Tape No. 85

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OREGON CRIMINAL LAW REVISION COMMISSION

Subcommittee No. 3

Twelfth Meeting, October 31, 1969

Minutes

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

Members Absent: Mr. Donald E. Clark

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

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Agenda: Riot, Disorderly Conduct & Related Offenses; P.D. No. 1; August 1969. (Article 26) 1

Offenses Involving Narcotics & Dangerous Drugs; P.D. No. 1; October 1969. (Article 31) 11

The meeting was called to order by the chairman, Judge Burns, at 1:50 p.m., Room 315, Capitol Building, Salem, Oregon.

Judge Burns advised the subcommittee that Mr. Paillette had written to the Portland School Board requesting their thoughts and suggestions regarding subsection (1) of section 6 of the Article on Riot, Disorderly Conduct and Related Offenses. This subsection proscribes, "Loiters or remains in or near a school building or grounds, not having a specific, legitimate reason for being there...." Judge Burns stated that he had talked with Mr. Bob Ridgley, a member of the School Board, and learned that Portland has had a good deal of trouble in this respect; it has been a continuous headache for them. It is hoped that a response will be received from Portland before the Draft is considered by the Commission.

RIOT, DISORDERLY CONDUCT & RELATED OFFENSES: P.D. NO. 1; AUGUST 1969.

Section 8. Abuse of venerated objects.

Mr. Wallingford advised that the term "abuse" used in the section is defined in subsection (1) of section 1 as meaning "to deface, damage, defile or otherwise physically mistreat in a manner likely to outrage ordinary public sensibilities." Some of the substance of section 8 is restatement of present law and some of it would be new law. There are presently statutes penalizing the desecration of the American flag and the section would extend this coverage to the state flag. Much of the conduct proscribed by the section's provisions is presently covered under Criminal Mischief;

in other words, actual damage must be done to property. The proposed statute would not require that actual damage be done to personal property; it would cover conduct which "outrages public sensibilities".

Representative Frost referred to the language "public...structure" contained in the section and asked if this referred to any structure open to the public or if it referred only to structures owned by a unit of government.

Mr. Wallingford replied that it was intended to mean a structure owned by a governmental agency.

Representative Frost understood, then, that it was not meant to be a part of the definition of a "public place" appearing in subsection (2) of section 1.

Mr. Knight asked what is and what is not permissible when dealing with the flag--what does "to defile" mean?

Chairman Burns referred to subsection (4) of ORS 162.720, Punishment for desecration of United States flag, and read:

> "Publicly mutilates, tramples upon, or publicly defaces, defies, defiles or by words or act casts contempt upon any flag of the United States."

Representative Frost observed that a recent Meier & Frank advertisement run on October 15th appeared to be in violation of ORS 162.720 (2) which prohibits:

> "Exposes or causes to be exposed to public view, any flag of the United States, upon which is printed, painted or otherwise placed, or to which is attached, appended, affixed or annexed any words, figures, numbers, marks, inscriptions, pictures, design, device, symbol, token, notice,drawing or any advertisement of any nature or kind."

Chairman Burns cited instances, also, where use of the flag for election advertising had caused concern.

Representative Frost could see no "big holes" in the provisions of section 8. He understood that it covered only physical abuse--not verbal abuse and Mr. Wallingford agreed.

Mr. Knight asked if the proposed section would conflict in any way with the criminal mischief statute.

Mr. Wallingford said he had considered this and the only place where he could determine that it could was through the use of the word "damage" in the definition of the term "abuse". The actor inflicting damage might be guilty under both the criminal mischief Article and under the section on abuse of venerated objects.

Mr. Paillette referred to the Article on Criminal Mischief, T.D. No. 1, and advised that it sets out three degrees of criminal mischief. Third degree really amounts to tampering or interfering with property. Second degree involves criminal mischief which results in damage to property "in an amount exceeding $100"; or there is intentional damage to property; or there is reckless damage to property "in amount exceeding $100". It is criminal mischief in the first degree if there is an intent to damage property and the damage exceeds $1,000 or is done "by means of an explosive."

Mr. Paillette did not believe there would be a Pirkey problem because there would be two separate statutes involving different elements.

Mr. Knight cited an instance where damage to a venerated object exceeded $100 and the district attorney wanted to prosecute under criminal mischief. Where there is a special statute relating to venerated objects, would the district attorney be required to bring charges solely under the statute on venerated objects.

Chairman Burns did not think this would be the case; he thought the district attorney could bring charges under either statute, provided he had the proper elements.

