

See: Minutes of Subcommittee No. 3
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CRIMINAL LAW REVISION COMMISSION
311 Capitol Building
Salem, Oregon

ARTICLE 31. OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS

Preliminary Draft No. 2; January 1970

Reporter: Roger D. Wallingford

Subcommittee No. 3

ARTICLE 31 . OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS

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Section 1. Offenses involving narcotics and dangerous drugs; definitions. As used in this Article, unless the context requires otherwise:

(1) The definitions in subsections (2), (3), (4), (5), (6), (7), (11), (12), (13), (18), (19), (20) and (21) of ORS 474.010 apply to this Article.

(2) "Dangerous drugs" means:

(a) Amobarbital, secobarbital, pentobarbital, phenobarbital, acid diethylbarbituric, amphetamine, dextroamphetamine, mephentermine, methamphetamine, phenmetrazine, methylphenidate hydrochloride, glutethimide, methyprylon, meprobamate, chlordiazepoxide HCL, diazepam, oxazepam, chloral hydrate, paraldehyde, ethchlorvynol and ethinamate, any salts, derivatives or compounds of the foregoing substances, any preparations or compound containing any of the foregoing substances or their salts, derivatives or compounds or any registered trademarked or copyrighted preparation or compound registered in the United States Patent Office containing any of the foregoing substances; and

(b) All products containing the substances lysergic acid diethylamide, psilocybin, dimethyltryptamine, methyltryptamine, peyote and mescaline; and

(c) Any other drug designated by the Drug Advisory Council as a dangerous drug and included in published regulations of the State Board of Pharmacy under ORS 689.620.

(3) "Peace officer" means a sheriff, constable, marshal, municipal policeman or a member of the Oregon State Police.

(4) "Sells" means to barter, exchange, give or dispose of to another, or to offer or agree to do the same, and includes each such transaction made by any person, whether as principal, proprietor, agent, servant or employe.

(5) "Unlawfully" means in violation of any provision of ORS chapter 474 or 475, or any other Oregon statute.

COMMENTARY - OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS; DEFINITIONS

A. Summary

Thirteen definitions found in ORS 474.010 are incorporated by reference in subsection (1) and made applicable to this Article. They include the following terms: (2) "Physician"; (3) "Dentist"; (4) "Veterinarian"; (5) "Manufacturer"; (6) "Wholesaler"; (7) "Apothecary"; (11) "Coca leaves"; (12) "Opium"; (13) "Marihuana"; (18) "Narcotic drugs"; (19) "Federal narcotic laws"; (20) "Official written order"; and (21) "Dispense".

"Dangerous drugs" are defined in subsection (2) by reference to specific drugs presently designated by the Drug Advisory Council as dangerous drugs. The drugs in paragraph (a) have been found to have a potential for abuse because of either their stimulant or depressant effect on the central nervous system. The drugs in paragraph (b) have been found to have a potential for abuse because of their hallucinogenic effect.

Paragraph (c) of subsection (2) incorporates the dangerous drug list promulgated by the Drug Advisory Council under authority of ORS 689.620. The current list (See Board of Pharmacy Chapter 855, Division 8, section 80-005) contains those drugs designated in paragraphs (a) and (b). Paragraph (c) is intended to include within the statutory definition of dangerous drugs any drug that may in the future be designated as dangerous by the Drug Advisory Council.

The object of defining specific drugs as "dangerous" is to avoid the problem raised by periodic challenges to the legal validity of the administrative procedure employed by the Drug Advisory Council in designating a drug as dangerous. While the problem may continue in regard to drugs designated as dangerous in the future, coverage for the 28 listed drugs can be firmly established.

Another potential problem to consider is the effect of a ruling by the Drug Advisory Council removing a drug presently designated as dangerous from the dangerous drug list. The definition of dangerous drugs in section 1 would then be subject to amendment by the legislature to conform to the Drug Advisory Council's determination. In the interim, it may reasonably be expected that the discretion of the district attorney would preclude prosecutions for dealing in the exempted drug.

"Sells" is given a broad definition in subsection (4), covering both gratuitous and nongratuitous transactions, as well as offers or agreements to engage in the same. The language regarding the status of the person who "sells" is included to avoid a conflict with the definition of "sale" in ORS 474.010 (10).

"Unlawfully" is defined to mean in violation of ORS chapter 474 or 475, or any other Oregon statute governing narcotic or dangerous drug transactions. These statutes establish the procedures and conditions whereby narcotic and dangerous drugs may be legally manufactured, transported, sold and possessed.

B. Derivation

Paragraphs (a) and (b) of subsection (2) are taken from Board of Pharmacy Chapter 855, Division 8, section 80-005.

C. Relationship to Existing Law

The definitions in section 1 represent a restatement of existing law.

The major structural change is reflected by the inclusion of specifically named drugs in the definition of dangerous drugs. ORS 475.010 (1) presently defines "dangerous drug" as a drug designated by the Drug Advisory Council as a dangerous drug and included in published regulations of the State Board of Pharmacy under ORS 689.620. It is recommended that that definition be amended to conform to the definition of dangerous drug proposed in this Article.

Section 2. Criminal dealing in drugs. A person commits the crime of criminal dealing in drugs if he knowingly and unlawfully manufactures, cultivates, transports, possesses, sells, prescribes, administers, dispenses or compounds any narcotic or dangerous drug.

COMMENTARY - CRIMINAL DEALING IN DRUGS

A. Summary

Section 2, the most significant penal statute in the proposed Article on narcotic and dangerous drugs, penalizes a broad range of illicit drug activity, including its manufacture, distribution, sale, possession and administration.

The mens rea requirement is that the conduct be "knowing" and "unlawful." "Unlawfully" means that the drug transaction is in violation of those Oregon statutes outside the criminal code that govern lawful drug activity, e.g., ORS chapters 474 and 475.

All the verbs are used in their ordinary dictionary sense, except "sells", which is defined in section 1, and "possesses", which is defined under the general definitions as meaning "to have physical possession or otherwise to exercise dominion or control over property."

B. Derivation

ORS 474.020 prohibits unlawful dealing in narcotic drugs.

ORS 474.990 (1) and (2) provide a penalty for violation of ORS 474.020 of a \$5,000 fine or 10 years imprisonment, or both, except in the case of the drug, marijuana, which may be punished either by 10 years and a \$5,000 fine, or 1 year and a \$5,000 fine.

ORS 475.100 states that "no person shall sell, give away, barter, distribute, buy, receive or possess a dangerous drug."

ORS 475.990 (2) provides a penalty for violation of ORS 475.100 of either a \$5,000 fine and 1 year imprisonment, or a \$5,000 fine and 10 years imprisonment.

An examination of the penalty provisions shows that:

(1) Unlawful dealing in any defined narcotic drug other than marihuana is treated as a felony.

(2) Unlawful dealing in the drug marihuana is treated as an indictable misdemeanor.

(3) Unlawful dealing in dangerous drugs is treated as an indictable misdemeanor.

Adoption of section 2 as proposed would impose uniform penalty criteria for criminal dealing in both narcotic and dangerous drugs. This would be consistent with existing law, if alternative sentencing provisions are provided granting the court authority to treat certain offenses as indictable misdemeanors, e.g., dealing in marihuana and dangerous drugs.

