

See: Minutes of Subcommittee No. 2
2/9/70, p. 1, Vol. XI, Tapes #91 & 92

Minutes of Commission
4/3/70, p. 22, Vol. IX, Tape #52

Minutes of Subcommittee on
Grading and Sentencing
4/5/70, p. 61, Vol. X, Tape #57

CRIMINAL LAW REVISION COMMISSION
311 Capitol Building
Salem, Oregon

ARTICLE 30. GAMBLING OFFENSES

Preliminary Draft No. 1; January 1970

Reporter: Donald L. Paillette

Subcommittee No. 2

ARTICLE 30. GAMBLING OFFENSES

Preliminary Draft No. 1; January 1970

Section 1. Definitions. As used in this Article, unless the context requires otherwise:

(1) "Bookmaking" means promoting gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.

(2) "Contest of chance" means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

(3) "Gambling" means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. "Gambling" does not include bona fide business transactions valid under the law of contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance.

(4) "Gambling device" means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists

of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices within this definition.

(5) "Lottery" or "policy" means an unlawful gambling scheme in which:

(a) The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and

(b) The winning chances are to be determined by a drawing or by some other method; and

(c) The holders of the winning chances are to receive something of value.

(6) "Mutual" or "the numbers game" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome of a future contingent event otherwise unrelated to the particular scheme.

(7) "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of

the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in "bookmaking" is not a player.

(8) "Profits from gambling activity" means that a person, other than as a player, accepts or receives money or other property pursuant to an agreement or understanding with another person whereby he participates or is to participate in the proceeds of gambling activity.

(9) "Promotes gambling activity" means that a person, acting other than as a player, engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes, but is not limited to, conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person promotes gambling

activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation.

(10) "Slot machine" means a gambling device that as a result of the insertion of a coin or other object operates, either completely automatically, or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value. A device so constructed or readily adaptable or convertible to such use is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because apart from its use or adaptability as such it may also sell or deliver something of value on a basis other than chance.

(11) "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

(12) "Unlawful" means not specifically authorized by law.

COMMENTARY - DEFINITIONS

The section is based on New York Revised Penal Law section 225.00 and Michigan Revised Criminal Code section 6101. The significance of each definition is discussed in the commentaries to particular sections in the Article.

Section 2. Promoting gambling in the second degree. A person commits the crime of promoting gambling in the second degree if he knowingly promotes or profits from unlawful gambling activity.

COMMENTARY - PROMOTING GAMBLING IN THE
SECOND DEGREE

See commentary under section 3 infra.

Section 3. Promoting gambling in the first degree. A person commits the crime of promoting gambling in the first degree if he violates section 2 of this Article by:

(1) Engaging in bookmaking to the extent that he receives or accepts in any one day more than five bets totaling more than \$500; or

(2) Receiving in connection with a lottery or mutual scheme or enterprise:

(a) Money or written records from a person other than a player whose chances or plays are represented by such money or records; or

(b) More than \$500 in any one day of money played in the scheme or enterprise.

COMMENTARY - PROMOTING GAMBLING IN THE SECOND DEGREE;
PROMOTING GAMBLING IN THE FIRST DEGREE

A. Summary

Sections 2 and 3 of the draft prohibit two basic kinds of criminal gambling activity. One is "promoting" unlawful gambling activity. This is defined in section 1 (9) to include any activity that goes beyond being a "player" under section 1 (7), including setting up the game, acquisition of the necessary equipment, providing the place, bringing in the players and financing the operation.

The other activity is "profiting" from unlawful gambling activity, the receipt of money or other property, other than as a player as defined in section 1 (7) as proceeds from gambling activity based on a prior agreement or understanding to that effect. This is intended to reach the criminal whose activities do not fall within the definition of "promoting".

The underlying purpose of the sections is to get at the professional who exploits the popular urge to gamble. The individual citizen who places a bet is not criminal. This approach to the gambling statutes eliminates the need for a special immunity statute because the "player" would not violate the law. Neither are friendly social games criminal under the draft and a person does not promote gambling if he merely invites friends in for a game and provides cards or other paraphernalia. This results from the definition of "player" in section 1 (7) which exempts one who "gambles at a social game of chance on equal terms with other participants" so long as he does nothing more than to provide without fee or remuneration the use of premises or the necessary equipment.

The Michigan revisers neatly state the case for excluding the friendly social game:

"Private consensual games are generally accepted as socially if not legally proper, and there is no point in preserving the fiction that they are undesirable."

The definition of "contest of chance" in section 1 (2) and "gambling" in section 1 (3) continue the generic approach incorporated in the definitions by using broad, comprehensive terms that are intended to include any sort of activity that brings in gain based on chance. None of the specific games are listed by name, although some are specifically mentioned in section 3.

