

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

Minutes of Commission  
5/14/70, p. 6, Vol IX, Tapes #57 & 58  
5/15/70, p. 62, Vol. IX, Tape #61

CRIMINAL LAW REVISION COMMISSION  
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ARTICLE 24 . OBSTRUCTING GOVERNMENTAL ADMINISTRATION

Tentative Draft No. 1; February 1970

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Subcommittee No. 1

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ARTICLE 24. OBSTRUCTING GOVERNMENTAL ADMINISTRATION

Tentative Draft No. 1; February 1970

Section 1. Obstructing governmental administration; definitions. As used in this Article, unless the context requires otherwise:

(1) "Fireman" means any fire or forestry department employe, or authorized fire department volunteer, vested with the duty of preventing or combating fire or preventing the loss of life or property by fire.

(2) "Official proceeding" means a proceeding before any judicial, legislative or administrative body or officer, wherein sworn statements are received, and includes any referee, hearing examiner, commissioner, notary or other person taking sworn statements in connection with such proceedings.

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

(4) "Pecuniary benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary, in the form of money, property, commercial interests or economic gain.

(5) "Physical evidence" means any article, object, record, document or other evidence of physical substance.

(6) "Public record" means all official books, documents, records or other written material created by or maintained in any

Existing Law
ORS
192.005 (5)
133.170
242.702
43.010
41.030

governmental office or agency, affording notice or information to the public, or constituting a memorial of an act or transaction of a public office or public servant.

(7) "Testimony" means oral or written statements that may be offered by a witness in an official proceeding.

COMMENTARY - OBSTRUCTING GOVERNMENTAL  
ADMINISTRATION; DEFINITIONS

A. Summary

Subsection (1) includes all persons vested with a duty to extinguish or prevent fires. Coverage extends to regular fire department personnel, rural and volunteer firemen, state and local fire marshals and their deputies, and state forestry employes.

Subsection (3) defines "peace officer" in specific terms, limiting such officers to those engaged in regular law enforcement activities.

"Physical evidence" is defined in subsection (5) to mean anything of physical substance that may be introduced in an official proceeding.

"Public record" as defined in subsection (6) means any tangible written record created or maintained by a public agency giving notice to the public, or memorializing an official transaction.

B. Derivation

The proposed definitions are derived from the following sources:

"Fireman" from ORS 242.702.

"Official proceeding" from Michigan Revised Criminal Code section 4901 (5).

"Peace officer" from ORS 133.170.

"Pecuniary benefit" from Model Penal Code section 240.0, subsections (1) and (6).

"Physical evidence" from Michigan Revised Criminal Code section 5045 (2).

"Public record" from Michigan Revised Criminal Code section 4555 (2) and Black's Law Dictionary 1438 (1957).

"Testimony" from Michigan Revised Criminal Code section 5001 (3).

C. Relationship to Existing Law

These definitions, as used in the context of a criminal code, are new to Oregon law.

ORS 41.030: Kinds of evidence, enumerates:

"(3) Writings.

"(4) Other material objects presented to the senses."

The definition of "physical evidence" includes both these species of evidence.

ORS 43.010: Defines public writings as:

"Public writings are the written acts, or records of the acts, of the sovereign authority, official bodies and tribunals and public officers, legislative, judicial and executive, of this state, the United States, a sister state or a foreign country."

ORS 133.170: Defines a peace officer as:

"...a sheriff, a constable, a marshal, a policeman of a town or a member of the Oregon State Police...."

Section 2. Obstructing governmental administration. (1) A person commits the crime of obstructing governmental administration if he intentionally obstructs, impairs or hinders the administration of law or other governmental function by means of intimidation, force, physical interference or obstacle.

(2) This section shall not apply to the obstruction of unlawful governmental action or interference with the making of an arrest.

COMMENTARY - OBSTRUCTING GOVERNMENTAL ADMINISTRATION

A. Summary

"At an early date, the punishment of acts obstructing the due administration of justice was recognized as absolutely essential to the existence of the courts and their efficiency in performing the functions for which they were created... the obstruction of the administration of justice is declared to be an indictable offense under the common law and by statute in many jurisdictions." 39 Am Jur, Obstructing Justice, sec. 1.

Existing Law
ORS
162.550
164.840
164.871
164.880
209.990 (1)
209.150
433.020
433.115
433.990 (4)
431.990
476.080
476.990 (1)
616.080
616.990
561.200
561.990
477.730
597.280
597.991
479.820 (5)
479.990 (5)
376.140
376.990 (1)
276.990 (3)
431.990
471.675
471.990
483.140
483.990 (1)

The word "obstruct" is extensively discussed in the law and is used in the context of its accepted judicial meaning:

"Obstruction: A term derived from the Latin verb 'obstruere', and variously defined as meaning a barrier, hindrance, impediment, or obstacle. An obstruction is that which impedes progress, and it has been defined as a blocking up; filling with obstacles or impediments. Obstruction does not necessarily imply prevention." 67 CJS, Obstruction, pp. 69-70.

Section 2 requires that the prohibited conduct be manifested by threats, violence or physical interference, a limitation that recognizes certain constitutional safeguards, e.g., freedom of speech and assembly. As a general rule, under statutes containing the words "obstructs, resist or oppose," the offense of resisting an officer can be committed without the employment of actual violence or direct force. See 48 ALR 749.

Subsection (2) exempts two kinds of interference with governmental action. The first is interference with unlawful action of a public servant. The test of illegality, however, is objective and is not determined by the actor's subjective belief as to the validity of the contested action. The illegality defense is not given equivalent recognition in the section prohibiting interference or obstruction with an arrest.

Section 2 is intended to supplement other proposed provisions dealing with specific acts tending to subvert the proper administration of government, e.g., perjury, bribery. It would be inconsistent to prohibit in this section all activities intended to obstruct governmental administration, since broadly generalized prohibitory language might be construed as a restriction upon the lawful exercise of political agitation in opposition to governmental policy.

The section is limited, therefore, to obstructive threats or violent or physical interference. The use of intimidation is not specifically proscribed unless it creates an unlawful obstruction of governmental process.

Section 2 imposes a uniform mens rea requirement for all illegal obstruction; that the person's conduct be intentional and directed towards the obstruction of governmental administration. "Intentional" is defined in Article \_\_\_\_, General Principles of Criminal Liability, as requiring that a person act with a conscious objective to cause the result.

B. Derivation

The proposed section is a composite of Michigan Revised Criminal Code section 4505; New York Revised Penal Law section 195.05; and Model Penal Code section 242.1.

C. Relationship to Existing Law

ORS 33.010: Lists 12 acts or omissions that constitute contempt of court.

ORS 1.020: Grants the court the power to punish by contempt proceedings.

Interference with judicial authority has usually been dealt with as contempt of court.

The following statutes are directed generally at interference with official governmental activity:

The Commission's recommended disposition of each statute is noted.

ORS 162.550: Disguising oneself with intent to obstruct execution of law or hinder officer. Recommend repeal.

ORS 164.840: Tearing down or defacing posted notice put up pursuant to law. Recommend repeal. Covered by section on criminal mischief, Article \_\_\_.

ORS 164.871: Injuring, removing or destroying boundary monuments or signs, lamps, railings, posts, barricades or warning devices. Recommend repeal. Covered by section on criminal mischief, Article \_\_\_.

ORS 164.880: Destroying or defacing surveyor's markings or markers. Recommend repeal. Covered by section on criminal mischief Article \_\_\_.

ORS 209.150: Unauthorized interference with corner or witness established by county surveyor. Recommend repeal. Covered by section on criminal mischief, Article \_\_\_.

ORS 209.990 (1): Penalty provision for violation of ORS 209.150.

ORS 433.020: Disturbing notice of State Board of Health prohibited. Recommend retention.

ORS 433.115: Alteration or removal of quarantine notices prohibited. Recommend retention.



ORS 433.990 (4): Penalty provision for violation of  
ORS 433.020.

ORS 431.990: Penalty provision for violation of  
ORS 433.115.

ORS 476.080: Entry and inspection of premises by State  
Fire Marshal and his deputies; interfering with or preventing  
entry prohibited. Recommend repeal by section 2, this Article.

ORS 476.990 (1): Penalty provision for violation of  
ORS 476.080.

ORS 616.080: Interference with Food & Other Commodities  
Department or personnel. Recommend repeal by section 2, this  
Article.

ORS 616.990: Penalty provision for violation of  
ORS 616.080.

ORS 561.200: Prohibition against the obstruction of  
officers, agents or employes of Department of Agriculture.  
Recommend repeal by section 2, this Article.

