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OREGON CRIMINAL LAW REVISION COMMISSION
Room 315 Capitol Building
Salem, Oregon

May 14 and 15, 1970

A G E N D A

OREGON CRIMINAL LAW REVISION COMMISSION

Twenty-first Meeting, May 14 and 15, 1970

Minutes

May 14, 1970

Members Present: Senator Anthony Yturri, Chairman
Senator John D. Burns, Vice Chairman
Judge James M. Burns
Representative Wallace P. Carson, Jr.
Representative David G. Frost
Representative Harl H. Haas
Senator Kenneth A. Jernstedt
Attorney General Lee Johnson
Mr. Frank D. Knight

Delayed: Mr. Robert W. Chandler
Representative Thomas F. Young

Excused: Mr. Donald E. Clark
Mr. Bruce Spaulding

Staff Present: Mr. Donald L. Paillette, Project Director
Professor George M. Platt, Reporter
Mr. Roger D. Wallingford, Research Counsel

Others Present: Mr. Walter Evans, Chief U. S. Probation Officer for Oregon
Mr. Duane Lemley, Correctional Consultant, Oregon State Corrections Division

Agenda: Thursday, May 14, 1970

MISCELLANEOUS OFFENSES
Preliminary Draft No. 1; May 1970

CLASSES OF OFFENSES
Preliminary Draft No. 2; May 1970

AUTHORIZED DISPOSITION OF OFFENDERS
Preliminary Draft No. 2; May 1970

AUTHORITY OF COURT IN SENTENCING
Preliminary Draft No. 2; May 1970

Amendments to THEFT AND RELATED OFFENSES
Tentative Draft No. 1; April 1968

GRADING OF OFFENSES

Agenda (Cont'd): Friday, May 15, 1970

OFFENSES INVOLVING FIREARMS AND DEADLY WEAPONS
Preliminary Draft No. 3; May 1970

PRELIMINARY
Tentative Draft No. 1

Organization of Proposed Code; Form and Style Changes and Corrections; General Discussion of Final Draft

The meeting was called to order by the Chairman, Senator Anthony Yturri, at 9:30 a.m. in Room 315, Capitol Building, Salem.

Approval of Minutes of Commission Meeting of April 3, 1970

Representative Frost moved that the Minutes of the Commission meeting of April 3, 1970, be approved as submitted. The motion carried unanimously.

Miscellaneous Offenses; Preliminary Draft No. 1; May 1970

Mr. Paillette explained that the Article on Miscellaneous Offenses was drafted to take care of left-over statutes not included elsewhere in the Code. As stated on page 1 of the draft, four alternatives were available for placement of these statutes:

(1) Recommend repeal without comparable coverage in the revised Criminal Code.

(2) Recommend transfer to an appropriate ORS regulatory chapter.

(3) Repeal because of duplicatory coverage in the proposed Code.

(4) Incorporate into Article on Miscellaneous Offenses.

As further stated on page 1, six of the proposed statutes could logically be placed in existing Articles of the proposed Code, and Mr. Paillette suggested these decisions be made by the Commission as the sections were considered.

Section 1. Offensive littering. Mr. Wallingford explained that section 1 was similar to ORS 166.440 except that subsection (3), enacted by the 1969 Legislative Assembly, had been deleted. That

subsection provided that any person sentenced to pay a fine under ORS 164.440 was to be permitted to clear debris from a public way in lieu of payment of the fine and was to be credited for such work at the rate of $25 per day. During the performance of this work, he was to wear an arm band bearing the letters "LP" meaning "Litter Patrol." Mr. Wallingford said it was his understanding from newspaper accounts that some difficulty had been encountered in enforcing this provision and also that the cost of supervising litter patrols was prohibitive. Furthermore, the courts had the power to impose this type of punishment if they wished to do so without inclusion of this specific provision.

Senator Jernstedt stated he saw no reason to delete the litter patrol provision. In some sections of the state, he said, it could be very helpful. Representative Haas expressed agreement and added that removing the provision could be misinterpreted by the courts to mean that judges were not empowered to impose that type of punishment.

Senator Burns moved that subsection (3) of ORS 166.440 be omitted from the proposed statute and an addition be made to the commentary stating that the reason for not retaining the statute was that the courts had the power to impose the litter patrol type of punishment without that specific provision. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Frost, Johnson, Knight, Mr. Chairman. Voting no: Carson, Haas and Jernstedt.

Mr. Knight noted that subsection (1) (c) pertained only to throwing debris which would be likely to injure an animal, vehicle or person and would therefore not apply to throwing paper or cardboard from a vehicle. Mr. Wallingford commented that this language was taken directly from ORS 164.440.

Mr. Johnson moved that subsection (1) (c) be deleted because the purpose of the Commission was to include all kinds of littering and paragraph (c) could be interpreted to mean that the only type of littering from a motor vehicle which was prohibited was that which was likely to injure. This motion was later withdrawn.

Representative Carson recommended that the provision be rewritten rather than deleted. The police, he said, might see something thrown from a car but when everyone in the car denied throwing the debris, it would be impossible to know which person to charge. He suggested that the driver be made responsible for anything thrown from his car. Mr. Wallingford remarked that paragraph (c) made the operator of the vehicle liable regardless of whether the article was thrown by himself or one of his passengers.

Mr. Johnson then withdrew his earlier motion and moved that subsection (1) (c) be amended to apply to anyone "permitting any discarding or depositing any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle which he is operating." This motion too was subsequently withdrawn.

Chairman Yturri pointed out that adoption of Mr. Johnson's motion would hold the driver responsible if someone threw a gum wrapper from his car whereas paragraph (c) held the driver responsible because the article thrown was likely to be injurious. This, he said, was a valid distinction which should be retained.

Professor Platt objected to attaching vicarious liability to a crime which might be graded as a minor misdemeanor carrying the possibility of a jail sentence. If it were graded as a violation carrying only the possibility of a fine, he said, he would not object to it but he contended that imposition of a loss of liberty sanction should not be based on vicarious criminal liability.

Judge Burns pointed out that if the driver of the vehicle knew that his passengers were throwing beer bottles or pop cans out of the window of his car, the legislature could validly say that he should be punished for knowingly permitting them to litter in that manner. Professor Platt agreed he would have no objection to that type of provision so long as a loss of liberty was not involved. Mr. Paillette commented that the state would have to prove he intentionally permitted the act. Mr. Knight added that the problems of proof in cases of this kind were very difficult but were even more difficult before the passage of ORS 164.440. Up until that time, a policeman was unable to charge anyone unless he actually saw which one of the passengers had thrown the debris from the car.

Mr. Johnson withdrew his motion and moved to delete from paragraph (c) "articles likely to injure an animal, vehicle or person" and to substitute "debris" therefor. Motion carried.

Judge Burns pointed out that the motion just adopted amended paragraph (c) to read: "Permitting any glass, cans or other debris to be thrown from a vehicle . . . " This amendment, he said, ran into the rule of construction called ejusdem generis and accomplished nothing because in effect it meant "glass, cans, other glass or other cans."

Mr. Johnson moved to reconsider the vote by which his motion had passed and this motion carried unanimously.

Judge Burns then moved that the staff be directed to equate paragraphs (a) and (c) of subsection (1) so far as the activity forbidden was concerned. Paragraph (a) was to prohibit discarding or depositing litter and paragraph (c) was to prohibit permitting the same materials to be thrown from a vehicle. Representative Frost seconded the motion and it carried unanimously.

Judge Burns moved that section 1 be adopted as amended and this motion also carried without opposition.

Mr. Johnson moved that offensive littering be graded as a Class C misdemeanor. Judge Burns seconded and the motion carried unanimously. Voting on the motions made in connection with section 1: Judge Burns, Senator Burns, Carson, Frost, Haas, Jernstedt, Johnson, Knight, Mr. Chairman.

Section 2. Unlawful stream pollution. Mr. Johnson moved that section 2 be deleted on the ground that the subject was covered under ORS chapter 449. Stream pollution, he said, was subject to administrative control and he could see no reason for having a special provision such as this in the Criminal Code.

Mr. Wallingford said he believed subsection (2) of section 2 was covered by ORS chapter 449 but he was uncertain about subsection (1).

Representative Frost asked if subsection (1) was limited only to clearing land for agricultural purposes and was told by Mr. Paillette that this was the limitation in the existing statute and the intent was to carry the same limitation over to the proposed statute.

Senator Burns commented that the necessity for including section 2 was to abate a nuisance and the objective would be to alleviate the pollution situation as quickly as possible by prosecuting the person criminally. Mr. Paillette advised that abatement authority was granted under ORS chapter 449 and it would be possible to abate the nuisance under that chapter as well as under the proposed statute.

Judge Burns seconded Mr. Johnson's motion to delete section 2. Motion carried with Representative Haas voting no.

Section 3. Creating a hazard. Mr. Wallingford explained that subsection (1) of section 3 was derived from ORS 166.560 while subsection (2) was new to Oregon law.

Mr. Johnson moved that section 3 be adopted. Motion carried unanimously.

Judge Burns moved that creating a hazard be graded as a Class B misdemeanor and this motion also carried without opposition.

Section 4. Misconduct with emergency telephone calls. Mr. Wallingford advised that section 4 covered the same offenses as those in ORS 166.710.

Judge Burns moved that section 4 be adopted and classified as a Class B misdemeanor. Motion carried.

Mr. Paillette asked if the Commission wished to place this section under the Article on Offenses Against Privacy of Communications. Representative Frost so moved. There being no objection, Senator Burns, who was acting as Chairman at this time, declared the motion adopted.

Section 5. Unlawful legislative lobbying. Senator Burns asked if section 5 concerned a conflict of interest question and was told by Mr. Paillette that a different issue was involved because the section was concerned only with lobbyists and not with legislators or other public officials.

Judge Burns moved that section 5 be adopted, transferred to the Article on Obstructing Governmental Administration and graded as a Class B misdemeanor. Representative Frost seconded and the motion carried unanimously. Voting: Judge Burns, Senator Burns, Frost, Haas, Jernstedt, Johnson, Knight.

Section 6. Promoting adoption of a child. In reply to a question by Senator Jernstedt, Mr. Paillette advised that the evil the legislature was apparently trying to cure by enacting ORS 167.645 was the indiscriminate contacting of individuals through advertising for the purpose of adopting a child.

Representative Frost remarked that the statute was probably enacted before the legislation requiring investigations by the Public Welfare Commission. These adoption investigations, he said, had eliminated the grey market for adoptions in Oregon.

Judge Burns advised that the section was enacted in 1935 and no cases had been brought under it. He moved to adopt the section but withdrew the motion when Mr. Johnson moved to delete section 6. Mr. Knight seconded and Mr. Johnson's motion carried. Voting for the motion: Frost, Jernstedt, Johnson, Knight, Mr. Chairman. Voting no: Judge Burns, Senator Burns, Haas.

Section 7. Failing to maintain a metal purchase record. Senator Burns commented that this was the so-called "copper wire thief" statute passed in 1967. Representative Frost observed that the statute was very effective and the City of Portland had an even more comprehensive ordinance on this subject.

Judge Burns moved that section 7 be adopted. Senator Burns seconded and the motion carried unanimously. Voting: Judge Burns, Senator Burns, Frost, Haas, Jernstedt, Johnson, Knight, Mr. Chairman.

Judge Burns moved that the offense in section 7 be graded as a Class B misdemeanor and that it be moved to the Article on Business and Commercial Offenses. Senator Burns and Mr. Knight wanted the offense classified as a Class A misdemeanor.

Vote was taken on Judge Burns' motion and it carried. Voting for the motion: Judge Burns, Frost, Haas, Jernstedt, Mr. Chairman. Voting no: Senator Burns, Johnson, Knight.

Section 8. Unlawful transportation of hay. Senator Burns moved to delete section 8 and Representative Frost seconded. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Frost, Haas, Johnson, Knight. Voting no: Jernstedt, Mr. Chairman.

Section 9. Misrepresentation of age by a minor. Judge Burns moved to adopt section 9 and to grade misrepresentation of age by a minor as a Class C misdemeanor. Representative Frost seconded and the motion carried unanimously. Voting: Judge Burns, Senator Burns, Frost, Haas, Jernstedt, Johnson, Knight, Mr. Chairman.

Section 10. Concealing birth of an infant. Mr. Paillette explained that the Commission had approved the substance of section 10 at its meeting on April 3, 1970. [See page 21 of Commission minutes.]

Judge Burns moved that section 10 be adopted and that concealing birth of an infant be graded as a Class A misdemeanor.

Senator Burns and Mr. Knight were of the opinion that this crime should be graded as a Class C felony.

Vote was taken on Judge Burns' motion and it carried. Voting for the motion: Judge Burns, Frost, Haas, Jernstedt, Mr. Chairman. Voting no: Senator Burns, Johnson, Knight.

ORS 162.560. Maintenance of a privately operated police force. Representative Frost observed that in some counties "protective associations" had been formed where the members dressed like policemen, acted like policemen and, in some cases in Washington County, had been actively committing crimes under the guise of being policemen. ORS 162.560, he said, contained the method by which these groups had been disbanded.

Chairman Yturri asked why the staff had recommended repeal of this statute and was told by Mr. Paillette that the proposed Criminal Code contained a statute prohibiting criminal impersonation which covered impersonating a police officer.

Senator Burns said he would support the staff's recommendation to repeal ORS 162.560 with the proviso that a copy of the statute together with a copy of the proposed section on criminal impersonation be circulated to the Department of State Police, chiefs of police and the sheriff's association soliciting their comments with respect to

the repeal. If those groups were of the opinion that ORS 162.560 should be retained, it could then be inserted into the proposed Code when it was presented to the 1971 legislature in bill form even though the repeal recommendation would appear in the Final Draft. This suggestion was adopted by unanimous consent.

The Commission approved the following staff recommendations:

ORS 161.310. Punishment for gross injury to another's person or property and offenses against public peace, health or morals	Repeal
ORS 162.580. Sale of badges without permit prohibited	Repeal
ORS 162.590. Seizure and destruction of badges not lawfully possessed	Repeal
ORS 162.600. Penalty for violating ORS 162.570 to 162.590	Repeal
ORS 162.610. Records required by law to be in English	Transfer to ORS chapter 192, Public Records

ORS 162.740. Display of red flag or other emblem as manifestation of disloyalty, belief in anarchy or defiance of law. Representative Frost moved to retain ORS 162.740, grade the crime a Class C felony and place it in the Article on Riot, Treason, Disorderly Conduct and Related Offenses.

Professor Platt urged that ORS 162.740 be repealed because it was in his opinion clearly a First Amendment violation of the freedom of speech. He added that retention would make the job of university presidents even more difficult by adding another non-negotiable demand for use by dissenters operating on college campuses. There was, he said, nothing covered by this section which could not be prosecuted under provisions of the Riot Article.

Judge Burns commented he was satisfied that ORS 162.740 would not stand under the United States Supreme Court decisions in Barnett v. Board of Education which had to do with a compulsory flag salute.

Representative Frost withdrew his motion to retain ORS 162.740 and Senator Burns moved to accept the recommendation of the staff to repeal the statute. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Frost, Haas, Jernstedt, Johnson. Voting no: Knight, Mr. Chairman.

ORS 163.410. Libel and slander; penalty for publishing or broadcasting defamatory matter. Representative Haas moved that ORS 163.410 be retained in order to keep the concept of criminal libel in the statutes.

Judge Burns said he did not believe there had been any cases which specifically spoke to the question of the constitutionality of criminal libel statutes since the New York Times case but there was a case out of Baker County a few years ago where a person was convicted under this statute.

Mr. Johnson was of the opinion that the same limitations applied to criminal libel as applied to civil libel and it was merely a question of what was permissible under the First Amendment. He was in favor of retaining the statute because someone might be libeled who would not have the means to pursue a civil remedy or who would not be responsive to a judgment. He noted, however, that the punishment provisions should be changed and that it should be graded as a Class A misdemeanor.