Section 3. Tampering with drug records. A person commits the crime of tampering with drug records if he knowingly:

(1) Alters, defaces or removes a narcotic or dangerous drug label affixed by a manufacturer, wholesaler or apothecary, except by an apothecary for the purpose of filling prescriptions; or

(2) Affixes a false or forged label to a package or receptacle containing narcotic or dangerous drugs; or

(3) Makes or utters a false or forged prescription or false or forged official written order for narcotic or dangerous drugs; or

(4) Makes a false statement in any narcotic or dangerous drug prescription, order, report or record required by ORS chapter 474 or 475.

COMMENTARY - TAMPERING WITH DRUG RECORDS

A. Summary

Section 3 combines in a single offense a variety of fraudulent practices involving drug labels, prescriptions, orders and reports. The intent of the section is to support the integrity of the regulatory provisions governing lawful traffic in drugs. In most instances, the section applies both to narcotic and dangerous drugs.

The required mens rea is that the actor's conduct be knowing. The culpability factor of "unlawfully" is not included, since ORS chapters 474 and 475 do not provide any lawful means of engaging in the prohibited conduct.

Subsection (1) prohibits the alteration of a narcotic or dangerous drug label. The apothecary is exempted if his purpose in defacing or removing the label involves filling prescriptions.

Subsection (2) prohibits affixing a false or forged label to a receptacle containing narcotic or dangerous drugs. Subsection (3) prohibits making or uttering false or forged prescriptions or written orders for narcotic or dangerous drugs.

Subsection (4) penalizes making false statements in connection with a narcotic or dangerous drug prescription, order, report or record that is required to be issued or maintained in accordance with ORS chapters 474 and 475.

B. Derivation

The title of the offense, tampering with drug records, is new to Oregon law.

Subsection (1) is derived from ORS 474.100.

Subsection (2) is derived from ORS 474.170 (6).

Subsection (3) is derived from ORS 474.170 (5).

Subsection (4) is derived from ORS 474.170 (3) and 475.100 (3).

C. Relationship to Existing Law

ORS 474.100 (1) and (2), prohibit the alteration, defacement or removal of a narcotic drug label. Subsection (1) of the proposed draft extends this prohibition by including dangerous drugs. The penalty provision is ORS 474.990, which provides a maximum punishment of 10 years imprisonment and a \$5,000 fine.

ORS 474.170 (6) prohibits affixing any false or forged label to a package or receptacle containing narcotic drugs. Section 3 extends this coverage to include dangerous drugs. The penalty provision is ORS 474.990.

ORS 474.170 (5) prohibits the making or uttering of any false or forged prescription or written order. This coverage is also extended to include dangerous drugs. The penalty provision is ORS 474.990.

ORS 474.170 (3) prohibits the making of a false statement in any prescription, order, report or record required by ORS chapter 474. The penalty provision is ORS 474.990. ORS 474.100 (3) prohibits the making of a false statement in any prescription, order, report or record required by ORS chapter 475. The penalty provision is ORS 474.990 (3), which provides a punishment of one year imprisonment or a \$500 fine.

Section 3 expands existing law by including within its prohibition tampering with labels, prescriptions, written orders, reports and records involving dangerous drugs. This is consistent with the legislative intent expressed by the 1969 amendment to ORS 475.990 (2) which, in effect, imposes a uniform penalty provision for dealing in narcotic drugs and dangerous drugs. The narcotic drug marihuana would not ordinarily be within the scope of section 3 since, with the exception of research and testing, it has no recognized medical use.

Section 4. Criminal use of drugs. (1) A person commits the crime of criminal use of drugs if he knowingly uses or is under the influence of a narcotic or dangerous drug, except when administered or dispensed by or under the direction of a person authorized by law to prescribe and administer narcotic drugs and dangerous drugs to human beings.

(2) In any prosecution for violation of subsection (1), it is not necessary to allege or prove what specific drug the defendant used, or was under the influence of, in order to establish a prima facie case. Evidence that the specific drug is not within the definition of narcotic drug in ORS 474.010 or the definition of dangerous drug in subsection (2) of section 1 of this Article is a defense.

COMMENTARY - CRIMINAL USE OF DRUGS

A. Summary

Section 4 prohibits the knowing use of a narcotic or dangerous drug when not administered or dispensed by a person authorized by law. The section penalizes both (1) the use of the drug, and (2) the condition of being under the influence of the drug. To penalize the actual use of the drug, the taking or administration must have occurred within the state. A person may be prosecuted for being under the influence of the drug within the state regardless of where taken or administered. The section does not penalize the mere status of being addicted to a narcotic or dangerous drug, so long as it is not taken or administered in Oregon and the person is not in Oregon under its influence.

B. Derivation

Section 4 is taken from ORS 475.625.

C. Relationship to Existing Law

ORS 475.625 (1) and (2) prohibit the use of narcotic or dangerous drugs unless legally administered or dispensed. Subsection (3) contains the prima facie evidence and defense provisions restated in subsection (2) above. The penalty provision is ORS 475.635 which provides a misdemeanor punishment and authorizes a maximum five year probation period.

Section 5. Criminal drug promotion. A person commits the crime of criminal drug promotion if he knowingly maintains or frequents a place:

(1) Resorted to by drug users for the purpose of unlawfully using narcotic or dangerous drugs; or

(2) Which is used for the unlawful keeping or sale of narcotic or dangerous drugs.

COMMENTARY - CRIMINAL DRUG PROMOTION

A. Summary

Section 5 is intended to discourage the knowing maintenance and frequenting of places characterized by unlawful drug activity. The words "maintain" and "frequent" are to be given their ordinary dictionary meaning.

B. Derivation

Section 5 is derived from ORS 474.130.

C. Relationship to Existing Law

ORS 474.130 (1) declares that any place which is resorted to by narcotic addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same shall be deemed a common nuisance. Subsection (2) prohibits keeping or maintaining such a common nuisance. Subsection (3) prohibits frequenting any place known to be such a common nuisance.

ORS 474.990 (3) provides a misdemeanor penalty for violation of ORS 474.130.

The proposed section extends the scope of existing law by including within its prohibition dangerous drug activity.

Section 6. Obtaining a drug unlawfully. A person commits the crime of obtaining a drug unlawfully if he obtains or procures the administration of a narcotic or dangerous drug by:

- (1) The forgery or alteration of a prescription or any official written order; or
- (2) The concealment of a material fact; or
- (3) The use or giving of a false name or a false address; or
- (4) Falsely representing himself to be a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian or other authorized person; or
- (5) Any other form of fraud, deceit, misrepresentation or subterfuge.

COMMENTARY - OBTAINING A DRUG UNLAWFULLY

A. Summary

Section 6 penalizes obtaining a narcotic or dangerous drug, or its administration, by various forms of fraud and misrepresentation. Subsection (5) is a dragnet provision intended to reach fraudulent means of obtaining drugs not otherwise specifically prohibited.

B. Derivation

The section is taken from ORS 474.170 (1) and (4).

C. Relationship to Existing Law

Section 6 restates the substance of ORS 474.170 (1) and (4). Subsection (2) of that statute states that "information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication." That provision has been deleted as unnecessary because the physician-client privilege under ORS 44.040 (1) (d) is limited to civil proceedings. (See, *State v. Betts*, 235 Or 127, 384 P2d 198 (1963).)

Coverage has been extended to include dangerous drug transactions.

Section 7. Criminal possession of drug; prima facie evidence.

(1) Proof of unlawful manufacture, cultivation, transportation or possession of a narcotic or dangerous drug is prima facie evidence of knowledge of its character.

(2) Proof of possession of a narcotic drug not in the container in which it was originally delivered, sold or dispensed is prima facie evidence that such possession is unlawful.

