Tape 31 - Side 2 - 1 to end
Tape 32 - Side 1 - 1 to 340

OREGON CRIMINAL LAW REVISION COMMISSION

Subcommittee No. 3

August 11, 1972

Minutes

Members Present: Representative Norma Paulus, Chairman
Mr. Donald R. Blensly
Mr. Donald E. Clark

Excused: Judge Charles S. Crookham

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

Others Present: Mr. John Darby, Oregon Corrections Division
Mr. Terry Johnson, Board of Parole and Probation
Mr. M. Chapin Milbank, Chairman, Oregon State Bar Committee on Criminal Law and Procedure
Mr. Bill Newell, Board of Parole and Probation
Mr. Bob Watson, Oregon Corrections Division
Mr. Jack Wiseman
Mr. Bob Wright, Oregon Corrections Division

AGENDA:
1. Parole, Probation and Related Provisions (ORS chapters 137, 143, 144)
2. Extraditions (ORS chapter 147)
3. Appeals and Post-Conviction Relief (ORS chapter 138)

Representative Norma Paulus, Chairman, called the meeting to order at 10:00 a.m. in Room 315 State Capitol.

The Chairman called on Mr. Watson of the Oregon Corrections Division to present to the subcommittee the Division's recommendations relating to chapters 137, 143 and 144 attached to these minutes as Exhibit A.

Mr. Paillette reported that he had met with the policy board of the Corrections Division on August 10 and although some of the recommendations from the Division were housekeeping type of amendments, there were some which contained policy questions.

Mr. Watson began his summary with ORS 137.015. There is a tremendous need for greater attention to be given in the area of crime prevention and education, he said, and referred to ORS 423.230 (4) which states that the coordinator in crime prevention program shall "conduct an educational program to inform the citizenry concerning the nature, extent,

underlying causes, control and prevention of crime and delinquency in this state." ORS 137.015 states that an assessment, in addition to a fine, shall be collected and credited to the Police Standards and Training Account and it was the Division's hope that an additional assessment would be implemented to go towards the crime prevention program. It was the Division's understanding that in the 11 months the statute had been in effect, the Police Standards and Training program has received approximately $500,000 into its account.

Mr. Clark commented that he would have serious reservations about the entire concept even if it were constitutional. Mr. Paillette was in agreement with this statement.

Mr. Blensly stated that rather than part of the overall revision, he would be inclined to think this would be a policy issue to be considered separately by the legislature.

ORS 137.072. Diagnostic examination of defendant. The position of the Corrections Division, Mr. Watson reported, was that this statute should be repealed. It contained the concept that the Corrections Division establish a reception and diagnostic center and implement this kind of service statewide. As a practical matter, however, they have had minimum use of it but that which they have had has not been a pleasant experience as he reported one man who came to them for diagnostic study and on completion, OSCI experienced an expenditure of $4,000. This statute also places an individual in the system who in essence is on a holding status, and the Division must divert from other legislatively approved programs the money to do this evaluation.

Chairman Paulus referred to Mr. Amos Reed's letter under date of April 27, 1972 which related in part to the need for presentence reports "in all felony cases unless the court directs otherwise," and "in misdemeanor cases if the Corrections Division and the court first agree to an investigation and report." She noted that testimony on HB 1170, which proposed this amendment to ORS 137.530 and which was later tabled, showed that an appropriation of $382,692 would be necessary in order to carry out the additional 1,500 presentence investigations. The Chairman asked if ORS 137.072 were repealed, would it help to balance the need for the additional money necessary for the presentence reports. Mr. Watson replied it would not as the Division has received very few persons under this statute. It was his opinion that it is not just the lack of money, but that the concept was outmoded.

Mr. Blensly asked if this was connected with the diagnostic center which was supposedly to be set up for all the people who were brought into the Corrections Division. Although this has not been done, he asked if it is anticipated that this will be developed in the future or if the theory had been abandoned. Mr. Watson reported it has been abandoned. A better job of diagnosis can be done, he said, by placing the person in a situation where there is a wide variety of experience rather than isolate him in a small unit where he will associate with people only for a short period of time.

Mr. Paillette remarked that the ABA Standards on Sentencing recommends the diagnostic approach and the Model Code on Sentencing Practices also recommends it although they did not direct it to the pre-conviction stage.

Mr. Blensly observed that this was a permissive statute and Mr. Watson commented that even though the Administrator has the discretion to determine who will be received for study, there must be research involved by the field staff in order to make that decision. The current practice is that they initiate and complete a short form presentence report. Mr. Blensly pointed out that if it is recommended that it be done in every case there would not be any additional expense involved other than just reading it and making evaluations, although to accomplish this additional staff would be needed, Mr. Watson replied.

Mr. Blensly asked what type of cases have been considered under this section and Mr. Watson replied there have been a variety of crimes involving some people who had been in prison several times before. If there was much material available to the officer doing the short form presentence report to indicate that the diagnostic study was unnecessary the requests have been denied. Mr. Watson contended that this is being used by some attorneys to delay the process in getting the person tried and it appeared to him it was used for purposes other than determining what the facts were in the person's background. Child abuse and molest cases have also been referred to the Division, he reported, and there are options available to the court now for them to receive psychiatric examination at the state hospitals and he did not believe this would be hampering the courts from gathering such information. He continued that he did not believe this was in conflict with the national recommendation in terms of providing reliable information to the courts, but did not believe this to be the mechanism with which to do it, and expressed preference to the presentence investigation and after conviction concept.

ORS 137.075. Report to court and to convicted person; use of report content limited. Mr. Watson reported that the section is related directly to ORS 137.072 and is also recommended to be repealed by the Corrections Division.

ORS 137.124. Commitment of defendant to Corrections Division; place of confinement; transfer of inmates. The Division recommends the deletion of "the penal or correctional institution" and the insertion of "Corrections Division Facility" in subsections (1) and (2). Mr. Watson advised that community centers would not be considered in the definition of a penal institution and that it was the Division's hope that it will be able to receive persons on parole or probation into its work release centers and other community centers which they are now prevented from doing as they can only house inmates. Under existing law, he said, if a man on probation is heading toward trouble, the Division must wait until he gets into it and there is no option for bringing him in where he could receive some extra attention.

Mr. Clark asked why the Division desired to delete misdemeanants in subsection (3). Mr. Watson replied that it does not now receive them at a state penal institution and if they are received under their jurisdiction they would wish it to be under the concept of a local or regional type of facility rather than a penal or correctional institution. Mr. Clark mentioned that if the other statutes would be amended to read "Corrections Division Facility" there would be no reason to exclude the misdemeanants. If, for instance, the Division took over the Multnomah County jail for sentenced prisoners and operated a correctional program, he would assume the Division would wish the flexibility of dealing with the entire system and be able to place those people in the forestry camps, work release centers, etc.

After discussing the situation with Mr. Paillette the previous day, Mr. Watson indicated the Division may wish to amend its proposal as subsection (3) empowers the court to send the people to the county jail and he reported that he only wished to make it clear that those people should not be in a state institution. When asked of any situation where a misdemeanant has been sent to the institution, Mr. Watson replied that it has been attempted, but they would not accept the person.

Mr. Paillette reported that subsection (3) was added to the statute for two purposes, (1) recognizing the future possibility of regional correctional facilities and (2) since all the penalty sections with respect to sentencing persons to the county jail were being repealed, there had to be a blanket provision to give the court some direction and authority to sentence them to a local jail.

Mr. Paillette expressed approval of the recommendations made by the Division with respect to the change of name in subsections (1) and (2) but was of the opinion that subsection (3) should be retained as it was not contemplated by the Commission or the Legislature that misdemeanants, in the absence of a regional correctional facility, would be sent to the penal institutions. He advised that rather than deleting the subsection, the words "penal or correctional institution" at the end of the sentence be changed to "correctional facility."

ORS 137.225. Order setting aside conviction; prerequisites; limitations. Mr. Watson reported that there is no provision in the statute for the Corrections Division to expunge its records after a certain period of time has lapsed and requirements are met by the defendant. The Division is requesting it be notified when this action occurs, otherwise they could inadvertently notify persons of the defendant's prior record. Mr. Blensly wondered if there is a provision in the statute to notify the State Police to expunge their records and if not, he believed this to be another necessary requirement.

Rather than naming the agencies, institutions and programs, Mr. Clark thought it more appropriate to state this in a general term. Mr. Blensly remarked that by stating "other official records" at the end of subsection (1) really should include the notification of these different agencies. In order to encompass all these agencies, Mr. Blensly proposed amending subsection (1) to say that the "clerk of

the court shall forward to the keeper of such records a certified copy of said order" thus including all other official records in the case.

