Tape 15 - Side 2, 960 to end
Tape 18 - Side 1 1 to 1094

COMMITTEE ON JUDICIARY

Subcommittee on Adjudication

June 4, 1974

Members Present: Rep. George F. Cole, Chairman
Sen. Elizabeth W. Browne
Sen. George Eivers
Rep. Lewis B. Hampton
Rep. Norma Paulus

Excused: Sen. John D. Burns

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

Others Present: Capt. John Williams, Oregon State Police
Sen. C. R. Hoyt
Miss Vinita Howard, Motor Vehicles Division
Hon. Robert L. Gilliland, District Judges' Association, Benton County
Mr. Chester Ott, Administrator, Motor Vehicles Division
Mr. Gil Bellamy, Administrator, Oregon Traffic Safety Commission
Hon. Wayne Thompson, Municipal Judge, Marion County

Agenda: Minutes of previous meeting

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

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

Minutes of meeting of April 30, 1974.

Chairman Cole moved the adoption of the minutes dated April 30, 1974. There being no objections, the minutes were approved as submitted.

Adjudication, Classification and Disposition suggestions

Mr. Paillette called attention to two letters, which had been distributed to the members. He explained that they were in response to a request for suggestions to the draft Classification of Offenses; Disposition of Offenders. One of the letters was from Hon. Sam Hall,

District Judge, Curry County and the other from Hon. P. M. Bagley, District Judge, Multnomah County.

[The letters citing the suggestions are attached as Appendix A and B.]

Report of Oregon State Bar Committee on Criminal Law and Procedure

Mr. Paillette explained that the Oregon State Bar Committee on Criminal Law and Procedure was interested in the work of the subcommittee with respect to the draft on Classification of Offenses and Disposition of Offenders and, secondly, the DUIL and .15 statutes in regards to the procedures between the two statutes.

He explained that at a recent meeting of the Bar Committee a position was taken and a formal statement will be submitted to the subcommittee, which will include the recommendations and resolutions that were adopted. The Bar Committee, continued Mr. Paillette, does endorse the concept incorporated in the draft. Briefly, he said, the resolution was to support the concept of decriminalization of the traffic code and await the action of the Judiciary Committee with respect to specific offenses. The Bar Committee has been aware that one of the problems of the district court, as far as caseloads are concerned, has been in the area of major traffic offenses. One member, reported Mr. Paillette, was not in favor of the elimination of a jury trial, however.

In answer to a question by Chairman Cole, Mr. Paillette stated that no specific recommendations were made for changes in the draft. The recommendations were more of a policy nature. The Bar Committee will attempt to have a formal statement for the Judiciary Committee prior to the legislative session.

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

In answer to a request by Chairman Cole to explain the changes that have been made in the draft, Mr. Paillette stated that sections (4) and (9) are probably the pivotal sections of the draft with respect to classification of certain offenses as traffic infractions and, secondly, options available to the trial court judge.

Mr. Paillette referred to subsection (1) of section 4, paragraph (e) and explained that a change had been made to specifically insert the words "traffic crimes". This would make a second offense within a five-year period a "crime" for sentencing purposes rather than a Class A traffic infraction.

Section 6, said Mr. Paillette, had been amended and stipulates that counsel at public expense will not be provided at any trial involving a traffic infraction.

Subsection (2) of section 9 states that probation and suspension authority will remain with the court, continued Mr. Paillette.

There was a great deal of discussion at previous meetings regarding section 10, said Mr. Paillette, and the matter of the appeals provision that will be submitted to the full committee under whatever draft is adopted. If the full committee decided to resubmit a proposal dealing with lower court appeals, it was generally agreed by the subcommittee a Class B infraction would be dealt with as a separate matter.

Senate Bill 403, explained Mr. Paillette, had been included in Preliminary Draft No. 2 as an appendix. If the committee, stressed Mr. Paillette, takes a position with respect to appeals, the Judiciary Committee bill will have to go beyond SB 403 and would have to deal with district court, as does SB 403, and include the matter of appeals from justice court and municipal court. With the inclusion of Senate Bill 403 as part of the draft, those persons on the mailing list could see specifically what is being referred to when appeals are discussed and that it deals with allowing appeals directly to the Court of Appeals.

Rep. Hampton asked whether Howard Lonergan objected to the direct appeal to the Court of Appeals provision at the Criminal Law and Procedure meeting.

Another question asked by Rep. Hampton was whether the opposing member at the Criminal Law and Procedure meeting objected to the provision that would allow direct appeal to the Court of Appeals or whether his objection was primarily to the jury trial. Mr. Paillette stated that elimination of the jury trial was his principal objection.

Sen. Browne was concerned how it would be possible to eliminate a jury trial on civil cases when the Oregon constitution guarantees a jury trial. Mr. Paillette explained that his position is based on the examination of case law. He made reference to the reference paper Constitutionality of Administrative Adjudication and explained that the subject had been discussed with the Consulting Committee and with respect to jury trial provisions in the constitution, the position of the Oregon courts, which seems to be consistent with other state case law, is that a jury trial is only required under the Oregon constitution if such a trial were guaranteed at common law. It would be a civil proceeding, commented Mr. Paillette, as opposed to criminal, so the civil jury trial provisions of the constitution would be the ones the subcommittee would be most concerned about. Senator Browne asked whether the constitution would need to be amended, and Mr. Paillette answered that it wouldn't.

There were two constitutional provisions with which he was concerned, Section 17 of Article I and Section 3 of Amended Article VII. The one provides that an action of law where the value of controversy shall exceed $20 the right of trial by jury shall be preserved.

Senator Browne asked whether an administrative proceeding could be handled through the court, and Mr. Paillette explained that the draft provides for a judicial proceeding, whether criminal or civil, but the constitutional issues would be the same with respect to any elimination of a jury trial. They should be the same, continued Mr. Paillette, because either one would eliminate a jury trial, whether before a court or a hearings officer, if that in fact is what the law provided. The New York system, he said, does away with the jury trial.

The latest case he could find, reported Mr. Paillette, was Cornelison v. Seabold, et al 254 Or 401, 460 P2d 1009 1969, which contained a fairly good review of previous Oregon Supreme Court cases dealing with Article I, Section 17 and Article 7, Section 3. The Court states, continued Mr. Paillette, "The language of these sections is not particularly helpful in determining their scope. We have held that both provisions assure trial by jury in the classes of cases wherein the right was customary at the time the Constitution was adopted'". Judge Schwab indicated that he shared the same view, said Mr. Paillette, and that he himself was confident the subcommittee was proceeding on solid ground.

Judge Robert L. Gilliland, in answer to a question by Chairman Cole, stated that he had read the draft. He stated that although he couldn't speak for all 40 district judges, he could express the opinion of a number of the judges with whom he had discussed the draft. Judge Gilliland made reference to section 2 of the draft and stated that he wondered why it was necessary to have four different categories of what are now considered minor infractions.

The overall concept of the draft, said Judge Gilliland, is excellent and he agreed with the distinction between offenses which can occur without overt intent and those committed purposely. He believed that this would make it possible to deal more directly with serious traffic offenses.

Judge Gilliland explained that the portion of the draft designating that the first DUIL charge would not be, under certain specified conditions, a criminal act was perhaps the most widely discussed and controversial. The District Judges' Association would be meeting next week, he said, and the stipulation would probably be discussed further. The decriminalization of minor traffic offenses, commented Judge Gilliland, seems to be realistic and would make it easier to impose the type of penalty that would fit the offense. A license suspension would be more in line for the person with a history of infractions, he said, and the statutes provide for this.

In his opinion, said Judge Gilliland, the suspension of a driver's license and the control of the suspension would be the most effective way to control those whose driving records warrant it. Incarceration of an offender may be warranted at times, he said, but restrictions and limitations on a driver's license would be much more effective.

The basis of having adequate insurance as a prerequisite to qualifying for a driver's license in many instances is unfair because of the great financial burden to some individuals, said Judge Gilliland. The fact that a young person, who has demonstrated maturity, can have his insurance rates raised because of minor infractions that cannot be avoided, said Judge Gilliland, can be an unfortunate factor.