Mr. Paillette added that it is possible for one act to violate two or three different statutes and the district attorney can decide what crime to prosecute for.

Representative Frost moved the adoption of section 8 as drafted and the motion carried unanimously.

Section 9. Abuse of corpse.

Mr. Wallingford noted that the word "abuse" is used again in this section. The fact that the term was employed in both section 8 and section 9 necessitated the use of the word "damage" in the definition.

Chairman Burns asked if the section would replace ORS 164.570, Disinterment or removal of body.

Mr. Wallingford replied that this is the intent and that it is anticipated the section will be graded an indictable misdemeanor.

Chairman Burns questioned that the definition in section 1 (1) made it clear that "removal" would constitute "abuse". It is conceivable that a body could be disinterred without defacing, damaging, defiling or otherwise physically mistreating it. He noted that ORS 164.570 reads: "Any person who wilfully and wrongfully digs up, disinters, removes or conveys away any human body or the remains thereof shall be punished...."

Mr. Wallingford suggested that perhaps the words "or disinters" should be added after the word "abuses" so that the sentence would read: "...he intentionally abuses or disinters a corpse."

Representative Frost moved section 9 be amended as suggested by Mr. Wallingford.

Chairman Burns wondered if the section's provisions, even with the amendment, would cover acts involving an unburied body.

Mr. Paillette read from Webster's New Collegiate Dictionary (1961): "Defile. To make filthy; to befoul. (Archaic) To ravish; to violate. ...to pollute. To tarnish...to dishonor."

Mr. Knight asked if the definition of rape applied only to living persons.

Mr. Paillette replied that it did. He added that at the time the Sex Offenses Draft was being worked on it was planned that a section on the order of section 9 would cover conduct such as necrophilia. It was felt that it should not be in the Sex Offenses Article.

Mr. Wallingford added that the word "defile" was used in defining the term "abuse" so that such conduct would be covered by the provisions of section 9. He anticipated grading the section a misdemeanor so there might be a question as to whether such an offense should be dealt with more severely, although someone convicted of this would probably, ordinarily, be committed to a mental institution.

Chairman Burns was still concerned about the need for something more in the way of an amendment to the section than just the addition of the words "or disinters".

Mr. Paillette noted that ORS 164.570, previously read, uses the language "disinters, removes or conveys away".

Mr. Wallingford thought if this language were incorporated into section 9, that, for drafting purposes, it would be best to break the section down into subsections so that it would read:

"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."

Representative Frost accepted this suggestion as a replacement for his earlier motion to amend section 9. He asked if it was felt that the word "conceal" should also be added. He asked what statutes applied to a situation where there is a failure to report a death or to a situation where someone did not move a body but, perhaps, put a screen around it so that it would not readily be seen by the police looking for it.

Chairman Burns pointed out that this conduct would be more in the area of Obstructing Governmental Administration and Mr. Paillette agreed that such conduct would be covered in that Article.

Chairman Burns referred to the draft commentary on page 52, to the sentence, "This section deals with the outrage to the sensibilities of surviving kin occasioned by mutilation or gross neglect of corpses." He asked Mr. Wallingford what was meant by the words "gross neglect".

Mr. Wallingford did not think the phrase belonged there in that the definition of "abuse" really refers to "intentional" acts, not "negligent" acts.

Chairman Burns commented, then, that this should be taken out of the commentary when the amendments to section 9 are picked up. He directed attention to the phrase "except as otherwise authorized by law" contained in section 9 and asked if it could safely be concluded that research, medical education, etc., are, in fact, authorized by law--are there specific statutes on this.

Mr. Paillette assured the subcommittee that there are specific statutes on this.

Chairman Burns asked for a vote on section 9, as amended, and all members voted favorably.

Mr. Paillette mentioned that a reference to necrophilia will also be added to the commentary on section 9. This was agreeable to all.

Section 10. Cruelty to animals.

Mr. Wallingford read the provisions of the section and noted that he had a question in regard to subsection (3). The draft language reads, "Kills any animal belonging to another" while the MPC uses the language, "kills or injures any animal belonging to another without legal privilege or consent of the owner." The last reported Oregon case, he said, (State v. Klein (1920)) involved the acquittal of a man of the "wanton and malicious" killing of a cow that was attempting to break into his hay corral because: "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." Mr. Wallingford wondered if perhaps subsection (3) should be amended by the insertion of some language indicating that there can be some cases where a person would have a legal privilege to kill the animal of another.

