

Tapes #95, 96 and 97

#95 - 280 to end of Side 1
#96 - Side 1 only
#97 - 1 to 375 of Side 1

OREGON CRIMINAL LAW REVISION COMMISSION

Subcommittee No. 3

Sixteenth Meeting, April 24, 1970

Minutes

Members Present: Judge James M. Burns, Chairman
Mr. Donald L. Clark
Representative David G. Frost
Mr. Frank D. Knight

Staff Present: Mr. Donald L. Paillette, Project Director
Mr. Roger D. Wallingford, Research Counsel

Others Present: Capt. Raymond G. Howard, Criminal Division,
Dept. of State Police

Agenda: Offenses Involving Firearms & Deadly Weapons;
P.D. No. 2; April 1970

The meeting was called to order by the Chairman, Judge Burns, at 9:40 a.m., Room 315, Capitol Building, Salem, Oregon.

OFFENSES INVOLVING FIREARMS AND DEADLY WEAPONS; P.D. No. 2; April 1970

Mr. Paillette suggested leaving the discussion of section 1, definitions, until later in the meeting and beginning the consideration of the draft with section 2, the first section having to do with firearm permits.

Mr. Wallingford advised that the draft combined general provisions regarding firearms and deadly weapons contained in Preliminary Draft No. 1 with gun control provisions, per the Commission directive of March 19 and April 3. Because of the short time available for drafting the Article, no commentary was prepared. Preliminary Draft No. 2 consists of 30 sections only.

Mr. Wallingford reported talking with Mr. James Schlosser, Special Investigator, Alcohol, Tobacco & Firearms, Internal Revenue Service. Mr. Schlosser specializes in firearms investigations of activist groups. He provided the Commission with material on the federal Gun Control Law and a copy of IRS Publication 603, State Laws and Local Ordinances relevant to Title 18 U.S.C., Chapter 44, which contains U.S. municipal and state

firearm ordinances and statutes. Mr. Schlosser also provided copies of forms being used under the 1968 federal firearms law and said he would like to see the states tie in their legislation with the federal requirements so that firearm dealers would not be required to duplicate material and information by having to provide one form for the federal government and another for the state. Mr. Wallingford noted, however, that Mr. Schlosser did not favor strict gun control.

Representative Frost said he had talked with Mr. Schlosser and, in fact, had been the one who had sent him over to talk with the staff about the Federal Gun Control Act. From conversations with Mr. Schlosser, he understood that what is needed is a method of tracing guns from one spot to another and that it would be impossible to get a strict gun control law that is going to work. Mr. Schlosser informed him that the problems are with tracing guns and with who is authorized to carry a gun. He suggested the State Police be the licensing agency. By controlling the licensing of dealers and requiring certain records, it is possible to trace a gun back to the place of sale. This provides the investigator with a place to start if a gun comes back into commercial action again. This procedure, he said, is very workable and is similar to what the state of Washington has. It is easier, according to Mr. Schlosser, to make a firearm investigation in Washington than it is in Oregon.

Mr. Wallingford said that one of the big problems is getting cooperation from the people it is most desirable to get cooperation from. He referred to the booklet Firearms and Violence in American Life, a staff report to the National Commission on the Causes and Prevention of Violence. He noted this report states that the City of Chicago, in order to overcome the Fifth Amendment problem, adopted an ordinance providing "that any person who possesses a firearm in violation of any Chicago, state or federal law is not required to register and that any attempted purported registration is null and void. The hypothetical felon thus need not register in Chicago. He will still be liable for illegal possession, however...."

Mr. Wallingford related that the report ends with the following statement (page 268):

"Perhaps more light will be shed on this subject by future Supreme Court decisions, but for the present the most realistic approach is to assume that fifth amendment objections to gun control statutes will be sustained when raised by those persons whom the statutes require to furnish information which might incriminate them. Any proposed gun control law must be carefully examined with an eye to at least minimizing possible fifth amendment objections...."

Mr. Wallingford said there are a number of ways to deal with the Fifth Amendment problem -- one would be to just ignore it, one would be to provide an exception (as did Chicago) and another would be to provide an immunity statute. This would require every person to register but would provide immunity from prosecution when the prosecution was based on information obtained from the registration.

Mr. Paillette stated that the Staff Report to the National Commission on the Causes and Prevention of Violence recognized that trying to control firearms on a state level is probably a hopeless task. What is needed is a strong federal statute that should probably be limited to handguns.

Chairman Burns observed that the Fifth Amendment problem would not be solved by vesting control on a federal level.

Mr. Wallingford said that another suggestion is to disregard registration by the exconvict -- to charge him as an exconvict in possession rather than for failing to register. Chairman Burns believed the exconvict would get around the law, then, by registering his handgun. He could then keep it; he would not have to forfeit the gun.

Mr. Paillette stated that the staff thought it would be best to stay away from the forfeiture procedure as it presents a great many problems for the police. The better way would be for the police to take a gun and hold it. If a trial is held, the court could declare the gun forfeited. The gun would then be forfeited as a result of a court procedure.

Chairman Burns noted that the Fifth Amendment problem still remained. Mr. Paillette observed that the Fifth Amendment problem would be resolved on a case-by-case basis. It would not invalidate the whole body of the statute. The provisions would still apply to other people. Chairman Burns observed that it would be like the Leary case -- to whatever extent one defendant successfully claims the Fifth Amendment, then all others similarly situated are "off the hook." In regard to the exconvict situation, he said, if he is made to come in and register, then he cannot be prosecuted and he would get to keep his gun. He would have evaded the exfelon in possession statute by registering. This would be enacting a statute which allows these persons to lawfully keep a gun. Mr. Knight observed that the guns would be kept out of the hands of felons by the statute on exfelons in possession, not by the registration requirement. Chairman Burns added that he was very reluctant to take a proposal to the legislature and have to say that all felons, etc., do not have to register under the proposal but all others have to register to have guns. Mr. Wallingford admitted this was a very difficult problem. Some authorities, he said, believe there is no constitutional way around the Fifth Amendment problem, that it is something the legislatures cannot resolve.

Captain Howard now present.

Chairman Burns referred to page 117 of the booklet, Firearms and Violence in American Life and read:

"There is still another way of minimizing fifth amendment objections. Requiring an owner to register the gun he possesses in violation of some law may raise a fifth amendment objection. Requiring firearms dealers to supply information about persons who obtain firearms from the dealers would seem to present fewer difficulties under the fifth amendment because the person supplying the information is no longer incriminating himself."

