

CRIMINAL LAW REVISION COMMISSION
311 Capitol Building
Salem, Oregon

ARTICLE 20. OFFENSES AGAINST THE FAMILY

Tentative Draft No. 1; May 1970

Reporter: Roger D. Wallingford

Subcommittee No. 2

ARTICLE 20. OFFENSES AGAINST THE FAMILY

Tentative Draft No. 1; May 1970

INDEX

	<u>Page</u>
Section 1. Offenses against the family; definitions	1
Section 2. Bigamy.	3
Section 3. Incest.	6
Section 4. Abandonment of a child.	9
Section 5. Child neglect	10
Section 6. Criminal nonsupport	12
Section 7. Criminal nonsupport; special rules of evidence	12
Section 8. Endangering the welfare of a minor. . .	15

#

ARTICLE 20. OFFENSES AGAINST THE FAMILY

Tentative Draft No. 1; May 1970

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

(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) is the same definition as appears in 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 paragraph (d) of subsection (1) of section 8 of this Article.

The significance of "descendant" as defined is the inclusion of stepchildren and lawfully adopted children. The term applies to section 3 of this Article prohibiting

incestuous relationships. Its effect will be to expand 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.

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) Bigamy is a Class C felony.

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.

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 s. 230.1 and Connecticut Revised Penal Code s. 200.

C. Relationship to Existing Law

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" 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).

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 defense of mistake of fact or mistake of law has been interposed with varying success in American jurisdictions. Generally, 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.

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.

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 State v. Locke, 77 Or 492, 151 P 717 (1915). Affirming the defendant's conviction, the court declined to discuss the defense at great length since the trial court in its charge to the jury had considered an invalid divorce decree as a complete defense to all acts committed by the defendant

in relation to his marital status 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 Oregon as to the general availability of the defense in bigamy prosecutions.

Section 2 is intended to clarify the issue to the extent of requiring proof that the actor knowingly contracted a marriage at a time when he knew that one of the parties was lawfully married. A defendant could therefore defend on the ground of reasonable mistake of law or fact negating the requisite knowledge.

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 in so far 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. (1) 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.

(2) Incest is a Class C felony.

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 s. 230.2. The relationship of stepchild has been added by the Commission.

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."

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."

The traditional basis for incest legislation has been relationships of consanguinity and affinity. Affinity arises from marriage, creating an affinity between the stepparent and the stepchild. While no affinity relationship is created between a parent and an adopted child, the

civil law accords the relationship with all the rights and liabilities that attach to natural parentage. In view of these considerations, the judgment of the Commission was to include both stepchildren and adopted children within the purview of the incest statute.

Deciding that the preservation of family security is the primary purpose behind incest legislation, the Commission then narrowed the scope of the section by deleting coverage for cousins and aunts and uncles. Under ORS 106.020 marriage between persons so related will remain void.

Section 4. 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 15 years of age, he deserts the child in any place with intent to abandon it.

(2) Abandonment of a child is a Class C felony.

COMMENTARY - ABANDONMENT OF A CHILD

ORS 167.605, the 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 gravamen of the crime is nonsupport, so that it is not necessary to charge and prove abandonment before a conviction can be had.

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.

Section 4 is taken from Michigan Revised Criminal Code s. 7030.

Section 5. Child neglect. (1) A person having custody or control of a child less than eight years of age commits the crime of child neglect if, with criminal negligence, he leaves the child unattended in or at any place for such period of time as may be likely to endanger the health or welfare of such child.

(2) Child neglect is a Class A misdemeanor.

COMMENTARY - CHILD NEGLECT

Section 5 is intended to complement the sections on child abandonment and criminal nonsupport by providing coverage for situations involving criminal neglect. The crucial issue here is not whether the child was deserted or left without nominal support, but whether it was left unattended under circumstances likely to endanger its health or welfare.

The term "custody or control of a child" extends the reach of the section beyond the child's parent or guardian; it includes the temporary custodian, e.g., baby-sitter, relative, teacher.

While recognizing that any age is arbitrary, the Commission believes that an age of eight is reasonable when measured by the criterion of relative self-reliance.

The mens rea element is criminal negligence which is defined in section 1, Article 2, to mean "that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation." The actor would, of course, be subject to prosecution under section 5 if a higher degree of culpability were present, e.g., intentional or knowing conduct.

The term "unattended" means that the child is left under circumstances in which no responsible person is present to attend to his needs. Leaving a three month old

child in the care of a nine year old child might, in some cases, amount to child neglect. An alleged offense under section 5 must be viewed as a totality of circumstances; the age of the child, place where left, whether it was left alone or in the company of others, period of time left and, finally, whether the sum of these circumstances are such as would endanger the health or welfare of the child.

Oregon presently has no comparable statute. Child neglect cases have generally been handled through the juvenile court process, with irresponsible parents prosecuted for other crimes that may have grown out of such neglect.

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.

(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.

