



OREGON LAW
COMMISSION



BIENNIAL REPORT
OF THE
OREGON LAW COMMISSION
1997-1999

MEMBERS OF THE OREGON LAW COMMISSION

Representative Lane Shetterly, Chair

Senator Kate Brown, Vice Chair

Representative Floyd Prozanski

Representative Max Williams

Dean Robert Ackerman
Willamette University College of Law

Dean Rennard Strickland
University of Oregon School of Law

Dean James Huffman
Northwestern School of Law

Attorney General Hardy Myers

Chief Justice Wallace Carson

Justice Hans Linde (ret.)

Mr. Jeff Carter, Attorney at Law

Ms. M. Janise Augur, Attorney at Law

Mr. Gregory Mowe, Attorney at Law

PART I INTRODUCTION

The Oregon Law Commission was created by the 1997 Legislative Assembly. Chapter 661, Oregon Laws 1997. The commission's predecessor, the Law Improvement Committee, had been inactive since 1990. In creating the commission, the Legislative Assembly recognized the need for a distinguished body of knowledgeable and respected individuals to undertake law revision projects requiring long-term commitment and an impartial approach. The law creating the commission, now codified at ORS 173.315 to 173.357, states that the commission will engage in a continuous review of the statutory laws of this state. The commission is given several duties, including the identification of obsolete, antiquated and defective statutory laws and the recommendation of needed reforms. The commission is directed to prepare proposed legislation to remedy those problems and to submit biennial reports to the Legislative Assembly that summarize the work of the commission. This is the first such report.

The commission held an organizational meeting on October 31, 1997 at the State Capitol in Salem. The members elected Representative Lane Shetterly as chair of the commission and Senator Kate Brown as vice chair. The commission began work immediately, establishing a Program Committee, chaired by Attorney General Hardy Myers. The Program Committee was directed to draft proposed criteria to be used by the commission in selecting appropriate projects for the commission. In general, the consensus of the commission members was that the commission should undertake those types of law revision projects that clearly needed to be done, but that might not otherwise be accomplished. The commission members did not wish to duplicate the efforts of other groups that were already engaged in efforts to clarify specific areas of the law.

Because many of the projects addressed by the commission would require more time than the two years available before the 1999 legislative session, the commission decided to identify specific projects as undertakings for the 1999 session. Appendices to this report contain summaries for the four drafts prepared by the commission for introduction in the 1999 session. The most significant of these proposals is a comprehensive revision of the statutes relating to violations and infractions.

The violations/infractions draft, prepared in close coordination with the Criminal Justice Advisory Committee established by the Chief Justice of the Supreme Court, represents one type of law revision proposal that the commission hopes to be able to bring before the Legislative Assembly in the future. The draft delves into an area of the law that has been long neglected and attempts to remold the statutes into language more understandable to a modern reader. Dozens of duplicative statutory provisions are eliminated. Obsolete terminology such as "bail" are replaced with terms that more closely reflect the intended meaning of the laws. Consistent terminology is used where there was previously a confusing inconsistency. To the greatest extent possible, the underlying substantive law has been preserved. The revision proposed by the draft is not only an academic exercise. The changes would have an immediate impact on the thousands of citizens who receive a traffic citation each year and would change the manner in which courts handle the most common judicial proceeding.

The commission hopes that the 1999 Legislative Assembly will give careful consideration to the legislative proposals submitted with this report. The commission looks forward to continuing its work during the next biennium and believes that the functions performed by the commission are important to ensure that Oregon law keeps pace with the many changes that are sure to occur in the new millenium.

PART II

THE ROLE OF THE COMMISSION

In the Spring 1998 edition of the Willamette Law Review, Professor Dominick Vetri, of the University of Oregon School of Law, wrote an article on the newly created commission. Communicating Between Planets: Law Reform for the Twenty-first Century, 34 Willamette L. Rev. 169 (1998). The article, which expresses high hopes for the success of the commission, describes the functions of a law revision commission as follows:

A law revision commission serves several functions. These are to: (1) understand the operations of the legislature and the courts; (2) provide a forum through which the courts and the legislature can inform each other about defects in the law and problems with its implementation; (3) enable the public and other interested groups (such as bar associations and committees or law faculty members) to raise issues for consideration about law reform; (4) thoroughly research and prepare reports on study projects undertaken; and (5) make statutory proposals to the legislature. 34 Willamette L. Rev. at 176-177.

The commission views this statement, in conjunction with the specific directives of ORS 173.315 to 173.357, as an accurate reflection of the commission's role. As noted in Professor Vetri's article:

A commission's true value lies in helping the legislature appreciate the need for certain changes in the law, to keep legislators more thoroughly informed throughout the legislative process, and to assist legislators in understanding the implications of legislative decisions on the work of the courts. 34 Willamette L. Rev. at 177.

The text of ORS 173.315 to 173.357 is attached as Appendix A.

PART III

COMMISSION ACTIVITIES GENERALLY

MEETINGS

As of the date of this report, the commission has held six meetings. Committees and workgroups established by the commission have held numerous additional meetings. The six meetings were held on October 31, 1997 in the State Capitol, December 19, 1997 at Willamette University in Salem, March 13, 1998 at the Oregon State Bar building in Lake Oswego, June 8, 1998 in the State Capitol, September 16, 1998 in the State Capitol and December 11, 1998 in the State Capitol. Minutes for the six meetings of the commission are available at the Office of Legislative Counsel, S-101 State Capitol, Salem, OR 97301.

COMMITTEES

The commission appointed four committees during the 1997-1999 biennium. These committees are:

Bylaws Committee (established October 31, 1997)

Program Committee (established October 31, 1997)

Executive Director Committee (established December 19, 1997)

Executive Director Selection Committee (established September 16, 1998)

Reports for the four committees appear in Part IV of this report.

WORKGROUPS

In addition to the committees listed above, the commission also established numerous workgroups to consider proposals for statutory revisions. These workgroups include:

- Workgroup on ORS chapter 239 repeal (LC 326)
- Workgroup on State v. Cheney (repeal of ORS 161.062) (LC 339)
- Workgroup on State v. Dunning (prison siting issue) (LC 525)
- Spousal Elective Share Workgroup
- Retroactivity Workgroup
- Time Limitations Workgroup
- Conflict of Laws Workgroup
- Family Law Workgroup

Reports for the workgroups appear in Part IV of this report.