ORS 561.990: Penalty provision for violation of  
ORS 561.200.

ORS 477.730: Wilful injury to or removal of notice  
posted by State Forester. Recommend repeal. Covered by section  
on criminal mischief, Article \_\_\_\_.

ORS 597.280: Interference with State Veterinarian  
Department personnel. Recommend repeal by section 2, this  
Article.

ORS 597.991: Penalty provision for violation of  
ORS 597.280.

ORS 579.820 (5): No person shall obstruct or interfere  
with the Labor Commissioner in performance of his duties.  
Recommend repeal by section 2, this Article.

ORS 479.990 (5): Penalty provision for violation of  
ORS 479.820 (5).

ORS 376.140: Obstruction of public road or gateway  
prohibited. Recommend repeal. Covered by section on dis-  
orderly conduct, Article \_\_\_\_, and section 2, this Article.

ORS 376.990 (1): Penalty provision for violation of  
ORS 376.140.

ORS 276.990 (3): Intentional damage to or obstruction  
of water line of a public institution. Recommend repeal.  
Covered by section on criminal mischief, Article \_\_\_.

ORS 431.990: Penalty provision for violation of  
ORS 276.990 (3).

ORS 471.675: Resisting lawful arrest or interfering  
or hindering officer or inspector with OLCC. Recommend repeal  
by section 2, this Article.

ORS 471.990: Penalty provision for violation of  
ORS 471.675.

ORS 483.140: Damaging or removing traffic sign or signal.  
Recommend repeal. Covered by section on criminal mischief,  
Article \_\_\_.

ORS 483.990 (1): Penalty provision for violation of  
ORS 483.140.

A number of Oregon cases discuss the power of the court  
to punish by contempt proceedings. The law of contempt  
concerns itself with a particular form of governmental ob-  
struction. It is necessary to recognize that certain inherent  
powers of the court, characterized by contempt proceedings,  
are derived from a source of authority not susceptible to  
legislative abridgement.

State ex rel Oregon State Bar v. Lenske, 243 Or 477,  
405 P2d 510, 407 P2d 250 (1966), commented on legislative  
authority in this area:

"....The legislature cannot unreasonably abridge  
or destroy the judicial power to punish for contempt  
because the legislature cannot take away a power which  
it does not give. (See Annotation, 121 ALR 215, 216-217  
(1939))....We hold that the power of a constitutionally  
established court to punish for contempt may be regu-  
lated within reasonable bounds by the legislature but  
not to the extent that the court's power is substan-  
tially impaired or destroyed...." At 492,495.

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Section 2 is not intended to limit the court's power  
to punish by contempt proceedings.

See, also:

6 Ark L Rev 46 (1951).

108 U Pa L Rev 388-413 (1960).

Section 3. Refusing to assist a peace officer. A person commits the crime of refusing to assist a peace officer if upon command by a person known by him to be a peace officer he unreasonably refuses or fails to assist in effecting an authorized arrest or preventing another from committing a crime.

Existing Law
ORS
145.020
145.990 (1)
166.050
145.030
165.530
162.540
206.050
133.230
137.340
137.990
483.048

COMMENTARY - REFUSING TO ASSIST A PEACE OFFICER

A. Summary

There are four elements in section 3: (1) An unreasonable refusal or unreasonable failure to assist a peace officer (2) in making an authorized arrest or in preventing the commission of a crime (3) after a recognized command for assistance (4) from a person known by the actor to be a peace officer.

The definition of "peace officer" is contained in subsection (4), section 1, of this Article.

The section limits the duty to render assistance to emergency situations, i.e., securing an arrest and the prevention of crime.

Criminal liability does not attach if the refusal to assist is "reasonable." All possible grounds for "reasonable" refusal cannot be catalogued, but it is submitted that the language "unreasonably refuses or fails" is preferable to an absolute requirement to render assistance upon command.

B. Derivation

The section is derived from Michigan Revised Criminal Code section 4520.

C. Relationship to Existing Law

The power of peace officers to command assistance from private citizens is reflected by existing Oregon law.

ORS 145.020 (2): Dispersal of unlawful or riotous assemblages.

ORS 145.990 (1): Violation of subsection (2) of ORS 145.020 is punishable as provided in ORS 166.050.

ORS 166.050: Punishment for participating in riot. Felony.

ORS 145.030: Justification of persons aiding officer. When the officers of justice act in the prevention of crime, other persons who by their command act in their aid are justified in so doing.

ORS 162.530: Punishment of person refusing to assist officer.

ORS 162.540: Assuming to be magistrate or peace officer and requiring assistance.

ORS 206.050: Sheriff commanding assistance in process serving. Exempts members of the National Guard.

ORS 133.230: Aiding officer in execution of warrant.

ORS 137.340: Authority of sheriff to require assistance while conveying defendant to prison in execution of judgment of imprisonment.

"(2) No person shall refuse or neglect to assist the sheriff when so required."

ORS 137.990: Penalty provision for violation of ORS 137.340 (2).

ORS 483.048: Duty to obey traffic officers.

Section 3 would repeal the provisions dealing with refusal to assist a peace officer.

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The provision relating to persons who refuse to assist in riot situations is dealt with in Article \_\_\_\_, Riot and Disorderly Conduct.

For further discussions, see, also:

- 1 Burdick, Law of Crime 286 (1946).
- 67 CJS, Obstructing Justice, section 4.
- 22 Mich L Rev 798 (1923).
- Perkins on Criminal Law 511 (2d ed 1969).
- 14 DePaul L Rev 159 (1964).

Section 4. Refusing to assist in fire-  
fighting operations. A person commits the crime  
of refusing to assist in firefighting operations  
if:

Existing Law
ORS
476.750
476.990 (6)
477.993
477.370

(1) Upon command by a person known by him  
to be a fireman he unreasonably refuses or fails to assist in  
extinguishing a fire or protecting property threatened thereby; or

(2) Upon command by a person known by him to be a fireman  
or peace officer he intentionally and unreasonably disobeys a law-  
ful order relating to his conduct in the vicinity of a fire.

#### COMMENTARY - REFUSING TO ASSIST IN FIREFIGHTING OPERATIONS

##### A. Summary

The definition of "fireman" in section 1 of this Article covers all persons with a legal duty to extinguish fires. This includes forest service personnel assigned to firefighting operations.

Subsection (1) applies a test of reasonableness to the actor's refusal to assist consistent with the section on refusing to assist a peace officer.

Subsection (2) makes it a crime to unreasonably disobey lawful orders issued by firemen and peace officers in the vicinity of a fire. Peace officers are included since they often are responsible for maintaining spectator safety.

B. Derivation

The proposed section is derived from Michigan Revised Criminal Code section 4525.

C. Relationship to Existing Law

ORS 476.750: Prohibits obstructing firefighting equipment or personnel. ORS 476.990 (6): Declares that violation of ORS 476.750 shall be a misdemeanor.

ORS 477.370: Prohibits an able-bodied man from refusing to assist a fire warden in firefighting. ORS 477.993 (1): Sets the penalty for violation of ORS 477.370 as a maximum \$1,000 fine and 60 days imprisonment.

These two statutes would be repealed by section 4, which is new to Oregon law to the extent that it covers all firefighting operations. It is one of the few proposed criminal laws punishing a failure to act.



	Existing Law
Section 5. <u>Bribing a witness.</u> A person	ORS
commits the crime of bribing a witness if he	
offers, confers or agrees to confer any	1.240 (3)
pecuniary benefit upon a witness in any official	33.020
proceeding, or a person he believes may be	162.210 (1)
called as a witness, with the intent that:	162.110 (2)
(1) His testimony as a witness will	162.130
thereby be influenced; or	162.140 (2)
(2) He will avoid legal process summoning	162.310
him to testify; or	33.010
(3) He will absent himself from any	44.010
official proceeding to which he has been legally	44.190
summoned.	45.190
	171.990
	419.498 (3)
	146.170
	146.180
	146.500
	146.510
	146.990
	139.240
	167.525

Section 6. Bribe receiving by a witness. A witness in any official proceeding, or a person who believes he may be called as a witness, commits the crime of bribe receiving by a witness if he solicits any pecuniary benefit with the intent, or accepts or agrees to accept any pecuniary benefit upon an agreement or understanding, that:

- (1) His testimony as a witness will thereby be influenced; or
- (2) He will avoid legal process summoning him to testify; or
- (3) He will absent himself from any official proceeding to which he has been legally summoned.