Vote was taken on Representative Haas' motion to retain ORS 163.410. Motion carried. Voting for the motion: Senator Burns, Haas, Jernstedt, Johnson, Mr. Chairman. Voting no: Judge Burns, Frost, Knight.

Mr. Paillette pointed out that the section's culpability requirements should be revised.

Judge Burns moved that ORS 163.410 be classified as a Class A misdemeanor and that the section be redrafted to conform the culpability requirements to the language of the proposed Code.

Mr. Knight commented that it would be difficult to get a district attorney to file a criminal libel action under this section and that it would be a complicated case to try. In all likelihood, he said, if the crime were classified as a Class A misdemeanor, it would have to be tried twice, once in district court and again in circuit court. Mr. Paillette observed that the case could be tried initially in circuit court and Mr. Knight replied that there was a ruling in Linn County which held that the defendant had a right to two trials on a de novo appeal and under that ruling such a case would have to begin in district court. He urged that the crime be graded a Class C felony.

Vote was then taken on Judge Burns' motion to classify ORS 163.410 as a Class A misdemeanor and redraft the section. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Frost, Haas, Jernstedt, Johnson, Mr. Chairman. Voting no: Knight.

ORS 163.420. Truth as defense in libel actions; presumption of malice — Repeal

ORS 163.430. Defamation of insurers or fraternal benefit societies — Repeal

ORS 163.440. Defamation of banks and trust companies — Repeal

ORS 163.450. Defamation of savings and loan association — Repeal

ORS 163.460. Publishing of picture importing that person is convict or criminal. Representative Haas said a situation could arise where a person was arrested, photographed and subsequently acquitted. When arrested later on another charge, the picture taken at the time of his prior arrest might be published in a newspaper together with an account of the current arrest and the picture, clearly identifiable as a "mug" picture taken by the police, could be very damaging. In such an instance, he said, that person could not be adequately recompensed by money damages alone.

Mr. Paillette advised that this situation would be covered by the criminal libel statute which the Commission had voted to retain (ORS 163.410) and he was of the opinion that it was unnecessary to retain a special statute for ex-convicts.

Representative Haas asked if libel covered a picture and was assured by Judge Burns that so long as a libelous connotation could be drawn from the circumstances in which the picture was published, it was capable of being a subject for libel.

The Commission was agreed that ORS 163.460 should be repealed.

ORS 163.470. Statements designed to injure former convicts — Repeal

ORS 164.362. Transportation of coniferous trees without bill of sale prohibited. ORS 164.364. Investigations to prevent violations of ORS 164.362 to 164.368; jurisdiction of courts. ORS 164.366. Arrest; trial; summons. ORS 164.368. Seizure of trees transported in violation of ORS 164.362. Professor Platt asked if it was inconsistent to retain ORS 164.362 when ORS 164.355 relating to transportation of hay without a certificate had been repealed. It was, he said, the same kind of crime and was clearly special interest legislation. Chairman Yturri expressed agreement and indicated that theft of hay was as serious a problem as was theft of Christmas trees.

Judge Burns then moved that ORS 164.362, 164.364, 164.366 and 164.368 be repealed. Motion failed. Voting for the motion: Judge Burns, Haas, Johnson, Mr. Chairman. Voting no: Senator Burns, Frost, Jernstedt, Knight.

Failure of this motion resulted in adoption of the staff's recommendation to transfer ORS 164.362, 164.364, 164.366 and 164.368 to ORS chapter 527, Forest Conservation.

ORS 164.462. Unlawful entry of dwelling — Repeal

ORS 164.465. Unauthorized entry of penal or correctional institutions — Repeal

ORS 164.520. Operating hand car on railroad track — Repeal

ORS 164.530. Throwing or shooting at motor or railway vehicle — Repeal

ORS 164.540. Unlawfully riding or attempting to ride on train; jurisdiction of justice court; venue — Repeal

ORS 164.550. Authority of railroad officials to arrest unlawful riders and to demand assistance from others — Repeal

ORS 164.640. Interference with radio reception — Repeal

ORS 164.720. Attempting to poison domestic animals. Mr. Paillette explained that attempting to poison domestic animals was an inchoate crime and would be covered by Article 6. The Commission agreed to accept the staff recommendation to repeal ORS 164.720.

ORS 164.730. Taking animals without consent of owner — Repeal

ORS 164.740. Detention of cows or bulls — Repeal

ORS 165.145. Transmission and delivery of false and forged messages; civil liability — Repeal

ORS 165.180. Receiving, disposing of or concealing article from which number or mark has been removed — Repeal

ORS 165.240. Producing infant and falsely pretending heirship — Repeal

ORS 165.245. Substituting another child for infant committed to one's care — Repeal

ORS 165.260. Use of dramatic or musical composition without consent — Repeal

ORS 165.325. Creation of society having name or purpose similar to that of existing body — Transfer to ORS chapter 649, Insignias and Names of Organizations

ORS 165.330. Organization of corporation to violate ORS 165.310 to 165.325 — Transfer to ORS chapter 649, Insignias and Names of Organizations

ORS 165.335. Circulating signs or rituals of fraternal society without authority	Transfer to ORS chapter 649, Insignias and Names of Organizations
ORS 165.410. Tampering with brands on hides of cattle; wrongfully selling or destroying hides	Transfer to ORS chapter 604, Brands and Marks
ORS 165.415. Misrepresentations of pedigree; mutilation of certificate or proof of pedigree	Transfer to ORS chapter 605, Breeding of Animals
ORS 165.420. Abandonment of animals by bailees	Transfer to ORS chapter 607, Stock Running at Large
ORS 165.450. Adulteration of gold dust	Repeal
ORS 165.455 Possession of adulterated gold dust	Repeal
ORS 165.460. Selling adulterated gold dust	Repeal
ORS 165.465. Misrepresentation or misbranding of metallic commodity	Repeal
ORS 165.610. Third person misrepresenting age of minor	Repeal
ORS 166.650. Making or disposing of keys to property of common carrier	Repeal

ORS 167.240. Visiting or inducing others to visit houses of prostitution. In reply to a question by Senator Burns, Mr. Wallingford explained that only subsection (1) of ORS 167.240 would no longer be covered if the statute were repealed; the balance would be covered by the Prostitution Article.

The Commission agreed to accept the staff's recommendation to repeal ORS 167.240.

ORS 167.250. Use of tobacco by minor in public place; permitting minor to frequent place of business while smoking. Representative Frost moved that ORS 167.250 be retained.

Professor Platt objected to retention of the statute on the ground that the Commission should not be engaging in trivial, symbolic legislation which would never be enforced. Mr. Knight said his guess was that a number of cases were brought into juvenile court under this statute.

Mr. Paillette expressed agreement with Professor Platt and recalled that the Commission had retained a statute prohibiting the sale of tobacco to minors and at that time had decided not to prohibit its use.

Vote was then taken on Representative Frost's motion to retain ORS 167.250. Motion failed. Voting for the motion: Frost, Jernstedt, Knight, Mr. Chairman. Voting no: Judge Burns, Senator Burns, Carson, Haas, Johnson. Result of this motion was to approve the staff's recommendation to repeal ORS 167.250.

ORS 167.300. Minor misrepresenting age in order to gamble	Repeal
ORS 167.640. Promoting divorce	Repeal
ORS 167.705. Exhibiting person in trance	Repeal
ORS 167.710. Exhibiting deformed person	Repeal
ORS 167.715. Sponsoring or participating in prize fight	Transfer to ORS chapter 463, Boxing and Wrestling

Senator Burns moved that the Article on Miscellaneous Offenses be approved as amended including approval of the staff's recommendations to ORS sections described above. Motion carried unanimously. Voting: Judge Burns, Senator Burns, Carson, Frost, Haas, Jernstedt, Johnson, Knight, Mr. Chairman.

Classes of Offenses; Preliminary Draft No. 2; May 1970

Section 1. Offenses; definition. Mr. Paillette explained that section 1 set forth the basic definition of an offense which would include both crimes and violations, the distinction between the two being that a sentence of imprisonment was authorized only for a crime. A crime was then further classified in the Article as a felony or a misdemeanor.

Representative Frost pointed out that section 1 granted to a political arm of the state the power to create a crime and objected to giving this authority to city councils and county commissions. He contended that the state should provide that a municipality could pass no Act that was not designated as a crime by the state.

Senator Burns acknowledged that the draft approved by the Subcommittee on Sentencing and Grading gave municipalities the right to create crimes. He said he too was opposed to granting this

authority in light of the fact that up to this time city ordinance violations did not rise to the dignity of crimes.

Representative Carson said it made little difference whether the act was called a crime or an offense when the person could be sent to jail as a result of his behavior. In his opinion, other than for impeachment purposes, the name given to the act was of little significance.

Judge Burns pointed out that the Minutes of the meeting of the Sentencing and Grading Subcommittee on April 4, 1970, contained a discussion of this subject on pages 2 to 6. He commented that if Representative Frost was bothered by the fact that a city could do something which later made conduct the subject of an impeachment question, the solution was to revise the evidence code. Representative Frost expressed agreement but was not convinced that cities should be empowered to create crimes.

Representative Young arrived at this point.

Chairman Yturri remarked that if city ordinances were not delineated as crimes, the city's power to impose a jail sentence for certain types of conduct would be revoked.

Professor Platt recommended that the Commission preempt the criminal law field to the state and revoke the power of cities to create crimes. This course, he said, would leave the municipalities not only with a well defined set of crimes which they could prosecute in state courts but also with the power to levy fines without having to impose on cities any problems concerning criminal due process rights. He urged that the state preempt all ability of cities to impose any kind of loss of liberty sanction.

Chairman Yturri pointed out that Professor Platt's position raised the question of unification of the court system which was not under consideration at this time. Even in the smaller cities, he said, there was a jury trial every day in the municipal courts and it was not feasible to transfer every drunk driving case and every offense which carried a loss of liberty sanction to the state courts.

Senator Burns said his objection was twofold. One was concerned with impeachment which could possibly be solved by amendment to the evidence code; secondly, he believed that creation of crimes should be on a higher level than a municipal ordinance. If municipalities were permitted to enact violations, it would not prevent a person from being prosecuted in a district court, a justice of the peace court or a municipal court for a state crime but it would protect against some municipality passing an ordinance which they would call a crime without giving any real consideration to its passage.

Chairman Yturri remarked that justices of the peace were often as inaccessible as were circuit courts and he objected to having to carry some minor offense over for three or four weeks before it could be disposed of. Representative Carson agreed with the Chairman that it was imperative to grant the cities authority to create crimes, one reason being that they oftentimes refused to adopt the state law because to do so meant that they had to bring the district attorney into every case. Chairman Yturri stated that the course Professor Platt, Representative Frost and Senator Burns were advocating might be a step which should be taken in the future if and when a unified court system were adopted but at this stage of Oregon's development in criminal law and procedure, the course set forth in the draft was the only rational direction to take.

Representative Frost and Senator Burns pointed out that the draft was increasing the cities' power by giving them authority to create crimes and under existing law only the state could create crimes. Mr. Paillette responded that the draft merely classified what the cities were actually doing at the present time. He added that adoption of section 1 as drafted could have a beneficial effect in that the cities might give more consideration to the kinds of ordinances they passed and attempt to limit their punishment to fines only rather than imprisonment.

Senator Burns said that if a man were filling out a civil service form which asked if he had ever been convicted of a crime, he would have to answer "yes" if he had been convicted of a municipal ordinance. Mr. Paillette said this would only be true if he had been convicted under an ordinance which because of its penalty was greater than a violation. If he had been convicted of a minor traffic violation, that would not be classified as a crime.

Mr. Chandler arrived at this point.

Representative Frost moved that section 2 be amended to define a crime as "only an offense created by the state for which a sentence of imprisonment is authorized."

In reply to a question by Mr. Johnson, Mr. Paillette explained that adoption of Representative Frost's motion would maintain existing law. Representative Frost added that passage of his motion would mean that city ordinance violations would be quasi-criminal if a loss of liberty penalty attached.

Chairman Yturri asked if the defendant would be entitled to his constitutional protections if a violation were not classified as a crime and was told by Mr. Paillette that he would be if imprisonment were authorized for the violation. The Chairman then asked if

adoption of Representative Frost's motion would require the intervention of the district attorney in every municipal violation which carried a penalty of imprisonment and received a negative reply from Mr. Paillette.

Mr. Paillette suggested that Representative Frost's objective could be achieved by amending section 1 rather than section 2 by placing a period after "state" in the third line of section 1. Representative Frost said this would be satisfactory so long as the proposed statute clearly stated that cities could not create a crime.

Chairman Yturri asked Representative Frost if he was willing for violation of any municipal ordinance to be called an offense even though it was treated in every other respect exactly like a crime and even though a person could be put in jail. He received an affirmative reply.

Vote was then taken on Representative Frost's motion and it failed. Voting for the motion: Senator Burns, Frost, Haas. Voting no: Judge Burns, Carson, Chandler, Jernstedt, Johnson, Knight, Young, Mr. Chairman.

Judge Burns moved to approve section 1 as drafted. Motion carried. Voting for the motion: Judge Burns, Carson, Chandler, Jernstedt, Johnson, Knight, Young, Mr. Chairman. Voting no: Senator Burns, Frost, Haas.

Representative Frost asked if the cities would be able to require the deposit of a jury fee for a municipal trial after section 1 became effective in view of the fact that the violation of a municipal ordinance would then be a crime. He pointed out that the reason the cities had been able to justify the required jury fee was because the courts had held that violation of a municipal ordinance was not a crime as such. When that barrier was removed by enactment of section 1, authority to require the deposit of a jury fee would then become a practical question in municipal courts.

Chairman Yturri commented that the answer to Representative Frost's question would probably have to be resolved by the courts. If at the present time the courts had held that the defendant was entitled to a jury trial even though an ordinance was not called a crime, that same distinction might well be carried over to the revised Code.

Section 2. Crimes; definition. Judge Burns asked whether a political subdivision of the state in passing an ordinance that carried imprisonment would create a misdemeanor or a felony and was told by Mr. Paillette that it would be a misdemeanor because the city court could not send the defendant to the penitentiary and the crime could not therefore be a felony.

The Commission recessed for lunch and reconvened at 1:30 p.m.

Members Present: Senator Anthony Yturri, Chairman
Judge James M. Burns
Representative Wallace P. Carson, Jr.
Mr. Robert Chandler
Senator Kenneth A. Jernstedt
Attorney General Lee Johnson
Mr. Frank D. Knight

Delayed: Senator John D. Burns
Representative David G. Frost
Representative Harl H. Haas
Representative Thomas F. Young

Staff Present: Mr. Donald L. Paillette
Professor George M. Platt
Mr. Roger D. Wallingford

Others Present: Mr. Walter Evans
Mr. Duane Lemley

Section 2 (Cont'd). Mr. Chandler moved that section 2 be approved. Motion carried. Voting: Judge Burns, Carson, Chandler, Jernstedt, Johnson, Knight, Mr. Chairman.

Section 3. Felonies; definition. Mr. Johnson moved that section 3 be amended in line 3 by changing "or" to "and." The motion was later withdrawn.

Mr. Paillette contended that "or" should be retained because there were statutes throughout ORS which did not state whether the crime was a felony or a misdemeanor but merely described the punishment. If such a statute prescribed more than a year's imprisonment, the crime would become a felony. Should "and" be substituted for "or" it would mean that in order for the crime to be a felony, every statute would have to contain both the statement that the crime was a felony and that the punishment was a term of imprisonment of more than one year.

Mr. Johnson asked what "thereof" defined in line 3 of section 3 and was told by Mr. Paillette that it referred to a crime. Chairman Yturri observed that "thereof" appeared to refer to "a statute of this state."

After further discussion, Mr. Johnson withdrew his motion and moved to delete "thereof" and substitute "under a statute of this state." Motion carried.