Judge Gilliland explained that most persons can adequately defend themselves in the case of a minor traffic infraction and that to require the appointment of counsel at public expense is not only an unnecessary burden on the taxpayer but is not realistically needed. The fact that a judge is in the position of explaining to a defendant that he doesn't intend to put him in jail and that he has not committed a crime even before a plea is entered is unfortunate. This would be a factor if a defendant should request a lawyer and one is not provided, he said.

Judge Gilliland stated that a case may arise where a young person appears because of a basic rule violation and already has two minor traffic infractions on his record and he might want a lawyer because a great deal would hinge on the outcome of the proceedings. He would be in the position, said Judge Gilliland, of telling the young person he would not be provided with a lawyer because he wouldn't be put in jail, and yet, the ramifications could be severe.

In reference to section 9, said Judge Gilliland, for a judge to have the authority to suspend a license, or impose driving restrictions, at the conclusion of a trial and while the defendant is still in the courtroom, is a tool that has long been needed. At times, a restriction needs to be imposed to curtail the hours a person can drive. Some people should not be driving at night, continued Judge Gilliland. A judge needs this kind of control, he said. If a person is caught driving while his restriction is in force, he would then be in effect driving while suspended.

Rep. Hampton stated that section 9, subsection (1) provides that a judge may suspend or restrict a license until the offender complies with certain conditions. Also, he said, there is a maximum 90 day period for which the suspension or restriction may be imposed. He asked Judge Gilliland whether he was proposing that a judge be given the power to impose a continued restriction such as those relating to eyesight and specified hours. Judge Gilliland pointed out that a judge can now request that a person be examined or re-examined for a condition that would require a license restriction. In answer to a question by Rep. Hampton, Judge Gilliland replied that it was his suggestion that a restriction a judge would impose would have the 90-day limit. The situation is cumbersome, because many times a judge may recognize that a restriction should be imposed, and if the judge could do it in the courtroom, the license would have the restriction when the defendant leaves the court.

Rep. Hampton asked if a person is charged with a VBR simply because an officer didn't have more of a case against him and it was obvious to the judge that the defendant had been drinking, would the judge be

vested with too much power if he could suspend or restrict the driver for 90 days when he was charged only with the VBR. If such a situation should arise, answered Judge Gilliland, it would be necessary to use judgment, and the judge would be the appropriate person to make the judgment. The judge would need to take into consideration whether the defendant was simply caught or whether it was a one-time occurrence, he said.

Rep. Hampton stated that for the judge to have this kind of power would seem necessary for traffic safety. However, he said, the lawyer of a defendant could go to the district attorney and negotiate a plea. That way, the defendant would get perhaps a restriction rather than a complete suspension on a second DUIL charge. Judge Gilliland added that he didn't see where it would be a detriment to section 9, subsection (1) and that the concept has been needed. It would be an added tool that would be most effective at the right time in the courtroom.

Rep. Paulus referred to ORS 482.477, which provides that a judge may request MVD that a driver's license be reinstated for occupational purposes only and asked Judge Gilliland whether he believed there was an abuse of that process. She explained that the Judiciary Committee, during legislative sessions, had received complaints that judges would sign the forms authorizing the reinstatement and would simply leave the orders with their secretaries. Judge Gilliland answered that many judges perhaps do automatically sign the forms authorizing the reinstatement for occupational purposes when the suspension is a result of a first offense.

In answer to a question by Rep. Paulus, Judge Gilliland remarked that abuse of the petition for limited reinstatement of a driver's license may be curbed by simply eliminating the authority and requiring a 30-day suspension

Mr. Paillette stated, in answer to a question by Chairman Cole, that the sections would not replace existing laws for automatic suspension by MVD. Chairman Cole remarked that if a person is convicted of a traffic crime, he would still be subject to a suspension under the statutes and if convicted of three or more offenses, he would still be subject to suspension by the MVD. This, he commented, simply gives a judge additional remedy.

Judge Gilliland made the suggestion that if a fine is not collected or uncollectible that the driver's license simply not be renewed or the license for the driver's car not be issued until existing fines are paid. This would tend to eliminate repeated extensions and the time involved for "showing just cause" would be drastically reduced and used primarily when a large fine would be involved.

The section on appeals, stated Judge Gilliland, would be of great benefit to the judicial system in Oregon and he favored it.

In answer to a question by Sen. Browne, Judge Gilliland answered that his organization is working on any problems that would arise out of SB 403. He commented that some courts are experimenting with the use of electronic recording equipment for the eventual use in eliminating the appeals to the circuit court. When the district court imposes a penalty and the penalty is appealed to the circuit court, it is held in abeyance. This, he said is a detriment to the system. Most counties, he continued, have alcohol treatment programs and judges want to use them and direct people to them for evaluation. The only way it can be done now, said Judge Gilliland, is to suspend the imposition of a penalty with the requirement that a person participate in the alcohol treatment program. Now, he continued, the defendant may appeal to the circuit court and the stipulation to attend the treatment program is held in abeyance. The trial may be held a year later, and in the meantime the defendant is driving as though there never had been a conviction.

Mr. Paillette explained that Jim Mattis made the recommendation that as an additional tool to aid in enforcing a judge's order in a traffic offense that it might be well to consider a provision as contained in the Criminal Code that a warrant can be issued for the arrest of a person who fails to appear in the court after being issued a citation and asked Judge Gilliland for his opinion. It would be considered a separate crime, said Mr. Paillette, and Judge Gilliland replied that if it is made a major crime, the court would be involved with all the criminal aspects. In answer to a question by Chairman Cole, Judge Gilliland stated that the "no shows" on minor matters were about 10 to 15 percent, and that automatic warrants are routinely issued for not appearing. The percentage of those that are not served, he continued, run fairly high, about 75 percent.

Rep. Paulus commented that she had been told by a local judge that the sheriff's office receives so many warrants that in many instances phone calls would be made rather than an effort to contact the person to receive the warrant. She asked Judge Gilliland if he considered that a basic problem. Judge Gilliland replied that it could be but that he had no figures to substantiate the claim.

Chairman Cole asked Mr. Paillette to comment on the classification of traffic infractions. The subcommittee, explained Mr. Paillette, attempted to classify offenses of equal gravity within the same category and placed an upper limit on a fine for each category. Those infractions, listed as Class A infraction, although noncriminal, are of a serious nature and the subcommittee had them set out under section 4. The range of penalties is considerably greater for the Class A infractions as compared to the other classifications. Mr. Paillette added that the fines set out in section 3 for the classifications other than Class A might be a little high when compared to other states, but the intent was not to have so many different penalties as is the case with the present traffic code. The subcommittee contemplates repeal of the 990 penalty sections, and each offense will be graded individually so it would be possible to read the offense and see in the section what classification it has been given.

Judge Gilliland explained that the percentage of persons accused of minor offenses who never appear in court are controlled by the bail schedule, which is the basis upon which disposition, in most cases, is hendled.

Most driving while suspended cases, continued Judge Gilliland, are never disposed of properly because of the present system of getting the evidence before the court to show there is a suspension, which is compatible with the language of the statute. Judge Gilliland suggested that when a suspension first occurs because of an order of another court in Oregon that instead of then relying on the validity of the order that a copy of the original order be the evidence of suspension. In other words, if a person is found guilty and his license is suspended by a particular court, it shouldn't be necessary to require the MVD order to be used for notifying the defendant of the suspension, he continued.

Chairman Cole asked Judge Gilliland to report to the Adjudication Subcommittee after his meeting with the District Judges' Association to advise of the responses of the judges.

Miss Vinita Howard stated that the Motor Vehicles Division supports the efforts of the subcommittee to decriminalize most traffic offenses in Oregon. The Department, she said, does have some specific objections and questions. She proceeded to read a prepared statement, which is attached as Appendix C.