COMMENTARY - BRIBING A WITNESS;  
BRIBE RECEIVING BY A WITNESS

A. Summary

The definition of "pecuniary benefit" is defined in section 1 (4), and "official proceeding" in section 1 (2).

Sections 5 and 6 are counterparts to provisions dealing with bribery of public servants. Minor changes have been made to adjust the language to the subject of witness testimony and witness amenability to legally required process.

The mens rea requirement is an intent to influence improperly the course of official proceedings. The definition of "testimony" in section 1 of this Article extends coverage to bribes connected with the production of records as well as to written and oral statements by a witness.

The section does not contemplate proscription of special fee arrangements with expert witnesses, the basis of which is presumably not to "influence" such testimony.

B. Derivation

Section 5 is derived from Michigan Revised Criminal Code section 5005 and New York Revised Penal Law section 215.00.

Section 6 is derived from Michigan Revised Criminal Code section 5010 and New York Revised Penal Law section 215.05.

C. Relationship to Existing Law

No existing Oregon criminal statute deals directly with bribe taking or bribe receiving by a witness.

ORS 162.210 (1): Defines "judicial officer" as it is used in the bribery statutes. The definition does not include witnesses. The definition of "public servant" in the proposed Bribery Article also excludes witnesses.

ORS 162.110 (2): The present subornation of perjury statute.

ORS 162.130: Prescribes the penalty for attempting to procure another to commit perjury.

ORS 162.140 (2): The present subornation of false swearing statute.

Existing statutes relating to procuring or attempting to procure another to commit perjury or false swearing will be repealed by the proposed section on criminal solicitation. (See Inchoate Crimes, Tent. Draft No. 1, February 1970).

ORS 162.310: Compounding or concealing crime for gratuity or consideration, including the act of withholding evidence. This area will be covered in sections on compounding and tampering with physical evidence.

ORS 33.010 (1): Defines conduct giving rise to civil or criminal contempt.

ORS 44.010: Defines witness as:

"...a person whose declaration is received as evidence for any purpose, whether it is made on oral examination, by deposition or by affidavit."

A number of other existing statutes relate indirectly to bribe receiving by a witness:

ORS 44.190: Penalty for disobedience to subpoena or refusal by witness to be sworn.

ORS 45.190: Compelling attendance of witnesses.

ORS 171.990: Penalty for witness failing to appear or to give testimony in legislative proceedings. Misdemeanor.

ORS 419.498 (3): Conduct of juvenile court proceedings; witnesses.

ORS 146.170: Witnesses: disobedience of coroner's order or process.

ORS 146.180: Power of coroner over witnesses.

ORS 146.500: Witnesses: disobedience of district attorney's order or process.

ORS 146.510: Power of district attorney over witnesses.

ORS 146.990: Penalty provision for ORS chapter 146.

ORS 139.240: Immunity of witness from arrest or service of process.

ORS 167.525: Witness failing to appear at gambling trial.

None of the above statutes will be affected by adoption of sections 5 and 6, this Article.

Two Oregon cases involve interference with witness testimony. The circumstances of each case support a finding that a "pecuniary benefit" was the motivating factor inducing the witness to evade judicial process.

In State v. Brownell, 79 Or 123, 154 P 428 (1916), defendant attorney arranged for the complaining witnesses in a rape case to leave the state to avoid trial testimony, paying them money for current and future living expenses. Defendant was convicted of contempt of court and fined \$100, the statutory maximum under what is now ORS 33.010.

In State v. Jones, 111 Or 295, 226 P 433 (1924), the court held, on facts similar to the Brownell case, that an attorney, who urged a mother to absent her children, who were witnesses, from the jurisdiction, paying as inducement, money on a note he

owed her, and transportation for a son to accompany the children, though they returned and testified, was guilty of constructive contempt at common law and as defined by section 670, Or L [now ORS 33.010], and not an attempt only.

ORS 33.020: Provides that the maximum penalty a court can impose for contempt is a \$300 fine and six months imprisonment. This maximum penalty is restricted to three forms of contempt: (1) to preserve and enforce order in the judge's immediate presence, (2) disorderly, contemptuous or insolent behavior toward the judge while holding court, and (3) a breach of the peace tending to interfere with the due course of a trial. In all other instances of contempt, unless it appears that the right or remedy of a party to an action, suit or proceeding was defeated or prejudiced, the maximum penalty is a \$100 fine.

The Commission believes that witness bribe giving and bribe receiving demands more stringent criminal sanction than that now available under existing Oregon law.

For further discussions, see, also:

Underhill on Criminal Evidence 657 (3rd ed).

1 Burdick, Law of Crime 337 (1946).

Section 7. Tampering with a witness. A person commits the crime of tampering with a witness if:

(1) He knowingly induces or attempts to induce a witness or a person he believes may be called as a witness in any official proceeding to offer false testimony or unlawfully withhold any testimony; or

(2) He knowingly induces or attempts to induce a witness to absent himself from any official proceeding to which he has been legally summoned.

Existing Law
ORS
33.010
33.020

COMMENTARY - TAMPERING WITH A WITNESS

A. Summary

Section 7 prohibits another form of improper conduct involving witnesses. Sections 5 and 6 are concerned with witness bribery, whereas section 7 covers instances where a witness is induced by persuasion or argument to testify falsely or to disobey legal process.

The section prohibits: (1) Inducing a witness to testify falsely; (2) inducing a witness to withhold testimony lawfully required to be given; and (3) inducing a witness to violate legal process.

It is not a violation of section 7 to persuade a witness to lawfully refuse to testify on grounds of personal privilege or to induce a witness to avoid process by leaving the jurisdiction of the court. The latter conduct, if engaged in by an attorney, may raise certain ethical questions, but should not be subject to criminal liability since neither the means used nor the end sought is independently unlawful.

B. Derivation

Section 7 is derived from New York Revised Penal Law section 215.10 and Model Penal Code section 241.6.

C. Relationship to Existing Law

No existing Oregon statute is directly in point. Violations would probably be punished under ORS 33.010 and 33.020, the civil and criminal contempt provisions. (See Commentary, sections 5 and 6, this Article).

Support for this type of legislation is found in 11 Op Atty Gen 296 (1922-24):

"It is too well established to need citation of authorities that a witness before a court or grand jury shall not be intimidated or prevented from testifying to facts within his knowledge, and that any person guilty of acts calculated or intended to intimidate or prevent such witness from testifying is amenable to the law, and merits severe punishment."

See, also:

Underhill on Criminal Evidence 526 (5th ed 1956).

1966 Wash U LQ 68 (1966)

Section 8. Tampering with physical evidence. A person commits the crime of tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or to the knowledge of such person is about to be instituted, he:

- (1) Destroys, mutilates, alters, conceals or removes physical evidence impairing its verity or availability; or
- (2) Knowingly makes, produces or offers any false physical evidence; or
- (3) Prevents the production of physical evidence by an act of force, intimidation or deception against any person.

COMMENTARY - TAMPERING WITH PHYSICAL EVIDENCE

A. Summary

Section 8 complements the other sections that are designed to protect against intentional subversion of "official proceedings." Section 9 of this Article prohibits tampering with "public records" and applies to the alteration or destruction of documents created or maintained by a governmental agency. Section 8 extends coverage to material intended to be introduced as evidence in an official proceeding.

Physical evidence is defined in section 1 (5) of this Article to mean anything of physical substance.

A uniform mens rea requirement applies to all three subsections: An intent that physical evidence be used, introduced, rejected or made unavailable. There could conceivably be some close question on a person's right to destroy evidence prior to seizure or subpena. If a legal right to destroy such



evidence exists, an actor would not be criminally liable unless motivated by a specific intent to suppress the evidence.

Under subsection (2), which bars the fabrication of physical evidence, the prosecutor must show both knowledge of its falsity and an intent that it be used, introduced or rejected in a pending or prospective official proceeding.

Consistent with the code's overall rejection of the defense of impossibility, section 8 does not require that the physical evidence be admissible or material.

B. Derivation

Section 8 is a composite of Michigan Revised Criminal Code section 5045 and New York Revised Penal Law section 215.40.

C. Relationship to Existing Law

Section 8 is new to Oregon law inasmuch as existing statutes and reported cases reveal no comparable authority. Ample support for such legislation is found in the common law and current authorities.

See, also:

- 1 Burdick, Law of Crime 300 (1946).
- 14 UCLA L Rev 670 (1967).
- 17 Baylor L Rev 400 (1965).

Section 9. Tampering with public records.

A person commits the crime of tampering with public records if, without lawful authority, he knowingly destroys, mutilates, conceals, removes, makes a false entry in or falsely alters any public record.