The definition of "something of value" in section 1 (11) includes money, property, tokens and free plays. (See further discussions, infra).

The definition of "gambling" exempts stock transactions and insurance from the coverage of the Article inasmuch as the activities are subject to close regulation under special statutory laws.

Not all gambling will be illegal under the proposed draft; the legislature can authorize some forms of gambling as long as they do not constitute a lottery prohibited by the Oregon Constitution. Consequently, the term "unlawful gambling" is used, with "unlawful" being defined in section 1 (12) as not specifically authorized by law.

"Bookmaking" is defined in section 1 (1) as taking bets as a business, rather than casually, upon the outcome of future contingent events. The definition of "lottery" in section 1 (5)

corresponds to the familiar "prize, chance, consideration" test used by the Oregon court in a number of cases.

The definitions of "mutual" and "numbers game" are additional refinements of the basic lottery definition.

A small volume bookmaker only "promotes gambling" and therefore only violates section 2, promoting gambling in the second degree. But, if he takes more than five bets for more than \$500 in any one day, he commits the first degree crime under section 3.

Similarly, the sections distinguish between the numbers runner who keeps his bets small and the professional "bagman".

B. Derivation

Sections 1, 2 and 3 are from Michigan Revised Criminal Code sections 6101 - 6106, and New York Revised Penal Law sections 225.00 - 225.10.

C. Relationship to Existing Law

ORS chapter 167 contains 17 separate statutes dealing with lotteries or other forms of gambling. The crimes are misdemeanors, except for ORS 167.405, an indictable misdemeanor, and ORS 167.420, a felony.

ORS 167.405 - Setting up or promoting lotteries.

ORS 167.410 - Selling lottery tickets.

ORS 167.415 - Advertising lottery tickets.

ORS 167.420 - False or fictitious lottery.

ORS 167.425 - Proof necessary to overcome presumption of falsity.

ORS 167.430 - Forfeiture of prizes.

ORS 167.505 - Conducting or playing forbidden games.

ORS 167.510 - Permitting gambling on premises.

ORS 167.515 - Duty of officers to enforce gambling laws.

ORS 167.520 - Self-incrimination by witnesses.

ORS 167.525 - Witness failing to appear at trial.

ORS 167.530 - Recovery of gambling fines.

ORS 167.535 - Operating or using a slot machine.

ORS 167.540 - Seizure and destruction of slot machines.

ORS 167.545 - Possession of slot machine as evidence of operating it.

ORS 167.550 - Disposal of fines and jurisdiction of courts for offenses under ORS 167.535.

ORS 167.555 - Possessing or operating games of chance; duty of officers.

Oregon Constitution, article XV, section 4, provides:

Lotteries and the sale of lottery tickets, for any purpose whatever, are prohibited, and the legislative assembly shall prevent the same by penal law.

Other statutes dealing with gambling:

ORS 30.740 - "All persons losing money or anything of value at or on any game described in ORS 167.505 shall have a cause of action to recover from the dealer or player winning the same, or proprietor for whose benefit such game was played or dealt, or such money or thing of value won, twice the amount of the money or double the value of the thing so lost."

ORS 91.410 - "(1) No person shall let or rent any house, room, shop or other building, or any boat, booth, garden or other place, knowing or having reason to believe it will be used for gambling purposes.

"(2) All contracts for the rent of a room, building or place in violation of subsection (1) of this section are void between the parties.

"(3) Any person letting or renting any room, building, or place mentioned in subsection (1) of this section which is at any time used by the lessee or occupant thereof, or any other person with his knowledge or consent, for gambling purposes, upon discovery thereof, may avoid and terminate such lease or contract of occupancy, and recover immediate possession of such building or other place by an action at law for that purpose to be brought before any justice of the peace of the county in which the use is permitted."

ORS 91.420 - "Violation of subsection (1) of ORS 91.410 results in a forfeiture of twice the amount of the rent of such building or other place for six months to be recovered by action at law instituted by the district attorney in the name of the state."

ORS 141.180 - "When any goods or things, the manufacture, sale or use of which is prohibited by the laws of this state, are taken on a search warrant, the magistrate before whom they are brought shall direct the officer to destroy them, which direction the officer shall obey and make return thereof on the warrant."

ORS 462.080 - "(2) Any person who has been convicted of or who attempts or conspires to commit pool selling, bookmaking, circulating handbooks or wagering by other than the mutual method whether within or without the state hereby is deemed to be an undesirable person detrimental to the best interest of racing." (Chapter 356, Oregon Laws 1969).