(3) Criminal nonsupport is a Class C felony.

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. The Commission believes 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 s. 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 should be retained.

Section 8. Endangering the welfare of a minor. (1) A person commits the crime of endangering the welfare of a minor if he knowingly:

(a) Induces, causes or permits an unmarried person less than 18 years of age to witness an act of sexual conduct of sado-masochistic abuse;

(b) Permits a person less than 21 years of age to enter or remain in a place where unlawful narcotic or dangerous drug activity is maintained or conducted; or

(c) Induces, causes or permits a person less than 21 years of age to participate in unlawful gambling activity; or

(d) Gives or sells, or causes to be given or sold, or otherwise makes available any alcoholic liquor to a person less than 21 years of age, except 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

(e) Sells, or causes to be sold, tobacco in any form to a person less than 18 years of age.

(2) The definitions of "sexual conduct" and "sado-masochistic abuse" in section 1 of Article 29 apply to this section.

(3) Endangering the welfare of a minor is a Class A misdemeanor.

COMMENTARY - ENDANGERING THE WELFARE OF A MINOR

A. Summary

Paragraph (a) of subsection (1) prohibits inducing, causing or permitting a person less than 18 years old to view an act of sexual conduct or sado-masochistic 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. The subsection does not require participation or active conduct on the part of the minor; exposure to the prohibited acts is considered harmful per se to the young and unsophisticated.

Paragraph (a) of subsection (1) is not intended to apply to the parents of a minor child who engage in lawful sexual activity within the ambit of family privacy. There may be aggravated instances in which the sexual conduct of parents patently endangers the welfare of their minor children; for this reason, the Commission chose not to write a specific exception into the statute.

Paragraph (b) prohibits allowing a person less than 21 years old to enter or remain on premises where unlawful drug activity is conducted or maintained. 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 (c) prohibits encouraging or allowing a person less than 21 years old to participate in unlawful gambling. Article 30, Gambling Offenses, is determinative of what forms of gambling are "unlawful." The age of 21 conforms to that established in Oregon for pari-mutuel wagering.

Paragraph (d) 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 (e) prohibits selling tobacco to a person less than 18. In practice, this prohibition may be difficult to enforce, but the Commission believes it advisable to continue to discourage sale to minors of substances that are provably "hazardous to your health."

Paragraphs (a), (b) and (c) are new.

Paragraph (d) is taken in part from Michigan Revised Criminal Code s. 7045.

Paragraph (e) is a restatement of ORS 167.245.

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 13, 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 11,
Assault and Related Offenses;

Compelling prostitution, inducing or causing a person under 18 years of age to engage in prostitution, Article 28,
Prostitution and Related Offenses;

Rape, sodomy, sexual abuse, contributing to the sexual delinquency of a minor, sexual misconduct with a minor, all in Article 13, Sexual Offenses;

Sale of obscene material to a minor, Article 29,
Obscenity and Related Offenses.

An examination of 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 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 419.720. Prohibition of parents, guardians or custodians from allowing minors to be in public places during curfew hours. Recommend retention.

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). Recommend repeal.

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

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

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. Recommend repeal.

Provisions relating to sexual misconduct with minors are covered in Article 13, Sexual Offenses.

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

Paragraphs (a) and (b) are new to Oregon law.

Paragraph (c) restates coverage found in ORS 167.295 and 462.190.

Paragraph (d) restates ORS 471.410 and 472.310.

Paragraph (e) restates ORS 167.245.

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 considered in the Article on Miscellaneous Offenses.

ORS 167.235 and 167.237 pertain to employment of minors in places of public entertainment. The former statute prohibits allowing a person less than 18 years of age to engage in dancing as a public performance. The penalty for violation is a \$100 fine. The latter statute provides a number of exemptions to ORS 167.235, including a procedure for juvenile court approval of such activity. The Commission recommends that similar coverage be transferred to ORS chapter 653, Employment of Women and Minors.

ORS 167.295 prohibits the playing of billiards and pool by minors, unless the "recreational facility" complies with the conditions in subsection (1) of the statute. The subcommittee recommends that pool playing by minors should be a concern of local option rather than state law. Where the premises involved are licensed to dispense alcoholic beverages, the Oregon Liquor Control Commission can adequately regulate the matter.

ORS 435.455 repealed ORS 163.060 which provided criminal penalties for unlawful abortion. The new law provides felony penalties for violation of the statutes governing therapeutic abortions. The Article does not propose any further changes in this area.

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

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 Article. (See, Article 12, Kidnapping and Related Offenses).

ORS 165.240. Producing infant and falsely pretending heirship. Prohibited conduct covered by section on theft by deception, Article 14.

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 13, Sexual Offenses, and Article 28, Prostitution. Prohibition relating to taking away female under 16 for purposes of marriage is not covered in this Article. See Article 12, 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 11, Assault. See, also Article 32, Miscellaneous Offenses.

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 child¹; 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.

#