In response to Miss Howard's remarks, Chairman Cole asked whether the Division records showed how many second-time convictions actually sustained a jail sentence and how many second-time convictions that occurred more than five years ago would have sustained a jail sentence. Miss Howard answered "no" to both questions and added that some research could be done on the subject to compile the information. In answer to another question by Chairman Cole, Miss Howard answered that the concern was about the attitude of the public toward "driving while under the influence" and that suspension would be discretionary and for not more than 90 days. Miss Howard asked whether it was the intention of the subcommittee that the Motor Vehicles Division would still impose a mandatory suspension, and Chairman Cole replied that there was no intention to repeal the statute. Mr. Paillette explained that section 9 sets out the authority of the judge and does not take away any of the authority of the MVD.

Miss Howard stated that MVD does not oppose judges having the authority to issue suspensions in the courtroom. She did, however, express concern that confusion and problems would occur with the MVD having the authority to suspend, under ORS chapter 482, for 30 days mandatorily, or one year, or up to three years and yet in another section the court would have the authority to suspend 90 days as a maximum and then in chapter 486 the suspension would be indefinite until the defendant would comply with financial responsibility. In answer to a question by Chairman Cole, Miss Howard replied that the process would be acceptable if the problems could be correlated. In answer to another question by Chairman Cole as to the main concern of the MVD, Miss Howard indicated that it was a minimizing of the seriousness of DUIL or .15.

Miss Howard continued to read her statement and Rep. Paulus commented that according to the Oregon Traffic Safety Commission the major accidents and those that result in death are caused by the habitual drunk drivers. Miss Howard replied that MVD statistics do not necessarily indicate this, and that, according to the statistics on fatal accident drivers, 29 of the surviving fatal accident drivers had a prior DUIL and 22 of the deceased drivers had a prior DUIL, a total of 51 or 7.48 percent, and yet, she continued, 48 1/2 percent of the drivers who were tested after dying in traffic accidents had been drinking. A fatal accident driver may have other entries on his record, but a prior DUIL is not what shows up most often, at least not on the records of those drivers involved in fatal accidents last year, she continued. However, she added, at the time they were killed, almost 50 percent had been drinking. In answer to a question by Sen. Browne as to how many DUILs had been reduced to reckless driving, Miss Howard answered that there was no figure available, but a study that is being made would indicate that DUILs are reduced quite frequently.

Miss Howard continued to read the attached statement, and in response to a question by Sen. Eivers, she stated that she believed the "financial responsibility law" needed to be revised. The problem is, she continued, that if a person were picked up for driving while suspended, it would be a "financial responsibility suspension" but he would be prosecuted for a traffic crime because he was failing to comply with a court order or because he was a "financial responsibility suspension". The same question, she added, would apply to other offenses such as DUIL, manslaughter and criminal negligent homicide. These offenses would all require financial responsibility filings.

Rep. Hampton asked if MVD was using reinstatement notices or whether the Division was relying on the original suspension orders to acquaint the driver with the period of suspension, and Miss Howard answered that a reinstatement fee is required and that there is a communication.

Mr. Paillette explained that on the question of the distinction, if there is one, between the driver who is suspended for a moving violation and the driver suspended for financial responsibility, the Consulting Committee and Judge Schwab were of the opinion that they perhaps should all be treated the same and that there should be no distinction, because each would be an act of intent. They did try, however, to make a distinction between the suspension that resulted from financial responsibility and that for a moving violation or other more serious offense. Miss Howard added that this could create problems because sometimes there is an overlap. The Motor Vehicles Division believes, she continued, that the question should be whether the offender knowingly drove while suspended regardless of the reason for the suspension.

In reference to paragraph 4 of page 4 of Miss Howard's attached testimony and in answer to a question by Chairman Cole as to what is meant by restrictions, Miss Howard answered that they would include daylight driving only and other such restrictions, dependent upon no

further traffic convictions within a certain period of time. Miss Howard stressed that it would be important to have a record in Salem that would be quickly available on the status of suspended licenses and licenses with restrictions. It was her opinion that a court might be given the authority to recommend suspension or restriction and that the DMV would be the logical body to act on the order.

Mr. Paillette explained that the term "restricted" in the draft in section 9 is meant to allow an occupational license and perhaps restrict to daytime only so that a defendant would have a way to get to work. In answer to a question by Mr. Paillette, Miss Howard stated that it was her opinion that the licensing authority has to have a thorough record. She pointed out that the DMV has a standardized restriction procedure, and if over 200 courts had the same authority, it was possible that an added communications problem might be created between the courts and the licensing authority and the driver.

Sen. Browne asked Miss Howard's opinion as to what would happen if a copy of any restriction a judge might issue and attached to a license were forwarded to MVD, Miss Howard replied that since there is a licensing authority with the power to suspend and restrict licenses why, when a judge wishes to restrict a license, the order cannot simply be sent in to the licensing authority so there would be no question as to the language. Rep. Paulus pointed out that if a judge should issue a restriction a copy would be sent to MVD, and if the driver secures a duplicate without the restriction there is a provision in the statutes that would make him guilty of fraud.

In answer to a question by Rep. Hampton, Miss Howard replied that when MVD issues a license with a restriction, the restriction is indicated on the face of the license. Rep. Hampton suggested that perhaps a court could issue a restriction and the procedure would conform with a code or regulation and when the MVD receives the order it would then issue a new license with the restriction on it. Miss Howard stated that it could be worked out but that the MVD was concerned with over 200 different people imposing restrictions of the possible problems that might be created.

Chairman Cole explained that Judge Schwab believed that it was important to inform a defendant of what a restriction is going to be while he is still in the courtroom and before a judge rather than being informed through the mail at a later date. Miss Howard said she would concur on a suspension order and recognizes the judge's position on a restriction but she did want to call attention to the problems that would be created for the MVD.

Rep. Hampton asked what the restriction contemplated in subsection (1) of section 9 would be. Miss Howard stated that she had no idea how broadly it could be interpreted. Rep. Hampton said that perhaps the restriction isn't needed if there is a conditional suspension because a license would be suspended until certain provisions are met and asked if that type of suspension would achieve the same results. Miss Howard answered that it would. Rep. Paulus explained that this wouldn't be

taking care of the problem mentioned by Judge Gilliland regarding the person who should have a permanent restriction on his license such as driving only to the grocery store during certain hours.

Miss Howard explained that MVD re-examines older people on the recommendation of judges almost every day and that perhaps a judge would really prefer to have an older person re-examined before a driving restriction is imposed. It was her opinion, she continued, that in imposing this type of restriction a re-examination procedure would be preferable rather than a court situation.

Mr. Paillette explained that restriction in subsections (1) and (2), section 9 is meant to be something short of suspension to force a defendant to meet certain requirements such as paying a fine. He stated that he simply couldn't see how it could be interpreted to mean a restriction on nighttime driving, for example, because of poor eyesight. It is simply meant to be an additional lever to get a defendant to comply.

Mr. Ott informed the subcommittee members that the concern of the MVD is two-fold. First, he said, there is concern that a problem might be substituted for a present problem area relating to a conviction, receiving notice of the conviction and issuing the suspension notice with an individual refusing to accept it. The other, he continued, deals with persons who have committed an offense and are candidates for suspension or restriction. They are persons who would like to avoid that sort of thing and there is nothing to stop them from securing a duplicate license without the restriction on the back. Mr. Ott suggested that the procedure be established so that if a judge or court wishes to issue a restriction that the license would be lifted, as should be in a suspension as well, and then issue a permit to that person, put the restriction on the license and then mail the license to the MVD. This way, the driver would not be able to secure a renewal or a duplicate that doesn't show the restriction.

Mr. Paillette explained that the subcommittee and the Advisory Committee are aware that many details need to be worked out. The only thing, he continued, the draft tried to do was to draw a distinction between the reasons for pulling a license. If the court, he said, is going to hold a license until a defendant pays a fine there might be a reason for simply leaving it in the possession of the judge rather than having it mailed back and forth. The MVD, continued Mr. Paillette, would know whether a defendant has completed a driving improvement course, whereas the judge would know if the defendant has paid a fine he has ordered. The draft simply was not written to imply that a judge would take over the duties of the MVD.