ORS 462.140 - "No person shall conduct or commit, attempt or conspire to conduct or commit pool selling, bookmaking, or circulate handbooks, or bet or wager on any licensed race meet, other than by the mutual method." (Chapter 356, Oregon Laws 1969).

ORS 462.990 - "(1) Except as hereinafter provided in this section, violation of any provision of this chapter is a misdemeanor.

"(2) Any person violating the provisions of ORS 462.420, 462.430, 462.450, 462.460 or subsection (2) of section 4 of this 1969 Act shall, upon conviction, be guilty of a felony and punished by imprisonment in the Oregon State Penitentiary for not more than two years or by a fine of not more than \$5,000, or by both." (Chapter 356, Oregon Laws 1969).

ORS 465.010 - Any person who maintains or assists in maintaining a place used for gambling or lottery is guilty of maintaining a common nuisance.

ORS 465.020 - Commencement of proceedings to enjoin nuisance.

ORS 465.030 - Application for temporary injunction; ex parte restraining order.

ORS 465.040 - Service or order; inventory; contempt, supplementary orders; bond.

ORS 465.050 - Final decree; duration of injunction; bond; suit on breach of bond.

ORS 465.060 - Owner's appearance and plea against injunction.

ORS 465.070 - Evidence of reputation admissible.

ORS 465.090 - "All notes, bills, bonds, mortgages or other securities or other conveyances, the consideration for which shall be money or other thing of value, won by playing at any games listed in ORS 167.505 shall be void and of no effect as between the parties to the same and all other persons, except holders in good faith, without notice of the illegality of such contract or conveyance."

ORS 498.028 - Prizes at fishing competitions limited; exception.

ORS 260.310 - Bets and wagers designed to influence election result.

"(3) Violators of this section shall be guilty of corrupt practice."

Oregon cases:

State v. Gitt Lee, 6 Or 425 (1877), in construing the statute (now ORS 167.505) the court stated:

"....It is not necessary in an indictment for a violation of this statute to state the name of the game or the name of the device by which it is played. [But] the indictment should describe the device with which the game was played, not necessarily by its name, but by its adoption and use, and it should appear therefrom that a 'tangible device' was used, and that it was adapted, devised and used for the purpose of carrying on or playing a 'banking or other game for money, etc.', or if it was not devised originally for that purpose that it was so adapted and used...."

Ex parte Kameta, 36 Or 251, 60 P 394 (1900):

"[Gaming] is generally defined as 'an agreement between two or more persons to risk money or on contest or chance of any kind, where one must be loser and the other gainer'; and a lottery is defined as a scheme for the 'distribution of prizes

by chance', or 'a sort of gaming contract, by which, for a valuable consideration, one may, by favor of the lot, obtain a prize of a value superior to the amount or value of that which he risks'."

Ah Poo v. Stevenson, 83 Or 340, 163 P 822 (1917):

"....A 'gambling implement' and a 'gambling device' are synonymous terms. A 'gambling device' is defined as an 'invention often used to determine the question as to who wins and who loses, that risk their money on a contest or chance of any kind; anything which is used as a means of playing for money or other thing of value, so that the result depends more largely on chance than skill; a gambling device'."

National Thrift Assn. v. Crews, 116 Or 352, 241 P 72 (1925):

"....A lottery is any scheme whereby one, on paying money or other valuable thing to another becomes entitled to receive from him such a return in value, or nothing, as some formula of chance may determine. The essential elements of a lottery are (1) consideration, (2) prize, and (3) chance."

Accord, State v. Schwemler, 154 Or 533, 60 P2d 938 (1936); McFadden v. Bain, 162 Or 250, 91 P2d 292 (1939); Cudd v. Aschenbrenner, 233 Or 272, 377 P2d 150 (1963).

State v. Coats, 158 Or 122, 72 P2d 1102 (1938), in affirming Oregon's adherence to the "dominant chance" doctrine as distinguished from the "pure chance" doctrine, held:

"....[T]hree things are necessary to constitute a lottery, viz., prize, chance and consideration... if any substantial degree of skill or judgment is involved, it is not a lottery. Of course, all forms of gambling involve prize, chance and consideration, but not all forms of gambling are lotteries. A lottery is a scheme or plan, as distinguished from a game where some substantial element of skill or judgment is involved. According to the weight of authority the operation of slot machines and similar gambling devices, whereby small amounts are hazarded on the chance of winning larger sums, constitutes lotteries."

McKee v. Foster, 219 Or 322, 347 P2d 585 (1959), held that "lottery" contemplates a prize tangible in nature and having a value in the market place, but does not include the "free-play" feature of a replay pinball machine.