PART IV COMMITTEES AND WORKGROUPS

BYLAWS COMMITTEE

The Bylaws Committee was formed at the first meeting of the commission held on October 31, 1997. The committee was charged with reviewing the temporary rules adopted by the commission for possible revision. The members of the Bylaws Committee are: Representative Lane Shetterly, Representative-elect Max Williams and Greg Mowe, Attorney at Law.

The committee submitted proposed amendments to the commission at the March 13, 1998 meeting. Changes were suggested to clarify voting rights of persons acting as delegates for members.

The committee submitted revised rules for consideration by the commission at the September 16, 1998 meeting. The commission adopted the revised rules as permanent rules for the commission.

PROGRAM COMMITTEE

The Program Committee was charged with establishing criteria for undertaking commission projects and with making recommendations to the commission on specific proposals. The committee also made an initial recommendation on seeking an executive director for the committee, an issue that was subsequently taken up by the Executive Director Committee. The members of the Program Committee are: Attorney General Hardy Myers, Senator Kate Brown, Janise Augur, Attorney at Law, Dean Robert Ackerman and Justice Hans Linde (ret.).

Work program. The first issue taken up by the Program Committee was the establishment of criteria for commission consideration of proposed projects. After meeting to discuss several possible approaches to making decisions on accepting or rejecting proposed law revision projects, the committee developed a work program for submission to the full commission. The work program was considered by the commission at the December 19, 1997 meeting and was accepted by the commission with only small changes. The work program approved by the commission (as amended) contained the following criteria for the selection of issues for consideration by the commission:

Selection of Issues for Study/Development of Legislation

The commission should select issues for study/development of legislation based on the following criteria:

A. Source of Work Proposals (Priorities)

- (1) Legislative Assembly proposals approved by resolution, legislative leadership or committee chair;
- (2) Judicial branch proposals approved by the Chief Justice of the Supreme Court, Judicial Conference or State Court Administrator;
- (3) Legislative Counsel proposals;
- (4) Law school proposals;
- (5) Oregon State Bar section proposals;
- (6) Commission member proposals; and
- (7) Other sources.

B. Nature of Issues

The commission should give highest priority to private law issues that affect large numbers of Oregonians and public law issues that fall outside particular regulatory areas administered by state agencies.

C. Resource Demands

The commission should select issues that available staff and the commission can finish within the time set for the study/development of legislation.

D. Probability of Approval by Legislature/Governor

The commission, at least during its first biennium of work, should select issues that can produce legislative proposals with a good prospect of approval by the Legislature and Governor.

E. Length of Time Required for Study/Development of Legislation

The commission should select issues that include both those permitting development of proposed legislation for the next legislative session and those requiring work over more than one biennium.

Executive Director. The Program Committee was asked to make an initial recommendation on seeking an administrator for the commission. The committee made its recommendation at the December 19, 1997 meeting. The committee recommended seeking an Executive Director who would be a professor at one of Oregon's law schools and who would work half-time for the commission. The committee recommended that the commission invite each law school in Oregon to submit a proposal for this position.

Recommendations on specific proposals. The Program Committee was charged with reviewing and making recommendations on proposals received by the commission for law revision projects. Pursuant to this request, the committee met on several occasions and recommended that the commission take under consideration many of the projects that subsequently became the focus of workgroups.

EXECUTIVE DIRECTOR COMMITTEE AND EXECUTIVE DIRECTOR SELECTION COMMITTEE

At its December 19, 1997 meeting, the commission adopted the recommendation made by the Program Committee to seek an Executive Director. The commission established an Executive Director Committee for this purpose and appointed the deans of the three law schools as the members of the committee. The committee was directed to prepare a draft of a Request for Proposals for submission to the law schools.

The Executive Director Committee submitted a draft of the Request for Proposals to the commission at its March 13, 1998 meeting. The commission suggested changes and delayed final action on the RFP until the June 8, 1998 meeting. At the June meeting, the RFP was approved and staff was directed to mail the RFP to the three Oregon law schools.

The commission received responses to the RFP from Willamette University and the University of Oregon. At its September 16, 1998 meeting the commission decided to establish an Executive Director Selection Committee to review the two proposals. The committee consisted of all members of the commission except Chief Justice Wallace Carson, Justice Hans Linde (ret.), Dean Robert Ackerman and Dean Rennard Strickland.

On November 4, 1998, members of the Executive Director Selection Committee traveled to Willamette University and the University of Oregon to discuss the proposals with the deans of the law schools at those universities. Based on those discussions, and the committee's review of the proposals submitted by the two universities, the committee recommended to the commission that the proposal of Willamette University be accepted.

At the December 11, 1998 meeting of the commission, the commission concurred in the recommendation of the Executive Director Selection Committee and voted to accept the proposal for an Executive Director submitted by Willamette University. A copy of the proposal submitted by Willamette University is attached to this report as Appendix B.

WORKGROUP ACTIVITIES

The commission appointed numerous workgroups to consider law revision proposals brought before the commission. Brief reports on the status of those workgroups follow:

A. Workgroup on ORS chapter 239 repeal (LC 236). Work completed and draft approved. See Appendix C-2.

B. Workgroup on *State v. Cheney* (repeal of ORS 161.062) (LC 339). Work completed and draft approved. See Appendix C-3.

C. Workgroup on *State v. Dunning* (prison siting issue) (LC 525). Work completed and draft approved. See Appendix C-4.

D. Spousal Elective Share Workgroup. The Spousal Elective Share Workgroup was appointed to review the status of probate law relating to the elective share of surviving spouses. Professor Susan Gary of the University of Oregon School of Law made a presentation on this issue to the commission at the December 19, 1997 meeting. The Estate Planning and Probate section of the Oregon State Bar had considered introducing a proposal relating to this topic in

the 1997 Legislative Session. In general, there seemed to be a consensus that the existing law on this topic (ORS 114.105 to 114.165) no longer operated in the manner originally contemplated. These laws, designed to prevent one spouse from "disinheriting" the other spouse, can now be easily circumvented by the use of living trusts and other nonprobate transfer mechanisms.

The workgroup held several meetings and considered a broad range of alternative approaches. The Uniform Probate Code provisions were extensively discussed, as well as an approach modeled on division of property in proceedings for dissolution of marriage. The Estate Planning and Probate section of the Oregon State Bar was consulted and made suggestions.