(3) Proof of possession of a dangerous drug not in the container in which it was originally delivered, sold or dispensed, when a prescription is required under the provisions of ORS chapter 474 or 475, is prima facie evidence that such possession is unlawful unless the possessor also has in his possession a label prepared by the pharmacist for the drug dispensed.

COMMENTARY - CRIMINAL POSSESSION OF DRUG; PRIMA FACIE EVIDENCE

A. Summary

Section 7 creates three prima facie evidence situations that impose upon the defendant the burden of coming forward with rebuttal evidence.

Subsection (1) states that proof of unlawful manufacture, cultivation, transportation or possession of drugs is prima facie evidence that the defendant has knowledge of the character of the drug.

Subsection (2) makes it prima facie unlawful to possess a narcotic drug other than in the container in which it was originally sold or dispensed. This presumption could, of course, be rebutted by evidence tending to prove that the drug was lawfully obtained.

Subsection (3) makes it prima facie unlawful to possess a dangerous drug other than in the container in which it was originally sold or dispensed, unless the possessor also has in his possession a label prepared by the pharmacist who dispensed the drug. The defendant could also rebut this presumption by a showing of lawful possession.

B. Derivation

Subsection (1) is derived from Michigan Revised Criminal Code section 6015.

Subsection (2) is derived from ORS 474.110.

Subsection (3) is derived from ORS 475.100 (4).

C. Relationship to Existing Law

Subsection (1) is new statutory language. 11 Op. Atty Gen 689 (1924), stated that proof of possession of opium is prima facie evidence that such possession is unauthorized. The opinion recognizes the rule of evidence that proof of unlawful possession may be used as the basis for a rebuttable presumption that the possessor had knowledge of the unlawful character of the contraband.

Subsection (2) restates the crime defined in ORS 474.110 in terms of prima facie evidence. ORS 474.110 states that a narcotic drug may lawfully be possessed only in its original container. The penalty provision, ORS 474.990, makes a violation of that section punishable by 10 years imprisonment or a \$5,000 fine.

Public policy might best be served by framing the circumstance of possession of a narcotic drug not in its original container in terms of prima facie evidence. Many instances of this conduct are lacking in criminal intent. The possessor should be afforded the opportunity to produce evidence tending to prove that his possession of the drug is, in fact, lawful.

Subsection (3) restates ORS 475.100 (4). A person may possess a dangerous drug not in its original container if he possesses a label prepared by the issuing pharmacist. If the drug is not in its original container and the possessor does not have the **required** label, it is prima facie evidence that such possession is unlawful. The possessor may, of course, rebut that presumption with other evidence.

Millar v. Semler, 137 Or 610, 619, 2 P2d 233, 3 P2d 987 (1931), discusses the legal intendment of a "prima facie case":

"The term 'prima facie case' was defined in Doherty v. Hazelwood Co., 90 Or. 475 (175 P. 849, 177 P. 432), as follows:

"'A prima facie case is that state of facts which entitles the party to have

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the case go to the jury; 6 Words & Phrases, [First Series] 5549. Whenever, therefore, it is determined that a plaintiff has made a prima facie case, it has passed beyond the power of the court to withdraw the case from the jury.'

"In defining a prima facie case, various definitions have been collected from the cases in 49 C.J., at page 1346, among which are the following:

"* * * that amount of evidence which would be sufficient to counterbalance the general presumption of innocence, and warrant a conviction, if not encountered and controlled by evidence tending to contradict it, and render it improbable, or to prove facts inconsistent with it; that which is received or continues until the contrary is shown."

In Re Estate of Thornberg, 186 Or 570, 577, 208 P2d 349 (1949), states that:

"Prima facie evidence is such evidence as in **judgment** of law is sufficient to establish the fact, and, if not refuted, remains sufficient for the purpose."

Section 8. Burden of proof on exemption from drug laws.

In any prosecution for violation of this Article it shall not be necessary for the state to negative any exception, excuse, proviso or exemption contained in ORS chapter 474 or 475, and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the defendant.

COMMENTARY - BURDEN OF PROOF ON EXEMPTION FROM DRUG LAWS

Section 8 shifts to the defendant the burden of proof on the issue of a claimed exemption from the drug law under which he is being prosecuted. This allocation of proof is both necessary and equitable since facts giving rise to such an exemption are peculiarly within the knowledge of the defendant.

The proposed section is a restatement of ORS 474.180.

Section 9. Seizure and forfeiture of conveyance used in violation of this Article. (1) Any district attorney or peace officer charged with the enforcement of this Article, having personal knowledge or reasonable information that narcotic or dangerous drugs are being unlawfully transported or possessed in any boat, vehicle or other conveyance, shall search the same without warrant and without an affidavit being filed. If narcotic or dangerous drugs are found in or upon such conveyance, he shall seize them, arrest any person in charge of the conveyance and as soon as possible take the arrested person and the seized drugs before any court in the county in which the seizure is made. He shall also, without delay, make and file a complaint for any crime justified by the evidence obtained.

(2) Any boat, vehicle or other conveyance used by or with the knowledge of the owner, operator or person in charge thereof for the unlawful transportation, possession or concealment of narcotic or dangerous drug shall be forfeited to the state in the same manner and with like effect as provided in ORS 471.660 and 471.665.

COMMENTARY - SEIZURE AND FORFEITURE OF CONVEYANCES
USED IN VIOLATION OF THIS ARTICLE

~~A. Summary~~

Section 9 restates existing law as reflected by ORS 475.120 (1) and (2). The two cited statutes, ORS 471.660 and 471.665, cover the seizure and disposal of conveyances transporting liquor.

ORS 471.660 authorizes a peace officer to seize any conveyance used for the unlawful transportation of alcoholic liquors. It states:

"When any [peace officer] discovers any person in the act of transporting alcoholic liquors in violation of law, in or upon any...conveyance...he shall...take possession of the vehicle or conveyance and arrest any person in charge thereof...."

ORS 471.665 provides that, upon conviction of the person arrested, the conveyance will be sold at public auction. It states further that:

"No claim of ownership or of any right, title or interest in or to such vehicle shall be held valid unless the claimant shows to the satisfaction of the court that he is in good faith the owner of the claim and had no knowledge that the vehicle was used or to be used in violation of law...."

ORS 475.120 (1) states that:

"Any district attorney [or peace officer], having personal knowledge or reasonable information that narcotic drugs are being unlawfully... transported...by any...conveyance, shall search the same without warrant and without any affidavit being filed...."

ORS 471.660 was first subject to constitutional attack in State v. DeFord, 120 Or 444, 451, 250 P 220 (1927), where the court, in sustaining the validity of the statute, quoted with approval Mr. Chief Justice Taft in Carroll v. U.S., 267 US 132, 45 Sup Ct 280, 285:

"On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of the circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The 4th Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens."

The same statute was later upheld in State v. Christensen, 151 Or 529, 535, 51 P2d 835 (1935), wherein it was stated by Justice Rossman in a specially concurring opinion:

"....The search of an automobile found upon the public highway may be lawful even though the searching officer possesses no search warrant. He must possess knowledge or information of facts constituting probable cause for a reasonable belief that the automobile which he is about to search contains illegal liquor...."

The issue of a warrantless search is discussed by William F. Frye in chapter 20, (20.5), Oregon Criminal Law Handbook (1969). A condensed review of that material as it relates to ORS 475.120 follows:

"Reasonableness does not depend on whether the search was made by authority of a warrant. '... An officer armed with a warrant may make an unreasonable search. An officer without a warrant may make a reasonable search.' State v. DeFord, 120 Or 444, 452, 250 P 220 (1927). Nor is the fact that the officer had an opportunity to obtain a warrant necessarily controlling. State v. Chinn, 231 Or 259, 272, 373 P2d 392 (1962).

