

CRIMINAL LAW REVISION COMMISSION

(September 1972)

Proposed Amendments to ORS 471.660 and 471.665

(Seizure of conveyance transporting liquor or narcotic
or dangerous drugs)

ORS 471.660 is amended to read:

471.660. (1) When any [sheriff, constable, police officer or any] peace officer [of the law] discovers any person in the act of transporting alcoholic liquors in violation of law, or in or upon any [wagon, buggy, automobile, water or aircraft, or other] vehicle, boat or aircraft, or conveyance of any kind, he shall seize any [and all] alcoholic liquor found therein, take possession of the vehicle or conveyance and arrest any person in charge thereof.

(2) [Such] The officer shall at once proceed against the person arrested, under the Liquor Control Act, in any court having competent jurisdiction, and shall deliver the vehicle or conveyance to the sheriff of the county in which such seizure was made.

(3) If the person arrested is the owner of the vehicle or conveyance seized, it shall be returned to [the owner] him upon execution by him of a good and valid bond, with sufficient sureties in a sum double the value of the property, approved by the sheriff and conditioned to return the property to the custody of the sheriff on the day of trial.

(4) If the person arrested is not the owner of the vehicle or conveyance seized, the sheriff shall make reasonable effort to determine the name and address of the owner. If the sheriff is able to determine the name and address of the owner, he shall immediately

notify the owner by registered or certified mail of the seizure and of the owner's rights and duties under ORS 471.660 and 471.665.

(5) A person notified under subsection (4) of this section, or any other person asserting a claim to rightful possession of the vehicle or conveyance seized, except the defendant, may move the court having ultimate trial jurisdiction over any crime charged in connection with the seizure, to return the vehicle or conveyance to the movant.

(6) The movant shall serve a copy of the motion upon the district attorney of the county in which the vehicle or conveyance is in custody. The court shall order the vehicle or conveyance returned to the movant unless the court is satisfied by clear and convincing evidence that the movant knowingly consented to the unlawful use that resulted in the seizure. If the court does not order the return of the vehicle or conveyance, the movant shall obtain the return only as provided in subsection (3) of this section.

(7) If the court orders the return of the vehicle or conveyance to the movant, the movant shall not be liable for any towing or storage costs incurred as a result of the seizure.

(8) If the court does not order the return of the vehicle or conveyance under subsection (6) of this section, and the arrested person is convicted for any offense in connection with the seizure, the vehicle or conveyance shall be subject to forfeiture as provided in ORS 471.665.

ORS 471.665 is amended to read:

471.665. (1) The court, upon conviction of the person arrested under ORS 471.660, shall order the alcoholic liquor delivered to the commission; and [, unless good cause to the contrary is shown by the owner,] shall, subject to the provisions of subsection (3) of this section, and the ownership rights of innocent third parties, order a sale at public auction by the sheriff of the county of the property seized. The sheriff, after deducting the expense of keeping the property and the cost of sale, shall pay all the liens, according to their priorities, which are established by intervention or otherwise at such hearing or in other proceedings brought for that purpose, and shall pay the balance of the proceeds into the general fund of the county. No claim of ownership or of any right, title or interest in or to such vehicle that is otherwise valid shall be held [valid] invalid unless the [claimant] state shows to the satisfaction of the court, by clear and convincing evidence, that [he is in good faith the owner of the claim and] the claimant had [no] knowledge that the vehicle was used or to be used in violation of law. All liens against property sold under this section shall be transferred from the property to the proceeds of the sale.

(2) If no person claims the vehicle or conveyance, the taking of the same and the description thereof shall be advertised in some daily newspaper published in the city or county where taken, or if no daily newspaper is published in such city or county, in a newspaper having weekly circulation in the city or county, once a week for two weeks

and by handbills posted in three public places near the place of seizure, and shall likewise notify by mail the legal owner, in the case of an automobile, if licensed by the State of Oregon, as shown by his name and address in the records of the Motor Vehicles Division of the Department of Transportation. If no claimant appears within 10 days after the last publication of the advertisement, the property shall be sold and the proceeds, after deducting the expenses and costs, shall be paid into the general fund of the county.

(3) In the case of any boat, vehicle or other conveyance seized pursuant to ORS 167.247 for violation of a narcotic or dangerous drug criminal statute, the boat, vehicle or other conveyance may, in the discretion of the seizing law enforcement agency, following conviction of the person arrested but prior to public auction, be claimed by the seizing law enforcement agency by giving timely notice to the sheriff of the county in which the seizure was made, that the seizing law enforcement agency intends to retain the boat, vehicle or other conveyance for official use. On receipt of notice of such claim, the sheriff shall determine the expense of keeping the boat, vehicle or other conveyance, and all the liens. The seizing agency may then pay the total of the expenses and liens to the sheriff of the county in which the seizure was made. The sheriff shall pay all the liens, according to their priorities, and all other expenses incurred in the seizing and keeping of the boat, vehicle or other conveyance. Upon payment of the liens and expenses, the boat, vehicle or other conveyance shall be delivered to the possession of, and title to the conveyance shall rest in, the seizing agency. The seizing agency then shall put the boat, vehicle or other conveyance to official law enforcement use.