ORS 137.240. Effect of felony conviction on civil and political rights; restoration of civil rights; exceptions. Mr. Watson reported that the Division is supporting the concept that, at the discretion of the Administrator, individuals may be married while in confinement. He noted that the Division defers to the Oregon Bar Committee on Detention and Correction on the statute and this provision is included in its proposal.

Mr. Paillette reported that the recommendations of the Bar Committee in this particular area would be to amend subsection (3), retaining the existing language and the insertion of:

"(d) Appearing and maintaining or defending an action for child custody or dissolution of marriage; or

"(e) Appearing and maintaining or defending a cause of action, while imprisoned or on bail, arising from acts other than official acts of the Division of Corrections or its agents; or

"(f) Appearing and maintaining or defending a civil action, suit or proceeding allowed under any other statute."

Mr. Paillette advised that a new subsection (4) would be added as follows:

"(4) Nothing in this section prevents a person convicted of a felony and imprisoned as a penalty therefor from entering into a civil contract of marriage during the period of imprisonment when in the judgment of the administrator of the Division of Corrections the marriage would contribute to the person's rehabilitation and the administrator consents to the marriage."

The Chairman wondered why the marriage contract must be only at the discretion of the Administrator and Mr. Watson replied that since the individuals are under the Division's jurisdiction they would have to enter into the decision making. Manpower and staffing considerations would also enter into it, he said. In response the the Chairman's inquiry, he said there were no members of the Oregon State Bar who were stressing absolute rights for the defendant with respect to the marriage.

Mr. Blensly was uncertain as to the wording in the section. He believed that under one section it states the defendant cannot sue the Corrections Division for a civil wrong and then it seems to say they have a right to maintain any civil suit. Mr. Paillette responded that the proposed paragraph (f) states they may defend a civil action under any other statute and indicated that they could have had in mind the Civil Rights Act. Mr. Blensly stated that he was thinking more along the lines of an assault and battery civil action.

Chairman Paulus asked if the Division also agreed with the Bar's recommendations as to the right to enter into custody disputes and Mr. Watson answered affirmatively.

Mr. Blensly inquired as to whether this would cover a termination of parental rights situation where, for instance, the Juvenile Court was bringing such an action. Mr. Watson's understanding was that it would.

Mr. Paillette urged support of the Bar Committee's proposals.

ORS 137.250. Restoration of political rights; effect of parole or probation revocation and commitment on civil and political rights. The Corrections Division recommends the wording in subsection (2) be amended to read "commitment to the Corrections Division and placement in a Corrections Division Facility" and the deletion of "commitment to the penitentiary or correctional institution."

ORS 137.380. Treatment and employment of prisoners. A change in title is again recommended by the Division and Mr. Watson reported the amendment would specifically state they have the authority to determine the manner of confinement, treatment and employment.

ORS 137.450. Enforcement of money judgment in criminal action. Mr. Paillette proposed the addition of a new subsection as follows:

> "The existence of an unsatisfied judgment for fines or costs shall not prevent the Board of Parole from granting the parole where the defendant's indigency or status as an inmate of a correctional facility prevents satisfaction of such judgment."

Mr. Paillette believed this to be a desirable amendment and Mr. Watson expressed agreement but deferred to the representatives of the Parole Board who were in attendance.

Mr. Johnson referred to an Attorney General's opinion dated April 6 which indicates the Parole Board has legal jurisdiction to parole even with an unsatisfied fine. His thoughts on the matter were that, when speaking about indigency, there may be some problems because by statute this cannot be specifically considered as related to unsatisfied fines as it will affect the question of inability to pay for legal counsel. When the Board is considering granting a parole, one factor which must be emphasized is the man's overall situation and whether or not he has the financial ability and means to support himself once he gets into the community, regardless of any fine he has. If the proposal suggested by Mr. Paillette were adopted and added to the statute he believed it would overlap into that situation.

Mr. Blensly asked if the policy prior to the Attorney General's opinion was to not grant parole if the person had unpaid fines and Mr. Johnson responded that before the opinion was issued the Parole

Board was unaware as to what position it should take. The policy now, he said, is that if the inmate is unable to pay the fine it does not prohibit him from going on parole.

Mr. Wiseman reported that the previous Board of Parole, with advice from a former Attorney General, felt they did not have jurisdiction when there was a fine or any kind of monetary consideration imposing itself at this point in the procedure. At one time, he said, they even went so far as to arrange for an individual to be transferred back to the county jail on probation so that he could comply with the pauper requirements and then he would be eligible for parole. In his judgment he believed it would be best to have the statute state what the Board's authority is in this particular area.

Mr. Wiseman spoke of a hypothetical situation where a man could be close to the finish of his sentence, but the court perhaps is disinterested or unwilling to amend the requirement for the fine and he would still have this obligation.

Mr. Blensly asked why the question of indigency was entered into the proposal. Mr. Wiseman said there were certain instances where the person in no way could pay any amount. Mr. Blensly believed that the way the amendment read, this would be the only time the Parole Board would have the authority to parole, and Mr. Wiseman thought it could be interpreted that way but was not his intention. He said he was concerned with the indigent with no means at all to satisfy this requirement - if the Board has the authority to parole as the Attorney General says it does, then whose responsibility is it going to be to see that this part of the original order is satisfied. He said he would not wish to see the Parole Board turn itself into a collection agency.

Mr. Blensly remarked that the district attorney presently can enforce it if the man has property and Mr. Wiseman reiterated that his main interest was in trying to clear up the area so that the Board would know what its authority is and how far it extended.

ORS 137.520. Power of committing magistrate to parole and arrange for employment of persons confined in county jail. The Division recommends the title change from the"State Board of Parole and Probation" to the "Corrections Division."

Mr. Watson referred to his earlier discussion with Mr. Paillette and believed serious fiscal implications would result if the words "under six months" were deleted in subsection (1) and may be the topic of a separate bill as they do not have the resources and staff to do an adequate job now for persons confined over six months. Mr. Paillette reported that with respect to bench parole where the court would order parole of misdemeants, the staff recommendation would be that the six months provision be deleted and the section amended so that no one on a court parole would go to the Corrections Division and he recommended the deletion of subsection (5) and the reference to "under six months"

in subsection (1), so that the committing magistrate would establish rules and regulations and confine the defendant to the county jail for any period. He said he was not suggesting to enlarge the scope of the Corrections Division's responsibility for taking care of misdemeanant parolees, but rather to delete it.

Mr. Clark asked what this would do in Multnomah County, for instance, if they wished to turn all the misdemeanants on parole and probation, along with the funds, to the state to administer. Mr. Paillette asked what kind of services the misdemeanant parolees under the six months' category have available to them on the county level and Mr. Clark replied that there is an office of parole and probation that has both professional staff and a considerable volunteer staff which does the same type of work done by the State Parole and Probation office. Douglas County also has a local parole staff, Mr. Watson reported.

Mr. Watson was concerned in that the amendment proposed by Mr. Paillette would still make the Division liable to receive people from any county of the state, even if subsection (5) were deleted because of the language in subsection (1), and Mr. Paillette replied that to be certain this wouldn't happen and if this were agreed to be a desirable policy, a specific prohibition could be written in stating that they shall not be released to the Corrections Division.

Mr. Wiseman reported that another problem which has arisen in the past refers to the authority to revoke on some of the misdemeanant parole cases. He spoke of a district court case in Lane County where the Board was asked to supervise; the individual ran into difficulty and it was referred back to the court for revocation but no action was taken as they did not have the authority to revoke but that the Board had the authority. The Board, in turn, did not think it did and so there is immediately the question of protection of the public interest.

The Chairman wondered if once the district judge has relinquished control to the Board he would no longer have authority over the matter.

Mr. Blensly referred to Mr. Clark's earlier question with respect to turning the misdemeanant parolees, along with the funds, to the state to administer. He believed that no matter what would be done to the section, either putting the obligation on the county or otherwise, ORS chapter 190 would clearly allow it.

ORS 190.007 reads:

> "In the interest of furthering economy and efficiency in local government, intergovernmental cooperation is declared a matter of state-wide concern. The provisions of ORS 190.003 to 190.110 shall be liberally construed."