"In the absence of a search warrant, however, a reasonable search can only be made in specially defined situations. Katz v. U.S., 389 US 347, 19 Led 2d 576 (1967). Such situations may be categorized as follows:

"(a) By consent. See §20.14 through §20.17 et seq.

"(b) Incident to lawful arrest. See §20.27 et seq.

"(c) In 'exceptional circumstances.'

"(d) Searches after seizure authorized by statute.

"The fourth category above, that of searches after seizure authorized by statute, fits into even more tenuous boundaries. In State v. Ramon, 248 Or 96, 432 P2d 507 (1967), the court sustained the search of a car seized off the street on the authority of ORS 475.120. This section provides that any district attorney or peace officer having personal knowledge or reasonable information that narcotic drugs are contained in 'any boat, vehicle or other conveyance, shall search the same without warrant and without any affidavit being filed.' In State v. Evans, 143 Or 603, 610, 22 P2d 496 (1933) (Case note in §20.7), the court found authority in a similar statute (ORS 496.660) for the search and seizure of game from a hunting camp.

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" Neither *Ramon* nor *Evans* dealt with the constitutionality of the respective statutes involved, but prior to *Evans* an article was published questioning the constitutionality of ORS 496.660. See *Skipworth, The Law of Search and Seizure*, 3 Or L Rev 179, 182 (1924). The court referred to this statute in *State v. Krogness*, 238 Or 135, 148, 388 P2d 120 (1964), saying, ' We leave open the question whether such a statute would be upheld if it were to be construed as permitting a search upon mere suspicion. ' See also ORS 471.660, .665 (forfeitures for certain violations of liquor code). The U.S. Supreme Court in *One 1958 Plymouth Sedan v. Pennsylvania*, 380 US 693, 14 Led2d 170 (1965), held that the constitutional exclusionary rule also applies in forfeiture proceedings.

"In his dissent to *State v. McCoy*, 86 Or Adv Sh 217, — Or —, 437 P2d 734 (1968), O'Connell, J., used the term 'searches after seizure authorized by statute' and cited *Cooper v. California*, 386 US 58, 17 Led 2d 730 (1967), as the case which recognized this as one of the exceptions to a warrantless search. He predicted, however, the eventual demise of the rule expressed in that case.

" CAVEAT: The Fourth Amendment is couched in terms of unreasonable 'searches and seizures,' while Art I, sec. 9 speaks of 'unreasonable search, or seizure.'" Id. at §20.5.

The grounds in ORS 475.120 (1) authorizing a warrantless search are "having personal knowledge or reasonable information." This may be construed to mean "probable cause to believe that a felony is being committed", i.e., the person in charge of the conveyance is unlawfully transporting or possessing narcotics. Viewed in this light, the officer could either (1) make a search incident to a lawful arrest, or (2) obtain a search warrant based upon the facts giving rise to such "probable cause."

The transportation in conveyances of narcotic and dangerous drugs presents special problems that may well justify a search after seizure authorized by statute. Research discloses no instance in which such a statute has been declared unconstitutional. In view of the legislative intent expressed by ORS 475.120, authority to conduct a warrantless search of conveyances for narcotic or dangerous drugs on the basis of "personal knowledge or reasonable information" has been retained. It should be noted that this authority has been broadened to include search for "dangerous drugs." The present statute refers only to narcotic drugs.

Section 10. Acquittal or conviction under federal law as precluding state prosecution. No person shall be prosecuted for a violation of any section in this Article if he has been acquitted or convicted under the federal narcotic laws of the same act or omission which it is alleged constitutes a violation of this Article.

COMMENTARY - ACQUITTAL OR CONVICTION UNDER FEDERAL LAW
AS PRECLUDING STATE PROSECUTION

Section 10 restates ORS 474.210.

TEXTS OF REVISIONS OF OTHER STATES

TEXT OF NEW YORK REVISED PENAL LAW

§ 220.00 Dangerous drug offenses; definitions of terms

The following definitions are applicable to this article:

1. "Narcotic drug" means any drug, article or substance declared to be "narcotic drugs" in section three thousand three hundred one of the public health law.
2. "Depressant or stimulant drug" means any drug, article or substance declared to be a "depressant or stimulant drug" in section three thousand three hundred seventy-one of the public health law.
3. "Hallucinogenic drug" means any drug, article or substance declared to be "hallucinogenic drugs" in section two hundred twenty-nine of the mental hygiene law.
4. "Dangerous drug" means any narcotic drug, depressant or stimulant drug, or hallucinogenic drug.
5. "Sell" means to sell, exchange, give or dispose of to another, or to offer or agree to do the same.
6. "Unlawfully" means in violation of article thirty-three, article thirty-three-A or article thirty-three-B of the public health law¹ or section two hundred twenty-nine of the mental hygiene law.
7. "Ounce" means an avoirdupois ounce as applied to solids and semi-solids, and a fluid ounce as applied to liquids. L.1965, c. 1030; amended L.1967, c. 791, § 30, eff. Sept. 1, 1967.

§ 220.05 Criminal possession of a dangerous drug in the fourth degree

A person is guilty of criminal possession of a dangerous drug in the fourth degree when he knowingly and unlawfully possesses a dangerous drug.

Criminal possession of a dangerous drug in the fourth degree is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 220.10 Criminal possession of a dangerous drug in the third degree

A person is guilty of criminal possession of a dangerous drug in the third degree when he knowingly and unlawfully possesses a dangerous drug with intent to sell the same.

Criminal possession of a dangerous drug in the third degree is a class E felony. L.1965, c. 1030, eff. Sept. 1, 1967.

TEXT OF NEW YORK REVISED PENAL LAW (CONT'D.)**§ 220.15** Criminal possession of a dangerous drug in the second degree

A person is guilty of criminal possession of a dangerous drug in the second degree when he knowingly and unlawfully possesses a narcotic drug:

1. With intent to sell the same; or
2. Consisting of (a) twenty-five or more cigarettes containing cannabis; or (b) one or more preparations, compounds, mixtures or substances of an aggregate weight of (i) one-eighth ounce or more, containing any of the respective alkaloids or salts of heroin, morphine or cocaine, or (ii) one-quarter ounce or more, containing any cannabis, or (iii) one-half ounce or more, containing raw or prepared opium, or (iv) one-half ounce or more, containing one or more than one of any of the other narcotic drugs.

Criminal possession of a dangerous drug in the second degree is a class D felony. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 220.20 Criminal possession of a dangerous drug in the first degree

A person is guilty of criminal possession of a dangerous drug in the first degree when he knowingly and unlawfully possesses a narcotic drug consisting of (a) one hundred or more cigarettes containing cannabis; or (b) one or more preparations, compounds, mixtures or substances of an aggregate weight of (i) one or more ounces, containing any of the respective alkaloids or salts of heroin, morphine or cocaine, or (ii) one or more ounces, containing any cannabis, or (iii) two or more ounces, containing raw or prepared opium, or (iv) two or more ounces, containing one or more than one of any of the other narcotic drugs.

Criminal possession of a dangerous drug in the first degree is a class C felony. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 220.25 Criminal possession of a dangerous drug; presumption

The presence of a dangerous drug in an automobile, other than a public omnibus, is presumptive evidence of knowing possession thereof by each and every person in the automobile at the time such drug was found; except that such presumption does not apply (a) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of his trade, or (b) to any person in the automobile if one of them, having obtained the drug and not being under duress, is authorized to possess it and such drug is in the same container as when he received possession thereof, or (c) when the drug is concealed upon the person of one of the occupants. L.1965, c. 1030, eff. Sept. 1, 1967.

