, at that point, call for the record of the driver so as to consider previous convictions, if any. If the conviction is one which requires a mandatory suspension of the license, he is able to secure the license from the driver at that time and enter the suspension on the record. Mt. Ott reported that the division has the capability to do all of this.

Representative Hampton asked Mr. Ott if there was any problem about the immediate review of the suspension as he did not see how the New York system would compare to present Oregon law, where the person can pursue judicial review regardless of the reason for the suspension. Mr. Ott remarked that very likely the New York system would provide for such a hearing although he was uncertain if it is done. The Chairman remarked that it was contemplated that the driver could serve notice that he wished to appeal to the board and which would stay the suspension. Mt. Ott thought that existing law did not specifically provide for a hearing to dispute the mandatory suspension after conviction of a major traffic offense, although he could contest the conviction. Mr. Paillette pointed out that the

New York system does allow 30 days even though the driver was suspended, unless the hearings officer decides it would be too much of a traffic hazard for him to be behind the wheel.

Mr. Ott continued that in order to adequately prepare for implementation of this system, the division would urge that it be given at least an absolute minimum of one year lead time. He questioned whether this system could be applied with any degree of reasonable economy in any area except a densely populated metropolitan area and suggested that, if adopted, the law provide for this system to be implemented only in the Portland area for a period of one year, where the density of the cases would make it justifiable. He doubted that it would be an economical system to attempt to apply in the rural areas, such as in eastern Oregon.

Representative Hampton asked if Mr. Ott would consider it workable to allow the judges in those sparsely populated areas to operate under the same rules prescribed for administrative adjudication and Mr. Ott replied in the affirmative.

Mr. Ott referred to subsection (2) of section 3 and suggested the draft specifically designate the person to mail the notice of transfer of the case. He next referred to the Chairman's remarks relating to the qualifications of the hearings officers and employes and suggested the draft provide at least the minimum qualifications. He said the New York system required that the referees be members of the bar although the division could manage with non-lawyers who are given a minimum amount of training. It was Mr. Paillette's understanding that the qualifications for the hearings officers were set by the MVD in New York and that they were required to be lawyers, but by regulation rather than by statute. Mr. Ott stated that his preference would be to have members of the Oregon bar participate and this requirement be by statute. Representative Hampton stated his concern with respect to legal training and that it apply to the fact-finding portion, not so much the adjudication. He was of the belief that there should be some degree of flexibility and the lawyer requirement should not be contained in the statutes.

Mr. Ott alluded to an earlier discussion with respect to retention of the records and destruction after a certain date. He informed the members that the drivers' records are maintained for a ten year period because of the requirement that the DUIL records be counted for a ten year period. The older records are then placed on tape and stored, and would be obtainable if needed.

With respect to a case of mitigating circumstances and with no fine imposed, Mr. Ott thought it feasible to retain this on the record of the driver in order that it could be studied at a later time, if necessary, thereby giving some guidance as to how the referee had judged the offense. He reminded the members that in order to expand the records, and storage for the same, the costs arising from 421,000 convictions such as in 1973 would begin to mount.

Mr. Ott continued that he would strongly recommend the provision for the guilty plea with explanation which was favored earlier by Representative Paulus. He believed this is of great value and has gone far to assure public acceptance of the New York program.

Judge Norblad referred to Mr. Ott's statement with respect to placing this system in the Portland area only and stated that this would bring about the concern of the other district courts who are presently inundated with cases and unable to handle them. He wondered how this problem would be resolved in the larger counties, e.g., Lane, Marion, Benton, etc. In answer to Representative Hampton's question, he stated that he had no objections to permitting an administrative appeal from a district judge's finding. In 1975 the district court would undoubtedly be a court of record and under that statute appeals would go directly to the Court of Appeals and could be resolved that way. He contended that if this system were to be tried in Portland first, and if Marion County, for example, would not be able to utilize it for three years, then obviously they would have to ask for additional judges to keep up with the caseload. Judge Norblad stated that although he was not speaking for all district judges, the majority has no objections to having a hearings officer as long as he is independent.

