See: Minutes of Subcommittee No. 2
3/6/70, p. 1, Vol. XI
Tape #92

CRIMINAL LAW REVISION COMMISSION
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ARTICLE 20. OFFENSES AGAINST THE FAMILY

Preliminary Draft No. 1; February 1970

Reporter: Roger D. Wallingford Subcommittee No. 2

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ARTICLE 20. OFFENSES AGAINST THE FAMILY

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Section 1. Offenses against the family; definitions. As used in this Article, unless the context requires otherwise:

Existing Law
ORS
471.005 (1)
471.035

(1) "Alcoholic liquor" means any alcoholic beverage containing more than one-half of one percent alcohol by volume, and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being but does not include any perfume, lotion, tincture, varnish, dressing fluid, extracts, acid vinegar, or any official medicinal or pharmaceutical preparations, or any patent or proprietary medicine intended solely for medicinal purposes.

(2) "Descendant" includes persons related by descending lineal consanguinity, stepchildren and lawfully adopted children.

(3) "Support" includes, but is not limited to, necessary and proper shelter, food, clothing, medical attention and education.

COMMENTARY - OFFENSES AGAINST THE FAMILY;

DEFINITIONS

Subsection (1) defines "alcoholic liquor" to conform to ORS chapter 471, the general regulatory chapter on alcoholic liquors. The definition is derived from two statutes, ORS 471.005 (1) and 471.035. The term "alcoholic liquor" is applicable to paragraphs (a) and (e) of subsection (1) and to subsection (3) of section 8 of this Article.

The significance of "descendant" as defined is the inclusion of stepchildren and lawfully adopted children. No particular model was used in formulating this definition. The term "descendant" applies to section 2 of this Article prohibiting incestuous relationships. Its effect will be to broaden existing law which presently excludes stepchildren and adopted children from the scope of criminal incest.

Subsection (3) defines "support" as necessary and proper care and maintenance. Present law, ORS 167.605, lists "shelter, food, care or clothing" as specific examples of support. Medical attention and education have been added as specific areas of support necessarily implied by the term "care." The term "support" is used in section 6, criminal nonsupport.

Existing Law

ORS
139.320
167.020

Section 2. Bigamy. (1) A person commits the crime of bigamy if he knowingly marries or purports to marry another person at a time when either is lawfully married.

(2) In any prosecution under this section it is a defense that at the time of the subsequent marriage or purported marriage:

(a) The actor's spouse has voluntarily withdrawn and remained absent for [five] consecutive years and the actor has no knowledge whether the absent spouse was living or dead within that period; or

(b) The actor otherwise reasonably believes that he is legally eligible to marry.

COMMENTARY - BIGAMY

A. Summary

The elements essential to bigamy are a knowing marriage or purported marriage to another person when either person to the contract is lawfully married to a third party.

The mens rea element of "knowingly" refers both to the marriage or purported marriage and to the fact that one of the parties has lawfully contracted a prior marriage which has not been dissolved. The prohibition would therefore apply to a married person who contracts a subsequent marriage, and to a single person who contracts a marriage with a person whom he knows to be lawfully married to another.

Subsection (2) affords a defendant two lines of defense. Paragraph (a) of subsection (2) grants a defense to bigamy where the actor's spouse has deserted the marital abode and remained absent for [five] consecutive years. This defense requires further that the absent spouse's withdrawal be voluntary and that the remarrying spouse have no knowledge whether the absent spouse is living or dead.

Paragraph (b) of subsection (2) provides a defense based upon a reasonable mistake of law or of fact. Examples of such error might be found in mistaken reliance on an invalid divorce or annulment decree or in a mistaken belief that a prior spouse has died.

The language "purports to marry" is intended to negate the defense that since a prior existing marriage was still in full force and effect, the subsequent marriage was null and void and therefore not in law or in fact a marriage.

B. Derivation

Section 2 is derived from Model Penal Code section 230.1 and Connecticut Revised Penal Code section 200.

C. Relationship to Existing Law

1 Bishop on Marriage, Divorce and Separation s. 717 states:

> "The offense of having at one time two husbands or wives, the one de jure and the other de facto, is often or commonly termed 'bigamy', though equally well designated by the broader term 'polygamy'."

ORS 167.020 defines polygamy. The statute encompasses two types of conduct. First, "Any person who while having a husband or wife living, marries another person . . . is guilty of polygamy." Discussing this portion of the statute, State v. Durphy, 43 Or 79, 71 P 63 (1903), states:

> "It is indispensable under the statute to show that the former husband or wife, as the case may be, is not only living, but is still, or was at the time of the commission of the offense, the husband or wife of the accused, for it may have transpired that the parties were in the meantime lawfully divorced . . . . " Id. at 81-82.

Without two marriages and two husbands at one and the same time there can be no bigamous marriage. Lahey v. Lahey, 109 Or 146, 219 P 807 (1923). To establish the invalidity of a second marriage it is necessary to allege and prove that the spouse of the former marriage is still living and that the former marriage has not been dissolved by divorce. Marcus v. Marcus, 173 Or 693, 147 P2d 191 (1944); In re Estate of De Force, 119 Or 556, 249 P 632 (1926).

Second, "Any person who while having a husband or wife living . . . lives and cohabits with another person as husband or wife, is guilty of polygamy . . . . " The interrelation of these sections was at issue in State v. Durphy, supra. In that case the charging part of the information alleged that the accused married a woman in Massachusetts "and while she was still his wife, feloniously married another woman in the State of Illinois, and subsequently cohabited with the latter in Oregon." The court held that the information did not charge two crimes -- the second marriage and cohabitation -- for a marriage in another state would not be an offense against the laws of Oregon and since the phrase "while she was still his wife" referred to the time of marriage and not to the cohabitation in Oregon, the information did not charge the crime of polygamy in Oregon. The rule of the case is summarized in 70 ALR 1036:

> " . . . /w/here it is made an offense by statute for a person, who having a husband or wife living, marries another, to continue to cohabit with the second husband or wife, within the jurisdiction, the place of the second marriage is immaterial, and the offense is committed wherever the parties to the second marriage continue to cohabit." Id. at 1038.

In State v. Locke, 77 Or 492, 151 P 717 (1915), the defendant challenged his conviction under the second portion of the statute on the ground that that portion was repealed by 2075 L O L [presently ORS 167.015, lewd cohabitation] which provides for punishment as a misdemeanor: "Any man and woman who lewdly or lasciviously cohabit or associate together when not married to each other . . . . " Affirming his conviction, the court stated:

> "Both sections were enacted in 1864 . . . . The fact that the offense described in Section 2075 might contain some of the elements of the crime defined in Section 2073 does not warrant the conclusion that the latter is supplanted by the

> former. The intent of Section 2073 is to preserve the sanctity of the marriage relation. Polygamous relations are a crime not included in the provisions of Section 2075. To prove an infraction of the statute against polygamy would require different evidence than that required in a case of lewd or lascivious cohabitation: State v. Donahue, 75 Or 409, 144 Pac. 755)." State v. Locke, supra at 495.