Representative Frost asked if the killing of an animal belonging to another would be larceny.

Mr. Knight thought this might be the case if the animal were killed and carried away but not if it were killed and left.

Mr. Paillette observed that the present statutes in this area are rather confusing. He cited the following statutes:

ORS 164.710 (1) covers killing, wounding or poisoning animals and requires malicious or wanton conduct or wilful administering of poison. It provides for punishment of not more than three years in the penitentiary. Subsection (2) covers trespassing by hunters who shoot an animal. This offense is a misdemeanor with a maximum of one year imprisonment.

ORS 164.730 covers taking an animal without consent of the owner and is an indictable misdemeanor with a maximum penalty of two years in the penitentiary.

ORS 167.740 is the cruelty to animals statute. This covers beating, mutilating or cruelly killing an animal. This offense is a straight misdemeanor punishable by imprisonment in the county jail for not more than 60 days.

Mr. Paillette advised that ORS 483.614 covers a driver's duty to help animals and this statute will not be affected by the proposed draft.

Chairman Burns referred to the draft commentary on page 54 stating that "a number of existing penal statutes that...be repealed

by the proposed section; a few others...should be retained." He noted that a number of statutes were listed on page 55 of the commentary and asked which of those would be repealed.

Mr. Paillette advised that of the 12 statutes listed, only those in the "160 series" would be repealed by the draft provisions: ORS 164.710, 164.720, 167.740, 167.745 and 165.420.

Chairman Burns noted, then, that this would take in the statutes on abandonment. He asked if abandonment would be deemed cruel mistreatment.

Mr. Wallingford did not think it would but noted this conduct would be covered by the provision in subsection (2) proscribing "cruel neglect". The provisions in subsection (1), he said, apply to any animal; subsection (2) applies only to animals within the custody of the actor; subsection (3) applies to any animal belonging to another.

Chairman Burns observed that the MPC uses the language "kills or injures any animal belonging to another" and asked why the word "injures" was not used in the proposed section.

Mr. Wallingford felt this conduct would be covered by the language in subsection (1): "Subjects any animal to cruel mistreatment".

Mr. Knight asked what is meant by "cruel mistreatment".

Mr. Wallingford thought this would be a question of fact as it would be impossible to list in the statute every form of cruelty to animals.

Representative Frost wondered if it would help the definition of "animal" to add the adjective "domestic".

Mr. Paillette advised there are some specific statutes in the game code covering such things as the wasteful killing of animals, untended traps, etc.

Representative Frost suggested that perhaps the "wild" animal provisions should be treated under the game law. As a matter of policy, he felt the provisions of section 10 really applied to domestic animals.

Mr. Wallingford asked if the term "domestic" would include a pet skunk, a pet cheetah, and other similar pet animals.

Mr. Knight was of the opinion that the section's provisions should cover any wild animal that man has corralled.

Representative Frost suggested that perhaps the approach should be toward covering any animal in custody rather than just limiting the provisions of subsection (2) to an animal in custody. This would exempt from the section's provisions all wild animals not reduced to custody.

Mr. Wallingford related that "animal" is presently defined in ORS 770.210 and reads: "includes all brute creatures."

Chairman Burns asked if the game code contains a definition section.

Mr. Paillette reported there are statutes defining such things as game animals, game birds and game fish, but there is no definition of an animal as such. There is also a special chapter, he continued, covering hatcheries, refuges, reservations, etc.

Chairman Burns felt the distinction between animals in custody and those not in custody was a good one. If this distinction is not made in the section language, he thought perhaps it should be noted in the commentary.

Representative Frost moved the section be redrafted so as to limit its provisions to those animals which have come under custody or control.

Chairman Burns read the definition of "animal" found in Webster's New Collegiate Dictionary (1961): "Any member of the group of living beings typically capable of spontaneous movement and rapid motor response to stimulation, as distinguished from a plant."

Mr. Paillette asked if the subcommittee wanted to try to distinguish between cruelty and the intentional killing of an animal. He wondered if including all of this conduct within one section made it too broad and if killing an animal should be looked upon more severely than mistreating an animal.

Mr. Wallingford observed that section 10, as drafted, permits a person to destroy his own animal as long as this is not done in a cruel manner.

Chairman Burns wondered if there would be any difficulty with the term "cruel mistreatment". He admitted that the present statute, ORS 167.740, is apparently workable and reads: "Any person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or cruelly kills...."

Mr. Paillette was of the opinion that the word "cruelly" is well defined. He read from Webster's New Collegiate Dictionary (1961): "Cruel. Disposed to give pain to others; inhuman; merciless."