ORS 190.110 reads:

> "In performing a duty imposed on it . . . a unit of local government or a state agency of this state may cooperate, by agreement or otherwise, with a unit of local government or a state agency of this or another state . . . . "

This chapter, he believed, gives authority to counties to enter into agreements with other counties and with a state agency to have that particular agency perform by this contract.

Mr. Clark reported that there is a discussion at both the state and local level, and just at the beginning stages, of trying to combine the local parole and probation operation in Multnomah County with the state operation, and surrendering to them the budgeted funds that the county is currently expending for the program.

Mr. Paillette explained that the deletion of the reference to the six months period in subsection (1) and the deletion of subsection (5) in its entirety would have the effect that it would all be handled at a local level and not brought into the Corrections Division.

Chairman Paulus asked if the overall result of changing the statute as recommended would be to make parole and probation at that level a farce, as there would not be any supervision at all. Mr. Watson believed this would be true as it would be limiting the effect immediately on the number of jurisdictions of the state who do not have resources for men who would otherwise be in the county jail.

Mr. Blensly asked to what extent are parolees through the Board now utilized by the counties. Mr. Darby reported that there are close to 900 misdemeanants under the Division's supervision on probation and 40 parolees from the county jail.

The Chairman asked Mr. Watson if the Division had run into the problem reported by Mr. Wiseman with respect to the district court and the Parole Board not knowing who had authority to revoke. He remarked that there should be a provision for this in the statute.

Mr. Clark thought that once the individual is found guilty, at that point in every county in the state he really should become the responsibility of the Department of Corrections and the county should be completely out of the picture.

Mr. Watson said that consideration must be given in that the future of the Corrections Division may be better improved if it is clear that the problem of crime is a local problem. When the individuals are tried, convicted and sentenced and sent off someplace else, the problem is not the court's and the people who must take care of them don't get the resources because they come from another part of the state. There is a

serious question involved as to whether all these people should be thrown into the system of the Division, he said. He wondered where the resources would come from and that perhaps it would be better to have them cared for on a local basis.

Mr. Blensly referred to a House Bill presented to the last legislature which related to preparing a local work release program. He reported that one judge in his county would automatically, on every commitment order, authorize the sheriff to temporarily release the person and the other judge would not. It was his feeling that subsection (2) could be amended to authorize the sheriff to release for temporary purposes and using basically the same wording on state work release programs so that once the sheriff gets custody, he could obtain employment and release this person for work release purposes, Mr. Blensly's theory being that if there is a proper work release program and the sheriff taking charge of custody, he is the one who should be making the determination and not the court. He believed that if the sheriff has the duty and responsibility for custody, he should be given the tools to utilize some of these programs. Mr. Watson concurred with this assessment but said that they must have authority in order to do so.

Mr. Johnson was of the opinion the proposal set forth to give the sheriffs the power to release under this program has much merit to it and recalled one case from a Parole Board standpoint where a sheriff had four or five persons committed to his institution and released them illegally for a period of time to a program. He did not know if the reason was that he could not get the court to place them on parole or didn't attempt to. Once he was made aware of the statute which allows the Parole Board to grant paroles from institutions in the right situations there was a flurry of applications.

Mr. Blensly said that the statute reads that the committing magistrate may parole. He asked if the Parole Board has authority to parole without order of the committing magistrate if the person is confined for six months or more and Mr. Johnson answered in the affirmative. Mr. Blensly next asked what the words "committing magistrate" would then mean in subsection (5) and Mr. Johnson replied that the Parole Board has nothing to do with that subsection. Under subsection (5), he said, it means that the committing magistrate may parole to the Corrections Division for supervision.

Mr. Blensly asked what section gives the authority to the Parole Board to parole county prisoners if they are confined to six months or more and Mr. Johnson replied that under ORS 144.050 the Board has the authority to parole anyone under the jurisdiction of the Corrections Division or anyone who is serving a sentence of six months or more in a local jail and this is where they exercise their jurisdiction.

Mr. Paillette asked if the State Board of Parole has the capability of handling the misdemeanants on a parole status and Mr. Newell responded

that at this time it is a touch and go basis but with the recent Supreme Court decision they will probably move into the field of having hearing officers, so he believed this service would be able to be provided.

Mr. Blensly wondered if the judges when making the ruling, really have the facilities and the time to make an intelligent determination. Mr. Milbank replied that in Marion County the judges seem to bench parole the individuals almost universally when they have employment and in answer to Mr. Blensly's question, he would believe they did not. Mr. Paillette remarked that it is really analogous to a suspended sentence without probation and Mr. Blensly agreed, saying there is no supervision or regulations when bench paroled. Mr. Paillette pointed out that the court can now suspend either the imposition or execution and also place the defendant on probation or suspend without probation and when he does that, the defendant is free to go unless it comes to the attention of the court that he has violated and he is brought back.

Mr. Blensly questioned whether the court had the authority to bring the defendant back in after the sentence has been suspended without any conditions. Mr. Paillette said he would assume that when the judge suspends sentence there will be some conditions placed on the defendant. He said he is not suggesting that the subcommittee should try to get away from providing services - he is in favor of this, but it seemed to him that if the Parole Board does not have the capabilities to take care of the misdemeanants, it should not be in the statute.

Mr. Wiseman did not believe the Division, the court, or anyone else has facilities or services to provide for these short term people and further, he did not believe this approach to their continued treatment is effective because these people do not attach any importance to this service and if they are looking at a balance of two, three or six months and you are trying to use this as an incentive to get them to conform, they laugh at you. Mr. Wiseman thought that in one sense of the word, funds of the county and state are being wasted in trying to work in this area. There is a service which could be provided but he believed it would be more effective if it were away from the system provided by the Division. In a practical sense, he said, the field officers do not have the time to give to these people because they have many more serious cases to work with. He thought that there was also the question of jurisdiction with those who wish to transfer out of state - if they are told no and do it anyway, nothing can be done about returning them. Mr. Wiseman said he believed the approach to this is almost facetious in terms of the effectiveness that accrues from it and it might be the time for the Commission to give some serious thoughts to some other alternatives, i.e., volunteer services, alternatives to commitment itself to local facilities, perhaps restricting commitment to the longer term misdemeanants so there is some time available to set up the machinery, establish the procedures and influence the clientele the court is trying to deal with.

Mr. Blensly believed there was a movement among many counties to try to utilize federal funds and try to set up a regional local probation system.

The Chairman referred to the volunteer program set up in Portland using men and women to act as unpaid volunteers and spoke of some of them who seem to be quite excited about the program. The Chairman said she was interested in knowing how the professionals feel about this volunteer program and in particular, if any attempts are being made to instill this program in the other counties.

Mr. Watson remarked that the Division strongly endorses the volunteer program. He said it does take a certain amount of selection and training to get the right people and then give them the right supervision and attention and that the Division is incorporating into its general fund budget request provisions for these volunteer coordinators.

Mr. Darby, who has been directly connected with the Portland office where a number of the volunteers are used, remarked that the Division is taking an enthusiastic position as to the use of the program but that it cannot do the existing job with what they have. There are many caseloads, some classified down to minimum supervision, that need a direct service and through the volunteers. The Division is trying to expand this to all districts and regions throughout the state and there are presently five regions and 20 office locations. The Division is making the volunteer program assist the needs of the various regions and districts throughout the state and would desire to start out on a selective basis with two volunteers for each probation officer and at least have 150 volunteers. In the Portland office, he said, they are dealing with 20 to 30 volunteers and have received federal funds to implement their program. The Division is starting out very slowly because they do not wish to lose these people and because the needs are different in each community it should be made meaningful to the volunteer, client and the professional staff. Some volunteers naturally will drop out, he said, but with the wide interest being shown by the public to this program he believed it was necessary to get into it.

The Chairman asked if there were any statutory obstacles to this volunteer program and Mr. Darby said the court could put a person on probation anywhere but the Division was somewhat concerned about the liability aspect. For instance, if a volunteer is driving a parolee to a job and an accident occurs, there is no coverage except in Portland. The Division is also concerned in that a certain percentage of the clientele will be quite manipulative and the Division also has to protect the volunteers, but the main concern is the liability aspect. The Division is going at a slow pace in order to assimilate and assume what they feel can be done, he said, but that it wholly promotes and endorses the project.

ORS 137.530. Investigation and report of probation officers. Mr. Watson reported that the Division recommended adoption of HB 1170 introduced during the last session wherein it requested presentence investigations as follows: "In all felony cases unless the court directs otherwise, and in a misdemeanor case if the Corrections Division and the court first agree to an investigation and report."