Judge Burns moved that section 3 be approved as amended. Motion carried. Voting: Judge Burns, Chandler, Frost, Haas, Jernstedt, Johnson, Knight, Mr. Chairman.

Section 4. Felonies; classification. Mr. Paillette explained that section 4 set up three grades of felonies to be used in the proposed Criminal Code plus a category of unclassified felonies outside the Code which, because of the sentence provided, fell within the definition of felony. The first sentence of subsection (2) was included to make clear that murder and treason, although felonies, would be punishable by life imprisonment and were therefore treated differently than other felonies.

Mr. Chandler moved that section 4 be approved and the motion carried unanimously. Voting: Judge Burns, Chandler, Frost, Haas, Jernstedt, Johnson, Knight, Mr. Chairman.

Section 5. Misdemeanors; definition. Mr. Johnson moved the adoption of section 5. Motion carried unanimously with the same members voting as had voted on the previous motion.

Section 6. Misdemeanors; classification. Mr. Chandler moved that section 6 be approved.

Mr. Knight commented that the effect of section 6 (2) (b) was to reduce Class A misdemeanors which carried a 30 day penalty to Class C misdemeanors but the statutes which carried a six months misdemeanor penalty would retain that penalty. Judge Burns acknowledged this was correct and added that it would be up to the legislature to change the penalty if they wished to do so.

Vote was then taken on Mr. Chandler's motion to approve section 6. Motion carried unanimously. Voting: Judge Burns, Chandler, Frost, Haas, Jernstedt, Johnson, Knight, Mr. Chairman.

Section 7. Violations; definition. Mr. Johnson moved approval of section 7. Motion carried unanimously with the same members voting as had voted on the previous motion.

Section 8. Violations; classification. Mr. Paillette explained section 8 provided that if the offense was punishable as defined in section 7, it would be a violation if outside the proposed Criminal Code.

Judge Burns asked how an offense would be treated if it were punishable only by a fine but the fine was different from that specified in this Code for a violation. Mr. Paillette replied that

even though the fine was considerably higher, the violation would come under section 7 if it were punishable only by a fine. It was entirely possible that a violation in this category could have a large fine attached to it, he said.

Judge Burns moved the adoption of section 8 and the motion carried unanimously with the same members voting as had voted on section 6.

Section 9. Crimes; classification determined by punishment. Mr. Paillette explained that section 9 was intended to cover the "indictable misdemeanor" type of offense. If the court took any of the actions set forth in subsection (2), the crime would be a misdemeanor; otherwise it would be a felony. In other words, the crime would be classed as a misdemeanor if the court imposed a punishment other than imprisonment. He advised that section 9 gave the judge an option not available to him under existing law; namely, discharge of the defendant.

Mr. Chandler moved approval of section 9. Motion carried unanimously. Voting: Judge Burns, Senator Burns, Carson, Chandler, Frost, Haas, Jernstedt, Johnson, Knight, Young, Mr. Chairman.

Proposed Amendment to ORS 137.120. Indeterminate Sentence.

Senator Burns asked where the proposed amendment would be placed in the Code and was told by Mr. Paillette that it would be included in Article 8, Authorized Disposition of Offenders. The original draft prepared for the subcommittee, he said, proposed no change in the indeterminate sentence statute, although it was referred to in section 3 of that Article where the language contemplated the indeterminate sentence as it existed under the present statute.

Mr. Paillette explained that during the meeting of the Subcommittee on Grading and Sentencing, Mr. Johnson had proposed that Oregon adopt the so-called Washington or California system of indeterminate sentencing whereby there would be no judge-fixed maximum sentence. The judge would sentence to the maximum provided by statute for the crime charged and it would be up to the Board of Parole and Probation to set the maximum term after the offender had been taken into the corrections process.

Following that meeting Senator Burns had requested the Legislative Fiscal Committee to prepare an estimate of the cost of administering this type of program. A meeting was then held in Mr. Johnson's office and among those attending were Mr. John Galvin, Administrator of the Corrections Division, and representatives of the Legislative Fiscal Committee. As a result of that meeting, Mr. Paillette drafted the proposed amendment which was before the Commission today.

The amendment attempted to provide for no judge-fixed maximum but the court would be required to make a recommendation within 60 days after committing the defendant to the custody of the Corrections Division as to when the defendant should be paroled. The parole authorities would not be prohibited from paroling sooner than the time recommended by the judge but if they chose not to parole him within that time, they would be required to advise the court of that decision.

Mr. Paillette noted that the last section on page 3 of the proposed amendment dealt with a separate question which was discussed by the Subcommittee on Sentencing and Grading and concerned concurrent and consecutive terms of imprisonment.

Mr. Chandler recalled that at one of the early Commission meetings Mr. Sol Rubin had recommended that the judge should sentence to a maximum term which could be less than the statutory maximum and thereafter the Corrections Division or parole board should fix the sentence. He indicated his approval of retaining that system.

Mr. Johnson commented that there was no disagreement in the subcommittee that the judge should observe the statutory maximum prescribed for the offense and no one was suggesting that the judge be deprived of the authority to impose probation, suspend sentence or discharge the defendant. The difference of opinion arose over the question of whether the judge should have the power to set a maximum within the statutory range or whether that authority should be delegated to the parole board. The draft under consideration, he said, was in some respects a compromise between the two positions in that it required the judge to make a recommendation as to the time of parole and would require the parole board to take an affirmative action to confine the inmate beyond the period recommended by the judge.

The strongest argument in favor of the indeterminate sentence, Mr. Johnson said, was that it would tend to alleviate the problem of disparity of sentencing and would reduce the possibility of different sentences imposed by 70 different circuit judges for the same crime, each of whom applied his individual standards, because one parole board would be applying the same standard to all those who came before them.

Senator Burns indicated that in the subcommittee meeting he and Mr. Johnson felt that the sentencing structure should be set up so that the court would sentence to an indeterminate period not to exceed the maximum. Two members felt the present law should be retained whereby the judge fixed the maximum sentence. One of the members was undecided. Since that time, he said, he had modified his position

somewhat in that he now believed that the cost factor of adopting the true indeterminate sentence was such that it was not legislatively feasible. He further indicated disapproval of the requirement that the judge make a recommendation to the parole board as to the length of time the defendant should serve before being paroled. The parole board was not bound to follow that recommendation, the requirement therefore had no teeth in it and he questioned the wisdom of placing such a provision in the statute. He then asked Judge Burns if he believed he would be in a better position within 60 days after sentencing a defendant to make a recommendation as to parole than he would be at the time of sentencing and received a negative reply.

Chairman Yturri stated that as far as disparity of sentencing was concerned, the problem had to a large extent been resolved by the classification and grading system in the proposed Code which in most cases would reduce the length of time an individual could be sentenced to imprisonment. Secondly, he said, although sentencing was spread among many judges, by and large, the majority of those judges were treating defendants realistically and relatively few were imposing sentences which resulted in any great amount of disparity. If the system advocated by Mr. Johnson were adopted, it would do away with the sentencing power which judges had today and society would lose the value of the judges' background of experience plus eliminating the benefit of their knowledge of the defendant gained through personal observation during the trial and through the presentence investigation and report. He was of the opinion that no one was in a better position initially to form a judgment as to the proper sentence to be imposed on the defendant than was the judge. The Chairman also noted that adoption of the proposed system would result in a great deal of duplication of effort because not only would the judge be sending a statement of the history of the defendant to the parole board but also the sheriff and the district attorney would be doing so. All in all, he said, there was little to be gained by adopting the proposed amendment.

Mr. Johnson observed that the Corrections Division would be furnishing the bulk of the information to the parole board. He added that it was better to look from hindsight than from foresight in determining the disposition to be made of an offender and the parole board would have the advantage of knowing how the offender behaved during his confinement. Chairman Yturri commented that if the judge's sentence was deemed by the parole board to be too harsh, there was nothing to prevent the board from reducing that sentence.

Senator Burns said the reason he was convinced that the indeterminate sentence was preferable to the judge-fixed maximum was the inverse of the situation where the sentences were too harsh. He cited a case where an offender was sentenced to one year and the corrections

authorities knew that he was a psychotic who was dangerous to society. They were, however, unable to keep him institutionalized past the one year period and after he was released, he committed a murder. This murder might well have been averted, Senator Burns said, had it been possible to detain the offender and treat him for a longer period of time. This would have been the case had he received a maximum indeterminate sentence.

Representative Frost said that as a theoretical matter, he would prefer the pure indeterminate sentence. However, if this proved to be unfeasible, sentencing should be broken into three basic parts: First, the decision as to probation or not, and the trial judge was in the best position to make that determination because it was based upon prior events; the second question should be the length of sentence to be imposed; the third question to be decided was when the inmate was to be paroled and that was best decided by his behavior between the time of sentencing and time of release. This, he said, was far outside the trial judge's knowledge and was best decided by the parole board. In summary, he said that if the pure indeterminate sentence were not adopted, he would prefer to maintain the present system.

Tape 3 begins here:

Judge Burns indicated that disparity was a problem inside the institutions partly because of the attitude of the inmate who determined that one of his fellow prisoners was sentenced for the same crime he had committed and received a lesser sentence. The inmate was not aware, and did not take the trouble to find out, that the other person had a totally different background and history so that in fact there might not be any disparity at all. It continued to be a problem, however, because so long as the inmates believed it to be a problem, it was harmful to their rehabilitation prospects; they spent their time being mad at someone instead of working toward their own rehabilitation. Judge Burns said it was his impression, based upon conversations he had had with prisoners, that disparity of sentencing was regarded as an evil but that disparity of parole treatment was regarded as an even greater evil from the inmates' standpoint.

He expressed his belief that the judge should participate in the sentencing decision because he more nearly represented the community than did the parole board and the judge, as the voice of the community and based upon his legal experience, probably was better able to make that decision. He should also at the time of sentencing express his point of view as to how long the man should serve.

There was, Judge Burns said, presently statutory provision for a post-sentence report. Many judges did not submit them nor did most sheriffs or district attorneys. He had been told by the parole board that where judges took the trouble to submit recommendations, they were given considerable weight by the board. Judges, he said, should

send their recommendations to the parole board in order that the board could be aware of what plan the judge envisaged for the defendant. Thereafter the judge should not be a part of the releasing process because his familiarity with the case diminished while the familiarity and knowledge of that person by the parole board and corrections system increased. Judge Burns indicated that the solution to the disparity problem lay in increased use of sentencing panels, in increased use of sentencing institutes and in increased communication between judges and others in the correction process.

Testimony of Mr. Duane Lemley, Correctional Consultant, State Corrections Division. Chairman Yturri then called upon Mr. Lemley and asked him to present his views on the subject of sentencing.

Mr. Lemley said his personal position was that the sentencing procedures should not be changed from existing law. He supported Judge Burns' statement that some of the sentences for the same crime should vary between individuals because the crime committed was not necessarily a good measure of how long the defendant should be confined. The parole board looked at a man's adjustment to a very abnormal situation where his decision-making responsibilities were taken away from him, and the kind of problems he had in an institution were quite different from those he encountered while living in the community. At the present time with the work release law and the temporary leave law, the corrections system for the first time had an opportunity to test how responsible a person was going to be in a more normal situation and this information would furnish better guidelines for the parole board in the future.

Mr. Lemley expressed the view that there was no magic in letting the parole board set the length of the sentence. The sentences might well be more uniform but at the same time they might be uniformly too long.

Testimony of Mr. Walter Evans, Chief U. S. Probation Officer for Oregon and President of the Criminal Justice Research Association. Mr. Evans next appeared and stated that in his opinion the critical point in the corrections process was the time of sentencing. He suggested that the judges and the parole board should have available to them figures as to the types of sentences being imposed in other jurisdictions throughout the state and felt this type of feedback might be of great assistance to all concerned.

Mr. Evans said he had just returned from a Sentencing Institute for federal judges in Phoenix, Arizona, where the Director of the Federal Bureau of Prisons stated that disparity among sentences imposed by federal judges had to a large extent been abolished by

Sentencing Institutes conducted at the federal level. Judges needed all the expertise they could gain in imposing sentences, he said, and urged that the sentencing process be kept as simple as possible. As he understood the present Oregon law, it was in effect an indeterminate sentence which gave the Division of Corrections, the parole board and the courts the widest possible latitude and this was to be desired.

Judge Burns asked Mr. Evans to comment on the use of the diagnostic center in the federal system and was told that the center was reserved for the most complicated and difficult cases where the court was unable to understand what motivated the individual's conduct and the presentence investigation did not adequately disclose his problems. The defendant could be committed for 60 to 90 days to the daignostic center and at the close of a study period a comprehensive report was made to the court covering the individual's social history, medical and psychological background and other factors of his life, with a recommendation as to disposition of the case. This procedure, he said, had been highly beneficial to courts on the federal level.

On behalf of the Criminal Justice Research Association, a nonprofit corporation dedicated to improving the criminal justice system, Mr. Lemley offered the services of members of the association as consultants to the Commission.

At this point Mr. Johnson withdrew his proposal to adopt the proposed amendments relating to an indeterminate sentence and was excused from the meeting.

Authorized Disposition of Offenders; Preliminary Draft No. 2; May 1970

Section 1. Adding sections to ORS 137.010 to 137.070. Following discussion of section 2, Senator Burns moved that section 1 be approved and the motion carried unanimously. Voting: Judge Burns, Senator Burns, Carson, Chandler, Frost, Haas, Jernstedt, Knight, Young, Mr. Chairman.

Section 2. Amending ORS 137.010. Duty of court to ascertain and impose punishment. Judge Burns asked if subsection (5) (d) of section 2 with respect to imposing a sentence of discharge was inconsistent with section 9 of the Article on Classes of Offenses which said that one of the ways in which a felony could become a misdemeanor was for the court to grant probation without imposition of sentence and thereafter discharge the defendant. He said it was important that the Code be clear that the power to grant discharge was available to the court either at the time of sentencing or at the time the defendant had successfully completed his probation which might be some years later. The power to grant discharge should be available anywhere along the line, he said, and subsection (5) was susceptible of the construction

that the only time the discharge could be granted was (1) when imposition of sentence was not suspended or (2) when probation had been revoked. He wanted to make sure, he said, that if the court suspended imposition of sentence and placed the defendant on probation for three years, at the end of that time the court could discharge him and the offense would be a misdemeanor.

Mr. Paillette explained that subsection (5) had to be read in context with its relationship to the suspension of the imposition of sentence or probation. In that relationship if the court did one of those two things, it then had available the alternatives listed in subsection (5). Section 9 of the Article on Classes of Offenses, he said, was concerned with how a felony became a misdemeanor.

Senator Burns asked what the result would be in a situation where a defendant was convicted of first degree robbery, execution of sentence was suspended, and he was placed on probation for five years; three years later the court discharged him. He asked if the crime would then be a felony and received an affirmative reply from Mr. Paillette who explained that the discharge authority of the court was further limited by section 5 of the Article on Authority of the Court in Sentencing. That section set out criteria for discharging a defendant and was limited to convictions for an offense other than murder, treason or a Class A or B felony. So far as felonies were concerned, he said, the court could only discharge where a Class C felony was involved and the crime would remain a felony even though the defendant was discharged.

Senator Burns recommended that the commentary be revised to state clearly that the court was intended to have continuing authority to grant discharge. Chairman Yturri directed that Judge Burns' concern with section 9 of the Article on Classes of Offenses and subsection (5) of section 2 of the Article on Authorized Disposition of Offenders be discussed and clarified in the commentary.

Senator Burns moved that section 2 be approved. Motion carried unanimously. Voting: Judge Burns, Senator Burns, Carson, Chandler, Frost, Haas, Jernstedt, Knight, Young, Mr. Chairman.

Section 3. Sentence of imprisonment for felonies; ordinary terms. Mr. Paillette indicated that section 3 established the outer limits for indeterminate sentences of each class of felony.