Mr. Knight favored the motion to amend section 10 made by Representative Frost and added that the "custody" should include that of a public body as well as that of a person.

Chairman Burns referred to the point raised by Mr. Paillette regarding separating the offense of mistreatment from that of killing an animal and observed that one problem here is that the killing of one animal is not nearly as reprehensible from a public viewpoint as is the mistreatment of another kind of animal, one of the higher forms, for example.

Representative Frost did not favor making a distinction between mistreatment and killing. In most instances he felt cruelty to be more socially reprehensible than killing an animal.

Mr. Paillette thought this could well be true from the standpoint of the animal but not, perhaps, from the standpoint of the owner. He admitted, however, that the section was aimed at the protection of the animal.

Mr. Paillette advised that the present sodomy statutes include sexual relations with animals but the definition of sodomy contained in the proposed Sexual Offenses Draft does not include intercourse with an animal. The provisions of section 10, he said, are broad enough to cover this kind of conduct with an animal but it no longer would be covered as a sexual offense. This is the approach taken by the other code revisionists, also.

Mr. Wallingford added that he will put something in the commentary on section 10 (1) noting this fact.

Representative Frost moved the adoption of section 10 with proposed amendments. The motion carried unanimously. (Amendments set out on page 8 of these minutes.)

Section 11. Falsely reporting an incident.

Mr. Knight understood the section's provisions were intended to cover acts such as yelling "fire" in a theatre or telephoning a school with a false report of a bomb planted therein.

Mr. Wallingford advised that under the Perjury Article there is another section reaching similar conduct--Perjury and Related Offenses, P.D. No. 2, section 8, Initiating a false report. Section 11 would not be a duplication because the section in the Perjury Article has a different requirement in that it involves direct reports.

Representative Frost assumed the provisions of section 11 would require knowledge on the part of the initiator as to the falseness of the report initiated or circulated.

Mr. Wallingford agreed with this statement; the adverb "knowingly" refers to "false report".

Representative Frost thought this was the intent but, as drafted, did not think this was what the section said.

Chairman Burns asked what is covered by the use of the word "initiates" that is not covered by the word "circulates".

Mr. Wallingford replied that to "circulate" means to pass on whereas to "initiate" means to start.

Mr. Paillette related that the terms "initiates" and "circulates" are popular terms in this area; New York, Michigan, Connecticut and the MPC have all used this language.

Chairman Burns wondered if the use of the language "or other emergency" was not too broad.

Representative Frost drew attention to the text of the Model Penal Code, section 250.3, False Public Alarms, set out on page 58 of the draft and commented that this language seemed to answer all the questions and objections raised so far in respect to section 11. He noted that the text of Michigan's section 5550, Falsely Reporting an Incident, seemed to be a little more detailed in that it specifies, "...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."

Mr. Wallingford explained that he had not been so detailed in drafting the section in that he felt the language "to cause public inconvenience or alarm" would include evacuation of a building, etc.

Chairman Burns recalled that during the time of the disturbances in Chicago there were a number of rumors circulated about such things as putting LSD in the reservoirs, etc., and he assumed it was intended that the section cover this type of conduct.

Mr. Paillette commented that a situation of this type would be a good argument for retaining the words "or other emergency" in the section.

Mr. Wallingford thought this type of conduct would be covered if the rumors were circulated by someome knowing them to be false. It would not cover merely the passing on of rumors--if it were desired to get at this type of conduct it would be necessary to insert the word "recklessly".

Mr. Wallingford stated that section 11 is derived from Michigan--with substantial structural changes made and with repetitious words deleted. The sections from New York and Connecticut were not used because they contain conduct placed in the Commission's proposed Perjury Article.

Mr. Knight suggested section 11 be amended by deleting the word "knowingly" and inserting the word "intentionally" and by deleting the word "false" and inserting the phrase "knowing it to be false" after the word "report". The amended section would then read:

> "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...."

Representative Frost moved the adoption of section 11 subject to redrafting to indicate that the material to be initiated and circulated was known to be false. The motion carried unanimously.

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

OFFENSES INVOLVING NARCOTICS & DANGEROUS DRUGS; P.D. NO. 1; OCT. 1969.