Mr. Ott referred to his earlier statement with respect to the economical aspect in implementing this system in the rural areas and said that if the qualification requirements were not set too high, it could be done by the division's making use of its supervisory personnel in the field, even though it would not be done as promptly or economically as in the metropolitan areas. He stressed that by having this implemented in the larger area for a year they would have the benefit of that experience when expanding the plan for the rest of the state.

Representative Hampton remarked that he did not see any merit to impose, merely for the sake of uniformity, a uniform system statewide except that there were some objectives such as simplification of procedures which he would wish uniformly available, and whether they could be obtained in the courts or the administrative machinery was another question. Judge Norblad stated that one of the objectives is to reduce the need for more judges and this would not be helped by implementing the program in Portland alone.

The subcommittee recessed for lunch at 12:30 p.m., reconvening at 1:30 p.m. with the same four members present.

Discussion of California "traffic infraction" statutes.

Mr. Paillette explained that in 1973 California enacted Chapter 1162 (Senate Bill No. 620), a copy of which is attached to these minutes marked Appendix A. Although the bill does not set out all the substantive law with respect to the different crimes, but incorporates them by reference, it applies the traffic infraction classification

to most of the violations of its vehicle code, with the exceptions listed in section 2. Speed contests, he said, would not be a major traffic offense under existing Oregon law. Mr. Paillette recalled that a letter received from the Judicial Council of California reported that the insertion of special provisions for professional drivers lessened the opposition to the bill and which provision is contained in section 1.

Section 3 states which violations constitute a misdemeanor and Mr. Paillette said that in some respects the California classification system is more severe than the New York approach. In answer to Representative Paulus' question, Mr. Paillette said that section 3 is stronger than the New York approach, particularly with respect to failing to appear or to pay a fine and failure to attend traffic school. Representative Paulus stated that she would desire to have this placed in the draft as part of the grading of offenses.

With respect to section 5, Mr. Paillette explained the three-tiered approach taken by California - a fine not exceeding $50 for the first conviction; $100 for the second, and $250 for the third conviction. Another variation which could be used on this same approach, he said, would be to have multiple offenses covered with greater fines, and also different degrees of offenses. The Oregon Criminal Code does not have any classification system for violations but imposes a maximum fine of not more than $250. There could also be provided one range of penalties and authorize the hearings officers to make that determination. He believed it would be logical to divide the offenses into moving and non-moving, as an example.

The Chairman noted that section 5 speaks to three convictions in a 12 month period rather than three citations and wondered if Oregon bases this on the conviction date as opposed to the violation date.

Mr. Paillette continued that there was nothing in the California law which takes traffic cases out of the courts, but there is no jury trial for these offenses.

Judge Norblad explained that the cost to the state and county for a district court jury trial for one day amounted to $400 to $500, which costs excluded rent and equipment.

Representative Hampton asked what the California statute actually achieves in comparison to Oregon law for minor traffic cases and Mr. Paillette explained that it would simplify the court procedure in that there would be no jury trial or court appointed attorney available, and for these reasons the cases would undoubtedly be handled more expeditiously. He pointed out that in talking to the judges and district attorneys and from data reported by the eight counties which are being surveyed it was discovered that in the minor traffic area there are not too many jury trials. He did not think this was a big consideration as far as the Oregon courts are concerned.

Representative Hampton expressed favor of much of the New York procedure and thought this approach should not be rejected as Oregon would benefit by many of the functions performed by them in their administrative adjudication system, but on the other hand, he wondered if it would be politically palatable to implement it statewide. He proposed taking the procedure in steps - having an administrative system whereby the bail forfeiture or what was equivalent to a guilty plea go straight into the MVD as the first step and implement this in six months, for instance. The next step would consider another increment. The Chairman was of the opinion this type of approach would be eliminating the clerical work and would not be affecting the judges' time. Judge Norblad stated that a staff of approximately six clerks work only on traffic citations and perhaps this approach would not have that great of an impact insofar as the judges' time.