Mr. Paillette pointed out that the bill had been referred to Ways and Means where it remained at the close of the session. Because of

the fiscal implications involved in this concept he was of the opinion the recommendations should go by way of a separate bill, as it will involve additional personnel, but urged the support of this concept.

Mr. Wiseman questioned whether "presentence" would be the term which should be used. To him it connotes a heavy approach. If, in the area of misdemeanants there has to be the consensus of the Division and the court before proceeding, the staff, he said, has already been committed to considerable time and effort that might be more appropriately directed to providing something more beneficial. Mr. Wiseman believed a better approach would be if the community resources, agency and private, were available to the court for disposition purposes and not think in terms of felonies and misdemeanors.

Mr. Blensly referred to the presentence reports coming out of his county and said he is not bothered by it because he finds that many reports he receives are useless and do not add a lot that had not already been made available. He said that Mr. Hennings in Multnomah County is giving to the court alternative programs that are available and he believed that this is more important to the court than the presentence report.

Mr. Wiseman said that if more concentration is made on what alternatives might be available and what is available in the alternatives to meet the needs, then a better service is being provided to the court. This can be done without using the umbrella of the presentence report. Mr. Blensly wondered if this could be done through a statute or if this is a policy decision of the Corrections Division or the Board, and Mr. Wiseman believed it could be done through statute. Mr. Blensly wondered if this would be getting back to the diagnostic center concept.

Mr. Watson remarked that the Division has made a policy decision which is to make the program options available to all the courts who request presentence. He said the Division recognizes this need, however he still believed these other factors are important as he said they are crucial to an officer who has supervision responsibilities, and it is essential that this information is available for these purposes.

Mr. Blensly asked if Mr. Watson believed that the presentence report requirement in all felony matters was a necessary tool and needed by the Corrections Division and Mr. Watson replied that the Division believes, from a broad look at the needs of the criminal justice system, that the courts have sometimes sentenced without having adequate information and they are offering to provide this. The Division has entered into much discussion to determine what the courts think is important and they are willing to make changes in the presentence report by making options available to them as he previously indicated. If an inappropriate sentence is given, defendants are sentenced to the prison whereas with more information they might be placed in the community and this is in the Division's and the person's best interest.

Mr. Darby reported that there are three options which they can give to the court and which has been made known to them, one a long form presentence where there could be a serious crime which would require a lengthy investigatory process; a short form where a person has not been involved in too much trouble and also a special presentence report when the court only wishes one segment of information, such as future residence or employment. This is all being offered to the court and in addition, the Division is also adding options and programming.

Mr. Blensly asked what Mr. Darby's feelings were with respect to the presentence report being made available to the defendant. Mr. Darby believed that anything that pertains to the man's personal history, schooling, etc. could be presented to the defendant for accuracy but he believed that to release personal comments from family members or past employers, etc. who are trying to help the court and the defendant as to which program would help him, could cause more harm than good.

Mr. Blensly said there has been a growing trend to allow the defendant to see the report and asked if Mr. Darby has found any difficulty in receiving information as this trend grows. Mr. Darby replied that he has and that because of this, many things are not put in the investigation report because they are concerned it may be transmitted to the defendant and this would be a very gross misuse of the material, he believed.

Mr. Clark reported that Multnomah County is very close to having a situation where, if a person is not diverted by the police and he comes into custody at the booking-in place, every person will be interviewed at that time by a recognizance officer who will amass a certain amount of information and verify parts of it. If the officer determines that a person is not suitable for recognizance the next step is that he proceeds with a minor custody classification on where the person should be housed and this information again will be placed in the person's file. About this time, he said, the Public Defender enters the case and he also begins to gather information and is attempting to develop some type of program for the man and he is determining additional alternatives which, at the same time, is being done by the recognizance officer. There is a further duplication of information, he said, with respect to the diagnostic center evaluation and the parole and probation officer again obtaining information and trying to seek out some type of alternative program. There is also the traditional presentence report. In essence, Mr. Clark pointed out, the procedure will occur three or four times and he maintained that there must be some way to pass on this information and also eliminate such a ponderous document with so much information in it that it is no longer useful to the court or too much information that is useful to the court. It must be condensed so that they get enough but not too much. Mr. Clark contended that this is a much more complex situation than what is being dealt with and he was of the opinion it should be examined in substance rather than in bits and pieces.

Mr. Blensly said that in looking at the proposed wording to ORS 137.530, he would question whether or not it is too limited in the question of misdemeanor cases because some presentence reports are prepared by local probation officers in two counties and undoubtedly will be done in other counties. If it is limited that on a misdemeanor the Corrections Division must agree to the investigation, he did not believe they would wish to be involved in agreeing to what the local probation officer would want to do. Mr. Watson replied this was true as Corrections wouldn't wish to be involved if they were not preparing the reports.

Mr. Watson stated that he was not in disagreement with Mr. Clark's comments as he believed the entire system needs an approach which would prevent this duplication and the main purpose is to come to some conclusion that is in agreement with all and then the procedure can be developed. They are faced,however, with a great crush of numbers and in 1971 had received 3,678 people in the various components of the Corrections Division. Of that number only 1,770 had presentence reports, consequently, 1,908 persons had been received without pertinent social history information.

Mr. Paillette asked if, in Multnomah County, the officer doing the presentence report contacts people such as the Public Defender and the recognizance officers to obtain information from them about the defendant. Mr. Darby was not certain but said they should be contacting these people, he believed. Mr. Blensly said that in his county the probation officer contacts the sheriff's office and gets the file which would have the information and this would be one of his sources.

Mr. Clark said that at the level of recognizance, the officer is also attempting to determine indigency and have counsel appointed right at that time. The self incrimination aspect is an important factor and must be dealt with. He advocated establishing a system where this information is passed on through but still protecting self incrimination.

Mr. Milbank commented that if had enough money in defending a person he would prefer not to have a presentence report done by the state. He could hire his own presentence report compiled and he knows he could give a much more favorable report on his client.

The Chairman said that with respect to HB 1170, whether the term "presentence" or another term is used and whether it is broadened or narrowed, she believed that no matter what was done with that segment it will mean a tremendous amount of money involved and that the subcommittee should decide whether or not it wishes to include it or have it introduced as a separate bill. $255,798 was the projected fiscal impact, Mr. Paillette reported.

The subcommittee recessed for lunch at 12:10, reconvening at 1 p.m.

Mr. Paillette reported that the presentence report was discussed at length at yesterday's meeting and that the Corrections Division is opposed to releasing the presentence report to the defense attorney.

Mr. Watson said existing statutes in other states provide for copies of the presentence reports to go to the defense counsel or defendant and others and he wanted to point out that if this is adopted it could have an impact on the content of the presentence report unless there is some type of screening provision to persons giving information.

Chairman Paulus asked if a statute is passed which required the presentence report to be made available to the defense counsel, by what administrative means could the officers circumvent the formal presentence report with the information the Corrections Division would not wish to be released. Mr. Watson was not certain as to the solution to this problem except that perhaps the judge could determine what part of the record is dangerous and remove the same although there may be problems with that concept also. The Division's position is that total disclosure is unnecessary. Mr. Wiseman reported that California resolved this problem by filing two reports, one for the court and one for their own use.

Mr. Darby said that in most cases in the state the defense attorney does see the report and in some jurisdictions two copies are submitted, one which is usually given to the defense attorney.

Mr. Paillette said that the ABA recommends that in extroadinary cases, and in this case protective guidelines would have to be laid out such as was in the Discovery draft, the court should be permitted to except from disclosure parts of the report which are not relevant to a proper sentence; diagnostic opinions which might seriously disrupt the program of rehabilitation, or sources of information which has been obtained on a promise of confidentiality. The ABA recommendations continue to state that all cases where parts of the report are not disclosed under such authority, the court should be required to state for the record the reasons for its action, to inform the defendant and his attorney that information has not been disclosed and which would be subject to appellate review.

The Chairman asked if Mr. Watson would agree to this language in the statute and make the availability of the presentence report mandatory to the defense attorney. Mr. Watson said he would hesitate at this time to reply and would wish his policy committee to examine this language. He did believe that it covered in general terms the issues that were raised.

ORS 137.560. Copies of certain orders to be sent to Director of Parole and Probation. The Division is requesting that copies of certain orders be sent to the Corrections Division Administrator rather than the Director of Parole and Probation.