Mr. Chandler contended that the sentences in section 3 were too long and recommended that they be cut in half. Mr. Paillette observed that the sentences were shorter than those contained in most other codes he had studied and noted that if the subcommittee's recommendations for grading of crimes were accepted by the Commission, a majority of the felony crimes would carry shorter sentences than under existing law.

Mr. Chandler observed that he could not see how any benefit could be derived from sentencing anyone to a period of more than 10 years. If he was not rehabilitated in that period of time, he said, nothing would be accomplished by keeping him another 10 years. Chairman Yturri commented that the parole board would still be able to function if they believed the sentence to be too long, but imposition of a 20 year sentence might take care of the isolated case where society might feel it would be proper to impose a more severe sentence. It would probably be a rare instance, he said, where a first offender would be sentenced to the maximum 20 year sentence.

Senator Jernstedt moved the adoption of section 3 and the motion carried. Voting for the motion: Judge Burns, Senator Burns, Carson, Haas, Jernstedt, Knight, Young, Mr. Chairman. Voting no: Chandler.

Mr. Chandler commented that the basic problem in the corrections field was that it took too long to get the defendants into the corrections system and after they were confined, they were kept too long. Mr. Paillette replied that some of those who entered the correctional system were incapable of being rehabilitated and it was necessary to confine them for the protection of the public. This, he said, was articulated as one of the purposes of the proposed Criminal Code.

Section 4. Sentence of imprisonment for misdemeanors. Judge Burns moved adoption of section 4. The motion was seconded by Senator Burns and carried unanimously with the same members voting as had voted on the previous motion.

Section 5. Fines for felonies. Mr. Chandler noted that the court could impose a fine for a felony under section 5 in lieu of imposing sentence. Under subsection (3), he said, if a person embezzled $7,000, the court could impose a fine of $14,000. He asked if this money would be paid to the victim. Mr. Paillette replied that section 5 was concerned with fines, not restitution to the victim, and the fine would be paid to the state. Restitution was provided for under existing law and those provisions would not be disturbed.

Judge Burns asked if the court could impose a fine as well as a sentence and Mr. Paillette answered that section 2 (5) (a) authorized this practice.

Senator Burns moved approval of section 5 and the motion carried unanimously. Voting: Judge Burns, Senator Burns, Chandler, Haas, Jernstedt, Knight, Young, Mr. Chairman.

Section 6. Fines for misdemeanors and violations. Senator Burns moved approval of section 6. Motion carried unanimously with the same members voting as voted on the previous motion.

Section 7. Criteria for imposition of fines. Mr. Paillette advised that section 7 had been added to this draft on recommendation of the subcommittee. It did not, however, include all the standards recommended by the ABA.

Mr. Chandler moved approval of section 7 and the motion carried unanimously. Voting: Judge Burns, Senator Burns, Chandler, Haas, Jernstedt, Knight, Young, Mr. Chairman.

Section 8. Fines for corporations. Mr. Paillette indicated that section 8 was derived from section 80.10 of the New York Revised Penal Law, the only difference being the $50,000 fine for a felony committed by a corporation.

Mr. Chandler moved approval of section 8 and the motion carried unanimously with the same members voting as had voted on the previous motion.

Section 9. Costs. Representative Haas asked if a provision were included in this Article to pay the defendant's costs when he was acquitted and received a negative reply from the Chairman. Representative Haas contended that such a provision should be included. Mr. Chandler said that adoption of Representative Haas' proposal would pose a problem in a case where the defendant admitted he shot his wife but the jury decided he did so with good reason and acquitted him. He asked if that defendant should be entitled to costs.

Representative Haas noted that the state was permitted to assess costs and the same benefit should accrue to the defendant.

Mr. Paillette commented that if the defendant was not ordered to pay costs, the state paid them. He called attention to the commentary on page 18 of the draft which pointed out that ORS 137.200, providing that costs and disbursements in a criminal action shall be taxed against a defendant upon conviction, and ORS 137.205, providing for taxation against a defendant for the cost of legal assistance furnished to him, would be repealed by enactment of the instant proposal. In reply to a question by Representative Haas, Mr. Paillette said he believed section 9 to be more restrictive than existing law so far as assessing costs against the defendant was concerned because costs were limited to expenses specially incurred by the state in prosecuting the defendant. Furthermore, the existing statute was mandatory whereas section 9 was discretionary and also included criteria for the courts to follow which the existing statute did not.

Representative Haas maintained that there was no reason why the innocent defendant should not be able to recover costs and Senator Burns agreed. Judge Burns also concurred that it would be proper for

the defendant to recover costs in some instances but a problem would arise in setting out what criteria should be used to establish legislatively the cases where he should be able to recover and the cases where he should not.

Chairman Yturri pointed out that it would be necessary to establish also whether the county or the state would pay the costs. Mr. Paillette remarked that if the statute were amended to require the state to pay costs when the defendant was acquitted, some very troublesome problems would be encountered as to what was meant by the term "acquitted." For instance, if he were charged with armed robbery and found guilty of unarmed robbery, would he have been "acquitted" of the armed robbery charge?

Representative Haas asked if there were any states which had a provision similar to the one he was advocating and was told by Mr. Paillette that he was aware of none but he had not studied the matter.

Chairman Yturri asked Mr. Paillette to research the question and if a feasible solution could be found, the subject could be reconsidered with a view to including it in the bill to be submitted to the legislature. Representative Haas said he would be satisfied with that approach.

Judge Burns asked Mr. Paillette what sort of expenditures could not be recovered as costs under the language of section 9. Mr. Paillette replied that it would not include district attorneys' salaries, sheriffs' salaries, jurors' fees, police investigations, etc. This was set forth in the second sentence of subsection (2), he said.

Representative Frost commented that recovery of this money in some respects became an additional penalty because it made the man who was able to pay, pay more than the man who could not pay. The individual in the middle income bracket charged with a crime was far worse off than the indigent who was provided with an attorney and everything he needed to defend his case.

Mr. Chandler moved approval of section 9. Motion carried. Voting for the motion: Judge Burns, Carson, Chandler, Jernstedt, Knight, Young, Mr. Chairman. Voting no: Senator Burns, Frost, Haas.

Section 10. Time and method of payment of fines and costs. Mr. Chandler moved that section 10 be approved. Motion carried unanimously. Voting: Judge Burns, Carson, Chandler, Frost, Haas, Jernstedt, Knight, Young, Mr. Chairman.

Section 11. Consequences of nonpayment of fines or costs. Mr. Paillette explained that section 11 was included at the direction of the subcommittee and followed generally Model Penal Code section 203.2 and section 1535 of the Michigan Revised Criminal Code.

Chairman Yturri commented that the $10 per day in subsection (4) was somewhat unrealistic and suggested the subsection provide that the amount should be fixed by the court but should be not less than $10 per day. Mr. Chandler said that as he understood the language, it meant the defendant could be credited at $10 per day but the court was empowered to increase that amount.

Judge Burns asked how long a person could be sentenced for contempt for failure to pay a $1,000 fine and was told by Mr. Paillette that the court would be limited to a sentence of 30 days, assuming the conviction was for a misdemeanor, because that would be the shorter period. If convicted of a felony, he would again be sentenced to the shorter period which would be 100 days. Judge Burns suggested the language in subsection (4) might be clarified by adding "applicable" after "shorter period."

Judge Burns observed that in light of the United States Supreme Court decisions, the question of requirement of a jury trial might arise in connection with the provision authorizing one year for contempt in a case which would probably be an indirect contempt. Mr. Paillette admitted that there was a possibility that a constitutional question as to the requirement for a jury trial might arise in cases involving imprisonment beyond six months. There was nothing, he said, either in the Model Penal Code or the Michigan commentary which spoke to that question.

Representative Frost was opposed to combining costs and fines in section 11. Fines, he said, were a penalty but costs should not be and should vary independently of fines with the type of case involved. He said he would prefer to see costs collected as a civil judgment and not as a matter of contempt or debtor's prison and urged that costs be separated from section 11. Chairman Yturri expressed agreement with Representative Frost's position.

Representative Frost moved to strike costs from the method of recovery provided in section 11 and to provide for costs to be collected under a civil judgment.

Judge Burns noted that ORS 137.180 provided for collection of costs and the commentary on page 22 of the draft stated that this section would be retained. Mr. Paillette concurred that a new statute would not be needed to collect costs in a civil manner if Representative Frost's motion were adopted.

Chairman Yturri called attention to the reference to costs in subsection (6) in section 11 and asked if this constituted a duplication. Judge Burns commented that it would do no harm to retain costs in that subsection inasmuch as it referred to instalment payments.

Vote was then taken on Representative Frost's motion and it carried. Voting for the motion: Judge Burns, Carson, Frost, Haas, Jernstedt, Knight, Young, Mr. Chairman. Voting no: Chandler.

Judge Burns moved approval of section 11 as amended and the motion carried unanimously with the same members voting as had voted on the previous motion.

Authority of Court in Sentencing; Preliminary Draft No. 2; May 1970

Section 1. Adding sections to ORS 137.010 to 137.990. Section 2. Amending ORS 137.075. Report to court and to convicted person. Mr. Chandler moved that sections 1 and 2 be approved. Motion carried unanimously. Voting: Judge Burns, Senator Burns, Carson, Chandler, Frost, Haas, Jernstedt, Knight, Young, Mr. Chairman.

Section 3. Amending ORS 137.124. Commitment of defendant to Corrections Division; place of confinement; transfer of inmates. Mr. Paillette explained that subsection (4) had been added to section 3 to give the courts legislative direction as to where to imprison misdemeanants and to give the courts flexibility for use of other correctional facilities which might be established in the future.

Representative Frost asked if "court" in subsection (4) included a municipal court and received an affirmative reply from Mr. Paillette. In that event, Representative Frost said, the subsection should say "chief of police" rather than "sheriff." Mr. Paillette agreed that the subsection should not be limited to the custody of the sheriff. Mr. Chandler suggested revising the subsection to read: " . . . commit the defendant to custody for confinement in the county jail . . . . "

Judge Burns read ORS 137.510 and moved that subsection (4) of section 3 be amended by using the language of subsection (2) of ORS 137.510.

Senator Burns asked whether it would be better to say "to the Corrections Division" rather than "to the executive head of the penal, reformatory or correctional institution designated in the judgment" as did ORS 137.510. Judge Burns explained that the purpose of the amendment was to permit the court to send the defendant to a jail or to a correctional facility if and when Oregon had a regional facility for misdemeanants. He said he was trying to avoid limiting the section to county jails and to resolve the problem Representative Frost had raised concerning municipal courts.

Senator Burns seconded Judge Burns' motion to amend section 3 and the motion carried unanimously.

Mr. Chandler expressed disapproval of subsection (3) and contended that the Corrections Division should have authority to transfer inmates from one institution to another when they ran out of space at one of the institutions.

Mr. Lemley said that the Corrections Division did transfer inmates when there was a logical reason for doing so but those reasons were not based on capacity. He suggested that subsection (2) be deleted from section 3 because it restricted the Corrections Division in making a determination as to where all inmates should be sent initially. Only inmates in this special category were required to be sent to the penitentiary, and he contended that all offenders should be committed to the custody of the Corrections Division.

Mr. Paillette advised that this question was before the legislature in 1967 and the decision at that time was that certain defendants should not be sent to OCI.

Mr. Chandler believed that all defendants should be sentenced to the Corrections Division and Judge Burns concurred.

Mr. Chandler moved to delete subsection (2) and the first clause of subsection (3) so that subsection (3) would begin: "The Corrections Division may transfer inmates . . . . " Judge Burns seconded the motion and it carried unanimously.

With respect to subsection (4) of section 3, Mr. Chandler declared that the county jails in about 3/4 of the counties of the state were very poor and the city jails were even worse in many instances. It was, he said, bad enough to lock up a person in one of these jails overnight but it was deplorable to place him there for the purpose of teaching him the error of his ways. Many of the jails were unattended at night and if a fire started, every prisoner would die. At the present time it was not possible to send a misdemeanant to OCI but he maintained that if OCI had the capacity, counties should be permitted to board misdemeanants there. Subsection (4), he said, was far too restrictive because it was confined to existing jails which were below the level of the state's correctional facilities.

Chairman Yturri commented that a separate statute would be needed to permit a misdemeanant to be temporarily a ward of the state and this question could not be resolved at this time, one reason being that space did not exist at OCI for all the misdemeanants in the state.

Mr. Chandler then moved adoption of section 3 as amended. The motion carried unanimously.

Section 4. Reduction of Class C felony or criminal dealing in drugs to misdemeanor; authority of court. Mr. Paillette explained that section 4 encompassed the so-called "indictable misdemeanor" and was limited to Class C felonies and one Class B felony -- "criminal activity in drugs." That section, he said, had originally been labeled "criminal dealing in drugs" and section 4 should be corrected

in both the title and the body of the section to conform to the new title of "criminal activity in drugs." The majority of the felonies, he said, had been classified as Class C and section 4 provided a general statute for the indictable misdemeanor without having to deal with each crime individually.

Judge Burns said he wanted to make sure that the commentary made it clear that the power of the court in section 4 existed not merely at the initial sentencing stage but that it continued to exist through any probationary stage or period of suspension of imposition of sentence so that if a person were convicted of possession of marihuana, for instance, he could be placed on probation and at sometime during the probation period or at the conclusion of that period, the court could enter a judgment of conviction for a Class A misdemeanor. He also wanted to make sure that if the defendant were placed on probation and his probation later revoked, the court would retain jurisdiction to treat him as a felon.

Chairman Yturri recalled that the Subcommittee on Sentencing and Grading had discussed that point at considerable length and the approach just outlined by Judge Burns was the one adopted by the subcommittee.

Mr. Paillette advised that once the court had said that the defendant was convicted of a felony, section 4 did not give the court authority to later change its mind and make that conviction a misdemeanor.

Judge Burns said that the situation just outlined by Mr. Paillette was not his concern. He understood that if the conviction were for possession of marihuana, the court sentenced the defendant to five years at OCI, suspended execution and placed him on probation, that sentence could not later be reduced to a Class A misdemeanor. However, if the court suspended imposition of sentence and placed the defendant on probation for five years, he wanted to make certain that sometime during that five year period, the court would be able to say the conviction was for a Class A misdemeanor.

Chairman Yturri observed that this was the understanding of the Subcommittee on Sentencing and Grading and asked that Mr. Paillette add this discussion to the commentary.

Judge Burns moved that section 4 be approved. Motion carried.

Section 5. Criteria for discharge of defendant. Judge Burns wanted to be sure section 5 was clear that the discharge of a defendant could occur at a time later than the initial sentencing process and at a time after the defendant had been placed on probation. Mr. Paillette indicated this had been discussed in connection with section 2 of the Article on Authorized Disposition of Offenders at which time the provisions of section 9 of the Article on Classes of

Offenses were also examined. [See pages 24 and 25 of these Minutes.] Chairman Yturri requested Mr. Paillette to clarify this point in the commentary.

Tape 4 begins here

Senator Burns moved approval of section 5 and the motion carried.

Section 6. Criteria for sentencing of dangerous offenders. Mr. Paillette advised that section 6 was derived from the Model Sentencing Act and would repeal the habitual criminal act. Senator Burns added that section 6 would contain the only enhanced penalty provision in the proposed Criminal Code. In some instances, he said, it took a harder line than did the habitual criminal act although this was not generally true of the proposal.

Following the discussion of section 7, Senator Burns moved to approve section 6 and the motion carried unanimously.

Section 7. Dangerous offenders; procedure and findings. Mr. Paillette indicated that section 7 was a companion to section 6. It set up the procedure for examination of the dangerous offender and also provided for a hearing. It required no filing of an information by the district attorney but did present a method of dealing with the first offender if he fell into the dangerous offender category.

Mr. Knight asked if it was up to the district attorney to raise the question as to whether the defendant was a dangerous offender. Mr. Paillette answered that this would probably be the usual procedure but it was not required; the court could raise the issue.