Judge Norblad remarked that the present staff does not perform any of the functions which would be done by the hearings officers, only the clerical work leading up to it. Under the New York approach this total staff would not be required in this category if it were to go into the MVD. To be of any benefit to the judges there would have to be hearings officers to take under advisement the guilty pleas and explanations.

Senator Hoyt's opinion was asked with respect to a system which would permit the municipal, district and justice of the peace courts in eastern Oregon to adjudge infractions but which would allow the more populous counties to use the hearings officers. Senator Hoyt indicated his support to this two-tier system. Senator Eivers stated that if it were to be tried on a limited basis and be restricted to certain things, it could be beneficial if the officer could check on the traffic citation the defendant's choice of using this system or not. If it were made attractive to the defendant because of the modest fine and no jail sentence, although with no appeal provision, the fine could be paid with an explanation and would not be on the record as a guilty plea. The defendant would not have to appear in these cases unless he wished, he said. Senator Eivers further stated that he was not impressed by the New York and California approach. Representative Paulus noted that if it were an infraction rather than a crime there should not be a plea of guilty.

Mr. Paillette indicated that Pennsylvania, New Jersey and Minnesota have an infraction or petty misdemeanor approach where there is no imprisonment penalty for minor traffic offenses. With respect to being innovative procedurally, New York is alone, although California has streamlined the procedure somewhat. A non-jury system would be constitutional in those cases where there is no possibility of a jail sentence.

With respect to the statement made that Judge Hanson presently spends approximately one hour daily on traffic cases, Representative Hampton wondered if it were feasible to have a judge with six or seven years of training decide whether a driver, for example, went through a stop sign, or decide the appropriateness of a $15 or $25 fine. Judge

Norblad mentioned that the cases dropped in December, January and February and it would be some time before they could present figures which were representative. The court averages 3,000 to 4,000 cases monthly although in the last three months they have dropped to approximately 1,800 but are again on the rise.

Mr. Paillette reported there are a number of states which are examining the administrative adjudication system. The Maryland State Bar Association has proposed to the Legislature that it adopt a New York type procedure which would exclude the major traffic offenses. They propose the standard for the hearings officers be a law degree and that they be screened and pass an examination. They also proposed that the reasonable doubt standard for proof be retained and also the right of an appeal de novo as to the factual determination of guilt only. It was also recommended that there be an independent administrative review board. Mr. Paillette continued that there are a number of states interested in what Oregon develops. The U. S. Dept. of Transportation and the National Highway Traffic Safety Administration have expressed interest in Oregon's study inasmuch as the DOT has already gone on record as recommending to the states some type of administrative approach.

Senator Hoyt was of the opinion that minor traffic offenses are not a grave problem and he did not consider they should be a problem to the subcommittee. He thought the real problem would be solved when the de novo appeals are eliminated although the Chairman stated that statistics show this is not creating a great burden on the circuit courts to which Senator Hoyt responded is due to the plea bargaining process. The main problem, the Chairman stated, is the burden on the lower court and the judges' time in considering the minor matters as opposed to the major.

Judge Norblad indicated the court has statistics computed on results of the de novo appeals of 1973 cases and offered to submit these to Mr. Paillette.

Representative Hampton suggested the committee consider having a proposal drafted which in effect would make minor traffic matters infractions and eliminate the jail sentence; that consideration be given to an administrative adjudication system which could be carried out through the judges in smaller areas, if practical, and also have the parallel system operating for the metropolitan areas. Chairman Cole suggested the procedure of utilizing the district court clerk concept as a hearings officer and free the judge for trial work.