Mr. Wallingford explained that the criminal law in Oregon in the area of narcotics and dangerous drugs is now represented by ORS chapters 474 and 475. These chapters are not strictly criminal statutes, they also contain most of Oregon's regulatory statutes on narcotics and dangerous drugs. The 1969 legislature passed a number of bills amending chapters 474 and 475 and in committee hearings pretty thoroughly wrestled with the problem of criminal penalties for the substantive law in this area. With this in mind, four different ways in which the Commission could approach this area are set out on page 2 of the Narcotics and Dangerous Drugs Draft:

(1) To revise all existing criminal laws applicable to narcotics and dangerous drugs and incorporate them directly into the new revised criminal code. The regulatory provisions would still remain in ORS chapters 474 and 475. This, in effect, is what is done in the 12 sections set out on pages 4-9 of the draft.

(2) To incorporate chapters 474 and 475 directly into the criminal code. This would involve bringing in all of the regulatory provisions, also, and Mr. Wallingford was not too sure these belonged in the criminal code.

(3) To revise ORS chapters 474 and 475 so at least the penalty provisions and substantive crimes in this area would more nearly conform to the form and structure of the revised code. This might cause a problem in that the criminal sections of this area would look somewhat different from the regulatory sections.

(4) To do nothing in regard to drug offenses.

Chairman Burns wondered if under suggestion (3) there might not be a problem with the quasi-substantive sections in chapters 474 and 475.

Mr. Wallingford observed that even if nothing is done with the substantive sections, the penalty structure in the two chapters will have to be looked at when the penalty provisions are inserted into the criminal code.

Representative Frost wondered if perhaps suggestion (4) would not be the best approach in that the narcotic and dangerous drug problem received a great deal of attention during the last legislative session and apparently is going to receive a great deal of attention from the Federal government. This will be a constantly changing area, he continued, and it is too early yet to determine if the last changes made by the legislature are good ones. He had had comments from some judges in this regard and they stated they liked the leeway in the sentencing area. The prosecutors, he had been told, are happy about not having an automatic penalty for possession, particularly possession of marihuana.

Mr. Paillette related that the thinking expressed by Representative Frost was pretty much that of the staff when drawing up the draft. No big departures or radical changes from existing law are proposed. It was felt, however, that the criminal laws relating to dangerous drugs should be brought over and incorporated into the criminal code, leaving the regulatory statutes intact in chapters 474 and 475. He advised that the second alternative mentioned by Mr. Wallingford was the approach taken by Illinois; they lifted their health code and carried it over into their criminal code. This did create somewhat of an incongruity in that the sections on narcotics and dangerous drugs read entirely different than the rest of the criminal code. Suggestion No. (4), the "do nothing" approach, is the MPC approach. The MPC does not deal with narcotic offenses at all, nor does it deal with gambling crimes.

Representative Frost asked if the "structural changes" referred to in suggestion No. (2) meant putting the existing law into the language of the criminal code.

Mr. Wallingford said this was the intent of the suggestion but he, frankly, did not think this was the best approach because chapters 474 and 475 are poorly structured and poorly organized, primarily because they have been legislated piecemeal over the years.

Mr. Paillette added that the chapters are hard to work with to determine what the law is.

Chairman Burns did not feel that the route proposed by the draft made any substantial change in the penalties or basic treatment provided by present law.

Representative Frost related that just in the House Judiciary Committee a number of large hearings were held on the subject during the last legislative session and the result was a compilation of at least four bills. The end product was the result of a great deal of thought and attention and he did not think the subcommittee had the time to do this now. In looking through the draft, Representative Frost noted weights and measures set out and advised the subcommittee members that the House Judiciary Committee had spent a great deal of time on this, receiving testimony from prosecutors, vice officers and people who defend, and learned they all had very definite practical problems with quantity and also with sale versus possession. They had all agreed the best approach was to leave the statutes as they are, just giving the court leeway for sentencing.

Mr. Wallingford advised that Michigan and New York have revised their narcotics law and incorporated it into their criminal code and these states have gone farther than what is suggested in the proposed draft. New York has three degrees of criminal sale and four degrees of criminal possession, breaking it down in amounts.

Representative Frost said he could see how the logic of what the last legislature did would not fit into what was being proposed now because there was no particular gradation or degrees of crime. He agreed that the present statutes would look out of place in comparison to the revised code but he was very reluctant to change the narcotic and dangerous drug statutes just two years after the previous change.

Mr. Wallingford observed that deleting sections 3 and 5 of the draft would result in having but one degree of criminal sale and one degree of criminal possession which would be the same as present law. The draft, then, would not make a distinction on the basis of amounts.

