Tape 9, Side 2 - 905 to end
Tape 11, Side 1 - 1 to 1155

COMMITTEE ON JUDICIARY

Subcommittee on Adjudication

March 29, 1974

Minutes

Members Present: Rep. George F. Cole, Chairman
Rep. Lewis B. Hampton
Rep. Norma Paulus

Delayed: Sen. Elizabeth W. Browne

Excused: Sen. John D. Burns
Sen. George Eivers

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

Minor Courts Committee: Hon. Philip Abraham, Chairman
Hon. Wayne H. Blair, District Judge, Klamath County
Hon. John F. Cushman, District Judge, Hood River County
Hon. Ross B. Davis, District Judge, Jackson County
Hon. Gerald O. Kabler, District Judge, Douglas County
Hon. Mitchell Karaman, Circuit Judge, Jackson County
Hon. James A. Mason, District Judge, Columbia County

Also Present: Sen. C. R. Hoyt
Mrs. Adell Johnson, Assistant State Court Administrator
Hon. Albin Norblad, District Judge, Marion County
Capt. John Williams, Oregon State Police
Hon. Herbert M. Schwab, Chief Judge, Court of Appeals

Agenda: Minutes of previous meeting

Discussion with members of Minor Courts Committee of the Oregon Judicial Conference on the subject of traffic case adjudication procedures.

a. Administrative Adjudication of Certain Traffic Offenses; P.D. No. 1, Feb. 1974.

b. Classes of Offenses; Disposition of Offenders; P.D. No. 1, March 1974.

Representative George F. Cole, Chairman, called the meeting to order at 10:00 a.m. in Room 14, State Capitol.

Members of the Minor Courts Committee of the Oregon Judicial Conference attending the meeting were welcomed by Chairman Cole, who then asked Mr. Paillette to review information and approaches which have been under discussion by the subcommittee as possible ways to alleviate congestion in the Oregon court system.

Mr. Paillette explained that the subcommittee had met with a number of municipal judges from around the state and informally discussed the question of adjudication of traffic offenses. The judges represented various sections of the state and the discussion was worthwhile in that the subcommittee members were made aware of the views of the municipal judges as to adjudication of traffic offenses, he said. The members had expressed an interest in having a similar meeting with the Minor Courts Committee. He made reference to copies of two preliminary drafts, which were sent to the Minor Courts Committee members, dealing with two different approaches to traffic case adjudication procedures. One, he explained, deals with an administrative adjudication of traffic offenses and is patterned after the New York system. The other draft deals with classes of offenses, and, in effect, decriminalizes the vehicle code. He explained that the Legislature wanted this committee to attempt to revise the substantive code and to reclassify offenses.

The Subcommittee on Revision, said Mr. Paillette, has been working on drafts which substantively restate the rules of the road and traffic offenses. It is anticipated, he said, that there will be a general revision of criminal penalties in ORS chapter 483. Once the committee as a whole has decided on a classification system, he said, it will then grade each of the offenses. He stressed that the terms are arbitrary and are suggestions to promote discussion. The staff, he continued, isn't promoting one type of system over another and that it is vital for the committee to review all alternatives.

Minutes of meeting of March 6, 1974.

Mr. Paillette made reference to the last paragraph on page 14 of the minutes, which referred to "other alternatives" for classification and adjudication. He explained that he had been meeting with Judge Herbert Schwab, and a rough draft is being typed on the "Schwab plan" which will be discussed by the Advisory Committee at a meeting which is scheduled for next Friday. He would anticipate, he said, that once the Advisory Committee is satisfied with a preliminary proposal the draft would be presented to the Subcommittee on Adjudication at its next meeting.

Chairman Cole moved the adoption of the minutes dated March 6, 1974. There being no objections, the minutes were approved as submitted.

Administrative Adjudication of Certain Traffic Offenses: P.D. No. 1.

Chairman Cole explained the problems facing the subcommittee regarding alternative approaches to the problem of court procedures. The subcommittee generally believes that minor traffic violations should be decriminalized, he said. One of the questions facing the subcommittee is whether to set up a whole new system, perhaps through the Motor Vehicles Division. Another is the possible establishment of hearings offices throughout the state to completely divest the courts of the responsibility of dealing with traffic violations as opposed to leaving them in the court system to be handled by the judicial system in an administrative manner. Another question facing the subcommittee, he continued, is whether it would be best to instigate changes for the more populous areas and later to expand and encompass the less populous sections of the state. If hearings offices are used in the sparsely populated areas, a problem would exist in making certain an individual wishing to be heard would have easy access to a hearings officer or to a court. The problem of reconciling differences among municipal courts, district courts and justice courts and the disposition of fines would need to be worked out, reported Chairman Cole. He explained that the municipal judges were generally of the opinion that the disposition of traffic violations should remain in the court system. The subcommittee would welcome the opinions and responses of the district judges, he said.