Mr. Wallingford reported there were some other possible problems with the draft. The federal law, he continued, is more restrictive than the proposed draft with respect to the age of those eligible to purchase firearms and suggested that perhaps the draft should be made to conform with the federal law in this respect. Also, when the proposed gun control provisions go into effect, there will be a large number of initial applications. This could involve sending as many as 500,000 fingerprints to the FBI for checking, a seemingly monumental task.

Chairman Burns said he had wondered about this since section 5 provides that "the Department shall issue a firearm permit before the 11th day after the day the application is received from a resident of this state, or before the 16th day after the application is received from a nonresident." What will happen, he asked, when the law first goes into effect and all firearm owners apply at the same time.

Captain Howard observed that it will be necessary to have a time period, similar to that given under the federal gun law, allowing a person 60 days to apply during which he is free from prosecution.

Section 2. Firearm permits and handgun registration certificates; exempted persons. Mr. Wallingford explained that section 2 sets out classes of people not required to register firearms and obtain licenses. Replying to a question by Mr. Clark, he stated that an "antique firearm" means "a firearm manufactured prior to 1898 and which is incapable of use as a firearm." Some of the language set out in section 2 (6), he related, was suggested in the amendments submitted by Mr. James Sanderson from the Attorney General's office.

Chairman Burns asked what the provisions in subsection (7) were for. Mr. Wallingford said that when the owner of a firearm dies, the heir or legatee would have 90 days after such passing or transfer in which to obtain the proper permits and certificates. Chairman Burns suggested that perhaps the language in subsection (7) could be improved upon. Mr. Wallingford noted that the term "transfer", as used in subsection (7), is defined in section 1 (23) as meaning "to give, lease, loan, sell or otherwise transfer to another." Chairman Burns asked if the words "or action other than one occurring under this Article," were needed in subsection (7). Mr. Paillette said this contemplated some legal action involving a transfer. Chairman Burns believed the intent of the subsection would be the same with the words deleted and suggested the language "or action other than one occurring under this Article," be deleted in section 2 (7).

Captain Howard noted that under the provisions of subsections (1), (2), (3) and (6) of section 2, members of the Armed Forces, federal officials, peace officers and public servants were exempted "while engaged in their official duties." The present law, he noted, also exempts peace officers from other states. Under the draft, unless these officers were engaged in official duties, they would not be exempt. Mr. Clark asked if there is not case law holding that a policeman is on duty 24 hours a day.

Mr. Wallingford acknowledged a problem where a person has guns both for official duty and nonofficial use. There might, also, be a problem where the out-of-state peace officer is concerned, he said. Chairman Burns was under the impression the draft contained a section applying to guns possessed or owned by out-of-state people but Mr. Paillette advised this exemption applied to nonresident hunters during hunting season.

Chairman Burns observed that the sheriffs buy their own guns as do city police officers. Mr. Clark advised that the State Police is the only agency providing a firearm. It would be easy, he said, to exempt firearms furnished by the State Police; however, would all firearms owned by the city policeman be exempt or only what he used on duty?

Chairman Burns commented that as far as the federal officials were concerned, they would be taken care of by the provisions of section 2 (2) in that they are engaged in their official duties all the time. As far as state officers, city police, sheriffs, etc., are concerned, he asked, what would be wrong with having them register their official firearms at no fee.

Mr. Paillette referred to the New Jersey statute, s. 2A:151-43. Carrying weapons without permit or identification card; exception of police, military personnel, jailers, etc., and read:

"5. Law enforcement officers employed by governmental agencies outside of the State of New Jersey who are engaged in their official duties provided that they have first notified the chief law enforcement officer of the municipality or the county prosecutor of the county in which they are engaged or the superintendent."

Captain Howard advised that the Department receives correspondence almost daily from police officers contemplating trips to Oregon, wanting to know if it is legal to possess handguns in Oregon. Presently these people are told it is legal because they are active law enforcement officers.

Captain Howard thought there might be a problem with respect to guns kept in trailers. Presently, he said, they are considered the same as having a gun in a home. Mr. Wallingford replied that in section 25, defenses, it is a defense if the person were "carrying or concealing a handgun or deadly weapon in his home or place of business or on property he owns or controls." Mr. Clark asked if this was a good idea and Mr. Wallingford advised it is a restatement of the present law, ORS 166.250. Mr. Knight noted, also, that the nonresident "whose firearms are unloaded and enclosed in a case" would be exempt from the registration requirement.

Chairman Burns asked why police officers traveling through the state on a vacation should be in a situation different from any other individual. Mr. Paillette asked if he would be considered off duty. Captain Howard was of the opinion that an officer was obligated to act as a police officer at all times. Mr. Clark added that a police officer feels an obligation to be prepared to handle crime at all times. Chairman Burns could not understand what official duties an out-of-state policeman would have in Oregon.

Chairman Burns noted that subsection (10) (b) exempts nonresidents while on a "lawfully established firing or shooting range" and asked how a firing range would be "lawfully established." Mr. Wallingford replied that firing ranges are locally licensed or otherwise regulated.

Section 3. Firearm permits and handgun registration; in general.
Mr. Wallingford explained that section 3 contains a general statement regarding firearm permits. The permit is a license every firearm owner must obtain to lawfully possess any firearm. A person owning or possessing a firearm on the effective date of the Article will have 180 days in which to apply for a firearm permit or to sell or transfer his firearm or ammunition. The Article requires all owners of firearms to have a permit. Mr. Paillette noted that in this way the draft is similar to the last draft. However, instead of combining the permit and registration form, the second draft separates it into two acts.

Mr. Knight observed that after 180 days an applicant would admit to having failed to apply within the grace period. If there was real concern about this, he suggested making a penalty for late registration. Chairman Burns asked if this would actually avoid the Fifth Amendment problem. Mr. Wallingford did not think that this was a real problem. If the individual does not register, he can be prosecuted for not registering, but if he does apply late, what is desired has been accomplished. The problem with the Fifth Amendment arises when a person is required to register and then is prosecuted on the basis of his registration. Chairman Burns observed that it would be necessary to rely upon prosecutorial judgment.

Mr. Paillette asked if it might be necessary to have the first registration period be more than 180 days. Mr. Clark said that it would seem that as a practical matter the governor's office, superintendent's office, etc., would promote a public relations campaign to get people to apply in order to avoid the problem of last minute registration. Captain Howard commented that people delay to the last minute on all such matters. Chairman Burns wondered if a fee penalty would help and Captain Howard thought it might. Mr. Paillette did not see how it would be possible to get around a last minute rush and noted it would only happen the first time around. He suggested that perhaps something could be worked out so that the fee would be only one-half as much for applications made during the first part of the 180 day period as would be charged for applications made during the last half of the 180 days.

Section 4. Firearm permit applications; authority; form; contents; fee. Mr. Wallingford stated that section 4 prescribes the contents of a firearm permit application. The form shall be prescribed by the Department of State Police and the firearm permit shall be issued by the Department.

