

ARTICLE 26 . RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES

Tentative Draft No. 1; February 1970

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CRIMINAL LAW REVISION COMMISSION
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ARTICLE 26. RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES

Tentative Draft No. 1; February 1970

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Subcommittee No. 3

ARTICLE 26. RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES

Tentative Draft No. 1; February 1970

Section 1. Riot, disorderly conduct and related offenses; definitions.

As used in this Article, unless the context requires otherwise:

(1) "Abuse" means to deface, damage, defile or otherwise physically mistreat in a manner likely to outrage ordinary public sensibilities.

(2) "Public place" means a place to which the general public has access, and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

COMMENTARY - RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES; DEFINITIONS

A. Summary

By defining "public place" in broad terms, subsection (2) attempts to avoid defeating by technicalities, prosecutions for disorderly conduct and related offenses involving conduct occurring in a "public place." Emphasis should properly be directed to the circumstances attending the prohibited conduct rather than the nature of the place of occurrence in fixing the "public" nature of the incident.

Black's Law Dictionary 1394 (1951) gives a comprehensive definition of "public place," the substance of which is reflected by the proposed definition:

"A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public. Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of a community. A place exposed to the public, and where the public gather together or pass to and fro."

Subsection (1) defines the word "abuse," which is used in connection with sections 9 and 10 of this Article.

B. Derivation

With minor changes, the definition of "public place" is taken from New York Revised Penal Law section 240.00 (1).

The definition of "abuse" is taken from Model Penal Code section 250.9, which defines the synonymous word "desecrates."

C. Relationship to Existing Law

The definitions of "public place" and "abuse" are new to Oregon law.

In Roach v. City of Eugene, 23 Or 376, 31 P 825 (1893), the court discussed "public place" in connection with public notice posting requirements:

"A public place is a relative term.... A place where the citizens frequently meet, or resort, or have occasion to be, is construed to be a public place."

Section 2. Treason. (1) A person commits the crime of treason if he levies war against the State of Oregon or adheres to its enemies, giving them aid and comfort.

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(2) No person shall be convicted of treason unless upon the testimony of two witnesses to the same overt act or upon confession in open court.

COMMENTARY - TREASON

Oregon Constitution, Art. I, s. 24, defines treason against the state:

"Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid or comfort. -No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open Court.-"

An assemblage of men for the purpose of executing a treasonable design by force would be covered by the proposed Riot Article. Also, where there is a combination of persons to prevent the execution of some public law by force, the Article on Obstructing Governmental Administration would encompass the prohibited acts. Although neither one of these Articles will probably punish these offenses with the severity presently prescribed for treason (life imprisonment), it might fairly be argued that any "treason" against the state which was not also treason against the United States would be adequately covered by the Articles.

The purpose of the proposed section is to preserve the statutory crime of treason as defined in the Oregon Constitution. It would seem that the classical definition of treason is broad enough to cover overt acts that might occur, and most of the activities would probably violate other sections of the draft.

Section 3. Riot. A person commits the crime of riot if while participating with five or more other persons he engages in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm.

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| (| 166.050 |
| (| 399.065 |
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COMMENTARY - RIOT

A. Summary

Under common law a riot involves five necessary elements:

"There are five necessary elements in a riot: (1) there must be at least three persons; (2) they must have a common purpose; (3) there must be execution or inception of the common purpose; (4) there must be an intent to help one another by force if necessary against any person who may oppose them in the execution of their common purpose; (5) there must be force or violence, not merely used in demolishing, but displayed in such a manner as to alarm at least one person of reasonable firmness and courage." (Kenney's Outlines of Criminal Law, section 437 (17th ed 1958)).

The proposed section adopts the modern concept of a "riot" by requiring a greater number of rioters and by shifting the emphasis from the commission of some other crime to the "conduct" that creates a risk of causing "public alarm."

It is necessary to prove that the rioters were involved in a common disorder; it is not enough to show that numerous individuals were engaged in similar unrelated activities. Mere presence without taking part by word or deed is not participation. In discussing the legislative policy supporting a riot provision, the Model Penal Code commentators base their decision to include it on three grounds:

(1) "To provide aggravated penalties for disorderly conduct where the number of participants makes the behavior especially alarming;"

(2) "To provide penal sanctions for disobeying police orders directing a disorderly mob to disperse;" and

(3) "To subject to police orders persons present but not shown to be implicated in the disorderly behavior--a kind of expanded 'complicity', necessitated by the fact that police cannot be expected to distinguish participants from non-participants intermingled in a mob." (See, Model Penal Code Commentary, Tent. Draft No. 13, pp. 20-21 (1961)).

The term "tumultuous and violent conduct" is intended to represent more than mere loud noise or disturbance. The language is designed to imply terroristic mob behavior involving ominous threats of personal injury and property damage:

"The underlying element, essential to constitute statutory crime of 'riot' and distinguishing it from other crimes involving breach of peace, is disturbance of public peace, which implies idea of lawless mob accomplishing or bent on accomplishing some object in violent and turbulent manner creating public alarm or consternation or terrifying or calculated to terrify people." (People v. Edelson, 169 Misc. 386, 7 NYS2d 323 (1938)).

It should be noted that a person participating in a large urban riot probably will be punished for individual criminal acts rather than for the crime of riot.

B. Derivation

With minor changes, the proposed section is derived from New York Revised Penal Law section 240.05. The language "participating with five or more others" was derived from Model Penal Code section 250.1 (1).

C. Relationship to Existing Law

ORS 145.020: Dispersal of unlawful or riotous assemblages. Recommend repeal.

ORS 145.990: Penalty provision for ORS 145.020. Recommend repeal.

ORS 166.040: Riot and unlawful assembly defined. "(1) Any use of force or violence, or threat to use force or violence, if accompanied by immediate power of execution, by three or more persons acting together, and without authority of law, is riot.

"(2) When three or more persons assemble with intent, or with means and preparation to do an unlawful act, which would be riot if actually committed, but do not act towards the commission thereof; or assemble without authority of law and in a manner adapted to disturb the public peace or excite public alarm; or assemble disguised in a manner adapted to prevent them from being identified, it is an unlawful assembly." Recommend repeal.

ORS 166.050: Punishment for participating in riot. Recommend repeal.

It is interesting to note that ORS 166.050 does not include a penalty provision for unlawful assembly as defined in ORS 166.040 (2). This anomaly is the basis of the court's decision in State v. Stephanus, 53 Or 135, 99 P 428 (1909), discussed in connection with section 4 of this Article.

ORS 399.065: "The Governor shall have the power, in case of...riot, breach of order...to order into active service of the state for such period, to such extent and in such manner as he may deem necessary all or any part of the...militia." Not affected by revised criminal code.

The emphasis in existing law is on conduct preparatory to the commission of a separate criminal offense and on individual acts of misconduct committed in group situations. Under the proposed criminal code revision, these offenses will be reached by provisions on inchoate crimes, parties to crime and particularized substantive sections. The thrust of the proposed riot section is directed towards unlawful group action producing or creating a grave risk of public "alarm."

A comprehensive analysis of ORS 166.040 is found in State v. Mizis, 48 Or 165 P 611, 86 P 361 (1906).

The distinction between riot and unlawful assembly is discussed in State v. Stephanus, supra:

"If parties assemble in a tumultuous manner, and actually execute their purpose with violence, it is 'riot' at common law. 'Unlawful assembly' is a distinct offense at common law, and if persons assemble for a purpose which, if executed, would constitute a riot, but separate without carrying out their purpose, their acts constitute an unlawful assembly."