Miss Howard explained that a problem in connection with a judge retaining a license and returning it to a defendant when a fine is paid would be the fact that most persons who would receive a restriction of this type would have problems in other areas of driving, and if the judge reinstated a license, MVD might be in the position of imposing a restriction for another offense committed by the driver in another area of the state. For this reason, she said, she would suggest the subcommittee consider that when a license is restricted or suspended it be mailed to

the MVD. She added that MVD does reinstate on line and if a person pays a fine in court and receives his license, he could commit an offense the same afternoon or evening, the information from Motor Vehicles would indicate that he is still suspended. For this reason, she suggested that all reinstatements be made through MVD field offices or headquarters.

The vagueness of the language "other rehabilitative program" is also a concern to the MVD, said Miss Howard. It is assumed, she said, that it refers to the alcohol problem. They would prefer, she said, that the language be similar to that in chapter 793 of the 1973 session and that the rehabilitation program must be approved by the Mental Health Division. Since there could be wide variations and types of rehabilitative programs, it would be well to try and have them reasonably uniform. Rep. Paulus pointed out that "other rehabilitative programs" would cover Judge Thompson's program of theme writing and Sen. Browne commented that latitude is needed for some innovation.

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

Captain John Williams informed the members that it is the position of the Oregon State Police that any weakening of the onus of a DUIL or .15 charge would be a mistake. They would oppose, he said, making a first DUIL or .15 offense a traffic infraction. The State Police, he reported, did a survey of six courts throughout the state on their adjudication of driving while intoxicated cases in November of 1972 and have subsequently checked on some of those cases. They are finding, he said, that there was a previous conviction for driving while intoxicated and now reckless driving charges are beginning to appear on some of the records. Because of plea bargaining and negotiations, the courts are using reckless driving charges instead of a decond DUIL, he continued.

It was his opinion, reported Captain Williams, that plea negotiating has its place, but with all the reduction of charges to reckless driving, careless driving and dismissals, it would appear that some effort needs to be applied in that area. Rep. Paulus asked Capt. Williams his opinion if the language of the draft were changed to include previous convictions of reckless driving and not just DUIL during the last five years. Capt. Williams agreed that it would eliminate some of the negotiating. However, he continued, his department would still have strong feelings about those who drive while intoxicated. Those people are the ones who kill whether it is a first or subsequent offense. Ten of the twelve persons who killed people over the Memorial Day weekend had positive blood alcohol readings, and two had prior DUIL convictions, he added. In answer to a question by Rep. Paulus, Capt. Williams answered that one had a previous charge of hit and run which resulted in a suspended license. The driver had been trying to elude a police officer because of the suspended license and killed himself, said Capt. Williams. Rep. Paulus pointed out that Judge Schwab advocates that any person charged with a first offense who is responsible for property damage or personal injury would be charged under the reckless driving statute. In answer to a question by Rep. Paulus, Capt. Williams explained that if a first DUIL is a traffic infraction more people who have been drinking will drive because they will be under the impression that it doesn't matter until they have been caught the first

time. Rep. Paulus pointed out that no attempt at passing stronger laws has resulted in a decrease of drunken driving.

Capt. Williams stated that there has been a decrease in fatalities and it is believed that legislative action, stiffer enforcement, decreased speed and less travel have all contributed to the decrease in fatalities of 26 percent.

Rep. Hampton asked if DUIL and .15 were left as traffic crimes whether there should be a provision to permit a district attorney to dispose of a DUIL as though it were a traffic offense and taking away the potential for a jail sentence as a matter of negotiation. Capt. Williams answered that some counties have guidelines for handling drunk driving and reckless driving negotiations and the attorneys know that they need to be followed. In other areas guidelines mean nothing and plea bargaining and negotiations are common. In answer to a question by Rep. Hampton, Capt. Williams answered that not many people are going to prison for a first DUIL, but that he didn't have figures as to how many were going.

Rep. Hampton explained that the subcommittee in exploring the possibility of decriminalizing the first DUIL is working under the assumption that rarely does a person go to jail on the first offense. If the assumption is incorrect, the subcommittee should know about it, he said. If the deterrent is the jail sentence and the jail sentence isn't being imposed the assumption would exist now that a person might as well drive when intoxicated because it really wouldn't matter until he was caught the first time. It is important, continued Rep. Hampton that whatever is adopted does not induce driving while under the influence and there should be a balance that is really workable.

Rep. Hampton stated that as the draft is written an offender who is under the influence of intoxicating liquor is treated as having committed an offense, but if he is involved in an accident he would be charged with a crime. He asked Capt. Williams how a determination could be made as to whose fault it would be and still be handled within the framework of the existing language of the draft. Captain Williams answered that in his opinion it would be wrong to differentiate between individuals who have been apprehended on DUIL charges simply because some have been involved in accidents and others haven't.

In answer to a question by Chairman Cole, Capt. Williams replied that his main concern in making a first DUIL a traffic infraction was that the public would get the impression that it was no longer a serious matter. Chairman Cole explained that it wouldn't be encouraging reductions to reckless because it would then be a traffic crime under the present proposal, so the offender would more likely be convicted on the DUIL charge than he is now. The penalty, continued Chairman Cole, would be no less severe than now and the offender would still be faced with the suspension of his operator's license and a fine which has a greater maximum than now. Capt. Williams stressed that the threat of jail would be eliminated on a first DUIL and the court would no longer have the jail sentence to deal with the offender. As the system operates now, continued Captain Williams, the court can authorize a restriction and if it is violated, the offender would go to jail. Chairman Cole explained that

under the draft if a restriction were imposed and an offender violates the restriction, he can go to jail because it would then be a traffic crime.

Senator Browne stated that convictions would be easier under preponderance of evidence and no lawyer. Capt. Williams agreed and stated much police time is taken by court appearances while negotiations are being conducted. The State Police, said Captain Williams, are in favor of streamlining the court system.

An alternative would be to create a new offense of "reckless driving under the influence", which would be a crime and a first DUIL would still be an infraction, said Rep. Hampton. Many of the first offenses would be reduced immediately, continued Rep. Hampton, to driving under the influence, which would not involve a possible jail sentence. If the .15 were made a crime, he said, then lawyers would advise their clients not to take the breathalyzer test.

One reason attorneys are advising clients to refuse to "blow", said Miss Howard, is to avoid a possible .15 charge. The maximum license suspension in Oregon for refusing to blow is 90 days. The UVC and the Oregon Bar Association recommendation for refusal is six months, she said. If Oregon had a six months suspension, she continued, for refusal instead of 90 days, a person would "blow" rather than face a six months suspension.

Mr. Paillette added that another reason for advising clients not to "blow" is because it is possible with the .15 and DUIL statutes to be charged and convicted for two offenses.

Mr. Paillette explained that the Judiciary Committee was given its present assignment by the Legislature to try and devise a way to alleviate congestion in the district courts without hiring more judges. One of the things the committee has done has been to undertake a three-~~year~~ month study of eight selected district courts. The statistics point out, as Judge Schwab has said, that the addition of more judges would not solve the problem under the present system. Mr. Paillette told of Klamath County where 37 persons were arrested by the State Police, seven months later 31 of the cases were either dismissed or reduced, one had been tried and the remainder were still waiting for a jury trial. In Lane County, he said, jury trials are being set nine months ahead. One question that needs to be considered, continued Mr. Paillette, is whether the certainty of punishment might be more important than the severity of the punishment that may never be imposed.

The subcommittee needs to attempt to devise a way to deal with problem drivers, including drunk drivers, said Mr. Paillette. A person who is charged with a serious offense can continue to drive for nine months and continues to be a menace simply because the judicial system can't get to him, continued Mr. Paillette, and assuming it is his first conviction the chances are that once he does appear before the court he doesn't go to jail. If the severety of the penalty alone would be a

deterrent, perhaps the subcommittee should give some thought to increasing the penalty and making drunk driving a felony. These are important policy considerations, said Mr. Paillette.

Statistics show, said Mr. Paillette, that district court judges spend most of their time dealing with major offenses and, within that category, mostly on DUIL cases.

These facts, explained Mr. Paillette, point to the dilemma that the committee and the Legislature face in trying to balance the equities and solve the caseload situation and deal with offenders more quickly. Federal recommendations deal with administrative adjudication for only minor traffic offenses, he continued. If this committee limits an administrative adjudication procedure to minor traffic offenses it would simply not be dealing with the problem because the majors are what take the judges' time, he said. Mr. Paillette wondered whether it would be better to have a system where the possibility of jail would exist nine months in the future, depending on when the defendant would get to trial, or whether it would be better for the defendant to be in court within a few days and would face the certainty of a license suspension or whatever.