Judge Ross B. Davis introduced himself and explained that he, Judge Merryman and Judge Karaman, Jackson County, had read the two preliminary drafts and the minutes and are basically in support of the trend the subcommittee is now following. He explained that there have been two district courts in Jackson County since 1969 and that there has been a substantial increase in the number of cases filed. In 1970 there were 10,686 traffic cases filed, and in 1973 there were 18,134. The total number of cases filed in 1970, including traffic, was 14,621, and in 1973 the total number was 23,849. The overall increase, he said, was 9,228. His opinion was that the two district courts were operating pretty much up to capacity. His opinion on decriminalization, he said, would depend on what the Legislature intends to do with the district courts. If the district courts are to be courts of record and the jurisdictional limit on civil cases increased, he didn't believe a $500 increase in jurisdictional limit in civil cases would substantially increase the number of civil cases, but he did feel that being a court of record would slow down procedures of the district courts.

Judge Davis explained that if district courts go on the record, lawyers will naturally make fuller presentations in cases where there is a possibility of appeal. Many more briefs will be presented, more issues will be raised and the whole process will be more time-consuming, he said. With the increase in traffic, better law enforcement, population growth and the resulting increase in cases filed, Jackson County district courts will need help if their jurisdiction is increased, because it would be difficult for two judges to handle the load. It would be helpful, he said, to take the traffic cases out of the district courts.

Judge Davis explained that he and Judge Merryman were in agreement that a first drunk driving offense, attempt to elude and driving while suspended should continue to be criminal offenses. It was Judge Davis' recommendation to decriminalize reckless driving and all lesser offenses. If the district courts are going to continue to increase in jurisdictional limit and acquire exclusive jurisdiction in some areas with no option as to where to file, then decriminalization should include the first DUIL charge.

In answer to a question by Rep. Hampton, Judge Davis answered that if the system is to be left as it is now, he would favor the decriminalization of reckless driving and all other lesser violations. The district judges as a group have not taken a position, he explained, but he and Judge Merryman share the same viewpoint. Rep. Hampton asked whether Judge Davis believed it was feasible for the subcommittee to continue to work successfully on either administrative adjudication or decriminalization of minor traffic offenses without dealing with the broad problem of single level trial judiciary versus commissioners, referees, etc. Judge Davis replied that his opinion was that it would be a piecemeal approach but would be logical.

Chairman Cole asked Judge Davis his opinion as to what the effect would be in his court if traffic offenses encompassing reckless and lesser charges were decriminalized and left in the court system. Judge Davis answered that the load would be the same as it is now. The district courts in Jackson County, said Judge Davis, tried a system where the district attorney would be excused from appearing on minor traffic cases unless he wanted to appear or unless the defendant appeared with counsel. There was some criticism, but generally those involved were not dissatisfied. In fact, he continued, when he would explain to the defendant what would happen, the defendant would usually be more open than with the district attorney there. Judge Davis indicated that it was his opinion that both sides were better presented to him.

The court procedures that take the time, said Judge Davis, are arraignments and docketing. There are very few jury trials involving reckless driving and lesser violations, he said. The two courts in Jackson County, he continued, are now setting jury trials approximately four months ahead with eight or nine being set for trial every day. Nonjury trials are being scheduled at about five and a half months ahead. According to Judge Davis, the Medford Police Department is considering citing more minor traffic cases into the district court rather than the municipal court. At present, continued Judge Davis, the district court receives all DUIL cases, which is a local policy. Judge Karaman added that it is cheaper for the police department and the municipal court to do this. If the trend continues, stated Judge Davis, the district court will have a huge caseload problem.

Judge James Mason expressed concern that once the municipal courts and police departments around the state understand that minor traffic cases can be funneled into a district court the practice will increase because the county pays the bill.

Chairman Cole stated that the New York system has a procedure for handling a "guilty with explanation" plea, which seems to be popular with a defendant who believes he might get a reduction in a fine if he can explain his case. The concern, continued the Chairman, has been raised that if this is removed from a judge's jurisdiction and given to an administrative person or an officer directly under the court that a defendant won't like the arrangement and will want to talk to a judge. Judge Davis replied that he didn't believe that the person who would listen to an explanation would necessarily need to be a judge. He agreed that the public generally wants to explain and that the person hearing the explanations would need to conduct himself with dignity and have some authority.

In answer to a question by Chairman Cole, Judge Karaman stated that the court system in Jackson County would have an extreme physical problem if it were required to handle another proceeding or house an administrative office in the same building. Chairman Cole explained that he was referring to sufficient space for a hearings officer, violators and attorneys.

Judge Karaman pointed out that it appeared that a separate parallel judicial system might be created. He explained that if some way certain types of violations such as running a stop sign and an equipment violation could be removed from the system, possibility of a jail sentence eliminated and the right to a jury trial removed, any competent person could hear a case and make a decision. The real problem in the district court, he continued, is the DUIL case. The last time he checked, he said, DUIL cases were scheduled six months in advance. Judge Davis added that thirty two jury trials for DUILs were being set per week, and if the DUIL problem could be eliminated, the matter would be solved.

Judge Wayne Blair explained that some people are pleading not guilty and fighting a drunk driving charge and refusing to take a Breathalyzer test because of the threat of a license suspension.

Judge Abraham stressed that the requests for jury trials are a problem. The time has to be docketed whether a case ever goes to trial or not, and the whole process is time consuming. Judge Karaman added that in Jackson County, with two district judges, eight to ten jury trials are set a day. There have been complaints, he added, because of plea bargaining and reduced charges.