The "unrelieved disability" mentioned in subsection (1) (b) refers to the disabilities listed in section 6. Except for provisions set out in section 7 to allow for a restricted firearm permit, those persons listed in section 6 are ineligible to obtain a firearm permit. The provisions in section 7 for a restricted permit would allow a person to have a long gun only.

Mr. Knight noted that the important thing is that when an individual returns and signs the application, it puts him on notice of the requirements.

Mr. Wallingford advised that the Kennedy Action Corps objected to not requiring fingerprints in section 4. Mr. Paillette said the first draft of the Article did not require fingerprints for a license but did require fingerprints for a permit for a handgun. Mr. Wallingford stated this could not be done under the present draft since the transfer of a handgun does not require an appearance at a State Police office. It would therefore be necessary to take fingerprints when the firearm permit is issued. The comment written by Mrs. Perry, Kennedy Action Corps, re the provisions in section 4 were:

"Fingerprints are not required on the application for permit (neither is photograph). Attorney General Arthur Sills says that fingerprints are the keystone of the permit system; there is no effective way to investigate without prints; and the permit system is useless as a 'screening out' device without further investigation."

Mr. Knight observed that if a person came in with a name and identification to obtain a permit, the fingerprints would prevent his using a false identification. Mr. Clark noted that a person doing this sort of thing would not be likely to register a gun anyway.

Chairman Burns asked if federal law calls for fingerprints. Mr. Wallingford examined a copy of the federal form which must be completed by the purchaser of a firearm and noted it contained no fingerprint requirement.

Chairman Burns was of the opinion that the provisions in section 5 should be considered along with those in section 4. Mr. Paillette suggested that perhaps section 5 could be amended by inserting language authorizing the State Police, when they feel it is necessary to establish identity, to obtain, in addition to information set out in section 4, the fingerprints of the applicant.

Captain Howard commented that obtaining fingerprints would be the only certain way to determine if a person had been convicted as a felon. He noted, too, that the individual's social security number should be furnished as it is good identification. The National Crime Identification Center, he continued, does not identify a person; it advises only whether or not the person is wanted for something. If an identification is wanted, it is necessary to go to the FBI. This is done by sending them a letter or telegraph since they are not on the teletype system.

Chairman Burns stated that if the only way to be certain of identification is by fingerprints, adopting Mr. Paillette's suggestion would give the State Police the option of asking for fingerprints when they had reason to believe they might be needed.

Captain Howard asked how the State Police would determine whether or not an applicant suffered from a mental defect or was a narcotic addict. These persons, under the provisions of section 6, would be ineligible to obtain a firearm permit. The State Police would have a record, he continued, if the applicant had been convicted of a crime, but they would not have a record of those who had been in the State Hospital. Mr. Paillette admitted that there was no immediate answer to this problem.

Mr. Paillette suggested that the fingerprint requirement might be incorporated into section 9, handgun registration certificates; requirements; fee. Mr. Wallingford said that he had attempted to avoid requiring a second appearance in the transfer of a handgun. If fingerprints were required, it would be necessary for those involved to go to the State Police in order to complete the paper work necessary to transfer a handgun.

Captain Howard did not favor eliminating the fingerprint requirement for a license to carry a concealed weapon.

Mr. Clark could see no reason why the person having a handgun should not be inconvenienced. Chairman Burns could see no reason why the fingerprint requirement should not be written into section 9. Mr. Paillette

noted the procedure would create a problem for the State Police in that people would be coming in at all times to get the paper work done so they could sell a handgun. Captain Howard added that figures obtained from other states indicate this is a very expensive procedure. Mr. Clark observed that perhaps the fingerprint requirement should be left optional. Mr. Paillette agreed that section 5 (1) could be amended to give the State Police this option. Section 13, issuance of license to carry a concealed handgun, he noted, requires fingerprinting. This is not presently required in Oregon.

Chairman Burns noted that fingerprints, handwriting samples and blood tests are not, according to the cases, within the Fifth Amendment. The U.S. Supreme Court has been clear on this. Mr. Paillette added that there have also been several hair sample cases which have been affirmed.

Chairman Burns noted, then, that the applicant's social security number would be added to the list of information required of the applicant which is set out in section 4 (2) (a) and that section 5 would be amended to authorize the Department of State Police to require fingerprints at its option. Mr. Paillette suggested the following language as an amendment to section 5:

"If the Department is unable to determine the eligibility of the applicant on the basis of information furnished under section 4 of this Article, it may require the applicant to furnish his fingerprints."

Mr. Paillette believed the amendment necessary to provide the Department with some standards. Chairman Burns thought the suggested language satisfactory.

Mr. Wallingford advised that the Kennedy Action Corps did not approve of the provision in section 5 (3).

Mr. Paillette was of the opinion that this potential problem could be left for later legislative action if such a check proved warranted. Mr. Wallingford added that he believed the renewal requirement would complicate the procedure and said there is a limit to what could be initially accomplished.

Section 5. Firearm permits; when issuable; term; number of firearms authorized. Section 6. Persons ineligible to obtain a firearm permit. Chairman Burns drew attention to the fact that subsection (2) of section 5 requires the Department to "issue a firearm permit before the 11th day after the day the application is received...." Captain Howard asked if this referred to a permit issued without a fingerprint check. Mr. Paillette said it could be a permit issued with or without the fingerprint check, depending upon whether or not the Department required them. Mr. Clark asked what would be wrong with making the time period "30 days," since as a practice the Department would issue the permit as soon as possible anyway. Chairman Burns suggested it might be possible to build in an extension provision for cases involving fingerprints. Mr. Knight suggested it might be provided that the Department issue the permit within 11 days unless it notifies the applicant otherwise. Chairman Burns believed it would be best to just give the Department a maximum of 30 days in which to issue a permit. As a practical matter, he said, under section 6 they would check only for a felony conviction and, possibly, State Hospital records. Captain Howard added that to be certain of the individual's identity and record, it would be necessary to go to the FBI. The Department would probably not do this unless it had some knowledge that the person came from a different state, he said.

Captain Howard cited a situation where a person convicted of child molestation in California has his record purged after 90 days of probation. He asked what effect this action would have on the State of Oregon if this person came to Oregon. A record purged, he said, is just the same as though the incident never happened. Mr. Paillette added that this has been upheld by the Supreme Court and cited a case in King County, Washington involving this type of situation.

Captain Howard asked if there was a penalty provided for supplying false information on an application for a firearm permit. Mr. Paillette advised that section 4 of the Perjury Article proscribes unsworn falsification and provides a penalty for this offense. Section 4, Perjury & Related Offenses, T.D.No. 1, reads:

"A person commits the crime of unsworn falsification if he knowingly makes any false written statement to a public servant in connection with an application for any benefit."