Rep. Paulus asked what the decrease might be in the backlog if the appeals provision were to be changed. She speculated that the appeals would drop if they were to go directly to the Court of Appeals. Capt. Williams answered that although the State Police would like to see cases adjudicated as quickly as possible, they wouldn't want to sacrifice dealing with DUIL cases. There are other ways to speed up the court system, continued Captain Williams, and perhaps the appeals change would be the answer. Mr. Paillette stated that changing the appeal procedure wouldn't speed up the process from the time of arrest to the time of trial in the district court, and Rep. Paulus agreed.

Rep. Paulus remarked that alcoholism is the greatest social problem in Oregon and the Legislature needs to recognize the fact. It is important that liquor tax revenues be used for detoxification centers rather than be used for lampposts, she said. She agreed with Captain Williams that public opinion toward the drunk driver has had an effect in influencing some people from driving while under the influence.

In answer to a question by Judge Gilliland, Mr. Paillette stated if a lawyer representing a client didn't know whether the judge was going to treat an offense as a traffic crime or an infraction until after the conclusion of a trial, whether the lawyer would be willing to waive the jury or forego any other trial protections that might help to get a case adjudiciated faster.

Judge Gilliland stated that perhaps the change should be made at the time of sentence and the defendant be allowed to have a criminal trial on a DUIL charge, then the negotiation would very likely take place and the person left with the "perhaps", and if there is doubt, it would be a civil DUIL.

Mr. Paillette stated that his point about the lawyer was from the standpoint of eliminating the jury trial in the backlog of cases in the district courts. The possibility of going to trial under an indictable misdemeanor concept would be just as great as otherwise. Judge Gilliland agreed, if there was to be a trial. However, he said, he didn't wish to see success or failure based on this one question. The caseloads may reflect that most cases are being dealt with on the DUIL, he said, but he believed a new negotiation was being enacted which would have most of the ramifications of a first DUIL conviction. Most lawyers, he said, would probably take the civil infraction and not have the jury trial.

Rep. Hampton again mentioned the possibility of creating a separate crime such as driving under the influence at which time the driver commits another offense such as driving through a red light. Driving through the red light would be the crime and the DUIL an infraction, he said. This would give a judge the flexibility needed when dealing with an offender who may be on his way home from a daughter's wedding reception. Captain Williams stated that this would be an attempt to put something in the law that already exists. There are magistrates, he said, who make those decisions that involve "grandpa returning home from granddaughter's wedding reception".

Rep. Hampton expressed concern with the dilemma a defense lawyer would face. It was his belief that the defense lawyer would insist on a jury because of the uncertainty of what might happen. Judge Gilliland added that he hears far more DUIL trials without a jury than with one and explained that the negotiation would be the new element. This, said Rep. Hampton, is what happens with the .15 and DUIL now. If at all close, the .15 will be dismissed and action taken on the DUIL. Chairman Cole stated that a negotiated plea of guilty would be made on the basis that the judge would make it an infraction, and the original charge would be the traffic crime. That would, in effect, said Rep. Hampton, delete subsection (1), paragraph (d) of section 4 with respect to DUIL, because it would be the same as it is now. Judge Gilliland agreed and added that the exception would be the sentencing alternatives. It would restrict the judge at the beginning of a case rather than during the conclusion, said Rep. Hampton. In effect, the district attorney and the defense lawyer would agree that a DUIL would be treated as an infraction upon the guilty plea of the defendant and no jury would be needed, said Rep. Hampton. Judge Gilliland added that on a second DUIL offense the defendant would be charged with a second DUIL and the records of the MVD would show this. Rep. Hampton mentioned that the district attorney might refuse to prove the first conviction.

Rep. Hampton asked Capt. Williams if he could mention a date as to when public attitudes had started to change regarding drunk drivers. Capt. Williams answered that it started about 1966. The State Police had conducted a campaign in various parts of the state to make the public aware of the drunk driving problem, the Traffic Safety Commission has had a leadership role in informing the public of the hazards involved in drunk driving and the Legislature has passed strong legislation dealing with drunk drivers, and this all has had an effect on public attitudes, answered Capt. Williams.

Rep. Paulus was interested in knowing how many people during the past two years, who had been picked up for drunk driving, didn't have a previous conviction during the past five years but had a reckless or carless driving charge where alcohol was involved. Capt. Williams replied that those figures weren't available and studies would have to be made on an individual basis. Rep. Paulus stressed that the information would be extremely important. Capt. Williams added that many courts negotiate and settle for lesser charges such as careless driving, violation of the basic rule or even dismissal.

Sen. Browne commented that it is the policy of a number of district attorneys on a first DUIL to automatically negotiate down.

Miss Howard reported that an analysis of convictions indicated that in 1973 27 percent of drunk driving convictions involved drivers under the age of 25. In 1970, 41 percent of the reckless driving convictions were for drivers who were under the age of 25. In 1971, reckless driving convictions totaled 2,060, and the younger drivers' share of the convictions dropped to 34.6 percent. In 1972, reckless driving convictions again increased to 2,991 and the young driver accounted for 26.6 percent of the total, and of the 3,500 reckless driving convictions in 1973 27.1 percent were drivers under the age of 25. Significantly, continued Miss Howard, reckless driving convictions are now disproportionately spread on a population basis over all age groups from 17 to 54, and in view of the overall conviction experience, the drivers 35 to 64 are overrepresented for the violations in 1973. These figures, said Miss Howard, indicate that reckless driving is being used more whether for a first, second or third DUIL offense. Mr. Paillette and Miss Howard agreed that it would appear that there have been many negotiated pleas to reckless driving.

Sen. Browne stated that it should be possible to check the arrests against the convictions. Capt. Williams pointed out that the study being made indicates that following a DUIL conviction a second charge is negotiated to reckless driving.

Miss Howard explained that one of the reasons for making the distinction between .15 and DUIL is, based on convictions, about 2,790 of convictions were .15 or more out of a total of 13,000. Some of them could be treated as infractions and some as traffic crimes, which would free the courts to some extent in this area but not totally. She would have reservations, continued Miss Howard, in making any of them infractions but believed there might be a way to split them. Chairman Cole asked Miss Howard how she would feel about treating an original charge, as Judge Gilliland suggested, as a traffic crime and the sentence would determine whether or not it would remain a traffic crime conviction or whether it would become a traffic infraction. Miss Howard answered that it might be a possibility and that she was concerned about downplaying DUIL.

In answer to a question by Rep. Hampton, Miss Howard answered that she had no opinion on making refusing to take a breathalyzer test a crime except that it would add three or four thousand cases to the

judicial process. If refusing to blow were made a six month suspension, continued Miss Howard, it would cut down on the refusals.

Mr. Bellamy stated that the function of the Traffic Safety Commission is to stop the offense before it is committed and that he would agree with Capt. Williams that social pressure is extremely significant in curbing drunk drivers. He pointed out that the subcommittee should consider what the impact would be if the news story were printed that DUIL had been decriminalized.

Chairman Cole made reference to section 9, subsection (1) and pointed out that no time limit has been indicated and that in subsection (2) there is a time limit in paragraph (b) but not in paragraph (c). Since the areas deal with judges' rights of suspension, he said, perhaps a time limit should be indicated.

Mr. Paillette stated that subsection (1) refers to a suspension to enforce the court's order to pay a fine, when the defendant fails or refuses to pay a fine or to comply with any condition upon which payment was suspended. Subsection (1) refers to any traffic offense, and subsection (2) deals with traffic crimes or Class A infraction in addition to other penalties. The limitation in subsection (2), paragraph (b) might be a problem, said Mr. Paillette. There is a distinction between subsections (1) and (2), because under subsection (2) there is an additional penalty and in subsection (1) there is a means of enforcing payment. Chairman Cole remarked that he was less concerned with the refusal to pay the fine than he was the phrase "or to comply with any condition upon which payment was suspended". He had concerns, he continued, with indefinite suspensions for failure to drive just during working hours and that sort of restriction.