Senator Burns proposed to have the first sentence of subsection (1) read "the court may order a presentence investigation" rather than "shall order." Mr. Paillette indicated that the language requiring the presentence investigation was included as an additional protection for the defendant.

Mr. Chandler suggested that the court be required to have a presentence investigation for all Class A, B and C felonies. Judge Burns commented that he would prefer the language of the federal statute which required presentence investigations except under certain conditions.

Representative Frost said there were many cases which required no presentence investigation -- those involving check writers, for example -- and there was no reason to hold those defendants in the county jail pending completion of a report. Mr. Paillette added that there were some counties where as a practical matter the reports were virtually impossible to obtain. Chairman Yturri said he was under the impression that every county had access to the necessary facilities. Mr. Lemley said this was true in theory but if every judge required an investigation for every case, the Corrections Division would need a great deal more manpower to meet the workload.

Mr. Chandler commented that he could see valid reasons for not requiring an investigation in every case but there were two or three judicial districts in the state where they were never requested and in many of those cases they should be required.

Representative Frost asked the length of time involved in obtaining a presentence investigation and was told by Judge Burns that the average time was from six weeks to sixty days. When the defendant was in custody, he said, there was no problem in waiting for the report but the situation presented some difficult problems when he was not in custody.

Mr. Paillette said that the subcommittee felt that in the dangerous offender situation, the presentence investigation should be required and the Commission agreed.

Judge Burns suggested that subsection (1) of section 7 read "the defendant may fall" rather than "the defendant falls." He said the court would be unable to tell whether he fell within section 6 until the psychiatric report was received. He then moved to amend section 7 (1) to read " . . . the defendant may fall within section 6 . . . . " Mr. Chandler pointed out that the subsection read "Whenever there is reason to believe" which in effect meant "may." Motion failed.

Mr. Chandler moved approval of section 7. Motion carried.

Proposed Amendments to Theft and Related Offenses; Tentative Draft No. 1

Section 2. Consolidation of theft offenses; pleading and proof. Mr. Paillette explained that theft offenses had been consolidated by the Theft Article and the proposed section 2 would spell out the procedural consequences of that consolidation. In effect, it said that no matter what kind of theft was committed, any charge of theft would be sufficient without designating the particular type of theft which was used in committing the crime. The only exception would be theft by extortion, which was graded as a Class B felony rather than a Class C felony as were the other types of theft, where a pleading and proof of theft by extortion would be required. The section, he said, was designed to abolish all the pleading problems inherent in the confusing distinctions between larceny, larceny by trick, embezzlement, etc.

Mr. Chandler moved that section 2 be approved and the motion carried unanimously. Voting: Judge Burns, Senator Burns, Carson, Chandler, Frost, Haas, Jernstedt, Knight, Young, Mr. Chairman.

Section 3. Theft; definition. Mr. Paillette advised that only the section number was revised in section 3.

Judge Burns moved approval of section 3 and the motion carried without opposition.

Section 4. Theft in the second degree. Section 5. Theft in the first degree. Mr. Paillette indicated that sections 4 and 5 could have been designated petty theft and grand theft but inasmuch as the rest of the Code used the degree format, he had chosen to follow the same procedure with respect to theft. It moved the breaking point between first and second degree theft from $75 in existing law to $250.

Judge Burns moved approval of sections 4 and 5. Motion carried unanimously.

Section 7. Theft by extortion. Mr. Paillette explained that section 7 had been restructured to include subsection (2) grading theft by extortion a Class B felony.

Judge Burns moved that section 7 be approved and the motion carried without opposition.

Section 11. Value of stolen property. Mr. Paillette advised that the only change in section 11 was in subsection (3) where the amount of $250 had been inserted.

Judge Burns moved approval of section 11. Motion carried unanimously.

Section 13. Theft of services. Theft of services, Mr. Paillette said, was made a part of the Theft Article by section 13 and the crime was graded as a Class A misdemeanor.

Judge Burns moved that section 13 be approved. Motion carried unanimously.

Section 14. Unauthorized use of a vehicle. Mr. Paillette explained that section 14 was also included in the amendments for the purpose of consolidating the crime into the basic Theft Article. Unauthorized use of a vehicle was graded as a Class C felony.

Judge Burns moved approval of section 14. Motion carried without opposition.

Grading of Offenses

Summary of Offenses by Classification (Chart prepared May 13, 1970). Mr. Paillette outlined that the chart showing a summary of offenses by classification had been prepared to indicate the number of offenses included in each classification as recommended by the Subcommittee on Sentencing and Grading. (See Appendix A attached.)

Mr. Chandler requested an explanation of the category under "Class A felonies" labeled "Attempt to commit murder or treason" as it related to "Attempt to commit Class A felony" listed under "Class B felonies." Mr. Paillette explained that murder and treason were

treated separately in the Code because they were punishable by life imprisonment whereas every other felony was classified as A, B or C. An attempt to commit murder or treason was dropped one degree from actual commission of the offense and would therefore be a Class A felony. Likewise, an attempt to commit a Class A felony was dropped one degree to a Class B felony. He further explained that an attempt to commit any crime was dropped all the way down the line by one degree from the classification adopted for the actual commission of the crime.

Class A Felonies. Senator Burns commented that the same aggravating culpability elements had been keyed into first degree robbery and first degree burglary, yet the subcommittee had voted to classify first degree robbery as a Class A felony and first degree burglary as a Class B felony. He disapproved of this action and moved to revise the classification for first degree burglary from a Class B to a Class A felony.

Judge Burns indicated that at the subcommittee meeting he had recommended that first degree arson also be classified as a Class A felony. Mr. Knight expressed approval of reclassifying both burglary and arson in the first degree as Class A felonies and further recommended that the second degree offenses for these two categories be raised to Class B felonies. Mr. Chandler agreed that first degree arson was equally as heinous as first degree robbery and should be classified as a Class A felony.

Vote was then taken on Senator Burns' motion to classify first degree burglary as a Class A felony. Motion failed on a tie vote. Voting for the motion: Senator Burns, Chandler, Haas, Jernstedt, Knight. Voting no: Judge Burns, Carson, Frost, Young, Mr. Chairman. Senator Burns changed his vote to no and served notice that, having voted on the prevailing side, he might move to reconsider the decision of the Commission on the following day.

Judge Burns then moved that first degree arson be classified as a Class A felony. Motion carried unanimously. Voting: Judge Burns, Senator Burns, Carson, Chandler, Frost, Haas, Jernstedt, Knight, Young, Mr. Chairman. Senator Burns served notice that he might move to reconsider this vote also.

Class B Felonies. Mr. Chandler moved that second degree arson be reclassified from Class C to a Class B felony.

Mr. Paillette reminded the Commission that under second degree arson a person could be convicted of burning down an outhouse, a garage or a shed simply because "building" was defined as anything which did not fall into the category of "protected property." To

classify second degree arson as a Class B felony, he said, would be a stiff penalty for an act which might have relatively minor consequences.

Mr. Chandler withdrew his motion and moved to approve the list of Class B felonies as amended. Motion carried. Voting for the motion: Judge Burns, Carson, Chandler, Frost, Haas, Jernstedt, Knight, Young, Mr. Chairman. Voting no: Senator Burns.

Senator Burns explained that he had voted no because he disapproved of classifying first degree burglary as a Class B felony.

Class C Felonies. Senator Burns moved that the list of Class C felonies be approved. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Carson, Chandler, Frost, Haas, Jernstedt, Johnson, Young, Mr. Chairman. Voting no: Knight.

Other Felonies. Mr. Paillette explained that both murder and treason would carry life imprisonment penalties if the subcommittee's recommendations were accepted.

Professor Platt disagreed with the automatic imposition of a life sentence for murder. The Homicide Article, he said, had abolished degrees of murder and it was inconsistent to make all murders punishable by life imprisonment when the Homicide Article had been carefully drawn to provide flexibility in treating defendants differently for conviction of murders committed under differing circumstances.

After further discussion, Representative Frost moved that the penalties for treason and murder be a maximum of life imprisonment.

Judge Burns commented that if Representative Frost's motion were adopted, legislative criteria for the imposition of a lesser sentence than life imprisonment should be established in the statute. Chairman Yturri asked Professor Platt if he had any suggestions as to the type of criteria which should be established and was told that this would be extremely difficult. He suggested the solution might be to set a maximum number of years as the penalty. Senator Burns remarked that it would be better to make the penalty automatic life and impose no restrictions on the parole board as to release of the offender.

Judge Burns indicated that the present average for life sentences was 11 to 12 years in Oregon and Professor Platt observed that it could be anticipated that this practice would continue when in fact a defendant should be serving no more than two or three years under certain circumstances.

Mr. Paillette outlined that some of the Articles in the proposed Code had real bearing on the question being discussed. One of them was the Responsibility Article which contained a liberalized test for

mental disease or defect. Also, the Criminal Homicide Article contained a number of escape hatches which did not exist under present law. He called attention to ORS 144.230, amended by the legislature in 1963. This, he said, was the only area which in effect set a minimum sentence by imposing a limitation of ten years on the parole of an individual convicted of first degree murder. This matter was on the agenda for discussion on the following day, he said. Senator Burns indicated he would not vote for an automatic life sentence without voting to repeal the minimum ten year sentence in view of the fact that the present 25 year maximum was being lumped into the Homicide Article.

Vote was then taken on Representative Frost's motion to make the maximum penalty for treason and murder life imprisonment. Motion failed. Voting for the motion: Frost, Young. Voting no: Judge Burns, Senator Burns, Carson, Chandler, Haas, Jernstedt, Knight, Mr. Chairman.

Mr. Chandler then moved to approve an automatic life sentence for murder and treason. Motion carried.

Chairman Yturri observed that in view of the motion just passed, the ten year minimum in ORS 144.230 should be repealed. [See page 61 of these Minutes for action on ORS 144.230.]

Class A Misdemeanors. Judge Burns moved to approve the list of Class A misdemeanors as recommended by the Subcommittee on Grading and Sentencing. Motion carried unanimously.

Class B Misdemeanors. Senator Burns moved to approve the list of Class B misdemeanors. Motion carried without opposition.

Class C Misdemeanors. Judge Burns moved the list of Class C misdemeanors be approved. Motion carried without opposition.

Violations. Judge Burns moved to approve the list of violations as submitted. Motion carried unanimously.

The meeting was recessed at 5:45 p.m.

May 15, 1970

Members Present: Senator Anthony Yturri, Chairman
Senator John D. Burns, Vice Chairman
Judge James M. Burns
Representative Wallace P. Carson, Jr.
Mr. Robert W. Chandler
Mr. Donald E. Clark
Representative David G. Frost
Senator Kenneth A. Jernstedt
Mr. Frank D. Knight
Representative Thomas F. Young

Delayed: Attorney General Lee Johnson

Excused: Representative Harl H. Haas
Mr. Bruce Spaulding

Staff Present: Mr. Donald L. Paillette
Professor George M. Platt
Mr. Roger D. Wallingford

Also Present: Captain Raymond G. Howard, Criminal Division, Department of State Police
Mr. James Sanderson, Department of Justice

Agenda: OFFENSES INVOLVING FIREARMS AND DEADLY WEAPONS
Preliminary Draft No. 3; May 1970

PRELIMINARY
Tentative Draft No. 1; May 1970

Organization of Proposed Code; Form and Style Changes and Corrections; General Discussion of Final Draft

The meeting was reconvened at 9:30 a.m. by Chairman Yturri in Room 315 of the Capitol Building.

Offenses Involving Firearms and Deadly Weapons; Preliminary Draft No. 3; May 1970

Chairman Yturri indicated that the subject of firearms control was one of the most controversial issues to be presented to the Commission since its inception. The controversy, he said, did not arise solely from the fact that the members differed on the principles involved. Some of the aspects of the controversy revolved around the

added expense that would be involved, the question of whether or not gun control should encompass long guns as well as hand weapons, whether the provisions should be all-encompassing so that both registration and licensing would be provided for both types of weapons and a number of other considerations including the fact that in the state at large there was a great variance of opinion as to whether or not Oregon should take the step contemplated by this draft.

In order to save time and to make sure that everyone had an opportunity to be heard, Chairman Yturri suggested that the best way to approach the subject would be first to poll the Commission to determine whether or not it was the desire of the majority of the members to provide legislation within the Code itself for both long arms and handguns, and, secondly, to see whether or not the Commission wished to have both registration and licensing for the two types of weapons. Next, and equally important, was the determination as to whether or not the Commission wished to make the product of their labors on this subject an integral part of the proposed Criminal Code or whether it should be submitted to the legislature as a separate measure.

Judge Burns suggested that the order of consideration be reversed. Having experienced the difficult and lengthy subcommittee discussion on this subject, he said he was convinced that the Commission should first make the decision as to whether the Article should be included as a part of the proposed Code. His recommendation was that the entire Article on Firearms be submitted as a separate bill to the legislature. If the legislature then wanted to enact gun control legislation, it could do so. If it chose not do so, it could take the noncontroversial portions of the Firearms Article and incorporate them into the proposed Criminal Code.

Mr. Chandler observed that the policy decisions under discussion had already been made by the Commission. Secondly, he said the Commission's directive was to revise the Criminal Code and he questioned the Commission's authority to submit a separate bill to the legislature. His contention was that the Firearms Article should be included within the Code itself.

Senator Burns asked whether Judge Burns' suggestion contemplated inclusion of the Firearms Article within the printed Final Draft of the Code and was told by Judge Burns that he would propose to print the firearms proposal separately.

Senator Burns commented that regardless of the feasibility and the political significance of the proposal, he believed the Commission had a responsibility to present the proposed Code in one package and agreed with Mr. Chandler that it should not be splintered off simply because it was controversial.

Chairman Yturri indicated that the votes on the provisions of the Article could be different if it were submitted as a part of the Code than they might be if the subject were submitted to the legislature as a separate bill. Insistence that it be a part of the Code, he said, could result in some of the proposals being defeated that might otherwise be approved. With respect to Mr. Chandler's comment concerning the Commission's function to revise the criminal laws of Oregon, it was his opinion that to submit the firearms proposal separately would do no violence to the instructions from the legislature so long as the subject was presented and had been duly considered. The matter would still be before the legislature, whether or not it was a part of the Code, and the Commission would have performed its function and duty, he said.

Mr. Knight concurred that the Firearms Article should be presented separately. As a member of the subcommittee which worked on this draft, he said it was apparent that there were very great financial implications involved in gun control legislation and by submitting it separately, it would then be unnecessary to submit the entire Code to the Ways and Means Committee of the legislature.

Representative Frost, as a member of Subcommittee No. 3, expressed the view that the draft providing for gun control legislation was totally unnecessary, unworkable and horribly expensive. His personal feeling was that the best way to approach the problem was to require registration at the point of retail sale on handguns only. The existing statutes should then be considered with respect to enhanced penalties, possession, centralization of permits to carry concealable firearms and a general reworking of the statutes applying to firearms without making extreme substantive changes. He said he was firmly convinced that if the proposed Code were submitted with the Firearms Article included, it would be fatal to the passage of the Code. He indicated he would go along with submitting it as a separate document to the legislature but he would not vote in favor of the approach set out in the draft for the reason that it was technically complicated and, in his view, totally unworkable.

Representative Young expressed approval of the remarks made by Representative Frost. He agreed that this was a technical and complicated area and he could not vote in favor of any portion of the gun control proposal. His opinion was that inclusion of the Article in the code would involved a substantial risk of defeating the entire Code.

Representative Carson said he was inclined toward including the Firearms Article in the Code because if it were submitted separately, it would probably receive little consideration by the legislature.

Senator Burns moved that the gun control proposal be limited to registration and licensing of handguns only. Representative Frost said it was his understanding that the Commission would first decide whether to submit the Firearms Article separately from the proposed Code. Senator Burns withdrew his motion.

Judge Burns then moved that the Commission submit to the legislature the results of its deliberations today on the draft proposed by Subcommittee No. 3 in the form of a bill separate from the balance of the proposed Criminal Code. His motion contemplated deletion of the entire Article 28 from the Code.