"...chance, as distinguished from skill, must be the predominant factor in a lottery." Mult. Co. Fair Assn. v. Langley, 140 Or 172, 13 P2d 354 (1932).

Langley goes on to say that the maintenance of a pool room in which persons congregate to bet upon horse races is a "gaming house" punishable as a nuisance at common law, therefore prohibited by §14-722, Oregon Code 1930.

The case relies on State v. Nease, 46 Or 433 and State v. Ayers, 49 Or 61, both of which rejected the contention that the outcome of a horse race is dependent upon mere chance, but held that maintaining a place to which persons can resort for the purpose of wagering money upon the outcome of such races constitutes a common law nuisance, but not a lottery.

An interesting discussion of the background of the constitutional prohibition appears in the Langley case at 184:

"At the time when the lottery provision of our constitution was proposed for adoption at the Constitutional Convention various amendments were proposed to it which sought to prohibit, in addition to lotteries, 'all games at billiards, ten pins and cards,' and 'all species of gambling.' These and other proposals were rejected while the one prohibiting lotteries was retained. (Citing Carey's History of the Oregon Constitution.) Lotteries at that time were institutions of great magnitude and the evil consequences were far-reaching. The Federal Supreme Court described their nature as of 'wide-spread pestilence.'"

See, also City of Portland v. Duntley, 185 Or 365, 203 P2d 640 (1949).

In State of Oregon v. Hennessey, 195 Or 355, 245 P2d 875 (1952), discussing the privilege immunity granted under ORS 167.520 the court held:

"....Under statutes such as [ORS 167.520]...we are of the opinion it is unnecessary for a person to claim the privilege against self-incrimination

in order to be protected. The statute is self-executing, and, when a person is subpoenaed by the state to testify in a gambling case, and testifies, he cannot be thereafter prosecuted for any offense connected with the transaction, as to which he is forced to provide evidence...."

State v. Light, 17 Or 358, 21 P 132 (1889), held that the dealer in a game of poker is an accomplice so that his testimony has to be corroborated to sustain a defendant's conviction.

Two cases discuss the double recovery provision of ORS 30.740:

O'Keefe v. Weber, 14 Or 55, 12 P 74 (1886), stated that an action based on this statute is civil in nature. It is intended to be remedial and not penal. Mozorosky v. Hurlburt, 106 Or 274, 198 P 556, 211 P 893 (1923), held that the willingness of a gambler to play does not preclude recovery of losses.

In Matlock v. Scheurman, 51 Or 49, 93 P 823 (1908), the court considered ORS 465.090, stating:

"The indorsee of a check for a gambling debt has the burden of showing that he is a holder in good faith."

The Oregon Attorney General has rendered a number of opinions regarding the gambling and lottery statutes, including:

31 Op Atty Gen 49 (1962) - A "one-armed" bandit type slot machine described in ORS 167.535 (1) may be seized and destroyed pursuant to court order without having to prove that such machine was actually used for gambling purposes.

30 Op Atty Gen 342 (1961) - Sale of merchandise by use of a punchboard is an illegal lottery.

30 Op Atty Gen 415 (1961) - A scheme of awarding discounts in varying amounts based on an individually drawn card is a lottery.

32 Op Atty Gen 255 (1965) - A scheme calling for guessing the number of pennies in a jar constitutes a lottery under ORS 167.405.

Section 4. Possession of gambling records in the second degree. A person commits the crime of possession of gambling records in the second degree if with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:

(1) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or

(2) Of a kind commonly used in the operation, promotion or playing of a lottery or mutual scheme or enterprise.

COMMENTARY - POSSESSION OF GAMBLING
RECORDS IN THE SECOND DEGREE

See commentary under section 6 infra.

Section 5. Possession of gambling records in the first degree. A person commits the crime of possession of gambling records in the first degree if with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:

(1) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting or representing more than five bets totaling more than \$500; or

(2) Of a kind commonly used in the operation, promotion or playing of a lottery or mutual scheme or enterprise, and constituting, reflecting or representing more than 500 plays or chances therein.

COMMENTARY - POSSESSION OF GAMBLING
RECORDS IN THE FIRST DEGREE

See commentary under section 6 infra.

Section 6. Possession of gambling records; defenses.

(1) In any prosecution under section 4 or subsection (1) of section 5 of this Article it is a defense if the writing, paper, instrument or article possessed by the defendant constituted, reflected or represented plays, bets or chances of the defendant himself. ~~in a number not exceeding 10.~~ 2/9/70

(2) In any prosecution under section 4 or 5 of this Article it is a defense if the writing, paper, instrument or article possessed by the defendant is neither used nor intended to be used in the operation or promotion of a bookmaking scheme or enterprise, or in the operation, promotion or playing of a lottery or mutual scheme or enterprise.