While the wording of the polygamy statute seems to require the accused to be a married person at the time he or she marries or cohabits with another, a single person can be guilty of bigamy by aiding, assisting, counseling or procuring a bigamous marriage. Boggus v. State, 34 Ga 275 (1866); State v. Warady, 78 NJL 687, 75 Atl 977 (1909); 5 ALR 782, 783. So it has been held that if an unmarried man marries a married woman, knowing her to be married, he is equally guilty with the woman of the offense of bigamy. Reg. v. Brown, 1 Car & K (Eng) 144 (1843).

There are two important aids in proving the existence and continuance of a previous marriage. First, by virtue of ORS 139.320, either the husband or wife is competent to testify to the fact of marriage against the other without his or her consent. Second, both the refusal of the courts to apply the presumption in favor of the validity of a second marriage in prosecutions for bigamy and the utilization in such prosecutions of the presumption of the continuance of life of the former spouse aid in establishing the validity and continuance of a previous marriage.

The effect of ORS 139.320 on polygamy prosecutions was discussed in State v. Von Klein, 71 Or 159, 142 P 549 (1914). In that case the wife, after testifying to the fact of her marriage to the defendant, was asked several questions relating to his handwriting. Defendant's counsel objected to the competency of the evidence and not to the competency of the witness. The court ruled that having failed to object to her competency as a witness for the reason that she was the defendant's wife and not permitted to testify against him without his consent, the defendant waived all objections to his wife's competency to testify against him generally. The court stated:

> "After the defendant's wife had given her evidence concerning her marriage to the defendant the defendant should have objected to her giving

> any further evidence in the case, for the reason that she was his wife, and had no right to testify to any facts except as to her marriage, without his consent.
>
> "Had a specific objection of that character been made at the proper time any evidence by her except as to the marriage would have been inadmissible. But the objections interposed were directed to the evidence against him, and by making said objections and omitting to object to her right to testify to any fact, except the marriage, for the reason that she was his wife, the defendant waived his right to object to her general evidence." Id. at 175.

It is an essential element of bigamy that the defendant was a party to a valid former marriage. Although it is generally well established that when a person has entered into two successive marriages a presumption arises in favor of the validity of the second marriage, the authorities are in general agreement that the presumption of the dissolution of the prior marriage by divorce, which normally obtains in civil litigation to sustain the validity of the subsequent marriage, will not be indulged to benefit the defendant in a prosecution for bigamy. See, 14 ALR2d 7. In bigamy prosecutions the majority of jurisdictions adhere to the rule that when the existence of a former spouse is once established by proof, a presumption arises that such spouse continues to exist or live until the contrary is shown or until a different presumption is raised. The Oregon court apparently is in the majority. State v. Locke, supra at 497, held that in a prosecution for bigamy the presumption is generally in favor of the validity of the former marriage where there is no evidence to the contrary. However, in view of the presumption of innocence which exists in favor of the accused, some courts have held that in a prosecution for bigamy it is not only incumbent on the state to prove the prior marriage, but it must also prove that the former spouse was alive when the second marriage was celebrated. See 56 ALR 1273, 1274.

A variety of defenses have been asserted to the charge of bigamy.

The authorities apparently are in accord that a person cannot justify what otherwise would constitute bigamy, by proof that his plural marriage was a part of or was sanctioned by his religious beliefs. Reynolds v. United States,

98 US 145, 25 L Ed 244 (1879); Miles v. United States, 103 US 304 (1881); Davis v. Beacon, 133 US 333, 33 L Ed 637, 10 Sup Ct Rep (1890). In the Reynolds case it was held that the defendant could not be permitted to show that polygamous marriage was a part of his religion, since to permit such a defense would be to make the professed religious doctrine superior to the law of the land. In Davis the court said that bigamy and polygamy are crimes by the law of all civilized and Christian countries and that the First Amendment to the Constitution cannot be invoked as a protection against legislation for their punishment.

The defense of mistake of fact or mistake of law has been interposed with varying success in American jurisdictions. Generally, United States courts have taken the position that bigamy is a statutory crime and where the legislature has not required an element of intent, the courts have no right to do so. Another argument for the American view is that of public policy, arguing that various unfortunate complications may arise from the protection of two separate marriages by the same person. It is further argued that if a statute has made it criminal to do any act under certain circumstances, the person voluntarily doing that act is chargeable with criminal intent in doing it.

In many states the statutes provide that a person shall not be deemed guilty of bigamy where the former spouse has been absent or unheard of for a specified number of years. In Oregon it is seven years, and requires that the party does not know the former spouse was living within that time. See ORS 167.020 (2). This type of statute is usually construed to mean that one who marries within the statutory period has no defense if the first spouse is still alive, although the second marriage is contracted with an honest belief in the death of the first spouse.

Where the belief of the defendant that he might legally marry again was induced by a mistake of law, as where he believed a divorce obtained by him to be valid, or that a separation had the effect of a divorce, the courts, under the principle that a mistake of law is no defense, have generally refused to permit the defendant to defend on his good faith or belief. But see, Long v. State, 44 Del 262, 65 A2d 489 (1949).

A split of authority exists as to whether belief in the existence of a divorce is a defense to the crime of bigamy. Some jurisdictions adopt the view that the good faith of the defendant in contracting the second marriage in the belief

that a former union had been terminated by divorce, when in fact no divorce had been granted, is not available as a defense to the charge of bigamy. See, 56 ALR2d 915. However, other jurisdictions support the view that a mistaken belief by the defendant in the existence of a divorce will constitute a defense in a prosecution for bigamy. While under this view it devolves upon the accused to establish the facts on which he relies to justify or excuse the prohibited act, he need not, according to Coy v. State, 75 Tex Crim 85, 171 SW 221 (1914), establish this defense beyond a reasonable doubt.

The leading case recognizing mistake of fact as a defense to a bigamy prosecution is People v. Vogel, 46 Cal2d 798, 299 P2d 850 (1956), wherein the court concluded:

> " . . . that the defendant is not guilty of bigamy, if he had a bona fide and reasonable belief that facts existed that left him free to marry . . . . Of course, such a belief must be honest, and based on reasonable grounds and not mere rumor; in other words, it must have been induced by a reasonable diligence to ascertain the truth."

The honest belief with respect to the existence of a divorce which might afford a defense to a prosecution for bigamy following a second marriage may not be rested on a mere rumor according to Alexander v. United States, 78 App DC 34, 136 F2d 783 (1943).

Although the Oregon court has never ruled expressly on the validity of either the defense of mistake of fact or mistake of law, it was faced with an issue of mistake of law in the case of State v. Locke, supra. The defendant was a conductor on a train which ran between Portland and Eugene. It was alleged that at the time he cohabited with a woman as his wife in Eugene, he had a wife in Portland. And, while he was so cohabiting in Eugene, he obtained a decree of divorce in Clackamas County upon publication of summons as though his Portland wife was a nonresident of the state. The defendant entered this decree in his defense at his trial for bigamy. In rebuttal, the state offered in evidence a decree of the same court setting aside the earlier divorce decree for the reason that the affidavit for publication of summons was false and fraudulent. The defendant had not been notified of the application to reopen the decree. Affirming his conviction, the court refused to discuss the matter at

great length since the trial court in its charge to the jury considered the decree of divorce as a complete defense for all acts committed by the defendant after the date of its issuance. Clearly, the trial court's instructions recognized defendant's reliance upon the earlier decree as a mistake of law constituting a valid defense. The court's refusal to affirm or reverse the conviction solely on this basis leaves the question undecided in this jurisdiction as to the general availability of the defense in bigamy prosecutions.