Representative Carson said that if the resulting draft were watered down considerably, he would then like to have the opportunity to reconsider this question. Should the draft turn out to be nothing more than a rewrite of existing laws, there was no point in placing it outside the Code, he said. Judge Burns concurred that if his motion were adopted and thereafter the Commission deleted most of the proposed draft, the decision to submit the subject separately should then be reconsidered. The Chairman acknowledged that this reconsideration would be entirely in order.

Vote was taken on Judge Burns' motion and it carried. Voting for the motion: Judge Burns, Clark, Frost, Jernstedt, Knight, Young, Mr. Chairman. Voting no: Senator Burns, Carson, Chandler.

Mr. Clark explained that he had voted in favor of the motion because he believed that there would be a better chance of approving a strong piece of legislation if the proposal were submitted apart from the Code.

Representative Frost moved that the consideration of licensing and registration of firearms be confined to handguns and not include long guns. In effect, he said, this was a restatement of Senator Burns' earlier motion which had been withdrawn.

Mr. Chandler spoke in opposition to the motion and called attention to three articles appearing in today's issue of the Oregon Statesman which outlined offenses involving dangerous weapons. The problem of firearms, he said, was a serious national problem. He admitted that the problem was growing fastest in the field of handguns where the sale of handguns had quadrupled in the last six years; long guns, however, posed an equally serious problem so far as killing people was concerned.

Mr. Clark concurred with Mr. Chandler's remarks. He noted that the proposed draft looked with disfavor on long guns and with even more disfavor on handguns, a view which was in accord with the statistics showing that handguns were more of an evil than long guns. He was in favor of this approach and said he would rather see the Commission pass no gun control legislation at all than to emasculate the approach adopted by the draft.

Vote was then taken on Representative Frost's motion. Motion failed. Voting for the motion: Frost, Jernstedt, Young, Mr. Chairman. Voting no: Judge Burns, Senator Burns, Carson, Chandler, Clark, Knight.

Representative Frost next moved that consideration of gun control legislation be limited to registration of handguns at the point of retail sale only. Motion failed. Voting for the motion: Frost, Jernstedt, Young, Mr. Chairman. Voting no: Judge Burns, Senator Burns, Carson, Chandler, Clark, Knight.

Introductory Commentary. Mr. Paillette called attention to the sources which had been consulted in formulating the draft as set forth on page 5 of the commentary. The draft, he said, did not follow the legislation of any one state, one reason being that the background of Oregon law was different from that of other states. The one area which had given the subcommittee the most difficulty was the Fifth Amendment problem which was also discussed on page 5 of the commentary.

Mr. Wallingford advised that sections 2 to 10 of the Article contained the basic gun control provisions. In effect, they required all firearm owners of both handguns and long guns to apply for and be issued a firearm permit which would be valid permanently unless the owner became subject to one of the disabilities outlined in the draft. Secondly, the draft would require all firearm owners who had a permit to register any handguns they owned with the State Police and they would be issued a certificate showing that the handgun was registered. After the issuance of that handgun certificate, if the handgun were transferred -- sold or given to another -- it would have to be reregistered. Theoretically, once all the handguns in the State of Oregon were registered, they would thereafter be registered in the name of the lawful possessor.

Suggestions by Mr. James Sanderson, Department of Justice. Chairman Yturri indicated that Mr. Sanderson was present at today's meeting and had some suggestions he wished to make for revision of the draft.

Mr. Sanderson explained that he was not representing the Attorney General's office but was expressing his personal interest in gun control legislation. His recommendations were:

Section 3 (1) (b): In light of the broad definition of "transfer" which included loaning a gun, a man going pistol shooting with his wife would violate the statute by letting his wife shoot the gun when she did not have a firearm permit. The draft contained a provision that an unemancipated child (section 2 (8)) could shoot a pistol without violating the statute and suggested that "other relative" be added.

Section 5: Should specify how long the permit will be valid. Mr. Paillette acknowledged this was a drafting error which would be corrected.

Section 8 (3) and (4) and section 21 (1) (b): Provisions regarding disposal of firearms if permit revoked require disposition within 10 days. Situation should be covered where a satisfactory buyer cannot be found within a 10 day period. He suggested the statutes say "reasonable time" and leave the period of time to the court's discretion.

Section 13 (1): Section stated "may" which was a discretionary standard. Suggested adding a sentence to the effect that if the Department refused to issue a license, that decision should be reviewable by the circuit court. Judge Burns indicated that the courts had too much to do to require a review procedure in this area where one did not presently exist.

Section 13 (3): To eliminate paperwork with no reduced benefit, eliminate the phrase "including the information set forth in subsection (1) of section 9 of this Article."

Section 25 (3): Section 2 provided for carrying concealed weapons while on duty. Many police organizations had regulations providing that their members carry weapons while on or off duty and he saw no benefit in requiring an officer to carry a concealed weapon permit in order to carry his gun while off duty. Suggested this requirement be eliminated.

Mr. Johnson arrived at this point.

Testimony of Captain Raymond G. Howard, Department of State Police. Chairman Yturri next asked Captain Howard to speak to the Commission with respect to the cost of the administration of a gun control program.

Captain Howard said that when House Bill 1546 was introduced to the 1969 Legislative Assembly, the Department of State Police made a survey of the approximate cost of administering the program and estimated it would cost $372,890 for the 1969-71 biennium. They also communicated with various states to determine their experience so far as this type of legislation was concerned and found that in New York there were more than 741,000 permits issued and 75,697 permits had been processed during the year of 1967. The total firearm registration program proposed in New York failed of legislative approval but under the proposed bill the cost of implementation was estimated at $51,000,000 with revenue estimated at $9,000,000 from permit fees.

Illinois enacted an identification card system in connection with firearms registration and estimated it would cost $1,103,000 to implement that legislation.

New York City budgeted $570,780 for their 1968-69 Firearms Control Act but estimates of cost of investigation alone were between $900,000 and $1,500,000 which was approximately $72.80 per applicant.

Captain Howard said that in Michigan as of October 1, 1968, there were 1,134,869 pistol registrations on file with the State Police. This state processed 7,000 permits per month requiring an annual expenditure of $40,000 with planned computerization of permit records anticipated to increase the cost substantially.

Converting these figures into terms which might be applicable in Oregon, Captain Howard said they estimated their cost on the basis of 500,000 weapons with 49% of the households in Oregon owning firearms which included both long and short guns and was probably a conservative estimate.

Mr. Clark pointed out that the cost estimates by the State Police were prepared in connection with HB 1546. That bill required fingerprinting and this was not one of the requirements contained in the draft under consideration. Senator Burns commented that the $372,000 State Police estimate would be less under the draft than under HB 1546 for the added reason that the bill included registration of both long and short guns.

Captain Howard indicated that in New Jersey as of November, 1968, there were 290,419 guns registered with the State Police consisting of 18,275 rifles, 9,225 shotguns and 262,919 handguns. The division employed eight state police and nine clerical personnel. They estimated the cost of processing at 35 cents per applicant for wages only and four clerk-typists processed 50 applications each work day.

Mr. Johnson asked if statistics showed that there were fewer crimes committed with long guns than with handguns and was told by Captain Howard that it was not uncommon to commit homicide with rifles. Handguns were the most usual weapon used in committing crimes but on many occasions .22 rifles were used with success.

Senator Burns asked Captain Howard if the State Police had contemplated in connection with the administration of HB 1546 that a central registry would be established in Salem and received an affirmative reply. Senator Burns then asked if it was envisioned that the records would be computerized and was told that ultimately they would be computerized but in the interim the records would be maintained in a hard file.

In response to Mr. Johnson's question concerning crimes committed with long guns as opposed to handguns, Mr. Paillette read from the booklet "Firearms and Violence in American Life," a staff report to the National Commission on the Causes and Prevention of Violence. The report said, "Although only about 27 percent of the firearms in this country are handguns, they are the predominant firearm used in

crime." The following statistics were quoted with respect to handguns and long guns in crimes involving firearms in the United States in 1967:

Homicide:	Long guns	24%
	Handguns	76%
Aggravated assault:	Long guns	14%
	Handguns	86%
Robbery:	Long guns	4%
	Handguns	96%

Mr. Chandler stated, and Mr. Clark concurred, that the benefits of gun control legislative would be cumulative and it would take several years before the effect of such legislation would be noticeable.

Section 1. Offenses involving firearms and deadly weapons; definitions. Judge Burns suggested that the Commission could progress faster by beginning with section 2 and returning to the definitions as they arose in the discussion. He called attention to the definition in subsection (2) of section 1 which defined an antique firearm as one manufactured prior to 1898. This definition, he said, was derived from the federal law and the subcommittee did not know why that particular date had been chosen.

Section 2. Firearm permits and handgun registration certificates; exempted persons. In reply to a question by Senator Burns, Mr. Wallingford explained that subsection (6) exempting district attorneys and the Attorney General's investigators from the provisions of section 2 had been included at the recommendation of the Attorney General's office.

Senator Burns asked if the phrase "or otherwise engaged in other law enforcement related duties" would include a Pinkerton detective charged with maintaining security at a furniture company and a campus policeman at Portland State. Mr. Paillette replied that the Pinkerton detective would not fall within the exemption but the campus policeman would because of the definition of "peace officer."

Mr. Chandler pointed out that all the subsections of section 2 referred to exempted persons with the exception of subsection (5) which referred to a firearm and suggested that the title of the section be amended so that antique firearms themselves were not called exempted persons. Mr. Paillette suggested that the title be amended to say "exemptions" rather than "exempted persons." Mr. Chandler so moved and the motion carried unanimously.

Mr. Chandler moved that section 2 be approved as amended.

Senator Jernstedt asked if the Article would apply to weapons that were plugged or had the bolt removed which were kept for sentimental reasons. Judge Burns replied that the definition of "firearm" in section 1 (8) would include such a weapon because it would be readily convertible to use.

Representative Young noted that subsection (7) of section 2 excepted firearm ammunition and asked if ammunition were controlled elsewhere in the Article. Judge Burns pointed out that section 3 (1) (a) prohibited acquiring or transferring ammunition without a firearm permit. Mr. Wallingford explained that the theory of this provision was that no one would have ammunition if he did not have a firearm.

Judge Burns pointed out that there were a number of areas in section 2 which were capable of creating dispute, such as the provisions applicable to nonresidents and to unemancipated minors.

Senator Burns asked if "case" in subsection (10) (a) would include a scabbard and was told by Mr. Wallingford that it was intended to apply to any type of gun case. Chairman Yturri commented that if someone came from Idaho to engage in a trapshoot in Ontario, he would be in violation of this provision if his gun were not carried in a case. Judge Burns pointed out that the requirement to carry the gun in a case was not applicable so long as the person was in a hunting area.

Vote was then taken on Mr. Chandler's motion to approve section 2 as amended. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Knight. Voting no: Frost, Jernstedt, Young, Mr. Chairman.

Section 3. Firearm permits and handgun registration; in general. Mr. Chandler moved to approve section 3.

Senator Jernstedt asked if the subcommittee had considered the possibility of making a hunting license an automatic gun permit. Judge Burns pointed out that the draft provided that certain persons were ineligible for a permit and there had to be some mechanism for separating them; there were no similar provisions for denying hunting licenses. Mr. Knight added that the gun permit was valid for a lifetime unless the person later fell into one of the prohibited categories whereas a hunting license required an annual fee.

Vote was then taken on Mr. Chandler's motion to approve section 3. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Knight. Voting no: Frost, Jernstedt, Young, Mr. Chairman.

Section 4. Firearm permit applications; authority; form; contents. Mr. Clark moved approval of section 4.

Judge Burns pointed out that the subcommittee felt it did not have sufficient information to establish the cost of a permit fee in subsection (3) of section 4 and since the Commission had decided to submit the Firearms Article separately, it would not be improper to leave the amount blank when the bill was submitted to the legislature. Mr. Chandler commented that the Commission had made the policy decision that the fee should be set at an amount not greater than the amount required to administer the program and agreed that the amount should be left blank until such time as the State Police and the legislature had a chance to make a determination as to what it would cost to issue a permit.

Vote was then taken on Mr. Clark's motion to approve section 4. Motion failed on a tie vote but the decision was subsequently reversed. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Knight. Voting no: Frost, Jernstedt, Johnson, Young, Mr. Chairman.

Mr. Chandler stated that without section 4, the first three sections were meaningless and he objected to the fact that approval of individual sections hinged upon the votes of members who were in attendance at a given time. The arrival of Mr. Johnson, he said, had resulted in defeat of the motion and if Representative Carson returned to the meeting following his National Guard duty, sections considered during his presence would probably be approved, assuming he voted in favor of them. The Commission had earlier voted to submit the Article to the legislature, he said, and his contention was that it was a ridiculous situation to approve portions of the Article and not to approve others inasmuch as an Article drawn in that manner would be worthless.

Mr. Johnson changed his vote to "aye" but stated he would probably vote against the entire Article. Mr. Clark's motion to approve section 4 thereby carried.

Section 5. Firearm permits; when issuable; term; number of firearms authorized. Mr. Wallingford indicated that the subsection relating to the term of firearm permits had been deleted but should probably be restored as subsection (4). The subsection he proposed read:

> "Firearm permits shall be valid permanently unless revoked or suspended or until such time as the holder becomes subject to one of the disabilities set forth in section 6 of this Article whereupon the firearm permit shall be void and shall be returned by the holder to the Department within 10 days."

Senator Burns pointed out that the last line of subsection (4) should be amended by deleting "properly" and adding after "registered" "in accordance with the provisions of this Article."

Judge Burns outlined that the subcommittee had spent considerable time on the problem of the initial registration rush but was unable to find a solution. They were hopeful that through widespread publicity and repeated public announcements, the State Police would make the public aware that they were required to obtain permits within 180 days of the effective date of the Act. The subcommittee, however, had been unable to find any way to avoid the inevitable rush of those who waited until the last day or two to apply for their permit.

Mr. Chandler then moved adoption of the two amendments proposed to section 5: One, to insert as subsection (4) the provision relating to the permanence of the permit as cited by Mr. Wallingford which would necessitate renumbering the present subsection (4) as subsection (5); and, secondly, to revise the last line of the section to read: " . . . shall be registered in accordance with the provisions of this Article." Motion carried.

Mr. Chandler moved adoption of section 5 as amended. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Knight. Voting no: Frost, Jernstedt, Young, Mr. Chairman.

Section 6. Persons ineligible to obtain a firearm permit. Chairman Yturri pointed out that subsection (6) provided that a person whose firearm permit was denied, revoked or suspended was not eligible to reapply for a permit for three years. If he were denied because he was 17 when he applied, he asked if he would then have to wait three years before he could receive a permit. Mr. Wallingford explained that the second sentence in subsection (6) was intended to apply only to a situation where a person had used a fictitious name or made a material misrepresentation in his application. If a person had been denied because he was 17 but had made no misrepresentation, he would not have to wait for the three year period to expire. However, if he applied at 17 and said he was 19 and was denied for that reason, he would have to wait three years to be eligible for a permit.

Judge Burns pointed out that section 6 contained troublesome areas as well as an inconsistency in that a person could not get a firearm permit if he were less than 18 which was inconsistent with the requirement for a hunting license. Under section 7 he could obtain a restricted long gun permit if he were 15 or older provided he had his parent's permission. Also, while out hunting, if the parent loaned his gun to his son, that would be a permissible transfer at any age. Representative Frost pointed out that under the age of 15 a child could only hunt with his parent or guardian; he could not go hunting alone.

Representative Young asked if the Department of State Police was empowered to make the finding as to denial of a firearm permit based on a physical defect under subsection (3) of section 6. Judge Burns

replied that the Department would make that initial determination although provisions were included for review of that decision.

The Commission recessed for lunch at this point and reconvened at 1:15 p.m.