Existing Law
ORS
162.620
165.105 (1)
181.420
181.990 (2)
171.410
171.430
192.005
192.080
192.110
192.120
192.130
192.140
192.150
192.160
192.170
651.150
46.750
46.760
43.010
43.020 (4)

COMMENTARY - TAMPERING WITH PUBLIC RECORDS

A. Summary

"Public record" is defined in section 1 (6) of this Article to include all official written material created by or maintained in a governmental office. Section 9 applies to all records so defined and requires that the conduct be without lawful authority and done knowingly.

Section 9 is designed to maintain the integrity of governmental administration. Its central purpose is not the protection of potential victims of altered records. If an alteration of records is accompanied by an intent to defraud, the provisions of the Forgery Article would apply which make the false alteration of a public record forgery in the first degree. If the false statement is submitted to a governmental office or agency with the intent to obtain a benefit, the Perjury Article would apply.

The mens rea requirement of intent to mislead a public servant has been omitted from the section on two grounds: (1) A person who knowingly falsifies a public record is fully cognizant that his conduct will mislead those relying on the verity of the records; and (2) regardless of the actor's motive, the conduct has a deleterious effect in its subversion of general reliance on public records.

B. Derivation

Section 9 is derived from New York Revised Penal Law section 175.20.

C. Relationship to Existing Law

A number of existing Oregon statutes govern the custody and disposition of public records:

ORS 162.620: Destruction of public records. Recommend repeal by section 9, this Article.

ORS 165.105 (1): Forgery of a public record declared a felony. Intent to defraud required. Recommend repeal by Forgery Article.

ORS 181.420: Removing, destroying or mutilating records of Department of State Police. Recommend repeal by section 9, this Article.

ORS 181.990 (2): Penalty provision for violation of ORS 181.420. One year imprisonment or \$500 fine.

ORS 171.410: "Legislative record" defined. Not affected by this Article.

ORS 171.430: Disposal of legislative records by certain committees. Not affected by this Article.

ORS 192.080: Notice to State Archivist prior to destruction of records by state agency. Not affected.

ORS 192.105: Authorization for state agency to dispose of its records. Not affected.

ORS 192.110: State Board of Control's disposition of its valueless records. Not affected.

ORS 192.120: Secretary of State's disposition of old vouchers. Not affected.

ORS 192.130: Disposition of valueless records in custody of State Archivist. Not affected.

ORS 192.140: Request by county for authority to dispose of its valueless records. Not affected.

ORS 192.150: Disposition of valueless county records. Not affected.

ORS 192.160: Disposition of valueless records in custody of governing body of county. Not affected.

ORS 192.170: Disposition of materials without authorization. Not affected.

ORS 651.150: Periodic destruction of records of Labor Bureau. Not affected.

ORS 46.750: Destruction of files in civil actions. Not affected.

ORS 46.760: Destruction of files in criminal actions. Not affected.

State v. Brantley, 201 Or 637, 271 P2d 668 (1954), gives a judicial definition of "public record":

"A 'public record', strictly speaking, is one made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public, or to serve as a memorial of official transactions for public reference." At 646.

MacEwan v. Holm, 226 Or 27, 359 P2d 413 (1961), again discussed the problem of defining "public record":

"....It would serve no useful purpose to attempt to frame a general definition of a public record. Whether a record is to be regarded as a public record in a particular instance will depend upon the purposes of the law which will be served by so classifying it. A record may be a public record for one purpose and not for another....A writing need not be a document that is required by law to be kept as a memorial of official action in order to come within the definition of a 'public record'....

"....It has been held that writings are regarded as a 'public writing' only if they fulfill two requirements: (1) they must be 'official documents' and (2) they must be 'the written acts or records of acts' of public officials....This narrow construction has been criticized. Pickerell, Secrecy and The Access to Administrative Records, 44 Cal Law Rev 305 (1956). We believe that the criticism is justified. The terms 'records and files' and 'public writings' as used in defining the scope of the right of inspection must be given a liberal construction consistent with the greatest public interest." At 36, 41, 47-48.

Page 27  
Obstructing Governmental Administration  
Tentative Draft No. 1

The purpose of section 9 is to maintain the reliability of governmental records. This objective will best be served by a liberal construction of the definitive scope of "public record" as applied to this section.

Section 10. Resisting arrest. (1) A person commits the crime of resisting arrest if he intentionally resists a person known by him to be a peace officer from making an arrest.

(2) "Resists", as used in **this section**, means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person.

(3) It is no defense to a prosecution under this section that the peace officer lacked legal authority to make the arrest, provided he was acting under color of his official authority.

Existing Law
ORS
133.280
ch. 34
164.392
206.050
206.060
206.070
477.365 (d)
401.150
483.112 (4)
484.100
145.110
163.010 (2)

COMMENTARY - RESISTING ARREST

A. Summary

Section 2 of this Article deals generally with obstruction of governmental activities. Subsection (2) of that section exempts interference with the making of an arrest, which reflects recognition of the variable elements involved in resisting an arrest, e. g., the degree and kind of resistance and the legality or illegality of the arrest.

The most common form of resisting arrest is physical violence directed at the arresting officer. Section 10 is limited therefore to the use, or threatened use, of physical violence or other acts producing a "substantial risk of physical injury." As pointed out by the Michigan revisers:

"Neither flight from arrest nor passive resistance should be made crimes in themselves. Ordinarily, the officer's authority to use force to effectuate an arrest provides an adequate remedy without any need for additional sanctions." (Mich Rev Crim Code, Committee Commentary 365 (1967)).

Actual physical injury inflicted on a peace officer in the course of resisting an arrest would, of course, constitute an assault.

Two mens rea factors are found in subsection (1): The actor's conduct must be intentional, and must be accompanied by knowledge that the person resisted is a peace officer.

Subsection (2) defines "resists" in terms of physical force or violence. Resistance is prohibited if it "creates a substantial risk of physical injury to any person," i.e., the actor, the peace officer or other persons in the immediate area.

Subsection (3) negatives the defense that the arrest resisted was unlawful, provided the peace officer is acting "under color of his official authority."

"Color of authority" is intended to mean:

"That semblance of presumption of authority sustaining the acts of a public officer which is derived from his apparent title to the office or from a writ or other process in his hands apparently valid and regular." (Black's Law Dictionary 331 (4th ed 1951)).

Subsection (3) departs from common law and the American majority view governing the right to resist an unlawful arrest. The prevailing rule has generally allowed reasonable resistance to an unlawful arrest on the ground that the actor is merely exercising a right of self-defense.

The Commission rejects self-help as a desirable means of challenging arrests made under color of law. Resistance tends to promote an escalation of force by the peace officer likely to produce dangerous consequences. Civil disorder and disrespect for the law is thereby threatened. Two important, and sometimes conflicting, interests must be balanced; the individual's right to bodily security measured against the threat to society posed by violent street confrontations between private citizens and the police. The Commission favors recourse by the aggrieved citizen to traditional tort remedies, which today have been greatly liberalized in favor of the individual citizen.

B. Derivation

Section 10 is derived from Michigan Revised Criminal Code section 4625 and New York Revised Penal Law section 205.30.

C. Relationship to Existing Law

The requirements for a lawful arrest are set out in ORS chapter 133, which authorizes a peace officer to arrest a person with or without a warrant (1) for a crime committed or attempted in his presence; (2) when the person has committed a felony, although not in his presence; (3) when a felony has in fact been committed; or (4) when notified by telegraph, telephone or other means of communication by another peace officer that he holds a duly issued warrant for arrest.

ORS 133.280: Provides that if after notice of intention to arrest the defendant, he either flees or forcibly resists, the officer may use all necessary and proper means to effect the arrest. ORS 133.270 and ORS 133.330 require that the arresting officer disclose his authority when proceeding under warrant and without a warrant.

ORS chapter 34: Codifies the common law remedy of the writ of habeas corpus, available to persons unlawfully held in custody.

ORS 164.392: Provides that "reasonable cause" shall be a defense to an action for false arrest arising out of the detention and interrogation of persons suspected of shoplifting.

ORS 206.050: Commanding assistance in process serving by sheriff.

ORS 206.060: When sheriff justified in executing process.

ORS 206.070: Excusing liability of sheriff in executing process.

ORS 477.365 (d): Power of fire wardens to make arrests.

ORS 401.150: Peace officers from other states in emergencies have and may perform in this state all police powers bestowed on peace officers of this state.

ORS 483.112 (4): Arrest without warrant in radar cases.

ORS 484.100: Authority of police officer to arrest or issue citation.



