Tape #92
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OREGON CRIMINAL LAW REVISION COMMISSION

Subcommittee No. 2

Thirteenth Meeting, March 6, 1970

Minutes

Members Present: Representative Wallace P. Carson, Jr., Chairman
Senator Kenneth A. Jernstedt
Attorney General Lee Johnson

Members Absent: Representative Harl H. Haas

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

Agenda: Offenses Against The Family; P.D. No. 1;Feb. 1970. (Article 20)

The meeting was called to order at 2:15 p.m. by Chairman Carson, Room 315, Capitol Building, Salem, Oregon.

Mr. Johnson moved approval of the subcommittee minutes of February 9, 1970, as submitted. The motion was adopted unanimously.

OFFENSES AGAINST THE FAMILY; P.D. NO. 1; FEBRUARY 1970.

Section 1. Offenses against the family; definitions.

Mr. Wallingford explained that this first section contains the definitions of three terms used in the draft:

The definition of "alcoholic liquor" is taken from ORS 471.005 and is based on percent of alcohol by volume. Replying to a question by Chairman Carson, he said that vanilla extract would not come within the definition--since it is not included in the regulatory code, it was not included in the draft definition.

The significance of the term "descendant" as defined is the inclusion of stepchildren and lawfully adopted children. The effect is to broaden existing law which presently excludes stepchildren and adopted children from the scope of criminal incest.

The definition of the term "support" is basically the same as that in present law except that necessary medical attention and education have been added as specific areas of support. These two forms of support have usually been included by case law within the definition of necessary support.

Section 2. Bigamy.

Mr. Wallingford read subsection (1), noting that it defines the crime of bigamy. Subsection (2) provides two defenses in a prosecution for bigamy: (1) Where "the actor's spouse has voluntarily withdrawn and remained absent for five consecutive years and the actor has no knowledge whether the absent spouse was living or dead within that period" or (2) where "the actor otherwise reasonably believes that he is legally eligible to marry."

The language "purports to marry" is used to negate the defense that since the second marriage is invalid and void because of the first marriage of the actor, the actor cannot be charged with bigamy.

Mr. Wallingford noted that the first defense involves an absence of five years whereas the present law requires a seven year absence.

Mr. Paillette related that the MPC does not use the language "voluntarily withdrawn" because it was felt that after a period of time it might be difficult to prove which spouse had been the one to leave and it is questionable that this is really material after a period of five years.

Mr. Johnson asked why it was necessary to have such a defense. It is not necessary, he noted, to have service for a divorce. Chairman Carson tended to agree with the point raised by Mr. Johnson adding that the only concern he had was for the woman whose husband simply disappears in some place such as Vietnam. In most other instances, he continued, the logical recourse would be for the individual to obtain a divorce.

Mr. Wallingford acknowledged the fact that perhaps the defense has outlived its need. Prior to the time legal aid was available to those unable to pay perhaps such a defense was necessary for indigent women. This is no longer true, at least in Oregon.

Mr. Paillette agreed that about the only thing the defense does is to do away with the necessity of obtaining a divorce where a spouse has waited for five years for the return of the husband or wife.

Mr. Johnson moved the deletion of subsection (2) (a) of section 2.

Senator Jernstedt asked how the deletion of subsection (2) (a) would affect the individual whose religion prohibits divorce. Chairman Carson said such an individual would either have to obtain a divorce or assume the death of the spouse. Mr. Paillette added that even if the provision were deleted from the draft, the individual would still have the statutory presumption of death at seven years and could petition the court to have the absent spouse declared dead.

Mr. Johnson also questioned the need for subsection (2) (b) of section 2.

Mr. Wallingford said this would cover a mistake as to law or fact. He felt the defense should be available for the individual who has relied on what he presumed to be a valid divorce.

