Tape 18 - Side 2 - 205 to end 10/2
Tape 19 - Side 1 - 1 to end 10/2 (Begins on p. 11)
Side 2 - 1 to 329 10/2 (Begins on p. 27)
Side 2 - 329 to end 10/3 (Begins on p. 41)
Tape 20 - Side 1 - 1 to end 10/3 (Begins on p. 47)
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OREGON CRIMINAL LAW REVISION COMMISSION

Thirty-Fifth Meeting, October 2 and 3, 1972

Minutes

October 2, 1972

Members Present: Senator Anthony Yturri, Chairman
Senator John D. Burns, Vice Chairman
Mr. Donald R. Blensly
Mr. Robert W. Chandler
Representative George F. Cole
Judge Charles S. Crookham
Attorney General Lee Johnson
Representative Norma Paulus
Mr. Bruce Spaulding
Representative Robert M. Stults

Excused: Senator Wallace P. Carson, Jr.
Mr. Donald E. Clark
Representative Leigh T. Johnson

Staff Present: Mr. Donald L. Paillette, Project Director
Professor George Platt, Reporter

Also Present: Det. Harry W. Boggs, Portland Bureau of Police
Mr. Jim Hennings, Metropolitan Public Defender, Portland
Mr. Terry Johnson, Member, Board of Parole and Probation
Ms. Helen Kalil, Deputy District Attorney, Multnomah County
Capt. John E. Nolan, Chief of Detectives, Portland Bureau of Police
Mr. John W. Osburn, Solicitor General, Department of Justice, representing Attorney General Lee Johnson after his departure
Mr. Scott Parker, Deputy District Attorney, Clackamas County
Mr. Amos Reed, Administrator, Corrections Division
Mr. William Snouffer, Portland attorney, ACLU
Mr. Robert J. Watson, Deputy Administrator, Corrections Division
Mr. Robert L. Wright, Executive Assistant to Administrator, Corrections Division

Agenda:

Senator Anthony Yturri, Chairman, called the meeting to order at 9:30 a.m. in Room 315 State Capitol.

Minutes of Meeting of August 28 and 29, 1972

Representative Stults moved approval of the minutes of the Commission meeting of August 28 and 29, 1972. Motion carried unanimously.

Search and Seizure; Preliminary Draft No. 3; May 1972

Section 17, subsection (2). Professor Platt called attention to the proposed addition of subsection (2) to section 17 of Preliminary Draft No. 3 on Search and Seizure. Through an oversight, he said, this subsection dealing with an inventory search of a vehicle had been omitted in the draft and was therefore being presented to the Commission at this time for consideration. The subsection, he said, was an attempt to reflect decisional law on inventory searches in Oregon based upon two recent cases -- State v. Raiford, 93 Adv Sh 1302, ___ Or App ___ (1971), 490 P2d 1036, and State v. Keller, 94 Adv Sh 1818, ___ Or App ___ (1972), 497 P2d 868. It was not meant to restrict in any way the inventory search authority that existed at the present time.

Judge Crookham objected to the use of the verb "shall" on the last line of the proposed subsection and suggested that it be changed to "may." Professor Platt expressed agreement and proposed to substitute "is" for "shall be." Judge Crookham so moved and the motion carried.

Representative Stults moved adoption of subsection (2) of section 17 as amended. Motion carried unanimously.

Section 15. Intermingled documents. Mr. Paillette indicated that there was an apparent conflict in the decisions made by the Commission with respect to sections 6, 12 and 15 of Preliminary Draft No. 3. Subsection (4) of section 6, the so-called "intermingled documents" provision, had been deleted by the Commission. The argument in favor of its deletion was that it would require the magistrate to inspect a great many documents and all it would accomplish would be to transfer that function from the police officer to the judge. Section 12 dealing

with the search incidental to an arrest under a warrant had also been deleted in its entirety because it too was applicable to intermingled documents.

Professor Platt went on to explain that the Commission had retained material in section 15 relating to intermingled documents discovered under searches conducted without a warrant. There was, therefore, an inconsistency in the draft. He said his understanding of the Commission's position with respect to intermingled documents was that they were opposed to the concept of requiring a judge to go through the documents, regardless of whether they were acquired under a warranted search or a warrantless search. Deletion of section 15, he said, would resolve the conflict and carry out that policy.

Mr. Chandler moved to delete section 15 from Preliminary Draft No. 3 on Search and Seizure. Motion carried unanimously.

Arraignment Proceedings; Preliminary Draft No. 2; September 1972

Mr. Paillette recalled that at the time the Commission considered Preliminary Draft No. 1 on Arraignment Proceedings in August they did not have the benefit of the minutes of the subcommittee meeting that had been held a few days earlier. For that reason several questions came up which had not been resolved at that time. Preliminary Draft No. 2, therefore, had been prepared embodying the recommendations of Subcommittee No. 1 as well as the revisions approved by the Commission in August. He suggested that the Commission review the entire draft inasmuch as it was an important area of the procedural revision.

Only the sections which prompted a discussion are included in these minutes although Mr. Paillette explained all portions of the draft including conforming amendments, repealed sections and ORS sections not affected by the draft.

Section 2. ORS 135.010. Time and place. Mr. Paillette advised that section 2 reflected the changes approved by the Commission, setting the outer limits on times for arraignment at 36 hours following arrest when the defendant was in custody and 96 hours in all other cases.

Judge Crookham asked whether the draft provided a sanction in the event the arraignment did not occur within the specified time periods and was told by Chairman Yturri that in that event the defendant would be released, but he would be subject to re-arrest. Judge Crookham urged that the commentary contain a statement to that effect, and the Commission unanimously concurred.

Section 7. ORS 133.625. Court appointment of counsel. Representative Cole questioned the necessity of the phrase "and provide any other information required by the court" in paragraph (c) of subsection (1). He asked what "other information" the paragraph referred to and was told by Mr. Paillette that as a practical matter

all the information would probably relate to a financial statement. "Financial," he said, had been specifically inserted by the Commission at the August meeting. Chairman Yturri added that the thrust of the discussion at that time was that any additional inquiries should relate to the defendant's financial ability to pay for counsel rather than to his ability to obtain counsel.

Mr. Chandler reiterated the objection he had made at previous meetings regarding the provision in section 7 permitting a civil proceeding to be initiated by a public body to recover counsel fees paid for the defense of a defendant who was found innocent.

ORS 135.440. Refusal to demur or plead. In reply to a question by Representative Stults, Mr. Paillette explained that although ORS 135.440 would be repealed by this draft, the draft on Plea Discussions and Agreements said that if the defendant did not plead, the court would enter a plea of not guilty for him.

ORS 135.610. Time and place of entering. Section 17. ORS 135.620. Form; signature; filing; specification of grounds. Judge Crookham noted that ORS 135.610 said, "The demurrer shall be put in, in open court . . . . " As worded, the section suggested that the demurrer was to be entered orally whereas ORS 135.620 required it to be in writing. He suggested that the staff combine the two sections by incorporating ORS 135.610 into ORS 135.620 in order to eliminate any possibility of misinterpretation. There being no objection, the Chairman so ordered.

Section 18. ORS 135.630. Grounds of demurrer. The only new provision in section 18, Mr. Paillette said, was contained in subsection (6). The provision relating to the fact that the accusatory instrument was not definite and certain applied at the present time to indictments and only indirectly to other charging instruments. Subsection (6) was intended to deal with the matter directly as one of the grounds of a demurrer to any accusatory instrument.

Senator Burns noted that ORS 132.530 said:

> "The indictment must be direct and certain as to the party charged, the crime charged and the particular circumstances of the crime charged when such circumstances are necessary to constitute a complete crime."

Inasmuch as the statutes enumerated in subsection (2) of section 18 contained the requirements for an indictment, Senator Burns asked why it was preferable to add subsection (6) rather than making subsection (2) applicable across the board to all accusatory instruments. Mr. Paillette replied that there were statutory references in the statutes cited in subsection (2) that would not apply unless the charging instrument was an indictment because a grand jury would not be involved in every circumstance contemplated by section 18.

Senator Burns wanted to make certain that the record showed that subsection (6) referred specifically to the certainty requirements in all accusatory instruments as set forth in ORS 132.530, and Mr. Paillette agreed that this was the intent.

Judge Crookham called attention to subsection (3) of section 18 which referred to multiple count indictments and asked if multiple count indictments were specifically provided for somewhere in the code. Mr. Paillette replied that the draft on Guilty Pleas permitted multiple count indictments by referring to the type of plea that could be entered to an accusatory instrument, or to a count thereof.

Judge Crookham moved to amend subsection (3) to read:

> "That more than one crime is charged in a count in the accusatory instrument;"

Mr. Spaulding suggested that subsection (3) read:

> "That the accusatory instrument charges more than one crime not separately stated;"

Judge Crookham restated his motion to amend subsection (3) as stated above by Mr. Spaulding.

Representative Stults pointed out that the proposed amendment would open up the possibility of stating separate charges in the same indictment where there was no connection between the two crimes; for example, burglary in the first degree and burglary in the second degree committed in two different places at two different times.

Senator Burns indicated that subsection (3) as stated in the draft was essentially existing language which had been construed to mean that it referred to more than one crime separately stated. Judge Crookham confirmed that construction but contended that the proposed statute should be updated to recognize what had occurred legislatively since the language of the section was enacted.

Mr. Paillette's concern was that the proposed amendment would result in an inconsistency with the draft on Former Jeopardy. He pointed out that because of the definition of "criminal episode" in the Former Jeopardy draft, that draft required compulsory joinder in the accusatory instrument of crimes connected in time and place. He wanted to make certain that one part of the code did not require the state to charge a criminal episode consisting of several crimes in the same accusatory instrument and on the other hand in another part of the code say that it was grounds for a demurrer to do so.