Mr. Paillette pointed out that beyond amounts, there is one other place where the draft tries to distinguish the degree of culpability--this is in regard to sales to minors. It was felt there are good reasons for treating this more severely from the standpoint of the pusher than other sales. This conduct is included in the description of criminal sale of drugs in the first degree.

Representative Frost noted that under the proposed draft a person could be arrested a number of times for selling small amounts of narcotics or dangerous drugs. This type of person is dangerous but if the quantity he sold did not meet the measurements set out in the section on criminal sale in the first degree, he would only be punished for a second degree offense.

Chairman Burns advised that, by and large, cases on sale of narcotics are very hard to make. He did not have figures available but was sure that well over 70% of the narcotics cases were brought on possession. Mr. Knight thought the percentage would be more nearly 90% to 95%.

Representative Frost recalled that the House Judiciary Committee had heard from a number of smaller police departments and they do not have the manpower to put out for two or three days in order to make a sale case. They pick up the offenders, then, on possession.

Mr. Knight noted, also, that in order for a small community to use an undercover man it is necessary to bring someone in from outside because everyone knows all of the police officers.

Mr. Wallingford observed that, assuming no real, substantive changes are made by the proposed draft, the decision to be made seemed to be this policy question: Since the main deterrence in the area is now the criminal law, do the statutes belong in the criminal code?

Representative Frost contended that very substantive changes are being proposed. He felt that even the organization of the draft is substantive when it sets out quantities, sales and degrees.

Mr. Wallingford admitted that this was done in regard to criminal sales and criminal possession but, he noted, this would not necessarily have to be retained.

Mr. Knight referred to section 3 of the draft and asked the derivation of the amounts set out in subsection (2).

Mr. Wallingford replied that this subsection was based on the

codes of Michigan and New York and admitted that the amounts set were somewhat arbitrary.

Representative Frost indicated that if some changes were to be made in the present statutes, he favored just moving the criminal sections of ORS chapters 474 and 475 over into the criminal code. He did not see any great problem in having the transferred language read a little differently from the rest of the criminal code.

Mr. Knight pointed out that even with these minor changes, the Article would have to go through the legislature with the adoption of the rest of the code and the area would be opened up thus allowing various people to present arguments for other changes in the law. Mr. Knight felt, however, that the provisions should be moved to the criminal code where they belong rather than being left in ORS chapters 474 and 475.

Representative Frost agreed; however, as a strictly political and practical matter, anticipating that a great many drug bills will be entered next legislative session and assuming these bills will be sent to one committee (probably the same committee working with the revised criminal code), it might be better to leave the narcotic and dangerous drug statutes as they are and where they are--in chapters 474 and 475. This would preclude the possible problem of stopping the adoption of the whole criminal code by reason of problems created in the drug section. This approach could be the best from a time standpoint, also. Whenever the attempt is made to win approval for something big, such as the insurance code (1967) or the probate code (1969), he continued, it comes down to its being an act of faith. When too many things "stir up the water" (and there are already a few such sections in the code), it lessens the liklihood of acceptance. Admittedly, it is not possible to put together a code which will please everybody, but, at the same time, the Commission should not go out of its way to creat problems and Representative Frost felt a drug Article would do just this.

Mr. Paillette acknowledged awareness of these various problems and because of them had given serious consideration to not proposing anything at all to the Commission in this area.

Chairman Burns wondered if it made sense for the subcommittee to go over the draft in detail in the absence of a policy determination by the Commission. If the Commission decision is to leave the present statute as it is in ORS chapters 474 and 475, there is no need for the subcommittee to spend time pruning or revising the proposed draft.

After considerable discussion, it was decided to send copies of pages 1-3, the introductory material in the Article on Offenses Involving Narcotics and Dangerous Drugs, P.D. No. 1, to the Commission members and ask that a short discussion be permitted at the Commission meeting scheduled Friday, November 7, 1969, so that the subcommittee may obtain the Commission's viewpoint on this matter and know how to proceed.

Mr. Paillette advised that the agenda scheduled for the November 7th Commission meeting is very heavy. If a Commission discussion on the policy question involving the Article on Narcotics and Dangerous Drugs cannot be fitted into the November meeting, however, it could certainly be scheduled for consideration at the December meeting of the Commission.

Future Subcommittee Meeting Date.

It was decided to wait until after the Commission meeting of November 7, 1969, before determining a date for the next subcommittee meeting.

The subcommittee meeting was adjourned at 3:50 p.m.

Respectfully submitted,

Maxine M. Bartruff, Clerk
Criminal Law Revision Commission