

# STATUTES OF OREGON.

ENACTED, AND CONTINUED IN FORCE, BY THE

## LEGISLATIVE ASSEMBLY,

AT THE

**Fifth and Sixth Regular Sessions thereof.**

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1855



## ADVERTISEMENT.

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IN the side notes in this volume, are added frequent references to the New York Reports. They will be often found necessary, and at all times useful, in explaining the Text.

That part of the Oregon Statutes relating to the manner of commencing and prosecuting actions at law, are taken, word for word, from the New York Code. As the Code abolished the distinctions that formerly existed in civil actions, and modified the forms of practice in many essential respects, those who practiced under the old system will often find difficulty in understanding the provisions herein enacted; and to no other Reports can they refer, in cases of doubt, unless to those of New York. We have also incorporated that part of the New York Statutes which refers to Executors and Administrators, and to Fraudulent Conveyances and Contracts.

To say anything in favor of the New York Reports, would be superfluous: they are acknowledged to be superior in legal erudition, and are, for this reason, referred to more frequently, by the legal writers of this country, than those of any other State. Until we have a settled system of Jurisprudence of our own, we must rely on the experience of our neighbor. The Editor, therefore, confidently hopes the references furnished to the following enactments will have the approval of the profession.

sheriff, deputy sheriff, coroner or constable, he shall, on conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred, nor less than fifty dollars. CHAP. 7.

SEC. 19. Every person who shall in any manner disguise himself, with intent to obstruct the due execution of the law, or with intent to intimidate, hinder, or interrupt any officer, or any other person in the legal performance of his duty, or the exercise of his rights under the laws of the United States, or of this territory, whether such intent shall be effected or not, shall be punished, on conviction, by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred, nor less than fifty dollars. Disguising one's self to obstruct officer.

SEC. 20. If any person, having knowledge of the commission of any offence, shall take any money, gratuity, reward, or any engagement therefor, upon an agreement or understanding, express or implied, to compound or conceal such offence, or not to prosecute therefor, or not give evidence thereof, he shall, where such offence was punishable with death, upon conviction, be punished by imprisonment in the penitentiary, not more than two years, nor less than six months; and where the offence was punishable in any other manner, he shall be punished by imprisonment in the county jail not more than six, nor less than three months, or by fine not exceeding two hundred, nor less than fifty dollars. Concealing and compounding offences, &c.

SEC. 21. If any sheriff, constable, or other officer, authorized to serve legal process, shall receive from a defendant, or any other person, any money or other valuable thing, as a consideration, reward, or inducement for delaying or omitting to arrest any defendant, or to carry him before a magistrate, or for delaying to take any person to prison, or for postponing the sale of any property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall, on conviction, be punished by imprisonment in the county jail not more than one year, nor less than three months, or by fine not exceeding five hundred, nor less than fifty dollars. Officers receiving reward to neglect duty.

## CHAPTER VII.

### OFFENCES AGAINST PUBLIC PEACE.

- SEC. 1. Unlawful assemblage, how suppressed.
2. Refusing to assist officer when required.
  3. Neglect of officer, how punished.
  4. Duties of officers when rioters refuse to disperse.
  5. Armed force when called out to obey certain civil officers.
  6. When officer to be considered guiltless if death ensues.
  7. Riotously destroying house, &c.

SECTION 1. If any persons, to the number of three or more, whether armed or not, shall be unlawfully, riotously or tumultuously assembled in any city, town, or county, it shall be the duty of the mayor and each of the aldermen and councilmen of such Unlawful assemblages how suppressed.

CHAP. 7. city, and of every justice of the peace, living in such city or town, and of the sheriff of the county, and his deputies, and also of every constable and coroner, living in such city or town, to go among the persons so assembled, or as near them as may be with safety, and in the name of the territory of Oregon, to command all the persons so assembled, immediately and peaceably to disperse; and if the persons so assembled, shall not thereupon immediately and peaceably disperse, it shall be the duty of each of the magistrates and officers to command the assistance of all persons there present, in seizing, arresting and securing in custody, the persons so unlawfully assembled, so that they may be proceeded with according to law.

Refusing to assist when required.

SEC. 2. If any persons present, being commanded by any of the magistrates or officers mentioned in the preceding section, to aid and assist in seizing and securing such rioters, or persons unlawfully assembled, or in suppressing such riot or unlawful assembly, shall refuse or neglect to obey such command, he shall be deemed to be one of the rioters or persons unlawfully assembled, and shall be liable to be prosecuted therefor, and punished accordingly.

Neglect of officer, how punished.

SEC. 3. If any mayor, councilman, justice of the peace, sheriff, deputy sheriff, constable or coroner, having notice of such riotous or tumultuous and unlawful assembly, as is mentioned in this chapter, in the city, town or county in which he lives, shall neglect or refuse immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or shall omit or neglect to exercise the authority with which he is invested by this chapter, for suppressing such riotous or unlawful assembly, and for arresting and securing the offenders, he shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars.

Duty of officers when rioters refuse to disperse.

SEC. 4. If any persons who shall be so riotously and unlawfully assembled, and who shall have been commanded to disperse as before provided, shall refuse or neglect to disperse without unnecessary delay, any two of the officers or magistrates before mentioned, may require the aid of a sufficient number of persons, in arms or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be deemed expedient, forthwith to disperse and suppress such unlawful, riotous or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Armed force when called out to obey certain civil officers.

SEC. 5. Whenever an armed force shall be called out, for the purpose of suppressing any tumult or riot, or dispersing any body of men, acting together by force, with intent to commit any felony, or to offer violence to persons or property, or with intent by force or violence, to resist or oppose the execution of the laws of this territory, such armed force, when they shall arrive at the place of such unlawful, riotous or tumultuous assembly, shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all the persons who are committing any of the said offences, as they may have received from the governor, or from any judge of a court of record, or the sheriff of the county; and also

PUBLISHED BY AUTHORITY.

THE

ORGANIC AND OTHER GENERAL LAWS

OF

OREGON

TOGETHER WITH

THE NATIONAL CONSTITUTION

AND

Other Public Acts and Statutes of the United States.

1845--1864.

COMPILED AND ANNOTATED BY  
M. P. DEADY.

*Alis volat propriis*  
OREGON

1845--1864

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1866.

OCT. 19, 1864.

than three months, nor more than one year, or by fine not less than one hundred, nor more than five hundred dollars.

Lobbying with members of legislature, without disclosing interest in measure.

SEC. 622. If any person, having any interest in the passage or defeat of any measure before, or which shall come before either house of the legislative assembly of this state, or if any person being the agent of another so interested, shall converse with, explain to, or in any manner attempt to influence any member of such assembly in relation to such measure, without first truly and completely disclosing to such member his interest therein, or that of the person whom he represents, and his own agency therein, such person, upon conviction thereof, shall be punished by imprisonment in the county jail, not less than three months, nor more than one year, or by fine not less than fifty, nor more than five hundred dollars.<sup>1</sup>

CHAPTER XLVII.

*Crimes against the public peace.*

SEC. 623. Definition of riot and unlawful assembly.

SEC. 624. Punishment for participating in riot. 625. Libel, definition and punishment of.

Definition of riot and unlawful assembly.

SEC. 623. Any use of force or violence, or any threat to use force or violence, if accompanied by immediate power of execution, by three or more persons acting together, and without authority of law, is riot.<sup>2</sup> Whenever three or more persons assemble with intent, or with means and preparations to do an unlawful act, which would be riot if actually committed, but do no act towards the commission thereof, or whenever such persons assemble without authority of law, and in such manner as is adapted to disturb the public peace or excite public alarm, or disguised in a manner to prevent them from being identified, such assembly is an unlawful assembly.<sup>3</sup>

Punishment for participating in riot.

SEC. 624. If any person shall be guilty of participating in any riot, such person, upon conviction thereof, shall be punished as follows:

- 1. If any felony or misdemeanor was committed in the

(1) 16 How. (U. S.) 314. 13 Pick. 472.      diana, 114. 10 Mass. 518.  
(2) 4 Scamm. 180. Whart. Cr. L. 722. 4 In-      (3) Whart. Crim. L. 722.

course of such riot, such person shall be punished in the same OCT. 19, 1864. manner as a principal in such crime ;

2. If such person carried, at the time of such riot, any species of dangerous weapon, or was disguised, or encouraged or solicited other persons who participated in the riot to acts of force or violence, such person shall be punished by imprisonment in the penitentiary, not less than three, nor more than fifteen years ;

3. In all other cases, such person shall be punished by imprisonment in the county jail, not less than three months, nor more than one year, or by fine not less than fifty, nor more than five hundred dollars.

SEC. 625. If any person shall wilfully, by any means other than words orally spoken, publish or cause to be published, or Label, definition and punishment of. concerning another, any false and scandalous matter, with intent to injure or defame such other, such person, upon conviction thereof, shall be punished by imprisonment in the county jail, not less than three months, nor more than one year, or by fine not less than fifty, nor more than five hundred dollars.

CHAPTER XLVIII.

*Crimes against morality and decency.*

<p>Sec. 626. Adultery, punishment of.</p> <p>627. Action for adultery, when commended; adultery by unmarried man.</p> <p>628. Polygamy, definition and punishment of.</p> <p>629. What not deemed polygamy.</p> <p>630. Lewd cohabitation.</p> <p>631. Seduction of chaste female.</p> <p>632. Indecent exposure and exhibition.</p> <p>633-34. Concealing death of child.</p> <p>635. Keeping bawdy house.</p> <p>636. Common fame evidence of; when lease for void.</p>	<p>Sec. 637. Indecent pictures and obscene books.</p> <p>638. Incest, punishment and definition of.</p> <p>639. Sodomy, punishment of.</p> <p>640. Illegal disinterment.</p> <p>641. Injuring grave stones or trespass in grave yards.</p> <p>642. Making roads or other easement through grave yards.</p> <p>643. Cruelty to animals.</p>
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SEC. 626. If any person shall commit the crime of adultery, such person, upon conviction thereof, shall be punished by Adultery, definition and punishment of. imprisonment in the penitentiary, not less that six months, nor more than two years, or by imprisonment in the county jail, not less than three months, nor more than one year, or by fine not less than two hundred, nor more than one thousand dollars.

SEC. 627. A prosecution for the crime of adultery shall not be Action for adul-



THE CODES  
AND  
STATUTES OF OREGON

SHOWING ALL

LAWS OF A GENERAL NATURE, INCLUDING  
THE SESSION LAWS OF 1901

COMPILED AND ANNOTATED

BY

HON. CHARLES B. BELLINGER  
U. S. DISTRICT JUDGE, DIST. OF OREGON  
AND  
WILLIAM W. COTTON  
OF THE PORTLAND BAR

IN TWO VOLUMES

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VOLUME I.

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or attempting or intending to vote thereat, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than fifty dollars nor more than five hundred dollars. [L. 1864; D. Cd. § 661; D. & L. § 676; H. C. § 1899.]

## CHAPTER VI.

### OF RIOT AND DISTURBANCE OF PEACE IN UNINCORPORATED TOWNS.

#### § 1913. Definition of Riot and Unlawful Assembly.

Any use of force or violence, or any threat to use force or violence, if accompanied by immediate power of execution, by three or more persons acting together, and without authority of law, is riot. Whenever three or more persons assemble with intent, or with means and preparations, to do an unlawful act, which would be riot if actually committed, but do not act towards the commission thereof, or whenever such persons assemble without authority of law, and in such manner as is adapted to disturb the public peace or excite public alarm, or disguised in a manner to prevent them from being identified, such an assembly is an unlawful assembly. [L. 1864; D. Cd. § 623; D. & L. § 639; H. C. § 1855.]

It is sufficient for the indictment to allege that the defendants "did encourage the other persons participating in the said riot to acts of violence and force": *State v. Tom Louey*, 11 Or. 326, 8 Pac. 353.

#### § 1914. Punishment for Participating in Riot.

If any person shall be guilty of participating in any riot, such person, upon conviction thereof, shall be punished as follows:—

1. If any felony or misdemeanor was committed in the course of such riot, such person shall be punished in the same manner as a principal in such crime;

2. If such person carried, at the time of such riot, any species of dangerous weapon, or was disguised, or encouraged or solicited other persons who participated in the riots to acts of force or violence, such person shall be punished by imprisonment in the penitentiary not less than three nor more than fifteen years;

3. In all other cases, such person shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars. [L. 1864; D. Cd. § 624; D. & L. § 640; H. C. § 1856.]