It should be noted that without such a defense, ORS 107.110 presents a "trap" for the unwary party who remarries immediately after obtaining a divorce. That statute provides that a decree of divorce shall not be effective insofar as it affects the marital status of the parties until the expiration of 60 days from the date of the decree. Thus, the decree of divorce is, in effect, interlocutory for 60 days. If during this time a party remarries or cohabits with another as his or her spouse he, technically, would commit bigamy.

Section 3. Incest. A person commits the crime of incest if he marries or engages in sexual intercourse or deviate sexual intercourse with a person whom he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant or brother or sister of either the whole or half blood.

Existing Law
ORS 167.035
106.020

COMMENTARY - INCEST

A. Summary

Section 3 defines the crime of incest in terms of three specified acts committed with a person known to be within a particular degree of consanguinity:

(1) Marriage,

(2) An act of sexual intercourse, or

(3) An act of deviate sexual intercourse.

The degree of consanguinity within the prohibited class includes:

(1) Ancestors,

(2) Descendants, and

(3) Brothers or sisters of either the whole or half blood.

"Descendants" is defined in section 1 to include stepchildren and adoptive children.

The mens rea requirement is that the actor commit the prohibited act with knowledge that the other person is related to him within the degree of consanguinity as defined by the statute.

B. Derivation

Section 3 is derived from Model Penal Code section 230.2. The relationship of stepchild has been added by the reporter.

C. Relationship to Existing Law

The crime of incest was not indictable at common law, but is only so by statute. State v. Jarvis, 20 Or 437 (1891). Oregon defines the crime of incest in ORS 167.035. The statute states:

> "Any persons, being within the degree of consanguinity within which marriages are prohibited by law, who intermarry or commit adultery or fornication with each other, such person or either of them shall be punished upon conviction . . . ."

The Oregon statute which defines the degrees of consanguinity referred to in the incest statute is ORS 106.020. It prohibits marriage "When the parties thereto are first cousins or any nearer of kin to each other, whether of the whole or half blood, computing by the rules of the civil law."

The incest statute requires a showing of two elements: (1) Marriage, adultery or fornication (2) between persons within the degrees prohibited by ORS 106.020. A third element is added by case law. State v. Jarvis, supra at 440, noted that the "language of the statute . . . necessarily implies a concurrent act, and the consent of both parties." The Oregon court cited the inclusive common law definition of an accomplice and held that the defendant's daughter was an accomplice in a prosecution for incest.

The crime of incest is committed by marriage if the state in which the marriage occurs declares the marriage incestuous. In Sturgis v. Sturgis, 51 Or 10, 93 P 696 (1908), the court noted the general rule:

> " . . . /a/ marriage valid where solemnized is valid everywhere, not only in other states generally but in the state of the domicile of the parties, even when they left their own state to marry elsewhere for the sole purpose of avoiding the laws of the state of their domicile.

> "There are two exceptions to this rule, viz. marriages which are deemed contrary to the law of nature as generally recognized in Christian countries, such as involve polygamy or incest, and marriages which the local lawmaking power has declared shall not be allowed any validity either in express terms or by necessary implication . . . . " At 16.

The exceptions noted to the general rule concerning marriages against nature or the laws of the domicile seem to indicate that a marriage between domiciliaries of one state incestuous in that state would be prosecutable in that state even if the parties were married in another state where the marriage was not declared incestuous. However, Leefield v. Leefield, 85 Or 287, 166 P 953 (1917), ruled that a marriage between first cousins consummated outside the state for the purpose of evading its laws will not be annulled since ORS 106.020 declaring it void if solemnized within the state is impliedly to the effect that, if a marriage between prohibited persons is solemnized in another state, the marriage is valid in this state irrespective of whether or not it is of any binding force in the state where the nuptial is celebrated.

Consanguinity relationships by blood exist between persons having at least one common ancestor and is measured in degrees. Affinity may be defined as the relationship which marriage creates between either party to that marriage and the blood relatives of the other party to the marriage. Unlike some states, Oregon has no statute prohibiting the intermarriage of affines. But affinity is considered by ORS 163.220. That statute provides life imprisonment for any person convicted of the rape of the daughter of his wife.

In the absence of a specific provision covering the effect of intercourse with an adopted child, it appears that such a relationship is not incestuous. In State v. Lee, 196 Miss 311, 17 So2d 277 (1944), the court held that an adopted child is not a "daughter" within an incest statute forbidding sexual relations between persons within the degrees with which marriages are declared to be incestuous and void, the marriage law providing that a father shall not marry his daughter. In that case, although a father was prohibited by statute from marrying his "daughter" or "stepdaughter," no statutory provision was made concerning relationship by adoption. Observing that the dictionary definition of "daughter" was "the female offspring of a man or woman, or

an immediate female descendant," the court said that it was for the legislature to include an adopted daughter by a plain statute and not for the court, by way of construction, to ingraft such a meaning or application into the existing statute. Similarly, State v. Youst, 59 NE2d 167, 14 Ohio App 381 (1945), held that sexual intercourse between a man and an adopted daughter not of the blood of the man and wife adopting her did not constitute the crime of incest. Also, State v. Rogers, 133 SE2d 1, NC (1963), held that a defendant who had sexual intercourse with his adopted daughter was not guilty of incest.

Section 230.2 of the Model Penal Code defines the crime of incest and designates it as a felony of the third degree. A person is guilty of the offense "if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood [or an uncle, aunt, nephew or niece of the whole blood]." This statute requires a consanguineous relationship closer than that of first cousins. The uncle-aunt-nephew-niece cases have been bracketed in the text to indicate some doubt whether they belong in the category of "felonious incest." The doubt recognizes that while the marriage laws of a state may circumscribe marriage more strictly than the incest law, a different question arises in regard to the crime of incest.

Although there are valid reasons for prohibiting sexual relations between stepparent and stepchild or between parents and adoptive children, present Oregon law, ORS 106.020, does not include them within the degrees of relationships among which marriages are prohibited. The Model Penal Code does not include stepparent and stepchild relationships within its incest definition, but does include the parent and adopted child relationship. The statute states:

> "The relationships referred to herein include blood relationships without regard to legitimacy, and relationship of parent and child by adoption."

Such a result is inconsistent if based upon the principle of preserving family harmony. Clearly, such a distinction could not be based on the presence or absence of a relationship by affinity. Affinity arises from marriage, creating an affinity between the stepparent and the stepchild, whereas there is no affinity relationship created between a parent and an adopted child. Applying the incest statute to a situation where there is no relationship by

affinity and not applying the statute where there is an affinity relationship completely disregards the traditional basis for incest legislation, i.e., relationships of consanguinity and affinity. If the Model Penal Code seeks to base its incest legislation on two principles, the first being the existence of a blood relationship by consanguinity and the second, in the absence of the first, being where the relationship would upset family harmony, it appears that both stepchild and adopted child relationships should be included under the statute on the strength of the second principle upon which the statute could be based.