COMMENTARY - POSSESSION OF GAMBLING RECORDS IN THE SECOND DEGREE;
POSSESSION OF GAMBLING RECORDS IN THE FIRST DEGREE;
POSSESSION OF GAMBLING RECORDS; DEFENSES

A. Summary

Sections 4 and 5 penalize the possession of papers and records necessary to the operation of lotteries, bookmaking and numbers rackets.

Section 4 is the basic offense, and the item possessed must relate to a lottery or bookmaking activity in that it is commonly used for the purpose. The defendant must be shown to have knowledge of the contents of the item.

Section 5 employs the same rationale as section 3 in penalizing more heavily the large volume professional gambler.

Section 6 permits a defense to a prosecution under section 4 or subsection (1) of section 5 if the defendant possesses no more than 10 slips that represent his own bets, or if the items possessed were not intended to be used for criminal purposes.

B. Derivation

Sections 4, 5 and 6 are taken from Michigan Revised Criminal Code sections 6115, 6116 and 6120.

C. Relationship to Existing Law

ORS 167.410 prohibits the sale or possession of lottery tickets and provides a misdemeanor penalty. No distinction is drawn between the small scale and large scale operator, although the authorized sentence ranges from three months to a year, or a fine not less than \$50 nor more than \$500.

Section 7. Possession of a gambling device. A person commits the crime of possession of a gambling device if, with knowledge of the character thereof, he manufactures, sells, transports, places or possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody or use of:

- (1) A slot machine; or
- (2) Any other gambling device, believing that the device is to be used in the advancement of unlawful gambling activity.

COMMENTARY - POSSESSION OF A GAMBLING DEVICE

A. Summary

This section penalizes trafficking in slot machines or other gambling devices.

B. Derivation

The section is adapted from Michigan Revised Criminal Code section 6125.

C. Relationship to Existing Law

Existing statutes:

167.535 Operating or using a slot machine. Any person, firm or corporation who possesses, sets up, conducts, maintains, operates, or is in control of the operation, either as owner, proprietor, lessee, employe or agent, or plays or uses any nickel-in-the-slot machine or other device of like character, which operates as described in this section and which may or may not indicate before the deposit of a coin what it will vend or dispense, shall be punished upon conviction by a fine of not more than \$100:

(1) Upon deposit therein of a coin, slug, token or other thing representative of value, the machine may vend or dispense any merchandise, money, check, token, slug, credit or other representative of value or evidence of winning in varying quantities or values, depending upon chance.

(2) In exchange for a deposit therein, there may be received at occasional or uncertain intervals or in varying quantities or value, from time to time, depending upon chance, any money, check, slug, token, credit or other representative of value or evidence of winning which:

(a) May be exchanged or redeemed for anything of value.

(b) May be deposited in such machine or device for further operation or play with the chance of winning or receiving additional merchandise, money, check, token, slug, credit or other representative of value or evidence of winning.

[Amended by 1959 c.530 §5]

167.545 Possession of slot machine as evidence of operating it. In all prosecutions under ORS 167.535 for conducting, maintaining or operating any such machine or device, proof of the possession of the machine or device, or of permitting it to remain in any public place owned or controlled by the person so prosecuted, convenient for use, is prima facie evidence against such person of violation of ORS 167.535.

167.555 Possessing or operating games of chance; duty of officers. (1) Regardless of whether their operation requires an element of skill on the part of a player, all games of chance such as slot machines, dart games, pin ball games, or similar devices or games, when operated or played for a profit, either in cash, merchandise or other article of value, hereby are declared unlawful, and their licensing is prohibited.

(2) Any person who possesses, displays, operates or plays any such game or device is punishable upon conviction by a fine of not more than \$250 or by imprisonment in the county jail for not more than 90 days.

(3) All sheriffs, state or municipal police officers, constables and city or town marshals shall confiscate and, without delay, destroy all games possessed, displayed, operated or played in violation of subsection (1) of this section.

See commentary following sections 2 and 3, supra for a discussion of Oregon cases.

Section 8. Gambling offenses; prima facie proof. In any prosecution under this Article in which it is necessary to prove the occurrence of a sporting event, the following shall be admissible in evidence and shall be prima facie evidence of the occurrence of the event:

(1) A published report of its occurrence in a daily newspaper, magazine or other periodically printed publication of general circulation; or

(2) Evidence that a description of some aspect of the event was written, printed or otherwise noted at the place in which a violation of this Article is alleged to have been committed.

COMMENTARY - GAMBLING OFFENSES; PRIMA FACIE PROOF

This section provides two alternative methods of proving the occurrence of a sporting event. The section is derived from Michigan Revised Criminal Code section 6130. Oregon now has no comparable statute.