Resistance to unlawful arrest is usually manifested by an assault directed against the arresting officer. The defense to criminal charges arising from such resistance is often self-defense, predicated on the theory that an assault was being committed by the arresting officer.

ORS 163.010: First degree murder. "(2) Any person who, without lawful excuse or justification, purposely kills any peace officer of this state or any municipal corporation or political subdivision thereof, when the officer is acting in the line of duty and is known to such person to be an officer so acting, is guilty of murder in the first degree."

State v. Linville, 127 Or 565, 273 P 338 (1928), considered the issue of resisting an unlawful arrest:

"It is the policy of the state to clothe its servants with official immunities when engaged in official acts. The immunity belongs, not to the individual, but to the office, and it is the general rule that if the immunity is to be vindicated, the office must be proclaimed or made known to the officer, in order to punish a defendant for resisting an officer. This rule applies to a case of resistance. It should be remembered that an officer in the execution of his official duties, although he be unauthorized, and therefore a trespasser, yet he is not bound to submit to unreasonable and unnecessary violence and may defend himself against the same without being guilty of an assault. (Citing cases). It is not necessary that where one is resisting an officer there should be a blow struck or force actually applied, though it is essential that the resistance should imply the application of force, actual or threatened...." At 575-76.

Two Oregon cases deal with the citizen's right to employ force in resisting an unlawful arrest:

In State v. Meyers, 57 Or 50, 110 P 407 (1910), the defendant was convicted of first degree murder for killing a municipal policeman who had taken him into custody without legal cause. In discussing the degree of force permissible in resisting an unlawful arrest the court stated:

"While there are cases holding that one threatened with unlawful arrest may use such force as may be necessary to free himself, and maintain his liberty, even to the extent of taking the life of the aggressor, we are inclined to adopt the more humane and civilized rule, that, where the arrest is made by a known officer

and nothing is to be reasonably apprehended beyond a mere temporary detention in jail, resistance cannot be carried to the extent of taking life....We do not wish to be understood as holding that cases may not arise in which one may use a deadly weapon to protect himself against an unlawful arrest. Thus where the arresting party himself uses a deadly weapon or signifies his immediate intention to do so, or where an unauthorized person, being armed, attempts to break into one's dwelling to make an unlawful arrest, or where it is attempted in such a way as to put one in fear of death or great bodily harm, in such rare instances one may be justified in using a deadly weapon. But we wish to be understood as holding emphatically that, where the attempted arrest is made by a known officer, and there is nothing apprehended beyond a mere temporary detention, the question of the right of such officer cannot be tried out with a pistol." At 55,56.

In State v. Swanson, 119 Or 522, 250 P 216 (1929), the defendant was charged with assault and battery against a municipal police officer during the course of an arrest. The defendant alleged that the arrest had been illegal and defended on grounds of self-defense. In reversing the conviction, the court held:

"In the matter of self-defense, the defendant requested the following instruction: 'I further instruct you that if in resisting an illegal arrest the person arrested is placed in danger of bodily harm, or in reasonable fear of bodily harm, he may protect himself from such danger or threatened danger with whatever means may be necessary to make that protection effective.'

"It was error to refuse this instruction. A person has a right to defend himself against an illegal arrest and to do so with such force as may be reasonably necessary to repel the assault involved in such wrongful detention, but the force used in defense must not be in excess of proportion to the force unlawfully applied in the attempt to arrest....In charging the jury on the right of self-defense, the court several times stated that the defendant had admitted the assault and battery. The whole theory of the defendant was that what he did was committed in self-defense. If that were true, there was no admission of assault and battery. A person resisting an unlawful

arrest, using no more force than is reasonably necessary to prevent the same, does not commit a crime and, hence, does not commit assault and battery. No crime is committed by lawfully resisting the commission of a crime upon one's person...." At 526, 27.

By restricting the right to forcibly resist an arrest made under color of law Oregon will enter the mainstream of progressive legislation as evidenced by other recent criminal code revisions.

For further discussions, see, also:

Waite, The Law of Arrest, 24 Tex L Rev 279 (1946) .

3 Tulsa L J 40 (1966) .

31 Mich L Rev 749 (1933) .

28 Va L Rev 315 (1942) .

6 Ark L Rev 53 (1951) .

26 ABA J 151 (1940) .

23 Tulane L Rev 277 (1948) .

Perkins on Criminal Law 997 (2d ed 1969) .

Section 11. Hindering prosecution. A person commits the crime of hindering prosecution if, with intent to hinder the apprehension, prosecution, conviction or punishment of a person who has committed a crime punishable as a felony, or with the intent to assist a person who has committed a crime punishable as a felony in profiting or benefiting from the commission of the crime, he:

Existing Law
ORS
161.230
161.240
161.250
161.210 (2)
131.390

- (1) Harbors or conceals such person; or
- (2) Warns such person of impending discovery or apprehension; or
- (3) Provides or aids in providing such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or
- (4) Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person; or
- (5) Suppresses by any act of concealment, alteration or destruction physical evidence which might aid in the discovery or apprehension of such person; or
- (6) Aids such person in securing or protecting the proceeds of the crime.

COMMENTARY - HINDERING PROSECUTION

A. Summary

Section 11 defines those acts of rendering criminal assistance that amount to hindering prosecution. The effort to narrow the common law concept is discussed in the Model Penal Code Commentary:

"At common law the accessory after the fact was one who 'receives, relieves, comforts, or assists' the felon...help of any kind would suffice for conviction if the helper had the purpose to aid the principal in eluding justice....

"The issue of policy is whether to forbid specified kinds of aid or aid of any character whatsoever. That there may be need to limit the kinds of aid which will be made criminal appears when we consider the possible application of the Section to a person who merely refuses to answer police questions about the fugitive, or gives misleading answers, or advises the fugitive to flee, or counsels him as to likely refuges of the law of extradition, or supplies bail....Passive failure to report the commission of an offense does not make the actor an accessory after the fact, although it might fall within the definition of misprison. If the community does not desire prosecution in these situations, it would seem preferable not to use the comprehensive term 'aid', but to specify the prohibited forms of aid...." (Tent. Draft No. 9, pp. 198-199 (1958)).

The mens rea requirement is an intent to hinder apprehension, prosecution, conviction or punishment of a person who has committed a felony. The common law required that an accessory after the fact have guilty knowledge that the person aided committed the crime. This rule has been eliminated in modern legislation concerned specifically with aiding offenders to avoid arrest. The requirement of intent to hinder law enforcement makes unnecessary the further requirement of knowledge. Knowledge that the person aided has committed a crime is simply evidence of the intent to aid the offender to escape justice.

B. Derivation

Section 11 is derived from New York Revised Penal Law sections 205.50, 205.55 and 205.60, Michigan Revised Criminal Code section 4635 and Model Penal Code section 242.3

C. Relationship to Existing Law

ORS 161.230: Defines an accessory as:

"All persons are accessories who, after the commission of a felony, conceal or aid the offender, with knowledge that he has committed a felony, and with intent that he may avoid or escape from arrest, trial, conviction or punishment."

Recommend repeal.

ORS 161.240: Provides that an accessory shall be punished by imprisonment in the penitentiary for not more than five years, or by imprisonment in the county jail for not less than three months nor more than one year. Recommend repeal.

ORS 161.250: Provides that an accessory is punishable though the principal is not tried. Recommend repeal.

ORS 161.210 (2): States that there are no accessories in misdemeanors. Recommend repeal.

ORS 131.390: Requires that in the case of an accessory after the fact the action must be commenced and tried in the county where the crime of the accessory was committed. Recommend amendment.

State v. Rosser, 162 Or 293, 86 P2d 441 (1939), held that an accessory after the fact is not an aider and abettor under ORS 161.220, which abrogates the distinction between an accessory before the fact and a principal.

See, also:

Perkins on Criminal Law 667 (2d ed 1969).

89 Pa L Rev 589 (1941).

Maddox v. Commonwealth, 349 SW2d 686 (Ky 1960).

Section 12. Compounding. A person commits the crime of compounding if he accepts or agrees to accept any pecuniary benefit as consideration for refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

Existing  
Law

ORS

162.310

162.320

134.010

134.020

134.030

134.040

#### COMMENTARY - COMPOUNDING

##### A. Summary

"Compounding a felony" is:

"The offense committed by a person who, having been directly injured by a felony, agrees with the criminal that he will not prosecute him, on condition of the latter's making reparation, or on receipt of a reward or bribe not to prosecute." (Black's Law Dictionary 358 (4th ed 1951)).