Since the Oregon statute does not presently forbid marriages between affines, the issue to be determined by the Commission is whether or not intercourse or marriage between stepparent and stepchild or parent and adopted child is of such an aggravated nature as to warrant condemnation as incest. If the decision is to include stepchildren and adopted children within incest, on the basis of preserving family harmony, the Commission could draw upon the majority view towards the termination of an affinity relationship in determining when the relationship must exist to make the conduct incestuous. By majority view, the death of either spouse terminates all affinity relationships created by the marriage unless issue of the marriage survive. Analogizing this to the principle of preserving family harmony as the basis of prohibiting incest between a stepparent and stepchild, incest would be limited in time to a date at which both spouses were alive. If neither spouse has died, intercourse with a stepchild would be incestuous.

Two other factors of the Model Penal Code definition of incest must be discussed in light of present Oregon law. First, the MPC requires that the actor "knowingly" marry or cohabit with a person within the prohibited degrees of relationship. The Oregon statute does not require such knowledge. Second, the text of the MPC does not require mutual assent of the parties to the incestuous relationship. Although this is in accord with the current law to the effect that a man cannot avoid conviction for incest by showing that he compelled the woman to submit, i.e., that he was guilty of rape, under the doctrine of State v. Jarvis, supra, it would appear that an opposite result obtains in Oregon. An indictment which charged incest, but the proof of which established rape, would constitute conviction for a crime not charged in the indictment, since incest is not an included offense within the definition of rape.

The New York Revised Penal Law, section 255.25, defines the crime of incest to include the same relations of the whole blood, but apparently extends the crime to include intercourse between uncle, aunt, nephew or niece of either the half or whole blood. New York, however, does not include either stepchildren or adopted children within the incest statute. In line with the Model Penal Code, New York requires the intercourse with the relative to be done knowingly and recognizes both legitimate and illegitimate relations as included within the statute. Section 255.30 requires corroboration in addition to the testimony of the prosecutrix.

Section 7005 of the Michigan Revised Criminal Code includes the same relationships recognized as incestuous by the Model Penal Code with the exclusion of the aunt, uncle, nephew, niece relationship by the whole blood. Michigan specifically includes "stepchildren" within its definition of "descendant" but does not cover adopted children. Michigan also requires that the intercourse be done "knowingly" with a designated relation and recognizes both legitimate and illegitimate relationships. Michigan also requires that no conviction for incest be had on "the uncorroborated testimony of the person with whom the offense is alleged to have been committed."

Section 5. Abandonment of a child. (1) A person commits the crime of abandonment of a child if, being a parent, lawful guardian or other person lawfully charged with the care or custody of a child less than [14] years of age, he deserts the child in any place with intent to wholly abandon it.

Existing Law
ORS
167.605
167.215
418.035 (1)

(2) If a parent, lawful guardian or other person charged with the care or custody of a child less than [14] years of age leaves the state and refuses or neglects for a period of 60 days to provide support for the child, it shall be prima facie evidence that he has wholly abandoned the child.

COMMENTARY - ABANDONMENT OF A CHILD

ORS 167.605: The Oregon nonsupport statute. Prohibits a person from "deserting or abandoning his or her minor children, born in or out of wedlock, under the age of 18 years, without providing necessary and proper shelter, food, care or clothing . . . . "

ORS 167.215: Prohibits a person from doing any act which "causes or tends to cause any child under the age of 18 years to become a dependent child . . . . " "Dependent child" is defined in ORS 418.035 (1).

State v. Hodges, 88 Adv Sh 721, ___ Or ___, 457 P2d 491 (1969), held ORS 167.210 (contributing to the delinquency of a minor) unconstitutionally vague, stating:

> " . . . [T]he terms of a penal statute creating an offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." At 726.

ORS 167.215: Causing child to become or remain dependent. May be constitutionally infirm on the same grounds enunciated by Hodges.

It is now an indictable misdemeanor under ORS 167.605 for a parent to desert or abandon his minor children under 18 without providing necessary care and support for them. The chief gravamen of the crime is nonsupport, so that it is not necessary to charge and prove abandonment before a conviction can be had.

In a sense section 5 is residual. If the abandoned child dies, the parent or person in loco parentis who abandons it commits in most instances a form of criminal homicide, depending on the culpability element. If the parent is reckless and thereby creates a substantial risk of serious physical injury to the child, he commits the crime of reckless endangerment. Section 5 therefore comes into play only where there is abandonment but the child is discovered and taken under protection without suffering physical harm.

The designated age is arbitrary; the criterion should be the ability of the child under the circumstances to "fend for himself," and, if in difficulty, to seek constructive aid and assistance.

Subsection (1) is taken from Michigan Revised Criminal Code section 7030.

Subsection (2) is a restatement of the prima facie evidence provision of ORS 167.605.

Section 6. Criminal nonsupport. (1) A person commits the crime of criminal nonsupport if, being a parent of a child born in or out of wedlock, lawful guardian or other person lawfully charged with the support of a child less than 18 years of age, he refuses or neglects without lawful excuse to provide support for such child.

Existing Law
ORS
167.605 - .635
419.513
419.515
Ch. 109
23.775 - .795

(2) It is no defense to a prosecution under this section that either parent has contracted a subsequent marriage, that issue has been born of a subsequent marriage, that the actor is the parent of issue born of a prior marriage or that the child is being supported by another person or agency.

Section 7. Criminal nonsupport; special rules of evidence. (1) Proof that a child was born to a woman during the time a man lived and cohabited with her, or held her out as his wife, is prima facie evidence that he is the father of the child. This subsection does not exclude any other legal evidence tending to establish the parental relationship.

(2) No provision of law prohibiting the disclosure of confidential communications between husband and wife apply to prosecutions for criminal nonsupport. A husband or wife is a competent and compellable witness for or against either party.

COMMENTARY - CRIMINAL NONSUPPORT AND SPECIAL RULES OF EVIDENCE

A. Summary

Section 6 makes it a crime for a parent or a person in loco parentis of a child less than 18 years old to intentionally fail or intentionally refuse to provide support for such child. The failure to provide support must be "without lawful excuse."

"Support" is defined in section 1 as "necessary and proper maintenance, including, but not limited to, shelter, food, clothing, medical attention and education."

Subsection (2) of section 6 negatives the defense to a charge of criminal nonsupport that the actor has remarried or is supporting children born of a prior or subsequent marriage.

Section 7 codifies three special rules of evidence applicable to criminal nonsupport actions. Subsection (1) provides that if a child is born to a woman during the time a man lived and cohabited with her, or held her out as his wife, it is prima facie evidence that he fathered the child. This, of course, could be rebutted by other competent evidence.

Subsection (2) takes away the privilege of confidential communications between husband and wife in criminal nonsupport prosecutions. It provides further that both husband and wife are competent and compellable witnesses for or against each other.

Section 6 departs from the present nonsupport statute, ORS 167.605, in two particulars. It broadens the definition of support by specifically including medical attention and education. It narrows the scope of the existing statute by limiting coverage to children less than 18 years old, thereby excluding nonsupport of a wife. It is submitted that adequate civil remedies exist to deal effectively with nonsupport of a spouse.

B. Derivation

Section 6 is taken from New York Revised Penal Code section 260.05 and ORS 167.630. Section 7 is a restatement of ORS 167.625.