The workgroup was not prepared to submit a draft for consideration by the 1999 Legislative Assembly. The workgroup continues to work on this problem.

E. Retroactivity Workgroup. The retroactivity workgroup was established to examine the problem of legislation passed by the Legislative Assembly that failed to adequately address the effect of the legislation on preexisting conditions. Frequently, this problem involves deciding whether the Legislative Assembly intended for the new law to operate "retroactively." Attorney General Hardy Myers chaired the workgroup.

The retroactivity workgroup was not prepared to submit a proposal for consideration by the 1999 Legislative Assembly. The workgroup did find that there should be a mechanism for raising the issue of retroactive application in a more consistent fashion while measures are being considered by the Legislative Assembly. The workgroup will continue to consider possible solutions to the problem of inadequate attention to the retroactive effect of measures and may propose statutory changes for consideration by the 2001 Legislative Assembly.

F. Time Limitations Workgroup. The Time Limitations Workgroup was appointed to look at possible solutions to the large amount of litigation relating to issues arising under statutes of limitation. Greg Chaimov, Legislative Counsel, acted as chair of the workgroup and prepared an extensive list reflecting the large number of statutes governing time limitations for commencing actions. The workgroup invited participation from attorneys and considered various revisions to ORS chapter 12, where most of the general statutes of limitation are codified. The workgroup found that there would be severe problems with substantially changing the statutes of limitations in an effort to consolidate and conform the time limitations. The workgroup determined that there might be some changes that could be made to ORS chapter 12 that would bring some clarity and consistency to the provisions of the chapter. The workgroup will continue to work on the problem and may propose statutory changes for consideration by the 2001 Legislative Assembly.

G. Conflict of Laws Workgroup. At the September 16, 1998 meeting of the commission, Professor James A.R. Nafziger, Thomas B. Stoel Professor of Law at Willamette University College of Law, presented a proposal to the commission for a comprehensive set of statutory provisions governing conflicts between the laws of Oregon and the laws of other states and countries. Professor Nafziger noted the growing importance of this issue in light of Oregon's increasing reliance on international trade. He noted that the courts have addressed this issue sporadically over the years, but argued that a comprehensive and coherent set of statutory rules were needed in this important area of the law.

The commission elected to pursue this project, and appointed a Conflict of Laws Workgroup to study the issue and make recommendations. It was recognized that this would be a lengthy and difficult project, and it is hoped that the workgroup will be prepared to offer proposed legislation for the 2001 Legislative Assembly.

H. Family Law Workgroup. At the September 16, 1998 meeting of the commission, John Richardson of the Oregon State Bar Juvenile Law section presented a proposal to the commission for a comprehensive review of juvenile law and matters pertaining to increasing use of family courts. Mr. Richardson provided a lengthy list of issues and problems in juvenile law practice, and sought commission approval for a project to review the statutes governing family law for the purpose of making proposals for legislative changes.

The commission elected to pursue this project and appointed a Family Law Workgroup to study the issue and make recommendations. As in the case of the Conflict of Laws project, it was recognized that a revision of the Juvenile Code would be a lengthy and difficult undertaking and it is hoped that the workgroup will be prepared to offer proposed legislation for the 2001 Legislative Assembly.

I. Other pending proposals. In addition to the topics addressed by workgroups appointed by the commission, the commission also received proposals that the commission felt merited attention but that needed to be deferred until a later date. The commission recognized that it was important to focus on attainable objectives during the first two years of the commission's operations, and held several proposals for further consideration at a later date.

PART V

LEGISLATIVE PACKAGE

The legislative package for the commission is attached to this report as Appendix C. The principal proposal is a comprehensive revision of the statutory laws relating to infractions and violations. A summary of the history of each proposal, and the effect of the draft, is provided in Appendix C.

All four drafts were introduced on behalf of the commission by the Interim House Judiciary Committee at a joint hearing held by the Interim Senate and House Judiciary Committees on November 18, 1998.

Copies of the drafts proposed by the committee are not attached to this report (LC 319, the violation/infraction proposal, is over 300 sections long). Copies of the draft are available through the Office of Legislative Counsel until such time as bills are printed.

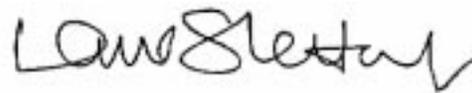
PART VI CONCLUSION

Professor Dominick Vetri's article on the Oregon Law Commission concludes with the following paragraph:

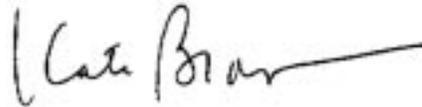
The Oregon Law Commission holds great promise as an organization that can help create an improved, more effective legal system for Oregon. The legislative and judicial branches will continue to function in their separate orbits, but the Commission, in Judge Cardozo's words, will be available to "mediate between them." 34 Willamette L. Rev. at 205 (1998).

The commission has made a good start in its first two years towards realizing that promise. It has established parameters for its operations and has set criteria for the types of projects it will undertake. It has completed work on one major project and commenced study on several other significant undertakings. It has expended substantial time in studying the structure of the commission and in determining those needs of the commission that should be addressed if the commission is to reach its full potential.

The chair and vice chair of the commission would like to thank the distinguished and very capable members of the commission for their extensive efforts on behalf of the commission during this organizational period. The chair and vice chair look forward to working with the members during the next two years in fulfilling the great promise of this organization.



Representative Lane Shetterly, Chair



Senator Kate Brown, Vice Chair

APPENDIX A
ORS 173.315 TO 173.357

173.315 Oregon Law Commission created; duties; membership; chairperson. (1) The Oregon Law Commission is established to conduct a continuous substantive law revision program, including but not limited to the subjects stated in ORS 173.338.

(2) The Oregon Law Commission shall consist of:

(a) Two persons, at least one of whom is a Senator at the time of appointment, appointed by the President of the Senate;

(b) Two persons, at least one of whom is a Representative at the time of appointment, appointed by the Speaker of the House of Representatives;

(c) The deans of Oregon's accredited law schools, or their designees;

(d) Three persons designated by the Board of Governors of the Oregon State Bar;

(e) The Attorney General or the Attorney General's designee;

(f) The Chief Justice of the Supreme Court or the Chief Justice's designee; and

(g) One person appointed by the Governor.