Senator Yturri suggested that if the amendment were adopted, the commentary should state that the intent of the amendment was not to change the meaning of the present statute but merely to state it more clearly and also add that the revision was not intended to be inconsistent with the joinder provisions in the Former Jeopardy Article.

Vote was then taken on Judge Crookham's motion to amend subsection (3) to read:

> "That the accusatory instrument charges more than one crime not separately stated;"

Motion carried with Mr. Chandler voting no.

There being no objection, Chairman Yturri directed that commentary be added essentially as stated above.

Section 20. ORS 135.670. Allowance of demurrer. Mr. Paillette recalled that a question had been raised at the August Commission meeting as to whether sections 14 and 20 should be consistent. As they appeared in this draft, they contained the same 30 day time provision in subsection (2) of each section. For the 30 day period, he said, the defendant's status would remain the same in the two situations covered by sections 14 and 20.

Mr. Spaulding said his recollection was that the Commission had decided that the judge should not be allowed to prolong the time period by neglecting to file the order promptly. To avoid that situation it was decided that the appeal right should run from the date the order was announced rather than from the date it was filed. Judge Crookham agreed that the case should not be held up because of paper work. Too frequently, he said, papers were lost or were not received promptly from defense counsel or the district attorney. However, announcing an order could cover a multitude of actions by the court; for example, a letter, a phone call or a statement in open court.

Mr. Blensly remarked that the prosecutor needed a time certain so he would know precisely when he had to resubmit the document. It was almost impossible, he said, to hinge the starting time on anything other than the date the order was filed because the date it was announced was, as Judge Crookham indicated, difficult to pinpoint.

Representative Paulus asked if there was any way to require that the judge file the order within a given time. Mr. Blensly stated that when the defendant was in custody, the defense counsel had a duty to make sure the order was filed as promptly as possible. Mr. Chandler concurred that he had that duty and obligation but in certain courts of the state although the defense counsel might submit the documents promptly, the judge was apt to delay filing them for as much as 60 to 90 days.

Chairman Yturri remarked that if the draft were not amended, there would be justification for criticizing a judge who delayed entering the order as Mr. Chandler suggested. Mr. Blensly added that the 60 to 90 day delay would probably not be involved when the defendant was in custody, because there were other statutes that applied enough pressure to get the case to trial promptly.

Mr. Osburn asked whether the draft was clear that the filing of an appeal by the state would stop the 30 days from running. Mr. Paillette replied that the proposed statute said that when the case was not refiled or resubmitted, the defendant was to be released. It was therefore implicit under subsection (2) of both sections 14 and 20 that when it was refiled or resubmitted, he would not be released. Before subsection (2) became operative, the court would already have had to issue an order saying that the case could be resubmitted.

Representative Stults explained that Mr. Osburn's concern was directed at the situation where the district attorney believed the court was wrong and appealed from the dismissal of the indictment. He wanted to know whether the defendant would then be automatically released within 30 days. Mr. Paillette replied that neither the subcommittee nor the Commission had dealt with the question of whether the appeal would take longer than the time allowed by the draft.

Chairman Yturri asked if any member of the Commission was under the impression that when an appeal was filed, it would prohibit the release of the defendant. He said he was not, and asked Mr. Osburn what he believed the law should be in that area. Mr. Osburn's answer was that where a demurrer to an indictment was sustained and the state wanted to resubmit, at the present time the court ordinarily altered in some way the security agreement by, for example, reducing bail.

Chairman Yturri suggested that the statute provide that the release of the defendant in the appeal situation would be left to the discretion of the court. Judge Crookham said that was essentially the effect when the state took an interlocutory appeal under existing law during the course of a retrial. The defendant was still subject to the jurisdiction of the court and the situations were analagous.

Chairman Yturri asked if the subject of an appeal could be adequately covered by commentary. Mr. Osburn believed it could be. Under the draft, he said, he would assume that unless the court included in its order some provision for custody or bail pending appeal, the state would have to apply to the Court of Appeals for a stay of the period of time in which the indictment had to be resubmitted.

There being no objection, Chairman Yturri directed that the commentary state that the proposed statute was not intended to change the present system whereby the defendant remained within the jurisdiction of the court and it was intended that the court would have

discretion to modify the release order or to change the security or bail when an appeal was taken.

Section 21. ORS 135.680. Failure to resubmit case after allowance of demurrer. Representative Stults noted that section 21 used the verb "direct" whereas sections 14 and 20 said "allow." Mr. Paillette concurred that all those sections should read "allow" to be in conformity.

Mr. Chandler moved that section 21 be amended to read: "If the court does not allow the case to be resubmitted . . . . " Motion carried.

ORS 135.690. Resubmission of case to grand jury. Mr. Chandler moved to make the same amendment in ORS 135.690 so it would read: "If the court allows the case to be resubmitted . . . . " Motion carried.

Section 22. ORS 135.700. Disallowance of demurrer. Judge Crookham questioned whether it was clear in the phrase "at his election" that "his" referred to the defendant. The Commission was unanimously agreed that "his" referred to the defendant rather than to the court.

Following an explanation of the balance of the draft, Mr. Chandler moved to approve Preliminary Draft No. 2 on Arraignment Proceedings. Motion carried unanimously. Voting: Blensly, Burns, Chandler, Cole, Crookham, Johnson, Paulus, Spaulding, Stults, Mr. Chairman.

A recess was taken at this point. Mr. Johnson left the meeting and was henceforth represented by Mr. Osburn.

Judgment and Execution, Parole and Probation; Preliminary Draft No. 1; September 1972

Mr. Paillette indicated that before Subcommittee No. 3 met to consider the drafts dealing with the statutes administered by the Corrections Division and the Board of Parole, he had met with the Corrections Division's policy board. Most of the changes in ORS chapters 137 and 144 were based on recommendations made by the two agencies both of which had been represented at the subcommittee meetings when these subjects were discussed. He emphasized, however, that sections 3 and 4 were not recommendations from the corrections staff.

ORS 137.010 to 137.070 would not be affected by the draft. The Corrections Division, Mr. Paillette said, had recommended a revision to ORS 137.015 but the subcommittee had not adopted it. Chairman Yturri asked Mr. Reed if he wanted to comment on the proposed revision, but he indicated he did not.

ORS 137.072 and 137.075 would be repealed by the draft, and Mr. Paillette noted that the commentary to those sections contained a quotation from a letter written by the Corrections Division explaining the reason for the repeal of the two sections.

Judge Crookham was of the opinion that it would be a grave mistake to repeal the provisions relating to diagnostic clinics. He explained the procedure followed with respect to post-conviction diagnostic clinics in the state of Idaho which, he said, was similar to the federal system, and the judges in Idaho were unanimous in their opinion that the clinics had been most beneficial. He added that the judges in Portland were very pleased with the diagnostic clinics operating in the metropolitan area and believed that they should ultimately be aimplified through the Corrections Division.

Mr. Watson explained that the Corrections Division's recommendation to repeal the two sections was based on actual experience although their experience had been minimal because they did not have the staff necessary to perform this kind of service and to hire the psychiatric and counseling manpower that was necessary to carry out the concept. He indicated that their budget for the coming biennium contained a proposal to adopt a diagnostic concept in a new format on a community level which they believed would be a more realistic approach. The person would then be near his employer and near his family and it would be easier to retain an over-all picture.

Mr. Reed commented that at the time the statutes relating to the diagnostic clinic were passed by the legislature, George Randall, who was then the Administrator of the Corrections Division, anticipated a separate and distinct diagnostic center. The center, however, did not materialize and was unlikely to materialize in the near future because of the fiscal implications. The division, he said, had never been funded to handle the procedure contemplated by these sections, and they were opposed to bringing persons into the maximum security centers when there was a likelihood that they might come in without a sentence.

Judge Crookham agreed that under the present conditions diagnostic centers were unworkable, but he urged that the possibilities of progress in this area not be ignored. Representative Paulus remarked that this was not the intention of either the Corrections Division or of the subcommittee in recommending repeal of ORS 137.072 and 137.075. The Corrections Division was attempting to work toward that concept, but it would require a totally different approach than that contemplated by the present statutes.

Representative Cole asked if there would be any alternatives available to the accused so far as receiving diagnostic services were concerned if these statutes were repealed. Judge Crookham replied that the person could still be sent to the State Hospital for psychiatric diagnosis.

Senator Burns said he was impressed by the accomplishments of the diagnostic facility in Multnomah County and asked what had been done by the Corrections Division to implement that kind of procedure. Mr. Reed replied that they were contemplating a diagnostic procedure through the purchase of services. They would, he said, prefer a mandatory pre-sentence report and if they received adequate funds for the purchase of diagnostic services, those services could be performed without taking the accused into the security institutions.

Senator Burns said that it was impossible to avoid coming face to face with the practical problems outlined by Mr. Reed. The institutions were filled to overflowing and the question to be resolved was whether every person in need of diagnostic examination should be sent to a maximum security institution when that might not be the best place for him.

Mr. Blensly remarked that the program the Corrections Division was considering was not a program of statutory concern but was simply a matter of money.

Tape 19 - Side 1

Chairman Yturri asked Judge Crookham for his recommendations in this area in light of the existing facilities, the financial position of the state and the prospects for the immediate future. Judge Crookham said he was not in a position to make such a recommendation, but he was of the opinion that a person should not be placed in the prison scene without some meaningful attempt at evaluation. Inasmuch as neither the funds nor the facilities were available to accomplish this, he would be satisfied to vote to eliminate the two statutes with the suggestion that the Corrections Division pursue the type of approach that the Commission had been discussing.