C. Relationship to Existing Law

The offense of criminal nonsupport is defined in Oregon by ORS 167.605:

> "Any person who, without just or sufficient cause, deserts or abandons his wife, or who deserts or abandons any of his or her minor children, born in or out of wedlock, under the age of 18 years, without providing necessary and proper shelter, food, care or clothing for any of them, or who, without just or sufficient cause, fails or neglects to support his wife, or any such minor children, shall be punished . . . . "

Thus, the statute covers two distinct areas: (1) Abandoning his wife and children without providing necessary support, or (2) failing to provide support even though he

has not abandoned his wife or children. The essential factor in either is the failure to provide support. However, failure to support alone is not sufficient to constitute the crime; the failure must be accompanied with circumstances that indicate it was without just or sufficient cause. Thus there are two essential elements of the crime: (1) Failure to provide support, and (2) lack of just or sufficient cause. State v. Francis, 126 Or 253, 269 P 878 (1928); State v. Langford, 90 Or 251, 176 P 197 (1918).

ORS 131.360 is a special venue provision for criminal nonsupport actions. This statute or a comparable one should be retained.

Section 8. Endangering the welfare of a minor. (1) Except as provided in subsection (2) or (3) of this section, a person commits the crime of endangering the welfare of a minor if:

(a) Being an owner, lessee, manager or employe of a public place where alcoholic liquor is consumed on the premises, he knowingly permits a person less than 21 years of age to enter or remain on the premises, unless the minor is accompanied by his parent or lawful guardian, or by an adult authorized by his parent or lawful guardian, or unless otherwise permitted by law to do so; or

(b) He knowingly induces, causes or permits an unmarried person less than 18 years of age to witness an act of sexual conduct or sadomasochistic abuse. The definitions of "sexual conduct" and "sadomasochistic abuse" in Article ___, section 1, apply to this section; or

(c) He knowingly permits a person less than 18 years of age to enter or remain in a place where unlawful narcotic or dangerous drug activity is maintained or conducted; or

(d) He knowingly induces, causes or permits a person less than 21 years of age to participate in unlawful gambling activity; or

(e) He knowingly gives or sells, or causes to be given or sold, any alcoholic liquor to a person less than 21 years of age, except

Existing Law
ORS
167.210
167.215
167.220
167.205
167.225
167.235
167.237
167.240
167.245
167.250
167.295
167.300
167.645
166.480
165.610
165.245
165.240
163.650
163.640
419.720
419.990
471.410
462.190
Ch 631, OL 1969
472.180
472.310

that this subsection shall not apply to the parent or lawful guardian of such person if the act in question does not occur on licensed premises, or to duly licensed physicians who dispense alcoholic liquor by prescription; or

(f) He knowingly sells, or causes to be sold, tobacco in any form to a person less than 18 years of age, except that this subsection shall not apply to the parent or lawful guardian of such person; or

(g) He intentionally marks the body of a person less than 18 years of age with indelible ink or pigments by means of a tattooing device; or

(h) He knowingly sells or furnishes to a person less than 18 years of age, without the written consent of the person's parent or lawful guardian, bulk gunpowder, dynamite, blasting caps or nitroglycerine.

(2) Paragraph (a) of subsection (1) of this section does not apply to participation in a public dance or entertainment if the minor has obtained written permission to engage in the activity from the juvenile court judge for the county in which the minor resides. The judge shall grant permission only if the parents or lawful guardian of the minor have consented to the minor's participation in the activity and the judge has found that the activity will not be inconsistent with the health, safety or morals of the minor.

(3) Notwithstanding the provisions of paragraph (a) of subsection (1) of this section, an owner, lessee, manager or employe

of a public billiard or pool facility may lawfully permit a person less than 21 years of age to play billiards or pool in the facility if:

(a) Facilities are offered to the public to play billiards or pool for amusement only; and

(b) The facility is clean, adequately lighted and ventilated; and

(c) No alcoholic liquor is served in that part of the facility where billiards or pool is played; and

(d) Access to the facility does not require passing through a room where alcoholic liquor is served; and

(e) The facility is otherwise in compliance with all applicable laws.

COMMENTARY - ENDANGERING THE WELFARE OF A MINOR

A. Summary

Paragraph (a) of subsection (1) prohibits allowing a person less than 21 to enter or remain on premises where alcoholic liquor is consumed. Coverage does not extend to premises that sell alcoholic liquor for consumption off the premises, e.g., licensed retail outlets. The premises in question must be "public"; a private residence or private club is not within reach of the section. The culpability requirement is "knowing" conduct, i.e., knowledge that a person less than 21 years of age has entered or remained on the premises.

There are a number of exceptions to paragraph (a), as reflected in the statement of crime itself, and in subsections (2) and (3). Permitting a person less than 21 years of age to enter or remain on premises where alcoholic liquor is consumed is not a crime if:

(1) The minor is accompanied by his parent or person in loco parentis; or

(2) The minor is otherwise permitted by law to do so, e.g., delivery boy, minor licensed to work in establishment; or

(3) The minor has permission of a juvenile court judge to engage in dancing or other form of entertainment on the premises; or

(4) The premise is a billiard or pool facility separated from an area where alcoholic liquor is served.

The age limit of 21 in paragraph (a) conforms to the legal age in Oregon for consumption of alcoholic liquor.

Paragraph (b) prohibits inducing, causing or permitting a person less than 18 years old to view an act of sexual conduct or sadomasochistic abuse. The provision is limited to unmarried persons. The two designated prohibited acts are defined in the Obscenity Article. The age limit of 18 and marital status distinction conform to the age of consent established in the Article on Sexual Offenses. Paragraph (b) does not require participation or active conduct on part of the minor; exposure to the prohibited acts is considered harmful per se to the young and unsophisticated.

Paragraph (c) prohibits allowing a person less than 18 years old to enter or remain on premises where unlawful drug activity is conducted or maintained. The age limit of 18 is applied here since no active participation by the minor is contemplated. If a minor is sold or given drugs, or if the actor maintains a place resorted to by drug users or used for the unlawful keeping or sale of drugs, the crime of criminal dealing in drugs and criminal drug promotion will be prosecutable.

Paragraph (d) prohibits encouraging or allowing a person less than 21 years old to participate in unlawful gambling. Article ___, Gambling and Related Offenses, determines what forms of gambling are "unlawful." The age of 21 conforms to that established in Oregon for pari-mutuel wagering.

Paragraph (e) prohibits furnishing a person less than 21 with alcoholic liquor. It is not an offense for a parent or lawful guardian to furnish his child with alcoholic liquor, except on licensed premises, or for a physician to dispense alcoholic liquor to a minor on prescription.

Paragraph (f) prohibits selling tobacco to a person less than 18. The paragraph excludes the parent or guardian who purchases tobacco for his minor child. In practice, this prohibition may be unenforceable, but it was believed advisable to continue to discourage sale to minors of substances that "may be harmful to your health."

Paragraph (g) is new to Oregon law. It prohibits tattooing a person less than 18 with indelible ink or pigments. While tattooing is legal in Oregon, it poses sufficient health hazards to warrant discontinuance of the practice on minors.

Paragraph (h) prohibits selling or furnishing persons less than 18 with certain designated dangerous explosives. Sale would be lawful if the minor has written consent of his parent or guardian.