Mr. Paillette reported that at yesterday's meeting it was discussed that the parolee agree to a search of the person and premises when requested by the probation officer. Mr. Blensly said that some district attorney's offices request this and get it but it strikes him as being wrong and if placed in the general provisions it could encourage more and more the use of it. Case law, he said, grants this authority and he could see in certain circumstances the need for it but he believed it improper to incorporate it into the section and subject the person to a search at any time. Mr. Clark agreed and observed it would be almost like giving them a license.

Mr. Darby reported that this procedure has had very minimal use over the years but when it was done, great discretion was exercised by the Division. The Division has had a few suits started against them recently but to no effect. Two courts are, he said, now placing this in the order in narcotic cases.

The Chairman asked if the volunteer probation officer would be involved in this type situation and Mr. Darby said the officer is not used in an enforcement situation. It is preferred in all jurisdictions not to use one in this category.

ORS 137.570. Authority to transfer probationer from one officer to another; procedure. This relates to the transfer of persons from one probation officer to another, Mr. Watson reported, and it is recommended it be changed from "A court" to "The Corrections Division" and "probation officer" to "probation office." The Division also recommends the deletion of subsections (1) and (2).

The Chairman wondered if the section was actually necessary because the Division has the inherent power to do this. Mr. Clark agreed but Mr. Blensly said it would make it clear if the changes were made to denote the Corrections Division so there would be no question as to authority.

Mr. Wiseman asked if this was one of several statutes which were designed to permit probation officers appointed by the court to be able to function. He said that ORS 137.570, 137.580 and 137.590 used to be interpreted to give the local court probationary staff jurisdiction. For instance, if a man in Multnomah County was on probation to a court staff member, the court could legally transfer him to Klamath Falls. He did not believe these statutes relate to the Division and their responsibility. When the statutes were enacted, he said, the court could utilize probation as one of its discretions - they could also utilize the State Parole and Probation services although they didn't have to, but to utilize probation without a state agency there must be some authority to control the mobility of these people and which was the purpose of these statutes.

Mr. Blensly said there could be a circumstance where the court would place a man on probation to the Corrections Division but that the judge has the blanket authority to amend the probation in any manner

he wishes. Mr. Wiseman said that by changing the statute to conform with the Division's recommendation the Division would be given the authority and not the court to arrange supervision in another jurisdiction within the state.

Mr. Paillette said that if it is desired to retain the idea that there are two kinds of probation, one should be called something else. Perhaps the court probation, he said, should be dealt with as a suspended sentence as it is confusing when talking about probation which involves the Corrections Division as opposed to probation which has nothing to do with the agency. If the agency is not involved, it is really in the nature of a suspended sentence by the court.

Mr. Watson reported that if the purpose of the statutes is as stated by Mr. Wiseman, then the Division would withdraw its recommendations as it would not be appropriate for them to be involved.

ORS 137.590. Appointment of probation officers and assistants; chief probation officer; compensation. Mr. Watson reported that the recommendation of the Corrections Division to delete the no compensation concept in the last sentence is worthy of consideration by the subcommittee because they were of the opinion this may inhibit the establishment of a probation service in some local district.

Mr. Blensly asked if Mr. Watson could see a need for having a copy of the order of appointment filed with the State Board of Parole and Probation and Mr. Watson responded that he would yield to those directly involved in this rather than make any recommendation at this point.

Mr. Paillette asked Mr. Wiseman if he thought it necessary to retain the concept of probation if it does not involve the probation people. Mr. Wiseman responded that from the standpoint of the court, he believed it necessary because he considered probation to have a different connotation and more of a therapeutic tone to it rather than merely referring to it as a suspended sentence. It is another degree of emphasis that the court can imply or utilize if it is going the informal route and Mr. Wiseman was not aware of any other section of the code which specifically authorizes the court to appoint probation officers, designate chiefs and allow transfers of clientele. This would be a fairly important section to the courts who wish to utilize conditional forms of control beyond the protection of the state's operation.

Mr. Paillette remarked that one way to approach this would be that under ORS 137.010 where it lists the things the court is empowered to do, it could be spelled out in that section the two different kinds of probation, but Mr. Blensly was uncertain as to what this would accomplish. Mr. Paillette replied that for one thing, even the Corrections people were confused about these statutes and the effect of them and if the Commission wishes to retain the idea of the informal kind of probation that does not involve Corrections, he felt the statutes should be clarified so that when talking about transferring by the court from one probation

officer to another, it is not talking about Corrections Division probation officers. He believed it should at least indicate to the court that it could have probation with or without the involvement of the Corrections Division. Just reading the statutes, he said, when it mentions probation it would seem to him that the same conclusion would be drawn as was by the Corrections Division.

Mr. Paillette remarked that if the subcommittee decides it wishes to retain the idea of informal probation, he would attempt to draft some appropriate language or if it wishes to repeal the sections, he believed the commentary could indicate the reasons for the deletion. Mr. Blensly stated that he would be opposed to deletion although he would be in agreement to deleting language in ORS 137.590 with respect to no compensation to the probation officer or the clerical assistant because he believed that the only way to effectively develop the volunteer program would be to have an employed person devote time to organizing the system. Mr. Blensly was of the opinion this could be utilized by the courts to develop this type of probation system - they can go to the Board of Commissioners and show where it is authorized by statute. He agreed that some of the language should be clarified in ORS 137.570 to indicate what it applies to but he would be opposed to deleting it in its entirety.

With respect to Mr. Paillette's earlier comment, Mr. Blensly thought there were three different categories, rather than two. One is in effect the suspended sentence because the man is placed on probation to the court; there is also the situation where there is a probation officer appointed by the court directly and there is also the State Board of Parole. Mr. Paillette pointed out that this was his reasoning for having it spelled out under subsection (3) of ORS 137.010 what is meant by probation.

ORS 137.580. Effect of transfer of probationer from one officer to another. Mr. Watson withdrew the recommendations made by the Corrections Division as it had been under the assumption that it was talking about the Division rather than the court.

ORS 137.590. Appointment of probation officers and assistants; chief probation officer; compensation. As mentioned earlier, Mr. Watson was of the opinion the provision with respect to no compensation should be deleted.

The Chairman wondered if, with the idea of encouraging volunteers, the word "training" in the second sentence should be deleted. Mr. Watson said he would hesitate to do so because he believed that the decisions that will be made on reviewing the qualifications of the volunteers may be based on training which could be interpreted to encompass their schooling and other volunteer work which they may have done.

ORS 137.620. Powers of probation officers; oath of office; bond; audit of accounts. Mr. Watson reported that this recommendation is

an effort to bring clarity to the issue of court probation officers and State probation officers. Mr. Blensly asked if the Division is still retaining the requirement that each probation officer be given an oath of office by the court making the appointment even though the court would not be appointing the probation officer of the Division. Mr. Watson said this would not be desired. The Division now requires an oath of office to be taken by the officer and Mr. Blensly said the words "to be administered by the court making the appointment" could then be deleted in this instance, and merely show that each officer takes the oath of office.

Mr. Wiseman asked if it should read that they take an oath of office administered by the appointing authority and this way there would be no question or conflict. Mr. Blensly stated that he was not too impressed with "oath of office" language. Mr. Clark wondered why the requirement is in the statute as he said they still could provide for the oath without a statutory provision for it and Mr. Blensly replied that this could be done but it does lend more formality and dignity to it and sets at least some requirement as far as standards. Mr. Darby explained that the oath of office is used because that with so many new officers coming in, many may not agree with the laws although they must enforce them and if they are not upholding the views they could be subject to dismissal. Mr. Blensly said the sanction would be that they would be dismissed and there would be a court hearing over whether or not this can be done.

Mr. Paillette referred to a recommendation by the Division to delete subsection (2) of ORS 137.990 of the penalty provisions. The subsection refers to ORS 137.360 which has two separate provisions, one which requires the judge to appoint a person to accompany a female to an institution and the other subsection requires the sheriff to cause a female attendant to accompany the female. The violation is punishable by a fine of not less than $25 nor more than $500. The way it reads, he said, is that the judge or the shefiff could be fined and he did not think a criminal penalty in the statute was needed.

ORS 143.040. Notice of intention to apply for pardon, commutation or remission; proof of service. Mr. Watson stated that the recommendations of the Division would be that the notice of intention to apply for a pardon be amended so that the notice be provided to the Corrections Division Administrator rather than the Director of Parole and Probation.

Mr. Paillette referred to a letter received by him from Mr. Branchfield of the Governor's office dated July 18, 1972 in which it was stated that he did not believe it necessary to keep the 20 day provision and recommends it be deleted.