Mr. Knight understood the provision in section 6 (3) to mean that once a person has been committed to a state hospital he cannot get a permit unless he can produce a certificate from a physician. Mr. Paillette agreed. Mr. Knight observed, however, that there would be no grounds for denying a permit to a person severely mentally ill who had not been committed. Also, he said, an individual mentally ill might be capable of

safely handling a firearm. Captain Howard believed the individual would have to be committed before he could be adjudged mentally incompetent. He noted the federal law prohibits a number of classes of persons from shipping or receiving firearms or ammunition. These include "marihuana or narcotics users and addicts." Captain Howard thought a large number of people in the United States could be called users. Chairman Burns believed that if an applicant produced a doctor's certificate, it would restore his eligibility on either a physical or mental basis. Mr. Wallingford concurred.

Chairman Burns expressed concern about the language in section 6 (3) since as drafted he thought the subsection would apply to both the present and past tense. He agreed that there should be a procedure providing for a physician's certificate. Otherwise, an unfair burden would be placed on the State Police by requiring them to make these determinations. However, he thought the language "no longer suffers," while applicable to a mental condition, was not valid when applied to a physical condition. A physical disability causing the police to question eligibility would be a physical disability they could see at the time of application. Mr. Wallingford agreed that this problem could be corrected by redrafting.

Rep. Frost asked if civil liability would attach to a doctor who certifies an individual as being eligible when, after obtaining the firearm, the individual goes out and kills a number of people with it. Mr. Wallingford admitted he could foresee reluctance on the part of a doctor to issue such a certificate. Captain Howard said a problem could also arise where a person receives a license from the State Police and then goes out and kills a number of people. Mr. Paillette doubted there would be a problem as long as the certificate or license was issued in good faith. Rep. Frost was of the opinion that the whole concept of mental illness being a reason for not owning a gun was rather medieval. Chairman Burns checked HB 1545 to see if it had provided for a defense and read:

"Section 7 (2). The department shall not issue a permit to an applicant who has ever been confined in a hospital or mental institution for a mental disorder, suffered from a physical defect or sickness which would make it unsafe for him to handle firearms or been a habitual drunkard, unless the person produces a certificate executed by a physician or psychologist stating that the applicant is no longer suffering from the disability."

Mr. Paillette noted this language was derived from the New Jersey statute.

Rep. Frost suggested a check be made on the definition of "physician" in that it might include a chiropractor, etc. He noted there is a definition in the licensing statutes. Judge Burns added there is also a definition in the workman's compensation code and Mr. Wallingford said the statutes on narcotics also contain a definition.

Mr. Paillette pointed out that the term "physician" was used in section 6 (3) so as not to limit the type of physician a person could consult.

Rep. Frost expressed concern about the age of 18 used in section 6 (4). Mr. Wallingford admitted this conflicted with the federal law. Under the draft at age 18 an individual would be eligible to have a firearm permit; whereas under federal law the individual would have to be 21 to purchase a handgun from a dealer. Also, he said, section 7 (1) (c) of the draft permits the purchase of a long gun by persons between 15 and 18. There could be instances of conflict, Mr. Wallingford continued, because the federal law states that a long gun which has been in interstate commerce cannot be sold to a person under 18.

Mr. Knight understood the 18-year-old would have to have a permit even if he were going to use his parent's gun. Chairman Burns pointed out that the provisions of section 2 (8) exempted "unemancipated minors while in the custody and immediate control of their parent, lawful guardian...provided... the parent, lawful guardian...shall have a valid firearm permit and, in the case of a handgun, shall also have a handgun registration certificate."

The Subcommittee recessed for lunch at 12 p.m., reconvening at 1:30. Those present: Chairman Burns, Clark, Frost, Knight, Paillette, Wallingford, Captain Howard.

Section 7. Person eligible for restricted firearm permit. Mr. Wallingford explained that one rationale behind section 7 is that there are many felons whose crimes were of such nature that they should not be prevented from possessing all types of firearms. This conforms to present law in that an exconvict may possess a rifle or hunting gun. If, however, the crime involved the use of a dangerous or deadly weapon or a narcotic or dangerous drug, the individual would not be able to have a firearm of any kind. In this sense, the proposed draft would be more restrictive than existing law.

Mr. Knight noted section 7 (a) refers to the "use of" a narcotic or dangerous drug while the more serious offense is the possession or sale of a narcotic or dangerous drug. As a practical matter, he continued, use of a narcotic or dangerous drug is usually a plea to a reduced charge. Chairman Burns asked if this provision meant that a simple marijuana possession case would make an individual ineligible for a restricted firearm permit. Mr. Wallingford thought the point raised by Mr. Knight was valid in that the intent of the draft was to get at those individuals whose felony involved the use of a narcotic or dangerous drug. Mr. Paillette added that the thinking had been that if the narcotic case were a "simple, little case" the charge would be a misdemeanor. Mr. Knight observed that if this was the intent of the subsection, the language "the use of" should be changed. Mr. Wallingford thought perhaps the language "criminal dealing" could be used; this term was used in the Narcotics Article. He asked how "Criminal dealing in drugs" (Section 2, Offenses Involving Narcotics and Dangerous Drugs, P.D. No. 3) was being graded. Mr. Paillette replied that the subcommittee recommended the offense be graded as a Class B felony, which would carry a maximum of 10 years, but also provided a special provision to allow the court to treat the offense as a misdemeanor. It is an exception to the Class C felony, he said, and, in effect, would create an indictable misdemeanor.

Mr. Knight asked if the terminology "criminal dealing in drugs" covered possession, also. Mr. Paillette said it covered sale and possession. The only trouble with using this language, he observed, is that it means possession or sale of narcotic or dangerous drugs under the proposed Oregon terminology. A problem might arise with a felony conviction in another state. Chairman Burns suggested getting at the problem by means of specifying the crimes. There are many people, he said, who end up with felony convictions, even in marijuana cases, because they have a deprived background, etc., and are ideal candidates for OCI even though they are not particularly dangerous persons. Under the draft provisions, these people would be ineligible for a restricted firearm permit. He asked if the language in section 7 (1) (a) followed the language of other states.

Mr. Wallingford said that the concept of a restricted firearm permit is a staff concept designed to achieve the same result as other state statutes do; to allow certain persons to have long guns but not handguns. Mr. Paillette added that while other states employ different language, they all cover narcotic or drug users in some way. The New Jersey statute, for example, provides the application for permits and identification cards shall state whether the applicant "is an alcoholic, habitual drunkard, addicted to narcotic drugs or is a habitual user of goofballs or pep pills." The draft attempts to get at the same kind of individuals on the theory that presumably their possession of firearms would be prima facie dangerous.