Subsection (2) would allow a minor to dance or entertain in a place where alcoholic liquor is consumed with consent of a juvenile court judge and the parents of the minor.

Subsection (3) would allow a minor to enter and remain in a billiard or pool facility so long as the facility complies with the requirements of the subsection.

B. Derivation

The title of the offense is taken from New York Revised Penal Law section 260.10, except that the word "child" has been changed to "minor."

Subsection (1) is based on New York Revised Penal Law section 260.20 with substantial alteration and addition.

Paragraphs (b) and (d) of subsection (1) have no derivative source.

Paragraphs (e) and (h) are taken in part from Michigan Revised Criminal Code section 7045.

C. Relationship to Existing Law

State v. Hodges, 88 Or Adv Sh 721, ___ Or ___, 457 P2d 491 (1969), held ORS 167.210 (contributing to the delinquency

of a minor) unconstitutional "on its face" because of vagueness. For a comprehensive review of preexisting law in Oregon and the effect on that law wrought by the Hodges decision, see commentary to Article ___, Sexual Offenses, pp. 55-64.

The court in Hodges quoted with approval Lanzetta v. New Jersey, 306 US 451:

> "It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards what is prohibited and what is not in each particular case." At 725.

Throughout the Oregon criminal code revision, the Commission has sought to articulate clear and concise statements of the substantive offenses, prohibiting particularized conduct and applying defined elements of culpability. Many of the provisions relate to conduct detrimental to the welfare of minors, e.g.:

Recklessly endangering another person, Article ___, Assault and Related Offenses;

Illegal traffic in firearms, sale or transfer to a person under 17 years of age, Article ___, Offenses Involving Firearms and Deadly Weapons;

Compelling prostitution, Inducing or causing a person under 18 years of age to engage in prostitution, Article ___, Prostitution and Related Offenses;

Rape, Sodomy, Sexual abuse, Contributing to the sexual delinquency of a minor, Sexual misconduct with a minor, all in Article ___, Sexual Offenses;

Sale of obscene material to a minor, Article ___, Obscenity.

An examination of the cases prosecuted under ORS 167.210 reveals that in almost every instance the same conduct could be prosecuted under one of the sections noted in the preceding listing. Section 8 is designed to provide additional coverage for specific acts injurious to the welfare of minors not prohibited elsewhere in the code.

The following Oregon statutes prohibit conduct considered detrimental to the welfare of minors:

ORS 167.210: Contributing to the delinquency of a minor. (Ruled unconstitutionally vague in State v. Hodges, supra).

ORS 167.215: Causing child to become or remain dependent.

ORS 167.220: Court may impose conditions and suspend sentence for violation of ORS 167.210 or 167.215.

ORS 167.205: Definition for ORS 167.210 to 167.220.

ORS 167.225: Taking away female under 16 without consent of parent.

ORS 167.235: Employment of minors in place of public entertainment.

ORS 167.237: Application of ORS 167.235.

ORS 167.240: Inducing minor to visit house of prostitution.

ORS 167.245: Furnishing tobacco to minors.

ORS 167.250: Use of tobacco by minor in public place; permitting minor to frequent place of business while smoking.

ORS 167.295: Playing of billiards, pool and games of chance by minors.

ORS 167.300: Minor misrepresenting age in order to gamble.

ORS 167.645: Promoting adoption of child by advertising.

ORS 166.480: Sale or gift of explosives and firearms to children [under the age of 14].

ORS 165.610: Third person misrepresenting age of minor.

ORS 165.245: Substituting another child for infant committed to one's care.

ORS 165.240: Producing infant and falsely pretending heirship.

ORS 163.650: Cruelty to child by one not child's parent.

ORS 163.640: Taking away child with intent to detain from parent.

ORS 419.720: Prohibition of parents, guardians or custodians from allowing minors to be in public places during curfew hours.

ORS 419.990: Violation of ORS 419.720 is a misdemeanor.

ORS 471.410: Sale or gift of liquor to minor. (ORS 471.990 (1) provides that violation of ORS 471.410 is a misdemeanor).

ORS 462.190: Selling wagering tickets to minors. (ORS 462.990 (1) makes violation of ORS 462.190 a misdemeanor).

Chapter 631, Oregon Laws 1969, sections 4 and 15: Amend ORS 453.050 prohibiting sale of poison to minors.

ORS 472.180: Grounds for suspension or revocation of [liquor] license. (8) That the licensee knowingly has sold alcoholic liquor to persons under 21 years of age.

ORS 472.310: It shall be unlawful: (3) For any person to serve, sell or dispense alcoholic liquor to any person under the age of 21 years. ORS 472.990 (1) Violation of ORS 472.310 punishable as a misdemeanor.

Provisions relating to sexual misconduct with minors are not included in the foregoing list. These offenses are covered in Article ___, Sexual Offenses.

Section 8 as drafted restates, broadens or departs from existing law in the following respects:

Paragraph (a) of subsection (1) is new to Oregon law insofar as it prohibits allowing a minor to remain on premises where alcoholic liquor is consumed without a showing that the minor was provided with alcoholic liquor.

Paragraphs (b) and (c) of subsection (1) are new to Oregon law.

Paragraph (d) of subsection (1) restates coverage found in ORS 167.295 and 462.190.

Paragraph (e) of subsection (1) restates ORS 471.410 and 472.310.

Paragraph (f) of subsection (1) restates ORS 167.245.

Paragraph (g) is new to Oregon law.

Paragraph (h) of subsection (1) restates ORS 166.480.

Subsection (2) restates ORS 167.237 with certain modifications.

Subsection (3) restates ORS 167.295.

Existing law on sale of poisons to minors and curfew violations would not be affected by adoption of section 8.

It is recommended that the following statutes be repealed: ORS 167.210; 167.215; 167.220; 167.205; 167.225; 167.235; 167.237; 167.240; 167.245; 167.250; 167.295; 166.480; 163.650; 163.640; 471.410 as it pertains to minors; 462.190 as it pertains to minors; and 472.310 as it pertains to minors.

ORS 167.300, 167.645, 165.610, 165.245 and 165.240 are dealt with in the Article on Miscellaneous Offenses.

SUPPLEMENTAL COMMENTARY

The purpose of this supplemental commentary is to explore some of the areas involving family oriented offenses not covered in this draft.

Abortion

Senate Bill 193, Chapter 684, Oregon Laws 1969, enacted into law in 1969, repealed ORS 163.060 which provided criminal penalties for unlawful abortion. Sections 2 and 5 of that bill provide felony penalties for violation of the new Act governing abortions. Since the new law creates a comprehensive, unitary scheme regulating the lawful termination of pregnancy, it is recommended that the provisions related thereto be left intact except for penalties which should conform to the proposed code's scheme.

Adultery

ORS 167.005 proscribes adultery. The Commission made a policy decision during deliberations on Article ___, Sexual Offenses, to recommend repeal.

Marriage

ORS 106.140 prohibits an unauthorized person from solemnizing a marriage and an authorized person from authorizing a marriage in violation of statute.

New York Revised Penal Law section 255.05 prohibits issuing a writing purporting to be a decree of divorce or annulment by a person not authorized to issue such decree. Oregon has no similar statute.