Mr. Blensly stated his opposition to deleting the 20 day provision as he felt it serves a purpose and function to give the prosecuting office that was involved in the case an opportunity to have some time to make whatever response they feel appropriate under these circumstances, and he could not see where it would create any harm. The Governor will

not act within 20 days as stated in Mr. Branchfield's letter, he said, and this lends itself as a safeguard.

Mr. Clark was in favor of deleting the section in its entirety but Mr. Blensly expressed the view that the public has a vested interest when they prosecute a person and therefore the section is needed. Mr. Paillette pointed out that it was not Mr. Branchfield's recommendation to delete the entire section, only the 20 day provision.

Mr. Newell was of the opinion that if the 20 day provision were deleted and insert "Oregon State Board of Parole" in lieu of "Director of Parole and Probation" the section would be in good shape.

Mr. Paillette asked if the notice went to the Corrections Division Administrator it would automatically ensure that the Parole Board would receive the notice, and was told this would not necessarily be the case. Mr. Paillette thought it necessary that both should know about the notice.

ORS 144.005. State Board of Parole and Probation; term of office; compensation; Administrator of Corrections Division as member. Mr. Watson said the recommendations of the Division in this chapter were to change the name from the State Board of Parole and Probation to "State Board of Parole" inasmuch as they do not have any probation functions. He advised that 15 statutes would be affected by this title change.

Mr. Blensly thought this recommendation would make it more clear that the probation functions are not in the structure of the State Board of Parole and is more descriptive of their actual duties.

Mr. Wiseman asked why the Board of Parole should receive a notice if it involves a probationer who is requesting the pardon. Mr. Newell responded that an opinion is probably desired from the Board as they concern themselves with these people all the time and can search their records for information which might be useful.

ORS 144.040. Power of board to determine parole violations. Mr. Paillette said the recommendations of the Division would be that any reference to conditional pardon, probation or other conditional release be deleted. Mr. Watson said the Board of Parole may have some recommendations with respect to this issue but the purpose of his recommendation would be to bring it to the parole issue only.

Mr. Johnson said that the Parole Board has nothing to do with determining violations in matters of conditional parole, probation or other conditional releases. The Chairman asked the meaning of a conditional pardon and was told that it is similar to a parole except it is given by the Governor under his terms and conditions. A conditional release, Mr. Johnson assumed, would be similar to a 30 day pass, work release situation or temporary leave. Mr. Johnson said the Board would be in agreement with the Division's recommendations relating to the statute.

ORS 144.060. Acceptance of funds, grants or donations; contracts with Federal Government and others. The Division recommends amending subsection (2) by deleting "board" and inserting "Corrections Division."

Mr. Johnson was uncertain as to whether it would be appropriate to delete "board." Unless the Division has the authority in some other statute to incur expenses for the Parole Board, this statute does not give them that power, he said.

Mr. Darby explained that the Division interprets this to mean that it relates to the cost for performance of certain services which would fall on the Corrections Division staff, such as expenses relating to hearings and travel but that perhaps it should be considered to include both the Board and the Division in the subsection.

ORS 144.075. Expenses of returning violators of parole, conditional pardon or commutation to penitentiary, how paid. The Division recommends changing the words "State Penitentiary" to "Corrections Division" and deletion of the last phrase "convicts to the penitentiary." The sentence would then conclude: " . . . incident to such transportation."

ORS 144.210. Statement and information about inmate and his crime from judge, district attorney and others. Mr. Johnson suggested the section be amended to insert a mandatory provision that the agencies stated in the statute furnish the defendant's information to the Board of Parole. He said that on occasion the Board has had trouble in obtaining the information from different jurisdictions in the state and he wished this information transmitted to the Board automatically. He said some agencies feel this should be treated as confidential material and do not wish to release it. This would specifically relate to arrest reports where the person may be convicted and the case on appeal.

Mr. Blensly pointed out that the statute already states that they shall furnish this information and Mr. Clark remarked that if the burden is placed on the sentencing judge, district attorney and sheriff or holding facility, without an agency having notice what matter is before the Board there would be no way for them to know what to send. Mr. Johnson said the Board has sent parole officers to these different agencies and made specific requests and have been denied the information. This relates, he said, to people coming down on initial commitments as well as returned parole violators who have committed new crimes. In answer to Mr. Clark's question, Mr. Johnson said their primary problem is with the Portland Police Department. Most other agencies cooperate fairly well with the Board, he said.

Tape 32 - Side 1

The Chairman asked if, as a matter of course, the information is asked from all three agencies involved and was told a form was sent out to all. Mr. Johnson said the problem was not necessarily with the after-sentence report but with other information concerning the facts and investigative reports. He said that if a presentence report is made the Board does have access to it. Mr. Blensly reported that the parole officer could also go to the court records and receive the statement of facts although Mr. Johnson said it becomes expensive ordering transcripts.

Mr. Clark commented that the officer could go to the district attorney who would give the police the authorization to release the information and this would be an option to secure it, but Mr. Johnson replied the Board should not have to do this.

ORS 144.240. Standards for parole. Mr. Johnson said that the Parole Board intends to draft and submit its own recommendations as it opposes the recommendations proposed by the Corrections Division regarding ORS 144.240 and 144.250. These recommendations, he said, will be in conformance with language of the American Law Institute Model Penal Code on Standards and Criteria of Parole Decision Making. Mr. Johnson said the matter has been under advisement for approximately three weeks, and they have had discussions with the Attorney General's office and representatives of the Governor's office. The Board has come to the conclusion that it must realign its revocation procedure and in so doing it will allow the defendant to have counsel present if he can afford to do so. Mr. Johnson said that the Board is trying to revise its procedures and there is no certainty as to what direction it will be going, except generally, and therefore they are not prepared to present anything at this time in writing. He advised that the Board desires to accomplish this by the first week in September and at that time should be able to report how it will proceed and what type of legislation would be needed on the matter. There will no doubt be financial impact on the state, he said.

Mr. Paillette said the area of procedures could be taken up by the Commission at its September meeting and would not have to be brought back to the subcommittee for action. He said that a separate bill may be introduced by the Commission or that it take the position of endorsing the bill.

The Chairman asked how many statutes would be affected and Mr. Johnson replied that it will affect ORS 144.240 and 144.250 and may or may not affect ORS 144.330 to 144.370 and 144.400. He remarked that part of the bill will take the basic form which is set forth in Senate Bill 522 offered during the last legislature and may be designed along the lines of Senate Bill 521 but he asserted they would probably not be drafted specifically along these formats.

Mr. Paillette reported that Senate Bills 520, 521 and 522 were all referred to the Commission during the last session. He said what could be done at this stage would be to not cover ORS 144.210 to 144.400 in the draft and await the recommendations of the Parole Board. If the Commission decides it wishes to deal with this as a separate bill, the statutes could be considered at one time.

ORS 144.410. Definitions for ORS 144.410 to 144.525. The recommendation of the Division is to bring clarity into the statute as to the types of facilities the Corrections Division has. The proposed wording would reflect the Division's total operation. The Chairman questioned the word "satellites" in the proposed recommendation and was told by Mr. Watson there may be a better term which could be used.

ORS 144.420. Corrections Division to administer work release program; purposes of release. Mr. Watson reported that because of the nature of the work release centers, the proposed wording would reflect living situations of some of the men and which would not be defined as "secure custody", thus the recommendation of the words "assigned quarters." Other recommendations would be to delete "for such purpose" in subsection (1) (a) and the words "and approved by the Board" which is an obsolete reference to the Board of Control, in subsection (2).

Subsection (2), Mr. Watson explained, would be expanded to reflect the current practice where a temporary leave is granted for more than the purpose of seeking employment. The wording has been taken from the statute relating to temporary leave.

ORS 144.430. Duties of division in administering program; all state agencies to cooperate. The Division recommends the insertion of "establish and maintain community centers" to reflect another of its responsibilities, and the addition of another subsection allowing the Division to enter into agreements with other agencies for provision of services.

ORS 144.450. Approval or rejection of recommendations; rules for program; specific conditions; Administrative Procedures Act not applicable. The Division recommends the deletion of the reference to the Board of Control.

ORS 144.460. Contracts for quartering of enrollees; suitable facilities required. The Division recommends the deletion of subsection (2) as it requires employment prior to approval of a work release application.

ORS 144.470. Disposition of enrollee's earnings under program. The words "from secure custody" in subsection (2) (a) are requested by the Division to be deleted because persons are now being released in the field rather than requiring them to come back to Salem.