Senator Burns said that the ultimate hope was the implementation of the regional jails concept. If there were a meaningful network of regional jails that were properly staffed, the goals could very simply be achieved. He was hopeful that the corrections budget for the coming biennium would contain proposals to implement that concept.

Mr. Chandler moved to repeal ORS 137.072 and 137.075. Motion carried.

ORS 137.080 and 137.100 would not be affected by this draft. Mr. Chandler asked if ORS 137.100 would create a problem for a defendant on appeal. Judge Crookham replied that the defendant usually presented his statement of circumstances in aggravation or mitigation of punishment through his attorney in the form of an unsworn statement, and the statute had created no problems in the past for a defendant on appeal.

Section 2. ORS 137.090. Proof of circumstances; presentence investigation. Mr. Paillette noted that ORS 137.090 had been amended to delete the last sentence referring to the availability of the presentence report. That language had been interpreted to mean that the availability of the presentence report was discretionary with the court as to whether both the defendant and the district attorney should have the report made available to them. This amendment, he said, was further implemented in the new sections 3 and 4 providing for disclosure of presentence reports.

At a later point in the meeting Mr. Paillette indicated that it had been brought to his attention by Judge Crookham and Mr. Hennings that presentence investigations could be conducted under sections other than ORS 137.530 and suggested that section 2 be amended to make allowance for that fact.

Judge Crookham moved to insert at the end of section 2 after "ORS 137.530" the phrase "or any other person designated by the court." Motion carried.

Section 3. Presentence report; general principles of disclosure. The first sentence of section 3, Mr. Paillette said, stressed the fact that the presentence report was not a public record, and the section then went on to outline those individuals or agencies to whom it would be available.

Section 4. Presentence report; disclosure to parties; court's authority to except parts from disclosure. Mr. Paillette explained that subsection (1) of section 4 required a copy of the presentence report to be given to the district attorney and defense counsel a reasonable time before sentencing. Subsection (2) contained a protective order concept and attempted to balance the interests of the corrections people for diagnosis of the defendant and protection of their sources of information against the right of the defendant to have access to information that would have a bearing on the sentence he received.

Judge Crookham pointed out that "diagnostic opinion" in subsection (2) should be plural to conform to the language in the balance of the subsection, and the Commission adopted that amendment by common consent.

Representative Cole asked why subsection (2) allowed the court to except information from disclosure to the defendant but not from the district attorney or Corrections Division. Mr. Paillette replied that the rationale was that it might be disruptive to the defendant if he were permitted to see certain types of information contained in the report.

Mr. Spaulding noted that under subsection (2) the court could also except "sources of information which were obtainable only on a promise of confidentiality." Mr. Paillette explained that the language was an attempt to quiet the fear that persons who were asked to comment upon a defendant would not do so truthfully or perhaps at all when they found that their statements would be made known to the defendant. The fear of making statements was ordinarily caused by the likelihood of reprisals by the defendant. The draft, he said, contained a stricter test than the ABA recommendation because it said "obtainable" whereas the ABA recommended "obtained."

Judge Crookham advised that there were three questions involved in this discussion. First, the presentence report was almost always prepared by the Corrections Division so there was no question of disclosure of the contents of the report to that agency. Secondly, an ethical problem was involved when some things were disclosed to the district attorney that were not disclosed to the defense in an adversary system. He believed that what was told to one side should also be told to the other. The third problem concerned confidentiality. He said he subscribed to confidentiality of sources of information because he had seen many instances where meaningful statements were obtained that would not have been made had the person been told that his statements were going to be disclosed to the defendant.

Mr. Chandler asked who was authorized to grant immunity to individuals making statements to be included in the presentence report and was told by Mr. Blensly that the "obtainable" requirement in subsection (2) would make it a decision of the judge.

Senator Burns said that the argument against confidentiality from the defendant's point of view was that he was the one who was in a position to know whether the statements made about him were true, and for that reason he believed the defendant should be given an opportunity to see the report.

Mr. Paillette pointed out that at the present time the defendant in many cases did not have access to any of the information in the presentence report except that under a very limited ruling of the court in Buchea v. Sullivan, 94 Adv Sh 1963 (June 1972), he would have access to information about his prior record.

Senator Burns expressed the view that the subcommittee had done as good a job as could be done with this very difficult question. In the final analysis, he said, its effectiveness would rest upon the wisdom of the court. He said he would be willing to approve sections 3 and 4 as drafted providing the commentary reflected Judge Crookham's position that where information was withheld from one side, it should also be withheld from the other.

Chairman Yturri said he could not see where an ethical question was involved in denying disclosure to one side as stated earlier by

Judge Crookham. Mr. Osburn agreed and added that he also did not understand how an adversary system was involved in this procedure. Senator Burns explained that Judge Crookham's point was that if a part of the presentence report were made available to the defendant, it should also be made available to the district attorney and vice versa.

Mr. Paillette reminded the Commission that at the present time the court was free to make the report available in its entirety to the district attorney but not at all to the defendant or his attorney, and that situation was occurring in a number of parts of the state. Judge Crookham replied that it was not occurring on his bench or in his department in Multnomah County. He reiterated his contention that disclosure should be a two-way street and what was given to the district attorney should also be given to the defendant and his counsel.

Judge Crookham moved to delete the phrase "to the defendant and his counsel" from subsection (2) of section 4.

Mr. Osburn commented that while the district attorney had a role as an advocate in a criminal trial, he also had other duties which might or might not make disclosure of this information important to him in the general conduct of the administration of criminal law. For that reason he said he found it difficult to agree that what went to the defense should necessarily go to the prosecution or vice versa.

Chairman Yturri pointed out that the presentence report was a post-conviction procedure and its sole purpose was to aid the court in imposing the best possible sentence. In light of that, there might be many instances where the court would feel that it would impede the rehabilitative process of the defendant or would have an adverse effect upon the defendant if disclosure were made to him while at the same time there might be confidential sources of information involved. He said he could see nothing wrong, since the objective was to have the court impose the proper sentence, in the court determining that the district attorney and the Corrections Division could have access to the report but the defendant could not when that decision was based on the judge's belief that harm might result if it were disclosed to the defendant or his counsel. In summary, he said he could see no impropriety in providing the information to one side and not to the other.

Representative Stults asked how the defendant would get a review if he didn't know what was in the report. Mr. Paillette replied that under subsection (3) the court was required to state its reasons for withholding the information.

Mr. Spaulding called attention to the fact that subsection (1) required a copy of the report to be made available to the district attorney and the defense counsel. Subsection (2) only relieved the

court from that duty with respect to the defendant and his counsel. What remained was that in every case the judge would be required to make the report available to the district attorney.

Mr. Osburn said that if the report said that a defendant had suicidal tendencies, it was not going to do him any good to see that information, but there was not a corresponding reason for withholding that fact from the district attorney. Mr. Chandler objected to any system that withheld information from someone just because it wasn't good for him to know it.

Representative Paulus remarked that the Corrections Division was charged with the responsibility of rehabilitating the individual as was, to some extent, the district attorney. That alone was enough to justify giving information to them that might be disruptive to the rehabilitation of the defendant should it be given to him. She was of the opinion that the Corrections Division and the district attorney had a right to that type of information.

After further discussion, Judge Crookham renewed his motion to delete "to the defendant and his counsel" from subsection (2) of section 4. Motion carried. Voting for the motion: Burns, Chandler, Cole, Crookham, Spaulding, Stults. Voting no: Blensly, Osburn, Paulus.

Mr. Blensly moved that subsection (3) be revised to conform to the amendment just adopted by deleting "defendant and his counsel" and substituting "parties." Motion carried.

Mr. Reed called attention to a letter relating to the position taken by the judges in Lane County with respect to the procedure followed regarding disclosure of information in presentence reports. He asked if the Commission members had seen that material describing the restrictions placed upon the use of that information after it was given to defense counsel. Mr. Paillette indicated he had distributed copies of that letter to the Commission. Basically, the procedure followed in Lane County was that the presentence report went out from the court with a cover letter reminding the defense attorney to use discretion in his use of the report and also requiring that the report itself be returned to the court within five days.

Senator Burns said his understanding of the draft was that the presentence report would be made available in court and not mailed out to counsel. His position was that the court should be given discretion as to whether the report should be given out or merely shown to the parties.

Mr. Paillette indicated that the draft contemplated that a copy would actually be mailed out by the court. He said the ABA Standards did not contemplate that the court would be permitted to place any restrictions on disclosure other than those set out in the statute.

Under the existing statutes the courts had flexibility as to whether to permit disclosure of the presentence report, and the difficulty with that system was that they had exercised that flexibility in most cases to promote nondisclosure rather than disclosure. He was opposed to adding any provision to the proposed statute that would permit the judges to allow restrictions beyond those specifically set forth in that statute. It was not his interpretation of the ABA Standards, he said, that the court could let the defense have certain information but impose some restriction on its use such as requiring that it be returned in five days or refusing to allow counsel to take the document to his office.

Senator Burns said he believed that if the court wanted to institute the Lane County system, it should be able to do so. If the judge wanted another system of making the information available, he should have that option also rather than writing a specific system into the statute.

Mr. Blensly asked why the statute should permit the procedure to differ from judge to judge. Judge Crookham replied that the sentence would be different in each case, and Mr. Spaulding agreed that every case was distinctive.