#### § 1915. Disturbance of the Peace in Unincorporated Towns.

If any person or persons shall, in any unincorporated town or village in this state, willfully drive or ride any horse or mule upon any sidewalk

# Chapter 166

## 1969 REPLACEMENT PART

### Crimes Against Peace and Safety; Firearms and Other Weapons

#### DUELING, RIOTING AND VAGRANCY

- 166.010 Duelling or challenging another to duel
- 166.020 Accepting or carrying challenge; aiding in duel
- 166.030 Using contemptuous language concerning another who refused to duel
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**DUELING, RIOTING AND VAGRANCY**

**166.010 Dueling or challenging another to duel.** Any person who engages in a duel with a deadly weapon, although no killing ensues, or who challenges another to fight a duel with a deadly weapon, or who sends or delivers any verbal or written message purporting or intending to be such challenge, although no duel ensues, shall be punished upon conviction by imprisonment in the penitentiary for not more than 10 years.

**166.020 Accepting or carrying challenge; aiding in duel.** Any person who accepts a challenge to fight a duel with a deadly weapon, or who knowingly carries or delivers any such challenge or message, although no duel ensues, or who is present at the fighting of such a duel as an aid, second or surgeon, or who advises, encourages, or promotes such duel, shall be punished upon conviction by imprisonment in the penitentiary for not more than five years.

**166.030 Using contemptuous language concerning another who refused to duel.** Any person who in any manner posts another, or in writing or print uses any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, shall be punished upon conviction by imprisonment in the penitentiary for not more than two years.

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

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

**166.050 Punishment for participating in riot.** Any person participating in any riot shall be punished upon conviction as follows:

(1) In the same manner as a principal in the crime, if a felony or misdemeanor is committed in the course of the riot.

(2) By imprisonment in the penitentiary for not more than 15 years, if he carried, at the time of the riot, any species of dangerous weapon, or was disguised, or encouraged or solicited other persons, who participated in the riots, to acts of force or violence.

(3) By imprisonment in the county jail for not less than three months nor more than one year, or by a fine of not less than \$50 nor more than \$500, in all other cases.

**166.060 Vagrancy.** (1) The following described persons are guilty of vagrancy and shall be punished upon conviction by imprisonment in the county jail for a period not exceeding six months, or by a fine of not more than \$100, or both:

(a) Every person without visible means of living, who has the physical ability to work, and who does not for the space of 10 days seek employment, nor labor when employment is offered him.

(b) Every beggar who solicits alms as a business.

(c) Every idle or dissolute person, or associate of known thieves, who wanders about the streets or highways at late or unusual hours of the night, or who lodges in any barn, shed, shop, outhouse, vessel, car or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof.

(d) Every common prostitute.

(e) Any person who is not enrolled as a student or who is not employed by the public or private school and who, without a lawful purpose therefor, wilfully loiters about any public or private school building or the public premises adjacent thereto.

(f) Any person who conducts himself in a violent, riotous or disorderly manner, or who uses abusive, obscene or profane language in a public place or upon any public highway, or in a house or place whereby the peace or quiet of the neighborhood or vicinity may be disturbed.

(2) Circuit, district and justice courts have concurrent jurisdiction over actions brought under this section.

[Amended by 1959 c.436 §1; 1961 c.503 §1]

**DISTURBING PEACE**

**166.110 Riding or driving animals recklessly.** (1) Any person who, in any unincorporated town or village in the state, wilfully

rides or drives any horse, mule, or any other animal upon any sidewalk therein, or wilfully drives or rides any horse, mule or other animal through the streets thereof at a greater speed than six miles per hour, to the disturbance or annoyance of any person, shall be punished upon conviction by a fine of not more than \$50.

(2) Justices of the peace shall have jurisdiction over all offenses described in this section committed within their respective counties. All fines collected under the provisions of this section shall be paid into the county treasury of the county in which the offense is committed, for the use and benefit of the county school fund of such county.

[Amended by 1961 c.503 §2]

**166.120 Disturbing religious meeting.** Any person who wilfully disturbs, interrupts or disquiets any assembly or congregation of people met for religious worship in a house or the open air, by uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise within the place where the meeting is held or so near the meeting as to disturb its order and solemnity, or by exposing for sale or gift any intoxicating liquors or drinks within two miles of the place where any such assembly or congregation is actually convened for religious worship, and in a place not duly licensed therefor, and in which such person has not usually resided and carried on such business, shall be punished upon conviction by imprisonment in the county jail for not less than one month nor more than six months, or by a fine of not less than \$10 nor more than \$200.

**166.130 Disturbing public meeting or assembly.** Any person who wilfully disturbs or breaks up any public meeting or assembly of people other than those mentioned in ORS 166.120, lawfully met together for a lawful purpose, in a house or the open air, shall be punished upon conviction by imprisonment in the county jail for not less than one month nor more than three months, or by a fine of not less than \$10 nor more than \$100.

**166.140 Use of stink bombs.** (1) Any person who places, throws, uncorks, opens, breaks or who maliciously attempts to place, throw, uncork, open or break any stink bomb in any theatre, place of amusement, building, hall or room, in which a public gathering is

being held, or in any place of business, shall be punished upon conviction by a fine of not less than \$25 nor more than \$1,000, or by imprisonment in the penitentiary for a period of not more than two years, or both.

(2) For the purpose of subsection (1) of this section, a stink bomb includes any bottle, glass, tube, capsule, light bulb, hose or metal substance, or any other article or device containing a chemical or substance of an offensive or noxious odor used or intended to be used for the purpose of creating a riot or disturbance in any theatre, place of amusement, building, hall or room in which a public gathering is being held at the time, or in a place of business, or for the purpose of intimidating the owner of such gathering or business place.

(3) Subsection (1) of this section shall not apply to peace officers in the performance of their duties.

**166.150 Permitting vicious animals to be at large.** Any person who, being the owner or having the control of any dangerous or vicious animal and knowing such animal to be dangerous or vicious, wilfully or negligently permits the animal to be at large in any neighborhood or on any public highway, shall be punished upon conviction by a fine of not less than \$10 nor more than \$50.

**166.160 Intoxicated while in public place.** Any person who enters or is found in a state of intoxication upon any railway engine, railway car, railway train, aircraft, boat, landing wharf or depot of any common carrier, or on any highway or street, or in any public place or building, or any person who creates, while in a state of intoxication, any disturbance of the public in any private business or place, shall be punished upon conviction by a fine of not less than \$5 nor more than \$100, or by imprisonment in the county jail for a period not exceeding 50 days, or both.

## POSSESSING OR USING FIREARMS

**166.210 Definitions for ORS 166.230, 166.250 to 166.270, 166.280, 166.290 and 166.410 to 166.470.** As used in ORS 166.230, 166.250 to 166.270, 166.280, 166.290 and 166.410 to 166.470:

(1) "Pistol," "revolver" and "firearms capable of being concealed upon the person,"

apply to and include all firearms having a barrel less than 12 inches in length.

(2) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which two or more shots may be fired by a single pressure on the trigger device.

**166.220 Attempting to use dangerous weapon; carrying dangerous weapon with intent to use it.** (1) Any person who attempts to use, or who with intent to use the same unlawfully against another, carries or possesses a dagger, dirk, dangerous knife, razor, stiletto, or any loaded pistol, revolver or other firearm, or any instrument or weapon of the kind commonly known as a blackjack, slung shot, billy, sandclub, sandbag, metal knuckles, bomb or bombshell, or any other dangerous or deadly weapon or instrument, is guilty of a felony, and upon conviction shall be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment in the county jail for not less than one month nor more than six months, or by imprisonment in the penitentiary for not exceeding five years.

(2) The carrying or possession of any of the weapons specified in subsection (1) of this section by any person while committing, or attempting or threatening to commit a felony or a breach of the peace or any act of violence against the person or property of another is presumptive evidence of carrying such weapon with intent to use the same in violation of subsection (1) of this section.

(3) A justice court has concurrent jurisdiction with the circuit court of any offense defined in subsection (1) of this section where the penalty does not exceed a fine of \$500 or imprisonment in the county jail for not more than six months, or both.

(4) For the purpose of subsection (1) of this section, any knife with a blade longer than three and one-half inches when carried concealed upon the person, is a dangerous weapon.

**166.230 Committing or attempting to commit felony while armed; subsequent convictions; presumption.** (1) Any person who commits or attempts to commit any felony within this state while armed with any pistol, revolver, machine gun or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm, upon conviction of the felony

or of an attempt to commit the felony, shall, in addition to the punishment prescribed for the crime of which he has been convicted, be punished by imprisonment in the penitentiary for not more than 10 years. Such additional period of imprisonment shall commence upon the expiration or other termination of the sentence imposed for the crime of which he stands convicted and shall not run concurrently with such sentence.

(2) Upon a second conviction under like circumstances the additional period of imprisonment shall be for not more than 15 years, and upon a third conviction under like circumstances the additional period of imprisonment shall be for not more than 25 years; such terms of additional imprisonment to run consecutively. Upon a fourth conviction under like circumstances the person so convicted may be imprisoned for life.

(3) In the trial of a person charged with committing or attempting to commit a felony against the person of another while armed with any pistol, revolver, machine gun or other firearm capable of being concealed upon the person, without having a license or permit to carry such firearm, the fact that he was so armed is prima facie evidence of his attempt to commit such felony.

(4) In no case shall any person punishable under this section, ORS 166.270 and 166.410 be granted probation by the trial court, nor shall the execution of the sentence imposed upon such person be suspended by the court.

**166.240 Carrying of concealed weapons.**

(1) Any person who carries concealed about his person in any manner, any revolver, pistol, or other firearm, any knife, other than an ordinary pocketknife, or any dirk, dagger, slung shot, metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person, shall be punished upon conviction by a fine of not less than \$10 nor more than \$200, or by imprisonment in the county jail not less than five days nor more than 100 days, or both.

(2) Nothing in subsection (1) of this section applies to any sheriff, constable, police or other peace officer, whose duty it is to serve process or make arrests. Justices of the peace have concurrent jurisdiction to try any person charged with violating any of the provisions of subsection (1) of this section.



**166.250 Unlawful possession of weapons.** (1) Except as otherwise provided in this section, ORS 166.230, 166.260, 166.270, 166.280, 166.290, or 166.410 to 166.470, any person who possesses or has in his possession any machine gun, or carries concealed upon his person or within any vehicle which is under his control or direction any pistol, revolver or other firearm capable of being concealed upon the person, without having a license to carry such firearm as provided in ORS 166.290, is guilty of a misdemeanor, unless he has been convicted previously of any felony or of any crime made punishable by this section, ORS 166.230, 166.260, 166.270, 166.280, 166.290 or 166.410 to 166.470, in which case he is guilty of a felony.

(2) This section does not prohibit any citizen of the United States over the age of 18 years who resides in or is temporarily sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270, from owning, possessing or keeping within his place of residence or place of business any pistol, revolver or other firearm capable of being concealed upon the person, and no permit or license to purchase, own, possess or keep any such firearm at his place of residence or place of business is required of any such citizen.

(3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

**166.260 Persons not affected by ORS 166.250.** ORS 166.250 does not apply to or affect:

(1) Sheriffs, constables, marshals, policemen, whether active or honorably retired, or other duly appointed peace officers.

(2) Any person summoned by any such officer to assist in making arrests or preserving the peace, while said person so summoned is actually engaged in assisting the officer.

(3) The possession or transportation by any merchant of unloaded firearms as merchandise.

(4) Members of the Army, Navy or Marine Corps of the United States, or of the National Guard, when on duty.

(5) Organizations which are by law authorized to purchase or receive weapons described in ORS 166.250 from the United States, or from this state.

(6) Duly authorized military or civil organizations while parading, or the members thereof when going to and from the

places of meeting of their organizations.

(7) Members of any club or organization, for the purpose of practicing shooting at targets upon the established target ranges, whether public or private, while such members are using any of the firearms referred to in ORS 166.250 upon such target ranges, or while going to and from such ranges.

(8) Licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from a hunting or fishing expedition.

**166.270 Aliens and convicts forbidden to possess arms.** Any unnaturalized foreign-born person or any person who has been convicted of a felony against the person or property of another or against the Government of the United States or of this state, or of any political subdivision of this state, who owns, or has in his possession or under his custody or control any pistol, revolver, or other firearm capable of being concealed upon the person, or machine gun, shall be punished upon conviction by imprisonment in the penitentiary for not more than five years.