Chairman Burns asked if the provisions of subsection (1) (a) covered the person who committed a felony involving the use of an automobile. Would an automobile be classified a dangerous or deadly weapon. Mr. Paillette said that dangerous and deadly weapons have been defined and the only time an automobile would be so classed would be where it was intentionally used to assault or kill someone.

Mr. Wallingford noted that subsection (1) (b) provides relief for those convicted of a misdemeanor where the conviction occurred more than two years before the date of the application. Mr. Knight recalled that even the habitual criminal statute gives the individual relief if he goes without conviction for seven years. If a person reforms and has no convictions for seven years, his earlier convictions do not make him an habitual criminal.

Mr. Wallingford asked if the members felt the exception should apply only to narcotic cases or to all felons. Rep. Frost asked the reason for being so hard on narcotic users; are they very dangerous with guns? Mr. Wallingford said these people frequently have to resort to crime to support their drug habit. Actually, one of the most dangerous groups with firearms, he said, are the chronic drunkards. This is not because they commit crimes but because they are very unstable when intoxicated. It is, however, very difficult to define the class.

Mr. Paillette noted it is necessary to be very careful with terminology used in restricting eligibility because of possible constitutional questions. Use of terms such as "narcotic addict" may raise questions as to whether the addiction is a disease. If an individual cannot be convicted of a disease, can he be deprived of eligibility because of it, etc. Captain Howard added that the term "addict" is a misnomer; today it is called either a physical or a psychological dependency. There are only about 200 people in the State of Oregon who are addicted (physically or psychologically dependent) to heroin or derivatives of morphine. The opiates are, of course, addicting, he said. The only other possible addiction is by barbiturates and there is no way of determining how many people are addicted to barbiturates. There are drugs which are dangerous but are not so designated by law, he continued. One of these, which can be easily obtained, is Asmadore. It is a very dangerous drug and is used extensively by young people. It is a drug used by asthmatics and is excellent when properly used. Young people use this hallucinogenic drug by taking massive oral doses or by smoking it in pipes or cigarettes.

Mr. Knight moved to amend section 7 (1) (a) so that the sentence would read: "...the use or attempted use of a dangerous or deadly weapon, a narcotic or dangerous drug or the negligent or reckless use of a firearm..." (No action was taken on this motion.)

Chairman Burns cited a situation where the applicant for a restricted permit admitted to a felony conviction and asked how the State Police would determine whether or not the conviction involved the use of force or violence. Mr. Knight said that unless the crime were one that by its very nature involved force or violence, it would be necessary for the Department to contact the police agency which handled the case. Mr. Wallingford acknowledged there might be a problem not only with verifying whether the crime involved the use of force or violence but with disputes between the applicant and the Department about the final determination. Chairman Burns wondered if the problem could be solved by specifying the crimes so that if the applicant were convicted for one of these, he would be ineligible for the permit.

Mr. Clark suggested that rather than using the draft approach, the applicant apply to the court for relief. The applicant who had had a felony conviction would go to court and apply for a certificate, much like that supplied by a physician under section 6 (3), attesting that the applicant was eligible for a restricted permit. The court would thus be making the determination. Mr. Wallingford said that if the applicant were denied a permit, the draft provides an appeal procedure. This is set out in section 8, firearm permits; denial; suspension; revocation. Mr. Paillette believed the appeal procedure partially answered the points brought out by Mr. Clark in that if the applicant appealed the denial, the judge would have to examine the record and determine whether or not there was sufficient reason for the denial.

Mr. Wallingford pointed out that another answer is the traditional approach -- simply to say that a convicted felon can only obtain a restricted permit. He could then possess a long gun regardless of the basis for the prior conviction. This is the state of the present law.

Mr. Paillette asked if it would be desirable to remove the clause referring to narcotic and dangerous drugs in section 7 (1) (a) since drugs, alcoholism and mental illness are covered by section 6, persons ineligible to obtain a firearm permit. He was of the opinion that, as drafted, section 7 (1) (a) contained very broad language for the State Police to apply.

Mr. Knight moved to delete the words ", the use of a narcotic or dangerous drug" in section 7 (1) (a). The motion carried on a voice vote.

Mr. Knight believed some consideration should be given to the idea of a moratorium for the person who has spent a period of years on good behavior outside an institution. For example, if he had a good record for a period of seven years, he probably would have shown enough responsibility to own a rifle. Mr. Clark was hesitant to loosen up any provisions. Mr. Knight did not think this type of provision would erode control; it would, however, give some encouragement to the person under civil disability. Also, he noted, under present law, this person can own a rifle.

Mr. Knight moved to amend the draft to allow issuance of a restricted permit to a person who has had no problems with the law for seven years after release from incarceration resulting from a felony conviction involving the use of force or violence. He suggested the staff look at the provisions of the Habitual Criminal Statute for drafting guidance. The motion carried on a voice vote.

Mr. Wallingford pointed out that under federal law, a licensee may not sell firearms or ammunition of any kind to anyone under 18 years of age. Under the draft provision (Section 7 (1) (c)), however, a person 15 years of age or older, but less than 18, may obtain a restricted firearm permit if he has his parent's consent. He would then be eligible under Oregon law to purchase a long gun.

Mr. Clark asked if the proposed draft contained a provision for a required course of study for those under 18, similar to the Hunter's Safety Course. Mr. Wallingford said the draft had no such provision. Mr. Knight thought this type of requirement would be more important than a certification from the applicant's parent or lawful guardian as is provided by section 7 (1) (c). Mr. Wallingford suggested both the course and parental consent could be required.

Mr. Knight moved to amend the draft so that a course such as the Hunter's Safety Course be required as well as parental consent for those applicants less than 18 years of age. (No action was taken on this motion.)

Section 8. Firearm permits; denial; suspension; revocation. Mr. Wallingford explained that section 8 applies when a permit application is denied or a permit which has been issued is suspended or revoked upon any of the grounds set forth in section 6. The term "aggrieved party" refers to a permit applicant whose application is denied or a permit holder whose permit is suspended or revoked. The section provides for right of

appeal in the manner set forth in ORS chapter 183, Administrative Procedures and Rules of State Agencies. When a permit application is denied or an existing permit suspended or revoked, the aggrieved party has 10 days in which to transfer all firearms in his possession. If the decision is appealed, he has 10 days after a final decision is rendered against him. Rep. Frost observed that in practice a husband would simply transfer the guns to his wife.

Section 9. Handgun registration certificates; requirements; fee.
Mr. Wallingford explained that section 9 contains all of the requirements for handgun registration.