Rep. Paulus suggested that if a trial is requested perhaps a charge can be made if the request is withdrawn without adequate notice.

Judge Davis told of a system used in Jackson County that seems to be successful. A pretrial conference is held on Tuesday preceding the week of a trial, and at that time negotiations are completed and the defendant is informed that any pretrial motions will have to be completed. Since negotiations stop after the pretrial conference, the court will not accept a reduction in the charge. The defendant has already decided whether to plead guilty or go to trial. If a defendant

changes his mind and doesn't inform the court 24 hours before the trial that he doesn't plan to appear and a jury has been called, he is required to pay a jury trial fee.

Mrs. Adell Johnson commented that it was her opinion that there wasn't a courthouse in the state, except for Fossil, that would have the facilities to accommodate an administrative bureau. Judge Karaman added that this would be true in Jackson County. Marion County, commented Judge Norblad, would have room.

Judge John Cushman explained that in Hood River County the DUIL cases where a jury trial is requested are not those that involve a first offense. For a repeat offender, the threat of losing a license for a year or more most always involves the request for a jury trial in district court. He added that there are about five DUIL cases a week, which would be a fairly large amount for a small county. Judge Cushman explained that he also works in Corvallis and that the district attorney is rarely present unless the case being tried involves a major traffic offense. This is also true in Hood River County, he said. In answer to a question by Chairman Cole, Judge Cushman stated that it is his opinion the public wants a legally trained person to administer justice. It was his understanding that there have been problems in the justice of the peace courts and some municipal courts where lay people will not consider evidence from a lawyer's point of view. It would be his preference, continued Judge Cushman, for an administrative system to be handled through the court with a judge. Minor offenses could be handled differently, he added.

Rep. Hampton expressed concern that a jury might make a "predecision" if a jury trial is allowed only when a prior conviction exists on a DUIL charge.

In answer to a question by Rep. Paulus, Judge Karaman answered that he could only give an estimate as to how many of the DUIL cases involve persons with suspended licenses. Thirty percent, he said, would be a low estimate. In answer to another question by Rep. Paulus, Judge Karaman answered that it would be difficult to impound an automobile with the first suspension of a license because of joint ownership. The repeat offenders are the persons who create a problem in any county, said Judge Karaman. People who commit DUIL offenses once and do not repeat are not the real problem.

Judge Kabler informed the subcommittee that about 75 percent of the people who appear in his court with suspended licenses have never been notified that their licenses have been suspended.

Rep. Hampton made the comment that a license that would have to be renewed monthly might help solve the problem of driving while suspended. It would be expensive, he commented, but a driver would receive his license monthly, which would be in effect for a month, and another card that would need to be mailed in for a license for the following month.

Chairman Cole asked whether divesting the courts of minor traffic matters would solve their problems and if this was done whether the courts would still have problems in dealing with the DUILs.

Judge Davis answered that with two judges in Jackson County it was his belief that jury trial time could be increased half again if the judges weren't concerned with minor traffic offenses. Judge Blair commented that in Klamath County the court is behind only on DUIL cases. He stated that minor traffic cases are handled two nights a week by a pro tem judge. Judge Mason replied that removing the minor traffic cases from the courts would not alleviate the docket problem in Columbia County because handling DUILs takes up most of his time. Appeals comprise 60 or 70 percent of all DUIL cases, he continued. In answer to a question by Rep. Cole, Judge Mason answered that it was his opinion that making the district court a court of record would help solve the problem.

Judge Kabler commented that the district court in Douglas County has no docket problem.

Chairman Cole commented that because of information furnished by some judges relating to the use of alcohol information schools with first time offenders that it may be feasible to eliminate the DUIL offender on his first offense from criminal process and asked how the judges felt about that alternative.

Judge Blair commented that a person with two DUIL offenses rates high as a possible problem drinker and that with a second offense there is the possibility of a medical problem being pushed into the criminal court.

Rep. Hampton stated that dealing with a mental problem poses the question of when a jury trial is needed to protect the civil liberties of a defendant. No one knows, he continued, where to draw the line. Because of the various degrees of mental illness, such as the standard mentally ill person, the alcoholic and the person with the substandard intelligence, circumstances vary greatly as to when the decision to make a jury trial available is made.

In Jackson County, commented Judge Davis, people are not jailed on a first DUIL offense. Instead, they are fined, put on probation, suspended or sent to an alcohol school. On a second DUIL offense, said Judge Davis, a defendant is usually sent to jail for 30 days. Jackson County has volunteer probation officers, but alcoholics do not participate in the probation program.

In Douglas County, said Judge Kabler, everyone convicted on a .15 charge goes on probation for a year. The probation program in Douglas County involves paid probation officials. The program, he said, appears to be successful. Douglas County also has a halfway house, which is financed by the county, and a ward in the hospital for alcoholics. There are about 20 to 30 DUIL cases every week in Douglas County, he said.

Rep Rep. Paulus asked for opinions as to whether a judge should be given the power to suspend a license of an offender before he leaves the courtroom. Judge Kabler replied that he didn't believe the Legislature would have the power to give that authority because of the appeal problem. The MVD, he said, can issue a temporary license for a 12 hour period.