(3) The term of office of each appointed member of the Oregon Law Commission is two years. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins on September 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term. A member shall be removed from the commission if the member misses three consecutive meetings without prior approval of the chairperson.

(4) The Oregon Law Commission shall elect its chairperson and vice chairperson from among the members with such powers and duties as the commission shall determine.

(5) A majority of the members of the commission constitutes a quorum for the transaction of business. [1981 c.813 s.1; 1997 c.661 s.1]

173.325 Compensation and expenses of members.

A member of the Oregon Law Commission who is not a member of the Legislative Assembly shall receive no compensation for services as a member but, subject to any other applicable law regulating travel and other expenses for state officers, may receive

actual and necessary travel and other expenses incurred in the performance of official duties, providing funds are appropriated therefor in the budget of the Legislative Counsel Committee. [1981 c.813 s.2; 1987 c.879 s.3; 1997 c.661 s.2]

173.328 Commission meetings. The Oregon Law Commission shall meet at least once every three months at a place, day and hour determined by the commission. The commission also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the commission. [1997 c.661 s.5]

173.335 Commission staff; duties. (1) The Legislative Counsel shall assist the Oregon Law Commission to carry out its functions as provided by law.

(2) The Legislative Counsel pursuant to subsection (1) of this section shall:

(a) Coordinate research for, and preparation of, legislative proposals, as requested by the commission.

(b) Examine the published opinions of any judge of the Supreme Court, the Court of Appeals and the Oregon Tax Court of this state for the purpose of discovering and reporting to the commission any statutory defects, anachronisms or omissions mentioned therein.

(c) Receive suggestions and proposed changes in the law from interested persons, and bring such suggestions and proposals to the attention of the commission.

(d) Perform such other services as are necessary to enable the commission to carry out its functions as provided by law. [1981 c.813 ss.3,4; 1997 c.661 s.6]

173.338 Law revision program; drafting services. (1)

The specific subject areas to be part of the law revision program of the Oregon Law Commission include but are not limited to:

(a) The common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

(c) Suggestions from judges, justices, public officials, lawyers and the public generally as to defects and anachronisms in the law.

(d) Such changes in the law as the commission considers necessary to modify or eliminate antiquated and inequitable rules of law and to bring the law of Oregon into harmony with modern conditions.

(e) The express repeal of all statutes repealed by implication or held unconstitutional by state and federal courts.

(2) The Legislative Counsel shall provide necessary drafting services as legislative priorities permit. [1997 c.661 s.3]

173.342 Commission biennial report to Legislative Assembly. (1) The Oregon Law Commission shall file a report at each regular session of the Legislative Assembly that shall contain recommendations for statutory and administrative changes and a calendar of topics selected by the commission for study, including a list of the studies in progress and a list of topics intended for future consideration.

(2) The commission shall also study any topic that the Legislative Assembly, by concurrent resolution, refers to it for such study. [1997 c.661 s.4]

173.345 Cooperation with bar associations or other associations. The Oregon Law Commission may cooperate with any bar association or other learned, professional or scientific association, institution or foundation in a manner suitable to fulfill the functions of the commission. [1997 c.661 s.7]

173.347 Appearance of commission members or staff before Legislative Assembly. The Oregon Law

Commission by its members or its staff may appear before committees of the Legislative Assembly in an advisory capacity, pursuant to the rules thereof, to present testimony and evidence in support of the commission's recommendations. [1997 c.661 s.8]

173.352 Advisory and technical committees. (1) To aid and advise the Oregon Law Commission in the performance of its functions, the commission may establish such advisory and technical committees as the commission considers necessary. These committees may be continuing or temporary. The commission shall determine the representation, membership, terms and organization of the committees and shall appoint their members.

(2) Members of the committees are not entitled to compensation, but in the discretion of the commission may be reimbursed from funds available to the commission for actual and necessary travel and other expenses incurred in the performance of their official duties. [1997 c.661 s.10]

173.355 Solicitation and receipt of gifts and grants. The Oregon Law Commission may solicit and receive funds from grants and gifts to assist and support its functions. [1997 c.661 s.9]

173.357 Disposition of moneys collected or received by commission. All moneys collected or received by the Oregon Law Commission shall be paid into the General Fund of the State Treasury. Such moneys are continuously appropriated for and shall be used by the commission in carrying out the purposes for which the funds are received. [1997 c.661 s.11]

APPENDIX B
WILLAMETTE UNIVERSITY RESPONSE TO REQUEST FOR PROPOSALS



OREGON LAW
COMMISSION



PROPOSAL OF WILLAMETTE UNIVERSITY IN RESPONSE
TO THE JUNE 11, 1998 REQUEST FOR PROPOSALS
TO PROVIDE THE OREGON LAW COMMISSION'S
EXECUTIVE DIRECTOR
AND
RELATED SERVICES

1. INTRODUCTION: PLACING THE OREGON LAW COMMISSION'S EXECUTIVE DIRECTOR AT WILLAMETTE UNIVERSITY IS PRACTICAL, EFFICIENT AND BENEFICIAL TO THE COMMISSION.
 - A. Willamette University's State Capital location allows delivery of the Executive Director's services with ease and efficiency. The proximity of Willamette University to the institutions of Oregon government make it the ideal location for housing the Executive Director's position. The University campus is convenient for legislators, their staffs and constituents, the Appellate Courts and the Department of Justice. Most state agencies are within easy walking distance. The commissioners of the Law Commission and the legislators they serve need not spend valuable time commuting beyond Salem. Oregon State Bar offices in Lake Oswego and other interested persons from the Portland area are able to use Salem and the Executive Director's offices as the center of gravity for public policy thinking, analysis and discussion in the state. Law school faculty from Portland and Eugene will enjoy the advantages of a central location as well.
 - B. The Executive Director will be an important part of a campus-wide commitment to public policy research and analysis extending to all units of the University through the establishment of the Willamette University Center for the Study of Public Policy. Willamette University is currently in the founding stages of its new Center for the Study of Public Policy. The Center's mission is to improve public policy and to promote Agood government@ in the northwest and across the nation. The Center aspires to be a recognized source of authoritative and nonpartisan statements on matters of public policy. Thanks to a generous gift this year from the Meyer Memorial Trust, the Center will be led by a director who will facilitate and coordinate the academic contributions of Senator Mark O. Hatfield (Ret.), the Hatfield Chair in Public Policy at the College of Liberal Arts, Professor Fred Thompson, the Grace and Elmer Goudy Chair in Public Policy at the Atkinson Graduate School of Management, and the holder of the Paulus Chair in Public Policy. Faculty from every corner of the University will be involved in the important work of the Center. A vital relationship between the new Center and the Executive Director of the Oregon Law Commission is anticipated. The Executive Director of the Commission will be the on-campus representative of Oregon State Government, its issues and its people with access to the Center's resources. The Executive Director will be positioned to communicate selected Commission needs for public policy research and analysis to University faculty in politics, economics, public administration, law and education. The opportunities are enormous. The relationship gives substance to an authentic public-private partnership.
 - C. A Willamette University-based Executive Director makes the Oregon Law Commission a beneficiary of the University's tradition of service to the community. Since its founding in 1843, Willamette University has been guided by the value that service to humanity is an obligation of the highest order. Modeling this value institutionally is important to the University's edu-