With respect to other alternatives to be proposed, Mr. Paillette indicated a plan had been suggested by Judge Schwab and which will be subsequently drafted by Mr. Paillette. There is also the approach to utilize the district courts in some parts of the states as proposed by Representative Hampton.

The next meeting of the subcommittee was scheduled for March 29 at which time it has been arranged to have the Minor Courts Committee of the Judicial Conference present to offer any recommendations or suggestions which they may have.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Norma Schnider, Clerk
Subcommittee on Adjudication

Senate Bill No. 620

CHAPTER 1162

An act to amend Sections 40000.3, 40000.15, 40000.25, and 42001 of, and to add Sections 12810.5 and 40000.28 to, the Vehicle Code, relating to vehicle violations.

[Approved by Governor October 2, 1973. Filed with Secretary of State October 2, 1973.]

LEGISLATIVE COUNSEL'S DIGEST

SB 620, Song. Vehicle violations.

Requires, notwithstanding a specified section of the Vehicle Code re negligent operators of motor vehicles, that a person who drives 25,000 miles or more per year be prima facie presumed to be a negligent driver of a motor vehicle only if his driving record shows a violation point count as specified.

Makes infractions, rather than misdemeanors, violations of various provisions of the Vehicle Code, relating to rules of the road, except provisions relating to driving under the influence, reckless driving, speed contests or exhibitions, throwing substance at vehicles, compliance with orders of officers on vehicular crossings, and trespassing.

Provides that if a defendant has been convicted of 3 or more violations of the Vehicle Code or local ordinances adopted pursuant thereto, within an immediately preceding 12-month period, any violation which otherwise would be an infraction is a misdemeanor provided such convictions are admitted by the defendant or alleged in the accusatory pleading.

Deletes special penalty provisions re certain specified misdemeanor violations, based on such violations being made infractions, and makes conforming changes.

Specifically provides that a willful violation of a court order which is punishable as contempt pursuant to specified provisions of the Vehicle Code is not an infraction, rather than providing that such violation constitutes a misdemeanor.

Makes related changes.

Makes additional changes in Section 40000.15, Vehicle Code, proposed by AB 660, to be operative only if this bill and AB 660 are both chaptered and effective January 1, 1974, and this bill is chaptered after AB 660.

Provides that notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be any appropriation made by the act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 12810.5 is added to the Vehicle Code, to read:

12810.5. Notwithstanding Section 12810, a person who drives 25,000 miles or more per year shall be prima facie presumed to be a negligent driver of a motor vehicle only if his driving record shows a violation point count of six or more points in 12 months, eight or more points in 24 months, or 10 or more points in 36 months.

SEC. 1.5. Section 40000.3 of the Vehicle Code is amended to read:

40000.3. A violation expressly declared to be a felony, or a public offense which is punishable, in the discretion of the court, either as a felony or misdemeanor, or a willful violation of a court order which is punishable as contempt pursuant to subdivision (a) of Section 42003, is not an infraction.

SEC. 2. Section 40000.15 of the Vehicle Code is amended to read:

40000.15. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Section 23102, relating to driving under the influence.

Sections 23103 and 23104, relating to reckless driving.

Section 23105, relating to driving under the influence.

Section 23109, relating to speed contests or exhibitions.

Section 23110, subdivision (a), relating to throwing at vehicles.

Section 23253, relating to officers on vehicular crossings.

Section 23332, relating to trespassing.

SEC. 3. Section 40000.25 of the Vehicle Code is amended to read:

40000.25. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Section 40005, relating to owner's responsibility.

Section 40504, relating to false signatures.

Section 40508, relating to failure to appear or to pay fine.

Section 40519, relating to failure to appear.

Section 42005, relating to failure to attend traffic school.

SEC. 4. Section 40000.28 is added to the Vehicle Code, to read:

40000.28. Any offense which would otherwise be an infraction is a misdemeanor if a defendant has been convicted of three or more violations of this code or any local ordinance adopted pursuant to this code within the 12-month period immediately preceding the commission of the offense and such prior convictions are admitted by the defendant or alleged in the accusatory pleading. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged.