Since the actor, in effect, makes a bargain to thwart prosecution of a crime the offense constitutes an obstruction of justice. A passive failure to act does not constitute compounding unless bound by consideration. As noted in the Model Penal Code Commentary:

"In the first place, absent consideration, a mere promise not to report the offender, no matter how serious the offense, is not punishable. Even where restitution is made in the hope of forbearance, and after the victim has adverted to possible prosecution, there is no compounding without proof of agreement or understanding to forbear in consideration of the payment. Many statutes expressly authorize compromise of criminal liability in designated classes of cases, usually under judicial supervision, and make the compromise a bar to later criminal prosecution...." (Tent. Draft No. 9, 204 (1958)).

Section 12 is limited to the person who accepts or agrees to accept the consideration. This limitation recognizes the intent of the statute to restrain the making of improper exactions and not to punish persons paying the benefit.

B. Derivation

Section 12 is derived from New York Revised Penal Law section 215.45 and Model Penal Code section 242.5.

C. Relationship to Existing Law

ORS 162.310: The Oregon compounding statute. Contains essentially the same elements embodied in section 12. Subsection (1) provides that if the crime is punishable by death or life imprisonment, compounding may be punished by five years imprisonment. Subsection (2) provides a misdemeanor penalty for all lesser crimes. Recommend repeal.

ORS 162.320: Provides that a person may be indicted for compounding a crime even though the person guilty of the original crime has not been indicted or tried. Recommend repeal. See section 13, infra.

ORS 134.010: Establishes the crimes subject to being compromised:

"When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised, as provided in ORS 134.020, except when it was committed:

"(1) By or upon an officer of justice while in the execution of the duties of his office;

"(2) Riotously; or

"(3) With an intent to commit a felony."

ORS 134.020: Satisfaction of injured person; discharge of defendant.

ORS 134.030: Discharge as bar to prosecution.

ORS 134.040: Exclusiveness of procedure. No crime can be compromised nor can any proceeding for the prosecution



or punishment thereof be stayed upon a compromise, except as provided in ORS 134.010 to 134.160.

Recommend retention of ORS 134.010 to 134.040.

The Oregon compromise statute was first discussed in Saxon v. Conger, 6 Or 388 (1877):

"....Under the criminal law of this state certain crimes may be compromised, but the crimes must be of the general class known...as misdemeanors. In order to effect a legal compromise, the defendant in the criminal action must have been held to answer on a charge of misdemeanor, and the same must fall under the category of those for which the law affords a civil remedy as well as a penal judgment....

"In effecting a compromise of a crime...the person whose property has been stolen has no right to exact or demand or receive from the person committing the larceny anything more than the property or its value...that is to say, the law will not permit the process in a criminal case to be used as an instrument, by means of which a person can secure pecuniary benefits to the prejudice of the other creditors charged with a crime...." At 389,90.

In State v. Ash, 33 Or 86, 54 P 184 (1898), defendant police officer was convicted of compounding a crime by taking a five dollar gratuity in consideration for failing to prosecute the operator of a bawdyhouse. In response to defendant's argument that the subsequent prosecution of the prosecutrix for keeping a bawdyhouse required an acquittal in his case, the court commented:

"It is no defense to a prosecution for compounding a crime...that the defendant subsequently institutes a prosecution against the party whom he promised to protect....

"Under [our] statute the offense is complete when the consideration or thing of value is received, or promise made, with such understanding or agreement; and a subsequent violation by a guilty party of his agreement is no defense to his prosecution, whatever may have been the rule at common law...." At 87.

See, also:

89 Pa L Rev 590 (1941).

55 Dickinson L Rev 356 (1951).

Section 13. Hindering prosecution and compounding; no defense. It is no defense to a prosecution for hindering prosecution or compounding that the principal offender is not apprehended, prosecuted, convicted or punished.

COMMENTARY - HINDERING PROSECUTION AND COMPOUNDING;  
NO DEFENSE

A. Summary

Section 13 states that criminal liability for hindering prosecution or compounding is not contingent upon the arrest or prosecution of the party whose prosecution is hindered or whose crime is compounded. The rule recognizes that hindering prosecution (accessory after the fact) and compounding are separate and distinct substantive offenses controlled by rules of accessorial rather than accomplice liability. However, the state bears the burden of proving the actual commission of a crime and the unlawful agreement to hinder its prosecution, or to conceal from law enforcement authorities information relating to its commission.

B. Derivation

Section 13 restates ORS 161.250 and 162.320.

C. Relationship to Existing Law

ORS 161.230: Defines an accessory as an accessory after the commission of a felony. Recommend repeal.

ORS 161.250: Provides that an accessory is punishable though the principal is not tried or indicted. Recommend repeal.

ORS 162.320: States that a person may be indicted for compounding or concealing a crime though the person guilty of the original crime has not been indicted or tried. Recommend repeal.

Section 13 codifies the majority view in the United States as expressed by the following authorities:

Hindering Prosecution:

Oaks v. People, 424 P2d 115 (Colo 1967).

Moore v. State, 94 SE2d 80 (Ga 1956).

Maddox v. Commonwealth, 349 SW2d 686 (Ky 1960).

Compounding:

15A CJS, Compounding Offenses, §7, p. 163:

"Actual commission of a preceding crime is commonly held essential to the compounding of an offense, but the alleged perpetrator need not be first tried or convicted....It is no defense that the person charged with the crime allegedly compounded was acquitted."

Section 14. Simulating legal process. A  
person commits the crime of simulating legal  
process if he knowingly issues or delivers to  
another any document that in form and substance  
falsely simulates civil or criminal process.

Existing Law
ORS
165.265
697.261

COMMENTARY - SIMULATING LEGAL PROCESS

A. Summary

Simulation of legal process is properly classified as a crime involving interference with judicial process. The false simulation of an official legal document subverts the legitimacy of judicial administration by impairing public confidence in the genuine article.

"Simulate" means:

"To assume the mere appearance of, without the reality; to assume the signs or indications of, falsely; to counterfeit; feign, imitate; pretend."  
(Black's Law Dictionary 1555 (4th ed 1951)).

Section 14 is designed to discourage the use of misleading documents in the debt collection process. The mens rea requirement is the "knowing" issuance or delivery of simulated legal process. Coverage includes both criminal and civil process and is not limited to legal process issued by a court of this state. Delivery to the Post Office Department of a properly addressed document would constitute "delivery to another," inasmuch as the sender designates the postal department his agent.

B. Derivation

Section 14 is derived from Michigan Revised Criminal Code section 5055 and Illinois Criminal Code section 32-7.

C. Relationship to Existing Law

ORS 165.265: Use of false pretense in collecting debts. Recommend repeal.

ORS 697.270: States that a conviction for obtaining money under false pretenses is grounds for the suspension, revocation or refusal to renew a collection agency license. Recommend amendment.

TEXT OF REVISIONS OF OTHER STATES

TEXT OF MODEL PENAL CODE

Section 3.04. Use of Force in Self-Protection.

(2) Limitations on Justifying Necessity for Use of Force.

(a) The use of force is not justifiable under this Section:

(i) to resist an arrest which the actor knows is being made by a peace officer, although the arrest is unlawful; or

Section 241.6. Tampering With Witnesses and Informants; Retaliation Against Them.

(1) Tampering. A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely; or

(b) withhold any testimony, information, document or thing; or

(c) elude legal process summoning him to testify or supply evidence; or

(d) absent himself from any proceeding or investigation to which he has been legally summoned.

The offense is a felony of the third degree if the actor employs force, deception, threat or offer of pecuniary benefit. Otherwise it is a misdemeanor.

(2) Retaliation Against Witness or Informant. A person commits a misdemeanor if he harms another by any unlawful act in retaliation for anything lawfully done in the capacity of witness or informant.

(3) Witness or Informant Taking Bribe. A person commits a felony of the third degree if he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in clauses (a) to (d) of Subsection (1).

TEXT OF MODEL PENAL CODE (CONT'D.)

**Section 241.7. Tampering With or Fabricating Physical Evidence.**

A person commits a misdemeanor if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(1) alters, destroys, conceals or removes any record, document or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(2) makes, presents or uses any record, document or thing knowing it to be false and with purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.

**Section 241.8. Tampering With Public Records or Information.**

(1) Offense Defined. A person commits an offense if he:

(a) knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government; or

(b) makes, presents or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (a); or

(c) purposely and unlawfully destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing.

(2) Grading. An offense under this Section is a misdemeanor unless the actor's purpose is to defraud or injure anyone, in which case the offense is a felony of the third degree.