**166.275 Possession of weapons by inmates of penal institutions.** Any person committed to any penal institution who, while under the jurisdiction of any penal institution or while being conveyed to or from any penal institution, possesses or carries upon his person, or has under his custody or control any dangerous instrument, or any weapon including but not limited to any blackjack, slingshot, billy, sand club, metal knuckles, explosive substance, dirk, dagger, sharp instrument, pistol, revolver or other firearm without lawful authority, is guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not more than 20 years.

[1953 c.533 §1]

**166.280 Seizure and destruction of concealed weapons.** The unlawful concealed carrying upon the person or within the vehicle of the carrier of any machine gun, pistol, revolver or other firearm capable of being concealed upon the person, is a nuisance. Any such weapons taken from the person or vehicle of any person unlawfully carrying the same are nuisances, and shall be surrendered to the magistrate before whom the person is taken, except that in any city, county, town or other municipal corporation the weapons shall be surrendered to the head

of the police force or police department. The officers to whom the weapons are surrendered, except upon the certificate of a judge of a court of record or of the district attorney of the county that their preservation is necessary or proper to the ends of justice, shall annually, between July 1 and 10, destroy the weapons to such extent that they are wholly and entirely ineffective and useless for the purpose for which they were manufactured. In the event any such weapon has been stolen and is thereafter recovered from the thief or his transferee, it shall not be destroyed but shall be restored to its lawful owner as soon as its use as evidence has been served, upon his identification of the weapon and proof of ownership. Upon the certificate of a judge or of the district attorney that the ends of justice will be subserved thereby, such weapon shall be preserved until the necessity for its use ceases.

**166.290 Issuance of license to carry concealed weapons.** (1) The sheriff of a county, and the board of police commissioners, chief of police, city marshal, town marshal or other head of the police department of any city, county, town, or other municipal corporation of this state, upon proof before said person or board, that the person applying therefor is of good moral character, and that good cause exists for the issuance thereof, have authority to issue to such person a license to carry concealed a pistol, revolver or other firearm for a period of one year from the date of the license, upon payment of a fee of 50 cents, and a like fee upon any renewal thereof. The fees shall be turned over to the treasurer of such city, county, town or other municipal corporation and credited to the general fund thereof.

(2) All applications for licenses shall be filed in writing, signed by the applicant, and shall state the name, occupation, residence and business address of the applicant; his age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. Any license issued upon the application shall set forth the foregoing data and shall, in addition, contain a description of the weapon authorized to be carried, giving the name of the manufacturer, the serial number and the caliber thereof. When such licenses are issued by a sheriff a record thereof shall be kept in the office of the county clerk; when issued by police authority such record shall be maintained in the

office of the authority by whom issued. The applications and licenses shall be uniform throughout the state, upon forms to be prescribed by the Attorney General.

**166.300 Killing another as cause for loss of right to bear arms.** (1) Any person who has committed, with firearms of any kind or description, murder in any degree, or manslaughter, either voluntary or involuntary, or who in a careless or reckless manner, kills or injures another with firearms, and who, at any time after committing murder or manslaughter or after said careless or reckless killing or injury of another, carries or bears firearms of any kind or description within this state, shall be punished upon conviction by a fine of not more than \$500, or by imprisonment in the county jail not to exceed one year, or both.

(2) Subsection (1) of this section does not deprive the people of this state of the right to bear arms for the defense of themselves and the state, and does not apply to any peace officer in the discharge of his official duties or to a member of any regularly constituted military organization while on duty with such military organization.

(3) Justices of the peace, district courts, county courts and all other courts having jurisdiction as justices of the peace, shall have concurrent jurisdiction with the circuit courts of all prosecutions under subsection (1) of this section.

**166.310 Concealed weapon found on arrested person; information to be filed.** Whenever any person is arrested and it is discovered that he possesses or carries or has possessed or carried upon his person any loaded pistol, revolver or other firearm, or any weapon named or enumerated in ORS 166.220, in violation of ORS 166.220, 166.510 or 166.520, the person making the arrest shall forthwith lay an information for a violation of the section against the person arrested, before the nearest or most accessible magistrate having jurisdiction of the offense, and the magistrate must entertain and examine the information and act thereon in the manner prescribed by law.

**166.320 Setting springgun or setgun.** (1) Any person who places or sets any loaded springgun, setgun, or any gun, firearm or other device of any kind designed for containing or firing explosives, in any place where it may be fired, exploded or discharged by the contact of any person or

animal with any string, wire, rod, stick, spring or other contrivance affixed to or connected with it, or with its trigger, shall be punished upon conviction by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail for not less than 30 days nor more than six months, or both.

(2) Subsection (1) of this section does not apply to any loaded springgun, setgun, firearm or other device placed for the purpose of destroying gophers, moles or other burrowing rodents, and does not prevent the use of a coyote getter by employes of county, state or federal governments engaged in cooperative predatory animal control work.

**166.330 Use of firearms with other than incombustible gun wadding.** Any person who uses in any firearms discharged on lands within this state, not his own, anything other than incombustible gun wadding, shall be punished upon conviction by a fine of not less than \$5 nor more than \$100, or by imprisonment in the county jail for not less than two days nor more than 60 days.

**166.340 Use of firearms within Devils Lake and Bend areas.** (1) It is unlawful for any person to fire or discharge any weapon which acts by force of explosive:

(a) Within the Devils Lake area, situated in Lincoln County, west of the center line of East Devils Lake Road and east of the center line of the Oregon Coast Highway from their intersection north of Devils Lake to their intersection south of the lake.

(b) Within an area situated in Deschutes County and bounded on the west by a line drawn parallel to the westerly bank of the Deschutes River and one-fourth mile west of the westerly bank, on the east and south by the city limits of the City of Bend, and on the north by a line beginning at a point 100 feet north of the center of the center line of the crest of the North Canal Diversion Dam and extending east and west to intersect the east and west boundaries of the area described in this section.

(2) Subsections (1) and (2) of this section do not apply to:

(a) A person acting in defense or protection of his property or an individual.

(b) A peace officer acting in the course of duty.

(3) Violation of this section is punishable, upon conviction, by a fine of not less than \$25 nor more than \$300.

[1965 c.20 §3 and 1969 c.351 §1]

### POSSESSION OF DESTRUCTIVE DEVICE OR LOADED FIREARM IN PUBLIC BUILDING

**166.360 Definitions for ORS 166.360 to 166.380.** As used in ORS 166.360 to 166.380, unless the context requires otherwise:

(1) "Capitol building" means the Capitol, the Supreme Court Building, the State Office Building, the State Library Building, the Labor and Industries Building, the State Highway Building, the Agriculture Building or the Public Service Building and includes any new buildings which may be constructed on the same grounds as an addition to the group of buildings listed in this subsection.

(2) "Destructive device" means:

(a) A projectile containing an explosive or incendiary material or any other chemical substance; or

(b) A bomb, grenade, missile or similar device or any launching device therefor.

(3) "Loaded firearm" means:

(a) A breech-loading firearm in which there is an unexpended cartridge or shell in or attached to the firearm including but not limited to, in a chamber, magazine or clip which is attached to the firearm.

(b) A muzzle-loading firearm which is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(4) "Public building" means a capitol building, a public or private school, college or university, a county courthouse, a city hall or the residence of the Governor, Secretary of State or State Treasurer and includes the grounds adjacent to a building described in this subsection.

[1969 c.705 §1]

**166.370 Possession of destructive device or loaded firearm prohibited; exceptions.** (1) Any person who possesses a destructive device or loaded firearm, on his person in or on a public building, shall be punished upon conviction by a fine of not more than \$500 or by imprisonment in the county jail for not more than one year, or both.

(2) Subsection (1) of this section does not apply to:

(a) A sheriff, policeman or other duly appointed peace officer.

(b) A person summoned by a peace officer to assist in making an arrest or preserving the peace, while the summoned person is engaged in assisting the officer.

(c) A member of the military forces of this state or the United States, when engaged in the performance of his duty.

(d) A person who is licensed under ORS 166.290 to carry a concealed weapon.  
 [1969 c.705 §§2, 4]

**166.380 Examination of device or firearm by peace officer; arrest for failure to allow examination.** (1) A peace officer may examine a firearm possessed by anyone on his person while in or on a public building to determine whether the firearm is a loaded firearm.

(2) Refusal by a person to allow the examination authorized by subsection (1) of this section constitutes reason to believe that the person has committed a crime and the peace officer may make an arrest pursuant to ORS 133.310.  
 [1969 c.705 §3]

**SALE OR TRANSFER OF FIREARMS**

**166.410 Manufacture, importation, sale, gift, loan or possession of firearms.** Any person who manufactures or causes to be manufactured within this state, or who imports into this state, or keeps, offers, exposes for sale, gives, lends or possesses a pistol, revolver or machine gun, otherwise than in accordance with ORS 166.230, 166.250 to 166.270, 166.280, 166.290 and 166.420 to 166.470, shall be punished upon conviction by imprisonment in the penitentiary for not more than five years.

**166.420 Register of transfers of concealed weapons; form and content of register and by whom to be maintained.** (1) Except as provided in subsection (5) of this section every person in the business of selling, leasing or otherwise transferring a pistol, revolver or other firearm, of a size capable of being concealed upon the person, whether he is a retail dealer, pawnbroker or otherwise, shall keep a register in which shall be entered the time, date and place of sale, the name of the salesman making the sale, the make, model, manufacturer's number, caliber or other marks of identification on the pistol, revolver or other firearm. The register shall be prepared by and obtained from the State Printer in the form provided in subsection (6) of this section, and shall be furnished by the State Printer to the dealer on application at a cost of \$3 per 100 leaves, in duplicate.

(2) The purchaser of any firearm capable of being concealed upon the person shall sign, and the dealer shall require him to sign, his name and affix his address to the

register in duplicate and the salesman shall affix his signature in duplicate as a witness to the signature of the purchaser. Any person signing a fictitious name or address is guilty of a misdemeanor.

(3) The duplicate sheet of the register shall, on the evening of the day of sale, be placed in the mail, postage prepaid, and properly addressed to the board of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the city, county, town or other municipal corporation wherein the sale was made. If the sale is made in a district where there is no municipal police department, the duplicate sheet shall be mailed to the county clerk of the county wherein the sale is made.

(4) Violation of this section by any person engaged in the business of selling, leasing or otherwise transferring such firearm is a misdemeanor.

(5) This section does not apply to wholesale dealers in their business intercourse with retail dealers, nor to wholesale or retail dealers in the regular or ordinary transportation of unloaded firearms as merchandise by mail, express or other mode of shipment, to points outside of the city, county, town or municipal corporation wherein they are situated.

(6) The register provided for in this section shall be substantially in the following form:

	Series No.....
	Sheet No.....
<b>ORIGINAL</b>	
<b>(DEALERS' RECORD OF SALE OF REVOLVER OR PISTOL)</b>	
State of Oregon	
Notice to Dealers: This original is for your files. If spoiled in making out, do not destroy. Keep in books. Fill out in duplicate.	
Carbon duplicate must be mailed on the evening of the day of sale, to head of police commissioners, chief of police, city marshal, town marshal or other head of the police department of the municipal corporations wherein the sale is made, or to the county clerk of your county if the sale is made in a district where there is no municipal police department. Violation of this law is a misdemeanor. Use carbon paper for duplicate. Use indelible pencil.	
Sold by.....	Salesman.....
City, town or township.....	
Description of arm (state whether revolver or pistol) .....	
Maker.....	Number..... Caliber.....
Name of purchaser.....	Age.....years
Permanent address (state name of city, town or township, street and number of dwelling).....	
Height.....	feet..... inches. Occupation.....
Color.....	Skin..... Eyes..... Hair.....
If traveling, or in locality temporarily, give local address .....	

Signature of purchaser.....  
 (Signing a fictitious name or address is a misdemeanor. To be signed in duplicate.)  
 Witness.....Salesman.  
 (To be signed in duplicate.)

Series No.....  
 Sheet No.....

**DUPLICATE**

**(DEALERS' RECORD OF SALE OF REVOLVER OR PISTOL)  
 State of Oregon**

Notice to Dealers: This carbon duplicate must be mailed on the evening of the day of sale as set forth in the original of this register page. Violation of this law is a misdemeanor.