Mr. Johnson amended his motion to amend section 2 (2) as follows:

Delete the colon following the word "marriage". Delete paragraph (a). In paragraph (b), delete "(b)" and after "actor" delete the word "otherwise". The amended subsection would read:

> "(2) In any prosecution under this section it is a defense that at the time of the subsequent marriage or purported marriage the actor reasonably believes that he is legally eligible to marry."

The motion carried unanimously.

Section 3. Incest.

Mr. Wallingford read section 3 and noted it changes present law because of the changes made in the definition of the term "descendant". As noted previously, stepchildren and adoptive children would be covered and they are not covered in present law. The proposed statute does not cover nieces and nephews, uncles and aunts and first cousins while under present law they are covered. Most of the commentators, he continued, feel that the real basis for penal laws covering incest is to protect the family unit. There is some question now of whether the genetic argument for incest has any real basis in fact. This point, however, is still open to debate. Mr. Wallingford was of the opinion that if protection of the family unit was a basis for incest laws, stepchildren and adopted children should be included.

Chairman Carson questioned that by the time a charge of incest is brought there would be any possibility of holding a family together. Mr. Wallingford replied that it would be more in the

area of a deterrent. Mr. Paillette added that when dealing with an incestuous situation it is usually one where the age of the child involved is beyond that for "rape" or "contributing". Incest usually involves an individual legally capable of giving consent but where, because of the relationship, the law has prohibited the conduct.

Chairman Carson asked the reason for removing aunts, uncles and first cousins from the proscription.

Mr. Wallingford said that these individuals were not usually members of the family. He noted that some states have these individuals included within the provisions of the law and the MPC provides an option. Marriage between these individuals would still be prohibited within the state and all that the proposed draft does is to no longer make it a crime of incest if these persons engage in sexual intercourse. These individuals could marry but it would be a void marriage. Mr. Wallingford noted, also, that the individuals would be consenting adults since, ordinarily, if the persons involved were minors, the conduct would be prosecutable under the Sexual Offenses Article.

Mr. Johnson asked if there are many prosecutions for incest. Mr. Wallingford replied that there are a few; there are three or four reported cases in Oregon. Chairman Carson observed that the cases have usually been prosecuted as "contributing" cases rather than as incest.

Mr. Johnson moved the adoption of section 3 as drafted.

Mr. Paillette commented that the issue of the stepchildren was an important issue to decide. Chairman Carson said that he was inclined to go along with the feeling that the purpose of the penal laws covering incest is to protect the family unit. He was not so convinced about the genetic argument although he understood that it was still pretty well established.

Mr. Wallingford explained that the draft section does not provide a corroboration requirement but the case law usually holds that when the party involved in sexual intercourse with the defendant is of the age of consent she is an accomplice so that he cannot be convicted on her testimony alone. Some states have put the corroboration requirement in their statute; however, Mr. Wallingford was quite sure this would be applied in any prosecution in Oregon. Chairman Carson was hopeful that the corroboration requirement would be applied since he felt this was one of the most abused provisions of the "contributing" statute.

Mr. Johnson asked for the question on his motion to approve section 3 as drafted and the motion carried unanimously.

Section 4. Concealing birth of an infant.

Mr. Wallingford explained that the Criminal Homicide Article defines a "human being" as a "person who has been born and was alive at the time of the criminal act." Quite often with a decomposed fetus it is difficult to determine whether the infant was born dead or alive so that no prosecution can be made on a manslaughter charge. A charge could, however, be brought under the provisions of this section without showing whether the child was born dead or alive.

Senator Jernstedt asked the punishment anticipated for this offense and Mr. Paillette said that it is presently a misdemeanor. He added that apparently the main purpose of the statute is to cover children of illegitimate birth. Mr. Johnson wondered if the provisions were an effort to get at an abortion situation.

Mr. Wallingford referred to the present statute, ORS 163.660, and read:

> "(1) Any unmarried woman who conceals the death of any issue of her body so that it may not be known whether the issue was born alive or dead, or....
>
> "(2) When a woman is indicted for the murder of her bastard infant she may be charged in the same indictment with the crime defined in this section. If she is found not guilty of the charge of murder she may be found guilty of the crime defined in this section and punished accordingly."