When the proposed Article goes into effect, persons possessing a firearm will be required to obtain a firearm permit. At that time they will be asked to declare all handguns possessed and will be required to obtain a handgun registration certificate.

The next step provides for a record of all handgun transfers made after the 180th day of the Article's enactment. A complete record is now kept by licensed dealers due to the federal gun control law. Section 9 sets out the requirements, primarily, for transfers between private parties. They are not required to make an appearance at the State Police Department but they are required to obtain an application for transfer of handgun registration. The application may be completed by the parties involved in the transfer and the seller must mail the completed form to the Department. Both parties must have firearm permits in order to transfer a handgun. The theory behind the section is that 180 days after enactment of the Article all handguns will have been registered and after this date all transfers will be reported and a certificate issued to the new owner. The handgun will then be registered in the new owner's name. Each time a gun is transferred, the procedure is repeated.

Mr. Paillette pointed out that under the proposed draft, only a single application is required for the initial registration of all handguns an individual possesses.

Mr. Wallingford added that fingerprints are not required for the transfer because the forms will be completed by the private parties involved in the transfer. The assumption made is that anyone selling or receiving a handgun has a firearm permit. If the purchaser has a restricted firearm permit, a handgun cannot be sold to him.

Section 10. Loss or theft of handgun, firearm permit or handgun registration certificate; reporting requirements. Mr. Wallingford said that section 10 provides another device to keep track of handguns, firearm permits and handgun registration certificates. If they are lost or stolen, the loss must be reported to the Department. Anyone finding a firearm permit or handgun registration certificate must mail it to the Department within five days of the finding. A handgun found must be delivered to the nearest police department or sheriff's department within five days of such finding. These departments must make a report to the State Police within three days after receipt of such handgun.

Mr. Clark questioned the necessity of requiring the loss or theft of a handgun, handgun registration or firearm permit to both the local police department and the State Police. He suggested the local police be obliged to supply this information to the state. Mr. Paillette thought this would work fine for loss of a handgun but he doubted that it would be desirable to require the local police be notified as to the loss of a firearm permit or handgun registration certificate. Chairman Burns concurred. Mr. Wallingford suggested that the loss of a handgun could be deleted in section 10 (1) and moved down to subsection (3). Subsection (1), then, would only apply to the loss of a handgun registration certificate or firearm permit and the procedure for reporting a lost handgun would be the same as that required when a handgun is found. There was general agreement on this approach.

Section 11. Dealers firearm transfer register; form and content of register and by whom maintained. Mr. Wallingford said section 11 requires dealers to maintain a firearm transfer register. The draft, however, would apply to both handguns and long guns and requires the reporting to the State Police. The present statute applies only to handguns and reporting is to the local police agency. The present statute does not specify what the local law enforcement people are to do with these reports. It was Mr. Schlosser's contention, he reported, that since the firearm dealers are already required to maintain a register under federal law, the states should require the same information so that the dealers would not have to maintain two records. The difficulty with this suggestion, Mr. Wallingford said, is that the federal forms used by the dealers are geared to federal law.

Mr. Wallingford advised that section 11 has fiscal implications since the cost of the leaves for the dealer's register is set at \$5 per 100. The present law sets the cost at \$2 per 100 leaves.

Section 12. Licensing provisions to sell firearms at retail; limitations and conditions. Mr. Wallingford stated that section 12 is a restatement of existing Oregon law granting local municipalities the right to grant licenses permitting the sale of firearms at retail within the municipality. The dealers have a dual obligation since they must also be licensed under the federal law.

Section 13. Issuance of license to carry a concealed handgun. Mr. Wallingford explained that section 13, also, is a restatement of an existing Oregon statute. A person applying for a license under the provisions of section 13 will have a firearm permit and a handgun registration certificate. He now wants a license to carry the handgun concealed. The fee in the present statute is 50 cents. The draft increases this to \$3. Mr. Paillette pointed out that the section also requires fingerprints of the applicant.

Chairman Burns noted sections 1 through 13 covered gun licensing and registration. He suggested that before voting on these sections, Captain Howard should give any suggestions or proposals his Department might have on the procedure set out in the first 13 sections.

Captain Howard reported that the Department of State Police had done a good deal of research when House Bill 1546 was being considered by the 1969 Legislature. The Department had come up with a cost estimate of \$372,890 for the 69-71 biennium. This included an extra cost for the six-month transition period necessary to implement the law, a provision for the employment of an attorney, and a provision for the employment of 15 fingerprint technicians for the first six months and for two fingerprint technicians for the remaining 18 months of the biennium. It was also estimated that it would be necessary for the Department to employ six field investigators stationed throughout the state to check out investigations referred to them for action.

Captain Howard related that the State Police of Michigan reported having 1,134,869 pistol registrations on file. They process 7,000 permits per month and estimate an annual expenditure of \$40,000, with planned computerization of permit records anticipated to increase the cost substantially. They class any firearm of 30 inches or less in length as a pistol or revolver.

New Jersey, he continued, has 290,419 firearms registered with the State Police -- 18,000 rifles, 9,000 shotguns and 262,000 handguns. They employ eight state police and nine civilian clerical personnel. Six

of the police personnel investigate firearms retailers',wholesalers' and manufacturers' applications and related investigations. They estimate that it costs about 35 cents per applicant for processing wages only. Four clerk typists process about 50 applications each work day.

New York State has a proposed budget of \$51,000,000 and will receive an estimated \$9,000,000 from permit fees. New York City has budgeted \$570,780 for the 1968-69 Firearms Control Act, but estimates the cost of investigations alone, in connection with the enforcement of the Act, to be between \$900,000 and \$1,500,000. New York City's Pistol Control Program costs \$72.87 per applicant because of the restrictions and prohibitions included in the Act.

Illinois budgeted \$1,103,000 and confine their registrations to handguns only. Each applicant is required to pay a \$5 fee. Captain Howard stated that Chicago had considerable trouble implementing their gun control law. It was pushed through the city council after Mayor Daly cautioned there were more than 200,000 guns loose in the city. The law resulted in the registration of 357,598 guns by persons living or working within the city limits.

Captain Howard related that New York adopted stringent firearm controls but as of July 1969 had received applications for permits from only 30,000 owners covering some 80,000 guns out of a total of 500,000 estimated. On February 13, New York gave owners a six-month period in which to register rifles and shotguns already in possession.

Mr. Clark observed that it appeared that better registration results are obtained under less stringent laws. The compliance in Chicago seemed good and that in New York very poor.

Mr. Wallingford commented that under the proposed draft, it is very difficult to project figures since many people who do not have a gun might apply for a firearm permit in order to be able to borrow or buy a gun when they so desired. Statistically 49% of the households in the West own one or more firearms. On a population basis it is estimated there are about 700,000 households in Oregon.