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

§ 220.30 *Criminally selling a dangerous drug in the third degree*

A person is guilty of criminally selling a dangerous drug in the third degree when he knowingly and unlawfully sells a dangerous drug.

Criminally selling a dangerous drug in the third degree is a class D felony. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 220.35 *Criminally selling a dangerous drug in the second degree*

A person is guilty of criminally selling a dangerous drug in the second degree when he knowingly and unlawfully sells a narcotic drug.

Criminally selling a dangerous drug in the second degree is a class C felony. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 220.40 *Criminally selling a dangerous drug in the first degree*

A person is guilty of criminally selling a dangerous drug in the first degree when he knowingly and unlawfully sells a narcotic drug to a person less than twenty-one years old.

Criminally selling a dangerous drug in the first degree is a class B felony. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 220.45 *Criminally possessing a hypodermic instrument*

A person is guilty of criminally possessing a hypodermic instrument when he knowingly and unlawfully possesses or sells a hypodermic syringe or hypodermic needle.

Criminally possessing a hypodermic instrument is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

#

TEXT OF MICHIGAN REVISED CRIMINAL CODE

[Definitions]

Sec. 6001. (1) The following definitions apply in this chapter.

(a) "Dangerous drug" means any substance characterized as a dangerous drug in section 1(a) of Act No. 204 of the Public Acts of 1943, as amended, being section 335.101(a) of the Compiled Laws of 1948.

[Criminal Sale of Narcotics in the First Degree]

Sec. 6005. (1) A person commits the crime of criminal sale of narcotics in the first degree if he knowingly and unlawfully sells any narcotic drug other than marijuana in any amount, $\frac{1}{8}$ th ounce or more of marijuana, or 50 capsules or more of one or more dangerous drugs.

(2) Criminal sale of narcotics in the first degree is a Class A felony.

[Criminal Sale of Narcotics in the Second Degree]

Sec. 6006. (1) A person commits the crime of criminal sale of narcotics in the second degree if he knowingly and unlawfully sells any marijuana, dangerous drug or LSD to a minor.

(2) Criminal sale of narcotics in the second degree is a Class B felony.

[Criminal Sale of Narcotics in the Third Degree]

Sec. 6007. (1) A person commits the crime of criminal sale of narcotics in the third degree if he knowingly and unlawfully sells any marijuana, dangerous drug or LSD.

(2) Criminal sale of narcotics in the third degree is a Class C felony.

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

[Criminal Possession of Narcotics in the First Degree]

Sec. 6010. (1) A person commits the crime of criminal possession of narcotics in the first degree if he knowingly and unlawfully manufactures, transports or possesses:

- (a) Heroin, unless in a quantity less than 3250 milligrams and the less than 3250 milligrams are of less than 10% purity; or
- (b) 3250 milligrams or more of one or more narcotic drugs other than heroin or marijuana; or
- (c) 1 ounce or more of marijuana; or
- (d) 50 capsules or more of one or more dangerous drugs; or
- (e) 2 or more drugs in amounts not otherwise covered by this section.

(2) Criminal possession of narcotics in the first degree is a Class A felony.

[Criminal Possession of Narcotics in the Second Degree]

Sec. 6011. (1) A person commits the crime of criminal possession of narcotics in the second degree if he knowingly and unlawfully manufactures, transports or possesses any narcotic drug, dangerous drug or LSD.

(2) Criminal possession of narcotics in the second degree is a Class C felony.

[Prima Facie Evidence]

Sec. 6015. Proof of transportation or possession of any narcotic drug, dangerous drug or LSD is prima facie evidence of the transportation or possession of the substance with knowledge of its character.

#

OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS

Chapter 474

1957 REPLACEMENT PART

Uniform Narcotic Drug Act (With criminal sections deleted)

474.010	Definitions	474.120	Applicability of chapter to carriers, warehousemen and public officers
474.014	Exemption of certain drugs otherwise subject to this chapter	474.130	Fines resorted to by drug addicts declared to be nuisance
474.016	Reversal of description	474.140	Forfeiture and destruction of unlawfully possessed drugs
474.020	Boating, in narcotic violation	474.150	Forwarding copy of conviction to licensing authorities; reinstatement of license
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474.050	Persons eligible to obtain drugs from license; procedure for obtaining narcotics and under what conditions they may be dispensed	474.180	Persons must prove exemption from drug laws
474.060	Sales of narcotics by pharmacy	474.190	Way to enforce chapter
474.070	Use and administration of drugs	474.200	Making rules and regulations
474.080	Drugs usable without prescription	474.210	Legislation compatible under federal law as prescribed procedure
474.090	Records required by persons manufacturing or selling drugs	474.220	Interpretation and construction of chapter
474.100	Labels affixed to containers of drugs	474.230	Penalties
474.110	Possession of drug lawful only in container		

CROSS REFERENCES

Administrative procedures and rules of state agencies, Ch. 183
Boats, operating while under influence of drugs, 488.160
Intercepted telecommunication, use of, 165.540

Narcotic and habit-forming drugs, Ch. 475
Prosecution under narcotic laws, duly authorized officers or their agents immune from, 475.150
Teacher's certificate, revocation or refusal to issue for narcotic violation, 342.175

OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS

§474.010

ALCOHOLIC LIQUORS, NARCOTICS AND HALLUCINATING DRUGS

474.010 Definitions. The following words and phrases, as used in this chapter, shall have the following meanings, unless the context otherwise requires:

(1) "Person" includes any corporation, association, copartnership or one or more individuals.

(2) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment.

(3) "Dentist" means a person authorized by law to practice dentistry in this state.

(4) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state.

(5) "Manufacturer" means a person who, by compounding, mixing, cultivating, growing or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions.

(6) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced or prepared, on official written orders, but not on prescriptions.

(7) "Apothecary" means a licensed pharmacist, as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this chapter shall be construed as conferring on a person who is not registered or licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this state.

(8) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the Board of Pharmacy as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian.

(9) "Laboratory" means a laboratory approved by the Board of Pharmacy as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction.

(10) "Sale" includes barter, exchange or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employe.

(11) "Coca leaves" include cocaine and

any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine or substances from which cocaine or ecgonine may be synthesized or made.

(12) "Opium" includes morphine, codeine and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium.

(13) "Marihuana" includes all parts of the plant *Cannabis Sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

(14) The term "isonipecaine" (meperidine) means the substance identified chemically as 1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester, or any salt thereof by whatever trade name identified.

(15) The term "amidone" (methadone) means any substance identified chemically as 4-4-diphenyl-6-dimethylaminoheptanone-3, or any salt thereof, by whatever trade name designated.

(16) The term "isoamidone" means any substance identified chemically as 4-4-diphenyl-5-methyl-6-dimethylaminohexanone-3, or any salt thereof, by whatever trade name designated.

(17) The term "keto-bemidone" means any substance identified chemically as 4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone hydrochloride, or any salt thereof, by whatever trade name designated.

(18) "Narcotic drugs" means coca leaves, opium, marihuana and every other substance neither chemically nor physically distinguishable from them; or other drugs to which the federal narcotic laws may now or hereafter apply; or any drug found by the State Board of Pharmacy, after reasonable notice and opportunity for hearing, to have addiction-forming or addiction-sustaining liability similar to morphine or cocaine, from the publication of such finding.