Chairman Carson asked if it was presently a crime to give birth to a child and not report it. Mr. Wallingford replied that if a child is born alive and dies, there is a duty to report its death.

Mr. Johnson asked why, if a child is born dead, should it be a crime to conceal it. There are statutes requiring the reporting of a death and it would seem these would be sufficient. He was still of the opinion that the purpose of the present statute was to get at abortion.

Mr. Paillette agreed that the language "conceals the death of any issue of her body" could refer to the result of an abortion. He noted that ORS 432.205 provides for compulsory registration of births and read:

"A certificate of every birth shall be filed with the local registrar of the registration district in which the birth occurred, within the time prescribed by the board, by either the physician or midwife in attendance at the birth or, if not so attended, by one of the parents...."

Mr. Johnson moved to delete section 4 with a corresponding motion that the staff check to see what the required recordings are for a death.

Mr. Wallingford reported that these are set out in ORS chapter 146. It is necessary to report the death of anyone found dead or has not been under the care of a physician. If he has been under the care of a physician, the physician must report the death. This would seem to cover all deaths. Mr. Paillette added that ORS 432.307 covers compulsory filing of a certificate of death or fetal death.

Mr. Johnson thought the conduct set out in section 4 was an administrative matter and if it is not now to be reported to the State Board of Health, it should be required.

Mr. Johnson's motion to delete section 4 was adopted unanimously.

Section 5. Abandonment of a child.

Mr. Wallingford said this section contains some of the elements presently found in the nonsupport statute. The present nonsupport statute includes both nonsupport and abandonment.

Chairman Carson asked the reason for using the age of 14 in the proposed section. The present statute contains the age of 18.

Mr. Wallingford felt the criterion should be an age when the child is reasonably able to take care of himself. He advised that Michigan uses the age of eight while New York uses the age of 14 for its abandonment statute and the age of 16 for its non-support statute.

Chairman Carson asked why the age in the abandonment provision was not the same as that in the support statute. Mr. Johnson also thought the age of 14 was too young.

Mr. Paillette recalled discussing this problem at the Criminal Code Revision Seminar he attended last summer in Ann Arbor, Michigan, he said, finally ended up with two separate statutes--one to take care of the "waif" situation (the small, abandoned child) and one to take care of nonsupport of the child who was a little older. The latter offense is not as serious as the former since the older child would be more likely to get help for himself.

Mr. Johnson understood by the proposed draft that it would not be a crime for a parent to abandon a child of 16 as long as he provided support for the child. A parent, he said, has more than a duty to just financially support a child of 16.

Mr. Wallingford did not think it should be made a crime for a person to take a child to an uncle or aunt and tell them he cannot handle the child and offer to pay them a monthly fee for the child's support and care.

Senator Jernstedt questioned that someone paying for the support of a child could be said to have wholly abandoned it.

Chairman Carson thought one of the key factors is that as soon as a person drives off leaving a child less than 14 years of age, he has abandoned the child, whereas for nonsupport he must fail to support for 60 days before he is so charged.

Mr. Paillette explained that under the present statute if a person leaves the state for a period of 60 days and during that period fails to provide support, it is a prima facie case of abandonment. As a practical matter, he said, district attorneys don't authorize a criminal prosecution until after a period of 60 days.

Chairman Carson asked if there was objection to raising the age to 18 in section 5.

Mr. Johnson asked the anticipated penalty for section 5 and Mr. Wallingford thought it probably would be a misdemeanor since in many instances other sections would come into play--sections such as reckless endangerment.

Mr. Johnson suggested creating two degrees of the crime of abandonment--one covering abandonment of small children and a not so serious offense for abandoning a child over 12.