ORS 144.500. Effect of violation or unexcused absence by enrollee. Subsection (2) speaks to "designated quarters" and Chairman Paulus suggested the term be changed to "assigned quarters."

ORS 144.515. Release terminates enrollment; continued employment to be sought. The Division recommends the phrase "from secure custody" be amended to read "from confinement."

Mr. Clark asked if the man is on parole and the determination is made that he is slipping but not enough to bring him back to the institution but rather that it would be desirable to bring him back to a work release center, would the wording "release from confinement" prevent them from bringing him back. He is not confined when on parole, he said, and was told that it would not in this particular statute as this would concern an inmate on a work release program.

ORS 144.710. Cooperation of public officials with State Board of Parole and Probation. Inasmuch as both the Parole Board and Corrections Division will need the information, it is recommended that the statute include "Corrections Division."

ORS chapter 144. The final recommendation of the Corrections Division is that an amendment be made to ORS chapter 144 containing the provisions that:

> "Community centers administered by the Corrections Division may, in the discretion of the administrator, receive parolees in accordance with good rehabilitation practices and approved treatment plans."

Mr. Blensly asked the meaning of "approved treatment plans" and who would approve this plan and was told by Mr. Watson it would be the parole staff.

Mr. Blensly asked if there might be a conflict between the Board of Parole and the Corrections Division as to who is to do the planning and Mr. Johnson answered in the affirmative. He said the Parole Board has no objection to this kind of statute as long as it is by order of the Board because they are speaking about a person who is an active parolee in the community. The concept is that rather than return them to the institution they be brought back to a halfway house for a temporary period of time and released following readjustment. Mr. Johnson said that after contacting the Attorney General's office with relation to this problem, he had been told that this would be tantamount to a revocation act, and therefore he would question whether or not this could be done constitutionally without confronting the inmate and providing him with a hearing. He said it was the position of the Parole Board that the administrator of the Corrections Division should not have the power to do this without an order or the approval of the Parole Board and at their direction.

As an alternative, Mr. Johnson suggested specifying conditions in the statute such as are placed in the probation order where there is a provision that the man can be confined in a county jail for a certain period of time as a condition of probation. A statute similar to that and relating to parole could be drafted, he said, to the effect that the parole status could be modified and as a condition of continued parole the man be placed in a work release facility for a certain length of time for further rehabilitation but Mr. Johnson said he would still question the constitutionality of this approach.

Mr. Clark presented a situation where a man is picked up by the police and charged with a minor crime and it is discovered he is on parole. He asked if this new revocation process would have anything to do with that situation or will the man still be maintained in custody pending the revocation hearing. Mr. Johnson responded that the Board's policy is that where there is an arrest, either on a felony or misdemeanor, and no violations of parole other than that, the man is left on parole status until convicted at which time action is taken by the Board.

Mr. Clark asked if the Board allows the man to sit in jail until the trial is dispensed with and Mr. Johnson replied that he is not held by any order of the Board, but of that jurisdiction. Mr. Clark said it was common practice where a man was arrested for drunkenness and it is discovered he is on parole, to book the man on a charge of drunkenness plus place a "hold for parole officer" on the record. Mr. Johnson said this may be a temporary detainment by the Corrections Division and which is only good for 15 days and the Board must act in the 15 day period. If it doesn't act, the man can get out on bail.

Mr. Johnson again reiterated his concern and that of the Board's in that the recommendation of the Corrections Division would eliminate any power by the Board which is what they oppose, plus the fact that they feel this is tantamount to revocation.

Mr. Watson said that if the Board did become involved, he would feel it is a revocation also but the Division wishes to have the man rehabilitated as quickly as possible, thus the reasoning for its proposal.

The Chairman wondered if this could be resolved by giving the Corrections Division the authority to do this and Mr. Johnson maintained that, assuming they could, he did not believe the Board desired to have this done. Mr. Watson commented that it is not a big issue with the Division as to who has the authority to do this, but they would like to see this flexibility built into the operation of the work release centers so they could better and faster serve the person.

Mr. Paillette suggested that, because a parolee cannot be placed in a work release center because he is not an inmate, a statute could perhaps be written setting up this administrative machinery allowing the Corrections Division to move quick enough to do so, subject to the advice and consent of the Parole Board, or the Corrections Division could follow the advice of the parole officer and what he thinks would be in the best interest, but only subject to later review by the Parole Board - they could either concur or not. It could be a condition of parole that the parolee agrees to this kind of disposition by the parole officers.

Mr. Clark asked where it is spelled out that the man can be detained for 15 days and was told that ORS 144.370 specifically states this. Mr. Blensly was of the opinion it could be drafted into that section the authority to have the person detained at any community center. He asked if the Board would wish to have authority, as a condition of parole, to make a person stay in the center for a period of time. Mr. Johnson said this may be one way to accomplish it.

Mr. Newell reported that there are nine conditions of parole and he wondered if Mr. Paillette's suggestion was that a 10th condition be written in that if the Board deems it necessary, the man could be returned to a work release center or halfway house, and Mr. Paillette said this would be his recommendation.

The Chairman said that in order to arrive at this concept there would have to be a definition of revocation but Mr. Paillette was not certain that it would be needed. He said if revocation is defined as including removal and placement in a work release facility or halfway house, it may be buying trouble.

Mr. Blensly asked if the parole officer makes the determination and places the person in a community center, would the Board have any objection to giving the parole officer this authority rather than having the person in secure custody while they make their own determination. Mr. Johnson said that the person may or may not be in secure custody. Mr. Blensly stated that he would be if he were arrested and remanded to jail. If the authority is given to the parole officer to make that determination not to arrest but instead make a semi-arrest by placing him in a community center, would there by any objection by the Board, he asked. He assumed there were two ways to proceed, one to place him in jail and have a hearing or make a recommendation and hold a hearing before the person is arrested. Mr. Johnson said that if the Board revokes, the hearing is usually held after the arrest, although on some occasions there is a hearing before the person is arrested. Mr. Blensly asked who makes the determination as to whether to arrest and Mr. Johnson replied that it is made by the parole officer.

ORS chapter 147. Extraditions. The subcommittee next turned its attention to chapter 147, and Mr. Paillette reported that he had asked for recommendations from the Governor's office with respect to extraditions. One of the recommendations proposed by the office was that ORS 147.010 be repealed and that in its place a statute be enacted which authorizes the Governor to designate someone who would be able to sign extradition requisitions in his absence from the state. Mr. Paillette thought that this can be done by including in the definition section a subsection which provides authority for the governor to appoint an agent to act in his behalf when he is absent from the state for the limited purpose of signing extradition requests and warrants.

ORS chapter 148. Special Law Enforcement Officers. Mr. Paillette advised that he had also asked Mr. Branchfield to examine this chapter. He was told the chapter had never been used but that the occasion may come up when they would wish to.

ORS chapter 149. Rewards. Mr. Blensly reported that under another statute there is the authority given to offer rewards for littering but that under ORS 149.010 it only concerns itself with escaping and fleeing from justice. He spoke of a situation where there were a series of arsons and this is where it would seem to him to be appropriate to offer a reward for information as to the identity of the arsonist. The reward offer now is common in the area of narcotics, he said, but is being done through private organizations. Mr. Blensly remarked that it strikes him as being wrong when the citizen groups for law enforcement are becoming involved in setting up rewards and that it should be the state's and county's obligation. He wondered if some thought should be given to expanding the right of the counties to offer this inducement in areas other than escape. The FBI, he said, successfully does most of

its criminal investigation because they have the ability to offer rewards and pay the informants.

Mr. Paillette thought the words "flees from justice" in the section could be construed as fleeing without having been arrested. Mr. Blensly said it could be construed this way but he is speaking about the situation where, for example, the court is trying to establish the identity of the arsonist.

Mr. Paillette said the statute talks about a specific individual who has already been identified and Mr. Blensly said his concern would be with general information and whether or not it is truthful. Mr. Paillette reported that if such a provision was desired, there could also be a specific penalty provision written with respect to giving false information, although Mr. Blensly said he could see some public policy reasons against enacting such a statute. He said the city, under one of its ordinances, could perhaps do this but he questioned that if a county tried it, whether it would be an improper expenditure of public funds. Mr. Paillette asked if Mr. Blensly would wish to take this area up with the Commission and Mr. Blensly said he would do so.