cational mission. It encourages our students and graduates to engage a life of service themselves. Willamette University's commitment to serving the needs of the people in our state, region and nation drives our desire to see the Executive Director of the Oregon Law Commission become an integral part of our campus community. As a part of that community, the Commission's needs will be met with broad-based institutional commitment.

II. STAFFING AND ADMINISTRATION OF THE OREGON LAW COMMISSION CAN BE ACCOMPLISHED SIMPLY AND EFFECTIVELY AT WILLAMETTE UNIVERSITY.

A. The Executive Director.

1. The Executive Director will be a tenured faculty member at the Willamette University College of Law. In order to have an Executive Director in place by the summer of 1999, the Executive Director at least initially is likely to be a current member of the Willamette law faculty. Hiring of new law professors is usually completed by early March, before legislative funding for the position is likely to be confirmed. Therefore, the best way to assure that the position is filled in conformity with the Request for Proposals is to at least initially appoint a current faculty member.

While several members of the Willamette faculty can serve the Commission quite ably, Professor Robert L. Misner, former Dean of the College of Law, has expressed preliminary interest in the position. His resume is attached. Professor Misner teaches state and local government as well as courses in criminal law and procedure. He is a skilled administrator with a strong interest in academic analysis of public policy issues. For over twenty years Professor Misner's substantial scholarly output has centered on institutional design, a topic of overarching significance in public policy analysis. He has served in positions with the states of Oregon and Arizona and as a consultant on matters of judicial management and administration for the federal governments of the United States and Australia.

Over time, The Executive Director's position might be filled by another professor hired expressly for that purpose. Willamette University is committed to maintaining in the position a qualified faculty member dedicated to public service and the fulfillment of the Commission's mission. To that end, the University will consult with the Commission regarding the initial appointment and any successor appointments.

2. The tenured faculty position will be structured as a twelve month appointment with six vacation weeks rather than the traditional nine month appointment. To accomplish this result, it will be necessary for Willamette University to make some minor modifications to the existing Trustees' rules regarding sabbatical leave and other benefits accrued by tenured professors. Those changes will be made, thus providing the Commission with the committed involvement of a tenured member of the law faculty.
3. The benefit package for the Executive Director will issue from Willamette University and not the State of Oregon. Retirement contributions to TIAA, medical benefits, sabbatical leave and all other benefits will be provided through a Willamette University College of Law faculty contract issued to the Executive Director. In this way, complications created when one is employed partially by the State and partially by the University can be avoided.

4. In concept, the Executive Director will be a Willamette professor Aon loan@ for one-half time to the Oregon Law Commission. Thus, as discussed in the budget section below (Part V), the State of Oregon will simply enter into a contract with Willamette University for a lump sum payment in exchange for the Executive Director and related services. The professor will not be an employee of the State of Oregon under this plan, simplifying, we think, the relationship between the Oregon Law Commission and the private institution providing services through a public-private partnership. As a professor at the College of Law, the Executive Director will be expected to perform all of the duties associated with that position on a one-half time basis. The teaching load will be limited to two classes, probably State and Local Government and either a course in Criminal Law or a seminar in Public Policy. College of Law committee service will be reduced and a substantial portion of the professor's scholarly agenda will be directed to the public policy area with primary attention given to written work of the Commission.

B. The Administrative Assistant.

1. An Administrative Assistant will be employed by Willamette University under a twelve month administrative contract with four weeks vacation.
2. Benefits, including retirement, medical and other will be provided through the standard University benefits package for Administrators.
3. The Administrative Assistant will report directly to the Executive Director. To the extent work time remains after fulfilling all of the obligations of the Oregon Law Commission, the Administrative Assistant will be available to the College of Law faculty or the Public Policy Center offering assistance in publications, communications, as well as event and related planning.

C. Other human resources available to the Oregon Law Commission at Willamette University.

1. Research Assistants: The services of law student research assistants are available to the Executive Director as a Professor at the College of Law. Up to 1200 hours per year of paid student research assistance will be available to the Oregon Law Commission Executive Director. These students will assist with preparing the Session Report, policy analysis reports and the academic research projects of the Executive Director.
2. Externs and Law Clerks: Willamette University College of Law has an active Externship Program. Students earn academic credit for service in positions with Legislative Counsel, the governor's office, lawyer-legislators, the Land Use Board of Appeals and other institutions within state government. These Externs earn academic credit under the supervision of the Externship Director, field professors and field supervisors. They are ready sources of information and important links in the communication network that makes Willamette University's academic environment a stimulating and enriching place for the Commission's work to be carried out. The same is true for the many law clerks from the Willamette University College of Law who have traditionally worked summers and during legislative sessions in a variety of paid positions within state government. Proximity has provided much opportunity over the years. For example, two current students spent the 1998 summer researching public policy

issue development for a House caucus. These sorts of on-going relationships give a Willamette University-based Executive Director quick access to a storehouse of public policy knowledge and expertise on campus. This atmosphere of public policy interest is fertile ground for creative thinking and thorough understanding of the issues confronting Oregon. It is in such a setting that the Executive Director can best serve the Commission's needs.