Sold by.....Salesman.....  
 City, town or township.....  
 Description of arm (state whether revolver or pistol).....  
 Maker.....Number.....Caliber.....  
 Name of purchaser.....Age.....years  
 Permanent address (state name of city, town or township, street and number of dwelling).....  
 Height.....feet.....inches. Occupation.....  
 Color.....Skin.....Eyes.....Hair.....  
 If traveling, or in locality temporarily, give local address.....  
 Signature of purchaser.....  
 (Signing a fictitious name or address is a misdemeanor. To be signed in duplicate.)  
 Witness.....Salesman.  
 (To be signed in duplicate.)

**166.430 Licenses to sell at retail.** Licensing authorities of any city, county, town or other municipality within this state may grant licenses in form prescribed by the Attorney General, effective for not more than one year from date of issue, permitting the licensee to sell at retail within the municipality, pistols, revolvers and other firearms capable of being concealed upon the person, subject to the following conditions, for breach of any of which the license is subject to forfeiture:

- (1) The business shall be carried on only in the building designated in the license.
- (2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be read.
- (3) No pistol or revolver shall be delivered on the day of the application for the purchase, or unless the purchaser either is personally known to the seller or presents clear evidence of his identity.
- (4) No pistol or revolver, or imitation thereof, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen.
- (5) When a pistol or revolver is delivered it shall be unloaded and securely wrapped.

**166.440 Unlicensed persons selling or advertising for sale concealable firearms.** Any person who, without being licensed as provided in ORS 166.430, engages in the business of selling or otherwise transferring, or who advertises for sale or offers or exposes for sale or transfer, any pistol, revolver or other firearm capable of being concealed upon the person, is guilty of a misdemeanor.

**166.450 Obliteration or change of identification marks on firearms.** Any person who changes, alters, removes or obliterates the name of the maker, model, manufacturer's number, or other mark of identification on any pistol or revolver, shall be punished upon conviction by imprisonment in the penitentiary for not more than five years. Possession of any such firearm upon which the same has been changed, altered, removed or obliterated, is presumptive evidence that the possessor has changed, altered, removed or obliterated the same.

**166.460 Antique firearms excepted.** ORS 166.230, 166.250 to 166.270, 166.280, 166.290, 166.410 to 166.450, and 166.470 do not apply to antique pistols or revolvers incapable of use as such.

**166.470 Limitations and conditions for sales of concealable firearms.** No person shall sell, deliver or otherwise transfer any pistol, revolver or other firearm capable of being concealed upon the person to any person whom he has cause to believe to be within any of the classes prohibited by ORS 166.270 from owning or possessing such firearms, nor to any minor under the age of 18 years. Such firearm shall not be delivered to the purchaser on the day of the application for its purchase, and when delivered it shall be securely wrapped and unloaded. When neither party to the transaction holds a dealers' license, the vendor shall not sell or otherwise transfer any such firearm to any other person within this state who is not personally known to the vendor. Violation of this section is a misdemeanor.

**166.480 Sale or gift of explosives and firearms to children.** Any person who sells, exchanges, barter or gives to any child, under the age of 14 years, any explosive article or substance, other than an ordinary firecracker containing 10 grains of gunpowder; or who sells, exchanges, barter or gives

to any such child any firearms, or other device of a like kind, ordinarily used or ordinarily capable of being used in discharging gunpowder in a greater quantity than 10 grains; or who sells, exchanges, barter or gives to any such child, any instrument or apparatus, the chief utility of which is the fact that it is used, or is ordinarily capable of being used, as an article or device to increase the force or intensity of any explosive, or to direct or control the discharge of any such explosive, is guilty of a misdemeanor.

**166.490 Purchase of firearms in certain other states.** (1) As used in this section, unless the context requires otherwise:

(a) "Contiguous state" means California, Idaho, Nevada or Washington.

(b) "Resident" includes an individual or a corporation or other business entity that maintains a place of business in this state.

(2) A resident of this state may purchase or otherwise obtain a rifle or shotgun in a contiguous state and receive in this state or transport into this state such rifle or shotgun, unless the purchase or transfer violates the law of this state, the state in which the purchase or transfer is made or the United States.

(3) This section does not apply to the purchase, receipt or transportation of rifles and shotguns by federally licensed firearms manufacturers, importers, dealers or collectors.

(4) This section expires and stands repealed upon the date that section 922(b) (3) of the Gun Control Act of 1968 (18 U.S.C. 922(b) (3) ) and regulations pursuant thereto are repealed or rescinded.

[1969 c.289 §§1, 2, 3, 4]

**SLUGGING AND STABBING WEAPONS**

**166.510 Manufacturing, selling, carrying or possessing slugging or stabbing weapons.** (1) Except as provided in ORS 166.520, any person who manufactures, causes to be manufactured, sells, keeps for sale, offers, gives, loans, carries or possesses an instrument or weapon having a blade which projects or swings into position by force of a spring or other device and commonly known as a switch-blade knife or an instrument or weapon commonly known as a blackjack, slung shot, billy, sandclub, sandbag or metal knuckles, or who carries a dirk, dagger or stiletto shall be punished:

(a) Upon conviction, by a fine of not more than \$100, or by imprisonment in the county jail for a term no longer than 30 days, or both.

(b) Upon a second conviction, by a fine of not more than \$200, or by imprisonment in a county jail for not less than three months, or both.

(c) Upon a third or subsequent conviction, by a fine of not more than \$500 or by imprisonment in a county jail for not more than six months or in the penitentiary for not more than two years.

(2) District and justice courts shall have concurrent jurisdiction with the circuit courts of any offense defined in this section where the penalty therefor does not exceed the limitations set out in ORS 46.040 and 51.050, respectively.

[Amended by 1957 c.290 §1]

**166.520 Persons permitted to carry blackjacks.** Sheriffs and their deputies, constables, marshals, police officers or any other duly appointed peace officers, or persons summoned by such officers to assist in making arrests or preserving the peace, while engaged in assisting such officers, are not prohibited from carrying or possessing an instrument or weapon commonly known as a blackjack or billy.

**DISCARDED CONTAINERS**

**166.560 Abandoning refrigerators in places accessible to children.** It is unlawful to maintain or leave in a place accessible to children any discarded ice box, refrigerator or similar container with a door or lid attached that cannot be opened with ease from the inside. Violation of this section is a misdemeanor.

[1965 c.118 §1]

**CRIMES INVOLVING COMMON CARRIERS AND PUBLIC WAYS**

**166.610 Obstruction of highway by herder.** Any person driving or herding, or causing to be driven or herded, cattle, horses, sheep or any kind of livestock along or near a public highway, and causing the highway to be obstructed thereby with stones, earth, or other debris, and leaving the same to so remain for more than 24 hours, shall be fined upon conviction in any sum not exceeding \$200. Justices of the peace of the county where the offense is

committed shall have original jurisdiction of all violations of this section.

166.620 [Repealed by 1963 c.94 §2]

**166.630 Discharging weapon on or across highway.** (1) Any person who discharges any bow and arrow, air rifle, rifle, gun, revolver or other firearm upon or across any highway or other public road in this state, shall be punished, upon conviction, by imprisonment in the county jail for not more than one year, or a fine of not more than \$500, or both. Any bow and arrow, air rifle, rifle, gun, revolver or other firearm in the possession of the person that was used in committing a violation of this subsection may be confiscated and forfeited to the State of Oregon. This subsection does not prevent the discharge of firearms by peace officers in the performance of their duty.

(2) The hunting license revocation provided in subsection (1) of ORS 497.285 is in addition to and not in lieu of the penalty provided in subsection (1) of this section.

[Amended by 1963 c.94 §1; 1969 c.501 §2; 1969 c.511 §4]

**166.640 Tampering with railroad property.** Any person who wilfully or maliciously places any obstruction on any railroad track or roadbed, or streetcar track, in this state, or who without the right so to do, loosens, tears up, removes or misplaces any rail, switch, frog, guard rail, cattle guard, or any part of the railroad track, roadbed, streetcar track, railroad block signal, crossing bell or crossing gate, or who in any manner so as to endanger the safety of any train or engine or so as to endanger the security of or injure any passenger or person riding thereon, tampers with or molests any such road, roadbed, track, block signal, crossing bell, crossing gate, signal flag or signal torpedo, shall be punished upon conviction by imprisonment in the penitentiary for not exceeding 10 years, or by imprisonment in the county jail for not exceeding one year.

**166.650 Making or disposing of keys to property of common carrier.** Any person who, by himself or another, without the written order and consent of the common carrier, makes, simulates, imitates, sells or disposes of any key belonging to or which might be used to open or unlock any switchlock, carlock, or locks used upon or belonging to any switch or car owned, controlled or operated by any common carrier in this state, shall be punished upon conviction by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail not less than 30 days nor more than one year.

### EMERGENCY TELEPHONE CALLS

**166.710 Relinquishing telephone to permit emergency call.** (1) Every person shall relinquish a telephone party line or a public pay telephone after he has been informed that the party line or telephone is needed to place an emergency call to a fire department or police department, or for emergency medical aid or ambulance service. This subsection does not apply to persons using a telephone party line or pay telephone for such an emergency call.

(2) No person shall request another to relinquish a telephone party line or pay telephone to place an emergency call to a fire department or police department, or for emergency medical aid or ambulance service knowing that no such emergency exists.

(3) Every telephone directory published after August 20, 1957, and which is distributed to the members of the general public in this state shall contain in a prominent place a notice which explains the offenses provided in this section.

(4) As used in this section, "emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential.

(5) Violation of subsection (1), (2) or (3) of this section is a misdemeanor.

[1957 c.601 §1]

### CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,  
on December 1, 1969.

Robert W. Lundy  
Legislative Counsel



of the proposed section is to preserve the statutory crime of treason as defined in the Oregon Constitution. It would seem that the classical definition of

treason is broad enough to cover overt acts that might occur, and most of the activities would probably violate other sections of the draft.

**Section 218. Riot.** (1) A person commits the crime of riot if while participating with five or more other persons he engages in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm.

(2) Riot is a Class C felony.

COMMENTARY

**A. Summary**

The common law definition of riot states:

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

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

It must be shown that the rioters were involved in a common disorder; it is not enough to show that numerous individuals were engaged in similar unrelated activities. Mere presence without taking part by word or deed is not participation.

The term “tumultuous and violent conduct” is intended to represent more than mere loud noise or disturbance. The language is designed to imply terroristic mob behavior involving ominous threats of personal injury and property damage. Persons participating in large urban riots would probably be punished for individual criminal acts rather than for riot.

**B. Derivation**

Section 218 is derived from New York Revised Penal Law § 240.05. The language “participating with five or more others” is derived from Model Penal Code § 250.1 (1).

**C. Relationship to Existing Law**

ORS 145.020, dispersal of unlawful or riotous assemblages and 145.990, penalty provision for ORS

145.020 would be amended; 166.040, riot and unlawful assembly; and 166.050, punishment for participating in riot, would be repealed. ORS 166.050 does not include a penalty provision for unlawful assembly as defined in ORS 166.040 ( 2). This anomaly is discussed in connection with § 219, infra.

The emphasis in existing law is on conduct preparatory to the commission of a separate criminal offense and on individual acts of misconduct committed in group situations. Under the proposed criminal code revision, these offenses will be reached by provisions on inchoate crimes, parties to crime and particularized substantive sections. The thrust of the proposed riot section is directed toward unlawful group action producing or creating a grave risk of public “alarm.” A comprehensive analysis of ORS 166.040 is found in *State v. Mizis*, 48 Or 165, 86 P 361 (1906).

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

“[A] group of cases sets forth the rule that tumultuous and violent, though not necessarily unlawful, acts which result in fright to persons may constitute a riot. One case, which has been frequently cited with approval, held that a riot existed when 8 or 10 disguised men paraded up and down the street at night shooting guns and blowing horns for several hours, terrifying a number of persons. *State v. Brazil*, Rice 257 (S.C. 1839) . . . . It is sufficient if the action of the parties implicated is so violent and tumultuous as to be likely to cause fright and individuals are frightened. *Spring Garden Ins. Co. v. Imperial Tobacco Co.*, 132 Ky 7, 116 SW 234 (1909).” 18 *Or L Rev* 254 (1939).

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

“To constitute a riot it is not necessary that there should be actual fright to the public generally. It is enough if the action of the parties



implicated be so violent and tumultuous as to be likely to cause fright, and if individuals are frightened.”

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

“The generally understood meaning of the word ‘riot’ is an assembly of individuals who

commit a lawful or unlawful act in a violent or tumultuous manner, to the terror or disturbance of others . . . .”