Mr. Chandler said he was still bothered by the last clause in subsection (2) of section 4 which permitted the court to except from disclosure information which was obtainable only on a promise of confidentiality. The one who conducted the interview would of necessity be the one who would give the promise of confidentiality and he asked whether everyone all the way up to the judge would be bound by his promise or whether it would be necessary to hold a hearing before the judge so he could decide whether the promise should be honored or abrogated.

Mr. Blensly replied that the judge would be aware of the circumstances under which the statements were obtained and could take into consideration the fact that they were hearsay. He was in a position to evaluate the source of the statements and to reach a conclusion as to their truthfulness.

Mr. Chandler indicated that his understanding of the intent of the draft, in view of Mr. Blensly's statement, was that the judge would review the promise of confidentiality and then he, on his own motion, could abrogate it.

Mr. Chandler moved to approve section 4 as amended.

Mr. Paillette pointed out that as section 4 had been amended by the Commission, the court could except from disclosure to the state parts of the presentence report that were made available to the defendant.

Senator Burns replied that this was not the intent. Mr. Chandler explained that the intent was that the courts were to make the report available to the district attorney and the defense counsel. They could, however, except parts of it, but if parts were excepted, they were not to be disclosed to either side. He believed the intent was clear in the amended section.

With respect to subsection (2), Mr. Hennings commented that parts of the presentence report that were not relevant to a proper sentence should not be included in the report, and there was no reason why disclosure of that type of information should be restricted. Mr. Snouffer expressed agreement with Mr. Hennings' statement. Everyone realized, he said, that irrelevant matters should not be in the report to begin with, but sometimes they were included nevertheless. It was more critical to the defense counsel than to the prosecutor that he be in a position to see that there were things in the presentence report which should not be considered and if they were considered, he should be in a position to take corrective action. He urged that no exception be included in the proposed statute for irrelevant matters and that the defense attorney be entitled to examine them if they were included in the report.

Mr. Chandler said that when the judge was willing to say that he had not taken irrelevant matters into consideration, there was no need to disclose it to anyone.

Mr. Paillette pointed out that the ABA commentary with respect to irrelevant material stated:

> "No purpose would be served if the defendant were to be shown scurrilous information that was clearly irrelevant to the sentencing decision. The principle which generally supports disclosure need not be pushed to extremes if there is a chance that the information may do positive harm."

He explained that this was the reason for including the clause relating to "parts of the presentence report which are not relevant to a proper sentence" which had been taken directly from the ABA recommendation. Subsection (2) attempted to promote disclosure but at the same time to balance it with what the court considered the best interests of the defendant. If the court felt the material was irrelevant and might do harm, it could extract that portion of the report. At the same time the court was required to state for the record the reason for making the extraction in order that it would be subject to later review by the defendant on appeal.

Vote was then taken on Mr. Chandler's motion to approve section 4 as amended. Motion carried. Voting for the motion: Burns, Chandler, Cole, Crookham, Paulus, Spaulding, Stults. Voting no: Blensly, Mr. Chairman.

The Commission recessed for lunch and reconvened at 1:15 p.m. With the exception of Professor Platt, everyone was present who had attended the morning session.

ORS 137.110. Other evidence of circumstances not admissible. Mr. Paillette commented that ORS 137.110 with respect to the aggravation or mitigation hearing was one that was violated with great regularity, and the subcommittee's recommendation was to repeal it. No objection to its repeal was expressed by the Commission.

Section 5. ORS 137.124. Commitment of defendant to Corrections Division; place of confinement; transfer of inmates. Mr. Paillette advised that the amendments in section 5 deleted the reference to "penal institution" and substituted "correctional facility" which was a term defined in the criminal code.

Judge Crookham noted that subsection (2) inferred that a woman could not be placed in a county correctional facility. Mr. Chandler suggested that problem could be solved by deleting "male" so the statute would refer to a "convicted person" rather than a "convicted male person."

Mr. Reed commented that inasmuch as there was only one correctional facility for women in Oregon, the proposed amendment would not create any problem for the Corrections Division.

Judge Crookham moved to delete "male" from subsection (2). Motion carried.

Mr. Chandler moved to approve section 5 as amended. Motion carried unanimously.

ORS 137.170 to 137.220 would not be affected by the draft. Mr. Paillette indicated that the subcommittee had discussed the advisability of combining ORS 137.130 and 137.140 because they contained some overlap but had finally decided to retain them both because there might be some distinction with respect to a county having a jail that was not suitable for safe confinement as opposed to a county having no jail at all.

ORS 137.140. Imprisonment when county jail is not suitable for safe confinement. Mr. Blensly noted that ORS 137.140 provided for imprisonment by the sentencing court. If there were some reason for wanting to transfer a prisoner to an adjoining county while he was, for example, awaiting trial, he suggested that there should be some specific statutory authority for the sheriff to do so. At the present time, he said, this was being done by a general agreement between the parties involved.

Mr. Blensly moved to amend ORS 137.140 to read:

"Whenever it appears to the court that there is no sufficient jail in the proper county, as provided in ORS 137.330, suitable for the safe confinement of the defendant, the court may order the confinement of the defendant in the jail of any county in the state."

Representative Paulus said there might be some reason for transferring prisoners other than the sufficiency of the jail and suggested the above statute be broadened to permit the court to take other reasons into consideration.

Chairman Yturri suggested that "safe" be deleted from the amendment proposed by Mr. Blensly to satisfy Representative Paulus' objection. Mr. Blensly amended his motion to include the deletion of "safe." Motion carried.

ORS 137.170. Entry of judgment on conviction. Judge Crookham noted that the last sentence of ORS 137.170 permitted the entry of a judgment of conviction to be made at any time. Inasmuch as the appeal time began to run upon the filing of the judgment, he suggested that the clerk could delay the appeal by not making the entry promptly.

Representative Paulus moved to insert "forthwith" after "the clerk shall enter the same in the journal" and to delete the last sentence of ORS 137.170. Motion carried unanimously. Voting on this and the previous motion: Blensly, Chandler, Cole, Crookham, Paulus, Spaulding, Stults, Mr. Chairman.

Section 6. ORS 137.225. Order setting aside conviction; prerequisites; limitations. Ms. Kalil asked if section 6 was intended to apply to defendants who had not been committed to the custody of the Corrections Division. Many times in the case of a misdemeanor, she said, only a fine was imposed at the district court level and there was no point in sending copies of that conviction to the Corrections Division. She also indicated that her office had encountered some difficulty in interpreting the phrase "other official records" and determining exactly where all the copies should go.

Chairman Yturri commented that the proposed amendment would not improve the latter situation.

Mr. Paillette explained the background of the proposed amendment. The Corrections Division, he said, wanted to amend ORS 137.225 to provide that the division would receive a copy of the motion to set aside. The subcommittee did not feel it would serve any particular purpose because once the sentence had been served, the division would have no authority over the petitioner. The purpose of the amendment was to give the Corrections Division notice of the order, and the question of whether there would be an interest on the part of the Corrections Division in misdemeanor cases as discussed by Ms. Kalil was not brought up at the subcommittee level. The amendment was to

try to cover all the bases and make sure that once the court entered an order to expunge the record, the Corrections Division would be aware of it.

Chairman Yturri remarked that the amendment did not resolve the question raised by Ms. Kalil regarding misdemeanors. The section included violations of municipal ordinances, and there was no purpose in serving the Corrections Division with the information in those circumstances.

Mr. Reed advised that the Corrections Division was not interested in the proceedings until such time as the person was convicted and committed to their custody.

Senator Burns asked why "keeper of the records" was necessary in the amended portion of section 6. Chairman Yturri and Judge Crookham agreed that it could be removed.

Senator Burns moved to amend the sentence to read: " . . . copy of the order to the Corrections Division." Motion carried.

Mr. Blensly said that as he remembered the recommendation of the subcommittee, it was that the amended sentence would read: " . . . forward a certified copy of the order to the keeper of the records of the arresting agency and of the Corrections Division."

Judge Crookham suggested that one solution would be to make it incumbent upon the court to designate the agencies that were to receive copies of the order rather than attempting to provide for all contingencies by statute. If it were a municipal violation, a copy would go to the city recorder; if it involved something in which the Corrections Division would be interested a copy would go to that agency; etc.

Mr. Blensly commented that such a procedure was followed in Yamhill County at the present time. As a matter of practice the judge designated the agencies that were to receive copies.

Judge Crookham proposed to amend the revised portion of ORS 137.225 to read essentially as follows subject to editorial changes by the staff:

> "The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Corrections Division when the person has been in the custody of the Corrections Division."

Motion carried.

Judge Crookham moved to approve section 6 as amended. Motion carried unanimously.

ORS 137.230. Definitions for ORS 137.230 to 137.260. Mr. Osburn asked if ORS 137.230 applied to nolo contendere pleas. Mr. Paillette replied that it did because of the approach in the guilty plea draft whereby the plea would be the same as an adjudication of guilt on a guilty plea.

Section 7. ORS 137.240. Effect of felony conviction on civil and political rights; restoration of civil rights; exceptions. Mr. Paillette explained that the amendments in sections 7, 8 and 9 dealt with the so-called civil rights statutes with respect to persons convicted of a felony. In discussing these sections the Corrections Division indicated they would defer any recommendation on them and leave the subject to the State Bar Committee on Detention and Corrections which was working on this area. The language in the three sections was taken directly from the Bar committee's recommendation and the commentary following section 9 was also from the committee report. Section 7, he said, dealt with the civil rights of a convicted person and made substantial changes from existing law in subsections (3) and (4).

Mr. Chandler moved to delete the following language from subsection (4): "in the judgment of the administrator of the Corrections Division the marriage would contribute to the person's rehabilitation and." That deletion, he said, would make the marriage a matter of right if the administrator consented to it. He would have to consent in any event and he could see no reason to add the requirement that the administrator must make a predetermination that the marriage would be good for the person; if he gave his consent, he would already have made that determination.