Members Present: Senator Anthony Yturri, Chairman
Senator John D. Burns, Vice Chairman
Judge James M. Burns
Mr. Robert W. Chandler
Mr. Donald E. Clark
Senator Kenneth A. Jernstedt
Attorney General Lee Johnson
Mr. Frank D. Knight
Representative Thomas F. Young

Staff Present: Mr. Donald L. Paillette
Professor George M. Platt
Mr. Roger D. Wallingford

Section 6 (Cont'd). Mr. Clark moved that section 6 be approved. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Johnson, Knight. Voting no: Jernstedt, Young, Mr. Chairman.

Section 7. Persons eligible for restricted firearm permit. Mr. Wallingford explained that section 7 carved out those classes of individuals who would be eligible for a restricted firearm permit.

Senator Burns inquired why seven years was chosen in subsection (1) (a) and was told by Mr. Wallingford that the figure was taken from the habitual criminal act. Senator Burns was of the opinion that seven years was too long but since there was little support for his position among the other members, he declined to move to reduce the period to three years.

Mr. Clark moved approval of section 7 and the motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Knight. Voting no: Jernstedt, Johnson, Young, Mr. Chairman.

Section 8. Firearm permits; denial; suspension; revocation. Judge Burns recalled Mr. Sanderson's suggestion that the 10 day period to dispose of firearms be lengthened. Mr. Chandler noted that under ORS 183.480 the aggrieved party could file for a court review which would in effect give him another six months to dispose of his weapons.

Judge Burns indicated the thinking of the subcommittee was that it was usual in today's society to provide judicial review for a

number of administrative activities and the members felt it was wise to build in an appellate review procedure. They therefore had decided to follow the Administrative Procedures Act to avoid writing an appellate review section.

Judge Burns moved to amend section 8 (3) to change "10 days" to "30 days" in the two places where this language appeared. Motion carried.

Judge Burns next moved to amend subsection (4) of section 8 in the same manner by deleting "10" and inserting "30". Motion carried.

Senator Burns moved to approve section 8 as amended. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Knight. Voting no: Jernstedt, Johnson, Young, Mr. Chairman.

Section 9. Handgun registration certificates; requirements; fees. After an explanation by Mr. Wallingford, Mr. Clark moved to approve section 9. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Knight. Voting no: Jernstedt, Johnson, Young, Mr. Chairman.

Section 10. Loss or theft of handgun, firearm permit or handgun registration certificate; reporting requirements. Mr. Wallingford explained that section 10 set out the reporting requirements when a handgun, firearm permit or registration certificate was lost or found.

Judge Burns moved to approve section 10. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Knight. Voting no: Jernstedt, Johnson, Young, Mr. Chairman.

Sections 11 through 30. In order to save time, Mr. Chandler moved to approve sections 11 through 30.

Judge Burns explained that most of the contents of sections 11 through 30 were a restatement of existing law and did not contain the controversial material found in the first ten sections. There was, however, a significant change in that permits to carry concealable firearms, previously issued by county sheriffs and city police chiefs, would be centralized in the Department of State Police who would under the draft issue all permits to carry concealable weapons.

Mr. Paillette added that these sections also contained three new crimes: Furnishing explosives to a minor (section 24); Defacing a firearm (section 23); and Illegal traffic in destructive devices (section 22). Judge Burns noted that the sections also contained procedural provisions plus the defenses applicable to the gun control sections.

Senator Burns asked why section 23 was limited to defacing a handgun or machine gun. He said it seemed to him it was equally wrong to remove the serial number from a rifle or a shotgun. Mr. Wallingford explained that under this Article rifles and other long guns would not be registered and there would be no way to trace a long gun back to its owner even if the serial number were available.

Senator Burns then asked if this draft retained the crime of an ex-convict in possession presently found in ORS chapter 166 and received an affirmative reply from Mr. Wallingford.

With respect to the question of transferring the issuance of permits to carry concealable weapons to the Department of State Police, Senator Jernstedt inquired how many state police offices were located throughout the state. Mr. Chandler said he did not know the number but there was at least one state police office in every county and some counties had more than one.

Chairman Yturri asked who would make the determination as to the amount of the appropriation to be required by section 30. Mr. Chandler said he assumed that decision would be made by the Ways and Means Committee during the legislative session.

Mr. Paillette asked if the Commission wished to review the grading of the crimes included in the sections describing crimes. It was determined that it was not feasible to vote on sections 11 through 30 in a block and Mr. Chandler withdrew his motion to approve sections 11 through 30.

Tape 5 begins here

Sections 11 through 13. Representative Young asked if "concealable handgun" was defined in this Article and was told by Mr. Wallingford that only "handgun" was defined and was described as a firearm having a barrel less than 12 inches in length. Representative Young asked how a sawed-off shotgun would be treated if it had been cut down to 12 1/2 inches; it would be concealable but would not qualify under the definition of handgun. Mr. Paillette replied that the draft separately prohibited carrying a sawed-off shotgun or a machine gun.

Mr. Chandler moved that sections 11 through 13 be approved. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Johnson, Knight. Voting no: Jernstedt, Young, Mr. Chairman.

Sections 14 through 24. Mr. Paillette made the following recommendations concerning grading of crimes in the Firearms Article:

Section 14.	Possession of a deadly weapon in the third degree	Class C misdemeanor
Section 15.	Possession of a deadly weapon in the second degree	Class B misdemeanor

Section 16.	Possession of a deadly weapon in the first degree	Class C felony
Section 17.	Carrying a concealed weapon in the second degree	Class B misdemeanor
Section 18.	Carrying a concealed weapon in the first degree	Class A misdemeanor
Section 19.	Illegal traffic in deadly weapons	Class B misdemeanor
Section 20.	Illegal use of firearms	Class A misdemeanor
Section 21.	Failing to comply with firearm permit or handgun registration requirements	Violation
Section 22.	Illegal traffic in destructive devices	Class C felony
Section 23.	Defacing a firearm	Class A misdemeanor
Section 24.	Furnishing explosives to a minor	Class A misdemeanor

Senator Burns moved to approve the grading recommendations of the Project Director. Motion carried.

Mr. Chandler moved to insert "January 1, 1972" in the two blanks in section 14.

Mr. Knight asked if it was anticipated that the proposed Criminal Code would go into effect 90 days after the legislative session or if it would have an effective date such as January 1, 1972. Chairman Yturri said he would expect the legislature to add a specific effective date. In view of this anticipated action by the legislature, Mr. Chandler withdrew his motion in the expectation that the legislature would insert the effective date of the Code in the two blanks in section 14.

Judge Burns moved to amend section 21 (1) (b) by deleting "10" and inserting "30" to conform to the amendment previously made to section 8. Motion carried.

Mr. Chandler then moved to approve sections 14 through 24 as amended with the offenses graded as set forth above. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Johnson, Knight. Voting no: Jernstedt, Young, Mr. Chairman.

Sections 25 through 30. Judge Burns pointed out that section 25 contained a defense for a motion picture or television studio which used destructive devices in the filming of motion pictures. Under this defense such studios would not need a permit.

Mr. Chandler expressed concern over the provisions of subsection (3) (c) of section 25 and asked who had the authority to say whether an organization was "duly authorized." Judge Burns said this was an area where the subcommittee had agreed to rely upon the county prosecutors to exercise appropriate discretion. Its chief purpose, he said, was to recognize that if a gun were carried in an American Legion parade, for example, no violation of this Article would occur.

Mr. Paillette commented that if exemptions were provided to subsection (3) (c), the problem of drawing exemptions to exemptions would be encountered and it was difficult to specify who should be excluded and who should not be excluded. The subsection was merely included, he said, to show legislative intent.

Mr. Chandler moved to approve sections 25 through 30. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Johnson, Knight. Voting no: Jernstedt, Young, Mr. Chairman.

Mr. Chandler next moved to approve the entire Firearms Article as amended. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Knight. Voting no: Jernstedt, Johnson, Young, Mr. Chairman.

Mr. Johnson changed his vote to "aye" and gave notice that, having voted on the prevailing side, he might later move to reconsider the vote by which the Firearms Article was approved.

Article 1. Preliminary; Tentative Draft No. 1; May 1970

Mr. Paillette advised that Article 1, in the form in which it was presented to the Commission today, had not been through a subcommittee although portions of it had been approved by the Commission in June, 1969.

Section 1. Short title. Mr. Paillette indicated that a short title for the Code was optional.

Mr. Johnson moved adoption of section 1 and the motion carried unanimously. Voting: Judge Burns, Senator Burns, Chandler, Clark, Jernstedt, Johnson, Knight, Young, Mr. Chairman.

Section 2. Purposes; principles of construction. Mr. Paillette advised that section 2 stated the objectives of the Code and had been approved by the Commission earlier.

Senator Burns noted that the rule of strict construction was not contained in section 2 and Mr. Paillette pointed out that ORS 161.050 abolished the common law rule of strict construction in the existing code.

Mr. Chandler moved that section 2 be approved and the motion carried unanimously.

Section 3. General definitions. Mr. Paillette outlined that section 3 had been approved by the Commission in June of 1969 and at that time the members recognized that they might at a future time want to add other definitions to this section which were used more than once in the Code. The Code contained a number of definitions which fell into this category and he raised the question at this time to see if the Commission wanted to authorize him to move definitions from other portions of the Code into section 3 if it appeared that such a transfer would avoid repeating definitions unnecessarily. He explained that a term defined in section 3 would apply to any Article contained in the Criminal Code.

Mr. Johnson moved that section 3 be approved and that Mr. Paillette be given authority to transfer definitions from other portions of the Code into section 3 of Article 1 and to make whatever internal changes were necessary to accomplish the transfers. Motion carried unanimously.

Mr. Knight referred to subsections (1) and (2) of section 3 containing the definitions of "dangerous weapon" and "deadly weapon" and called attention to the case of State v. Godfrey, 17 Or 300 (1889). When that case was decided, he said, a firearm had to have a ball and powder in it before it became a dangerous weapon and it was a time-consuming process in those days to load such a weapon. Today the question of a dangerous weapon was entirely different because a gun could have a shell in the chamber that was not in firing position but which could be placed in firing position by the flick of a lever. He urged that the commentary contain a statement that a firearm with a bullet or shell in the chamber or magazine was considered to be a loaded weapon, whether or not the ammunition was in firing position. He noted that the commentary as written stated that Oregon followed the rule that the gun had to be loaded in order to be a deadly weapon.

Mr. Paillette commented that if the weapon was specifically designed for causing death or serious physical injury, and a revolver or rifle would be, it would be considered "presently capable" of

causing death or serious physical injury and would fall under the definition of "deadly weapon." He pointed out that State v. Godfrey as well as other Oregon cases and several of the Oregon statutes used the terms "dangerous" and "deadly" weapons interchangeably whereas section 3 defined them separately and distinguished between the two. The distinction became important, he said, in the case of armed robbery where it was a first degree crime if the actor was armed with a deadly weapon. He observed that the definitions did not disturb the presumption that the weapon was loaded.

Judge Burns pointed out that the distinction between the two was contained in the terms "readily capable of causing death" in the definition of "dangerous weapon" and "presently capable" in the definition of "deadly weapon."

Mr. Paillette said that Mr. Knight's concern could be satisfied by a statement in the commentary to the effect that the Commission considered a gun which had a bullet or shell in the chamber or magazine, whether or not it was in firing position, to fall within the definition of "deadly weapon" because that weapon was "presently capable of causing death or serious physical injury." An unloaded weapon would then, in effect, be defined as one which had no ammunition in it at all. The Commission was generally agreed that the commentary should be revised to this effect.

Section 4. Defenses; burden of proof. Mr. Paillette advised that section 4 had been inserted in Article 1 to establish the distinction between an affirmative defense and a straight defense as used throughout the proposed Criminal Code.

Judge Burns asked whether the word "trial" as used in section 4 was sufficiently exhaustive. His concern was that the section might have applicability to proceedings other than trials and he suggested it might be advisable to insert "or proceeding" after "trial." Mr. Paillette replied that the terms "defense" and "affirmative defense" were used only in connection with substantive crimes and would only be applicable at trial.

Mr. Chandler moved that section 4 be approved and the motion carried unanimously.

Section 5. Application of provisions. Judge Burns moved approval of section 5. Motion carried unanimously.

Section 6. Other limitations on applicability of this Act. Mr. Paillette explained that section 6 was included because it was assumed that the proposed Criminal Code would be approved while the existing procedural code was still in effect. Section 6 was intended to make it clear that the present procedural code would govern and that the passage of the new Code would have no effect on any military jurisdiction, civil rights, rights to damages, etc.

Judge Burns moved approval of section 6. Motion carried unanimously.

Organization of Proposed Code; Form and Style Changes and Corrections; General Discussion of Final Draft

Mr. Paillette explained that in reviewing the proposed Code he had discovered some areas which needed clarification and policy decisions by the Commission.

Forgery and Related Offenses; Tentative Draft No. 1; June 1969. Mr. Paillette recalled that the Commission had discussed the sections on possession of forgery instruments and devices and had eliminated certain sections from the Forgery Article relating to these devices with the thought that they would be covered under a general section in the Inchoate Crimes Article. This, however, was not the approach the subcommittee or the Commission had adopted under the Inchoate Crimes Article which meant that, except for those instances where a person might be charged under an attempt if it could be shown that possession of a certain type of instrument was a "substantial step," there were certain substantive offenses which were covered under existing law that would not be covered by the proposed Code. Under Preliminary Draft No. 2 of the Forgery Article the following sections were included:

Section 4. Criminal possession of a forged instrument in the second degree

Section 5. Criminal possession of a forged instrument in the first degree

Section 6. Criminal possession of a forgery device

Mr. Paillette advised that a section on possession of burglary tools had been retained. He emphasized that he was not attempting to urge that the above listed sections be adopted but inasmuch as they had been deleted with the expectation that they would be covered elsewhere, he was calling the matter to the Commission's attention so the members could decide whether they wanted to reinsert those sections in the Forgery Article. Professor Platt agreed that there was no inchoate crime of possession except for burglary tools.

Mr. Chandler moved that Tentative Draft No. 1 of the Article on Forgery and Related Offenses be amended by restoring thereto sections 4, 5 and 6 of Preliminary Draft No. 2 of that Article. Motion carried.

There being no objection, Chairman Yturri directed that Mr. Paillette grade the three offenses just approved in accordance with similar offenses in the Code.

ORS 164.392. Detention and interrogation of person suspected of shoplifting; "reasonable cause" as defense to action for false arrest, etc. Mr. Paillette explained that the proposed Criminal Code repealed shoplifting as a separate substantive offense and it would be treated the same as any other kind of theft. ORS 164.392, he said, allowed a peace officer to detain certain individuals who were suspected of shoplifting and exempted them from a civil or criminal action for slander, false arrest, etc. A similar provision was not contained in the proposed Code.

Judge Burns suggested this statute be transferred to ORS chapter 30 or an appropriate chapter in the civil code. The legislature should then be made aware of this action so they could take other steps if they chose to do so.

Judge Burns asked if false imprisonment were included as a crime in the proposed Criminal Code and received a negative reply from Mr. Paillette. Judge Burns said that if there were no criminal charge that could be brought against a store detective for false imprisonment, it was not then important to retain the provisions of ORS 164.392 as a defense to a criminal charge; its only importance would be as a defense to a civil charge in which event the statute should be in the civil code.

Chairman Yturri commented that in order to flag the section for prosecutors, attorneys and the legislature, the commentary should show the disposition made of the section.

Mr. Paillette remarked that the merchants would be particularly interested in this area of the law since it involved the question of what they could do about detaining someone in the store who had been picked up for shoplifting.

Senator Burns suggested that Mr. Paillette transfer ORS 164.392 to the appropriate chapter of ORS after discussing the matter with Legislative Counsel. Mr. Clark so moved. Motion carried.