There is considerable authority holding that the proscribed conduct creating the "alarm" need not itself be unlawful:

18 Or L Rev 254 (1939), Criminal Law--Riot--What Constitutes:

"[A] group of cases sets forth the rule that tumultuous and violent, though not necessarily unlawful, acts which result in fright to persons may constitute a riot. One case, which has been frequently cited with approval, held that a riot existed when 8 or 10 disguised men paraded up and down the street at night shooting guns and blowing horns for several hours, terrifying a number of persons. State v. Brazil, Rice 257 (S.C. 1839)....It is sufficient if the action of the parties implicated is so violent and tumultuous as to be likely to cause fright and individuals are frightened. Spring Garden Ins. Co. v. Imperial Tobacco Co., 132 Ky 7, 116 SW 234 (1909)."

In Salem Mfg. Co. v. First American Fire Ins. Co. of N.Y., 111 F2d 797 (9th Cir 1940), the court stated:

"To constitute a riot it is not necessary that there should be actual fright to the public generally. It is enough if the action of the parties implicated be so violent and tumultuous as to be likely to cause fright, and if individuals are frightened."

The court then quoted with approval International Wire Works v. Hanover Fire Ins. Co., 230 Wis 72, 283 NW 293:

"The generally understood meaning of the word 'riot' is an assembly of individuals who commit a lawful or unlawful act in a violent or tumultuous manner, to the terror or disturbance of others...."

Section 3 imposes a single penalty provision for the crime of riot. Aggravating factors enhancing the penalty contained in ORS 166.050 would be reached by the various sections on parties to crime, carrying a concealed weapon, assault, criminal solicitation, etc.

Section 4. Unlawful assembly. A person commits the crime of unlawful assembly if:

(1) He assembles with five or more other persons with the purpose of engaging in conduct constituting a riot; or

Existing
Law

ORS

166.040 (2)

(2) Being present at an assembly that either has or develops the purpose of engaging in conduct constituting a riot, he remains there with the intent to advance that purpose.

COMMENTARY - UNLAWFUL ASSEMBLY

A. Summary

The common law crime of "riot", or unlawful assembly, is defined in 1 Russell on Crime 284 (11th ed 1958):

"An unlawful assembly...is a disturbance of the peace by persons assembling together with an intention to do a thing which, if it were executed, would make them riotous, but neither actually executing it nor making a move towards its execution....If the parties assemble in a tumultuous manner calculated to cause terror, and actually execute their purpose with violence, it is a riot; but if they merely assemble upon a purpose which, if executed, would make them riotous, but do not execute or make any motions to create such purpose and having done nothing, separate without carrying their purpose into effect, it is an unlawful assembly."

The purpose of section 4 is stated in the Michigan commentary:

"....[It] is intended to reach those who have assembled for the purpose of rioting or who are on their way to the scene of a riot, but who have not yet begun

to riot, or who associate with a group of known potential rioters with intent to aid their cause. It thus comprises both unlawful assembly and rout at the common law, and constitutes in effect an expanded concept of attempted riot...." (Michigan Revised Criminal Code, section 5515, Committee Commentary, Final Draft 1967).

Subsection (1) prohibits a person from assembling with five or more other persons with the purpose of pursuing a course of conduct that would subject him to prosecution for riot.

Subsection (2) is directed at a person present at an assembly whose purpose it is to riot, and who remains there with the intent to personally advance that purpose.

The policy behind section 4 is to grant some flexibility to law enforcement authorities in dispersing groups gathered for an unlawful purpose prior to the inception of riotous conduct. It is not intended to infringe upon the right to lawfully assemble and exercise First Amendment prerogatives.

B. Derivation

With substantial structural change, the section is taken from Michigan Revised Criminal Code section 5515.

C. Relationship to Existing Law

The constitutional issue involved in imposing criminal sanctions in the area of unlawful assemblies was raised in State v. DeJonge, 152 Or 315, 51 P2d 674 (1936). The defendant was convicted under a state criminal syndicalism law which contained the language, "...or who shall preside at or conduct or assist in conducting any assemblage of persons, or any organization, or any society, or any group which teaches or advocates the doctrine of criminal syndicalism or sabotage is guilty of a felony...." The conviction was affirmed by the Oregon Supreme Court. On appeal to the United States Supreme Court, the conviction was reversed. DeJonge v. State of Oregon, 299 US 352 (1937): Justice Hughes, speaking for the Court, stated:

"The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental...the right is one that cannot be denied

without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions....

"The rights may be abused by using speech or press or assembly in order to incite violence and crime. The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed....Peaceable assembly for lawful discussion cannot be made a crime....If the persons assembling... have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violation of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge."

ORS 166.040 (2): Defines an unlawful assembly. The penalty provisions in ORS 166.050 refer only to the crime of riot.

This statutory flaw was construed in 30 Op Atty Gen 419 (1960-62):

"....There is no penalty assigned by the statutes to acts described in ORS 166.040 (2). ORS 166.050 assigns penalties for riot as defined by ORS 166.040 (1). And, ORS 145.020 provides certain penalties for failure to assist police officers in dispersal of unlawful assemblies, or for the refusal to disperse upon properly being ordered to do so by enforcement officers. But...there is no penalty assigned to acts not amounting to riot but which do become unlawful assembly. It is therefore my view that ORS 166.040 (2) does not in itself describe a crime, either a misdemeanor or a felony."

Section 4 would therefore be new to Oregon law, inasmuch as existing law defines an "unlawful assembly" but provides no penalty.

Authorities: 40 Or L Rev 63 (1960).

Section 5. Disorderly conduct. A person commits the crime of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(1) Engages in fighting or in violent, tumultuous or threatening behavior; or

(2) Makes unreasonable noise; or

(3) Uses abusive or obscene language, or makes an obscene gesture, in a public place; or

(4) Disturbs any lawful assembly of persons without lawful authority; or

(5) Obstructs vehicular or pedestrian traffic on a public way; or

(6) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or

(7) Creates a hazardous or physically offensive condition by any act which he is not licensed or privileged to do.

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166.010
166.020
166.030
166.060
166.110
166.120
166.130
166.140
166.150
166.160
166.610
166.630
161.310
164.440
164.450
164.452
164.510
164.520
33.010

COMMENTARY - DISORDERLY CONDUCT

A. Summary

This section is designed to replace much of the existing law presently classified as vagrancy and disturbing the peace. Some of that coverage is allocated to sections on loitering and harassment. Matters relating to prostitution have been incorporated into Article ___, Prostitution and Related Offenses. Vagrancy as a substantive offense has been deleted. The existing provisions that, in effect, create "status" offenses are hopelessly archaic and most likely unconstitutional. This section is directed at conduct causing what the common law termed a breach of the peace. Before the specified conduct may be viewed as "disorderly", the actor must intend to cause, or recklessly create a risk of, public inconvenience, annoyance or alarm. A strict liability offense is thereby avoided.

Subsection (1) is directed at public conduct within the traditional common law concept of breach of the peace.

Subsection (2) prohibits making "unreasonable" noise. The application of this provision depends upon the circumstances under which the challenged activity is performed. Noise eminently reasonable under certain circumstances may be highly unreasonable under other circumstances, e.g., day-time v. night-time; quiet residential area v. industrial area.

Subsection (3) is directed at the unfocused use of abusive or obscene language or gestures in public places. If used with the intent to harass a particular person, it would constitute the crime of harassment.