Michigan Revised Criminal Code section 7010 makes it unlawful for a person to marry, under circumstances not amounting to bigamy or incest, knowing that he is not legally eligible to do so. No similar statute is found in Oregon law. ORS 106.010, as amended by Chapter 242, Oregon Laws 1969, sets the minimum required age for marriage. The statute does not make entering into a marriage when below the age of consent a crime, but such marriage would be voidable under ORS 106.030.

ORS 167.640 prohibits promoting divorce. There is no comparable section in the proposed draft.

Incompetents

New York Revised Penal Law section 260.25 and Michigan Revised Criminal Code section 7050 state an offense titled "Endangering the welfare of an incompetent person." In view of State v. Hodges, supra, it is doubtful whether either section would be constitutionally valid in Oregon.

Minors

ORS 167.240: Makes it a crime for a minor to visit a house of prostitution.

ORS 167.250: Prohibits a minor under the age of 18 from smoking, using or possessing tobacco in a public place.

ORS 167.300: Penalizes a minor who misrepresents his age in order to gamble.

The three statutes set forth above are not covered in the proposed draft.

ORS 165.245: Substituting another child for infant committed to one's care. No comparable section in proposed draft. (See, Article ___, Kidnapping and Related Offenses).

ORS 165.240: Producing infant and falsely pretending heirship. Prohibited conduct covered by section on theft by deception, Article ___.

ORS 167.225: Taking away female under 16 without consent of parents [for purpose of marriage, concubinage or prostitution]. Coverage relating to concubinage and prostitution is found in Article ___, Sexual Offenses, and Article ___, Prostitution. Prohibition relating to taking away female under 16 for purposes of marriage is not covered in the proposed draft. Such conduct is covered by the Article on Kidnapping and Related Offenses.

ORS 166.560: Punishes abandoning refrigerators in places accessible to children. This provision is probably covered by section on reckless endangering in Article ___, Assault. See, also Article ___, Miscellaneous Offenses.

Support of Parents

ORS 167.635 makes it a crime for a person over the age of 21 to fail or neglect to support his indigent parent without just cause. This statute has not been retained in the proposed draft.

TEXT OF REVISIONS OF OTHER STATES

Text of Oregon Revised Statutes:

471.005. (1) "Alcoholic liquor" means any alcoholic beverage containing more than one-half of one percent alcohol by volume, and every liquid or solid, patented or not, containing alcohol, and capable of being consumed by a human being.

471.035. No provision of the Liquor Control Act shall, by reason only that such product contains alcoholic liquor, prevent the sale of any perfume, lotion, tincture, varnish, dressing fluid, extracts, acid vinegar, or of any official medicinal or pharmaceutical preparations, or of any patent or proprietary medicine intended solely for medicinal purposes.

# # #

Text of Model Penal Code:

Section 230.1. Bigamy and Polygamy.

(1) Bigamy. A married person is guilty of bigamy, a misdemeanor, if he contracts or purports to contract another marriage, unless at the time of the subsequent marriage:

(a) the actor believes that the prior spouse is dead; or

(b) the actor and the prior spouse have been living apart for five consecutive years throughout which the prior spouse was not known by the actor to be alive; or

(c) a Court has entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the actor does not know that judgment to be invalid; or

(d) the actor reasonably believes that he is legally eligible to remarry.

Text of Model Penal Code (Cont'd):

Section 230.1 (Cont'd):

(2) Polygamy. A person is guilty of polygamy, a felony of the third degree, if he marries or cohabits with more than one spouse at a time in purported exercise of the right of plural marriage. The offense is a continuing one until all cohabitation and claim of marriage with more than one spouse terminates. This section does not apply to parties to a polygamous marriage, lawful in the country of which they are residents or nationals, while they are in transit through or temporarily visiting this State.

(3) Other Party to Bigamous or Polygamous Marriage. A person is guilty of bigamy or polygamy, as the case may be, if he contracts or purports to contract marriage with another knowing that the other is thereby committing bigamy or polygamy.

Section 230.2. Incest.

A person is guilty of incest, a felony of the third degree, if he knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood [or an uncle, aunt, nephew or niece of the whole blood]. "Cohabit" means to live together under the representation or appearance of being married. The relationships referred to herein include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.

Text of Model Penal Code Cont'd:

Section 230.4. Endangering Welfare of Children.

A parent, guardian, or other person supervising the welfare of a child under 18 commits a misdemeanor if he knowingly endangers the child's welfare by violating a duty of care, protection or support.

Section 230.5. Persistent Non-Support.

A person commits a misdemeanor if he persistently fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child or other dependent.

# # #

Text of New York Revised Penal Law:

§ 255.15 Bigamy

A person is guilty of bigamy when he contracts or purports to contract a marriage with another person at a time when he has a living spouse, or the other person has a living spouse.

Bigamy is a class E felony. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 255.30 Adultery and incest; corroboration

A person shall not be convicted of adultery or incest or of an attempt to commit either such crime upon the uncorroborated testimony of the other party to the adulterous or incestuous act or attempted act. L.1965, c. 1030; amended L.1967, c. 791, § 43, eff. Sept. 1, 1967.

§ 260.00 Abandonment of a child

A person is guilty of abandonment of a child when, being a parent, guardian or other person legally charged with the care or custody of a child less than fourteen years old, he deserts such child in any place with intent to wholly abandon it.

Abandonment of a child is a class E felony. L.1965, c. 1030, eff. Sept. 1, 1967.

Text of New York Revised Penal Law (Cont'd):

§ 260.05 Non-support of a child

A person is guilty of non-support of a child when, being a parent, guardian or other person legally charged with the care or custody of a child less than sixteen years old, he fails or refuses without lawful excuse to provide support for such child when he is able to do so.

Non-support of a child is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

§ 260.10 Endangering the welfare of a child

A person is guilty of endangering the welfare of a child when:

1. He knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than sixteen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his life or health; or

2. Being a parent, guardian or other person legally charged with the care or custody of a male child less than sixteen years old or of a female child less than eighteen years old, he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming a "neglected child," a "juvenile delinquent" or a "person in need of supervision," as those terms are defined in articles three and seven of the family court act.

Endangering the welfare of a child is a class A misdemeanor. L.1965, c. 1030; amended L.1967, c. 791, § 44, eff. Sept. 1, 1967.

§ 260.15 Endangering the welfare of a child; defense

In any prosecution for endangering the welfare of a child, pursuant to section 260.10, based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is an affirmative defense that the defendant (a) is a parent, guardian or other person legally charged with the care or custody of such chlid [1]; and (b) is a member or adherent of an organized church or religious group the tenets of which prescribe prayer as the principal treatment for illness; and (c) treated or caused such ill child to be treated in accordance with such tenets. L.1960, c. 1030; amended L.1967, c. 791, § 45, eff. Sept. 1, 1967.

[1] So in original. Probably should be "child."