Subsection (2), paragraph (c) without a time limit in which a defendant must comply was also a source of concern, remarked Chairman Cole. In regard to subsection (2), paragraph (c), said Judge Wayne Thompson, it is one of the few sanctions readily available to the court and which means something. He remarked that right now there are suspension orders outstanding against offenders who have not appeared in court, and they have been outstanding since 1967, and the same is true with some cases where fines have not been paid. The providing of 90-day time limit would only create more scofflaw problems, said Judge Thompson, because if an individual is in the service or passing through the state, he will often ignore a court order. At times, suspensions are cleared two or three years later, continued Judge Thompson. In answer to a question by Chairman Cole, Judge Thompson answered that the suspensions are through the MVD. Judge Thompson suggested that "other rehabilitative program" under subsection (2), paragraph (a) of section 9 be left as it is without involving another agency such as mental health.

The other point mentioned, commented Chairman Cole, was the procedure involved if a judge is going to impose a restriction on condition, pick up the license and issue a temporary permit and send the original to MVD with a notation and the MVD would issue a new license with the restriction on it. Chairman Cole commented that he was wondering whether the procedure should be written into the draft or whether it

be a procedure that could be established without being written into the statutes. Sen. Browne suggested that when the judge writes on the license he could have a form that would produce an automatic duplicate and mail it to MVD the same day. However, she continued, the offender could go to MVD and acquire a duplicate license before the restriction is processed. He would then be guilty of fraud, added Sen. Browne. It was Sen. Browne's suggestion that if a new license would need to be issued with a restriction on it, the defendant should have to pay for it.

Mr. Paillette explained that section 9 was developed to incorporate a concept, and he recognized that it needs more work to coordinate it with MVD procedures.

Judge Gilliland commented that if a court is going to be limiting a persons driving in some manner, the process should be between the court and the defendant without involving MVD. There would be nothing wrong with the court holding the license for a limited period of time, and in lieu of the license the court could issue a document which would specify the limitations. When the court is ready to return a license, continued Judge Gilliland, a check can be made with MVD to determine whether a duplicate license had been issued. This process would bring the defendant back to the court to pick up his license.

Senator Browne remarked that in either instance, if the judge writes on the license or if he keeps it, the defendant can claim to have lost it and apply for a duplicate. Appropriate charges could immediately be filed against such an individual, said Judge Gilliland, so that he didn't see where it would be a problem.

In answer to a question by Sen. Eivers, Mr. Paillette answered that there is a statutory prohibition against applying for a duplicate license while the person is suspended.

Chairman Cole asked for opinions on the concept to give trial judges the authority to suspend or restrict a driver's license. Sen. Eivers remarked that the discretion should be left to the judges rather than MVD, and the judge should decide what restriction to impose and then pick up the license. He would, said Sen. Eivers, take exception to the draft on one point only because he believed it would downgrade DUIL.

Sen. Browne asked if .15 were made a crime and DUIL an infraction whether a copy of the DUIL charge would go to the district attorney's office and whether the district attorney could negotiate. Mr. Paillette answered that if the .15 were the crime to start with, he saw no reason why the district attorney couldn't negotiate.

Sen. Hoyt asked if concrete evidence is necessary for a .15 charge, why bother to negotiate, and some of the reasons given were trial time, a questionable case because of disruption in the handling of the breathalyzer or a time lapse.

Mr. Paillette said it was his belief that the subcommittee was oversimplifying the problem. The many problems that had been discussed

were all interrelated according to Judge Schwab, continued Mr. Paillette. Cases simply are not getting into court for many months and that itself can lead to a reduced charge because a state's witness may no longer be available, said Mr. Paillette. Judge Schwab is merely suggesting a system that will result in a reduction of jury trials and speeding up the docket, which in turn will make it possible to bring the drunk driver into court in a matter of weeks rather than months, he continued. Rep. Paulus added that the only argument against the plan is in regard to what public response will be.

Rep. Paulus again stressed the importance of financing the detox centers and Judge Gilliland added that it was important to require participation on a first offense in the detox or some other program in order to make the whole process of dealing with DUIL offenders more salable.

Chairman Cole anounced that the full committee would meet June 12 and 13 and mentioned the possibility of the Adjudication Subcommittee meeting on the morning of the 12th for a work session.

Rep. Paulus asked whether information was available as to how many DUILs are appealed and what the time lapse might be. Mr. Paillette stated that there are some statistics available and they could be checked.

Rep. Paulus made the suggestion that before any more work is done on the draft that the subcommittee should wait and get the approval of the full committee on the policy concept of the draft. Mr. Paillette suggested inviting Judge Schwab to attend the meeting. Chairman Cole agreed.

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

Respectfully submitted

Anna McNeil, Clerk
Subcommittee on Adjudication

THE DISTRICT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CURRY

COURTHOUSE, GOLD BEACH, OREGON 97444 SAM HALL, JUDGE

May 21, 1974

Donald L. Paillette, Director
Committee on Judiciary
State Capitol Building, Room 14
Salem, Oregon 97310

Re: Subcommittee on Adjudication

Dear Don:

In response to your solicitation for comments on Preliminary Draft No. 2, May, 1974, "Classes of Offenses, Disposition of Offenders", I respectfully submit the following:

(1) Profound appreciation for what appear to me to be fundamental improvements.

(2) Section 4(1)(d) which makes violation of a "restriction" a traffic crime on the theory that such an offense would be intentional. Some people have an eye-glasses restriction when their eyesight is not sufficiently deficient to prevent them from unintentionally forgetting to wear their glasses on some particular and rare occasion even though otherwise there is conscientious compliance. Seems to me this should apply to some but not all types of "restrictions".

(3) Section 5. — Does this nonjury provision conflict with Art. I, Sec. 17 and Art. VII (Am.) Sec. 3, Oregon Constitution even though not in conflict with U.S. Constitution?

(4) Section 7., Commentary — "presented by the issuing officer." Does this contemplate officer may perform otherwise than as witness? If he may argue the evidence, that goes beyond what a lawyer may do when he has testified to a material fact.

(5) Section 8 — Suppose separate charges of first offense DUIL or .15% and reckless driving arising out of single episode; and suppose the manner of driving in and of itself would not have caused the officer to cite for reckless, but he adds to the manner of driving the alcohol conditions and decides that the combination of both amounts to "carelessly and heedlessly in

Donald L. Paillette, Director
Committee on Judiciary
Salem, Oregon 97310

wilful or wanton disregard." Thus in order to prove the charge of reckless it would be necessary to prove the fact of DUIL or .15% in the reckless trial. Assuming a conviction on the reckless charge, is the accused later estopped from offering evidence of his innocence at trial on the civil charge of DUIL or .15%? If the officer is allowed to include the fact element of DUIL or .15% in his assessment of a manner of driving which alone would not be reckless, is this likely to encourage a substantial increase in the number of reckless driving charges in which the manner of driving alone would not result in a verdict of guilty, whereas with the influence of the added fact element of DUIL or .15% the verdict would be guilty. In other words, if you have decided or do decide that it is sound law for a first DUIL or .15% to be an infraction instead of a crime, are there not good odds that such a provision of civil law would be defeated by use of the criminal charge of reckless driving if the fact element of DUIL or .15% is included as an element for proving reckless driving?

(6) Sections 3 and 9 - Commentaries - " *** a judge's authority to suspend payment of any find." A judge should have unequivocal authority not only to suspend all of a fine, but also any part of a fine. There is an Attorney General opinion of some years back (pre-Johnson) which holds, as to the question there presented, that a judge has no authority to suspend less than the whole fine he imposed. For a judge to be able to suspend a part of a fine he imposed is a very effective tool for avoidance of a repeat offense. It is illogical to me that a whole fine may be suspended but not less than the whole; however, if that should be the law as to some offenses, it should be clearly revised to permit partial suspension of any fine so the judge will have more than one option as respects suspension of a fine.