Captain Howard reported his Department estimated there are about 500,000 firearms in Oregon. This was done by using the number of hunting licenses issued and adding about 30% to this figure.

Chairman Burns understood the cost figures given by Captain Howard to administer the provisions of HB 1546 did not take into account revenue that would come in as a result of fees charged. Captain Howard agreed this was so. The revenue to the state was never determined because no agreement was reached as to what the fee would be. If a fee of \$3 were adopted and 500,000 guns were involved, an idea of the amount of revenue could be estimated.

Mr. Paillette pointed out that under the proposed draft the Department would have more paper work than it would have had under HB 1546. Mr. Clark observed that it would not have the same number of fingerprints, however. Rep. Frost believed the estimated figure of 500,000 guns was much too low. The average household having a gun has more than one and even though only about 49% of the households have guns, he thought the gun figure would be more near 2,000,000. Captain Howard commented that many people would not comply with the law requiring gun registration, however. Mr. Wallingford explained that the draft makes no provision for determining how many long guns are possessed. Possessors would be required to obtain a firearm permit but they would not have to declare the number of long guns owned or possessed.

Rep. Frost asked how an organization such as the Oregon Historical Society would be affected by the draft provisions. The Society has a large number of guns which have been donated and given to it which are not antique. Mr. Wallingford said the Society would be required to have a firearm permit. The definition of a "person," he noted, includes a corporation.

Captain Howard left the meeting at this point.

Rep. Frost moved to submit the gun control sections of the proposed draft (sections 1-13) to the Commission without recommendation. The motion was defeated on a voice vote.

Mr. Knight moved the approval of sections 1 through 13.

Mr. Wallingford noted the provisions of section 1, definitions, had not been discussed. The definition of a "firearm" set out in subsection (8) was redrafted, he said, to take care of the question regarding BB guns raised by Rep. Frost at a previous meeting.

Rep. Frost understood the provisions in section 1 (9) would require a person to have a permit in order to buy anything having to do with

handloading ammunition. Mr. Paillette agreed that a permit would be necessary in order to buy material to make ammunition. Mr. Wallingford said this provision was derived from a federal bill introduced by U.S. Senator Tydings.

Mr. Knight's motion to approve the first 13 sections of the draft carried by a voice vote. Rep. Frost voted against the motion.

The subcommittee recessed at 3:00 p.m., reconvening at 3:10 p.m.

Section 14. Possession of a deadly weapon in the third degree.
Section 15. Possession of a deadly weapon in the second degree. Section 16. Possession of a deadly weapon in the first degree. Mr. Wallingford explained that sections 14, 15 and 16 go together and cover three degrees of possession of a deadly weapon. The provisions in section 14 (a) and (b) become effective 181 days after the effective date of the Article. They proscribe knowingly possessing a firearm without a valid firearm permit and knowingly possessing a handgun without a registration certificate.

Rep. Frost observed that under the federal law, a machine gun may be lawfully owned or possessed but this is presently prohibited by Oregon law. He asked if the proposed draft would continue this prohibition. Chairman Burns thought a Fifth Amendment problem might be involved here and cited as an example, a situation where an individual registered a machine gun with the federal people and paid the required tax thereby incriminating himself under the state law. Under Malloy v. Hogan, however, he did not think the state could prosecute. Mr. Knight asked how it is possible to prosecute for marihuana, then, since there always has been a \$100 federal tax per ounce on marihuana. Chairman Burns noted the Fifth Amendment problem would arise where the prosecution was based upon the federal information. Mr. Wallingford said this is what the Haynes case held -- if the individual registered his machine gun with the federal government and paid the tax, the state would not be able to use the federal information for a state prosecution.

Rep. Frost asked if any exceptions were provided in the draft. He again expressed concern about organizations such as the Oregon Historical Society. They do possess guns which fall within the description of a machine gun, as defined in section 1 (15). Mr. Paillette admitted he did not really have an answer to this situation unless it was thought desirable to write in a defense.

Mr. Knight thought perhaps the language used in the section should be amended by enlarging the term "possession." Using the language, "own, possess or have under his control or custody" would conform to language presently in the Oregon statute. Mr. Paillette reminded the members that the term "possess" is defined in the General Definitions Article as meaning "to have physical possession or otherwise to exercise dominion or control over property" and this definition would apply to the term as it is used in the Firearms Article.

Section 17. Carrying a concealed weapon in the second degree.
Section 18. Carrying a concealed weapon in the first degree. Rep. Frost asked if a convicted felon is convicted upon entry of plea or finding of guilt by a jury or whether sentencing is required. Chairman Burns cited a recent case where a defendant in his court was found guilty of armed robbery and while awaiting presentence, appeared in another court to give testimony. When asked in court if he had ever been convicted of a crime, he said he had not. Ultimately, the district attorney was allowed to bring out the fact of the jury's conviction even though sentence had not been imposed. Chairman Burns said he could not recall seeing any appellate cases on this point; however, he believed the defendant would be considered convicted if the verdict had been received. Mr. Paillette said it would be easier to reply to a question as to whether or not you had been convicted of a crime than it would be as to conviction for a felony in that in some cases you would not know this until sentence had been imposed. Mr. Knight pointed out that the individual would be convicted of a felony if guilty of certain crimes until the sentencing court exercised discretion and imposed a lighter penalty. Rep. Frost contended it would then be procedurally a felony; this would not mean it would automatically be a felony.

Chairman Burns recalled that Captain Howard had mentioned the possibility of a problem arising when a weapon was concealed in a trailer and suggested considering this point a little more completely.

Mr. Wallingford stated that section 25 sets out defenses to sections 17 and 18. Section 25 (2) (d) reads:

"...it is a defense that at the time of the alleged offense the actor was:

"(d) A person carrying or concealing a handgun or deadly weapon in his home or place of business or on property he owns or controls."

Section 19. Illegal traffic in deadly weapons. Rep. Frost referred to the provision in section 19 (1) (c) and asked who could lawfully own or possess a machine gun under the draft. Mr. Wallingford said that under the draft defenses certain persons, such as the police, detention facility employes and the military, are permitted to own machine guns. Chairman Burns suggested that this would be the place to write in an exemption for organizations like the Oregon Historical Society. Mr. Paillette agreed that additional thought should be given this problem and an attempt made to clarify the statute to take care of this type of situation.

Section 20. Illegal use of firearms. Chairman Burns asked the reason for the provisions in section 20 (1) (e), which relate to the discharging of a firearm within the Devils Lake area in Lincoln County or within a particular area situated in Deschutes County. Mr. Wallingford said this provision is presently ORS 166.340. Originally, the statute covered only the Lincoln County area but the 1969 Legislature amended the law to add the Deschutes County area.