(19) "Federal narcotic laws" means the

laws of the United States relating to opium, coca leaves and other narcotic drugs.

(20) "Official written order" means an order written on a form provided for that purpose by the United States Commissioner of Internal Revenue, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided, then on an official form provided for that purpose by the Board of Pharmacy.

(21) "Dispense" includes distribute, leave with, give away, dispose of or deliver.

(22) "Registry number" means the number assigned to each person registered under the federal narcotic laws.

[Amended by 1953 c.342 §3; 1963 c.137 §1]

474.014 Exemption of certain drugs otherwise subject to this chapter. (1) The Board of Pharmacy may exempt any narcotic drug from the application of this chapter to the extent determined, after reasonable notice and opportunity for hearing, to be consistent with the public welfare if it finds that the narcotic drug does not:

(a) Possess sufficient addiction-formation or addiction-sustaining liability to warrant imposition of all of the requirements of this chapter; or

(b) Permit recovery of a narcotic drug having sufficient addiction-forming or addiction-sustaining liability with such technical simplicity and amount of yield as to create a risk of improper use.

(2) The Board of Pharmacy may by regulation and without special determination exempt from the application of this chapter to the extent determined to be consistent with the public welfare any narcotic drug exempt under the federal narcotics laws and regulations and permit the administering, dispensing or selling of such drugs under the same conditions imposed by the federal narcotics laws and regulations.

[1961 c.572 §2]

474.016 Reversal of exemption. If the Board of Pharmacy determines that any narcotic drug previously exempted from the operation of this chapter under subsection (1) or (2) of ORS 474.014 possesses a degree of addiction liability that may result in improper use, the board shall publish a notice of its determination in two newspapers of general circulation. The determination shall be final and after the expiration of a period of six

months from the date of publication of the notice, the exempt status shall cease to apply to such narcotic drug.

[1961 c.572 §3]

474.030 License needed to cultivate, manufacture or wholesale narcotics. No person shall manufacture, compound, mix, cultivate, grow or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same without having first obtained a license so to do from the Board of Pharmacy.

474.040 Persons eligible for license; revocation of license. (1) No license shall be issued under ORS 474.030 unless and until the applicant therefor has furnished proof satisfactory to the Board of Pharmacy:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character.

(b) That the applicant is equipped as to land, buildings and paraphernalia properly to carry on the business described in his application.

(2) No license shall be granted to any person who has within five years been convicted of a wilful violation of any law of the United States, or of any state, relating to opium, coca leaves or other narcotic drugs, or to any person who is a narcotic drug addict. The Board of Pharmacy may suspend or revoke any license for cause.

474.050 Persons eligible to obtain drugs from licensee; procedure for obtaining narcotics and under what conditions they may be dispensed. (1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

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(a) To a manufacturer, wholesaler or apothecary.

(b) To a physician, dentist or veterinarian.

(c) To a person in charge of a hospital, but only for use by or in that hospital.

(d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

(a) On a special written order as required by the federal narcotic laws, to a person in the employ of the United States Government or of any state, territorial, district, county, municipal or insular government, purchasing, receiving, possessing or dispensing narcotic drugs by reason of his official duties.

(b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed; or to a physician or surgeon duly licensed in some state, territory or the District of Columbia to practice his profession, or to a retired commissioned medical officer of the United States Army, Navy or Public Health Service, employed upon such ship or aircraft, for the actual medical needs of persons on board such ship or aircraft, when not in port; provided, such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft, or to a physician, surgeon or retired commissioned medical officer of the United States Army, Navy or Public Health Service, employed upon such ship or aircraft, only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service.

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(3) An official written order for any narcotic drug shall be signed in triplicate by the person giving said order or by his duly authorized agent. The original and triplicate copy shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two years in such a way as to be readily accessible for inspection by any public officer or employe engaged in the enforcement of this chapter. It shall be deemed a compliance with this subsection

if the parties to the transaction have complied with the federal narcotic laws respecting the requirements governing the use of order forms.

(4) Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivision thereof, or a master of a ship, or a person in charge of any aircraft, upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the United States Army, Navy or Public Health Service, employed upon such ship or aircraft, who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer nor dispense, nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this chapter.

[Amended by 1957 c.587 §°]

474.060 Sales of narcotics by apothecary. (1) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription of a physician, dentist or veterinarian, properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed.

(2) Notwithstanding the provisions of subsection (1) of this section, narcotic drugs or compounds of a narcotic drug which possess relatively little or no addiction liability which the State Board of Pharmacy shall find and by regulations designate, after reasonable notice and opportunity for hearing, to possess relatively little or no narcotic addiction liability may be sold and dispensed by an apothecary, in

good faith, to any person upon an oral prescription of a physician, dentist or veterinarian. In issuing an oral prescription, the prescriber shall furnish the same information as is required for a written prescription under subsection (1) of this section except for the written signature of the prescriber. Upon receipt of the oral prescription, the person filling the oral prescription shall promptly reduce the oral prescription to writing by recording:

(a) The date when the oral prescription was received.

(b) The full name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed.

(c) The full name, address and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered.

(d) If the oral prescription is for an animal, the species of the animal for which the drug is prescribed.

(3) The person filling an oral or written prescription under this section shall write the date of filling and his own signature on the face of the prescription. The oral or written prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employe engaged in the enforcement of this chapter. The oral or written prescription shall not be refilled.

(4) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler or apothecary, but only on an official written order, and with the approval of the District Director of Internal Revenue for the district of Oregon.

(5) An apothecary, only upon an official written order, may sell to a physician, dentist or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than 20 percent of the complete solution, to be used for medical purposes.

[Amended by 1955 c.60 §1]

474.070 Use and administration of drugs.

(1) A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer and dispense narcotic drugs, or he may cause

the same to be administered by a nurse or interne under his direction and supervision.

(2) A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.

(3) Any person who has obtained from a physician, dentist or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist or veterinarian shall return to such physician, dentist or veterinarian any unused portion of such drug when it is no longer required by the patient.

474.080 Drugs usable without prescription. (1) Except as otherwise in this chapter specifically provided, this chapter shall not apply to the administering, dispensing or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semisolid preparation, in one avoirdupois ounce, not more than one grain of codeine, one-half grain of dihydrocodeine, two grains of Noscapine (also known as Narcotine), or two grains of Papaverine, or of any of their salts. The exemptions authorized by this section shall be subject to the following conditions:

(a) The medicinal preparation administered, dispensed or sold shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone.

(b) Such preparation shall be administered, dispensed and sold in good faith as a medicine, and not for the purpose of evading the provisions of this chapter.

(2) Nothing in this section shall be construed to limit the quantity of codeine, dihydrocodeine, Noscapine (also known as Narcotine), Papaverine, or of any of their salts that may be prescribed, administered, dispensed or sold to any person or for the use of any person or animal, when it is prescribed, administered, dispensed or sold in compliance with the general provisions of this chapter.

[Amended by 1957 c.587 §3; 1967 c.117 §1]

474.090 Records required by persons manufacturing or selling drugs. (1) Every physician, dentist, veterinarian or other

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person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients; provided, that no record need be kept of narcotic drugs administered, dispensed or professionally used in the treatment of any one patient when the amount administered, dispensed or professionally used for that purpose does not exceed in any 48 consecutive hours (a) four grains of opium, or (b) one-half of a grain of morphine or of any of its salts, or (c) two grains of codeine or of any of its salts, or (d) one-fourth of a grain of heroin or of any of its salts, or (e) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated.