Mr. Paillette explained that to prosecute under present law it is necessary to have abandonment (which includes abandonment of wives) plus a failure to provide necessary and proper shelter, food, care or clothing; or without just and sufficient cause, failure or neglect to support. Under present statutes it is not possible to have abandonment with support provided. It made more sense to him to split the abandonment and nonsupport into two separate crimes.

Mr. Johnson moved to rewrite section 5 so that the offense is divided into two degrees--one (the more serious offense) covering the abandonment of a child less than eight years of age and the

other (the less serious offense) covering the abandonment of a child over eight years but less than 18 years of age.

Mr. Paillette asked what was to be done with the "60 day prima facie evidence" provision set out in subsection (2) of section 5.

Chairman Carson asked the significance of the language "leaves the state" contained in subsection (2). Mr. Wallingford said that the language appears in the present statute but he questioned that it has a great deal of significance.

Chairman Carson understood that in order to have a prima facie case of abandonment under the proposed draft it would be necessary for the parent or guardian to leave the state and to fail to pay support for 60 days. He wondered if the provision regarding leaving the state was really needed in that he was concerned that it would become part of the meaning of "abandonment." If it is felt needed, he suggested putting the "60 day" requirement in the nonsupport statute and deleting it in section 5, abandonment.

Mr. Paillette advised that ORS 131.360, the nonsupport venue provision, also contains a "60 day" provision and read from the statute:

> "In criminal actions for nonsupport of wife or child, or both, the action may be commenced and tried in any county ...in which the dependent wife or child has been an actual resident for not less than 60 days while such failure and neglect to support has continued...."

With this statute in mind, he thought the "60 day" provision could be removed from the draft as it is not intended that ORS 131.360 be repealed.

Mr. Johnson did not think the provisions set out in section 5 (2) were needed and amended his motion to include the deletion of the subsection. The amended motion to divide the offense into two degrees and to delete subsection (2) carried unanimously.

Section 6. Criminal nonsupport.

Mr. Wallingford read the section and explained that the term "support" is defined in section 1 to "include, but is not limited to, necessary and proper shelter, food, clothing, medical attention and education."

Mr. Johnson asked if the provisions set out conform to those in the reciprocal nonsupport act. Mr. Paillette assured him that

the draft in no way conflicts with the Uniform Reciprocal Enforcement of Support Act.

Mr. Wallingford noted that the only significant change in existing law made by the proposed draft is the exclusion of support of a spouse. This change was made because it was felt there are sufficient civil remedies available when there is a failure to support a wife.

Mr. Paillette added that even under the present statute criminal action for nonsupport of a wife is rare. The only advantage in retaining the provision, he said, would be to allow the extradition of someone from another state for this offense. He questioned the need for extradition for alimony situations because of the URESA.

Chairman Carson thought that in cases where a wife needed help because of illness or infirmities, the welfare recovery statute could be utilized. He doubted that there are very many welfare women who have alimony.

Mr. Johnson observed that one of the greatest weaknesses in the welfare recovery operation is the lack of criminal jurisdiction. He acknowledged the availability of the contempt proceeding but said there are problems with it. Nonsupport is a serious problem, however, for the state.

Mr. Johnson moved the adoption of section 6 as drafted and the motion carried unanimously.

Section 7. Criminal nonsupport; special rules of evidence.

Mr. Wallingford explained that this section restates some special rules of evidence for nonsupport. These are in present law. This is the only area in Oregon law, he related, where spouses are compellable witnesses for or against each other.

Mr. Johnson remarked that this provision is needed and Mr. Paillette concurred.

Chairman Carson understood it is a conclusive presumption that when two people are married and there is access, that a child born to a woman is the husband's child. He asked if the provision of section 7 (1) did not conflict with this presumption; if it did not provide a rebuttable presumption.

Mr. Wallingford said that the conclusive presumption would prevail if the wife were cohabiting with her husband. The draft covers cohabitation between a man and woman who are not married to each other.