Mr. Blensly contended that, as drafted, it gave the administrator a legislative standard to look to. Representative Paulus commented that Mr. Chandler's proposal would make the subsection more restrictive and would be a step backward instead of forward.

Mr. Osburn expressed the view that it would be difficult for the administrator to justify the validity of his consent when there were no guidelines on which to base that consent.

Vote was taken on Mr. Chandler's motion. Motion was defeated.

Mr. Spaulding asked why paragraph (f) of subsection (3) required that the civil action, suit or proceeding had to be allowed under some other statute. Mr. Paillette replied that the commentary on page 21 was directed at subsection (3) (f) and cited two federal cases. The provision, he said, was an attempt to remove a possible ambiguity as to what could be brought under the federal Civil Rights Act as opposed to rights of action under a state statute.

If a person were injured in some fashion, then committed a crime and was sent to the penitentiary, Mr. Chandler asked if that person

could sue to recover for his injuries. Mr. Spaulding said he believed he could, but he had never represented anyone in that kind of situation. He added that the intent of paragraph (f) was unclear to him.

Senator Burns said his guess would be that it was probably drafted in response to a concern of the Corrections Division that unless the right was limited to a case by case situation where it could be shown that the person should be entitled to this right, it would open the floodgates and the prisoners would be in court constantly.

Mr. Reed confirmed Senator Burns' statement. He advised that the last session of the legislature had considered the question of marriage of inmates and since that time the other elements in section 7 had been added. The Corrections Division's initial and principal concern, he said, was directed at the situation where it was to the best interests of everyone to permit a marriage to occur.

Mr. Spaulding was of the opinion that subsection (3) (f) was illogical. Judge Crookham agreed and added that since a person was given a right to bring a law suit by virtue of the federal statute while he was incarcerated, there was no reason for the state statute to be concerned with the subject.

Judge Crookham moved to delete paragraph (f) of subsection (3). Motion carried.

Mr. Osburn questioned the meaning of "acts other than official acts of the Corrections Division or its agents" in paragraph (e) of subsection (3).

Representative Paulus replied that the example given in subcommittee was that if an inmate cut off his hand in a defective saw, he should be able to sue. Mr. Blensly added that the provision was primarily directed at assault and battery situations. Mr. Osburn commented that if a guard assaulted a prisoner in the course of trying to break up a hassle, there might be a question as to whether that was an official act. He said his question was whether the Corrections Division could be sued under subsection (3) (e) in that type of situation. As he understood the provision, the effect would be that the inmate could have a cause of action against anyone except against the Corrections Division. Representative Paulus replied that under the Oregon case law he could not sue the official in any event.

Mr. Osburn moved to delete paragraph (e) of subsection (3). Motion carried. Representative Paulus voted no.

Mr. Spaulding asked if the Commission's action would prevent a prisoner from defending an action brought against him even when he was insured and received an affirmative reply from the Chairman. Mr. Spaudling pointed out that a citizen's right to sue an inmate should be preserved.

Senator Burns indicated that Mr. Paillette had advised him that the Bar Committee on Detention and Corrections planned to introduce sections 7, 8 and 9 of this draft as a separate bill at the next session of the legislature. He asked what the Commission thought about the feasibility of deleting the three sections from this draft and letting the Judiciary Committees make the determination as to the advisability of incorporating them into the procedure code.

Representative Paulus replied that the sections embodied a basic principle of prison reform, and she believed it would be proper for the Commission to make some kind of official recommendation on the subject.

Mr. Paillette said he had contemplated that the amendments to ORS chapter 137 would be chiefly housekeeping in nature. The only reason the language in these three sections was adopted by the subcommittee was because they had the benefit of the Bar committee's work in the area. He urged the Commission not to submit a recommendation that was contrary to the Bar committee's bill without more discussion on the subject than had taken place at today's meeting, particularly since no one from the Bar committee was present to explain why they had selected this particular language.

Chairman Yturri said that if no amendments were made to section 7, a person convicted of a felony would have the power to make a will, execute a power of attorney and execute a deed. He suggested that in addition the Commission could add paragraph (d) of subsection (3) since it apparently was satisfactory to everyone. Paragraph (e), instead of being couched in the language of the draft, could be rewritten to give him the right to defend himself against an action commenced while he was imprisoned or out on bail. In addition, since the Corrections Division was in favor of it, he suggested that the marriage provision also remain in the draft.

Judge Crookham moved that paragraph (e) as it appeared in the draft be deleted and that the staff prepare a new paragraph (e) permitting the person to appear and defend a cause of action.

Mr. Hennings questioned the advisability of deleting the provision enabling the person to maintain an action. If he brought an action prior to being incarcerated, he should have the right to see it through, he said. It appeared to him that the language of paragraph (e) applied (1) to actions that were begun by the inmate prior to incarceration or (2) to actions he was defending which were brought against him at any time.

In reply to Chairman Yturri's inquiry, Mr. Spaulding, Mr. Chandler and Judge Crookham agreed that Mr. Hennings' suggestion should be adopted.

Chairman Yturri proposed to state in the commentary that paragraph (e) did not refer to the commencement of an action but rather to the

continuation of an action commenced prior to the person's imprisonment or before he was placed on bail.

Judge Crookham and Mr. Osburn were of the opinion that the statement should be in the statute rather than the commentary. Mr. Blensly added that the statute should also make specific reference to an action initiated prior to his being sentenced.

Chairman Yturri stated that the amendment being discussed would be applicable to paragraphs (d), (e) and (f) of subsection (3) and he said that if it were amended in that fashion, he suspected that the Commission would then have accomplished the intent of the Bar committee.

Mr. Blensly was of the opinion that paragraph (f) was unnecessary because the inmate would in any event be entitled under the federal Civil Rights Act to the rights bestowed by that paragraph. If the phrase in paragraph (e) relating to acts other than official acts of the Corrections Division were eliminated, only one provision would be needed to allow the person to appear, defend and maintain a cause of action initiated prior to his conviction.

Chairman Yturri suggested that the language of paragraph (d) should also be modified to make clear that he was entitled to commence an action in that situation as well as maintain one. Representative Paulus suggested that "Commencing," be inserted at the beginning of paragraph (d). Judge Crookham expressed agreement and added that "an action" should be changed to "a proceeding" in paragraph (d). The reference would then be more accurate with respect to suits for dissolution of marriage and to custody proceedings.

Mr. Hennings commented that what the Commission was attempting to do was to confer the right to defend any action while the individual was in prison because they didn't want to take away the right of anyone to sue him. The members concurred.

Senator Burns moved to reconsider the vote by which paragraph (e) of subsection (3) was deleted. Motion carried.

Senator Burns then moved that Mr. Paillette prepare an amendment to carry out the directive of the Commission with respect to paragraphs (d) and (e) in accordance with the above discussion.

Mr. Osburn commented that the amendment should make clear that the person may appear, maintain and defend a pending cause of action arising other than from official acts of the Corrections Division or its agents. Mr. Blensly said his understanding of the Commission's intent was that the amendment would make no reference to either an official or an unofficial act. If the person had initiated a suit prior to being convicted against the Corrections Division in its official capacity, he would still have the right to maintain that suit.

He would not, however, have the right to initiate any suit after incarceration under paragraph (e). The Commission agreed that this was the intent.

Vote was taken on Senator Burns' motion to have Mr. Paillette draft an amendment to subsection (3) of section 7. Motion carried.

Senator Burns moved to approve section 7 as amended. Motion carried.

Section 8. ORS 44.230. Order for deposition or production of prisoner. Mr. Paillette indicated that section 8 was taken directly from the recommendations of the Bar Committee on Corrections and Detention as was section 9.

Mr. Chandler moved to approve section 8. Motion carried unanimously.

Section 9. ORS 44.240. Production of witness confined in state penal or correctional institution. Mr. Chandler moved approval of section 9. Motion carried unanimously.

Section 10. ORS 137.250. Restoration of political rights; effect of parole or probation revocation and commitment on civil and political rights. Mr. Chandler moved to approve section 10. Motion carried.

Judge Crookham called attention to the provision of subsection (1) of section 10 which said that a felon's political rights would be automatically restored to him upon final discharge from probation, parole or imprisonment. On the other hand, subsection (2) of section 7 said that such a person "may lawfully exercise all civil rights during any period of parole or probation." His criticism was that his rights were not suspended under section 7 during parole or probation yet section 10 restored them. Mr. Chandler explained that section 7 restored his civil rights whereas section 10 restored his political rights.

Representative Paulus suggested that ORS 137.250 be combined with 137.240 by adding in subsection (2) of ORS 137.240 "all civil and political rights." Judge Crookham believed it would be better to add another subsection to ORS 137.240 encompassing the automatic restoration of political rights as set forth in ORS 137.250. The decision was to leave the two sections alone.

ORS 137.260 to 137.375 would not be affected by this draft. Mr. Chandler proposed to repeal ORS 137.350 and 137.360 because he said he could not imagine that any other procedure would be followed in this situation.

Representative Paulus concurred with Mr. Chandler and moved to repeal ORS 137.350 and 137.360. Mr. Chandler seconded. Motion was defeated on a 5 - 5 vote. Voting for the motion: Chandler, Cole, Crookham, Paulus, Stults. Voting no: Blensly, Burns, Osburn, Spaulding, Mr. Chairman.

Section 11. ORS 137.380. Treatment and employment of prisoners. Mr. Chandler moved to approve section 11. Motion carried.

ORS 137.390 to 137.450 would not be affected by the draft.