Subsection (4) prohibits interference with lawful meetings or assemblages.

Subsection (5) covers the intentional obstruction of vehicular or pedestrian traffic. It is not intended to prohibit persons gathering to hear a speech or otherwise communicate.

Subsection (6) proscribes the failure to disperse in response to a lawful order from the police.

Subsection (7) is a dragnet provision designed to reach activity that constitutes a public nuisance but that is not specifically proscribed under the other subsections. The provision is necessitated by the impossibility of itemizing every kind of act properly punishable as disorderly conduct. One example found in existing law is the use of stink bombs in public places.

B. Derivation

The proposed section is almost identical to New York Revised Penal Law section 240.20 and Michigan Revised Criminal Code section 5525.

C. Relationship to Existing Law

ORS 166.010, 166.020, 166.030: All relating to dueling offenses. Recommend repeal by section 8, harassment, this Article.

ORS 166.060: Vagrancy. Subsection (1) (a): recommend repeal; not retained in revised criminal code. (1) (b): recommend repeal; not retained in revised criminal code. (1) (c): recommend repeal by sections on loitering and criminal trespass. (1) (d): repealed by Article _____, Prostitution. (1) (e): recommend repeal by section 7, loitering, this Article. (1) (f): recommend repeal, section 5 this Article. Subsection (2): recommend repeal.

ORS 166.110: Riding or driving animals recklessly. Recommend repeal by section on reckless endangering, Article _____, Assault.

ORS 166.120: Disturbing religious meetings. Recommend repeal by section 5, this Article.

ORS 166.130: Disturbing public meeting or assembly. Recommend repeal by section 5, this Article.

ORS 166.140: Use of stink bombs. Recommend repeal by section 5, this Article.

ORS 166.150: Permitting vicious animals to be at large. Recommend repeal by section on reckless endangering, Article _____, Assault.

ORS 166.160: Intoxicated while in public. Recommend repeal by section 6, this Article.

ORS 166.610: Obstruction of highway by herder. Recommend repeal by section 5, this Article.

ORS 166.630: Throwing debris on highway or railroad right of way. Recommend repeal. Covered by Article on Miscellaneous Offenses.

ORS 161.310: Criminal "nuisance" statute. Recommend repeal. Not retained in revised criminal code.

ORS 164.440: Dumping rubbish on private land or public way. Recommend repeal. Covered by Article on Miscellaneous Offenses.

ORS 164.450: Defacing buildings or contents. Recommend repeal by section on criminal mischief, Article _____, and sections 5 and 8, this Article.

ORS 164.452: Defacing school property. Recommend repeal by section on criminal mischief, Article _____, and sections 5, 8 and 9, this Article.

ORS 164.510: Obstructing road, canal, bridge, railroad. Recommend repeal by section 5, this Article.

ORS 164.520: Operating hand car on railroad track. Recommend repeal by section on criminal trespass, Article _____.

ORS 33.010: Criminal contempt. Not affected by revised criminal code.

There are few reported cases dealing with disorderly conduct offenses.

ORS 161.310, commonly referred to as the "Nuisance Act", has a long and varied judicial history. Since State v. Bergman, 6 Or 341 (1877), involving a slaughterhouse, this criminal statute has been used to prosecute for an act which "grossly disturbs the public peace or outrages the public decency and is injurious to public morals." See State v. Ayers, 49 Or 61, 88 P 653 (1907), Horse gaming pools. Multnomah County Fair Ass'n v. Langley, 140 Or 172, 13 P2d 354 (1932), horse racing lottery. State v. Elliott, 204 Or 460, 277 P2d 754 (1955), abortion mill. Wilson v. Parent, 228 Or 354, 365 P2d 72 (1961), vile and obscene language and gestures. State v. Dewey, 206 Or 496, 292 P2d 799 (1956), Abortion mill.

The constitutionality of ORS 161.310 was questioned in State v. Franzone, 243 Or 597, 415 P2d 16 (1966), wherein the court stated:

"We regard the question of the constitutionality of ORS 161.310 as still an open one, particularly in view of recent decisions of the Supreme Court of the United States."

Since the lower court decision was reversed on other grounds, the Supreme Court did not reach the constitutional issue.

Authorities: 9 William & Mary L Rev 349 (1967)
12 Am Jur 2d, Breach of Peace, 30
14 Wayne L Rev 986 (1968)

Section 6. Public intoxication. A person commits the crime of public intoxication if he appears in any public place under the influence of alcohol, narcotics or dangerous drugs to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity.

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| 136.400 |
| 493.160 |
| 493.990 |
| Ch. 471 |

COMMENTARY - PUBLIC INTOXICATION

A. Summary

Section 6 does not make public intoxication a strict liability offense. An intoxicated person may be charged only if he appears in public in a condition that endangers himself or other persons or property, or in a manner annoying to those around him. Coverage under the public intoxication section has been broadened to include narcotic drugs and dangerous drugs.

The state statute does not, of course, prevent the application of municipal public intoxication ordinances. (See Woods v. Town of Prineville, 19 Or 108 (1890)).

B. Derivation

The proposed section is taken from New York Revised Penal Law section 240.40.

C. Relationship to Existing Law

The subject of public intoxication as a criminal offense, particularly as it relates to chronic alcoholism, has been an issue of increasing concern in recent years. A number of legal authorities have attempted to bring into sharp focus the failures and inadequacies of past and present legislation dealing with drunkenness as a crime:

See: The Challenge of Crime in a Free Society, President's Commission on Law Enforcement 235 (1967).

Block-Geis, Man, Crime & Society, 346 (2d ed 1964).

Barnes-Teeters, New Horizons in Criminology, 89 (3d ed 1959).

19 SC L Rev 316 (1969).

18 Buffalo L Rev 337 (1969).

Powell v. Texas, 392 US 514 (1968).

A chronic alcoholic may not be convicted of public intoxication. Easter v. District of Columbia, 361 F2d 50 (DC Cir 1966). Driver v. Hinnant, 356 F2d 761 (4th Cir 1966).

ORS 166.160: Intoxicated while in public place. Recommend repeal by section 6, this Article.

ORS 136.400: Intoxication as a defense.

ORS 493.160: Prohibited operation of aircraft. (1) While under influence of alcohol or drugs.

ORS 493.990 (2): Penalty provision for violation of ORS 493.160. \$500 fine, six months imprisonment, or both.

ORS chapter 471: Control of alcoholic liquors.

There are no reported Oregon cases dealing with public intoxication.

A majority of Commission members believe that the problem of public drunkenness should be handled on a professional socio-medical basis rather than by the agency of the criminal law. Civil detoxification centers, medical-psychiatric counseling and sustained rehabilitative measures represent the truly practical and justifiable response to the chronic alcoholic.

Unfortunately, facilities are not presently available in Oregon to implement a worthwhile socio-medical approach to the problem of public drunkenness. Until the advent of a state-wide program, the Commission believes that the criminal law remains the only available alternative.

Section 7. Loitering. A person commits the crime of loitering if he:

(1) Loiters in or near a school building or grounds, not having any reason or relationship involving custody of or responsibility for a student, and not having written permission from anyone authorized to grant the same; or

(2) Loiters or prowls in a public place without apparent reason and under circumstances which warrant justifiable alarm for the safety of persons or property in the vicinity, and, upon inquiry by a peace officer, refuses to identify himself and give a reasonably credible account of his presence and purposes.