(7) Section 10 - Appeals - Commentary. "It might be that each municipality could elect at its option to adopt SB 403 and be subject to the same appellate procedure *** ". There is an old Oregon case which holds that a city cannot impose additional jurisdiction upon the state courts - in that instance the circuit court- by, as I recall, setting up an appellate procedure from city court to the state court; hence, if the city is to have such an option I believe the option would have to be made available by statute, not by city ordinance. I believe the City of La Grande was the city in the mentioned old case.

As respects appellate review for city and J.P. cases I wrote Chief Judge Schwab last week that it is difficult for even a law trained judge to avoid reversible error in a trial and that appeals on the record only from city and J.P. courts would cast a big burden upon the not-law-trained judges. It would also involve a considerable expense statewide for equipment and maintenance, and proper operation of the machine – an operator if the judge is to not to try to perform simultaneously the two chores of judge and recording reporter. I think it would be less expensive, more efficient and in avoidance of casting such a burden on the not-law-trained judges if the defendant were given the right to elect whether to (1) remain and have the charge tried in municipal or J.P. court where it was filed or (2) to have it transferred for trial to the district court (circuit where no district available). If he should elect to remain in the municipal or J.P. court he would thereby waive his right to appeal. If he should elect to transfer the charge to district court (or circuit when district not available) he would preserve his right to appeal from the judgment of the district or circuit court. This principal of election to waive or preserve the right to appeal is the same as that for small claims, where the defendant (1) may elect on a claim over $20 to have a jury trial in district court or (2) remain in the small claims court. If the small claims defendant elects (1) he has a right to appeal from the district court judgment, but if he elects (2) he has no right of appeal from the small claims court judgment. This would eliminate any necessity for providing J.P. and municipal courts with an appeal procedure option in SB-403 and it would eliminate necessity for any de novo appeals, and I seriously doubt there would be any more transfers from municipal and J.P. courts to district court than there are presently de novo appeals to the circuit court from J.P. and municipal courts; hence there would be no load upon the district courts that they could not handle more conveniently and less expensively to the parties than would be the case of municipal and J.P. appeals to the Court of Appeals, and it seems to me such would offer a better avenue to the Court of Appeals for development of a body of good case law precedents.

Sincerely,

Sam Hall

SAM HALL. District Judge

SAH/t
cc: The Honorable Leonard A. Cushing

DISTRICT COURT OF THE STATE OF OREGON
for MULTNOMAH COUNTY

DEPARTMENT NUMBER 7 • COUNTY COURTHOUSE
PORTLAND, OREGON 97204 • (503) 248-3985

PHILIP M. BAGLEY
JUDGE

May 21, 1974

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

Dear Mr. Paillette:

In your letter of approximately April 22, 1974, you requested suggestions in writing regarding the revision of the Vehicle Code.

Without giving any statute references it is suggested that anything other than major traffic violations be made noncriminal violations to be handled by the Department of Motor Vehicles.

Major traffic violations made criminal can be handled by the Court.

The Courts to be given the authority to handle them through appointed referees under the supervision of the Courts.

The right to cite only on probable cause and not to arrest.

Reckless driving to be made a lesser and included in driving under the influence of intoxicating liquor with the provision that proof of reckless not be necessary to support the charge of driving while under the influence.

Since history has shown such a small percentage of convictions under driving while suspended and since a relatively small number of courts follow the provisions of that rule requiring a minimum sentence to be imposed if convicted, and since the enforcement of the law requires so much otherwise

unnecessary paper work, it is suggested that the law prohibiting driving while suspended be repealed leaving discretion in the Court to impose such sentence as each case might require on any person found guilty of driving without having possession of a current and valid drivers license.

The above are the results of only twenty years experience on the bench handling traffic cases and eight years as a prosecutor and twelve years as a member of the Traffic Court and Minor Court Rules Committee, but they are all that I can think of off hand.

Very truly yours,

P. M. Bagley,
District Judge

PMB:ml

Statement
Adjudication Sub-committee
Legislative Judiciary Committee
Submitted by Motor Vehicles Division
June 4, 1974

The Motor Vehicles Division supports the efforts of this committee to decriminalize most traffic offenses in Oregon.

We do, however, have some specific objections and some questions we wish to raise concerning two sections of the draft before you today. We refer to Sections 4 and 9.

Section 4 (page 6) establishes various traffic crimes and Class A traffic infractions.

Although we understand the committee's desire to free the courts of thousands of DUIL cases prosecuted under criminal procedures each year, we have reservations about classifying first-time DUIL and .15 or more charges as Class A traffic infractions rather than traffic crimes, particularly in view of the role DUIL plays in serious accidents.

Our concern stems from these facts:

> Approximately 75% of the more than 13,000 DUIL convictions reported to the division last year were first convictions within the last 10 years.
>
> $18\frac{1}{2}$ were second convictions within 10 years.
>
> 7.7% were third or subsequent convictions within 10 years.

The draft proposes to reduce the "reference period" for determining whether to classify a DUIL or a .15 or more charge as a traffic crime, rather than a Class A infraction, from 10 years to five years. This means that very few drivers will be prosecuted as repeat offenders, as provided for in subsection (1) (e).

Thus, the vast majority of convictions for DUIL or .15 or more -- perhaps as many as 85-95% -- will be Class A traffic infractions and, under the draft, drivers will face a maximum fine of not more than $1,000 -- a maximum we doubt that few courts will approach -- no jail sentence, and no mandatory license suspension under the provisions of Section 9.

Most people believe DUIL to be the most serious of all driving offenses. They, we believe, may interpret this proposal as going too far in liberalizing the penalty for DUIL, particularly when many have worked for several years to strengthen the penalty provisions for this charge.

As a serious traffic accident problem, DUIL far outranks either hit and run or eluding a police officer, yet the draft terms these two charges as "traffic crimes" with prosecution as felonies or misdemeanors.

In Oregon last year, we received convictions for 1,006 hit and run charges of all types and 375 eluding convictions. With reference to eluding convictions, we should mention that of the 375 reported last year, 38 per cent of the drivers convicted on this charge were between the ages of 15 and 19. Another 28 per cent were between the ages of 20 and 24. In other words, 66 per cent of the convictions for this "traffic crime," as defined in the draft, would be for young drivers. This means that very early in their life they will face conviction for a traffic crime.

We suggest the committee consider classifying eluding as a Class A traffic infraction. Subsection (1) (e) already provides that a second or subsequent conviction within five years for DUIL or driving with a .15 or more charge would be a traffic crime rather than a Class A infraction. As a possible compromise we suggest the committee consider classifying a first DUIL a Class A infraction but that a charge of driving with a .15 or more be classified as a traffic crime, regardless of whether it is a first, second or subsequent charge. (Of the 13,138 DUILs last year, 2,790 involved blood alcohol readings of .15 or more.)

This would mean that the driver who may over-indulge on occasion would face a Class A infraction, but the most serious drinking driver -- the ones with readings of .15 or more, the ones who studies show are 25 times more likely to be involved in an accident than a sober driver, and the ones most likely to be killed or to kill someone else as a result of their drinking would face the most serious offense -- a traffic crime.

We believe that the social drinker who only rarely over-indulges and then drives represents an infinitesimal number of the drivers who manage to achieve .15 or more blood alcohol readings when arrested. Most cocktail party drinkers, even when they believe they've had too much to drink to drive, would fail to register .15 if a chemical test were taken.

The risk to others that a driver with a .15 or more blood alcohol reading presents is just as serious if it is his first such offense as if it is his second or third.

Subsection (1) (d) of Section 4 appears to limit for consideration as a traffic crime those who drive while a driver's license is restricted or suspended only if the suspension or restriction resulted from moving violations or from failure to comply with a court order.

First, we question the use of the word "restriction" in this classification. A driver's license may be restricted to "wearing corrective lenses" or "daylight driving only" or "with automatic transmission", etc. Punishment as a traffic crime for violation of these restrictions seems too severe.

Oregon law does not define a "moving" violation though it is a term also used in the language of the habitual offender act. A clear-cut definition of legislative intent here would be helpful.

The language in (1) (d) also appears imprecise. It would not cover many reasons for which a license is suspended under Oregon law, such as failure to appear for re-examination when requested to do so, failure to complete required tests, or medical reports. Perhaps this problem could be corrected by adding to this sentence after the words "court order", the language "or any suspension order issued by the Motor Vehicles Division under authority of Chapter 482.