TEXT OF MODEL PENAL CODE (CONT'D.)

**Section 242.1. Obstructing Administration of Law or Other Governmental Function.**

A person commits a misdemeanor if he purposely obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this Section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

**Section 242.2. Resisting Arrest or Other Law Enforcement.**

A person commits a misdemeanor if, for the purpose of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

**Section 242.3. Hindering Apprehension or Prosecution.**

A person commits an offense if, with purpose to hinder the apprehension, prosecution, conviction or punishment of another for crime, he:

- (1) harbors or conceals the other; or
- (2) provides or aids in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape; or
- (3) conceals or destroys evidence of the crime, or tampers with a witness, informant, document or other source of information, regardless of its admissibility in evidence; or
- (4) warns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law; or
- (5) volunteers false information to a law enforcement officer.

The offense is a felony of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a felony of the first or second degree. Otherwise it is a misdemeanor.



TEXT OF MODEL PENAL CODE (CONT'D.)

Section 242.5. Compounding.

A person commits a misdemeanor if he accepts or agrees to accept any pecuniary benefit in consideration of refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to an offense. It is an affirmative defense to prosecution under this Section that the pecuniary benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for harm caused by the offense.

# # # #

TEXT OF ILLINOIS CRIMINAL CODE OF 1961

Section 31-1. Resisting or Obstructing a Peace Officer

A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity shall be fined not to exceed \$500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both.

Section 31-4. Obstructing Justice

A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he knowingly commits any of the following acts:

(a) Destroys, alters, conceals or disguises physical evidence, plants false evidence, furnishes false information; or

(b) Induces a witness having knowledge material to the subject at issue to leave the State or conceal himself; or

(c) Possessing knowledge material to the subject at issue, he leaves the State or conceals himself.

Penalty.

A person convicted of obstructing justice shall be fined not to exceed \$1,000 or imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to 3 years, or both fined and imprisoned.

Section 31-5. Concealing or Aiding a Fugitive

Every person not standing in the relation of husband, wife, parent, child, brother or sister to the offender, who, with intent to prevent the apprehension of the offender, conceals his knowledge that an offense has been committed or harbors, aids or conceals the offender, shall be fined not to exceed \$1,000 or imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to 2 years, or both fined and imprisoned.

TEXT OF ILLINOIS CRIMINAL CODE OF 1961 (CONT'D.)

Section 31-8. Refusing to Aid an Officer

Whoever upon command refuses or knowingly fails reasonably to aid a person known by him to be a peace officer in:

(a) Apprehending a person whom the officer is authorized to apprehend; or

(b) Preventing the commission by another of any offense, shall be fined not to exceed \$100.

Section 32-1. Compounding a Crime

(a) A person compounds a crime when he receives or offers to another any consideration for a promise not to prosecute or aid in the prosecution of an offender.

(b) A person convicted of compounding a crime shall be fined not to exceed \$500.

Section 32-7. Simulating Legal Process

A person who issues or delivers any document which he knows falsely purports to be or simulates any civil or criminal process shall be fined not to exceed \$500 or imprisoned in a penal institution other than the penitentiary not to exceed 6 months, or both.

" " " "

Section 32-8. Tampering with Public Records

A person who knowingly and without lawful authority alters, destroys, defaces, removes or conceals any public record shall be fined not to exceed \$1,000 or imprisoned in a penal institution other than the penitentiary not to exceed one year or in the penitentiary from one to 5 years, or both fined and imprisoned.

# # # #

TEXT OF NEW YORK REVISED PENAL LAW

Section 35.37. Justification; use of physical force in resisting arrest prohibited

A person may not use physical force to resist an arrest, whether authorized or unauthorized, which is being effected or attempted by a peace officer when it would reasonably appear that the latter is a peace officer.

Section 175.25. Tampering with public records in the first degree.

A person is guilty of tampering with public records in the first degree when, knowing that he does not have the authority of any one entitled to grant it, and with intent to defraud, he knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in, or otherwise constituting a record of a public office or public servant.

Tampering with public records in the first degree is a class D felony.

Section 190.50 Unlawful collection practices

A person is guilty of unlawful collection practices when, with intent to enforce a claim or judgment for money or property, he knowingly sends, mails or delivers to another person a notice, document or other instrument which has no judicial or official sanction and which in its format or appearance, simulates a summons, complaint, court order or process, or an insignia, seal or printed form of a federal, state or local government or an instrumentality thereof, or is otherwise calculated to induce a belief that such notice, document or instrument has a judicial or official sanction.

Unlawful collection practices is a class B misdemeanor.

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

**§ 195.05 Obstructing governmental administration**

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act.

Obstructing governmental administration is a class A misdemeanor.

**Section 195.10. Refusing to aid a peace officer**

A person is guilty of refusing to aid a peace officer when, upon command by a peace officer identifiable or identified to him as such, he unreasonably fails or refuses to aid such peace officer in effecting an arrest, or in preventing the commission by another person of any offense.

Refusing to aid a peace officer is a class B misdemeanor.

**Section 195.15. Obstructing firefighting operations**

A person is guilty of obstructing firefighting operations when he intentionally and unreasonably obstructs the efforts of any fireman in extinguishing a fire, or prevents or dissuades another from extinguishing or helping to extinguish a fire.

Obstructing firefighting operations is a class B misdemeanor.

**Section 205.30. Resisting arrest**

A person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a peace officer from effecting an authorized arrest of himself or another person.

Resisting arrest is a class A misdemeanor.

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

Section 205.50. Hindering prosecution; definition of term

As used in sections 205.55, 205.60 and 205.65, a person "renders criminal assistance" when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person who he knows or believes has committed a crime or is being sought by law enforcement officials for the commission of a crime, or with intent to assist a person in profiting or benefiting from the commission of a crime, he:

1. Harbors or conceals such person; or
2. Warns such person of impending discovery or apprehension; or
3. Provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or
4. Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or
5. Suppresses, by any act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or
6. Aids such person to protect or expeditiously profit from an advantage derived from such crime.

Section 205.55. Hindering prosecution in the third degree

A person is guilty of hindering prosecution in the third degree when he renders criminal assistance to a person who has committed a felony.

Hindering prosecution in the third degree is a class A misdemeanor.

Section 205.60. Hindering prosecution in the second degree

A person is guilty of hindering prosecution in the second degree when he renders criminal assistance to a person who has committed a class B or class C felony.

Hindering prosecution in the second degree is a class E felony.

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

Section 205.65. Hindering prosecution in the first degree

A person is guilty of hindering prosecution in the first degree when he renders criminal assistance to a person who has committed murder or kidnapping in the first degree, knowing or believing that such person has engaged in the conduct constituting such murder or kidnapping in the first degree.

Hindering prosecution in the first degree is a class D felony.

Section 215.00. Bribing a witness

A person is guilty of bribing a witness when he confers, or offers or agrees to confer, any benefit upon a witness or a person about to be called as a witness in any action or proceeding upon an agreement or understanding that (a) the testimony of such witness will thereby be influenced, or (b) such witness will absent himself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.

Bribing a witness is a class D felony.

Section 215.05. Bribe receiving by a witness

A witness or a person about to be called as a witness in any action or proceeding is guilty of bribe receiving by a witness when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that (a) his testimony will thereby be influenced, or (b) he will absent himself from, or otherwise avoid or seek to avoid appearing or testifying at, such action or proceeding.

Bribe receiving by a witness is a class D felony.

Section 215.10. Tampering with a witness

A person is guilty of tampering with a witness when, knowing that a person is or is about to be called as a witness in an action or proceeding, (a) he wrongfully induces or attempts to induce such person to absent himself from, or otherwise to avoid or seek to avoid appearing or testifying at, such action or proceeding, or (b) he knowingly makes any false statement or practices any fraud or deceit with intent to affect the testimony of such person.

Tampering with a witness is a class A misdemeanor.

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

Section 215.40. Tampering with physical evidence

A person is guilty of tampering with physical evidence when:

1. With intent that it be used or introduced in an official proceeding or a prospective official proceeding, he (a) knowingly makes, devises or prepares false physical evidence, or (b) produces or offers such evidence at such a proceeding knowing it to be false; or
2. Believing that certain physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent such production or use, he suppresses it by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person.

Tampering with physical evidence is a class E felony.

Section 215.45 Compounding a crime

1. A person is guilty of compounding a crime when:

(a) He solicits, accepts or agrees to accept any benefit upon an agreement or understanding that he will refrain from initiating a prosecution for a crime; or

(b) He confers, or offers or agrees to confer, any benefit upon another person upon an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.