ORS chapter 138. Appeals; Post-conviction Relief. Mr. Paillette referred to the Public Defender's letter of August 8 wherein it was suggested that the subcommittee recommend the abolishment of the provisions of ORS 138.050 which relates for an appeal from the guilty plea. Mr. Babcock was of the opinion that any contentions with regard to whether or not the fine or punishment is excessive can be adequately handled under the provisions of ORS 138.530 (1) and (2) of the Post-Conviction Relief Act and if the statute is abolished, the language used in it with reference to the grounds for the appeal should be tied in with that subsection under chapter 138.

Enclosed in Mr. Babcock's letter was a copy of his letter of May 4, 1972 to Chief Justice O'Connell with regard to the filing of petitions for rehearing and review and containing recommendations for expediting the appellate process.

Mr. Paillette was uncertain as to whether a statute should be drafted on the subject and the Chairman suggested Mr. Paillette contact Judge Schwab and inquire as to the Court's recommendations with respect to this area.

Mr. Paillette asked if the subcommittee wished to take any position with respect to Mr. Babcock's suggestion to repeal ORS 138.050. Mr. Blensly wondered if it is interpreted to mean that the Public Defender wishes to eliminate all direct appeals on the guilty plea and handle them on post-conviction relief. He said they have handled every one of the cruel and unusual punishment arguments within the appeal statute but if there were some other ground, they will go under the post-conviction statutes.

Mr. Paillette said that the provisions on negotiated pleas covered this and if adopted, everything surrounding the plea and plea agreement would all be reviewable on appeal because it would be on the record.

The Chairman said she was in agreement with Mr. Babcock's position but Mr. Blensly was concerned about cases coming from district court to circuit court and whether they would come within the post-conviction statutes.

Mr. Blensly recommended that at the time of Mr. Paillette's conversation with Judge Schwab on the Court's position with respect to petitions for rehearing, he also be asked for any recommendations or thoughts he may have on ORS 138.050. Mr. Blensly was in favor of having the right to appeal on that basis even though it is sometimes useless and is used as an escape valve to have some basis for an appeal and that this may serve some function even though it does clutter up the judicial system to some degree.

Mr. Paillette advised that the next meeting of the subcommittee will be a work session and that drafting will be done after that date.

The meeting was adjourned at 4 p.m.

Respectfully submitted,

Norma E.Schnider, Clerk
Criminal Law Revision Commission

1 .015 It is recommended that an assessment also be considered and implemented for "crime prevention" funds to be administered by the Oregon Law Enforcement Council for purposes outlined in ORS 423.210.

137.072 It is recommended this statute be repealed. It is considered a punitive measure to send an untried man to a maximum security institution. Tried and untried prisoners should be separated. Mental Hospital Resources should be utilized when mental competence is the issue. (OSCI has experienced expenditure of as much as $4,000 on one individual for diagnostic examination--the statute does not provide an ability to recover reimbursement.)

137.075 Repeal. Related to 137.072 above.

137.124 Sections 1 and 2. Substitute the phrase "Corrections Division Facility," instead of "the Penal or Correctional Institution."

Section 3. Delete. It is not intended that misdemeanants shall be committed to a State penal institution.

137.225 When individuals convicted of a Class C Felony have been committed to the care of the Corrections Division, officials should contact the Corrections Division as well as the prosecuting attorney when there is an application for setting aside a conviction. It is recommended this change is made.

137.240 The Corrections Division defers to the Oregon Bar Association on this statute. It is understood they are developing a proposal for change in this area.

Re: Marriage. Proposed HB 1164 which was introduced in the last Legislature Assembly proposed a change in ORS 137.240 to permit marriage of inmates, at the discretion of the Administrator. We continue to recommend adoption of this legislation.

137.250 Section 2. This section should be changed to read--"commitment to the Corrections Division and placement in a Corrections Division Facility," instead of the words "commitment to the penitentiary or correctional institution."

137.380 Change 1st sentence as follows: "A judgment of commitment to the Corrections Division need only specify the duration of confinement." Change 2nd sentence to read as follows: "Thereafter the manner of the confinement and the treatment and employment of a person shall be regulated and governed by whatever law is then in force prescribing the discipline, treatment and employment of persons committed."

137 520 Section 5. The words "Corrections Division" should be substituted for the current wording, "State Board of Parole and Probation."

137.530 We recommend adoption of HB 1170 which was introduced during the last Legislative Assembly. A supporting position statement submitted by Amos Reed to the Judges Sentencing Institute is attached. HB 1170 requested presentence investigations as follows: "In all felony cases unless the court directs otherwise, and in a misdemeanor case if the Corrections Division and the court first agree to an investigation and report."

137.560 Change "Director of Parole and Probation" to "Corrections Division Administrator."

137.570 1st sentence. Change the words "A court" to "The Corrections Division," and change the words "probation officer" to "probation office." Change "such court" to "the Corrections Division" in the second sentence.

Sections 1 and 2. Delete

137.580 Substitute "Corrections Division" for the words "court making it" and delete the words "of such court."

137.590 Delete the last eight lines of this statute: "A copy of each order of appointment shall be filed in the office of the State Board of Parole and Probation. No probation officer or clerical assistant appointed by the court under this section shall receive any compensation from the state, any county or any municipality."

137.620 Insert the words "of the Corrections Division and those appointed by the court," after the words "probation officers" in the 1st line of the statute. Insert the words "appointed by the court" in the 3rd line following the words "probation officer."

143.040 Notice concerning the intention to apply for a pardon must currently be served on the District Attorney and the Director of Parole and Probation. It is recommended this be changed and notice be provided the "District Attorney and Corrections Division Administrator."

144.005 Since the Parole Board does not have any probation functions, it is suggested the title be changed to "State Board of Parole." This change should be made in the following statutes:

144.005	144.210	144.310
144.015	144.220	144.330
144.025	144.228	144.340
144.040	144.260	144.400
144.050	144.270	144.710

144.040 Change to read as follows: "The State Board of Parole shall determine whether violations of conditions of parole exist in specific cases."

144.060 Section 2. Change the word "Board" in the seventh line to "Corrections Division."

144.075 In the 4th and 5th lines, the words, "State Penitentiary" should be changed to read "Corrections Division."

In the last line of this statute, delete the words, "of convicts to the penitentiary."

144.240 This change is recommended.

"Standards for Parole. No prisoners in a Corrections Division facility shall be paroled unless it is the opinion of the Parole Board that such release is not incompatible with the welfare of society. Factors to be considered shall include, but not be limited to:

a) good conduct,

b) efficient performance of duties in the state's correctional facilities,

c) initiative demonstrated in his or her own self-improvement,

d) projected release program, and

e) availability of appropriate community resources."

144.250 If the above recommended change in 144.240 is accepted, we recommend deleting 144.250.

144.260 In lines 4 and 5, the words "a Corrections Division facility" should be substituted for the words "state penitentiary or correctional institution."

144.374 Line 8, delete the word "probation, " section 2, line 5, delete the word "probation."

144.400 The words, "and without recommitment" should be deleted from the title.

The words "a Corrections Division facility" should be inserted in place of "Oregon State Penitentiary" in lines 7 and 8.

144.410 Section 3, this wording is suggested:

"Penal and correctional institution means any Corrections Division facility, including the Oregon State Penitentiary, the Oregon State Correctional Institution, the Oregon Women's Correctional Center, their satellites, and community centers."

144.420 On lines 7 and 8, the existing words, "be granted the privilege of leaving secure custody" should be amended to read: "be authorized to leave assigned quarters."

In section 1 (a), delete the superfluous words at the end of the sentence, "for such purpose."

In section 2, line 3, delete the words, "and approved by

In section 2, lines 4 and 5, delete the words, "for the purpose of seeking employment," and insert: "for purposes consistent with good rehabilitation practices."

144.430 It is recommended a section (1), (e), be added, to read: "Establish and maintain community centers."

Section 2, to be added at the end of the existing section: "The Corrections Division may enter into agreements with other public or private agencies for the provision of services."

144.450 Section 2. Delete the words "subject to the approval of the Board,"--an obsolete reference to the Board of Control.

144.460 Section 2, delete.

144.470 Section 2 (a), delete the words,"from secure custody."

144.515 In lines 4 and 5, the words "from secure custody" should be amended to read: "from confinement."

144.710 Change to read as follows:

"All public officials shall cooperate with the State Board of Parole and Corrections Division, and give to the Board and Division, officers and employees, such information as may be necessary in the performance of functions.:

It is requested thatthe following provision be added in Chapter 144, or another chapter which may be deemed more appropriate. "Community Centers administered by the Corrections Division may, in the discretion of the administrator, receive parolees in accordance with good rehabilitation practices and approved treatment plans."