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| 162.550 |

COMMENTARY - LOITERING

A. Summary

The most critical aspect of vagrancy legislation is its effect of creating a "status" of criminality based upon no specific misbehavior. Loitering statutes have traditionally been designed to enable the police to arrest and detain persons suspected of having committed or being about to commit a crime. The Model Penal Code commentary (Tentative Draft No. 13, p. 64, 1961), discusses and analyzes alternative responses that may be devised to deal with the "suspicious loiterer":

"(2) The suspicious situation may be treated as laying the basis for police inquiries to which the actor must respond...."

Two problems are noted in connection with this approach:

(a) [It does not exclude the possibility that a person may be convicted without proof of anti-social behavior] "since failure to identify or to give credible account of one's behavior leads to criminal liability, without necessity on the part of the prosecution to prove any criminal purpose."

(b) "...a plausible lie about one's purposes or identity will exclude liability, while an implausible truth does not...."

"(5) ...the police might expect merely to make inquiry of suspicious persons, most of whom would of course answer questions voluntarily. Where the answer does not dissipate suspicion, the officer would make such observations as would facilitate identification of the suspect in case an offense is committed in the neighborhood."

The commentary finds this alternative most consistent with its ideas of the proper role of the police and with general principles of penal law, but recognizes that it would involve a total abandonment of the traditional vagrancy concept, a departure that would encounter serious resistance.

Model Penal Code section 250.6 is designed to provide the least objectionable form of alternative (2) for those jurisdictions not prepared to depart entirely from the vagrancy concept. This approach is reflected in subsection (2) of section 7.

Subsection (1) is designed to deter conduct in or near school buildings or grounds that disrupts the orderly process of school administration. It prohibits "loitering" in or near school property in the absence of a relationship involving a student and written permission from a school administrator. Persons visiting a school on legitimate business, or attending an authorized school function, are not "loitering." No attempt has been made to define with precision what constitutes being "near" a school building or grounds; each factual question presented must necessarily turn on whether the act of loitering is in sufficient proximity to the school or school grounds to threaten the proper administration of school activities.

B. Derivation

Subsection (1) is taken from New York Revised Penal Law section 240.35 (5).

Subsection (2) is derived from Model Penal Code section 250.6 and New York Revised Penal Law section 240.35 (6).

C. Relationship to Existing Law

The Oregon vagrancy statute, ORS 166.060, has six subsections:

- (a) Every person without visible means of support.
- (b) Every beggar who solicits alms.
- (c) Every idle or dissolute person who wanders late at night.
- (d) Every common prostitute.
- (e) Any person who loiters about school buildings.
- (f) Any person who conducts himself violently, riotously or disorderly.

Subsection (f) is incorporated into the disorderly conduct section. Subsection (d) is covered in Article _____, Prostitution and Related Offenses. As for begging, covered in subsection (b), the Model Penal Code commentary rejects such coverage:

"Municipalities may properly regulate the use of sidewalks to safeguard against annoying and importunate mendicants and merchants; but such legislation does not belong in the penal code." (Tentative Draft No. 13, p. 65, 1961).

Subsections (a) and (c), in light of the modern decisions, are probably unconstitutional.

This leaves only subsection (e) to consider in drafting a loitering statute based on existing law.

Subsection (1) continues the coverage provided in subsection (e) of ORS 166.060, Oregon's present vagrancy statute.

Subsection (2) attempts to incorporate the essential elements of Model Penal Code section 250.6. This is a new and controversial offense.

In City of Portland v. Goodwin, 187 Or 409, 210 P2d 577 (1949), the Supreme Court held constitutional the following City of Portland ordinance:

"Between the hours of 1:00 and 5:00 o'clock A.M., Pacific Standard time, it shall be unlawful for any person to roam or be upon any street, alley or public place without having and disclosing a lawful purpose."

In City of Portland v. James, 86 Adv Sh 1287, ___ Or ___, 444 P2d 554 (1968), the same ordinance was held to be violative of due process. Speaking for the court, Justice O'Connell states:

"It seems apparent to us that the ordinance is a part and parcel of the general scheme underlying the various vagrancy laws, the design of which is to give a police officer the right to arrest persons whose appearance or actions arouse the officer's suspicion that the suspect has been or is likely to be involved in some transgression of law not then specifically identifiable by the officer. In short, the ordinance is designed to permit 'arrests on suspicion'.

"Designed as it is the ordinance is void for vagueness....It purports to make criminal the mere presence of a person on the streets when a police officer has the suspicion that the suspect does not have a lawful purpose in being there. This criterion for arrest is too vague to provide a standard adequate for the protection of constitutional rights.

"It is not our intention to say that the police may not stop and question persons who arouse a reasonable suspicion that they are connected with criminal activity. Nor do we express any opinion as to the validity of an ordinance cast in language similar to that used in the Model Penal Code permitting, under proper safeguards, the arrest of persons who loiter or prowl under circumstances creating a justifiable alarm for the safety of persons or property.

"The principal evil of such vague legislation is that it invites arbitrary and discriminatory enforcement....An arrest is valid only if it is based upon probable cause. To sustain this ordinance in question would be to allow a crime to be defined so as to render the requirement of probable cause to effect a valid arrest an illusory protection....The interest of freedom of movement on the streets and the attendant interests of privacy and human dignity deserve the most careful constitutional protection...." At 1289-1292 (Emphasis supplied).

Recent state court decisions involving loitering statutes support the view that if the statute clearly defines the circumstances under which loitering creates "justifiable public danger or alarm," its constitutional validity will be upheld. For cases involving "suspicious loitering" or loitering in or about a school, see:

Anderson v. Shaver, 290 F Supp 920 (DCNM 1968)
State v. Wiggins, 158 SE2d 37 (NC 1967)
In re Huddleson, 229 CA2d 618, 40 Cal Rptr 581 (1964)
People v. Johnson, 161 NE2d 9 (Ct of App NY 1959)

The "reasonably credible account" requirement in subsection (2) is discussed in two recent cases:

State v. Zito, 103 NJ Super 552, 248 A2d 254 (1968); 54 NJ 206, 254 A2d 769 (1969), analyzes the "good account" provision of the New Jersey disorderly conduct statute:

"Plainly, the failure to give a satisfactory explanation to a police officer may be a failure to give a good account of oneself, but such fact alone will not be sufficient to support a conviction.

"As stated in State v. Salerno, 27 NJ 289, 142 A2d 636 (1958):

"Usually provisions for a good account are associated with conduct or circumstances in themselves offensive or suggestive of an intent to commit a crime...." At 639.

"We are satisfied that a failure to give a good account may not itself be punished or be made an essential element of a crime....A failure to give a good account may not serve as affirmative proof of presence for an unlawful purpose. The central purpose of our statute being to reach presence at a place for an unlawful purpose rather than to punish silence, we think it fair to say the Legislature intended by the good account provision to assure the suspect a chance to explain away the circumstances which appear inculpatory.

"To summarize, we hold (1) that the statutory offense consists solely of presence at a place for an unlawful purpose, (2) that the failure, refusal, or inability to give the officer a good account is not part of the offense, (3) that the statute requires, as a condition for prosecution, that the officer offer the suspect a chance to explain away circumstances which indicate presence for an unlawful purpose, unless the court finds that the circumstances prevented the officer or made it plainly unnecessary....

"We stress, that an arrest cannot be made because a person refused or failed to give a good account. An arrest can be made only if in the total circumstances there is probable cause to believe that individual was present at the place for an unlawful purpose, i.e., to commit a crime...." Id at 774, 775, 776.