Section 9. Forfeiture of prizes. (1) All sums of money and every other valuable thing drawn as a prize in any lottery or pretended lottery, by any person within this state, are forfeited to the use of the state, and may be sued for and recovered by a civil action.

(2) Nothing contained in ORS 465.010 to 465.070 shall interfere with the duty of officers to take possession of property as provided by subsection (1) of this section.

COMMENTARY - FORFEITURE OF PRIZES

This section continues existing law. Subsection (2) refers to abatement proceedings authorized by ORS chapter 465.

~~Section 10. Recovery of gambling fines. All fines and forfeitures under this Article or ORS 91.420 shall be recovered by an actor at law brought in the name of the State of Oregon. All fines and forfeitures shall be paid into the county treasury, and constitute a part of the school fund.~~

~~COMMENTARY - RECOVERY OF GAMBLING FINES~~

~~This section restates ORS 167.530. State v. Carr, 6 Or 133 (1876), held that a proceeding by indictment was an action at law within the meaning of a former, similar section.~~

~~ORS 91.420 provides that "letting or renting" a place with knowledge that it will be used for gambling purposes results in a forfeiture of twice the amount of the rent for six months.~~

Section ¹⁰ ~~11~~. Seizure and destruction of slot machines.

(1) A slot machine as defined in subsection (10) of section 1 of this Article is a public nuisance. The sheriff shall summarily seize any such gambling device or operating part thereof, found in the possession of any person violating the provisions of this Article, and hold it subject to the order of the court having jurisdiction.

(2) Whenever it appears to the court that ~~the gambling device~~ has been possessed in violation of this Article, the court shall adjudge forfeiture thereof and shall order the sheriff to destroy the device and to deliver any coins taken therefrom to the county treasurer, who shall deposit them to the general fund of the county.

2/9/70

(3) The seizure of the gambling device thereof constitutes sufficient notice to the owner or person in possession thereof. The sheriff shall make return to the court showing that he has complied with the order.

COMMENTARY - SEIZURE AND DESTRUCTION OF SLOT MACHINES

This section is a slightly modified version of ORS 167.540.

The case of Stangier v. Goad, 163 Or 314, 97 P2d 191 (1939), held that a sheriff could not be enjoined from seizing a slot machine since the judicial determination provided for in the statute constituted an adequate remedy at law.

~~[Section 13.] Failing to enforce gambling laws. (1) A district attorney or peace officer commits the crime of failing to enforce gambling laws if he knowingly refuses or neglects to inform against or diligently prosecute any person he has reasonable cause to believe is committing a violation of this Article.~~

~~(2) The court shall declare the officer or appointment held by any person convicted of violation of this section vacant for the rest of his term.~~

~~COMMENTARY - FAILING TO ENFORCE GAMBLING LAWS~~

~~This is an optional section to continue the provisions of ORS 167.515.~~

~~[Section 12.] Disposal of fines and jurisdiction of courts.~~

~~(1) One-half of any fine imposed in any conviction under this Article shall be paid to the complainant in the case, and the other half shall be paid into the treasury of the county wherein the conviction was secured for the benefit of the school fund.~~

~~(2) Justice courts have concurrent jurisdiction with circuit courts in all proceedings under section 7 or 10 of this Article.~~

~~COMMENTARY - DISPOSAL OF FINES AND JURISDICTION OF COURTS~~

~~This is an optional section to continue the provisions of ORS 167.550.~~

TEXT OF REVISIONS OF OTHER STATES

TEXT OF NEW YORK REVISED PENAL LAW

§ 225.00 Gambling offenses; definitions of terms

The following definitions are applicable to this article:

1. "Contest of chance" means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

2. "Gambling." A person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.

3. "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in "bookmaking", as defined in this section is not a "player."

4. "Advance gambling activity." A person "advances gambling activity" when, acting other than as a player, he engages in conduct which materially aids any form of gambling activity. Such conduct includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of

TEXT OF NEW YORK REVISED PENAL LAW (CONT'D.)

its operation. One advances gambling activity when, having substantial proprietary or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits such to occur or continue or makes no effort to prevent its occurrence or continuation.

5. "Profit from gambling activity." A person "profits from gambling activity" when, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

6. "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

7. "Gambling device" means any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether such activity consists of gambling between persons or gambling by a person involving the playing of a machine. Notwithstanding the foregoing, lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices.