Text of New York Revised Penal Law (Cont'd):

§ 260.20 Unlawfully dealing with a child

A person is guilty of unlawfully dealing with a child when:

1. Being an owner, lessee, manager or employee of a public dance hall, public pool or billiard room, public bowling alley, theatre, motion picture theatre, skating rink, or of a place where alcoholic beverages are sold or given away, he permits a child less than sixteen years old to enter or remain in such place unless:

(a) The child is accompanied by his parent, guardian or an adult authorized by a parent or guardian; or

(b) The entertainment or activity is being conducted for the benefit or under the auspices of a non-profit school, church or other educational or religious institution; or

(c) Otherwise permitted by law to do so; or

2. He knowingly permits a child less than eighteen years old to enter or remain in a place where illicit sexual activity or illegal narcotics activity is maintained or conducted; or

3. He marks the body of a child less than eighteen years old with indelible ink or pigments by means of tattooing; or

4. He gives or sells or causes to be given or sold any alcoholic beverage, as defined by section three of the alcoholic beverage control law, to a child less than eighteen years old; except that this subdivision does not apply to the parent or guardian of such a child; or

5. He sells or causes to be sold tobacco in any form to a child less than eighteen years old.

It is no defense to a prosecution pursuant to subdivision four or five of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Unlawfully dealing with a child is a class B misdemeanor. L. 1965, c. 1030, eff. Sept. 1, 1967.

§ 260.25 Endangering the welfare of an incompetent person

A person is guilty of endangering the welfare of an incompetent person when he knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a person who is unable to care for himself because of mental disease or defect.

Endangering the welfare of an incompetent person is a class A misdemeanor. L.1965, c. 1030, eff. Sept. 1, 1967.

# # #

Text of Michigan Revised Criminal Code:

[Bigamy]

Sec. 7001. (1) A person commits the crime of bigamy if he intentionally contracts or purports to contract a marriage with another person at a time when he has a living spouse.

(2) A person does not commit a crime under this section if he believes that he is legally eligible to marry. The burden of injecting the issue is on the defendant, but this does not shift the burden of proof.

(3) Bigamy is a Class C felony.

[Incest]

Sec. 7005. (1) A person commits the crime of incest if he marries or engages in sexual intercourse with a person whom he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendant or brother or sister of either the whole or the half blood.

(2) For purposes of this section, "descendant" includes stepchildren.

(3) A person shall not be convicted of incest or of an attempt to commit incest upon the uncorroborated testimony of the person with whom the offense is alleged to have been committed.

(4) Incest is a Class C felony.

[Concealing Birth of Infant]

Sec. 7025. (1) A person commits the crime of concealing the birth of an infant if he conceals the corpse of a new-born child with intent to conceal the fact of its birth or to prevent a determination of whether it was born dead or alive.

(2) Concealing the birth of an infant is a Class A misdemeanor.

[Abandonment of Child]

Sec. 7030. (1) A person commits the crime of abandonment of a child if, as a parent, guardian or other person legally charged with the care or custody of a child less than 8 years old, he deserts the child in any place with intent wholly to abandon it.

(2) Abandonment of a child is a Class A misdemeanor.

Text of Michigan Revised Criminal Code (Cont'd):

[Persistent Non-Support]

Sec. 7035. (1) A person commits the crime of persistent non-support if he persistently and intentionally fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child or other dependent.

(2) "Support" includes but is not limited to food, shelter, clothing, medical attention and other necessary care, as determined elsewhere by law.

(3) Persistent non-support is a Class C felony.

[Endangering Welfare of a Child]

Sec. 7040. (1) A person commits the crime of endangering the welfare of a child if he:

(a) Knowingly acts in a manner likely to be injurious to the physical or mental welfare of a child under 17 years of age; or

(b) Knowingly or with criminal negligence brings about conduct by a child under 19 years of age that gives the juvenile division of a probate court jurisdiction to act under section 2 of Act No. 54 of the Public Acts of 1944, as amended, being section 712A.2 of the Compiled Laws of 1948.

(2) Endangering the welfare of a child is a Class A misdemeanor.

[Unlawful Transactions With a Child]

Sec. 7045. (1) A person commits the crime of unlawful transactions with a child if:

(a) Being an owner, lessee, manager, or employee of a dance hall, saloon, barroom or any place where alcoholic liquor is sold or provided for consumption on the premises, he permits a child under 17 years of age to enter or remain on the premises, unless the child is accompanied by his parent, guardian, or an adult authorized to accompany him by a parent or guardian, or unless otherwise permitted by law to do so; or

(b) He knowingly permits a child under 19 years of age to enter or remain in a place where illicit sexual activity or illegal narcotics activity is maintained or conducted; or

(c) He knowingly gives or sells or causes to be given or sold any alcoholic liquor to a child under 21 years of age; or

(d) He knowingly sells or causes to be sold tobacco in any form to a child under 17 years of age; or

(e) Being a parent, guardian or other person having lawful control and custody of a child, he fails or refuses to exercise reasonable diligence to prevent a curfew violation by the child; or

Text of Michigan Revised Criminal Code (Cont'd):

Sec. 7045 (Cont'd):

(f) He knowingly sells or furnishes to a child under the age of 18, without the written consent of the parent, guardian or other person having lawful custody and control of the child, bulk gunpowder, dynamite, blasting caps or nitroglycerine.

(2) The definition of "alcoholic liquor" in section 2 of Act No. 8 of the Public Acts of 1933, as amended, being section 436.2 of the Compiled Laws of 1948, applies to this section.

(3) Subparagraphs 1(c) and (d) of this section do not apply to a parent or guardian or other person having lawful custody and control of the child in question, if the act in question does not occur on licensed premises.

(4) Subparagraph 1(c) does not apply to alcoholic liquors dispensed on prescription of a duly-licensed physician.

(5) This section shall not prevent any township, village or city from establishing by ordinance:

(a) Regulations more stringent than the provisions of this section relative to the attendance of any minor under the age of 21 years at theaters, moving picture theaters, bowling alleys, billiard or pool halls, and dance halls; or

(b) Regulations permitting the attendance of minor children at dances where no alcoholic liquor is sold or provided for consumption on the premises.

(6) Unlawful transactions with a child is a Class B misdemeanor.

[Endangering the Welfare of an Incompetent Person]

Sec. 7050. (1) A person commits the crime of endangering the welfare of an incompetent person if he knowingly acts in a manner likely to be injurious to the physical or mental welfare of a person who is unable to care for himself because of mental disease or defect.

(2) Endangering the welfare of an incompetent person is a Class A misdemeanor.

# # #

Text of Connecticut Proposed Penal Code:

§ 109. Concealment of delivery

Any person who intentionally conceals the delivery of any child, whether said child was delivered alive or dead, is guilty of concealment of delivery.

Concealment of delivery is a class A misdemeanor.

§ 200. Bigamy

Any person is guilty of bigamy who marries or purports to marry another person in this state if either is lawfully married; or so marries or purports to marry another person in any other state or country in violation of the laws thereof, and knowingly cohabits and lives with such other person in this state as husband and wife.

It is an affirmative defense to the charge of bigamy that at the time of the subsequent marriage or purported marriage:

1. the actor reasonably believes, based on persuasive and reliable information, that the prior spouse is dead; or

2. a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage and the actor does not know that judgment to be invalid; or

3. the single person does not know that the other is legally married.

Bigamy is a class D felony.

§ 201. Incest

A person is guilty of incest when he marries or engages in sexual intercourse with a person whom he knows to be related to him within any of the degrees of kindred specified in section 46-1.

Incest is a class D felony.

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