In People v. Schanbarger, 24 NY2d 288, 300 NYS2d 100, 248 NE2d 16 (1969), defendant was accosted at 3:00 a.m. by a peace officer while walking on a public highway in an area where there had been a number of recent burglaries. He refused to answer the officer's questions and was arrested for loitering under New York Revised Penal Law section 240.35 (6):

Conviction reversed: "It is unnecessary to deal with the constitutional argument. Clauses in subsection (6) are conjunctive, rather than disjunctive, and in order to sustain conviction, each of the conjunctive elements must be proved beyond a reasonable doubt. The information in this case nowhere states that the circumstances were such that the trooper was justified in suspecting that the defendant might be engaged or was about to engage in crime. The defendant was convicted for his failure to answer the trooper's questions....His

failure to answer cannot constitute a criminal act under subsection (6) of section 240.35." Id at 17.

In applying the same standards to the proposed loitering provision in subsection (2), the Commission believes that a person cannot be arrested merely because upon inquiry by a peace officer he refused to identify himself and give a reasonably credible account of his presence and purpose. An arrest can be made only if under the total circumstances his conduct warrants justifiable alarm for the safety of persons or property in the vicinity.

Authorities: 104 U of Pa L Rev (II) 603 (1956)
35 Tenn L Rev 617 (1968)
City of Seattle v. Drew, 423 P2d 522 (Wash 1967)

Section 8. Harassment. A person commits the crime of harassment if, with intent to harass, annoy or alarm another person, he:

(1) Subjects another to offensive physical contact;
or

(2) Publicly insults another by abusive or obscene words or gestures in a manner likely to provoke a violent or disorderly response; or

(3) Communicates with a person, anonymously or otherwise, by telephone, mail or other form of written communication, in a manner likely to cause annoyance or alarm; or

(4) Engages in a course of conduct that alarms or seriously annoys another person and which serves no legitimate purpose.

Existing
Law

ORS
166.030
163.260
161.310
165.550

COMMENTARY - HARASSMENT

A. Summary

A separate provision is required for certain private annoyances since the proposed disorderly conduct section is limited to disturbances of general or public impact. Section 8 is intended to reach "disorderly conduct" creating alarm or annoyance for an individual rather than the general public.

Subsection (1) is designed to prohibit conduct presently constituting "simple assault." The assault sections in Article _____ require a physical injury or serious bodily injury. Petty batteries not producing injury will not constitute criminal assault under Article _____. If the petty battery is committed with the intent to "harass, annoy or alarm" it will be subject to prosecution as harassment.

Subsection (2) is similar to subsection (3) of the disorderly conduct statute which is designed to protect the general public from exposure to abrasive or obscene conduct. Subsection (2) makes the same type of conduct punishable where directed at a specific individual.

Subsection (3) subjects the actor to criminal liability if he uses the telephone or a written medium of communication in a manner likely to cause annoyance or alarm to another person, and acts intending to achieve that result.

Subsection (4) is a dragnet provision comparable to subsection (7) of the disorderly conduct statute and is intended to reach the myriad forms of intentional harassment that cannot be specifically enumerated.

B. Derivation

Subsection (1) is a condensed version of New York Revised Penal Law section 240.25 (1).

Subsection (2) is a modified version of Model Penal Code section 250.4 (2).

Subsection (3) is derived from New York Revised Penal Law section 240.30 (1).

Subsection (4) is taken from New York Revised Penal Law section 240.25 (5).

C. Relationship to Existing Law

The proposed section on harassment is new to Oregon law. Some of the coverage included in the section is reflected in existing statutes:

ORS 166.030: Using contemptuous language concerning another who refused to duel. Recommend repeal by section 8.

ORS 163.260: Assault and battery while unarmed. Repealed by Article _____, Assault.

ORS 161.310: Gross injury to another's person or property and offenses against public peace, health or morals. Recommend repeal.

ORS 165.550: Objectionable telephone calls. Recommend repeal by subsection (3) of section 8.

Section 9. Abuse of venerated objects. A person commits the crime of abuse of venerated objects if he intentionally abuses a public monument or structure, a place of worship or burial, or the national or state flag.

Existing
Law

ORS
162.710
162.720
162.730
164.450
164.580
164.590

COMMENTARY - ABUSE OF VENERATED OBJECTS

A. Summary

The Article dealing with criminal mischief penalizes intentional interference with or damage to the property of another. Section 9 recognizes the existence of a special species of public property that may be desecrated without appreciable damage. The usual object and result of such conduct is an affront to public sensibilities. Examples are painting a swastika on a church, overturning cemetery headstones and burning a flag at a public demonstration.

The proposed section is designed to discourage that kind of conduct. Its purpose is to protect the public sensibility from conduct that technically may or may not fall within the section on criminal mischief.

B. Derivation

The section is taken, with substantial change, from Michigan Revised Criminal Code section 5555.

C. Relationship to Existing Law

There are nine Oregon criminal statutes dealing with criminal mischief to property. Six other statutes reach damage to or interference with particular kinds of property of a public nature.

ORS 162.710: Meaning of "flag".

ORS 162.720: Punishment for desecration of United States flag.

ORS 162.730: Acts not considered desecration of United States flag.

ORS 164.450: Defacing building or contents.

ORS 164.580: Defacing, destroying or removing property in cemetery.

ORS 164.590: Building road through cemetery.

It is recommended that these six statutes be repealed. There are no reported Oregon cases involving these statutes.

Section 10. Abuse of corpse. A person commits the crime of abuse of corpse if, except as otherwise authorized by law, he intentionally:

- (1) Abuses a corpse; or
- (2) Disinters, removes or carries away a corpse.

Existing
Law

ORS
164.570
Ch. 97

COMMENTARY - ABUSE OF CORPSE

A. Summary

Section 10 deals with conduct with a corpse that shocks the sensibilities of surviving kin and the public at large. The term "defile" in the definition of "abuse" in section 1 would reach sexual misconduct with a corpse, known generally as necrophilism.

The term "except as otherwise authorized by law" is intended to remove from criminal liability certain lawful activities involving corpses, e.g., scientific research, cremation, autopsies.

B. Derivation

The section is derived from Michigan Revised Criminal Code section 5560, with the exception of subsection (2), which is a restatement of ORS 164.570.

C. Relationship to Existing Law

ORS 164.570: Disinterment or removal of body. Punishable as a felony or misdemeanor. Recommend repeal.

ORS chapter 97: Property rights in human bodies. Not affected by section 10.

Section 11. Cruelty to animals. A person commits the crime of cruelty to animals if, except as otherwise authorized by law, he intentionally or recklessly:

(1) Subjects any animal under human custody or control to cruel mistreatment; or

(2) Subjects any animal under his custody or control to cruel neglect; or

(3) Kills without legal privilege any animal under the custody or control of another.

Existing
Law

ORS

141.070

164.710

164.720

167.740

167.745

165.420

603.310

609.150

Ch. 610

770.210

770.220

COMMENTARY - CRUELTY TO ANIMALS

A. Summary

Section 11 consolidates the proliferation of existing penal provisions dealing with cruelty to animals. The section states, in effect, that a person cannot:

- (1) Cruelly mistreat any animal; or
- (2) Cruelly neglect his own animal; or
- (3) Kill any animal belonging to another.

The term "custody or control" as used excludes wild animals in their natural state. The security of these animals is regulated by the state game laws. No attempt has been made to define "animal." The usual application of the term in cruelty to animal legislation includes domestic and pet animals, e.g., horses, cows, dogs, cats, etc.