Another problem appears in subsection (2) (d) and concerns driving after a suspension or revocation as the result of failure to file proof of future financial responsibility as required under Chapter 486.

Many people believe that failure to file proof is always directly related only to a driver involved in an uninsured accident. But Chapter 486 also requires financial responsibility to be filed as a result of a court judgment. Thus a driver might also be considered as having committed a traffic crime, rather than a Class A infraction. Certain serious offenses -- DUIL, manslaughter, criminally negligent homicide, any crime punishable as a felony if a motor vehicle was used in its commission, unauthorized use of a motor vehicle and several other offenses also carry a requirement to file proof of future financial responsibility.

Bear in mind that the suspension referred to in subsection (1) (d) is usually for a definite period of time -- 30 days, 60 days, up to a maximum of one year. The FR suspension referred to in (2) (d) is "indefinite" or until the SR-22 filing is submitted to the division.

We are not certain that we understand or agree with the split between FR suspensions and other driving while suspended charges. It seems to us that the question here should hinge on whether or not the driver knowingly drove a car while his license was suspended, not what the suspension was for. If he knew he was suspended, then he should be prosecuted for a traffic crime. (DMV is now working with a committee of judges and hopes to devise a method whereby an entry can be made on the computer that will definitely show that a drivers was served a suspension order.)

In the meantime, it should not be forgotten by the courts that a driver who fails to receive a notice of suspension because he moved and failed to notify DMV of his current address also is violating the law.

It is possible under the split proposed in the draft that a driver convicted of DUIL who is suspended by a judge for 30 days would be

charged with a traffic crime if arrested for driving while suspended during the 30 day period. But, if he had not filed future proof by the end of 30 days his suspension would then become indefinite -- until he filed proof -- and if he were arrested on the 32nd day, driving while suspended would then be considered a Class A infraction.

About 22 per cent of the FR suspensions last year involved a driver or owner required to make a filing as a result of an uninsured accident. Thirty-one per cent were for DUIL and eluding filings and the rest were for failure to maintain proof after an original filing had been made.

Turning to Section 9 (page 13) of the draft, we concur with the draft's intent to authorize courts to suspend a driver's license, even though the Uniform Vehicle Code maintains that suspension and restriction should be functions only of the state licensing authority.

However, we oppose the provisions of the draft that would permit a court to impose restrictions on a driver's license. We believe that only the state licensing authority should impose restrictions, following established and uniform guidelines consistent with driver licensing procedures. We are concerned that with more than 200 courts imposing restrictions, we would have a wide variety of restrictions not always consistent with licensing practices nor even easily understood by police, courts or license authorities in other jurisdictions. At best, this could add another "communication" problem involving the courts, the licensing authority and the driver.

Thus, throughout Section 9 we respectfully urge the court's authority be limited to suspensions. If the court believes restrictions should be imposed on a license the request should be made to the licensing authority, as currently provided in ORS 482.510. The division would then issue a license bearing the restrictions and make the entry on the driver's record.

While we agree that the court should be authorized to issue a suspension order if a defendant fails or refuses to pay a fine or to comply with any condition upon which payment of the fine was suspended, we do not support the provision of subsection 3 (page 14) which allows the court to retain the license as part of the court's record and then return it to the driver when he complies and forward a copy of the reinstatement to DMV.

This procedure could result in a similar but more serious problem in reverse of what we have today.

DMV has the capability to re-instate on line thus if reinstatement remains only with the licensing authority this is reflected very quickly on the computer record. A court reinstatement, due to mail time or other possible communication problems, might not appear on the computer for several days. In the meantime, the driver has a license in his possession but any inquiry to DMV will produce a response that he is suspended.

A more serious problem, however, is that it is always possible that a driver whose license the court has retained may also be having other driving problems the court is not aware of. If the court retains and returns the license, DMV may then be faced with again suspending or attempting to get the driver to comply with other requirements.

There also is the question of the reinstatement fee. If the court returns or reinstates the license would it then collect the reinstatement fee and would the court keep the reinstatement fee or forward it to DMV?

Subsection 2 of Section 9 represents a substantive change in law with respect to DUILs in that it, as we pointed out, eliminates the mandatory suspension periods now specified for first, second, third or subsequent convictions for DUIL. It makes suspension strictly discretionary with the judge, even if the driver is convicted of a traffic crime, rather than a Class A infraction.

This, we fear, may lead to "shopping around" for the judge who rarely, if ever, orders a suspension on these charges and will result in unequal application of suspensions from area to area in the state. On a charge as serious as this it seems that all convicted drivers should at least expect the same suspension.

Our concern also relates to the possible effect a non-mandatory suspension might have on the problem drinker rehabilitation program approved by the 1973 Legislature.

This law permits earlier reinstatement for a second or third conviction if the driver participates in an approved rehabilitation program and the Mental Health Division recommends reinstatement based on the driver's progress in the program. At present, Mental Health is making recommendations to us for partial reinstatement after 90 days in the program. Yet, under the proposal the driver's license, even if it is suspended, could be restored after 90 days. We think that it is possible that the incentive to stay with the program and "on the wagon" might therefore effectively be removed.

As we testified before this committee on January 9, we believe that a short but absolute suspension for a first offense with no possibility of reinstatement would be a very pointed message to drivers that the state does not tolerate drinking and driving.

We still would rather see the first DUIL offender be given a 30 day suspension or even a mandatory two week suspension, with no occupational provision, than the present 30 day suspension with an occupational license almost a foregone conclusion, or a discretionary suspension which the judge may or may not impose.

But for the drivers with a serious drinking problem, we are concerned that without the possibility of a suspension for more than 90 days, the driver with a serious alcohol problem may not be sufficiently motivated to remain in the rehabilitation program (or off the sauce).

Under the draft, we assume that courts, in addition to a fine, would also be able to suspend for lesser infractions, if circumstances warranted such action and that use of DDC for traffic crimes and Class A traffic infractions would not preclude court referral to DMV-DDC programs for other less serious traffic offenses. In fact, there is reason to believe that DDC may be most effective as a remedial program at a point earlier in the driver's career.

By the same token, the language in (2) (a) and (b) with reference to "other rehabilitative program" seems too vague. We presume the language may be referring to a rehabilitation program for alcohol and, if this is the case, we believe it should be more specific and similar to that in Chapter 793 of the 1973 session. The rehabilitation program for problem drinkers should be approved by the Mental Health Division.

The present language could result in almost anything passing as a rehabilitation program and produce inconsistent and ineffective results. All such programs must be capable of evaluation.

To summarize:

1. We believe the committee should carefully examine the proposal to make first-time DUILs and .15s Class A infractions in view of the role drinking drivers play in serious accidents and the public's attitude toward this offense.

2. Subsection (1) (d) of Section 4 should be changed to eliminate "restrictions" and the language should be broadened to provide for suspension orders issued by the Motor Vehicles Division under authority of Chapter 482.

3. The proposal to class financial responsibility suspensions on a lower scale than other types of suspensions raises more problems and questions than it solves. (The real solution here is making it an offense in the first place to drive without insurance.)

4. Only the licensing authority should impose restrictions on a driver's license.

5. Any license suspended by the court for any reason should be returned to the Motor Vehicles Division and only the division should reinstate the license.

6. We are concerned about the elimination of mandatory suspensions and the provision of no more than a discretionary 90 day court suspension, particularly for the problem drinkers. We still recommend a short but absolutely mandatory suspension of from 15 days to 30 days for a first DUIL or .15 conviction, and perhaps a mandatory one year suspension for second or subsequent offenders within five years, with earlier reinstatement possible only through participation in an approved rehabilitation program and a recommendation from the Mental Health Division to the Motor Vehicles Division, based on the driver's progress.

7. The language in Section 9 with respect to "other rehabilitative programs" should be clarified so that these programs would have to meet with approval of the Mental Health Division.

8. We believe eluding should be a Class A infraction and that at least .15 or more charges should be treated as traffic crimes, the same as a second or subsequent DUIL.