Judge Karaman, in answer to a question by Rep. Paulus, commented that the volunteer probation program in Jackson County is handled through the court and is patterned after a program in Royal Oaks, Michigan, and information from the Corrections Division of the State Board of Parole. Some funding had been received from LEEA, which has now been taken over by the county. There is a paid supervisor with a paid assistant and thirty or forty volunteers, he said. The volunteers are usually counselors and school teachers. When the court assigns an offender to "Project Misdemeanor", he is interviewed by the director who then refers him to one of the counselors.

The Chairman called a 10 minute recess, reconvening at 11:30.

Chairman Cole commented that there was a question as to how the Legislature could set up a system of decriminalization and administrative adjudication of minor traffic offenses and still leave the process in the court system. The physical problem would be a concern, he said, and from information gathered so far, it would appear that any space used would be outside the courtroom, and, in many instances, outside the courthouse. It may be necessary, he continued, to fund an entire separate administrative process and to hire personnel to handle the paper work and violations. The cost to the counties would be a concern, he said.

The Chairman ased for comments and suggestions as to how the system could be improved and still left in the court system and under the direction of a judge and still relieve the judge from some of the time-consuming problems.

Judge Kabler told that in Douglas County a defendant at the time of arraignment is given the choice of either setting a trial date or giving his testimony at the arraignment. If he chooses to present his side at the arraignment, Judge Kabler then also takes the testimony of the officer and makes a decision later. Judge Kabler explained that the public seems to be satisfied with the procedure and that it eliminates almost all minor traffic trials. Although his time is still involved, he said, the procedure is quick and takes very little time.

Judge Cushman stated that he follows the same procedure as Judge Kabler except that he takes the testimony of the policeman at a later time. He commented that the process is satisfactory.

In answer to a question by Chairman Cole as to how the process of taking testimony at the time of arraignment would work in a court with more of a docket problem, Judge Davis answered that in Jackson County, if the court is to handle more trials, some cases will have to be removed from the court process in order to operate efficiently. Arraignments are time consuming, he said. If there could be a decriminalization then perhaps the arraignment proceeding could be eliminated,

which would save time. In answer to another question by Chairman Cole, Judge Davis replied that the type of system he was referring to was described in the draft on Administrative Adjudication of Certain Traffic Offenses. Chairman Cole added that under that type of system all proceedings would be handled by mail up to the time the defendant would be scheduled to appear.

Judge Mason agreed that the type of system described by Judge Davis and Chairman Cole would be helpful in Columbia County. Many complaints, he continued, are based on the fact that a defendant has to make more than one trip to the courthouse when a "not guilty" plea is entered. He personally was not particularly in favor of taking testimony at an arraignment, because if a person wishes a jury trial, it would not be much of a trial.

Judge Abraham pointed out that as a minimum decriminalization of traffic offenses, a county could be given the option to designate an administrative hearing officer, who would work under the court, if the county could set up what is needed for an administrative procedure. This, he continued, would streamline the handling of traffic offenses to some extent. Even though it would alleviate the congestion problem for the judges somewhat, it wouldn't be enough to be the only reason for adopting the proceeding. There are very few jury trials on minor traffic offenses in Multnomah County now, and this would eliminate them, he said.

The mail plea, said Judge Abraham, is used in Multnomah County. A person, he said, can plead "not guilty" and have the case tried by mail. He didn't believe, he said, that the public is aware of that particular alternative. Administrative handling, decriminalization of traffic and the setting up of an administrative office would be extremely helpful to those persons who read the mail pleas and then have to make a decision, he said. A law degree, he continued, isn't needed to make an intelligent decision. About 100 cases are handled in this manner each week in Multnomah County, he said, and the citation gives a person the option to post bail or post bail and give an explanation. The judge will then either forfeit all or part of the bail or dismiss the case, he said. "Not guilty" pleas and "guilty with explanation" pleas can be handled through the mail.

Citations, according to Judge Abraham, need to be more clearly worded indicating the options available to the person receiving one.

Chairman Cole asked whether the citation form was under revision at the present time. Mr. Paillette responded that the Minor Court Rules Committee works on the "uniform traffic citation" periodically.

Judge Karaman and Judge Abraham were in agreement that the handling of pleas by mail does take a great deal of judges' time.

Chairman Cole asked if the Legislature decriminalized certain offenses and gave the court the authority to appoint someone to whom the responsibilities could be delegated if then the court could go ahead if the county would fund the procedure.

Judge Norblad stated that he had talked to judges in Marion County regarding such a system and that it was their conclusion that it would work well for them. Polk, Linn, Marion and perhaps Benton Counties could share the same hearings offices and the cost, he said. In answer to a question by Chairman Cole, Judge Norblad replied that he didn't know whether to anticipate problems with the county commissioners.

Judge Karaman commented that changes could be made in the Violations Bureau. The court can appoint a clerk and delegate the authority to the clerk since the court has been given the authority by the Legislature.

Mr. Paillette pointed out that although Marion County district court uses the traffic violations bureau statute, it isn't widely used in the state. Judge Kabler stated that Douglas County has a violations bureau but that a defendant seems to prefer to appear before a judge.