ORS 163.130. Conviction of murder on confession. Mr. Paillette advised that the proposed Criminal Code would repeal everything in ORS chapters 161 through 168 and two sections of 169. This raised a procedural problem as to what happened when a man entered a plea of guilty to murder. ORS 163.130 said that when the defendant was convicted upon his own confession, the court shall hear the proof and determine the degree of murder. In view of the fact that the proposed Code would abolish degrees of murder, he asked if the Commission still wanted the court to hear the proof on confession.

Mr. Knight commented that since there was an automatic life sentence, the court would not need to hear the proof and Judge Burns agreed that the statute was unnecessary.

Professor Platt called attention to the constitutional limitations set forth in two United States Supreme Court decisions which involved procedures to be followed by a court prior to accepting a guilty plea. The two cases he cited were Boykin v. Alabama, 395 US 238 (1969), and McCarthy v. U.S., 394 US 459 (1968). Judge Burns said he did not believe there had been a case where the Court held that the judge was required to have a defendant detail the circumstances of the event before accepting the plea. However, the Boykin case came close to that requirement.

Mr. Paillette observed that when the Commission revised the procedural code, they could consider the standards for guilty pleas formulated by the ABA.

Judge Burns suggested that ORS 163.130 be transferred temporarily to ORS chapter 135 or 136 bearing in mind that those chapters would be revised during the course of the procedural revision. Mr. Paillette noted that the reference to degrees in that statute should be deleted.

Senator Burns expressed the view that Judge Burns' suggestion was appropriate and moved that ORS 163.130 be transferred temporarily to ORS chapter 135 or 136 pending the Commission's revision of those chapters.

Professor Platt was of the opinion that the system would operate without ORS 163.130 because judges were aware that they could not simply accept a plea of guilty to any crime, let alone murder, without observing due process requirements.

Senator Burns withdrew his motion and Judge Burns moved to repeal ORS 163.130 with a statement in the commentary as to why it had been repealed and a declaration that the entire matter would be considered when the procedural code was revised. The commentary should further state that in the interim it was the Commission's understanding that the only legitimate way in which a judge could accept a plea was to have the defendant detail the circumstances of the event and if the circumstances did not add up to all the material elements, the judge would reject the plea.

ORS 165.140. Evidence admissible to prove forgery. Mr. Paillette pointed out that ORS 165.140 referred to a procedural matter and should probably be transferred to the trial section of ORS if the Commission wished to retain it.

Judge Burns moved that ORS 165.140 be transferred to ORS chapter 136. Motion carried.

ORS 136.610. General or special verdict; verdict to be unanimous; exceptions. Mr. Paillette called attention to subsection (2) of ORS 136.610 requiring a unanimous verdict in a criminal action. The reference to "otherwise provided" in that statute, he said, pertained to Article I, section 11, of the Oregon Constitution which allowed a 10 - 2 verdict in circuit court but required a unanimous verdict for first degree murder. He suggested that ORS 136.610 be amended to make it clear that a unanimous decision was required for murder so there would be no conflict with the Constitution. Any court faced with this problem, he said, would probably say that the effect of murder under the new Code was the same as first degree murder because it provided for life imprisonment and a 10 - 2 verdict would not be allowed.

Mr. Knight asked if the proposed Constitution made any change in this provision and received a negative reply from Mr. Chandler.

Judge Burns was of the opinion that rather than amend ORS 136.610, all that was needed was a statement in the commentary to the effect that murder under the new Criminal Code would require a unanimous verdict in order to support a finding of guilty. Mr. Clark moved approval of Judge Burns' proposal. Motion carried. Voting for the motion: Judge Burns, Senator Burns, Chandler, Clark, Jernstedt, Johnson, Young, Mr. Chairman. Voting no: Knight.

Judge Burns commented that one of the ramifications of this statute was that if a criminal case were tried in circuit court with six people on the jury, technically it had to be a unanimous verdict whereas when there was a 12 man jury, the verdict could be 10 - 2. He suggested that it might be desirable to amend the statute to provide that a 5 - 1 verdict would be acceptable in criminal cases. This matter was discussed but no action was taken at this time. The question, however, was given further consideration shortly thereafter when Mr. Knight pointed out that if the revised Constitution passed, a unanimous verdict would not be needed except in capital cases. He said he could see no reason for one or two persons to hang up a murder verdict and urged that the statute conform to the revised Constitution which said that verdicts of 5/6 of the jury could be authorized by law except for capital cases which would have to be unanimous.

Judge Burns noted that the language of the revised Constitution would automatically require all verdicts to be unanimous because that was the way the statutes read at the present time. Mr. Paillette commented that the Commission could not assume at this point that the proposed Constitution would be approved by the voters. Mr. Knight agreed but added that if the Constitution were changed to no longer require a unanimous verdict, the statute should not be in conflict. Judge Burns objected to making recommendations conditioned upon passage of the proposed Constitution.

Having voted on the prevailing side, Senator Burns moved to reconsider the vote by which the Commission required that verdicts in all murder cases be unanimous. Motion carried.

Mr. Knight moved that a 5 - 6 verdict be required in murder cases only. Motion failed on a tie vote. Voting for the motion: Senator Burns, Chandler, Jernstedt, Knight. Voting no: Judge Burns, Clark, Young, Mr. Chairman.

ORS 144.230. Eligibility for parole of person convicted of first or second degree murder. Mr. Paillette advised that ORS 144.230 provided that a person convicted of murder in the first degree was not eligible for parole until he had served 10 years of his sentence, and one convicted of murder in the second degree was not eligible until he had served seven years of his sentence.

Senator Burns moved that ORS 144.230 be repealed. Motion carried.

ORS 165.415. Misrepresentations of pedigree; mutilation of certificate or proof of pedigree. Mr. Paillette said the staff recommendation was that ORS 165.415 be transferred to ORS chapter 605, Breeding of Animals. Judge Burns so moved and the motion carried unanimously.

ORS 167.055. Jurisdiction of circuit courts over offenses against children under 16. Mr. Paillette read ORS 167.055 and suggested that it be transferred to the procedural code. Judge Burns explained that the purpose of this statute was to avoid the necessity of preliminary hearings in sex cases involving children.

Mr. Clark moved that ORS 167.055 be retained and transferred to the procedural code. Motion carried.

Initiating a false report and Falsely reporting an incident. The next question concerned a duplication in that section 12 of the Article on Riot, Disorderly Conduct and Related Offenses covered the crime of "Falsely reporting an incident" while section 8 of the Article on Perjury and Related Offenses covered the crime of "Initiating a false report."

Mr. Wallingford explained that section 12 of the Riot Article was in effect a form of disorderly conduct and one suggested solution to the problem would be to add a subsection (8) to section 5 of the Riot Article relating to disorderly conduct. The mens rea of that section was intent to cause public inconvenience, annoyance or alarm or recklessly create a risk thereof. If this suggestion were adopted, subsection (8) would read:

"(8) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency."

Mr. Wallingford advised that section 8 of the Perjury Article, Initiating a false report, covered most everything that was covered in the two sections together. He recommended that section 8 be removed from the Perjury Article and transferred to the Article on Obstructing Governmental Administration. In reply to a question by Judge Burns, Mr. Wallingford advised that if only the suggestion set forth above were adopted, it would not be a crime to report falsely when the report was not reported or meant to be transmitted to a public agency.

After further discussion, Mr. Clark moved that the disorderly conduct statute be amended by adding subsection (8) as set forth above and that section 8 of the Perjury Article be transferred to the Article on Obstructing Governmental Administration. Motion carried unanimously.

Criminal impersonation. Mr. Paillette recommended that section 9 of the Article on Perjury and Related Offenses entitled "Criminal impersonation" be transferred to the Article on Obstructing Governmental Administration. Judge Burns so moved and the motion carried unanimously.

Offenses Against Privacy of Communications. Mr. Paillette indicated that the Commission had not decided the crimes for which they would permit an eavesdropping warrant to be issued. The staff recommended that eavesdropping warrants be issuable for any of the following crimes:

Any felony and the following misdemeanors: Promoting gambling in the second degree, possession of gambling records in the second degree, possession of a gambling device, tampering with a witness, tampering with physical evidence and harassment.

After further discussion, Mr. Clark moved to adopt the staff's recommendation as set forth above. Motion carried unanimously.

Final Draft. Mr. Paillette indicated that this month's issue of the Oregon State Bar Bulletin would contain a notice about the Final Draft of the proposed Criminal Code stating that copies could be reserved at $5 each.

Professor Platt commented that in Illinois copies of the final draft of the criminal code became very scarce after the law went into effect and it later became a virtual impossibility to obtain a copy. Mr. Paillette advised that the Commission had earlier decided to order

3,500 copies and the members reaffirmed this decision.

Mr. Paillette then discussed the Foreword which would be included in the Final Draft. It would, he said, contain material similar to that appearing in the Commission's report to the 1969 Legislative Assembly containing information on background, organization, etc., with appropriate acknowledgments of the assistance received from other organizations and states.

Judge Burns suggested that when the Foreword had been drafted, it be circulated to every member of the Commission and if anyone then had specific proposals to make, they should discuss them either with the Chairman or with Mr. Paillette. The Commission agreed to this procedure.

Next Meeting

Chairman Yturri asked Mr. Paillette what his estimate would be as to the date of commencement of work on the procedural code so that the members would have an approximate idea of the date of the next Commission meeting. Mr. Paillette said he expected to prepare an outline of work to be undertaken with suggested priorities and the first meeting on the procedural code might be sometime in July or early August.

Mr. Chandler commented that the next meeting would be largely exploratory in nature and inasmuch as it would probably not necessitate transporting a large volume of materials, he suggested that it be held in Bend.

Budget

Chairman Yturri explained that the Commission was required to submit a preliminary budget and he had instructed Mr. Paillette to prepare one on the same basis as the previous budget. The final budget did not have to be submitted until September and the Commission would therefore have time to act on it at a future meeting.

The meeting was adjourned at 3:30 p.m.

Respectfully submitted,

Mildred E. Carpenter, Clerk
Criminal Law Revision Commission

OREGON CRIMINAL LAW REVISION COMMISSION
311 Capitol Building
Salem, Oregon

SUMMARY OF OFFENSES BY CLASSIFICATION

(As of May 13, 1970)

CLASS "A" FELONIES:

Attempt to commit murder or treason
Soliciting murder or treason
Conspiracy to commit murder, treason or Class A felony
Kidnapping - 1st degree
Rape - 1st degree
Sodomy - 1st degree
Robbery - 1st degree

Total: 7

CLASS "B" FELONIES:

Attempt to commit Class A felony
Soliciting Class A felony
Conspiracy to commit Class B felony
Manslaughter
Assault - 1st degree
Kidnapping - 2d degree
Rape - 2d degree
Sodomy - 2d degree
Theft by extortion
Burglary - 1st degree
Arson - 1st degree
Robbery - 2d degree
Bribe giving
Bribe receiving
Escape - 1st degree
Compelling prostitution
Criminal activity in drugs

Total: 17

SUMMARY OF OFFENSES BY CLASSIFICATION
(As of May 13, 1970)

CLASS "C" FELONIES:

Attempt to commit Class B felony or unclassified felony
Soliciting Class B felony
Conspiracy to commit Class C felony or unclassified felony
Criminally negligent homicide
Assault - 2d degree
Custodial interference - 1st degree
Coercion
Rape - 3d degree
Sodomy - 3d degree
Sexual abuse - 1st degree
Theft - 1st degree
Unauthorized use of vehicle
Burglary - 2d degree
Arson - 2d degree
Criminal mischief - 1st degree
Robbery - 3d degree
Forgery - 1st degree
Fraudulent use of credit card ($250 or more)
Sports bribery
Sports bribe receiving
Bigamy
Incest
Child abandonment
Criminal nonsupport
Perjury
Escape - 2d degree
Supplying contraband
Bail jumping - 1st degree
Bribing a witness
Bribe receiving by witness

Page 3
SUMMARY OF OFFENSES BY CLASSIFICATION
(As of May 13, 1970)

CLASS "C" FELONIES (CONT'D.):

Hindering prosecution
Riot
Eavesdropping
Possession of deadly weapon - 1st degree
Illegal traffic in destructive devices
Promoting prostitution
Promoting gambling - 1st degree
Possession of gambling records - 1st degree
Tampering with drug records
Obtaining a drug unlawfully

Total: 40

OTHER FELONIES:

Murder
Treason

Total: 2

CLASS "A" MISDEMEANORS:

Attempt to commit Class C felony or unclassified felony
Soliciting Class C felony or unclassified felony
Conspiracy to commit Class A, B or C or unclassified misdemeanor
Assault - 3d degree
Custodial interference - 2d degree
Sexual abuse - 2d degree
Contributing to sexual delinquency of minor
Public indecency
Theft - 2d degree
Theft of services
Possession of burglar's tools
Criminal trespass - 1st degree
Reckless burning
Criminal mischief - 2d degree

SUMMARY OF OFFENSES BY CLASSIFICATION
(As of May 13, 1970)

CLASS "A" MISDEMEANORS (CONT'D.):

Forgery - 2d degree
Criminal simulation
Fraudulently obtaining a signature
Fraudulent use of credit card (Under $250)
Negotiating a bad check
Falsifying business records
Misapplication of entrusted property
Issuing a false financial statement
Obtaining execution of documents by deception
Endangering the welfare of a minor
Child neglect
False swearing
Criminal impersonation
Escape - 3d degree
Aiding an unauthorized departure
Bail jumping - 2d degree
Obstructing governmental administration
Tampering with a witness
Tampering with physical evidence
Tampering with public records
Resisting arrest
Compounding
Official misconduct - 1st degree
Unlawful assembly
Possession of eavesdropping device
Divulging an eavesdropping warrant
Divulging illegally obtained information
Carrying concealed weapon - 1st degree
Illegal use of firearms
Defacing a firearm
Furnishing explosives to a minor
Furnishing obscene materials to minors

Page 5
SUMMARY OF OFFENSES BY CLASSIFICATION
(As of May 13, 1970)

CLASS "A" MISDEMEANORS (CONT'D.)

Sending obscene materials to minors
Exhibiting an obscene performance to minors
Displaying obscene materials to minors
Promoting gambling - 2d degree
Possession of gambling records - 2d degree
Possession of gambling device
Criminal use of drugs
Criminal drug promotion
Concealing the birth of an infant

Total: 55

CLASS "B" MISDEMEANORS:

Attempt to commit Class A misdemeanor
Soliciting Class A misdemeanor
Unlawfully using slugs
Unsworn falsification
Simulating legal process
Misuse of confidential information
Disorderly conduct
Harassment
Cruelty to animals
Tampering with private communications
Possession of deadly weapon - 2d degree
Carrying concealed weapon - 2d degree
Illegal traffic in deadly weapons
Prostitution
Creating a hazard
Misconduct with emergency telephone calls
Failing to maintain metal purchase record

Total: 17

SUMMARY OF OFFENSES BY CLASSIFICATION
(As of May 13, 1970)

CLASS "C" MISDEMEANORS:

Attempt to commit Class B misdemeanor
Soliciting Class B misdemeanor
Sexual misconduct
Accosting for deviate purposes
Criminal trespass - 2d degree
Criminal mischief - 3d degree
Initiating a false report
Official misconduct - 2d degree
Public intoxication
Loitering
Abuse of venerated objects
Abuse of corpse
Falsely reporting an incident
Possession of deadly weapon - 3d degree
Offensive littering
Unlawful stream pollution
Unlawful legislative lobbying
Promoting adoption of a child
Misrepresentation of age by a minor

Total: 19

Page 7
SUMMARY OF OFFENSES BY CLASSIFICATION
(As of May 13, 1970)

VIOLATIONS:

Attempt to commit Class C misdemeanor or unclassified misdemeanor

Soliciting Class C misdemeanor or unclassified misdemeanor

Refusing to assist peace officer

Refusing to assist firefighting operations

Failing to comply with firearms permit or handgun registration requirements

Unlawful transportation of hay

Total: 6

Total of all offenses: 163