ORS 137.450. Enforcement of money judgment in criminal action. Judge Crookham asked if the term "private prosecutor" was used in other sections of the code. Mr. Spaulding pointed out that "complainant" was used in ORS 137.210. Judge Crookham indicated that "private prosecutor" was apparently intended to refer to a private complainant.

Following a brief discussion, Judge Crookham moved to substitute "complainant" for "private prosecutor" in ORS 137.450. Motion carried.

Section 12. ORS 137.520. Power of committing magistrate to parole and arrange for employment of persons confined in county jail. Mr. Paillette explained that the purpose of the amendment to section 12 was to allow the sheriff to authorize inmates in the county jail to be temporarily released for work release or for educational purposes.

Mr. Blensly explained the problem that gave rise to the proposed amendment. In Yamhill County, he said, one judge gave blanket orders authorizing work release and the other judge did not. Some of the businessmen in the area became interested in the work release program and were willing to hire some of the prisoners on a part-time basis. However, when a job was found for one of them, it was then necessary to go back to the court to get authorization to release the man for that purpose and it became impossible to run a program of that type because of the time involved. The amendment, therefore, would allow the court to do what some courts were doing now at the time of sentencing. Once the person was sentenced and confined to jail, the sheriff would have the authority to grant temporary leave for work release or educational purposes. Basically, he said, the wording was the same as the state work release statute.

Judge Crookham asked why subsections (1) and (5) were limited to sentences of six months or more. Mr. Paillette replied that both subsections referred to parole rather than work release and if the sentence was six months or more, under subsection (5) the person would be in the custody of the Corrections Division.

Judge Crookham said that persons were frequently sentenced to nine months in the county jail but were not turned over to the jurisdiction of the Corrections Division. Mr. Paillette called attention to the provisions of ORS 144.050 which permitted the State Board of Parole to

authorize parole for a person confined in a county jail for a period of six months or more.

Mr. Blensly commented that the logic behind that provision was to have uniform state-wide parole in terms of rules and regulations for those persons confined for six months or more.

In reply to a question by Chairman Yturri as to whether the committing magistrate could parole a person who had served six months of a nine month sentence, Mr. Paillette replied that under subsection (5) of section 12 the committing magistrate could parole any persons sentenced to six months or more.

Mr. Blensly explained that the committing magistrate always had that authority, but the Board of Parole only had it when the sentence was for six months or more. The sheriff, however, under the proposed amendments to section 12 would not have any authority over parole. The amendments were only intended to broaden the sheriff's authority over a person on temporary leave for work release or educational purposes.

Mr. Chandler commented that the sheriff would have that authority whether or not the judge agreed with his decision and the amended section was therefore giving judicial discretion to the sheriff.

Senator Burns moved approval of section 12. Motion carried.

Section 13. ORS 137.560. Copies of certain orders to be sent to Director of Parole and Probation. In reply to a question by Senator Burns, Mr. Reed explained that the Director of Parole was subordinate to the Corrections Division Administrator and it was therefore appropriate that copies of the orders referred to in section 13 be sent to the administrator. Senator Burns indicated that inasmuch as the Corrections Division handled the administrative work in this area, the amendment appeared to be feasible.

Senator Burns moved approval of section 13. Motion carried.

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Section 14. ORS 137.570. Authority to transfer probationer from one officer to another; procedure. Mr. Chandler moved to approve section 14. Motion carried.

Section 15. ORS 137.580. Effect of transfer of probationer from one officer to another. Senator Burns moved the approval of section 15. Motion carried.

Section 16. ORS 137.590. Appointment of probation officers and assistants; chief probation officer; compensation. Mr. Chandler moved to approve section 16. Motion carried.

Section 17. ORS 137.620. Powers of probation officers; oath of office; bond; audit of accounts. Senator Burns explained that section 17 took into account the diagnostic centers. He moved approval of section 17. Motion carried.

Mr. Chandler moved to approve Article 11 as amended. Motion carried unanimously.

Reprieves, Commutations and Pardons; Remission of Penalties and Forfeitures. Board of Parole and Probation; Work Release Program; Preliminary Draft No. 1; September 1972

Section 1. ORS 143.040. Notice of intention to apply for pardon, commutation or remission; proof of service. Section 1, Mr. Paillette said, contained the only revision to ORS chapter 143 and would require notice of intention to apply for a pardon or commutation to be served on the Corrections Division Administrator as well as the Board of Parole.

Chairman Yturri asked why this recommendation was made when just a few minutes earlier the Commission had voted to approve an amendment to ORS 137.560 which required copies of orders to be sent to the Corrections Division Administrator rather than to the Board of Parole. He recalled that Mr. Reed had said he was superior to the Board of Parole and the administrative duties were handled by his division.

Mr. Paillette replied that this was a different area and at the subcommittee meeting both agencies had indicated that each of them needed copies of the notice of intention to apply for a pardon or commutation.

Mr. Johnson indicated that section 1 should read "upon the Board of Parole" rather than the "Director of Parole." Mr. Chandler moved to adopt that revision and the motion carried.

Representative Stults moved the approval of section 1 as amended. Motion carried.

Section 2. ORS 144.005. Section 3. ORS 144.015. Section 4. ORS 144.025. Mr. Paillette explained that the Parole Board no longer had any probation functions and the amendments in sections 2, 3 and 4 therefore deleted obsolete references to the State Board of Parole and Probation. Identical amendments were made throughout ORS chapter 144, he said.

Mr. Spaulding moved approval of sections 2, 3 and 4. Motion carried unanimously.

Section 5. ORS 144.040. Section 6. ORS 144.050. Mr. Paillette advised that in addition to the same type of amendment appearing in sections 2, 3 and 4, section 5 also eliminated the reference to

"conditional pardon, probation or other conditional release," matters which were not considered by the Parole Board.

Mr. Chandler moved approval of sections 5 and 6. Motion carried.

Section 7. ORS 144.060. Mr. Chandler moved approval of section 7. Motion carried.

Section 8. ORS 144.075. Section 9. ORS 144.210. Section 10. ORS 144.220. Section 11. ORS 144.226. Section 12. ORS 144.228. Mr. Chandler moved approval of sections 8, 9, 10, 11 and 12. Motion carried.

ORS 144.250. Factors considered by board in granting parole. Judge Crookham noted that "and Probation" had not been deleted from ORS 144.250. Mr. Paillette explained that it had not been changed because at the time of the subcommittee meeting Mr. Johnson had advised that the Board of Parole was in the process of working on a revised set of standards relating to these chapters. He was hopeful that they would be ready for today's meeting but such was not the case. The statutes dealing with standards for parole as well as statutes relating to standards for revocation procedures would be the subject of a separate bill to be introduced at the request of the Parole Board, and it was contemplated that the necessary conforming amendments would be made in that bill. However, for the purposes of the Commission's draft these types of revisions could be made.

There being no objection, the Chairman directed that "and Probation" be deleted from ORS 144.250.

Section 13. ORS 144.260. Section 14. ORS 144.270. Section 15. ORS 144.310. Section 16. ORS 144.330. Section 17. ORS 144.340. Section 18. ORS 144.360. Section 19. ORS 144.370. Section 20. ORS 144.374. Section 21. ORS 144.400. Mr. Chandler moved the approval of sections 13 through 21. Motion carried.

Section 22. ORS 144.410. Definitions for ORS 144.410 to 144.525. Representative Paulus observed that the subcommittee had discussed alternatives for the word "satellites" in subsection (3) of section 22 but had ultimately decided it was the best word they could come up with.

Mr. Watson explained that the purpose of the amendment was to bring within the definition of "penal and correctional institutions" facilities operated by the Corrections Division such as work release centers, halfway houses, etc.

Mr. Chandler moved to approve section 22. Motion carried.

Section 23. ORS 144.420. Corrections Division to administer work release program; purposes of release. Chairman Yturri noted that subsection (1) retained the term "correctional institution" while other sections had been changed to "correctional facility." Mr. Paillette replied that "institution" was a broader term than "facility."

Mr. Reed indicated that the Corrections Division sometimes placed persons under their custody in group living centers or in community centers which were not ordinarily referred to as correctional institutions. Mr. Chandler pointed out that the term "penal and correctional institutions" was defined in section 22. Chairman Yturri acknowledged that in view of that definition, section 23 was clear that it would include centers such as those referred to by Mr. Reed.

Mr. Blensly moved approval of section 23. Motion carried.

Section 24. ORS 144.430. Duties of division in administering program; all state agencies to cooperate. Mr. Paillette advised that the amendments in section 24 related to the establishment and maintenance of community centers by the Corrections Division. The new language in subsection (2) authorized the Corrections Division to enter into agreements with public and private agencies for work release services.

Representative Paulus moved approval of section 24. Motion carried.

Section 25. ORS 144.440. Recommendation by sentencing court. Mr. Chandler moved to approve section 25. Motion carried.

Section 26. ORS 144.450. Approval or rejection of recommendations; rules for program; specific conditions; Administrative Procedures Act not applicable. Mr. Chandler moved the approval of section 26. Motion carried.

Section 27. ORS 144.460. Contracts for quartering of enrollees; suitable facilities required. Mr. Paillette explained that the amendment in section 27 was another amendment that had been requested by the Corrections Division. Subsection (2) restricted the enrollment of persons in work release unless the division had determined that a suitable facility for quartering the person was available. The amendment would delete that restriction and extend broader discretion to the division to grant enrollment in the work release program.

Mr. Watson explained that the section spoke to the subject of a person having suitable facilities and employment in the area before he could be released and before he could be enrolled in the work release program. The Corrections Division's intent in seeking this amendment was to permit a man to be enrolled in the work release program and after enrollment, suitable facilities for quartering him would be found.