Mrs. Adell Johnson reported that complaints received in her office are from people who indicate that they have followed instructions on the form, stated their case and the court made the decision for the officer without informing the defendant. If a defendant receives some relief by mail, she said, then there is no complaint.

Judge Abraham explained that the violations bureau is an option available to the court, but the mail plea is required by statute to be printed on the back of the uniform traffic citation so that the court is required to have a system set up to hear it by mail. The statute, he continued, gives the defendant that option.

Judge Mason asked what is considered a plea by mail, and Judge Abraham replied that if only bail is posted then it wouldn't be considered a plea by mail. Any letter, no matter how brief, would be referred to a judge, he said.

A fine for a particular offense, reported Judge Abraham, may be $15.00 and the bail $27.00. In Multnomah County, for instance, this would not be indicated on the citation and the defendant may merely send in the $27.00. If a defendant would write just a very short letter, a judge would consider the case and refund part of the bail, or if he would walk into the violations bureau or come to court, his fine would only be $15.00.

Chairman Cole asked Captain Williams if state police officers are instructed to inform a violator of the options available. Captain Willaims replied that they do try to explain but only to a certain extent. Any excess conversation with a violator, he said, usually gets an officer into trouble, because the violator may interpret the officer differently and create problems for the officer with the court.

Mr. Paillette asked whether the difference between a fine and bail is explained to a violator by a police officer, and Captain Williams replied that it isn't.

Judge Abraham explained that a problem exists in that a fine for a second offense could be more than for a first offense and could be even more for a third offense. The amount of bail, he said, may not cover the fine for a second or third offense. In answer to a question by Chairman Cole, Judge Abraham replied that the fine schedule is set by the court, and the recommended bail schedule is set by the Minor Courts Rules Committee.

In answer to a question by Mr. Paillette, Captain Williams answered that the Supreme Court approves the recommended bail schedules.

Judge Davis stated that if Jackson County refuses to fund an administrative system and the court load continues to increase, another judge will need to be hired.

Judge Mason stressed that along with decriminalization, it would be important for a citation to be worded in such a way so that the violator would clearly understand that his fine could be mailed in and that an appearance wouldn't be necessary.

Judge Kabler explained that many people appear before a judge because they do not understand the law and that it is important to have a judge explain the circumstances. Representative Hampton pointed out that contact with a judge is an important aspect of the judicial system and the option should be open for those who want it.

The Subcommittee recessed for lunch at 12:00 noon, reconvening at 1:30 p.m.

The Chairman commented that if an administrative procedure is enacted which would be funded by the state, the Legislature would probably want to establish some requirements and the determination as to whether the procedure would be imposed on all the courts in the state or just the district courts or whether it should be an optional program. Another question to be resolved, continued Chairman Cole, would be whether an administrative officer would be required or whether there would be a choice. Some judges have expressed the opinion that they could handle the cases without additional assistance. Judge Abraham replied that the Minor Courts Committee is of the opinion that each court should have the option as to whether to use an adminstrative officer or to continue using a judge.

Representative Hampton suggested an alternative whereby several courts could designate an "impact area" to handle cases from all the courts in the area. Judge Kabler added the public won't like the arrangement if getting to the hearings office would entail distances.

Judge Abraham remarked that the ideal would be for the state to fund administrative offices where cases could be heard rather than for

the courts to rely on the counties for financing. The minimum, he said, would be legislation that would permit a county to pay for an administrative office.

Chairman Cole suggested that a possible alternative would be for the state to provide the funds for administrative officers, and the counties could fund the facilities and the other personnel.

The Minor Courts Committee held a short meeting during the lunch hour, reported Judge Abraham, and the following decisions were made:

(1) The Minor Courts Committee unanimously agreed that nonmoving traffic violations should be decriminalized.

(2) All traffic offenses other than major traffic offenses should be decriminalized. Six voted yes, one no.

(3) Two judges voted for decriminalization of the first DUIL offense and four voted no.

(4) There were four votes against the "Schwab plan" and three for it. The reason for the votes against the plan was because the first DUIL would be decriminalized. If the first DUIL were to be removed from decriminalization, the committee would probably support the plan.

(5) The committee, by a vote of six to one, supports SB 403, which permits an appeal from district court directly to the Court of Appeals.

(6) The committee unanimously agreed that there should be administrative handling of a decriminalized offense, but it should be handled within the court.

(7) The committee was opposed to an administrative procedure outside the court but was unanimously in favor of adminstrative handling of cases within the court system. No position was taken on how the process should be handled within the court, but it wouldn't necessarily have to be done by a judge.

Chairman Cole explained that Judge Schwab's main emphasis in decriminalizing the first DUIL was because of the jury trial problem. Judge Kabler pointed out that an argument against this would be that it would do away with a district attorney's ability to negotiate a plea because in many instances a .15 charge will be dismissed upon a defendant's agreement to plead guilty to a DUIL. The Chairman pointed out that a district attorney could be given the option to choose between a .15 and DUIL rather than making them separate offenses.

Judge Kabler explained that a defendant can be tried and found guilty on a .15 charge and a DUIL at the same time and then sentenced on one charge.