Bestiality is defined to mean "a sexual connection between a human being and a brute of the opposite sex." (Black's Law Dict (4 ed (1957))). At common law, and under ORS 164.040, bestiality is treated as a form of sodomy. Sodomy, as defined in the Sexual Offenses Article, no longer includes sexual activity between a human being and an animal. The Commission intends for bestiality to be covered by subsection (1) of section 11.

The term "except as otherwise authorized by law" is intended to exempt professionally accepted practices involving the use of animals, experiments by veterinarians or scientific research. It would also exempt the legalized destruction of certain animals by meat packers and humane societies.

B. Derivation

The section is derived from Michigan Revised Criminal Code section 5565.

C. Relationship to Existing Law

There are a number of existing penal statutes that would be repealed by the proposed section; a few others deal with specific problems involving animals and should be retained:

ORS 141.070: Issuance of search warrant on complaint of cruelty to animals. Retain.

ORS 164.710: Killing, wounding or poisoning animals. One year, \$1,000 fine. Recommend repeal.

ORS 164.720: Attempting to poison domestic animals. One year, \$1,000 fine. Recommend repeal.

ORS 167.740: Cruelty to animals. 60 days, \$100 fine. Recommend repeal.

ORS 167.745: Abandonment of domestic animals. \$500 fine. Recommend repeal.

ORS 165.420: Abandonment of animals by bailees. One year, \$300 fine. Recommend repeal.

ORS 483.614: Driver's duty to help animals. ORS 483.991 (12) makes this a misdemeanor. Retain.

ORS 603.310: Inhumane slaughter prohibited. One year, \$500 fine. Retain.

ORS 609.150: Right to kill dog that kills or injures livestock. Retain.

Chapter 610: Predatory animals; bounties. Retain.

ORS 770.210: Definitions. "Animal" includes all brute creatures. Retain.

ORS 770.220: Maximum consecutive hours of confinement for animals in transit. \$500 fine. Retain.

Three reported Oregon cases involve cruelty to animal prosecutions:

State v. Goodall, 82 Or 329, 160 P 595 (1916), defendant convicted of cruelly tormenting and torturing a cow.

State v. Goodall, 90 Or 485, 175 P 857 (1919), defendant convicted of cruelly torturing and tormenting a horse by riding it when it had deep, ulcerated sore on its back, and by supplying it with insufficient food.

State v. Klein, 98 Or 116, 193 P 208 (1920), defendant acquitted of "wanton and malicious" killing of cow that was attempting to break into his hay corral. "If the defendant shot the cow because she was trying to break into his hay corral, it cannot be said to have been without cause, or a wanton act."

Section 12. Falsely reporting an incident. A person commits the crime of falsely reporting an incident if he intentionally initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency under circumstances causing or likely to cause public inconvenience or alarm.

| |
|---------------------------|
| Existing Law |
| ORS 161.310 476.740 |

COMMENTARY - FALSELY REPORTING AN INCIDENT

A. Summary

The conduct prohibited by section 12 is an aggravated form of disturbing the peace. A common and most aggravated example is the airline bomb scare.

The draft Article on Perjury and Related Offenses (Tent. Draft No. 1, s. 8, February 1970) penalizes false fire and police reports. An intent to convey the report to the particular public authority is an element of the offense under that section. This section is designed to protect the public against general inconvenience and insecurity, rather than against deliberate interference with governmental administration.

B. Derivation

With substantial structural change the section is taken from Michigan Revised Criminal Code section 5550.

C. Relationship to Existing Law

No existing Oregon statute deals directly with the type of misconduct prohibited by section 12.

ORS 476.740: Prohibits false fire alarms.

ORS 161.310: A dragnet provision condemning offenses against the public peace, health and morals.

TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code

Section 250.1. Riot; Failure to Disperse.

(1) Riot. A person is guilty of riot, a felony of the third degree, if he participates with [two] or more others in a course of disorderly conduct:

(a) with purpose to commit or facilitate the commission of a felony or misdemeanor;

(b) with purpose to prevent or coerce official action; or

(c) when the actor or any other participant to the knowledge of the actor uses or plans to use a firearm or other deadly weapon.

(2) Failure of Disorderly Persons to Disperse Upon Official Order. Where [three] or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance or alarm, a peace officer or other public servant engaged in executing or enforcing the law may order the participants and others in the immediate vicinity to disperse. A person who refuses or knowingly fails to obey such an order commits a misdemeanor.

Section 250.2. Disorderly Conduct.

(1) Offense Defined. A person is guilty of disorderly conduct if, with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(a) engages in fighting or threatening, or in violent or tumultuous behavior; or

(b) makes unreasonable noise or offensively coarse utterance, gesture or display, or addresses abusive language to any person present; or

(c) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

"Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

(2) Grading. An offense under this section is a petty misdemeanor if the actor's purpose is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

Section 250.3. False Public Alarms.

A person is guilty of a misdemeanor if he initiates or circulates a report or warning of an impending bombing or other crime or catastrophe, knowing that the report or warning is false or baseless and that it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or to cause public inconvenience or alarm.

Section 250.4. Harassment.

A person commits a petty misdemeanor if, with purpose to harass another, he:

- (1) makes a telephone call without purpose of legitimate communication; or
- (2) insults, taunts or challenges another in a manner likely to provoke violent or disorderly response; or
- (3) makes repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language; or
- (4) subjects another to an offensive touching; or
- (5) engages in any other course of alarming conduct serving no legitimate purpose of the actor.

Section 250.5. Public Drunkenness; Drug Incapacitation.

A person is guilty of an offense if he appears in any public place manifestly under the influence of alcohol, narcotics or other drug, not therapeutically administered, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity. An offense under this Section constitutes a petty misdemeanor if the actor has been convicted hereunder twice before within a period of one year. Otherwise the offense constitutes a violation.

Section 250.6. Loitering or Prowling.

A person commits a violation if he loiters or prowls in a place, at a time, or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the actor takes flight upon appearance of a peace officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the actor or other circumstance makes it impracticable, a peace officer shall prior to any arrest for an offense under this section afford the actor an opportunity to dispel any alarm which would otherwise be warranted, by requesting him to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this Section if the peace officer did not comply with the preceding sentence, or if it appears at trial that the explanation given by the actor was true and, if believed by the peace officer at the time, would have dispelled the alarm.

Section 250.9. Desecration of Venerated Objects.

A person commits a misdemeanor if he purposely desecrates any public monument or structure, or place of worship or burial, or if he purposely desecrates the national flag or any other object of veneration by the public or a substantial segment thereof in any public place. "Desecrate" means defacing, damaging, polluting or otherwise physically mistreating in a way that the actor knows will outrage the sensibilities of persons likely to observe or discover his action.

Section 250.10. Abuse of Corpse.

Except as authorized by law, a person who treats a corpse in a way that he knows would outrage ordinary family sensibilities commits a misdemeanor.

Section 250.11. Cruelty to Animals.

A person commits a misdemeanor if he purposely or recklessly:

- (1) subjects any animal to cruel mistreatment; or
- (2) subjects any animal in his custody to cruel neglect; or
- (3) kills or injures any animal belonging to another without legal privilege or consent of the owner.

Subsections (1) and (2) shall not be deemed applicable to accepted veterinary practices and activities carried on for scientific research.