Chairman Carson referred to ORS 109.070 (1) and read:

> "The child of a wife cohabiting with her husband who is not impotent, shall be conclusively presumed to be the child of her husband, whether or not the marriage of the husband and wife may be void."

Under ORS 109.110, he continued, filiation proceedings must be initiated by "any unmarried female who is delivered of a child out of wedlock or who is pregnant with a child which, if born alive, may be born out of wedlock" so that a married woman who becomes pregnant cannot bring a paternity suit.

Chairman Carson cited a situation where a woman cohabiting with someone other than her husband has a child. If she had been cohabiting with her husband or if he had access at a time near the time of conception, Chairman Carson understood the child would be presumed to be the child of the husband and he would be required to provide support for it.

Mr. Johnson moved the adoption of section 7 as drafted and the motion carried unanimously.

Section 8. Endangering the welfare of a minor.

Mr. Wallingford advised that this section attempts to cover everything the statute on contributing to the delinquency of a minor encompassed which has not been provided for elsewhere in the proposed code. It is a "contributing" statute set out in specific language.

The provisions in subsection (1) (a) are new to Oregon law and have to do with knowingly and unlawfully allowing a minor to enter and remain on premises where alcoholic liquor is consumed.

Mr. Johnson moved to delete paragraph (a) of subsection (1) in that in his opinion the threat of license revocation is sufficient deterrent. The motion carried unanimously.

Mr. Wallingford explained that paragraph (b) covers conduct where a person "knowingly induces, causes or permits and unmarried person less than 18 years of age to witness an act of sexual conduct or sadomasochistic abuse."

There was no objection to the provisions of this paragraph.

Mr. Johnson thought the intent of paragraph (c) was good but questioned the construction of the sentence. He suggested amending the paragraph to read:

"He permits a person less than 18 years of age to enter or remain in a place knowing that unlawful narcotic or dangerous drug activity is maintained or conducted...."

Mr. Paillette advised that the word "knowingly" is a term which has been defined in the Culpability Article. He referred to the Culpability Article, P.D. No. 4, and read:

"'Knowingly' or 'with knowledge,' when used with respect to conduct or to a circumstance described by a statute defining a crime, means that a person acts with an awareness that his conduct is of a nature so described or that a circumstance so described exists."

Mr. Johnson agreed that considering this definition, paragraph (c) was satisfactory as drafted.

There were no other objections to paragraph (c).

Mr. Wallingford advised that paragraph (d) covers allowing a minor to participate in unlawful gambling activity. This conforms to the regulatory code on parimutual gambling in Oregon. There are presently statutes on allowing a minor to gamble--ORS 167.295 and 462.190.

Mr. Johnson was of the opinion that the age of a participant should be 18 rather than 21, as set out in the draft.

Chairman Carson said he had been inclined to go toward the age of 18 until he considered the parimutual problem. A person cannot gamble on parimutuals until he is 21 years of age. If the 19 year old ballot measure passes, he was hopeful that it would be possible to go back in the code and amend some of the statutes--such as those relating to the age limit for use of alcohol, etc.

Mr. Johnson suggested that the staff be asked to call Commission attention to the provisions in section 8 if the ballot measure on the 19 year old vote passes at the upcoming election.

Mr. Wallingford explained that paragraph (e) proscribes giving or selling alcoholic liquor to a minor and is a restatement of present law. The subsection does not apply to a parent or lawful guardian if the act does not occur on licensed premises.

Mr. Johnson favored deletion of paragraph (e) in that an individual would be in violation of the code if a juvenile of 19 or 20 were served a bottle of beer in his home.

Mr. Wallingford admitted that in cases such as that cited by Mr. Johnson the conduct probably would not be harmful; however, in many cases involving sexual advances upon a minor, the serving of alcoholic beverages is just how the situation came about.

Mr. Paillette noted, also, that there is a limit even upon parents in this regard. If a parent allows a minor child to drink to the point of endangering himself, he probably would be liable for prosecution under some other statute. Also, the proposed provisions in paragraph (e) will necessarily be used to control some liquor cases previously prosecuted under the CTDM statute.