(2) Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (5) of this section.

(3) Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (5) of this section.

(4) Every person who purchases for resale, or who sells narcotic drug preparations exempted by ORS 474.080, shall keep a record showing the quantities and kinds thereof received and sold or disposed of otherwise, in accordance with the provisions of subsection (5) of this section.

(5) The form of records shall be prescribed by the Board of Pharmacy. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received and the kind and quantity of drugs received; the kind and quantity of narcotic

manufacture and the date of such production or removal from process of manufacture; and the record shall in every case show the proportion of morphine, cocaine or egonine contained in or producible from crude opium or coca leaves received or produced, and the proportion of resin contained in or producible from the plant *Cannabis Sativa L.*, received or produced. The record of all narcotic drugs sold, administered, dispensed or otherwise disposed of shall show the date of selling, administering or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft.

474.100 Labels affixed to containers of drugs. (1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall affix securely to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind and form of narcotic drug contained therein.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his name, address and registry number, or the name, address and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address and registry number of the physician, dentist or veterinarian by whom the prescription was written; and such directions as may be stated on the prescription.

474.120 Applicability of chapter to carriers, warehousemen and public officers. The provisions of this chapter restricting the possession and having control of narcotic drugs shall not apply to common carriers or to warehousemen while engaged in lawfully transporting or storing such drugs, or to any employe of the same acting within the scope of his employment; or to public officers or their employes in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employes or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

474.130 Place resorted to by drug addicts declared to be nuisance. (1) Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance and shall be abated in the manner provided in ORS 471.630 to 471.655.

474.140 Forfeiture and destruction of unlawfully possessed drugs. All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited and disposed of as follows:

(1) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place and manner of destruction, shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the United States Commissioner of Narcotics, by the officer who destroys them.

(2) Upon written application by the Board of Pharmacy, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them, except heroin and its salts and derivatives, to said Board of Pharmacy for distribution or destruction, as hereinafter provided.

(3) Upon application by any hospital within this state, not operated for private gain, the Board of Pharmacy may in its discretion deliver any narcotic drugs that have come into its custody by authority of this section to the applicant for medicinal use. The Board of Pharmacy may from time to time deliver excess stocks of such narcotic drugs to the United States Commissioner of Narcotics, or may destroy the same.

(4) The Board of Pharmacy shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered and destroyed; and the dates of the receipt, disposal or destruction, which record shall be open to inspection by all federal or state officers charged with the enforcement of federal and state narcotic laws.

474.150 Forwarding copy of conviction to licensing authorities; reinstatement of license. On the conviction of any person of the violation of any provision of this chapter, a copy of the judgment and sentence and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon

or ORS Article 

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proper showing and for good cause, said board or officer may reinstate such license or registration.

474.169 Inspection of prescriptions, orders, records and stocks. Prescriptions, orders and records required by this chapter, and stocks of narcotic drugs, shall be open for inspection only to federal, state, county and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

474.190 Duty to enforce chapter. It hereby is made the duty of the Board of Pharmacy, its officers, agents, inspectors and representatives, and of all peace officers within the state, and of all county attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state and of all other states relating to narcotic drugs.

474.200 Making rules and regulations. The Board of Pharmacy shall make all needed rules and regulations for carrying the provisions of this chapter into effect.

474.220 Interpretation and construction of chapter. This chapter shall be so interpreted and construed as to effectuate its general purpose, to make uniform the laws of those states which enact it.

474.990. Penalties. (1) Except as otherwise specifically provided, any person violating any provision of this chapter, upon conviction, shall be punished by a fine not exceeding , or by imprisonment

or both.

OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS

Chapter 475

1965 REPLACEMENT PART

Narcotic and Habit-forming Drugs (With criminal sections deleted)

- | | |
|---|--|
| 475.010 Chapter definitions | 475.685 Criminal penalty; probation; admission period of imprisonment |
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CROSS REFERENCES

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| Airplane, operating while under influence of drugs, 493.160 | Motor vehicle, operating while under influence of drugs, 483.992 |
| Boats, operating while under influence of drugs, 488.160 | Pharmacists and pharmacies, Ch. 689 |
| Deaths or injuries to be reported to medical investigator, Ch. 143 | Publicizing effects of narcotic drugs, 430.080 |
| Drugs, poisons, caustics and corrosives, Ch. 453 | Teacher's certificate, revocation or refusal to issue for narcotic violation, 342.175 |
| Intercepted telecommunications, use of, 165.540 | Uniform Narcotic Drug Act, Ch. 474 |
| Juvenile court, jurisdiction over certain children, 419.476 | Water skiing or surfboarding while under influence of drugs, 488.144 |
| Local mental health services, 430.610 to 430.660 | 475.610 |
| | Exemption of certain drugs, 474.014 |
| | 475.090 |
| | Furnishing beverages to prisoners, 169.130 |

OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS

§475.010

ALCOHOLIC LIQUORS, NARCOTICS AND HABIT-FORMING DRUGS

475.010 Chapter definitions. As used in this chapter, unless the context requires otherwise:

(1) "Dangerous drug" means

conform to section 1 (2).

(2) "Licensed medical practitioner," "pharmacist," "pharmacy" and "prescription" have the meaning provided for those terms in ORS 689.010.

(3) "Narcotic drugs" and "veterinarian" have the meaning provided for those terms in ORS 474.010.

[Amended by 1953 c.342 §3; 1957 c.587 §6; 1965 c.545 §1]

475.020 [Repealed by 1957 c.587 §12]

475.030 [Repealed by 1957 c.587 §12]

475.040 [Repealed by 1957 c.587 §12]

475.050 [Repealed by 1957 c.587 §12]

475.060 [Repealed by 1957 c.587 §12]

475.090 Repealed by section on supplying contraband, and supplying dangerous contraband, Article on Escape and Related Offenses.

475.100 Sale or possession of dangerous drugs without prescription prohibited; preservation and inspection of prescriptions.

(1) Except as provided in ORS 475.110, no person shall sell, give away, barter, distribute, buy, receive or possess a dangerous drug except:

(a) Upon a written prescription of a practitioner licensed by law to administer such drug; or

(b) Upon an oral prescription of a practitioner licensed to administer such drug which is reduced promptly to writing and filed by the pharmacist; or

(c) By refilling the written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist; or

(d) Without prescription if such drug is combined with one or more additional ingredients that prevent ingestion of an amount of such drug sufficient to cause a stimulating or hypnotic effect upon the central nervous system and if for this reason the combination may be sold without prescription under federal law.

(2) Every prescription or order required by subsection (1) of this section shall be at all times open to inspection by duly authorized officers of the law and shall be preserved for at least three years from the date of filing thereof.

475.110 When ORS 475.100 not applicable. ORS 475.100 does not apply:

(1) To sales by drug wholesalers and manufacturers to pharmacies, or to licensed medical practitioners and veterinarians, or to each other.

(2) To sales by pharmacists to each other or to licensed medical practitioners and veterinarians.

[Amended by 1953 c.396 §2; 1965 c.545 §3]

of this state, shall likewise enforce the laws of this state regulating or prohibiting the sale or use of narcotic drugs.

475.160 Applicability of liquor laws setting apart funds for enforcement. Any provision by law for setting apart for law enforcement funds, fines collected for violation of the liquor laws of this state, unless otherwise provided therein, applies in like manner and in like proportions to fines collected for violation of the laws of this state regulating or prohibiting the sale of narcotic drugs. The maximum amounts of such funds shall be as fixed in the laws providing for funds to enforce liquor laws.