8. "Slot machine" means a gambling device which, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of some physical act by the player, in such manner that, depending upon elements of chance, it may eject something of value. A device so constructed, or readily adaptable or convertible to such use, is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because, apart from its use or adaptability as such, it may also sell or deliver something of value on a basis other than chance. A machine which sells items of merchandise which are of equivalent value, is not a slot machine merely because such items differ from each other in composition, size, shape or color.

9. "Bookmaking" means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.

10. "Lottery" means an unlawful gambling scheme in which (a) the players pay or agree to pay something of value for

TEXT OF NEW YORK REVISED PENAL LAW (CONT'D.)

chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which chances are to be designated the winning ones; and (b) the winning chances are to be determined by a drawing or by some other method based upon the element of chance; and (c) the holders of the winning chances are to receive something of value.

11. "Policy" or "the numbers game" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

12. "Unlawful" means not specifically authorized by law. L.1965, c. 1030; amended L.1967, c. 791, § 31, eff. Sept. 1, 1967.

§ 225.05 Promoting gambling in the second degree

A person is guilty of promoting gambling in the second degree when he knowingly advances or profits from unlawful gambling activity.

Promoting gambling in the second degree is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 225.10 Promoting gambling in the first degree

A person is guilty of promoting gambling in the first degree when he knowingly advances or profits from unlawful gambling activity by:

1. Engaging in bookmaking to the extent that he receives or accepts in any one day more than five bets totaling more than five thousand dollars; or

2. Receiving, in connection with a lottery or policy scheme or enterprise, (a) money or written records from a person other than a player whose chances or plays are represented by such money or records, or (b) more than five hundred dollars in any one day of money played in such scheme or enterprise.

Promoting gambling in the first degree is a class E felony. L.1965, c. 1030, eff. Sept. 1, 1967.

TEXT OF NEW YORK REVISED PENAL LAW (CONT'D.)

§ 225.15 Possession of gambling records in the second degree

A person is guilty of possession of gambling records in the second degree when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:

1. Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or
2. Of a kind commonly used in the operation, promotion or playing of a lottery or policy scheme or enterprise; except that in any prosecution under this subdivision, it is a defense that the writing, paper, instrument or article possessed by the defendant constituted, reflected or represented plays, bets or chances of the defendant himself in a number not exceeding ten.

Possession of gambling records in the second degree is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 225.20 Possession of gambling records in the first degree

A person is guilty of possession of gambling records in the first degree when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:

1. Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting or representing more than five bets totaling more than five thousand dollars; or
2. Of a kind commonly used in the operation, promotion or playing of a lottery or policy scheme or enterprise, and constituting, reflecting or representing more than five hundred plays or chances therein.

Possession of gambling records in the first degree is a class E felony. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 225.25 Possession of gambling records; defense

In any prosecution for possession of gambling records, it is a defense that the writing, paper, instrument or article possessed by the defendant was neither used nor intended to be used in the operation or promotion of a bookmaking scheme or enterprise, or in the operation, promotion or playing of a lottery or policy scheme or enterprise. L.1965, c. 1030, eff. Sept. 1, 1967.

TEXT OF NEW YORK REVISED PENAL LAW (CONT'D.)

§ 225.30 Possession of a gambling device

A person is guilty of possession of a gambling device when, with knowledge of the character thereof, he manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of:

1. A slot machine; or
2. Any other gambling device, believing that the same is to be used in the advancement of unlawful gambling activity.

Possession of a gambling device is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 225.35 Gambling offenses; presumptions

1. Proof of possession of any gambling device or of any gambling record specified in sections 225.15 and 225.20, is presumptive evidence of possession thereof with knowledge of its character or contents.

2. In any prosecution under this article in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine or other periodically printed publication of general circulation shall be admissible in evidence and shall constitute presumptive proof of the occurrence of such event. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 225.40 Lottery offenses; no defense

Any offense defined in this article which consists of the commission of acts relating to a lottery is no less criminal because the lottery itself is drawn or conducted without the state and is not violative of the laws of the jurisdiction in which it was so drawn or conducted. L.1965, c. 1030, eff. Sept. 1, 1967.

#

TEXT OF MICHIGAN REVISED CRIMINAL CODE

[Definitions]

Sec. 6101. The following definitions apply to this chapter:

(a) "Advance gambling activity." A person "advances gambling activity" if, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation.

(b) "Bookmaking" means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.

(c) "Contest of chance" means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

(d) "Gambling." A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance.

(e) "Gambling device" means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices within this definition.

TEXT OF MICHIGAN REVISED CRIMINAL CODE (CONT'D.)

(f) "Lottery" or "policy" means an unlawful gambling scheme in which (i) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and (ii) the winning chances are to be determined by a drawing or by some other method; and (iii) the holders of the winning chances are to receive something of value.