SEC. 5. Section 42001 of the Vehicle Code is amended to read:

42001. (a) Except as provided in Section 42001.5, every person convicted of an infraction for a violation of this code or of any local ordinance adopted pursuant to this code shall be punished upon a first conviction by a fine not exceeding fifty dollars ($50) and for a second conviction within a period of one year by a fine of not exceeding one hundred dollars ($100) and for a third or any subsequent conviction within a period of one year by a fine of not exceeding two hundred fifty dollars ($250).

(b) Every person convicted of a misdemeanor violation of Sections 2800, 2801, and 2803 insofar as they affect failure to stop and submit to inspection of equipment or for an unsafe condition endangering any person, and Section 2815, shall be punished upon a first conviction by a fine not exceeding fifty dollars ($50) or by imprisonment in the county jail for not exceeding five days and for a second conviction within a period of one year by a fine of not exceeding one hundred dollars ($100) or by imprisonment in the county jail for not exceeding 10 days, or by both such fine and imprisonment and for a third or any subsequent conviction within a period of one year by a fine of not exceeding five hundred dollars ($500) or by imprisonment in the county jail for not exceeding six months or by both such fine and imprisonment.

This section shall have no application to Article 2 (commencing with Section 42030) of Chapter 1 of this division relating to weight violations or to any violation punishable pursuant to Section 42001.7.

SEC. 6. Section 40000.15 of the Vehicle Code is amended to read:

40000.15. A violation of any of the following provisions shall constitute a misdemeanor, and not an infraction:

Section 23102, relating to driving under the influence.

Sections 23103 and 23104, relating to reckless driving.

Section 23105, relating to driving under the influence.

Section 23109, relating to speed contests or exhibitions.

Section 23110, subdivision (a), relating to throwing at vehicles.

Section 23253, relating to officers on vehicular crossings.

Section 23332, relating to trespassing.

Section 27150.1, relating to sale of exhaust systems.

SEC. 7. It is the intent of the Legislature, if this bill and Assembly Bill No. 660 are both chaptered and become effective January 1, 1974, both bills amend Section 40000.15 of the Vehicle Code, and this bill is chaptered after Assembly Bill No. 660, that the amendments to Section 40000.15 proposed by both bills be given effect and incorporated in Section 40000.15 in the form set forth in Section 6 of this act. Therefore, Section 6 of this act shall become operative only if this bill and Assembly Bill No. 660 are both chaptered and become effective January 1, 1974, both amend Section 40000.15, and this bill is chaptered after Assembly Bill No. 660, in which case Section 2 of this act shall not become operative.

SEC. 8. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

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1968 Annual Report

1. Traffic Infractions

Assembly Bill No. 2038 would have revised a number of Vehicle Code provisions to make the violation of certain statutes relating to the operation of vehicles and the use of highways traffic infractions instead of crimes. It provided for court trials of such offenses and for the imposition of a fine, license suspension, or mandatory traffic school as penalties but eliminated the possibility of a jail sentence for any such violation.[2]

Two other measures relating to the subject of traffic infractions—Senate Bill No. 197, introduced by Senator Carrell, and Senate Bill No. 430, introduced by Senator Song—were placed before the 1967 Legislature. Senate Bill No. 430 was identical to the Council's Assembly Bill No. 2038 in all respects except that license suspension was made unavailable as a penalty for a first conviction and the right to a jury trial was retained when license suspension was available as a penalty, *i.e.*, for any subsequent conviction within a 12-month period. The Judicial Council determined to support Senate Bill No. 430. This measure was favorably reported out of the Senate Committee on Judiciary, but was refused passage by the Senate. In light of this action on Senate Bill No. 430, the Judicial Council determined not to move ahead with its own proposal and, consequently, Assembly Bill No. 2038 was never scheduled for hearing.[3]

[2] See 1967 Judicial Council Report 13–57.
[3] House Resolution No. 504 authorized an interim study of this subject.