Chairman Carson thought there was some merit in making it possible for an adult to point to a statute as a reason for not serving alcohol to a minor who is not his child or ward. He thought, also, the problem would take care of itself eventually--as soon as the age for some of these privileges is lowered to 18. He asked if any problems would be created if the age in paragraph (e) were changed from 21 to 18, thus no longer making it criminal to serve alcoholic liquor to anyone over 18.

Mr. Wallingford observed that amendments would also have to be made in the regulatory code so as to protect the license of those dispensing the alcoholic liquor. It might be possible, he continued, to lower the age to 18 and limit the conduct to off-licensed premises. This would allow the Liquor Control Board to run the licensed premises.

Mr. Paillette reported that there have been cases where tavern owners have been prosecuted under this statute.

Chairman Carson expressed doubt that this kind of change in existing law would receive the support of a majority of the Commission members. He requested data on this matter from the staff regarding the number of statutes that would be affected.

Mr. Johnson referred to paragraph (f) and moved to delete the language: ",except that this subsection shall not apply to parent or lawful guardian of such person". The amended paragraph would read:

> "He knowingly sells, or causes to be sold, tobacco in any form to a person less than 18 years of age; or"

Mr. Wallingford explained that paragraph (f) proscribes the sale of tobacco to a person less than 18 and restates existing law. The paragraph only involves selling so that even with the amendment proposed by Mr. Johnson, it apparently would not be an offense to give tobacco to someone under 18.

The subcommittee unanimously adopted Mr. Johnson's amendment to paragraph (f) of subsection (1).

Mr. Wallingford stated that paragraph (g) proscribing the intentional marking of the body of a person less than 18 with indelible ink or pigments or by a tattooing device was taken from a New York statute. Tattooing is presently legal in Oregon. The provision was included in the section because the practice poses quite a few health hazards. The practice of tattooing is not a vast problem in Oregon, however, as there are probably not more than four or five tattoo parlors in the state.

Since it was generally agreed there is not much need for the provisions set out in paragraph (g) of section 8 (1), Chairman Carson announced it would be deleted.

Mr. Wallingford stated that provisions set out in paragraph (h) relating to the selling or furnishing of bulk gunpowder, dynamite, blasting caps or nitrogylcerine to persons less than 18 years of age is a restatement of the present law. This provision would repeal ORS 166.480 which covers the sale or gift of both explosives and firearms to children under the age of 14. The proposed Firearms Article raises this age to 17 with respect to the selling, offering, transferring, giving or lending of a firearm.

Mr. Johnson was of the opinion that the provisions in paragraph (h) also belonged in the Article on Firearms. Mr. Paillette advised that subcommittee No. 3 has not yet approved the Firearms Article so that this provision could be moved over for that subcommittee's consideration.

Mr. Johnson moved this approach be taken and the motion was adopted unanimously.

Mr. Wallingford advised that section 8 (2) refers back to section 8 (1) (a), which was deleted by subcommittee action. The subsection restates existing law which provides that if a minor participates in a public dance or entertainment in a place where alcoholic beverages are served, permission must be obtained from the juvenile court judge and from his parents or guardian.

Chairman Carson was of the opinion that since the section 8 (1) (a) was deleted, subsection (2) should also be deleted. He suggested that perhaps the amendatory language should go into the statutes covering liquor control.

Mr. Wallingford stated that if it would not endanger the license of the establishment to have minor entertainers, the provisions set out in subsection (2) would not be needed.

Mr. Johnson moved to delete subsection (2) of section 8 and to instruct the staff to ascertain whether or not the provisions should be added as part of the liquor code. The motion carried unanimously.

Mr. Wallingford explained that subsection (3) of section 8 is a restatement of an existing statute. He noted that in most small towns the pool halls are part of taverns where liquor is sold. The subsection makes an exception for these pool halls so that if specific conditions are complied with, minors may be allowed to play pool in the facility.