(g) "Mutuel" or "the numbers game" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

(h) "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in "bookmaking" as defined in paragraph (b) is not a "player." The burden of injecting the issue that he is a player is on the defendant, but this does not shift the burden of proof.

(i) "Profit from gambling activity." A person "profits from gambling activity" if, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

(j) "Slot machine" means a gambling device that as a result of the insertion of a coin or other object operates, either completely automatically or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value. A device so constructed or readily adaptable or convertible to such use is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because apart from its use or adaptability as such it may also sell or deliver something of value on a basis other than chance.

(k) "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

(l) "Unlawful" means not specifically authorized by law.

TEXT OF MICHIGAN REVISED CRIMINAL CODE (CONT'D.)

[Promoting Gambling in the First Degree]

Sec. 6105. (1) A person commits the crime of promoting gambling in the first degree if he knowingly advances or profits from unlawful gambling activity by:

(a) Engaging in bookmaking to the extent that he receives or accepts in any one day more than 5 bets totaling more than 500 dollars; or

(b) Receiving in connection with a lottery or mutual scheme or enterprise (i) money or written records from a person other than a player whose chances or plays are represented by such money or records, or (ii) more than 500 dollars in any one day of money played in the scheme or enterprise.

(2) Promoting gambling in the first degree is a Class C felony.

[Promoting Gambling in the Second Degree]

Sec. 6106. (1) A person commits the crime of promoting gambling in the second degree if he knowingly advances or profits from unlawful gambling activity.

(2) Promoting gambling in the second degree is a Class A misdemeanor.

[Conspiracy to Promote Gambling]

Sec. 6110. (1) A person commits the crime of conspiracy to promote gambling if he conspires to advance or profit from gambling activity.

(2) "Conspire" means to engage in activity constituting a criminal conspiracy as defined in section 1015.

(3) Conspiracy to promote gambling is a Class C felony.

TEXT OF MICHIGAN REVISED CRIMINAL CODE (CONT'D.)

[Possession of Gambling Records in the First Degree]

Sec. 6115. (1) A person commits the crime of possession of gambling records in the first degree if with knowledge of the contents thereof, he possesses any writing, paper, instrument or article:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting or representing more than 5 bets totaling more than 500 dollars;
or

(b) Of a kind commonly used in the operation, promotion or playing of a lottery or mutuel scheme or enterprise, and constituting, reflecting or representing more than 500 plays or chances therein.

(2) A person does not commit a crime under subsection (1) (a) if the writing, paper, instrument or article possessed by the defendant constituted, reflected or represented bets of the defendant himself in a number not exceeding 10. The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.

(3) Possession of gambling records in the first degree is a Class C felony.

[Possession of Gambling Records: Defense]

Sec. 6120. A person does not commit the crime of possession of gambling records in either degree if the writing, paper, instrument, or article possessed by the defendant is neither used nor intended to be used in the operation or promotion of a bookmaking scheme or enterprise, or in the operation, promotion or playing of a lottery or mutuel scheme or enterprise. The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.

[Possession of a Gambling Device]

Sec. 6125. (1) A person commits the crime of possession of a gambling device if with knowledge of the character thereof he manufactures, sells, transports, places or possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of:

(a) A slot machine; or

(b) Any other gambling device, believing that it is to be used in the advancement of unlawful gambling activity.

(2) Possession of a gambling device is a Class A misdemeanor.

TEXT OF MICHIGAN REVISED CRIMINAL CODE (CONT'D.)

[Gambling Offenses; Prima Facie Proof]

Sec. 6130. (1) Proof of possession of any gambling device or of any gambling record specified in sections 6115 and 6116 is prima facie evidence of possession thereof with knowledge of its character or contents.

(2) In any prosecution under this chapter in which it is necessary to prove the occurrence of a sporting event, (a) a published report of its occurrence in any daily newspaper, magazine or other periodically printed publication of general circulation, or (b) evidence that a description of some aspect of the event was written, printed or otherwise noted at the place in which a violation of this chapter is alleged to have been committed, shall be admissible in evidence and shall constitute prima facie proof of the occurrence of the event.

[Lottery Offenses: No Defense]

Sec. 6135. It is no defense under any section of this chapter relating to a lottery that the lottery itself is drawn or conducted outside Michigan and is not in violation of the laws of the jurisdiction in which it is drawn or conducted.

[Forfeiture of Gambling Devices and Gambling Proceeds]

Sec. 6140. Any gambling device or gambling record possessed or used in violation of this chapter is forfeited to the state, and shall by court order be turned over to the department of state police for whatever disposition its director may order. Money used as bets or stakes in gambling activity in violation of this chapter shall by court order be transmitted to the general fund of the state.

#