Section 218 imposes a single penalty provision for the crime of riot. Aggravating factors enhancing the penalty contained in ORS 166.050 would be reached by the various sections on parties to crime, assault, criminal solicitation, etc.



**Section 219. Unlawful assembly.** (1) A person commits the crime of unlawful assembly if:

- (a) He assembles with five or more other persons with the purpose of engaging in conduct constituting a riot; or
- (b) Being present at an assembly that either has or develops the purpose of engaging in conduct constituting a riot, he remains there with the intent to advance that purpose.

(2) Unlawful assembly is a Class A misdemeanor.

COMMENTARY

**A. Summary**

The purpose of § 219 is stated in the Michigan Revised Criminal Code:

“. . . . [It] is intended to reach those who have assembled for the purpose of rioting or who are on their way to the scene of a riot, but who have not yet begun to riot, or who associate with a group of known potential rioters with intent to aid their cause. It thus comprises both unlawful assembly and rout at the common law, and constitutes in effect an expanded concept of attempted riot . . . .” (Commentary, § 5515).

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

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

The policy behind § 219 is to give law enforcement authorities flexibility in dispersing groups gathered for an unlawful purpose prior to the inception of riotous conduct. It is not intended to infringe upon the right to lawfully assemble and exercise First Amendment prerogatives.

**B. Derivation**

The section is based on Michigan Revised Criminal Code § 5515.

**C. Relationship to Existing Law**

ORS 166.040 (2) defines an unlawful assembly. The penalty provision in ORS 166.050 refers only to riot. This statutory flaw was construed in 30 *Op Atty Gen* 419 (1960-62):

“. . . . There is no penalty assigned by the statutes to acts described in ORS 166.040 (2). ORS 166.050 assigns penalties for riot as defined by ORS 166.040 (1). And, ORS 145.020 provides certain penalties for failure to assist police officers in dispersal of unlawful assemblies, or for the refusal to disperse upon properly being ordered to do so by enforcement officers. But . . . there is no penalty assigned to acts not amounting to riot but which do become unlawful assembly. It is therefore my view that ORS 166.040 (2) does not in itself describe a crime, either a misdemeanor or a felony.” See also 40 *Or L Rev* 60 (1960); *State v. Stephanus*, 53 Or 135, 99 P 428 (1909).

Section 219 would therefore be a new crime inasmuch as existing law defines an “unlawful assembly” without providing a penalty.



the district. An advisory committee shall consist of one representative from each public or private safety agency, as defined in ORS 401.710, included within the district. A member of the advisory committee shall reside within the district.

(2) A member of the advisory committee shall serve for a term of two years. Of the members first appointed, however, one-half of the members shall serve for a term of one year. The respective terms of the members shall be determined by lot at the first meeting of the advisory committee.

(3) The advisory committee shall meet with the governing body of the district at the times and places determined by the committee and governing body jointly.

(4) The advisory committee may adopt rules for the conduct of its proceedings.

(5) The advisory committee may propose changes to any of the district's rules, policies or practices as it considers necessary or desirable. In addition to its other functions and duties, the advisory committee shall review the annual budget of the district and any assessments levied under ORS 451.410 to 451.600. The advisory committee shall meet with the governing body of the district and may make such recommendations relating to the budget and assessments as it considers necessary or prudent.

**SECTION 5.** ORS 401.710 is amended to read:

401.710. As used in ORS 307.215 and 401.710 to 401.790, unless the context requires otherwise:

(1) "Account" means the Emergency Communications Account.

(2) "Division" means the Emergency Management Division of the Executive Department.

(3) "Department" means the Department of Revenue.

(4) "Exchange access services" means:

(a) Telephone exchange access lines or channels which provide local access from the premises of a subscriber in this state to the local telecommunications network to effect the transfer of information; and

(b) Unless a separate tariff rate is charged therefor, any facility or service provided in connection with the services described in paragraph (a) of this subsection.

(5) "Public or private safety agency" means any unit of state or local government, a special-purpose district or a private firm which provides or has authority to provide fire-fighting, police, ambulance or emergency medical services.

(6) "Subscriber" means a person who receives telephone exchange access services.

(7) "Provider" means a public utility which provides telephone exchange access services.

(8) "Local jurisdiction" means a county service district established under ORS chapter 451 to provide an emergency communications system or a group of public or private safety agencies who have agreed in writing to jointly plan an emergency telephone system.

Approved by the Governor July 9, 1987

Filed in the office of Secretary of State July 9, 1987

**CHAPTER 526**

AN ACT

SB 581

Relating to authority regarding unlawful assemblies; amending ORS 131.675; and repealing ORS 131.990.  
**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 131.675 is amended to read:

131.675. [(1)] When any five or more persons, whether armed or not, are unlawfully or riotously assembled in any county, city, town or village, the sheriff of the county and the deputies of the sheriff, the mayor of the city, town or village, or chief executive officer or officers thereof, and the justice of the peace of the district where the assemblage takes place, or such of them as can forthwith be collected, shall go among the persons assembled, or as near to them as they can with safety, and command them in the name of the State of Oregon to disperse. If, so commanded, they do not immediately disperse, the officer must arrest them or cause them to be arrested; and they may be punished according to law.

[(2) For the purpose of arresting or causing the arrest of persons who fail to disperse when so commanded, the arresting officer or officers may command the aid of persons present or within the county, except members of the National Guard. No person, when so commanded, shall fail to give such aid and, if the person does fail so to do, the person shall be deemed one of the rioters and may be treated accordingly.]

[(3) No such officer, having notice of such unlawful or riotous assemblage, shall neglect to exercise the authority with which the officer is vested under this section.]

**SECTION 2.** ORS 131.990 is repealed.

Approved by the Governor July 9, 1987

Filed in the office of Secretary of State July 9, 1987

**CHAPTER 527**

AN ACT

SB 631

Relating to counties; amending ORS 426.241.  
**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 426.241 is amended to read:

426.241. (1) The cost of emergency psychiatric care, custody and treatment related to or resulting from such psychiatric condition, provided by a hospital or other facility approved by the division and the community mental health program director of the county in which the facility is located, except a state mental hospital, for an allegedly mentally ill person admitted or

345 MR. SHEPARD reported the Ad Hoc committee will be recommending that perhaps half of the misdemeanor driving while suspended charges and many of the Fish and Game charges no longer be crimes, and there is a genuine push in that regard in Ways and Means.

370 MOTION: CHAIRMAN FRYE moved the proposed amendments to SB 293 as submitted by the Oregon State Bar.

372 SENATOR HAMBY said she would go with the Bar's recommendation.

380 VOPE: There being no objection, CHAIRMAN FRYE so ordered.

391 MOTION: CHAIRMAN FRYE moved SB 293 as amended out of the committee with a Do Pass recommendation and referral to Ways and Means.

392 VOPE: In a roll call vote, all members present voted AYE, with SENATOR BROCKMAN excused. The motion passed.

**PUBLIC HEARING**

**SB 581**

414 SEN. MAE YIH read her written testimony in support of SB 581 (EXHIBIT E)

4:02 SENATOR HILL left the meeting.

**TAPE 84, SIDE B**

025 SENATOR YIH continued reading her testimony and offered an amendment to SB 581 as contained in her testimony.

032 COUNSEL KRAMER explained the effect of Senator Yih's proposed amendment.

051 DAVID FIDANQUE, representing the American Civil Liberties Union (ACLU) testified in support of SB 581 and presented material which was given to the committee two years ago (EXHIBIT F). Included in his testimony was a copy of an order issued by Federal District Judge Leavy in a civil case involving this statute, in which he found that Subsection (2) of the statute was unconstitutional for a number of reasons under the Federal Constitution. MR. FIDANQUE believed that rationale applied to Subsection (3) of the current statute. The ACLU further believes that Section 1 is unnecessary, however, in the interest of getting the bill passed, they are satisfied with SB 581 together with the proposed amendment. MR. FIDANQUE said in addition to the rationale used by Judge Leavy under the Federal Constitution, the ACLU believes at least Subsections (2) and (3) are unconstitutional for a variety of reasons under the Oregon Bill of Rights and the Oregon Constitution. They feel the most onerous things about Subsection (2) is that it unconstitutionally delegates authority to police officers in the field to create a crime.

097 SENATOR WYERS asked if ACLU supported SB 581. MR. FIDANQUE said they supported it and are listed as a requestor of its introduction.

4:08 SENATOR BRENNEMAN stepped out.

112 CHAIRMAN FRYE closed the public hearing on SB 581.

**WORK SESSION**  
**SB 581**

120 **MOTION:** SENATOR COHEN moved to delete Sec. 2 of SB 581.

121 **VOTE:** There being no objection, CHAIRMAN FRYE so ordered.

122 **MOTION:** SENATOR HAMBY moved SB 581 as amended to the floor with a Do Pass recommendation.

130 **VOTE:** In a roll call vote, all members present voted AYE, with SENATOR BROCKMAN excused. The motion passed.

132 CHAIRMAN FRYE assigned SB 581 to Sen. Yih to carry.

**PUBLIC HEARING**  
**SB 213**

140 SENATOR LARRY HILL explained the background of a bill adopted in 1985 addressing literary profits resulting from criminal activities. He said experience shows there are flaws in the current statute which need to be corrected.

188 ED KUYKENDALL, representing the Department of Justice Special Compensation Programs, testified in support of SB 213 (EXHIBIT G) and presented proposed amendments (EXHIBIT H). He said the main focus for this bill has been as a result of the Diane Downs contract, and that staff and legal time in the Downs matter has totalled over \$30,000. MR. KUYKENDALL said the proposed amendments are intended to avoid abuse, put enforcement teeth into the statute, and clarify it so the determination process can be made more simple.

229 SENATOR LARRY HILL said there is a potentially large amount of money to be made through the sale of these crimes for literary purposes, and this money currently may be used to satisfy a lien that could have been brought by a victim against the offender who earns the money through selling the story of the crime. He said most victims do not obtain a civil judgment with only the prospect that at some point there may be money available to satisfy the judgment, and as a result few victims enter these kinds of civil cases. This statute is intended to seize and protect any such monies until such time as a victim may bring a civil case. If no one brings a case within a certain period of time, the statute provides that the money is released to the offender. SENATOR HILL said if a final determination cannot be obtained that a contract is applicable, then the law cannot be applied, the victim's interest cannot be protected, the money is not preserved from being spent by the offender, and the purpose of the act is not accomplished.

4:20 SENATOR BRENNEMAN returned.

MAE YIH  
LINN AND BENTON COUNTIES  
DISTRICT 19

REPLY TO ADDRESS INDICATED:

S 214 - State Capitol  
Salem, Oregon 97310-1347  
Phone (503) 378-8847  
 4465 Yih Lane NE  
Albany, Oregon 97321  
Phone (503) 327-2666



COMMITTEES  
Member:  
Ways and Means  
Government Operations and Elections  
Human Resources

SENATE JUDICIARY  
SB 581 Pages 2  
Exhibit E Date 3/26/87  
Presented by Sen. Mae Yih  
OREGON STATE SENATE  
SALEM, OREGON  
97310-1347

March 26, 1987

TESTIMONY FOR SENATE BILL 581

REPEAL OF THE RIOT ACT

SENATE BILL 581 MUST LOOK VERY FAMILIAR TO YOU. IT IS A VERSION OF THE REPEAL OF THE RIOT ACT THAT CAME OUT OF YOUR JUDICIARY COMMITTEE FOR THE FIRST TIME DURING THE 1985 SESSION. THAT 1985 BILL, SENATE BILL 418, COMPLETELY REPEALED THE ENTIRE OREGON RIOT STATUTE AND WAS VETOED BY GOVERNOR ATIYEH. HE WANTED TO RETAIN SUBSECTION I OF THE ACT IN ORDER TO MAINTAIN THE POWER OF PUBLIC OFFICERS TO DISPERSE A CROWD IN CASE OF A RIOTOUS SITUATION ON PRIVATE PROPERTY. HE STATED THAT SUBSECTION I WAS NECESSARY TO GIVE LAW ENFORCEMENT OFFICERS THE POWER TO COMMAND DISPERSION WHENEVER THERE WAS NOT TIME TO CONTACT PROPERTY OWNERS. SUBSEQUENTLY, YOU AMENDED HOUSE BILL 2638, THE 1985 DEADLY FORCE ACT, TO INCLUDE THE REPEAL OF THE RIOT ACT, BUT REINSTATING THE SUBSECTION I THAT THE GOVERNOR WANTED TO SEE REMAIN. HE THEN HOWEVER, VETOED THAT BILL FOR OTHER REASONS WHICH ARE NOT RELEVANT TO THE ISSUE OF THE RIOT ACT.