III. FACILITIES FOR THE OREGON LAW COMMISSION ARE ACCESSIBLE, PLENTIFUL AND FUNCTIONAL AT WILLAMETTE UNIVERSITY.

- A. The College of Law Collins Legal Center: This will be the center of activity for the Executive Director's work on behalf of the Commission. It is located at 245 Winter Street NE, across State Street from the capitol building. Not only is it readily accessible and efficiently reached by legislators, their staffs and commissioners, its location in Salem provides relative ease of access from Portland and Eugene. The building was completely renovated and expanded in 1992. It has been beautifully maintained and will serve as a welcome retreat for legislators and commissioners interested in gaining a perspective that only occasional separation from the pressure of the statehouse can provide.
- B. The Executive Director's office: The Executive Director will be housed in a fully equipped faculty office on the fourth floor of the College of Law building. The office is accessible to the disabled and an easy walk from the Capitol. Phone, fax, computer, copying and secretarial assistance are all provided.
- C. The Administrative Assistant's office: The Administrative Assistant will also be located on the fourth floor of the law school building within easy reach of the Executive Director's office. Appropriate signage and public access will be in place. The office itself will be fully equipped with phone, fax, and computer with Internet and e-mail access.
- D. Meeting space: Also on the fourth floor of the Collin's Legal Center are conference rooms, including the Deans' Conference Room, the Faculty Conference Room and Faculty Lounge. All of these are available through centralized scheduling and can be used for meetings of groups from as small as two to as large as twenty-five. In the past, the Deans' Conference Room at the College of Law has been home to such meetings as a bipartisan working group on tort reform, new judge training and other important policy-making functions. These close and desirable off-site locations for discussion of public policy issues have served government well in the past and will do so more frequently in the future through the Executive Director's work with the Commission on Willamette's campus.
- E. Other facilities: Also on the fourth floor, the faculty research library will be available for study and research on a pre-scheduled basis as well as our entire College of Law library on the first, second and third floors. This provides a comfortable and appropriate place for research, analysis and thinking away from the busy pace of the Capitol but not so far away as to be inconvenient. Additional space is available throughout the campus as needed for day offices for visiting commissioners and for larger groups. Of course, classrooms and other meeting areas are available through scheduling to serve the needs of the Commission.

IV. SERVICES PROVIDED TO THE OREGON LAW COMMISSION BY WILLAMETTE UNIVERSITY ARE COMPLETE IN SCOPE AND QUALITY.

A. Services required by the Commission's Request for Proposals.

1. Session report: The Executive Director, with the cooperation of the Willamette University printing office, as well as the state printing office located in the basement of the capitol building, will prepare and distribute the biennial session report as required by law.
2. Scheduling of meetings: The Executive Director's Administrative Assistant will take primary responsibility for scheduling all meetings of the Commission and its committees as well as ad hoc special gatherings of related groups including Oregon State Bar representatives and academic collaborators. The Administrative Assistant will keep a calendar of events, current mailing lists, e-mail addresses, phone numbers and related information on master lists available to all Commission members.
3. Coordinating work with Legislative Counsel: This function will be undertaken by the Executive Director who has easy access to the office of legislative counsel both directly by walking over to the offices and indirectly through research assistants, externs, and clerks from the College of Law community serving in those positions. This function is served efficiently and effectively because of the close location and existing relationships between the College of Law and the State of Oregon.
4. Undertaking cooperative ventures with related institutions: From a central location in Salem, the Executive Director is well positioned to engage cooperative ventures with the agencies of state government, the faculties of the other Oregon law schools, and the Oregon State Bar in Lake Oswego. In addition, the Executive Director is able to promote relationships from the College of Law with the American Law Institute, the Commission on Uniform State Laws, and the Association of American Law Schools. Because of Willamette's leadership of the Consortium of Capital City Law Schools, the Executive Director at Willamette University will have ready access to the deans of the law schools located in the capital cities of other states across the nation. Since its inception four years ago, Willamette has convened annual meetings of this group of deans and deans' designates and maintains a communication network with capital city-based law schools throughout the United States. This set of relationships, already in place, will allow the Executive Director at Willamette University ready access to the best thinking in state and local government and public policy analysis from throughout the nation.
5. Coordinating and presenting testimony and evidence for the legislature in support of public policy initiatives: The Executive Director will take primary responsibility for offering nonpartisan and objective support for public policy issues raised in the legislative process. It is vital that the Executive Director maintain independence and objectivity as well as neutrality. This will be crucial to the success of the Executive Director's office. As a private institution with no ties to state government, Willamette University is best suited to position the Commission and its work in a light most favorable to the unbiased advancement of good government in the state of Oregon. Credibility before the legislature is essential and that credibility is based on solid research, good evidence and meticulous nonpartisan neutrality. Willamette University is positioned to provide precisely that important service.
6. Fund-raising: In the opinion of Willamette University, the fund-raising function called

for by the Request for Proposal is best kept separate from the day-to-day work of the Executive Director. The line between fund-raising activities and the neutral, nonpartisan work of the Executive Director must be clearly defined and never crossed. Anything less will seriously undermine the perceived neutrality of the Executive Director. To resolve the potential difficulty of providing Executive Director and fund-raising services, Willamette proposes in addition to the services of the Executive Director, efforts of David Kenagy, Associate Dean for Administration and External Affairs at the Willamette University College of Law. This position is already responsible for selected development initiatives including, among others, the Oregon State Bar's Oregon Law Foundation, the Oregon Community Foundation, and specified major donors. The energies of the Associate Dean will be available to the Executive Director on an as-needed basis. We expect to undertake fund raising efforts with foundations and other donors for the purpose of supporting public policy conferences and special multi-year, in-depth research projects under the direction of the Executive Director. The resources of the Associate Dean's office together with access to Willamette University's Office of Academic Grants and Awards will well serve the interests of the Commission.

7. Advisory or technical committees: The Executive Director will oversee the formation of any special technical or advisory committees the Commission considers necessary to carry out its function. The scheduling of meetings, the preparation of written materials and support necessary for these committees to function effectively will be provided by the Administrative Assistant.
8. Represent and serve as spokesperson for the Commission: The Executive Director will carry out the function of speaking on behalf of the Commission when so authorized. This important function emphasizes again the necessity of the Executive Director's objectivity and neutrality to assure public receptivity to the work done on behalf of the Commission.
9. Additional support: Through the Executive Director and Administrative Assistant, Willamette University will provide meeting space for the Commission and its committees as well as systems and support for the collection, storage and retrieval of all written materials and resources. We will provide shelf space and file cabinets within the office of the Executive Director and Administrative Assistant as well as retrieval capabilities through the College of Law library for other assembled materials. Willamette University's experience with Internet communications through the Willamette Law On-Line service opens opportunity for networking relationships worldwide. The work of the Commission should not be viewed as a pen to paper project only. Communicating effectively in cyberspace is a part of the Commission's scope of work to be undertaken at Willamette University.