Mr. Chandler asked if it was the division's intent to turn the inmate loose without first finding suitable facilities for quartering him and was assured by Mr. Watson that it was not. They merely wanted to be in a position to find suitable facilities following the inmate's enrollment in the program.

Judge Crookham moved approval of section 27 with the deletion of subsection (2). Motion carried.

Section 28. ORS 144.470. Disposition of enrollee's earnings under program. Mr. Blensly moved approval of section 28. Motion carried.

Section 29. ORS 144.515. Release terminates enrollment; continued employment to be sought. Mr. Chandler moved approval of section 29. Motion carried.

Section 30. ORS 144.710. Cooperation of public officials with State Board of Parole and Probation. Mr. Chandler moved to approve section 30. Motion carried.

Judge Crookham moved the approval of the entire Article. Motion carried unanimously. Voting: Blensly, Chandler, Cole, Crookham, Osburn, Paulus, Spaulding, Stults, Mr. Chairman.

Proposed addition to ORS chapter 144. Mr. Reed indicated that the Corrections Division had requested Subcommittee No. 3 to add a section to ORS chapter 144 which would grant the division authority to place parolees in community centers. The subcommittee had not adopted the proposal and he asked that the Commission consider the matter.

The precise language of the proposal was:

> "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. Reed explained that the Corrections Division now had community centers and would soon be opening a number of others where it might be possible to salvage a parolee in a few days or a few weeks instead of returning him to the penitentiary when he violated his parole. Under present law this procedure was not possible because the work release centers and other centers of that type could accept only inmates.

Representative Paulus indicated that one of the reasons the subcommittee had not adopted the proposal was because Terry Johnson had informed the members that the Parole Board had contacted the Attorney General's office about this problem and was told that to place a parolee in one of these centers was tantamount to a revocation of parole.

Mr. Blensly explained that the proposed procedure raised all kinds of problems. If the person were to be committed to the community centers, it not only raised a question as to whether his parole was being revoked but also presented the problem of what type of revocation procedure was necessary in such cases. There was the further question of whether the Corrections Division should take over the functions of the Parole Board.

Representative Paulus indicated also that there was a split of opinion between the Corrections Division and the Parole Board as to the advisability of adopting the procedure. The subcommittee had ultimately concluded that they agreed with Mr. Johnson that parole authority should not be taken from the Parole Board in this area.

Mr. Reed commented that if a man did not want to go into a community center, he could not be kept there, and the alternative would be to take him into custody as a parole violator. He indicated that it should be possible to draft language which would allow the Parole Board to be advised of the Corrections Division's action and if they wanted to make another disposition of the case, they could do so.

Terry Johnson indicated that the Parole Board's position was in accord in principle with the procedure explained by Mr. Reed. However, the procedure would place the sole discretion in the hands of the Corrections Division, and the Parole Board did not feel it was appropriate that the board should not be involved in the decision.

Mr. Blensly asked if the Parole Board at the present time could revoke a person's parole and place him in a halfway house and received an affirmative reply from Mr. Johnson. Mr. Reed conceded that this was possible but added that it was a cumbersome procedure. If the board revoked parole and turned the person over to the jurisdiction of the Corrections Division, the division could then put him in a community center but first it was necessary to go through the revocation process.

Chairman Yturri commented that at this late stage of the revision, he was personally hesitant to become involved in what appeared to be a difference of opinion between the Corrections Division and the Parole Board. He suggested that it would be more suitable for Mr. Reed to present his views and his request to the legislature in a separate bill rather than having this Commission become involved in the dispute.

There being no objection, the Chairman directed that the Commission proceed to the next item on the agenda.

ORS chapter 147. Uniform Criminal Extradition Act; Preliminary Draft No. 1; September 1972

Mr. Paillette indicated that he had requested and received recommendations for amendments to ORS chapter 147 from the Governor's Legal Advisor, Mr. Ed Branchfield. The Legislative Fiscal office,

at the direction of the Emergency Board, had also requested an amendment to ORS 147.230.

Section 1. ORS 147.010. Definitions; appointment of person to act in Governor's absence. The amendment in section 1 was based on a recommendation by Mr. Branchfield and would authorize the Governor to appoint a person to act in his behalf for the purpose of performing extradition functions when he was out of the state. He said he believed Mr. Branchfield contemplated that the person appointed would be a member of the Governor's staff although the Governor would be free to pick anyone he believed to be competent and qualified to perform these duties during his absence from the state. Mr. Paillette observed that if the ballot measure which would change the line of succession to the Governor's office were adopted at the November election, there would be even more necessity for this amendment than under the existing law.

Senator Burns commented that as a practical matter, Mr. Branchfield actually performed these duties at the present time and the Governor signed the order. When he was absent, it was signed by the person who was acting as Governor at the time. He suggested that it would be preferable to have the Governor designate his legal counsel to perform this duty.

Mr. Chandler commented that the Governor could take care of these matters without a change in the statute and was doing so at the present time. He said he could see no great need for the amendment.

Chairman Yturri commented that he could see nothing wrong with the proposal except that it detracted somewhat from the authority of the President of the Senate when he was acting as Governor.

Mr. Spaulding moved to delete the amendments in section 1. Senator Burns seconded. He explained that his objection was that the extradition function should remain in the Governor's office and not be assigned to some outside person. Mr. Spaulding's motion failed. Voting for the motion: Burns, Chandler, Paulus, Spaulding. Voting no: Blensly, Cole, Crookham, Osburn, Mr. Chairman.

Mr. Chandler moved that "person" in subsection (2) be changed to "a member of his staff." Mr. Osburn said that the danger in refining the language was that it made it possible for a lower echelon of the Governor's staff to perform extradition functions.

Mr. Paillette suggested that "member of his legal staff" be substituted for "person." Judge Crookham so moved. Motion carried with Mr. Chandler and Representative Paulus voting no.

Senator Burns moved to approve section 1 as amended. Motion carried.

ORS 147.030. Form of demand. ORS 147.050. Facts documents must show. Mr. Osburn noted that ORS 147.030 made reference to a form of demand including a statement by the Governor of the other state that the person "escaped from confinement or has broken the terms of his bail, probation or parole." ORS 147.050 said that the documents must show the person committed a crime in the other state and had thereafter fled from that state. Most of the other states of the Union had adopted an amendment to the Uniform Criminal Extradition Act which Oregon had not. That amendment revised the definition of "fugitive from justice" to include a case where a man was extradited from one state to another and to say that he may thereafter be extradited back to the original state. The question he was raising, he said, was whether the Commission should consider bringing the Uniform Act into conformance with the Uniform Acts in other states. His suggestion was that final action of the Commission be deferred on this question until the following morning at which time he would present specific amendments to ORS 147.030 and 147.050 to accomplish the purpose he had suggested.

There being no objection, the Chairman so ordered.

The following morning Mr. Osburn explained that recently his office had a situation, which was still pending, involving a prisoner who was transferred to Oregon to serve a California sentence concurrently with his Oregon sentence. He was now ready to be released from Oregon and there was a question as to whether he could be returned to the state of California to finish the balance of his sentence.

The Oregon legislature in 1932 had enacted substantially the Uniform Criminal Extradition Act of 1926 but had not incorporated changes that were made thereafter. In 1937 the Oregon legislature amended the statute to conform to some but not all of the changes made in the Uniform Act since 1926. One of the changes not made was section 5 of the Uniform Act:

> "Sec. 5. Extradition of Persons Imprisoned or Awaiting Trial in Another State or Who Have Left the Demanding State Under Compulsion. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this state may agree with the Executive Authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.
>
> "The Governor of this state may also surrender on demand of the Executive Authority of any other state any person in this state who is charged in the manner provided in Section 23 of this act with having violated the laws of the state

whose Executive Authority is making the demand, even though such person left the demanding state involuntarily."

Mr. Osburn advised that the first paragraph of the amendment was introductory in effect while the second paragraph contained the substance of the amendment.

In re Whittington, 167 P 404, 34 Cal App 344 (1917), became celebrated in a story written by Erle Stanley Gardner in which a prisoner committed a homicide in California, committed a minor crime in Arizona for which he was extradited and California was thereafter unable to extradite him back to California to face the murder charge. The problem raised by that case was recognized in the amendment to the Uniform Act and would permit extradition even though the person left the demanding state involuntarily such as by extradition or by a transfer of the prisoner from one institution to another.

Mr. Paillette asked Mr. Osburn if he would recommend adding the section as a part of ORS 147.050 and was told that it should probably be added to ORS chapter 147 as a separate provision.

In reply to a question by Chairman Yturri, Mr. Osburn explained that adoption of the amendment would cover the problem of the fugitive from justice discussed by the Commission on the previous day because a fugitive would be a person who came into this state, even though involuntarily.

Mr. Chandler said that since Perry Mason was one of his favorite lawyers, he would move the adoption of the amendment proposed by Mr. Osburn to be added as a part of ORS chapter 147. Motion carried.

Section 2. ORS 147.110. Penalty for disobedience to ORS 147.100. Mr. Chandler moved approval of section 2. Motion carried.

ORS 147.100. Rights of arrested persons. Mr. Hennings suggested that the Commission include in ORS 147.100 the right of a person arrested on a Governor's warrant to be released on bail or on his own recognizance to make it clear that if a judge in Oregon felt the person should be released, he would have the authority to do so. Probably, he said, the provision should be drafted to state that the release would be discretionary with a circuit court judge.