WELL, THEN THIS IS THE THIRD GO AT IT FOR THE REPEAL OF THE RIOT ACT MEASURE. LET US HOPE NUMBER THREE IS A CHARM.

SENATE BILL 581 DOES NOT REPEAL THE OREGON RIOT ACT, ORS CHAPTER 131 SECTION 675, IN TOTO. THE BILL AMENDS THE LAW BY ELIMINATING SUBSECTIONS 2 and 3 OF THAT SECTION AND ALSO REPEALS ORS 131.990.

SUBSECTION 2 OF THE CURRENT RIOT ACT PROVIDES THAT WHEN PERSONS ARE UNLAWFULLY OR RIOTOUSLY ASSEMBLED, LAW ENFORCEMENT OFFICERS MAY COMMAND THE AID OF PRIVATE PERSONS TO DISPERSE THE CROWD AND THAT NO PERSON CAN REFUSE SUCH A COMMAND. THIS LAW WAS DECLARED UNCONSTITUTIONAL BY THE U. S. DISTRICT COURT IN OREGON IN 1986 AS VIOLATIVE OF THE FIRST, FOURTH AND FOURTEENTH AMENDMENTS. THE LANGUAGE IN THE STATUTE WAS FOUND TO BE VAGUE AND INCAPABLE OF SETTING ANY REASONABLY PRECISE STANDARD OF GUILT. IT IS OVERBROAD, BRINGING SOME CONSTITUTIONALLY PROTECTED BEHAVIOR UNDER THE SCOPE OF ACTIVITY DEEMED ILLEGAL BY THE PRESENT STATUTE.


FURTHERMORE, THE LAW AS IT NOW STANDS (AS STATED IN SUBSECTION 3 OF ORS 131.675 AND ORS 131.990) SUBJECTS A PUBLIC PEACE OFFICER, SHERIFF, OR OTHER PUBLIC PEACE OFFICER TO CRIMINAL LIABILITY FOR FAILURE TO EXERCISE THE AUTHORITY OF THE RIOT ACT. THIS IS SIMPLY AGAINST GOOD PUBLIC POLICY AND IS ALSO UNNECESSARY.

AS I STATED EARLIER, I PROPOSED IN THE LAST SESSION THAT THE RIOT ACT BE REPEALED. THE TIME HAS COME TO GET THIS LAW OFF THE BOOKS.

I WOULD LIKE TO OFFER AN AMENDMENT TO SENATE BILL 581 AS PRINTED. I SUGGEST DISCARDING SECTION 2 OF THE BILL, THEREBY MAKING SECTION 3, SECTION 2. SECTION 2 OF THE BILL IS REDUNDANT AND SHOULD BE DELETED.

PLEASE CONSIDER THIS AMENDMENT AS YOU REGARD SENATE BILL 581. I BELIEVE THE NEED FOR THIS BILL IS OBVIOUS. I HOPE YOU WILL AGREE.

# # # # #

**ACLU**  
**AMERICAN CIVIL LIBERTIES UNION**  **OF OREGON**  
*Southern District • 1756 Willamette, Suite #2 • Eugene, OR 97401 • 345-6162*

TESTIMONY ON SENATE BILL 581  
BY THE  
AMERICAN CIVIL LIBERTIES UNION OF OREGON  
March 26, 1987  
SENATE JUDICIARY COMMITTEE

For the record, my name is David Fidanque. I am the Associate Director of the ACLU of Oregon. The ACLU appears in support of Senate Bill 581. We are pleased to once again be able to work with Senator Yih on this legislation. We are especially pleased that the bill, this session, is also supported by Linn County District Attorney Jackson Frost.

As the Committee may already be aware, this bill was approved by the 1985 Legislative Assembly twice but was vetoed on both occasions by former Governor Atiyeh. Last session the bill was introduced as SB 418 which was similar, although not identical, to the proposal before you today. After SB 418 was vetoed, a revised version of the bill was included as an amendment in HB 2638 B-Engrossed.

That is the version of the bill which now takes the form of SB 581. The bill repeals two particularly onerous sections of ORS 131.675 which had lain dormant in Oregon law since territorial days until a few years ago. It is the ACLU's position that the entire statute is either unconstitutional or unnecessary. However, we are content to leave subsection (1) of the statute in place in the interest of ensuring that subsections (2) and (3) get repealed.

For the record, I would like to explain in some detail how this statute was used in Linn County in 1984 in order to illustrate the need for this legislation.

A group of environmentalists, known as the Cathedral Forest Action Group, began a series of civil disobedience demonstrations in the Willamette National Forest in the spring of 1984. In order to protest the logging of timber which the group felt should have been preserved as wilderness, they periodically blockaded a nearby Forest Service road in order to halt log truck traffic in the area.

These demonstrations went on for a number of weeks. On each occasion, log trucks were blocked from exiting the area until Linn Co. Sheriff's deputies could arrive at the scene to place the blockaders under arrest for disorderly conduct [ORS 166.025(e), a Class B Misdemeanor].

It should be noted that at each of the demonstrations, only a small number of individuals would block the road and be arrested. Others were lawfully assembled by the side of the road, making their political views known and giving "moral" support to those who had decided to violate the law.

By mid-July, community pressure was building on the sheriff's office to take actions which would deter further demonstrations. For whatever reason, on July 17, 1984, demonstrators were dragged by their hair after being arrested by the deputies on the scene. A freelance photographer took pictures of this incident and sold them to several daily newspapers. This photographer, who had on a previous occasion been arrested himself, also filed a formal complaint with the Linn Co. Sheriff protesting the treatment of those who had been arrested.

A week later, July 23, 1984, protestors had once again blocked the road. On reaching the scene, the sheriff's deputy in charge approached the bystanders and called this freelance photographer by name. As he stepped forward, camera in hand, the deputy ordered him, under the authority of ORS 131.675(2), to arrest the waiting demonstrators or face prosecution for a Class C Felony.

The photographer attempted to carry out the order by walking over to the blockaders and telling them that they were under arrest. They refused to move. The deputy then ordered the photographer to carry the demonstrators to the sheriff's van. He refused and he was arrested.

The deputy then called another photographer out of the crowd who worked for the Portland Alliance. He also was ordered to place the protestors under arrest. After telling the deputy that he was partially disabled due to a back injury, he was also placed under arrest. Finally, a third man was called from the crowd and was also arrested after refusing to arrest the demonstrators.

It should be noted that numerous other individuals were present at the scene, including employees of the Forest Service and Willamette Industries. Only four people were blocking the road. There was at no time any indication that the deputies on the scene were unable to handle the situation without assistance from innocent bystanders:

Subsequently, each of the three men arrested under ORS 131.675(2) was indicted. The ACLU directly represented the two photographers and we assisted the attorney for the third defendant. One day before a Circuit Court hearing on the constitutionality of the statute, the charges were dismissed on the motion of the District Attorney's office.



Some months later, a civil suit was filed in federal court against Linn Co. on behalf of the three men. The ACLU was not directly involved in that suit, but we were advised of the progress of the suit by the plaintiff's attorney. The merits of the case were resolved through a settlement between the parties. On November 13, 1986, U.S. District Judge Edward Leavy issued an order holding that ORS 131.675(2) was unconstitutional and enjoining Linn Co. from any further attempts to utilize the statute. I have attached a copy of that order to my testimony for the record.

As far as the ACLU has been able to determine, this statute had never been used by authorities prior to 1984. To our knowledge there are no appellate cases on point. These provisions have appeared in similar form in Oregon law since at least Deady's Code of 1864. According to the Oregon Historical Society, they may trace back as far as the Oregon Territorial Laws of 1846. I have attached a copy of the relevant portions of Deady's Code, for the record.

The present law was almost repealed during the comprehensive revisions of the Oregon Criminal Code in 1971 and 1973. For some reason which does not appear in the Legislative archives, committee members apparently balked at that time. The original recommendation to the Judiciary Committees from staff at that time was to eliminate the entire provision, including subsection (1).

As I stated earlier, the ACLU's position is that subsections (2) and (3) are clearly unconstitutional. Repeal of those sections are essential at this time. We believe that subsection (1) is archaic and unnecessary. We would support its repeal as well. However, if it is left to stand by itself it probably would not result in any direct harm other than taking up space in the ORS.

The ACLU urges you to support SB 581 and eliminate the "riot act" from Oregon law before it can be used again by officials somewhere else in the state.

THOMSEN, GOUGH & GOUGH

DONALD F. THOMSEN  
A KENNETH GOUGH  
TERRANCE P. GOUGH

ATTORNEYS AT LAW  
935 OAK STREET, SUITE B  
EUGENE OREGON 97401

TELEPHONE  
(503) 485-7444

November 19, 1986

Mr. Dave Fidanque  
ACLU  
1756 Willamette St., Suite 2  
Eugene, Oregon 97401

RE: Hund, et al v. County of Linn, et al

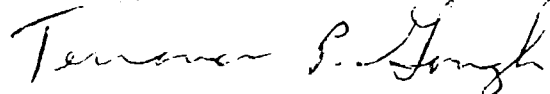
Dear Dave:

In accordance with your request of November 18, 1986, you will find enclosed a xerox copy of the Findings of Fact, Conclusions of Law and Judgment which was entered in the above matter regarding the constitutionality of ORS 131.675. As I have indicated to you on a previous occasion, I am not at liberty to send you the settlement agreement which was arrived at in the above case concerning monetary damages, because part of that agreement required that the matter be kept confidential to the extent possible.

If you have any questions about the case, please don't hesitate to call me. Keep up the good work for the ACLU.

Very truly yours,

THOMSEN, GOUGH & GOUGH



Terrance P. Gough

TPG:smd  
Enclosure

11-14-87

U. S. DISTRICT COURT  
DISTRICT OF OREGON  
**FILED**

*msd*

NOV 17 1986

ROBERT M. CHRIST, CLERK  
BY *RM* DEPUTY

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8 Eugene, OR 97401  
9 Tel: (503) 485-7444

7 Attorneys for Plaintiffs

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE DISTRICT OF OREGON

10 LEO J. HUND, ERIC M. NEVILLE,  
11 and PAUL G. MCADAMS,  
12 Plaintiffs,

Civil No. 85-1415

13 vs.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
JUDGMENT

14 COUNTY OF LINN, a political  
15 subdivision of the State of  
16 Oregon, KENNETH D. GOIN,  
17 individually, and as Sheriff of  
18 Linn County, Oregon, DARRELL  
19 THURMAN, individually, and as a  
20 deputy sheriff of the County of  
21 Linn, RICHARD D. BENSON,  
22 individually, and as a deputy  
23 sheriff of the COUNTY OF LINN,

24 Defendants.

25 THIS MATTER came on for hearing June 24, 1986 before  
26 the Honorable Edward Leavy, on plaintiffs' Motion for Summary  
Judgment for Declaratory Relief to declare ORS 131.675  
unconstitutional in that it violates the First, Fourth and  
Fourteenth Amendments and to enjoin its enforcement, the  
plaintiffs appearing by and through their attorney, Michael E.  
Kohlhoff, and defendants County of Linn, Sheriff Kenneth D.

1 - FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

MICHAEL E. KOHLHOFF  
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29

RECEIVED NOV 17 1986

1 Goin and deputy sheriffs Darrell Thurman and Richard P. Benson,  
2 not appearing; their counsel, Richard J. Kuhn, having  
3 previously advised the court on behalf of his clients that the  
4 motion was not opposed and that the matter was tendered to the  
5 State of Oregon for defense, and the State of Oregon appeared  
6 not, having notified the court by letter of June 18, 1986, the  
7 matter had not been certified;

8 Whereupon, this court, pursuant to 28 USC 2403(2),  
9 certified the issue of the constitutionality of ORS 131.675(2),  
10 caused a copy of the certification to be sent on June 25, 1986  
11 to the Attorney General for the State of Oregon, David B.  
12 Frohnmayer, and provided the State with a 30-day period to make  
13 timely application to intervene; and

14 Further, this court directed plaintiffs' counsel to  
15 cause to be served on the State's Attorney General a summons,  
16 copies of complaint, defendants' answer, pretrial order and  
17 summary judgment motion for declaratory relief. Return of  
18 service of summons was duly filed with the Court showing due  
19 service on July 8, 1986. The State of Oregon has not appeared  
20 nor has the State of Oregon made application for intervention,  
21 and more than 30 days have elapsed;

22 NOW, THEREFORE, the court, having fully reviewed the  
23 record, inclusive of the authorities submitted and those  
24 independently ascertained, and being fully advised in the  
25 premises; the court makes the following Findings of Fact and  
26 Conclusions of Law:

Page 2 - FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

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FINDINGS OF FACT

1  
2 1. This action for declaratory and injunctive relief  
3 is authorized under 42 USC Sec. 1983 and 28 USC Sec. 2201 and  
4 Sec. 2202. the court has jurisdiction over this matter  
5 pursuant to 28 USC Sec. 2201, Sec. 2202 and Sec. 1343.