Mr. Paillette indicated that perhaps the Judiciary Committee could do something to clear up the problem that exists with .15 and DUIL. It has not been consistent throughout the state and has been difficult to understand and apply, he said. It was his opinion, he continued, that the Legislature never intended that out of one transaction a person could commit both a .15 and DUIL offense.

Judge Abraham stated that he didn't believe the possibility of committing both a .15 and DUIL has created problems. In fact, he said, from an enforcement point of view it has been helpful. It has brought about a coerced negotiation to plead to a DUIL to avoid the more serious impact of a .15. Under Oregon law, according to the Court of Appeals, a defendant can be tried on both charges at the same time. The question of sentencing has been left open, he said, but that his own feeling was, under other Oregon cases, that a defendant can only be sentenced on the more serious charge.

Mr. Paillette stressed that the problem, according to letters and phone calls received while working for the Legislature, has been the lack of consistency and uniformity throughout the state in handling .15 and DUIL cases. Mr. Paillette explained that he wasn't promoting any plan over another but that he would hope the judges would reserve judgment until they had the opportunity to read the draft on Judge Schwab's proposal. He explained that it would be difficult from just reading a memorandum to understand how it is all intended to fit together.

The Minor Courts Committee members agreed to withdraw any position on Judge Schwab's plan until the members have the opportunity to study the draft.

Judge Karaman suggested that since it appears the DUIL cases are consuming about 80 percent of a trial docket that the penal provision and jury trial could be eliminated from the first DUIL offense, which would solve the interim problem until decisions can be made as to what would ultimately be done with the trial court system.

Chairman Cole explained that the committee has been given the assignment of studying the whole traffic code, and whether it will revise the whole code at one time is a matter the committee needs to resolve. Mr. Paillette added that it was his opinion that .15 and DUIL charges would have to be handled the same way procedurally but that the penalties could vary. Judge Karaman was in agreement with Mr. Paillette.

Judge Kabler remarked that a DUIL charge is serious and should remain a crime.

Chairman Cole asked for opinions on the violations that constitute major traffic offenses and whether there should be any additions or deletions.

Leaving the scene of an accident when no personal injury has occurred constitutes a 10 day jail sentence or a $100 fine, said Judge Cushman. It was his opinion that a charge for such an offense could be handled administratively. Rep. Hampton pointed out that sometimes it would be difficult to determine injury, which may not be apparent at the scene of an accident.

Judge Karaman related that if the first DUIL were to be decriminalized and handled administratively in the court with no jury trial, it would be a step in the right direction until other issues could be resolved. Chairman Cole added that this is primarily Judge Schwab's thinking.

Senator Browne asked how it would be possible to do away with a jury trial, if an administrative procedure were handled in the court, when a person is guaranteed a jury trial in a civil case. Mr. Paillette commented that in case law the civil jury provisions are not binding unless at common law there were jury provisions for the particular offense. Mr. Paillette called attention to the reference paper "Constitutionality of Administrative Adjudication" dated December, 1973, in which a number of Oregon cases are cited with respect to the civil question of jury trials.

Chairman Cole asked if an administrative procedure were set up in the courts authorizing or requiring the establishment of adjudication officers within the court system what the judges envisioned regarding appellate procedure from the decision of the adjudicating officer. He asked whether there should be a direct appeal to the judge or whether the officer's decision should be stopped at that point. Judge Davis answered that he would be in favor of the plan set out in the tentative draft that would involve a review board and then the appellate court.

In answer to a question by Chairman Cole as to whether there should be a right of appeal of the adjudicating officer's opinion involving a civil penalty, Judge Abraham answered there should be an appeal right involving errors of procedure but not for a reconsideration of the facts.

In answer to another question by Chairman Cole, Judge Abraham answered that if a system is set up that will encourage frivolous appeals, there will be no improvement in the court system. A system needs to be devised that will do away with appeals that are requested simply because of the penalties involved. Judge Karaman expressed the opinion that if a review is requested in an administrative system, it should be kept within the administrative system. If it were to be carried further, he said, then it should go to the Court of Appeals and not through the trial courts.

Judge Abraham raised the question that if a case is handled administratively in the court to start with whether it could be then handled administratively outside the court. Chairman Cole pointed out that one of the reasons for favoring an administrative system in the court is that some judges expressed the wish to have some authority over the cases handled administratively.

Judge Cushman stated that his position would be that the court should have authority over a case and the judge should have the responsibility at whatever level it would have been in had it not been transferred to the administrative hearing officer in the judicial system.

The suggestion was made to create a separate department, such as a small claims department, to which certain cases could be referred and there handled administratively. Another suggestion was that a defendant could be given the choice in some instances, depending on the type of violation, as to whether he would prefer to have his case handled administratively or not.

Judge Karaman asked if all decriminalized offenses were to be heard in a separate depatment of the district court, what issues could be appealed. Chairman Cole added that under the New York system a hearing may be requested and that it is handled administratively and does not go through the court. Such appeals are very few, he said.