1969 Annual Report

8. Traffic Infractions

Assembly Bill No. 1118 was introduced by Assemblyman Bagley to implement the Judicial Council's recommendation for a reclassification of minor offenses as infractions. As introduced, this measure would have classified as infractions a number of lesser Vehicle Code offenses and local ordinances adopted pursuant to the Vehicle Code.[16] Following several hearings in the Legislature, the measure was amended substantially. As amended, the measure was enacted to become operative January 1, 1969.[17]

This measure amended Penal Code Section 16 to establish a penal category of infractions, constituting a type of public offense in addition to felonies and misdemeanors. It added, amended, and repealed several other Penal Code sections and a number of Vehicle Code sections to specify that all local ordinances adopted pursuant to the Vehicle Code and specific violations of the Vehicle Code—generally relating to parking, equipment, and a number of miscellaneous and lesser types of offenses—are infractions. The procedure applicable to the issuance of citations and for the trial of misdemeanor actions apply generally to infraction cases, except that an infraction is tried by the court without a jury and an indigent defendant has no right to receive the services of counsel paid for at public expense. An infraction was made punishable only by fine or traffic school; jail was eliminated as an available penalty for these violations. Wilful nonpayment of a fine or failure to attend traffic school constitutes a misdemeanor. Other nonpayment of a fine results in the court's being authorized to impound the defendant's driver's license for a period not to exceed 30 days unless the defendant persuades the court that his license is essential to his employment, in which case the court is authorized only to restrict the defendant's driving to that which is essential to his employment. The license impoundment or driving restriction does not constitute a formal suspension or revocation, but a violation of the court's order constitutes a contempt of court.

[17] Cal.Stats. 1968, Ch. 1192.

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Annual Report

Traffic Infractions—Conforming Adjustments

In 1968, the Judicial Council successfully sponsored legislation in implementation of its recommendation for a reclassification of minor offenses as infractions, and that legislation classified as infractions a number of lesser Vehicle Code offenses and local ordinances adopted pursuant to the Vehicle Code.[2] The measure was amended once in a nonsubstantive manner. As thus amended, the measure was enacted as an urgency measure effective March 6, 1969.[3]

[2] Cal.Stats. 1968, Ch. 1192. See 1969 Judicial Council Report 109.
[3] Cal.Stats. 1969, Ch. 9.

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Annual Report

Traffic Infractions

Assembly Bill 1414 was introduced by Assemblyman Warren to effectuate the Judicial Council's recommendation that the infractions concept be broadened to include all ordinary moving violations of the Vehicle Code and that the procedural law for handling traffic infractions be revised in several respects: Expansion of the infractions category was abandoned in the face of opposition from several interested groups. Section 42003 is amended to provide that a judgment granting the defendant time to pay a fine on an infraction conviction shall include an order requiring him to appear for further proceedings if he fails to pay as ordered, and that wilful violation of the order is punishable as a contempt, rather than having the court obtain a written promise to pay or appear, the wilful violation of which is a misdemeanor. Section 40509 is amended to permit rather than to require the court to give notice to the Department of Motor Vehicles of violation of a written promise to appear, or of an order to appear or pay a fine, or of a wilful failure to pay a fine, and to delete the requirement of prior issuance of warrant. The range of offenses for which a notice may be sent for wilful failure to pay a fine is broadened to include all offenses reportable under Section 1803. Finally, Sections 12507 and 13365 are amended to conform to these substantive changes in procedure. The measure was amended twice, first to delete the expansion of infractions and then to expand the category of offenses for which a notice may be sent. The measure was enacted in this amended form,[12] to become operative on May 3, 1972.[13]

[12] Cal.Stats. 1971, Ch. 1532.
[13] Vehicle Code § 1.5 (added by Cal.Stats. 1971, Ch. 450).

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