475.170 to 475.600 [Reserved for expansion]

475.610 [1955 c.573 §2; 1957 c.587 §9; repealed by 1959 c.411 §2 (ORS 475.615 enacted in lieu of ORS 475.610)]

475.615 Definitions for ORS 475.615 to 475.705. As used in ORS 475.615 to 475.705, unless the context requires otherwise:

(1) "Dispense" includes sell, exchange, leave with, give away, deliver or in any manner relinquish possession to another.

(2) "Physician" means a person licensed by the State Board of Medical Examiners. [1959 c.411 §3 (enacted in lieu of ORS 475.610)]

475.150 Funds and officers available to enforce the narcotic laws; officers immune from prosecution under law. (1) All special funds provided by law for enforcement of the liquor laws of this state are available, under the direction of the Governor, for the enforcement of the laws of this state regulating or prohibiting the sale and use of narcotic drugs.

(2) All officers, agents and inspectors authorized by law to enforce the liquor laws

OFFENSES INVOLVING NARCOTICS AND DANGEROUS DRUGS

§ 475.635

ALCOHOLIC LIQUORS, NARCOTICS AND HABIT-FORMING DRUGS

cause to believe that a person in his county is unlawfully using, or under the influence of narcotic drugs, he may file with the circuit court a written request for a warrant of detention of that person. When the person is taken into custody upon the warrant, the district attorney shall immediately notify the county health officer, or a physician appointed by the State Health Officer under subsection (1) of ORS 475.685, who shall examine the person and make a report to the district attorney of his findings. The report shall also be made available to the person examined and shall be admissible against him in any subsequent judicial proceeding under No person shall remain in custody longer than 48 hours under the warrant of detention.

[1959 c.411 §7 (enacted in lieu of ORS 475.630); 1963 c.137 §3]

475.660 [1955 c.573 §7; repealed by 1959 c.411 §12 (ORS 475.675 enacted in lieu of ORS 475.660)]

475.665 Tests on suspected drug users; use of results in evidence. (1) When a person is arrested for violation of . . . , or is arrested upon another charge and is suspected of violating that section, the officer or person making the arrest may, upon the written consent of the arrested person, have a city or county health officer, or a physician appointed by the State Health Officer, administer a test to determine by use of an opiate or synthetic antinarcotic whether the arrested person is using or is under the influence of narcotic drugs. Results of the test shall be made available to the person tested and in a subsequent trial of that person, and upon the request of either party, the court may admit those results in evidence. Refusal of the arrested person to consent to the test at the time of his arrest is not admissible in evidence upon his trial.

(2) The health officer or physician examining a person detained under ORS 475.655, upon the written consent of that person, may administer a test to determine by use of an opiate or synthetic antinarcotic whether the person is using or is under the influence of narcotic drugs. Results of the test shall be included in the findings of the health officer or physician, but a refusal of the detained person to consent to the test shall be excluded.

(3) Nothing in this section is intended to limit the introduction of other evidence bearing upon the question of whether or not a

475.645 Hospital treatment facilities; hospitalization in lieu of imprisonment. (1) The Mental Health Division of the State Board of Control shall establish facilities at one or more state hospitals for persons convicted of violating . . . , who are in need of temporary hospitalization because of sickness while withdrawing from addiction. When a person recovers from withdrawal sickness he shall be released to the sheriff of the county in which he was convicted. However, if the superintendent of the state hospital finds that the person may be substantially benefited by further treatment, he may request the court, in writing, for an order directing that person to remain at the hospital for an additional period, not to exceed six months, before being released.

(2) The sentence of imprisonment under . . . may be reduced by the number of days a person is hospitalized, for the same offense, under subsection (1) of this section.

[1959 c.411 §21 (enacted in lieu of ORS 475.700)]

475.650 [1955 c.573 §6; repealed by 1959 c.411 §10 (ORS 475.635 enacted in lieu of ORS 475.650)]

475.655 Warrant of detention of drug user. Whenever a district attorney has good

person is using or is under the influence of narcotic drugs.

[1959 c.411 §9 (enacted in lieu of ORS 475.640)]

475.670 [1955 c.573 §8; repealed by 1959 c.411 §14 (ORS 475.705 enacted in lieu of ORS 475.670)]

475.675 Requiring person on parole or probation to submit to periodic tests. (1) When a court in this state grants probation to a person whom the court has good cause to believe is or has been an unlawful user of narcotic drugs, the court may require as a condition to probation that the probationer consent to undergo periodic tests by a city or county health officer, or by a physician appointed by the State Health Officer, to determine by use of an opiate or synthetic antinarcotic whether the probationer is using or is under the influence of narcotic drugs.

(2) When the State Board of Parole and Probation grants a parole to a person whom the board has good cause to believe is or has been an unlawful user of narcotic drugs, a condition of the parole shall be that the parolee consent to undergo periodic tests as provided in subsection (1) of this section. [1959 c.411 §13 (enacted in lieu of ORS 475.660)]

475.680 [1955 c.573 §§9, 13; repealed by 1959 c.411 §16 (ORS 475.685 enacted in lieu of ORS 475.680)]

475.685 Appointment of physicians to administer tests; instruction; providing forms. (1) The State Health Officer shall appoint physicians, in localities where needed, to assist city and county health officers in administration of tests under ORS 475.665 and 475.675, and shall instruct the physicians and health officers in the method of administering these tests.

(2) The State Health Officer shall provide the forms for the reports and written consent required by ORS 475.695.

[1959 c. 411 §17 (enacted in lieu of ORS 475.680)]

475.690 [1955 c.573 §9; repealed by 1959 c.411 §18 (ORS 475.695 enacted in lieu of ORS 475.690)]

475.695 Persons authorized to make examinations and administer tests; administering tests and reporting results; testing only upon written consent. City and county health officers, and physicians appointed by the

State Health Officer under ORS 475.685, shall make physical examinations under ORS 475.655, and shall administer tests under ORS 475.665 and 475.675. If the person tested has been placed under arrest or is detained under warrant, the test shall be administered promptly and the results reported without delay to the person who requested it. If the person tested is a probationer or parolee, results shall be reported to the probation officer. A person shall be tested only upon his written consent.

[1959 c.411 §19 (enacted in lieu of ORS 475.690)]

475.700 [1955 c.573 §10; repealed by 1959 c.411 §20 (ORS 475.645 enacted in lieu of ORS 475.700)]

475.705 Charging cost of administering test. The cost of administering tests under subsections (1) and (2) of ORS 475.665 and subsection (1) of ORS 475.675 shall be charged to the county. The cost of administering tests under subsection (2) of ORS 475.675 shall be charged to the state.

[1959 c.411 §15 (enacted in lieu of ORS 475.670)]

475.710 [1955 c.573 §11; repealed by 1959 c.411 §22]

475.720 [1955 c.573 §12; repealed by 1959 c.411 §22]

475.730 [1955 c.573 §13; repealed by 1959 c.411 §22]

475.740 [1955 c.573 §1; repealed by 1959 c.411 §22]

475.750 [1955 c.573 §3; repealed by 1959 c.411 §22]

475.760 to 475.930 [Reserved for expansion]

475.990. Penalties.

(2) Violation of subsection (2) of ORS 475.100 is punishable, upon conviction, by a fine not exceeding \$5,000 or by imprisonment in the county jail not exceeding one year, or both, or by imprisonment in the penitentiary not exceeding 10 years, or by a fine of not more than \$5,000, or both.