If cases to be handled administratively are civil offenses, said Judge Karaman, then there would be no court appointed counsel and free transcript. If the court is made a court of record and the only way to appeal would be on a record, which means that a request has to be made for a record prior to the time of the hearing and if a decision is made against the defendant, he can then appeal on the record. If this isn't done, he said, then there is nothing from which to appeal.

Judge Abraham pointed out that in July, 1975, the district courts, according to law, will become courts of record in regard to criminal cases.

Mr. Paillette mentioned that under the New York system a recording is automatically made of all the hearings. If a defendant files an administrative appeal, he said, he pays for the transcript and it is used as the record in the review he had requested.

Chairman Cole explained that a person who commits several traffic infractions would face a stiff penalty and that he should have the right to an appeal. Judge Karaman added that if it is a court of record, the transcript is available, but if it isn't a court of record, the defendant should be so advised. Chairman Cole explained that a bill was passed and the law will go into effect in 1975 that stipulates that no record will be kept on a civil case unless requested.

If leaving an administrative system in the courts would cause problems, Judge Abraham stated that he wouldn't be committed to leaving it. Chairman Cole stated that leaving the procedure in the court would be simpler to solve in the Legislature. It wouldn't be necessary, he said, to be concerned with setting up an entirely new administrative

procedure. Judge Karaman added that the right to appeal is always a question which puts the matter back in the court at some point.

In answer to a question by Senator Browne, Judge Abraham stated that in Multnomah County two traffic courts are in session all day five days a week plus extra courts at times to handle court trials.

Judge Davis explained that in Jackson County the courts are committed because trials are set, and even though the courtrooms are not always in use, additional space would be needed for an administrative officer.

In answer to a question by Judge Mason, Chairman Cole replied that the Legislature probably couldn't justify creating a whole new system to handle traffic cases on a statewide basis. Possibly, a highly populated area could be picked as a testing ground, he said. There has not been a great deal of support from judges for a separate system, he continued.

It was her understanding, said Sen. Browne, that there were a number of problems with SB 403 and she wondered if anything was being done to solve the problems. Judge Abraham answered that he didn't know if anyone from the District Judges Association was looking at SB 403. The comment was made that Judges Robert Gilliland, L. A. Cushing and Ross Davis were studying the measure.

The Subcommittee recessed at 2:45 p.m. for 10 minutes.

Classes of Offenses; Disposition of Offenders.

Mr. Paillette called attention to the study draft "Classes of Offenses; Disposition of Offenders" and explained the term "traffic infraction". He made reference to Section 3, page 4, and pointed out that traffic infractions will be further classified into three categories as shown in subsections (a), (b) and (c) with a range of penalties in the form of fines. Mr. Paillette gave a summary of the section and explained that the section provides for setting up a classification schedule for grading the offenses and doing away with the jury trial for those offenses called "traffic infractions". This is taking into consideration, he said, that there is no jail sentence authorized in the penalty provisions.

Section 4, said Mr. Paillette, eliminates the jury trial for certain offenses called "traffic infractions" and this takes into consideration that there is no jail sentence authorized under the penalty provision. Subsection 2 deals with the burden of proof, he said. Section 5 does away with the court appointed counsel, said Mr. Paillette. He went on to explain that some states have done away with jury trials for traffic infractions and some states have never had jury trials for these offenses. Section 6 provides that the prosecutor would be removed from a contested case and that the issuing officer would present the facts.

In answer to a question by Judge Davis relating to "other personal representative" in line 3 of section 5 of the draft, Mr. Paillette answered that a defendant doesn't have to bring a lawyer to represent him. If he wishes, a defendant may bring a relative or friend, continued Mr. Paillette.

Judge Davis stated that perhaps because of the wording in section 5 a whole group of people, who are not lawyers, might specialize in representing a defendant in a hearing. Mr. Paillette suggested that the language could be removed and Senator Browne stated that the language could be changed.

Judge Abraham pointed out that the distinction between "beyond a reasonable doubt" and "by a preponderance of the evidence" is very clear, but the addition of a third dimension such as "clear and convincing evidence" is confusing. Judge Mason agreed with Judge Abraham's statement

In section 6, said Judge Abraham, which provides for a peace officer to present the facts concerning an offense at a hearing, provision should be made for the officer's report in a mail plea. Mr. Paillette explained that the draft under discussion is a classification scheme dealing with traffic infractions and setting up some procedural provision. Another draft will need to be drawn, he said, to take care of matters such as the one mentioned by Judge Abraham. Another issue raised was that frequently an issuing officer may have issued a citation on a probable cause and may not have been at the scene of the offense. The witness to the infraction may have been a private citizen.

Judge Abraham explained that subsection (2) of section 6 may present problems in that if a defendant is represented by counsel, it would appear to be one sided. If there are no attorneys present for the state, the judge will either decide in favor of the defendant or become a prosecutor. Mr. Paillette replied that in New York all hearings officers are lawyers and members of the bar and that there are no prosecutors. The system seems to work well in New York even when a defendant is represented by a lawyer. Mr. Paillette related an example of a hearing he had attended where the hearings officer asked questions of both the issuing officer and the defendant. The defense lawyer did raise some legal questions, he said. Mr. Paillette added that a hearings officer would need to have legal training for such a case.