6 2. ORS 131.675 is unconstitutional in that it is  
7 vague, uncertain and fails to establish any reasonably  
8 ascertainable standard of guilt, contrary to the due process  
9 clause of the Fourteenth Amendment, U.S. Constitution.

10 3. ORS 131.675(2) is unconstitutional in that it is  
11 overbroad and encompasses within its coverage Activities which  
12 are protected by the guarantees of the First Amendment, U.S.  
13 Constitution, contrary to the due process clause of the  
14 Fourteenth Amendment, U.S. Constitution.

15 4. ORS 131.675(2) is unconstitutional in that its  
16 vagueness and overbreadth permits improper application to  
17 protected activities in violation of the First Amendment, U.S.  
18 Constitution and Fourth Amendment, U.S. Constitution, contrary  
19 to the equal protection clause of the Fourteenth Amendment,  
20 U.S. Constitution.

21 5. Serious, immediate and irreparable injury will  
22 occur and continue to occur to substantial constitutional  
23 rights of plaintiffs unless Linn County and officials, their  
24 agents and employees, are enjoined permanently for enforcing  
25 ORS 131.675(2).  
26

Page

3 - FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

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Wilsonville, Oregon 97070-0706  
Telephone (503) 682-3955

1 CONCLUSIONS OF LAW

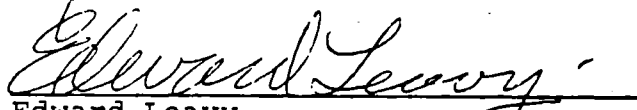
2 1. ORS 131.675(2) is declared unconstitutional in  
3 that it violates the First, Fourth, and Fourteenth Amendments  
4 of the U.S. Constitution as set forth above.

5 2. Linn County and local subdivisions thereof, and  
6 employees and agents thereof, are permanently enjoined from the  
7 enforcement of ORS 131.675(2) as it is presently constituted.

8 JUDGMENT

9 NOW, THEREFORE, IT IS HEREBY ORDERED, DECREED AND  
10 ADJUDGED that ORS 131.165(2) is declared unconstitutional and  
11 Linn County and local subdivisions thereof, and employees and  
12 agents thereof, are permanently enjoined from the enforcement  
13 of ORS 131.675(2) as it is presently constituted.

14 DATED this 13th day of November, 1986.

15   
16 Edward Leavy  
17 U.S. District Court Judge

OCT. 19, 1864.

to be of good behaviour also.

and deemed to be an undertaking to be of good behavior also, and cannot be required, except as provided in this chapter.

AUG 06 1984

CHAPTER XXXIX.

Suppression of Riots.

- Sec. 441. When governor to order military force to aid officer.
- 442. How and by whom rioters commanded to disperse.
- 443. If rioters do not disperse, to be arrested.
- 444. Consequence of refusing to aid officers.
- 445. Magistrate or officer neglecting to act, guilty of misdemeanor.
- 446. Proceedings, if rioters do not disperse.

- Sec. 447. What officers may order out the military.
- 448. Commanding officer and troops to obey orders.
- 449. Armed force to obey orders, of whom.
- 450. Between conflicting orders, which to be obeyed.
- 451. Endeavor to disperse rioters without loss of life.
- 452. If death ensue, who deemed guilty thereof.

When governor may order military force to aid officer.

SEC. 441. If it appear to the governor, that the power of the county is not sufficient to enable the sheriff to execute process delivered to him, he must, on the application of the sheriff, order such a military force from any other county or counties, as is necessary.

How and by whom rioters commanded to disperse.

SEC. 442. When any persons, to the number of three or more, whether armed or not, are unlawfully or riotously assembled in any county, city, town or village, the sheriff of the county and his deputies, the mayor of the city, town or village, or chief executive officer or officers thereof, and the justices of the peace of the county, for the precinct where the assemblage takes place, must go among the persons assembled, or as near to them as they can with safety, and command them, in the name of the state of Oregon, immediately to disperse.

If rioters do not disperse, to be arrested.

SEC. 443. If the persons assembled do not immediately disperse, the magistrates and officers must arrest them, or cause them to be arrested, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

Consequence of refusing to aid officers.

SEC. 444. If a person so commanded to aid the magistrate or officers, or any of them mentioned in section 442, neglect to do so, he is deemed one of the rioters, and may be treated and is punishable accordingly.

Magistrate or officer neglecting to

SEC. 445. If a magistrate or officer having notice of an unlawful or riotous assembly, mentioned in section 442, neglect to

proceed to th with safety, a vested for su is guilty of a Sec. 446. perse, do not or officers ma a sufficient n necessary, an may be most offenders.

SEC. 447. with intent t or property, c fact is made supreme coun city, town or directed to t ment, battali any part of i civil authorit

SEC. 448. must forthwi the time and nition as for :

SEC. 449. of suppressin orders in rela section 447.

SEC. 450. mentioned in of one subse from any of peace of the j

SEC. 451. officers and consistently duce or force upon them by Sec. 452.

behavior also,  
chapter.

proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

OCT. 19, 1864.

act, guilty of a misdemeanor.

SEC. 446. If the persons assembled, and commanded to disperse, do not immediately disperse, any two of the magistrates or officers mentioned in sections 442, may command the aid of a sufficient number of persons, armed or otherwise as may be necessary, and may proceed in such manner as in their judgment may be most expedient, to disperse the assembly and arrest the offenders.

Proceedings, if rioters do not disperse.

SEC. 447. When there is an unlawful or riotous assembly, with intent to commit a felony, or to offer violence to person or property, or to resist by force the laws of this state, and the fact is made to appear to the governor, or to a justice of the supreme court, or to the sheriff of the county, or mayor of the city, town or village, either of those officers may issue an order directed to the commanding officer of a division, brigade, regiment, battalion or company of troops, to order his command or any part of it, to appear at a specified time and place, to aid the civil authorities in suppressing violence and enforcing the law.

What officers may order out the military.

SEC. 448. The commanding officer to whom the order is given, must forthwith obey it, and the troops required must appear at the time and place appointed, armed and equipped with ammunition as for an engagement.

Commanding officer and troops to obey orders.

SEC. 449. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, it must obey the orders in relation thereto, of either of the officers mentioned in section 447.

Armed force to obey orders of whom.

SEC. 450. Between conflicting orders, that of the officer first mentioned in section 447 must be obeyed in preference to that of one subsequently enumerated; and in the absence of orders from any of such officers, the orders of any two justices of the peace of the precinct must be obeyed.

Between conflicting orders, which to be obeyed.

SEC. 451. Every endeavor must be made, both by the civil officers and the officer commanding the troops, which can be, consistently with the preservation of life and property, to induce or force the rioters to disperse, before an attack is made upon them by which their lives may be endangered.

Endeavor to disperse rioters without loss of life.

SEC. 452. If, in the effort to suppress or disperse any unlaw-

If death ensue,



OCT. 19, 1861.  
who deemed guilty thereof.

ful or riotous assembly, or to arrest or detain any of the persons engaged therein, any such rioters or other persons then present as spectators or otherwise, be killed or wounded, the magistrate and officers, and persons acting in their aid, are guiltless thereof; but if any such magistrate or officers or persons acting in their aid, be killed or wounded, all the persons engaged in such assembly are guilty thereof.

## CHAPTER XL.

### *Coroner's inquest and proceedings thereon.*

- |  |   |
|--|---|
| <p>SEC. 453. When and where coroner to summon jury, to hold inquest.</p> <p>454. Oath of jury.</p> <p>455. Witnesses to be subpoenaed.</p> <p>456. Compelling the attendance of witnesses and punishing their disobedience.</p> <p>457. Verdict of the jury, how given, and what to contain.</p> <p>458. Testimony how taken, and verdict to whom delivered.</p> <p>459. Testimony and verdict, how disposed of.</p> <p>460. Magistrate to issue warrant, when, and proceedings thereon.</p> <p>461. Proceedings if defendant arrested before verdict delivered.</p> | <p>SEC. 462. When coroner to bury body.</p> <p>463. Coroner's statement of expenses of inquest or burial, to whom and how made and paid.</p> <p>464. Inventory of property found on deceased.</p> <p>465. Coroner must deliver property to county treasurer.</p> <p>466. Disposition of property by treasurer.</p> <p>467. When and how money paid to legal representatives of deceased.</p> <p>468. Expenses of county to be first deducted.</p> <p>469. When justice of the peace authorized to act as coroner.</p> |
|--|---|

When and where coroner to summon jury to hold inquest.

SEC. 453. When it becomes the duty of a coroner to make the enquiry mentioned in section 996 of the code of civil procedure, he must go the place where the dead or wounded person is, and forthwith summon six persons, qualified by law to serve as jurors, to appear before him forthwith at a specified place, to enquire into the cause of the death or wound.

Oath of jury.

SEC. 454. When the jurors to the number of six appear, they must be sworn by the coroner to enquire who the person was, and when, where and by what means he came to his death or was wounded, as the case may be, and into the circumstances attending the death or wounding, and to give a true verdict thereon, according to the evidence offered to them, or arising from the inspection of the body.

Witnesses to be subpoenaed, to include physician.

SEC. 455. The coroner must subpoena and examine as witnesses, every person who, in his opinion, has knowledge of the material facts, and also a surgeon or physician, who must, in

the presence of the opinion as to the c

SEC. 456. For tling them to attendi-  
dience, a coroner i  
and authority in t  
code.

SEC. 457. When thirds of their nu-  
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SEC. 458. The t  
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SEC. 459. If the  
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SEC. 460. If the  
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SEC. 461. If, bo  
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SEC. 462. When  
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to claim the body  
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must be paid by tl

SB 111,114,174,177,  
178,216,322,581,  
HB 2844

HOUSE COMMITTEE ON JUDICIARY

Subcommittee 2

MAY 27, 1987  
TAPE 669-670

HEARING ROOM 350  
STATE CAPITOL

MEMBERS PRESENT: REP. JUDITH BAUMAN  
REP. RANDY MILLER  
REP. PAUL PHILLIPS  
REP. DICK SPRINGER  
REP. MIKE BURTON, CHAIR

STAFF PRESENT: CATHERINE WEBBER, Legal Counsel  
BILL TAYLOR, Legal Counsel  
GLENDA HARRIS, Chief Committee Assistant

WITNESSES: SENATOR MAE YIH, DISTRICT 19  
DAVE FIDINQUE, ACLU OF OREGON  
VERN FAATZ, STATE BOARD OF PAROLE  
JUDGE WAYNE HARRIS, DISTRICT COURT, YAMHILL COUNTY  
BRADD SWANK, JUDICIAL DEPARTMENT  
JANE AIKEN, GOVERNORS ADVISORY ON DUII  
REPRESENTATIVE MIKE KOPETSKI, HOUSE DISTRICT 33  
BILL NESLEY, DEPARTMENT OF JUSTICE  
STAN BILES, DEPARTMENT OF ENVIROMENTAL QUALITY  
PHILLIP FELL, LEAGUE OF OREGON CITIES  
DAVE MARTINO, DEPUTY CITY ATTORNEY, SALEM

TAPE 669

005 REPRESENTATIVE BURTON called the meeting to order at 6:15. Members present:  
REPRESENTATIVE BURTON, SPRINGER.

SB 581

009 STATE SENATOR MAE YIH, DISTRICT 19  
She said that this was a version of the repeal of the riot act, that had come out of the Senate Judiciary committee in 1985. She introduced Mr. Fidinque. She said that the when Governor Atiyeh vetoed the bill in 1985, he wanted to retain section 1 in order to maintain the power of public officers to disperse a crowd in case of a riot on private property. She said that the 1985 deadly

force act was amended to include a partial appeal of the riot act, reinstating section 1, but then he vetoed that bill also, for other reasons. She told the committee that this bill amended law by eliminating sub section 2 & 3 of the statute section of ORS. 131.675. She said that it would also repeal ORS. 131.990.