ORS 147.160. Bail. In the same vein Ms. Kalil called attention to ORS 147.160 which allowed bail after a person had been picked up on a fugitive warrant, but which contained no provision allowing bail after the Governor's warrant was served on him. She said her office had consistently said that an individual was not entitled to bail after the Governor's warrant had been served on him and Judge Solomon had taken the same position. However, Judge Beatty had taken the position that the person was not entitled to bail in that circumstance and the matter of setting bail was discretionary with the judge. She urged

that the statute be made clear one way or the other and added that it was the position of her office that bail should be set by the Governor and not by the judge because the judge was in no position to know the seriousness of the crime.

Mr. Chandler said he could see no logic for the rationale that everyone else was entitled to bail but a person who was under indictment in another state was not. He conceded that the judge was not in a position to determine the seriousness of the crime the person had committed nor to determine the likelihood of his guilt or innocence, but he had as good a chance of determining the likelihood of his willingness to appear in that situation as in any other. If the judge felt it necessary, he could set bail high enough to guarantee his appearance.

Mr. Hennings advised that most of the fugitive cases he handled in his office involved collection matters which were eventually dismissed after restitution was made. In cases of that type, he said, Judge Beatty had gone along with the idea that the person should stay out on recognizance so he could continue to work and make enough money to make restitution and not be hauled back to the other state.

ORS 147.160. (Housekeeping Amendments, page 30.) Mr. Paillette outlined that subsequent to the subcommittee meetings dealing with this area of the law the staff checked all of the statutes in the criminal procedure area against the drafts the Commission had approved to make whatever revisions were necessary to conform the statutes to the drafts. During the course of that procedure they picked up some proposed amendments that would deal with the problem under discussion. He indicated that on page 30 of the Housekeeping Amendments there appeared an amended version of ORS 147.160 as well as amendments to ORS 147.170 and 147.180 which would conform the release provisions in ORS chapter 147 with the position taken by the Commission in the Release of Defendants draft. It dealt with the problem under discussion as a release decision, and ROR would in effect be authorized under the proposed amendments. Although it was a part of the Housekeeping Amendments package, the revisions in these sections involved a substantial policy decision, he said.

Mr. Hennings observed that the proposed amendments to ORS 147.160 still did not answer the question regarding a person arrested under a Governor's warrant. Ms. Kalil commented that it generally took about 30 days from the time the defendant was charged with a fugitive complaint until the time the Governor's warrant came down.

Judge Crookham expressed approval of the proposal to give the court the authority to release the defendant on bail or recognizance during this period of time. He said he had seen several instances where it was necessary to pull the warrant back in order to keep the person working and to further negotiate with the other state. That

would have been unnecessary had the court had the authority to release him on recognizance. He said he objected to the theory that the Governor of Mississippi, for example, should have the right to set the bail of a person who was before an Oregon judge, but it would be advisable to make the law clear.

Following a discussion of the best way to amend the statutes to accomplish the Commission's goal, Judge Crookham moved that the amended version of ORS 147.160 be adopted with a further amendment to place a period after the phrase "the security release or in the release agreement" and delete the balance of the section. It would then allow the judge the option of releasing the defendant up to the time of his surrender upon the Governor's warrant or at a later time as specified in the release agreement and would impose the discretion in the circuit court.

Mr. Hennings commented that the proposed amendment would meet his objection but there might be other ORS sections that would need to be corrected to conform to the revision.

Mr. Blensly said that in his county defendants in this category appeared in district court to request a writ of habeas corpus. Mr. Chandler advised that under the Release of Defendants draft the release agreement would follow with him into the circuit court. Mr. Blensly said he was concerned about the language "for his appearance before him at a time specified." Mr. Chandler suggested that phrase be amended to read: "for his appearance at a time specified in the security release or in the release agreement."

Mr. Blensly suggested that the entire phrase be deleted by placing a period after "Release of Defendants." There might be instances where the defendant would surrender himself to the sheriff. Mr. Chandler replied that under the proposed amendment he wouldn't necessarily have to appear in court. He could appear at the sheriff's office, the state penitentiary, etc.

Ms. Kalil stated that the remedy the defendant had available to him after the execution of the Governor's warrant was a petition for a writ of habeas corpus. When he was out on a release agreement, she asked if that would be considered custody for the purpose of a writ of habeas corpus inasmuch as habeas corpus contemplated physical confinement. Mr. Hennings advised that the Supreme Court has held that habeas corpus lies even after the person has been released and served his sentence.

Representative Paulus moved to adopt Judge Crookham's earlier motion with the further amendment to delete "before him" so that ORS 147.160 as it appeared on page 30 of the Housekeeping Amendments would read:

" . . . under the provisions of sections 1 through 12, Article 6, Release of Defendants, for his appearance at a time specified in the security release or in the release agreement."

Motion carried to amend and adopt ORS 147.160.

Chairman Yturri observed that the amendment just adopted did not fully solve the problem raised by Ms. Kalil if it was correct that habeas corpus did not apply when a person was out on recognizance.

ORS 147.170. Proceedings in absence of arrest under executive warrant within specified time. (Housekeeping Amendments, page 31.) Mr. Paillette explained that ORS 147.170 and 147.180 as set out on pages 31 and 32 of the Housekeeping Amendments contained conforming amendments to delete references to bonds, undertakings and bail and to write in the language used in the Release of Defendants draft.

Judge Crookham moved to adopt ORS 147.170 as amended by the Housekeeping Amendments. Motion carried.

ORS 147.180. Forfeiture; recover thereon. (Housekeeping Amendments, page 32.) Mr. Blensly observed that ORS 147.180 might cause a problem when the defendant failed to appear and surrender himself. Mr. Paillette replied that that criticism could be corrected by deleting "and surrender himself" in the first sentence.

Mr. Chandler moved to adopt ORS 147.180 with the amendment suggested by Mr. Paillette by revising it to read:

"If the prisoner is released and fails to appear according to the condition of his security release . . . . "

Motion carried.

The Commission then returned to the draft on the Uniform Criminal Extradition Act.

Section 3. ORS 147.230. Application for requisition; filing and forwarding of papers. Mr. Paillette advised that the question of the cost of extradition had been referred to him by the Legislative Fiscal office which had been directed to do so by the Emergency Board with the request that the Commission consider the type of showing the district attorney should be required to make when he sought an extradition. The subcommittee was furnished with a copy of the minutes of the Emergency Board meeting at which the problem of rising costs of extradition was discussed and the question was raised as to whether all extraditions were of the type they should be spending money for in view of the nature of the offense and the penalty imposed.

Senator Burns advised that the Emergency Board got into the area when they were requested to give the Governor more money for extraditions. The board held a lengthy discussion about spending several hundred dollars to bring a person back for such things as indictable misdemeanors and then finding that the judge put them on bench probation or imposed a minimal fine. The members of the Emergency Board felt that if the crimes were not considered to be any more serious than that, they shouldn't go to the expense of extraditing the defendants.

Representative Paulus recalled one thing that was raised in subcommittee was that perhaps the Legislative Fiscal Officer's information did not reflect the actual situation because the appropriation for the last biennium was 60% less than for the previous biennium.

Mr. Paillette indicated that he had asked the Legislative Fiscal office to make a review of extraditions and they had given him a list consisting of some 47 pages of extraditions made during the last fiscal year. It set out the county, type of offense and cost of returning the fugitive although it did not indicate the disposition of the cases because they had no way of determining that information from the data available to them. He passed that list around for the Commission members to examine.

Representative Paulus asked Mr. Paillette if he had been furnished with a comparison of the actual number of cases from the preceding fiscal year and received a negative reply.

Senator Burns expressed approval of the proposed amendment to ORS 147.230 and Mr. Paillette advised that while the language of the amendment had not been approved by the subcommittee, they had suggested that it be presented to the Commission. He explained that it would tighten the statute somewhat and was intended to carry with it a connotation of the types of factors the requesting district attorney should take into account in making extraditions. Although it did not specifically mention dollars and cents, from the standpoint of a legislative directive, it gave a little more guidance.

Judge Crookham moved that subsection (2) of ORS 147.230 be amended to substitute "release" for "bail" in the two places the word appeared. Motion carried.

Representative Cole suggested that subsection (2) should also make reference to fugitives from justice. Chairman Yturri expressed approval of the suggestion but proposed to defer action on it until Mr. Osburn had made his presentation to the Commission on the following morning with respect to the amendment to the definition of "fugitives from justice" that was discussed earlier.

Mr. Spaulding suggested that the opening sentence of subsection (1) be amended to refer to the "alleged" crime rather than just to the

crime and the same amendment should also be made later in the same subsection where it said, "the crime charged against him." He added that no one should assume that the person was guilty of the crime committed because at this point there had been no determination that the person was guilty.

Judge Crookham said that if the person had fled after conviction, he was no longer a person charged but was a convicted person. Chairman Yturri remarked that was one reason it might be important to include in this section the "fugitives from justice" language suggested by Representative Cole.

Mr. Paillette indicated that the first subsection of section 3 dealt with a person charged with a crime whereas the second dealt with a person who had been convicted and then fled. In answer to Judge Crookham's point, the two subsections were meant to deal with each situation separately.

Representative Paulus moved to insert "alleged" before "crime" on the third line of section 3 and to approve the section as amended. Mr. Paillette was of the opinion that since subsection (1) referred to a crime charged, the addition of "alleged" was unnecessary. Nevertheless, the motion carried.

Chairman Yturri indicated that if it appeared necessary, the Commission would return to section 3 the following day after the amendments to be proposed by Mr. Osburn had been considered.

Senator Burns moved to approve the entire Article as amended subject to giving Mr. Osburn an opportunity to propose his amendments to the Uniform Act. Motion carried.

The Commission recessed until 9:00 a.m. the following morning.