B. Services to be provided by Willamette University in addition to those requested in the Request for Proposals.

1. Special publications: Willamette University proposes the production of significant published scholarly work through the efforts of the Oregon Law Commission's Executive Director. This material will be available for publication, subject to student

editorial selection, every second year in the Willamette University College of Law *Law Review's* Legislative Session Review issue. This issue of the *Law Review* reports the work of the legislature from the preceding session and has been a standard focus of the *Law Review* for many years. We contemplate issue-based coverage of the legislative session through selected live and written symposia available to the *Law Review* including publishable studies and reports prepared by or on behalf of the Commission. Recent experience with this approach at Willamette University includes the 1998 Forum on the Initiative Process. We also contemplate publication of special research reports written by the Executive Director, research assistants, members of the Commission and faculty elsewhere at Willamette University and throughout Oregon. Issues of copyright between Willamette University and the State of Oregon should be the subject of future discussions.

2. Conferences: Willamette University College of Law has within it an office of Professional Program Planning. The services of that office will be available to the Executive Director. This makes the process of planning, publicizing, promoting and running conferences much easier for the Oregon Law Commission. The College of Law intends to continue offering high quality conferences such as the Forum on the Initiative Process. These conferences bring together the best thinking from around our state and region. They will culminate in the production of written material for publication on a stand-alone basis or within the *Willamette Law Review*.
3. Issue analysis through the Center for the Study of Public Policy: Thanks to the contemplated development of the Willamette University Center for the Study of Public Policy, we expect to be able to provide resources from many academic disciplines to focus authoritatively on issues as far ranging as power deregulation, juvenile justice, transportation and recycling. The resources at the entire University are available to assist in that process. In December of 1998, for example, Willamette University College of Law and the Atkinson Graduate School of Management will sponsor a day of new legislator training through the offices of both House and Senate staff. While the focus of that day's training will be on negotiation, mediation and related skills, the Willamette University Center for the Study of Public Policy expects to enjoy substantive involvement in the issues confronting new legislators. As time goes by and we see the Executive Director of the Oregon Law Commission playing a central role in bringing focus to discrete public policy issues through the Commission and serving, therefore, the needs of our state legislators, both returning and new. Among the programs of the Center for the Study of Public Policy at Willamette University, the Executive Director will participate in a biennial pre-session policy seminar series for Oregon legislators, staff, administrators and judges. These seminars would invite governmental and non-governmental officials as well as policy experts from academia, government and business for dialogue on pressing public policy issues facing the state. The objective of this seminar series is to help educate (as well as to learn from) Oregon public officials regarding some of the complex policy issues they will face in office, a task that is particularly vital to the state in the wake of term limits passed by the Oregon voters in 1992. By creating better informed public officials, this seminar series will aid in making public policy. Similar pre-session seminars for legislators have enjoyed great success at other institutions with close connections to large local governments or state capitals, including the University of Wisconsin, Carnegie Mellon University and the California library system (in cooperation with UC Berkeley). In each of these cases, major foundations such as the Pugh Charitable Trust and the Ford

Foundation have funded these enterprises on an on-going basis.

- V. BUDGET: THE COST TO THE STATE OF OREGON FOR THE EXECUTIVE DIRECTOR'S POSITION AND RELATED SERVICES IS ONLY A FRACTION OF THE VALUE PROVIDED BY WILLAMETTE UNIVERSITY.

To implement the above proposed services, Willamette University will require an annual contribution from the State of Oregon of \$65,000. This money will be used to supplement the annual incomes of the Executive Director and the Administrative Assistant, provide the University with teaching services to replace the half-time teaching load surrendered by the Executive Director and provide funding for conferences, food, supplies, printing, copying, fax and phone services as necessary to the accomplishment of the purposes stated throughout this proposal. A tentative budget for use of the State's payment is as follows:

\$50,000	Executive Director Salary Contribution
\$15,000	Administrative Assistant Salary Contribution
\$10,000	Supplement to phone, supplies, conferences and publication budget

The value of the total services provided by Willamette University in exchange for \$75,000 will greatly exceed that sum. This can be seen by combining the salaries, in whole or in part, of the personnel directly associated with the delivery of services to the Oregon Law Commission (the Executive Director and the Administrative Assistant) as well as the value of the space provided and the adjuncted services of the *Willamette Law Review*, the Development Office of Willamette University, the office of the Associate Dean for Administration and External Relations at the College of Law, the services of paid law students and research assistants, the office of Professional Program Planning, the services of law and other faculty from throughout the University and the involvement of the Hatfield, Paulus and Goudy Chair holders through their work with Willamette University's Center for the Study of Public Policy.

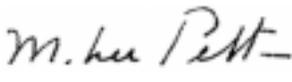
- VI. CONCLUSION: WILLAMETTE UNIVERSITY HOPES TO PROVIDE THE OREGON LAW COMMISSION WITH ITS EXECUTIVE DIRECTOR AND RELATED SERVICES AND LOOKS FORWARD TO BEING OF SERVICE TO THE COMMISSION AND THE PEOPLE OF OREGON THROUGH THIS OPPORTUNITY.

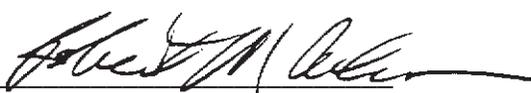
Respectfully submitted,

Date: August 28, 1998

Willamette University

Willamette University College of Law

by 
M. Lee Pelton
President

by 
Robert M Ackerman
Dean and Professor of Law

APPENDIX C
LEGISLATIVE PACKAGE

APPENDIX C-1

VIOLATION PROCEDURES (LC 319)

A. Background. LC 319 is the major legislative proposal submitted by the Oregon Law Commission for consideration by the 1999 Legislative Assembly. The concept was first brought before the commission by the State Court Administrator's Office at the December 19, 1997 meeting of the commission. At that meeting, Bradd Swank of the State Court Administrator's Office testified about the need for a revision of the laws relating to offenses that do not provide for a period of imprisonment as a penalty. A copy of Mr. Swank's November 14, 1997 memo on the issue addressed to Kingsley Click, State Court Administrator, is attached to this appendix.