036 REPRESENTATIVE PHILLIPS arrived at this point

049 YIH said that as the law stands now it was against good public policy. She said that it was time to get the unconstitutional laws off the books.

053 REPRESENTATIVE BAUMAN arrived at this point.

060 DAVE FIDINQUE, ACLU OF OREGON

He told the committee that he had submitted written testimony, EXHIBIT A. He said that the version of the bill that passed out of the Senate this year was identical to the deadly force bill last session. He said that as opposed to last session, the bill now had the support of Linn County DA, Jack Frost as well as the ACLU. He explained how sub section 2 had been used against some anti logging demonstrators in Linn County. He said that they were called out of the crowd in order to arrest the demonstrators blocking the road. He said that when they refused they were charged with class C felonies. He said that those charges had been dropped one day before they were going to argue a motion to have the statute ruled unconstitutional.

090 He said that sub section 2 was unconstitutional and he urged the committee to pass SB 581.

095 REPRESENTATIVE SPRINGER asked for the date and the floor vote in the Senate and YIH said that she remembered it being unanimous, or close to it.

#### HB 2844

106 REPRESENTATIVE BURTON said that they would have an LC draft, 2844-3, EXHIBIT B. He said that there had been some concerns with the bill, so REPRESENTATIVE BURTON asked the parole board to come up with amendments. REPRESENTATIVE BURTON said that essentially the amendments would replace the bill as printed.

117 VERN FAATZ, STATE BOARD OF PAROLE

He told the committee that the Board was required to set a sentence on a prisoner within 6 months of incarceration. He said that this amendment would give them some latitude in that it would allow them to set persons who were imprisoned for life, or more than 15 years, be sentenced within one year, rather than 6 months. He explained that the reason for that was that their case load was growing rapidly and they were having difficulties scheduling people within 6 months. He told REPRESENTATIVE BURTON that people who were there for 15 years to life they were there on minimum terms exceeding the year, or they have matrix ranges that exceed a year, in every instance.

143 REPRESENTATIVE BURTON said that they were talking about section 1 of the bill, the rest of the information in the amendments remains as it is in current statute.

209 MOTION: REPRESENTATIVE BURTON moved SB 111 to the House Floor with a do pass recommendation.

213 VOTE: In a roll call vote the motion passed unanimously. REPRESENTATIVE BUNN would lead the debate on the House Floor.

SENATE BILL 114 - RELATING TO CIVIL PENALTIES

219 TAYLOR told the committee that SB 114 came from subcommittee 2 and said that it would make it a class A misdemeanor to place pollutants in a brook, stream, spring, well, road, highway, field or vacant lot. He said that the statute also allowed for DEQ to impose a civil penalty for violations. He said that there was a technical problem with the law in the sense that the criminal statute didn't reference the civil statute. He said that they cross referenced the statutes, thus allowing the Department of environmental quality to impose a civil fine.

233 MOTION: REPRESENTATIVE BURTON moved SB 114 to the House Floor with a do pass recommendation.

237 REPRESENTATIVE BELLAMY asked if the subcommittee could assure him that offensive substances were clearly defined and REPRESENTATIVE SPRINGER said yes. He said that if they looked in the Oregon Revised Statutes he would find the definition.

246 VOTE: In a roll call vote the motion passed unanimously. REPRESENTATIVE BURTON would lead the debate on the Floor.

SENATE BILL 322 - RELATING TO JURY TRIALS

254 REPRESENTATIVE BURTON said that this came from subcommittee 2, and said that under current statute, ORS 221.349, a person violating city charters or ordinances the right to a jury trial, regardless of whether it was a crime or an offense. He said that the bill deleted the offenses from the jury trial requirement. He explained that a person who didn't face the possibility of imprisonment wouldn't be entitled to a jury trial.

265 MOTION: REPRESENTATIVE BURTON moved SB 322 to the House Floor with a do pass recommendation.

270 VOTE: In a roll call vote the motion passed. Members voting AYE: REPRESENTATIVE BAUMAN, BELLAMY, BUNN, BURTON, DIX, MILLER, PHILLIPS, SPRINGER. Members voting NO: REPRESENTATIVE HANLON. REPRESENTATIVE SPRINGER would lead the debate on the Floor.

SENATE BILL 581 - RELATING TO AUTHORITY REGARDING UNLAWFUL ASSEMBLIES

280 REPRESENTATIVE BURTON told the committee that SB 581 came from subcommittee 2 also. He said that the current statute made it a class C felony if a citizen failed to obey a law enforcement officers command to assist in dispersing a riot assemblage. He said that the bill would delete the portion of the statute that was ruled to be unconstitutional in 1986, by the US district court. He said that it repealed certain police powers to command assistance during unlawful assembly.

291 MOTION: REPRESENTATIVE BURTON moved SB 581 to the House Floor with a do pass recommendation.

299 VOTE: In a roll call vote the motion passed unanimously. REPRESENTATIVE BURTON would lead the debate on the Floor.

SENATE BILL 174 - RELATING TO PROBATION IN CRIMINAL CASES

312 REPRESENTATIVE BURTON said that the bill would authorize a probation officer, with out prior court approval, to issue a citation to a probationer who was in violation, to appear in court on a specific date. He said that if the person failed to appear then the court could issue an arrest warrant. He said that there were specifications for the contents of the citation in section 3.

333 MOTION: REPRESENTATIVE BURTON moved SB 174 to the House Floor with a do pass recommendation.

339 VOTE: In a roll call vote the motion passed unanimously. REPRESENTATIVE BAUMAN would lead the debate on the Floor.

SENATE BILL 568 - RELATING TO FORECLOSURE OF TAX LIENS

351 TAYLOR said that the bill would require that the proceeds from property sold for delinquent taxes be distributed first to the taxing district and the remainder, if any, be paid to the person forfeiting the property. He said that there was a subsequent referral to the Revenue committee.

367 REPRESENTATIVE BUNN asked if the bill was set up so that after the Governmental bodies were paid and the expense of selling the property had been taken care of, any lien holders or security interest holders would have their security or lien paid before the underlying property owner. TAYLOR said that he didn't believe that was addressed in the bill.

377 REPRESENTATIVE BUNN said that they needed to be sure that they didn't inadvertently by passed any security holders in the process. He felt that they should hold the bill for staff to check on that.

389 REPRESENTATIVE PHILLIPS said that he understood that the Mortgage bankers supported the bill and he hoped that they wouldn't have done that if their rights were being abdicated. He said that the referral to Revenue came as a request from REPRESENTATIVE HUGO.

403 REPRESENTATIVE BUNN suggested that they go ahead with the bill and as it was going to Revenue they should have their staff check the issue and report back.

409 REPRESENTATIVE SPRINGER said that if the vote was favorable he would direct staff to check on the issue.

425 TAYLOR said that he had just reviewed the bill and it said nothing about subsequent lien holders. He said that he would check, but thought that they were no worse after the bill was passed than they were presently.

**ACLU**  
**AMERICAN CIVIL LIBERTIES UNION**  **OF OREGON**  
Southern District • ~~XXXXXX~~ Eugene, OR 97401 • 345-6162

HOUSE JUDICIARY  
Bill No. SB 581 Pages 3  
Exhibit A Date 5-27-87  
Presented by DAVID FIDANQUE

1679 Willamette St.

TESTIMONY ON SENATE BILL 581  
BY THE  
AMERICAN CIVIL LIBERTIES UNION OF OREGON  
May 27, 1987  
HOUSE JUDICIARY COMMITTEE

For the record, my name is David Fidanque. I am the Associate Director of the ACLU of Oregon. The ACLU appears in support of Senate Bill 581. We are pleased to once again be able to work with Senator Yih on this legislation. We are especially pleased that the bill, this session, is also supported by Linn County District Attorney Jackson Frost.

As the Committee may already be aware, this bill was approved by the 1985 Legislative Assembly twice but was vetoed on both occasions by former Governor Atiyeh. Last session the bill was introduced as SB 418 which was similar, although not identical, to the proposal before you today. After SB 418 was vetoed, a revised version of the bill was included as an amendment in HB 2638 B-Engrossed.

That is the version of the bill which now takes the form of SB 581. The bill repeals two particularly onerous sections of ORS 131.675 which had lain dormant in Oregon law since territorial days until a few years ago. It is the ACLU's position that the entire statute is either unconstitutional or unnecessary. However, we are content to leave subsection (1) of the statute in place in the interest of ensuring that subsections (2) and (3) get repealed.

For the record, I would like to explain in some detail how this statute was used in Linn County in 1984 in order to illustrate the need for this legislation.

A group of environmentalists, known as the Cathedral Forest Action Group, began a series of civil disobedience demonstrations in the Willamette National Forest in the spring of 1984. In order to protest the logging of timber which the group felt should have been preserved as wilderness, they periodically blockaded a nearby Forest Service road in order to halt log truck traffic in the area.

These demonstrations went on for a number of weeks. On each occasion, log trucks were blocked from exiting the area until Linn Co. Sheriff's deputies could arrive at the scene to place the blockaders under arrest for disorderly conduct [ORS 166.025(e), a Class B Misdemeanor].

It should be noted that at each of the demonstrations, only a small number of individuals would block the road and be arrested. Others were lawfully assembled by the side of the road, making their political views known and giving "moral" support to those who had decided to violate the law.

By mid-July, community pressure was building on the sheriff's office to take actions which would deter further demonstrations. For whatever reason, on July 17, 1984, demonstrators were dragged by their hair after being arrested by the deputies on the scene. A freelance photographer took pictures of this incident and sold them to several daily newspapers. This photographer, who had on a previous occasion been arrested himself, also filed a formal complaint with the Linn Co. Sheriff protesting the treatment of those who had been arrested.

A week later, July 23, 1984, protestors had once again blocked the road. On reaching the scene, the sheriff's deputy in charge approached the bystanders and called this freelance photographer by name. As he stepped forward, camera in hand, the deputy ordered him, under the authority of ORS 131.675(2), to arrest the waiting demonstrators or face prosecution for a Class C Felony.

The photographer attempted to carry out the order by walking over to the blockaders and telling them that they were under arrest. They refused to move. The deputy then ordered the photographer to carry the demonstrators to the sheriff's van. He refused and he was arrested.

The deputy then called another photographer out of the crowd who worked for the Portland Alliance. He also was ordered to place the protestors under arrest. After telling the deputy that he was partially disabled due to a back injury, he was also placed under arrest. Finally, a third man was called from the crowd and was also arrested after refusing to arrest the demonstrators.

It should be noted that numerous other individuals were present at the scene, including employees of the Forest Service and Willamette Industries. Only four people were blocking the road. There was at no time any indication that the deputies on the scene were unable to handle the situation without assistance from innocent bystanders.

Subsequently, each of the three men arrested under ORS 131.675(2) was indicted. The ACLU directly represented the two photographers and we assisted the attorney for the third defendant. One day before a Circuit Court hearing on the constitutionality of the statute, the charges were dismissed on the motion of the District Attorney's office.

Some months later, a civil suit was filed in federal court against Linn Co. on behalf of the three men. The ACLU was not directly involved in that suit, but we were advised of the progress of the suit by the plaintiff's attorney. The merits of the case were resolved through a settlement between the parties. On November 13, 1986, U.S. District Judge Edward Leavy issued an order holding that ORS 131.675(2) was unconstitutional and enjoining Linn Co. from any further attempts to utilize the statute. I have provided Committee staff a copy of that order for the record.

As far as the ACLU has been able to determine, this statute had never been used by authorities prior to 1984. To our knowledge there are no appellate cases on point. These provisions have appeared in similar form in Oregon law since at least Deady's Code of 1864. According to the Oregon Historical Society, they may trace back as far as the Oregon Territorial Laws of 1846.

The present law was almost repealed during the comprehensive revisions of the Oregon Criminal Code in 1971 and 1973. For some reason which does not appear in the Legislative archives, committee members apparently balked at that time. The original recommendation to the Judiciary Committees from staff at that time was to eliminate the entire provision, including subsection (1).

As I stated earlier, the ACLU's position is that subsections (2) and (3) are clearly unconstitutional. Repeal of those sections are essential at this time. We believe that subsection (1) is archaic and unnecessary. We would have supported its repeal as well. However, if it is left to stand by itself it probably would not result in any direct harm other than taking up space in the ORS.

The ACLU therefore strongly urges you to support SB 581 A-Eng. and eliminate the "riot act" from Oregon law before it can be used again by officials somewhere else in the state.