2. In any prosecution under this section, it is an affirmative defense that the benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

Compounding a crime is a class A misdemeanor.

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TEXT OF MICHIGAN REVISED CRIMINAL CODE

[Obstructing Government Operations]

Sec. 4505. (1) A person commits the crime of obstructing government operations in the second degree if he intentionally obstructs, impairs or hinders the performance of a governmental function by using or threatening to use violence, force, or physical interference or obstacle.

(2) This section shall not apply to:

(a) The obstruction, impairment or hindrance of unlawful action by a public servant.

(b) The obstruction, impairment or hindrance of the making of an arrest.

(c) The obstruction, impairment or hindrance of any governmental function in connection with a labor dispute with the government.

(3) Obstruction of government operations is a Class B misdemeanor.

[Obstructing a Peace Officer]

Sec. 4506. (1) A person commits the crime of obstructing a peace officer if, by using or threatening to use violence, force or physical interference or obstacle, he intentionally obstructs, impairs or hinders the enforcement of the criminal law or the preservation of the peace by a peace officer recognized to be acting under color of his official authority.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided he was acting under color of his official authority.

(3) This section does not apply to the obstruction, impairment or hindrance of the making of an arrest.

(4) Obstruction of a peace officer is a Class A misdemeanor.

[Refusing to Aid a Peace Officer]

Sec. 4520. (1) A person commits the crime of refusing to aid a peace officer when, upon command by a person known to him to be a peace officer, he unreasonably refuses or fails to aid such peace officer, in:

(a) Effectuating or securing an arrest; or

(b) Preventing the commission by another of any offense.

(2) Refusing to aid a peace officer is a Class C misdemeanor.

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

[Refusing to Assist in Fire Control]

Sec. 4525. (1) A person commits the crime of refusing to assist in fire control when:

(a) Upon command by a person known to him to be a fireman, he unreasonably refuses to aid in extinguishing a fire and protecting the property thereat; or

(b) Upon command by a person known to him to be a fireman or peace officer, he intentionally disobeys an order or regulation relating to the conduct of persons in the vicinity of a fire.

(2) "Fireman" includes any officer of a fire department or any other person vested by law with the duty to extinguish fires.

(3) Refusing to assist in fire control is a Class C misdemeanor.

[Compounding]

Sec. 4530. (1) A person commits the crime of compounding if he accepts or agrees to accept any pecuniary benefit in consideration for:

(a) Refraining from seeking prosecution of an offense;  
or

(b) Refraining from reporting to law enforcement authorities the commission or suspected commission of any offense or information relating to the offense.

(2) Compounding is a Class A misdemeanor.

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

[Tampering with Public Records]

Sec. 4555. (1) A person commits the crime of tampering with public records if:

(a) He knowingly makes a false entry in or falsely alters any public record; or

(b) Knowing he lacks the authority to do so, he intentionally destroys, mutilates, conceals, removes or otherwise impairs the availability of any public records; or

(c) Knowing he lacks the authority to retain the record, he refuses to deliver up a public record in his possession upon proper request of a public servant lawfully entitled to receive such record for examination or other purposes.

(2) For purposes of this section, "public record" includes all official books, papers or records created by or received in any governmental office or agency.

(3) Tampering with public records is a Class A misdemeanor.

[Securing the Proceeds of an Offense in the First Degree]

Sec. 4560. (1) A person commits the crime of securing the proceeds of an offense in the first degree if, with intent to assist another in profiting or benefiting from criminal activity constituting a Class A or B felony, he aids that person in securing the proceeds of the crime.

(2) Securing the proceeds of an offense in the first degree is a Class C felony.

[Securing the Proceeds of an Offense in the Second Degree]

Sec. 4561. (1) A person commits the crime of securing the proceeds of an offense in the second degree if, with intent to assist another in profiting or benefiting from criminal activity constituting a Class C felony or Class A misdemeanor, he aids that person in securing the proceeds of the crime.

(2) Securing the proceeds of an offense in the second degree is a Class A misdemeanor.

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

[Resisting Arrest]

Sec. 4625. (1) A person commits the crime of resisting arrest if he intentionally prevents or attempts to prevent a peace officer, recognized to be acting under color of his official authority, from effecting an arrest of the actor or another, by:

(a) Using or threatening to use physical force or violence against the peace officer or another; or

(b) Using any other means creating a substantial risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the police officer was acting unlawfully in making the arrest, provided he was acting under color of his official authority.

(3) Resisting arrest is a Class A misdemeanor.

[Rendering Assistance to Hinder Prosecution or Apprehension: Definition]

Sec. 4635. For the purposes of sections 4636, 4637 and 4640, a person renders assistance to another if he:

(a) Harbors or conceals such person;

(b) Warns such person of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring another into compliance with the law;

(c) Provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension;

(d) Prevents or obstructs, by means of force, deception or intimidation, anyone from performing an act that might aid in the discovery or apprehension of such person; or

(e) Suppresses by an act of concealment, alteration or destruction any physical evidence that might aid in the discovery or apprehension of such person.

TEXT OF MICHIGAN REVISED CRIMINAL CODE (CONT'D)

[Hindering Prosecution in the First Degree]

Sec. 4636. (1) A person commits the crime of hindering prosecution in the first degree if with the intent to hinder the apprehension, prosecution, conviction or punishment of another for conduct constituting murder in the first degree of a Class A or B felony, he renders assistance to such person.

(2) Hindering prosecution or apprehension in the first degree is a Class C felony.

[Hindering Prosecution or Apprehension in the Second Degree]

Sec. 4637. (1) A person commits the crime of hindering prosecution in the second degree if with the intent to hinder the apprehension, prosecution, conviction or imprisonment of another for conduct constituting a Class C felony or Class A misdemeanor, he renders assistance to such person.

(2) Hindering prosecution or apprehension in the second degree is a Class A misdemeanor.

[Definition of Terms]

Sec. 5001.

(3) "Testimony" includes oral or written statements, documents or any other material that may be offered by a witness in an official proceeding.

[Bribing a Witness]

Sec. 5005. (1) A person commits the crime of bribing a witness if he offers, confers or agrees to confer any pecuniary benefit upon a witness or a person he believes is about to be called as a witness in any official proceeding with intent to:

(a) Influence the testimony of that person;

(b) Induce that person to avoid legal process summoning him to testify; or

(c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.

(2) Bribing a witness is a Class C felony.

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

[Bribe Receiving by a Witness]

Sec. 5010. (1) A witness or a person believing he is about to be called as a witness in any official proceeding commits the crime of bribe receiving by a witness if he solicits, accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that:

- (a) His testimony will thereby be influenced;
- (b) He will attempt to avoid legal process summoning him to testify; or
- (c) He will attempt to absent himself from an official proceeding to which he has been legally summoned.

[Tampering with a Witness]

Sec. 5020. (1) A person commits the crime of tampering with a witness if he attempts to induce a witness or a person he believes is about to be called as a witness in any official proceeding to:

- (a) Testify falsely or unlawfully withhold any testimony;  
or
- (b) Absent himself from any official proceeding to which he has been legally summoned.

(2) Tampering with a witness is a Class B misdemeanor.

[Tampering with Physical Evidence]

Sec. 5045. (1) A person commits the crime of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he:

- (a) Destroys, mutilates, conceals, removes or alters physical evidence with intent to impair its verity or availability in the pending or prospective official proceeding.
- (b) Knowingly makes, presents or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

(2) "Physical evidence," as used in this section, includes any article, object, document, record or other thing of physical substance.

(3) Tampering with physical evidence is a Class A misdemeanor.

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

[Simulating Legal Process]

Sec. 5055. (1) A person commits the crime of simulating legal process if he knowingly delivers or causes to be delivered to another a request for the payment of money on behalf of a creditor that in form and substance simulates any legal process issued by any court of this state.

(2) Simulating legal process is a Class B misdemeanor.

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TEXT OF PROPOSED MINNESOTA CRIMINAL CODE

Section 609.51 Simulating Legal Process

Subdivision 1. Acts Prohibited. Whoever does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than \$100:

(1) Sends or delivers to another any document which simulates a summons, complaint, or court process with intent thereby to induce payment of a claim; or

(2) Prints, distributes, or offers for sale any such document knowing or intending that it shall be so used.

Subd. 2. Exceptions. This section does not prohibit the printing, distribution or sale of blank forms of legal documents for use in judicial proceedings.

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TEXT OF WISCONSIN CRIMINAL CODE

Section 939.22 (22): "Peace Officer" includes any public servant vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes.

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