Mr. Johnson felt this type of regulation should be a part of the regulations set out by the Liquor Control Commission.

Chairman Carson commented that since section 8 (1) (a) was deleted, subsection (3) would also have to be deleted because it would no longer be a crime to "knowingly permit a person less than 21 years of age to enter or remain on the premises...." The only crime would be that the owner of the establishment would lose his license unless he qualifies under the Liquor Control Commission regulations.

Mr. Paillette wanted to be certain that some protection for the owners of these facilities was not being written out of the code. He asked if these facilities are the only thing that ORS 167.295, the present statute, applies to.

Mr. Wallingford referred to ORS 167.295 (2) and read:

> "Any person, being the owner, lessee, proprietor...of any cigar store, public card room, saloon, barroom, public billiard room, public pool room...who permits any minor to engage therein in any game of cards, billiards, pool, bagatelle...shall be punished...by a fine not...more than $100. However...a recreational facility may permit a minor to play billiards or pool in such a facility."

Pool rooms, he continued, which comply with the provisions set out in section 8 (3) would not come within the penal statute.

Mr. Johnson moved to delete subsection (3) of section 8 and there was no objection to this motion.

Supplemental Commentary

Mr. Paillette directed attention to page 34 of the draft, Supplemental Commentary, which explores some of the areas involving family oriented offenses not covered in the proposed draft.

Abortion:

He observed that in the area of abortion there is the same issue that arose in the area of narcotics and that is that the legislature has just finished taking a long, hard look at this problem. He wondered how the Commission wanted to go on record in respect to the abortion statutes.

Chairman Carson thought a poll taken today would result in a much different showing from one taken at the time of the last legislative session. He suggested polling the members of the Commission on the question of abortion to determine whether or not a change in the law is desired.

Adultery:

Mr. Paillette noted that the Commission made a policy decision recommending repeal of ORS 167.005, proscribing adultery, when the Article on Sex Offenses was considered.

Marriage:

Mr. Wallingford advised that presently there is a statute prohibiting the promotion of divorce, ORS 167.640, and there is no comparable section provided in the proposed draft.

Chairman Carson observed that having a criminal statute on the books prohibiting promotion of divorce has apparently not helped the situation in Oregon since the state's divorce rate is third in the nation on a per capita basis; Arizona and New Mexico lead.

Minors:

ORS 167.240, making it a crime for a minor to visit a house of prostitution, ORS 167.250, prohibiting a minor under 18 from smoking, using or possessing tobacco in a public place and ORS 167.300, penalizing a minor who misrepresents his age in order to gamble, are not covered in the proposed draft.

Chairman Carson asked if this conduct is covered by the juvenile code. Mr. Johnson thought that under the juvenile code the conduct would be a form of delinquency.

Mr. Johnson asked if ORS 166.560, which punishes abandoning refrigerators in places accessible to children, was to be repealed. Mr. Wallingford advised that the provisions would be continued in the Article on Miscellaneous Offenses. Mr. Paillette recalled that at one time this had been quite an issue and as a result the statute was enacted. While the provision probably is covered by the section on reckless endangering contained in the Assault Article, it was thought that the public might feel more secure if there was a specific statute covering this conduct.

Support of Parents:

Mr. Wallingford advised that the proposed draft does not retain the provisions of ORS 167.635, which make it a crime for a person over the age of 21 to fail or neglect to support his indigent parent without just cause. This statute has very rarely been used and there are civil remedies to get at this type of conduct.

Mr. Johnson moved the approval of section 1 of the proposed draft, as submitted, section 2, as amended and section 8, as amended. The motion was unanimously approved.

Mr. Johnson then moved the approval of the amended Article on Offenses Against The Family and this motion, also, carried on a unanimous vote.

The meeting was adjourned at 4:15 p.m.

Respectfully submitted,

Maxine Bartruff, Clerk
Criminal Law Revision Commission