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TEXT OF ILLINOIS CRIMINAL CODE OF 1961

§ 26-1. Elements of the Offense

(a) A person commits disorderly conduct when he knowingly:

(1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace; or

(2) With intent to annoy another, makes a telephone call, whether or not conversation thereby ensues; or

(3) Transmits in any manner to the fire department of any city, town or village a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists; or

(4) Transmits in any manner to another a false alarm to the effect that a bomb or other explosive of any nature is concealed in such place that its explosion would endanger human life, knowing at the time of such transmission that there is no reasonable ground for believing that such a bomb or explosive is concealed in such place; or

(5) Transmits in any manner to any peace officer, public officer or public employee a report to the effect that an offense has been committed, knowing at the time of such transmission that there is no reasonable ground for believing that such an offense has been committed.

(b) Penalty.

A person convicted of a violation of Subsection 26-1(a) (1) or (a) (2) shall be fined not to exceed \$500. A person convicted of a violation of Subsection 26-1(a) (3), (a) (4) or (a) (5) shall be fined not to exceed \$500 or imprisoned in a penal institution other than the penitentiary not to exceed 6 months, or both.

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TEXT OF NEW YORK REVISED PENAL LAW

§ 240.00 Offenses against public order; definitions of terms

The following definitions are applicable to this article:

1. "Public place" means a place to which the public or a substantial group of persons has access, and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, playgrounds, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

§ 240.05 Riot in the second degree

A person is guilty of riot in the second degree when, simultaneously with four or more other persons, he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm.

Riot in the second degree is a class A misdemeanor.

§ 240.06 Riot in the first degree

A person is guilty of riot in the first degree when (a) simultaneously with ten or more other persons he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm, and (b) in the course of and as a result of such conduct, a person other than one of the participants suffers physical injury or substantial property damage occurs.

Riot in the first degree is a class E felony.

§ 240.10 Unlawful assembly

A person is guilty of unlawful assembly when he assembles with four or more other persons for the purpose of engaging or preparing to engage with them in tumultuous and violent conduct likely to cause public alarm, or when, being present at an assembly which either has or develops such purpose, he remains there with intent to advance that purpose.

Unlawful assembly is a class B misdemeanor.

§ 240.20 Disorderly conduct

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or
2. He makes unreasonable noise; or
3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
5. He obstructs vehicular or pedestrian traffic; or
6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.

Disorderly conduct is a violation.

§ 240.25 Harassment

A person is guilty of harassment when, with intent to harass, annoy or alarm another person:

1. He strikes, shoves, kicks or otherwise subjects him to physical contact, or attempts or threatens to do the same; or
2. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
3. He follows a person in or about a public place or places; or
4. As a student in school, college or other institution of learning, he engages in conduct commonly called hazing; or
5. He engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

§ 240.30 Aggravated harassment

A person is guilty of aggravated harassment when, with intent to harass, annoy or alarm another person, he:

1. Communicates with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm; or
2. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication.

§ 240.35 Loitering

A person is guilty of loitering when he:

1. Loiters, remains or wanders about in a public place for the purpose of begging; or
2. Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia; or
3. Loiters or remains in a public place for the purpose of engaging, or soliciting another person to engage, in deviate sexual intercourse or other sexual behavior of a deviate nature; or

4. Being masked or in any manner disguised by unusual or unnatural attire or facial alteration, loiters, remains or congregates in a public place with other persons so masked or disguised, or knowingly permits or aids persons so masked or disguised to congregate in a public place; except that such conduct is not unlawful when it occurs in connection with a masquerade party or like entertainment if, when such entertainment is held in a city which has promulgated regulations in connection with such affairs, permission is first obtained from the police or other appropriate authorities; or

5. Loiters or remains in or about a school, college or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same; or

6. Loiters, remains or wanders in or about a place without apparent reason and under circumstances which justify suspicion that he may be engaged or about to engage in crime, and, upon inquiry by a peace officer, refuses to identify himself or fails to give a reasonably credible account of his conduct and purposes; or

7. Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commercial transactions involving the sale of merchandise or services, or for the purpose of entertaining persons by singing, dancing or playing any musical instrument; or

8. Loiters or remains in any transportation facility, or is found sleeping therein, and is unable to give a satisfactory explanation of his presence; or

9. Loiters or remains in any place with one or more persons for the purpose of unlawfully using or possessing a dangerous drug, as defined in section 220.00.

§ 240.40 Public intoxication

A person is guilty of public intoxication when he appears in a public place under the influence of alcohol, narcotics or other drug to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity.

Public intoxication is a violation.

§ 240.50 Falsely reporting an incident

A person is guilty of falsely reporting an incident when, knowing the information reported, conveyed or circulated to be false or baseless, he:

1. Initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe or emergency under circumstances in which it is not unlikely that public alarm or inconvenience will result; or
2. Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion or other catastrophe or emergency which did not in fact occur or does not in fact exist; or
3. Gratuitously reports to a law enforcement officer or agency (a) the alleged occurrence of an offense or incident which did not in fact occur; or (b) an allegedly impending occurrence of an offense or incident which in fact is not about to occur; or (c) false information relating to an actual offense or incident or to the alleged implication of some person therein.

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TEXT OF MICHIGAN REVISED CRIMINAL CODE

[Definitions]

Sec. 5501. The following definitions apply in this chapter:

(a) To "obstruct" means to render impassable without unreasonable inconvenience or hazard. A gathering of persons to hear a person speak or otherwise communicate does not constitute an obstruction.

(b) "Public place" means a place to which the public or a substantial group of persons has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds and hallways, lobbies and other portions of apartment houses not constituting rooms or apartments designed for actual residence.

(c) "Transportation facility" means any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, railroad, motor vehicle or any other method. It includes aircraft, watercraft, railroad cars, buses and air, boat, railroad and bus terminals and stations and all appurtenances thereto.

[Unlawful Assembly]

Sec. 5515. (1) A person commits the crime of unlawful assembly if he assembles with 5 or more other persons for the purpose of engaging in conduct constituting the crime of riot or if, being present at an assembly that either has or develops such a purpose, he remains there with intent to advance that purpose.

(2) Unlawful assembly is a Class A misdemeanor.

[Disorderly Conduct]

Sec. 5525. (1) A person commits the crime of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(a) Engages in fighting or in violent, tumultuous or threatening behavior; or

(b) Makes unreasonable noise; or

(c) In a public place uses abusive or obscene language, or makes an obscene gesture; or

(d) Without lawful authority, disturbs any lawful assembly or meeting of persons; or

(e) Obstructs vehicular or pedestrian traffic; or

(f) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or

(g) Creates a hazardous or physically offensive condition by any act that serves no legitimate purpose.

(2) Disorderly conduct is a Class C misdemeanor.

[Harassment]

Sec. 5530. (1) A person commits the crime of harassment if, with intent to harass, annoy or alarm another person, he:

(a) Strikes, shoves, kicks or otherwise touches a person or subjects him to physical contact; or

(b) In a public place uses abusive or obscene language, or makes an obscene gesture; or

(c) Follows a person in or about a public place or places; or

(d) Engages in a course of conduct or repeatedly commits acts that alarm or seriously annoy another person and that serve no legitimate purpose.

(2) Harassment is a Class C misdemeanor.

[Harassing Communications]

Sec. 5535. (1) A person commits the crime of harassing communications if, with intent to harass or alarm another person, he:

(a) Communicates with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to harass or cause alarm; or

(b) Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication.

(2) Harassing communications is a Class B misdemeanor.