Mr. Wallingford informed the members that each of the subsections in section 20 restated existing Oregon law.

Mr. Clark said his objections centered mainly on the provisions contained in paragraph (e). Mr. Paillette thought the conduct proscribed would be covered by the provisions in section 5, recklessly endangering another person, Assault and Related Offenses, Tent. Draft No. 1.

Mr. Clark moved to delete paragraph (e) of subsection (1) of section 20. The motion carried unanimously on a voice vote.

Rep. Frost asked if subsection (2), re the suspension of hunting privileges of any person convicted under the section, was really necessary. He could see no reason to suspend hunting privileges unless the offense were connected with hunting. Mr. Wallingford noted the subsection restated existing law, although presently the suspension period cannot exceed three years. The draft expands this to five years. The rationale behind the penalty is that persons committing these offenses are irresponsible firearms handlers.

Section 21. Failing to comply with firearm permit or handgun registration requirements. Mr. Wallingford said section 21 sets out the offense arising when a person fails to comply with firearm permit or handgun registration requirements. He noted the amendment adopted earlier regarding the reporting of a lost or stolen handgun (section 10), required an amendment to section 21 (1) (d); therefore, the language ", a handgun registered in his name" will be deleted.

Section 22. Illegal traffic in destructive devices. Mr. Wallingford reported that section 22 was based on sections 12302 to 12307 of the California statute and would outlaw the ownership or possession of destructive devices within Oregon. The language in subsection (3) exempting "projectiles designed exclusively for firework displays" was written into the section because it was felt these might be included within the definition of destructive device as set out in subsection (2).

Chairman Burns observed that the section's descriptions were much more explicit than those in the federal law. Mr. Wallingford noted the federal law does not prohibit destructive devices, but does place a prohibitive tax on their possession.

Section 23. Defacing a firearm. Chairman Burns asked why there was concern about the defacing of a handgun. Mr. Paillette said this would prohibit the removal of identification marks and serial numbers on the guns.

Section 24. Furnishing explosives to a minor. Mr. Wallingford stated that section 24 was a restatement of existing Oregon law.

Section 25. Defenses. Mr. Wallingford explained that under section 25 (1), in any prosecution for possession of a blackjack, switchblade knife, gravity knife or metallic knuckles or for possession of a machine gun or sawed-off shotgun, it is a defense that at the time of the alleged offense the actor was engaged in official duties as a member of the Armed Forces of the United States or the National Guard, a federal official required to carry firearms, a peace officer, a firearms dealer or a public servant employed in a detention facility.

Subsection (2), he continued, gives a defense to the same group of people in any prosecution under sections 17 and 18, carrying a

concealed weapon in the first or second degree. Chairman Burns noted that section 25 (2) (a) should read "section 2 of this Article" not "section 6." Also the reference to subsection "(5)" of section 2 should be deleted as it refers to an antique firearm.

Chairman Burns asked what was meant by a "duly authorized military or veterans' organization" as set out in paragraph (b) of section 25 (1) and Mr. Wallingford said this referred to a VFW parade on Veterans' Day or the American Legion. The language was derived from the present Oregon statute. Chairman Burns said he understood why this would be a defense to section 18 but he could not see why it would be a defense to section 17, which involves the crime of carrying a concealed knife. He suggested that perhaps section 25 (2) (a) and (b) should be made applicable to both section 17 and section 18, and section 25 (2) (c) and (d) should be made applicable to just section 18. Mr. Paillette added it might be best to just insert another subsection. There was general agreement to this.

Mr. Clark believed the provisions in section 25 (2) (d), permitting a person to carry a handgun or deadly weapon "on property he owns or controls," would allow an employe "of Lloyd Center Corporation to run around with a gun as long as he was on Lloyd Center property." Chairman Burns asked what the existing law is on this. Mr. Wallingford referred to ORS 166.250 (2) and read:

"This section does not prohibit any citizen of the United States over the age of 18 years...from owning, possessing or keeping within his place of residence or place of business any pistol, revolver or other firearm capable of being concealed upon the person...."

Mr. Paillette noted the draft provision extends the present law and suggested that perhaps it went too far. The draft intent, he said, was to allow a store owner to have a concealed firearm on his premises.

After further discussion, Mr. Clark moved to amend section 25 (2) (d) by deleting the words "carrying or" and by placing a period after the word "business." The amended paragraph would read:

"(d) A person concealing a handgun or deadly weapon in his home or place of business."

The motion carried unanimously on a voice vote.

Mr. Wallingford explained that section 25 (3) deals with defenses to a prosecution for illegal use of firearms. Since paragraph (e) of subsection (1) of section 20 was deleted by subcommittee action, section 25 (3) will be amended by deleting "(e)" and inserting "(d)" in its place. The conduct described in section 20 is permitted if committed by a person engaged in official duties as a member of the Armed Forces or National Guard, a federal official required to carry a firearm, a peace officer or a correctional officer.

Rep. Frost asked if the defense of self-defense or defense of others was removed. Mr. Paillette said it was not. The Justification Article, he continued, does not refer to firearms, as such, but an individual is entitled to use reasonable force and even deadly force under certain circumstances. There would, then, be a defense under the Justification Article for defense of self and a limited defense for defense of property.

Chairman Burns observed that section 25 (4) covered defenses for a prosecution for illegal traffic in destructive devices. The reference to subsection (5) contained in section 25 (4) (a) should be deleted, he noted.

Section 26. Forfeiture of deadly weapons and firearms. Mr. Clark noted that he was not very happy about the provision allowing the sale of forfeited weapons and firearms but he did not know how to get around this possibility. He favored allowing the State Police to utilize the weapons and firearms for their own benefit or to destroy them, thus removing them from circulation. Mr. Paillette noted the draft allows the forfeited firearms or destructive devices to be disposed of "in any lawful manner" which would include destroying them.

Section 27. Purchase of firearms in certain other states. Mr. Wallingford stated section 27 is an exact duplicate of ORS 166.490 passed by the 1969 Legislature. The law was enacted because of provisions contained in the Gun Control Act of 1968.

Section 28. Firearm permits and handgun registration certificate records; requirements; availability. Section 29. State Police Firearms Account. Section 30. Appropriation. Chairman Burns observed that sections 28, 29 and 30 are housekeeping provisions.

Mr. Clark moved the adoption of sections 14 through 30. The motion carried unanimously. Mr. Knight was not present.

The meeting was adjourned at 4:05 p.m.

Respectfully submitted,

Maxine Bartruff, Clerk
Criminal Law Revision Commission