Mr. Paillette explained that in the New York system a defendant doesn't take the stand. The officer, he said, tells his story under oath and the defendant does the same thing even though he is represented by an attorney. The defendant is not put on the stand, he continued. The judge may ask questions after both sides are presented or he may ask questions as the hearing proceeds. A defense lawyer may be present but in a much different setting than is traditional. In answer to a question by Judge Abraham, Mr. Paillette replied that the defense lawyer may ask questions of the officer.

The draft on Judge Schwab's plan provides a different approach and stipulates that with the consent of the court the state may waive counsel, said Mr. Paillette. This could presumably be done case to case or on a blanket basis, said Mr. Paillette. The district attorney could waive being there for traffic infractions. The subcommittee, he said heard testimony from the president of the District Attorneys Association that the district attorneys would like to get out of minor traffic cases.

In answer to a question by Senator Browne regarding the use of the word "offense" on page 1, section 1 of the draft, Mr. Paillette replied that the word is used in the criminal code. The subcommittee will need to amend the statute where an offense is defined in ORS 161.505 to include the new term "traffic infraction".

Judge Herbert Schwab arrived to participate in discussion of proposed draft.

Judge Schwab explained that the district court is far behind in the disposition of jury traffic cases than is the circuit court with the disposition of all major offense cases. All statistics indicate, he said, that the largest single factor is the trial by jury, or the request of trial by jury, of DUIL and .15 cases. It may be five months to a year before a case can be heard, he said. The system is bogged down he said, and 20 new district judges wouldn't solve the problem. In large part, he said, it is caused by treating as a crime an offense which very rarely results in a jail sentence. This would be a drunken driver who is not driving recklessly and who is involved in an accident and who does not cause an injury or death.

His suggestion, said Judge Schwab, would be to treat all traffic violations as traffic infractions, which would make then civil violations. The violation would be punishable by fine, license restriction or suspension, by requirement to attend an alcohol school or driver school. These would not be mandatory, he said. They should be readily enforceable by providing that failure to comply could result in a suspension. Exceptions, he said, would be eluding a police officer, hit and run, reckless driving and a second major offense within a specified number of years.

The proposal, according to Judge Schwab, does not decriminalize reckless drunken driving, a reckless DUIL that results in a death, or a reckless DUIL that results in an injury.

Even though a case would be handled as a civil proceeding, there would be a right of appeal, said Judge Schwab, but there would not be a trial by jury on civil offenses.

In answer to a question, Judge Schwab said that a .15 charge would be treated the same as a DUIL.

In answer to another question posed by Judge Karaman, Judge Schwab stated that according to all indications the drunk driving cases create the biggest docketing problem. The jury system is inefficient in terms of docketing.

Judge Schwab stated that reckless driving would continue to be a criminal offense. If a driver injures or kills a person, he can be tried under a major misdemeanor or felony statute. Any physical injury, or threat of physical injury, can be tried as a class A misdemeanor. Judge Schwab added that he would support keeping all "hit and run" cases criminal and added that those cases didn't take a great deal of court time. His reason for keeping "hit and run" criminal, he said, was because it was a crime of intent.

In answer to a question by Judge Karaman, Judge Schwab indicated that he was opposed to adjudication in Oregon under a separate bureau. He would propose, he said, to keep it all in the judicial system and to devote more judge time to the more important matters. An exception would be bail forfeitures and fine schedules. If bail forfeitures and fine schedules take a great deal of time, they could be handled, he said, by allowing the district courts with the approval of the Supreme Court to appoint a referee to whom a district judge could delegate some of the functions.

Judge Schwab stated that he would prefer to have the burden of proof a preponderance.

The system, explained Judge Schwab, will not operate efficiently as long as appeals are heard in the circuit court. With the district court as a court of record, there is no reason, he said, why appeals shouldn't go directly to the Court of Appeals.

Judge Schwab, in answer to a question, stated that he viewed his proposal as a permanent solution. There is no reason, he said, why a district judge, if given a system that allows him to control his time efficiently, cannot operate more efficiently than a hearings officer. If the system works, he said, it will probably ultimately lead to complete unification of the district and circuit court.

There should be no mandatory sentences for first offenders, reported Judge Schwab, but should be left up to the discretion of the judge. Driving in violation of a license restriction would definitely be a crime since it would be an intent. There would be two categories, he said, and the first would be considered serious if someone had been driving with a license which had been suspended for a moving violation. The second offense would be driving with a suspended license because of a prior violation when the offender did not have the financial ability or insurance to cover damages. This also, he said, would be a crime but with a lesser penalty.

Senator Hoyt pointed out that when a defendant goes to trial for a second offense, the jury knows he had committed a previous offense.

Judge Schwab indicated that there is nothing unconstitutional about it. Judge Abraham added that a prior conviction is admissible now in a second trial.

Eventually the use of road blocks will need to be put into effect to apprehend persons driving with suspended licenses, said Judge Schwab. In order to be successful, he said, the MVD should be in a position to make driving records quickly available. The information furnished by MVD will only be as accurate as the information furnished by the courts to the Division.

Members of the Minor Courts Committee in attendance agreed to endorse Judge Schwab's proposed plan.

The meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Anna McNeil, Clerk
Subcommittee on Adjudication