[Loitering]

Sec. 5540. (1) A person commits the crime of loitering if he:

(a) Loiters, remains or wanders about in a public place for the purpose of begging; or

(b) Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia; or

(c) Loiters or remains in a public place for the purpose of engaging or soliciting another person to engage in prostitution, deviate sexual intercourse or other sexual behavior of a deviate nature; or

(d) Being masked or in any manner disguised by unusual or unnatural attire, loiters, remains or congregates in a public place with other persons so masked or disguised, or knowingly permits or aids persons so masked or disguised to congregate in a public place; or

(e) Loiters or remains in or about a school building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or any other specific, legitimate reason for being there, and not having written permission from a school administrator; or

(f) Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commercial transactions involving the sale of merchandise or services, or for the purpose of entertaining persons by singing, dancing, or playing any musical instrument; or

(g) Loiters or remains in any place with one or more persons for the purpose of unlawfully using or possessing a dangerous drug.

(2) A person does not commit a crime under subparagraph (1) (d) if he is going to and from a masquerade party, or is participating in a public parade or presentation of an educational, religious, or historical character or in an event as defined in section 4220(2).

(3) "Deviate sexual intercourse" in subparagraph (1) (c) is defined as in section 2301(b).

(4) "Dangerous drug" in subparagraph (1) (g) means any narcotic drug, barbiturate or amphetamine.

(5) Loitering is a violation.

[Public Intoxication]

Sec. 5545. (1) A person commits the crime of public intoxication if he appears in a public place under the influence of alcohol, narcotics or other drug to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity.

(2) Public intoxication is a violation.

[Falsely Reporting an Incident]

Sec. 5550. (1) A person commits the crime of falsely reporting an incident if with knowledge that the information reported, conveyed or circulated is false, he initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe or emergency under circumstances in which it is likely to cause evacuation of a building, place of assembly, or transportation facility, or to cause public inconvenience or alarm.

(2) Falsely reporting an incident is a Class B misdemeanor.

[Desecration of Venerated Objects]

Sec. 5555. (1) A person commits the crime of desecration of venerated objects if he intentionally:

(a) Desecrates any public monument or structure or place of worship or burial; or

(b) Desecrates in a public place the national or state flag or any other object of veneration by the public or a substantial segment thereof; or

(c) Performs in public the national or state anthem except as an entire and separate composition or number and without embellishments of national or other melodies.

(2) Desecration of venerated objects is a Class C misdemeanor.

[Abuse of Corpse]

Sec. 5560. (1) A person commits the crime of abuse of a corpse if, except as otherwise authorized by law, he treats a corpse in a way that he knows would outrage ordinary family sensibilities.

(2) Abuse of a corpse is a Class A misdemeanor.

[Cruelty to Animals]

Sec. 5565. (1) A person commits the crime of cruelty to animals if, except as otherwise authorized by law, he intentionally or recklessly:

(a) Subjects any animal to cruel mistreatment; or

(b) Subjects any animal in his custody to cruel neglect; or

(c) Kills or injures any animal belonging to another.

(2) Cruelty to animals is a Class B misdemeanor.

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TEXT OF PROPOSED CONNECTICUT PENAL CODE

§ 185. Riot in the first degree

A person is guilty of riot in the first degree when (a) simultaneously with six or more other persons he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm, and (b) in the course of and as a result of such conduct, a person other than one of the participants suffers physical injury or substantial property damage occurs.

Riot in the first degree is class A misdemeanor.

§ 186. Riot in the second degree

A person is guilty of riot in the second degree when, simultaneously with two or more other persons, he engages in tumultuous and violent conduct and thereby intentionally or recklessly causes or creates a grave risk of causing public alarm.

Riot in the second degree is a class B misdemeanor.

§ 187. Unlawful assembly

A person is guilty of unlawful assembly when he assembles with two or more other persons for the purpose of engaging in conduct constituting the crime of riot, or when, being present at an assembly which either has or develops such a purpose, he remains there with intent to advance that purpose.

Unlawful assembly is a class B misdemeanor.

§ 190. Falsely reporting an incident

A person is guilty of falsely reporting an incident when, knowing the information reported, conveyed or circulated to be false or baseless, he:

1. initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire, explosion, crime catastrophe or emergency under circumstances in which it is likely that public alarm or inconvenience will result; or

2. reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion or other catastrophe or emergency which did not in fact occur or does not in fact exist; or

3. gratuitously reports to a law enforcement officer or agency (a) the alleged occurrence of an offense or incident which did not in fact occur; or (b) an allegedly impending occurrence of an offense or incident which in fact is not about to occur; or (c) false information relating to an actual offense or incident or to the alleged implication of some person therein.

Falsely reporting an incident is a class B misdemeanor.

§ 191. Breach of peace

A person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. he engages in fighting or in violent, tumultuous or threatening behavior, in a public place; or
2. he assaults or strikes another; or
3. he threatens to commit any crime against another person or his property; or
4. he publicly exhibits, distributes, posts up or advertises any offensive, indecent or abusive matter concerning any person; or
5. in a public place, he uses abusive or obscene language or makes an obscene gesture; or
6. he creates a public, hazardous or physically offensive condition by any act which he is not licensed or privileged to do.

Breach of peace is a class B misdemeanor.

§ 192. Disorderly conduct

A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. he engages in fighting or in violent, tumultuous or threatening behavior; or
2. by offensive or disorderly conduct, he annoys or interferes with another person; or
3. he makes unreasonable noise; or
4. without lawful authority, he disturbs any lawful assembly or meeting of persons; or
5. he obstructs vehicular or pedestrian traffic; or
6. he congregates with other persons in a public place and refuses to comply with a reasonable official request or order to disperse.

Disorderly conduct is a class C misdemeanor.

§ 193. Harassment

A person is guilty of harassment when:

1. by telephone, he addresses another in or uses indecent or obscene language; or
2. with intent to harass, annoy or alarm another person, he communicates with a person, anonymously or otherwise by telephone, mail or any other form of written communication, in a manner likely to cause annoyance or alarm; or
3. with intent to harass, annoy or alarm another person, he makes a telephone call, whether or not a conversation ensues, in a manner likely to cause annoyance or alarm.

For purposes of this section such offense may be deemed to have been committed either at the place where the telephone call was made, or at the place where it was received. The court may order any person convicted under this section to be examined by one or more psychiatrists.

Harassment is a class C misdemeanor.

§ 194. Intoxication

1. A person is guilty of intoxication when he is under the influence of alcohol, narcotic drug or controlled drug as defined in section 19-443, or other substance, to the degree that he may endanger himself or other persons or property, or annoy persons in his vicinity.

2. The court in its discretion may commit to the custody and control of the Department of Mental Health or to any appropriate facility within that department for not less than thirty (30) days nor more than twelve (12) months, or until discharged within that period by the Commissioner of Mental Health:

(a) any person charged under this section who requests such commitment, if the court finds that there is reasonable ground to believe such a person is an alcoholic. If such request is granted before conviction, the criminal proceeding shall be dismissed.

(b) any person found guilty under this section who has been convicted previously, under this section or under section 53-246, at least twice in the last preceding six months or four times in the last preceding year.

3. The defendant shall be advised of his rights under subsection 2 hereof by the court before being put to plea.

4. Notwithstanding the provisions of subsection 1 hereof, in lieu of arrest, a police officer in his discretion may escort an intoxicated person to a civil facility for the care of alcoholics.

Intoxication is a class C misdemeanor.

§ 195. Loitering in or about school grounds

A person is guilty of loitering on school grounds when he loiters or remains in or about a school building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or any other license or privilege to be there.

Loitering in or about school grounds is a class C misdemeanor.