Under existing law, offenses under state law that do not provide for a period of imprisonment are divided between infractions and violations. "Violations" have existed as an offense classification since the state's earliest days. "Infractions" were introduced quite recently for the purpose of describing certain procedures that would apply only to specific offenses. Traffic infractions, of course, make up the largest group of infractions.

Initially, the infraction procedure varied from the violation procedure in a very significant way. Police officers were authorized to issue citations for infractions. Over the years, the criminal laws were amended to allow the use of citations for most other offenses. Citations currently can be used for any violation, any misdemeanor, any Class C felony and a few Class B felonies relating to possession of drugs.

However, while violations can now be charged by use of a citation, the infraction procedures for infractions still do not apply. As a result, the convenient and efficient procedures developed for infractions are not available if a person is charged with one of the myriad of violations established under Oregon law. This is the case even though the penalty for many of these violations is far smaller than the penalties imposed for an infraction (e.g., \$250 for an unclassified violation as opposed to \$600 for a Class A traffic infraction). The impact of this different treatment falls heavily on district attorneys and courts. Complaints must be prepared by the district attorney for violations instead of relying on a complaint prepared by the police officer. There is no provision for the posting of "bail" to avoid the need for a first appearance by the defendant. There is no provision allowing the defendant to "forfeit bail" in the manner provided for infractions (thereby allowing entry of a "default" judgment of conviction). Any rationale that may have existed for differentiating between "violations" and "infractions" seems to have disappeared over the years.

In addition to the arguments for consolidating violations and infractions into a single, "noncriminal offense," there were additional incentives for law revision arising from the confusing and duplicative laws on infraction procedure. Most of these procedures appear in ORS chapter 153. There are four separate, but nearly identical, sets of procedures for traffic infractions, state park infractions, boating infractions and fish and game infractions. In addition, there is an antiquated and confusing set of infraction procedures for weight and measure infractions in ORS chapter 618. Since there are also provisions for violation procedures in ORS chapter 133, it seemed apparent that some consolidation and clarification was needed.

The commission decided to take up the proposal for a few basic reasons. The project

seemed to fit nicely with the statutory mandate given to the commission to “[discover] defects and anachronisms in the law and [recommend] needed reforms.” ORS 173.338. Members of the commission noted that the laws and procedures for infractions usually represent the sole interaction between the average citizen and the criminal justice system. To the extent that the laws are confusing and do not adequately explain to the citizen the rules applicable to a traffic citation, the law has failed in a fundamental fashion.

Mr. Swank explained the Judicial Department's interest in the revision and indicated that the Criminal Justice Advisory Committee (CJAC) established by the Chief Justice of the Oregon Supreme Court would be creating a work group to review the proposal. The commission elected to allow CJAC to proceed initially with the proposal and requested that two of the members of the commission be appointed to the work group (Representative Floyd Prozanski and Janise Auger). The commission directed the Legislative Counsel's Office to work closely with the workgroup and to make progress reports to the commission at the following scheduled meetings of the commission.

The workgroup appointed by CJAC included representatives from the commission, the district attorneys of the state, the Oregon State Police, the Legislative Fiscal Office of the Legislative Assembly, the State Court Administrator's Office and the circuit, municipal and justice courts of the state. The workgroup met four times and the draft of LC 319 submitted to the commission represents the product of that workgroup.

B. The draft proposal. LC 319 proposes a major consolidation and revision of the laws governing offenses that are not subject to punishment by a term of imprisonment. A fundamental decision made by the CJAC workgroup was to consolidate all offenses of this type under the single term “violation.” All violations would be prosecuted under a single set of procedures. The procedures would be based on the existing procedures for traffic infractions (ORS 153.500 to 153.635). The draft would attempt to retain those differences between procedures that were truly significant, while establishing uniformity to the greatest extent possible. The following outline of the draft's provisions suggests the scope of the undertaking:

LC 319 OUTLINE

I. DEFINITIONS

- The draft would consolidate almost all substantive and procedural provisions on violations into a single chapter. Uniform definitions are provided for the chapter.

II. VIOLATIONS DESCRIBED

- The description of violations is designed to clarify which offenses are violations. The crucial distinction between violations and other offenses is that incarceration is not one of the possible penalties for committing a violation.
- Violations remain an “offense” for the purposes of the Oregon Criminal Code.
- The draft does not attempt to clean up the many antiquated statutes that provide for enforcement of a “civil penalty” through a civil action by the district attorney.

III. VIOLATION CATEGORIES

- The draft utilizes the existing traffic infraction categories. Class A, B, C and D traffic infractions convert directly to Class A, B, C and D violations under the draft. Legislative Counsel is authorized to make editorial substitution of “violation” for “infraction.”
- Two additional categories are created: unclassified and specific fine violations.
- The fines for the new classifications are the same as the fines for traffic infractions under existing law.
- Unclassified violations, formerly subject to a \$250 maximum fine, are treated as Class B violations (\$300 maximum fine).

IV. VIOLATION PROCEDURES

- A single set of procedures is established for all violations.
- Infractions previously had no statute of limitations. The statute of limitation for violations (six months) is extended to those violations that were previously infractions.
- The Supreme Court is authorized to adopt rules of procedure for violations consistent with the draft.
- Except as provided for traffic offenses, peace officers may issue citations only if an offense is committed in their presence.
- Standards for stop and detention are made consistent for all violations, except traffic offenses for which a separate rule is retained.
- Retains authority of private party to bring action alleging commission of violation.
- Provides rules for venue in circuit courts.
- Provides requirements for violation citations. Prohibits charging of both crime and violation on same citation form.
- Establishes rules for first appearance by defendant. Clarifies that defendant may: (a) Appear at time and place specified in citation; (b) Request trial at any time before time specified in citation; (c) Plead no contest and submit base fine amount; or (d) Plead guilty and submit base fine amount.
- Allows court to require deposit of additional amounts beyond base fine amount to ensure appearance of defendant at trial if trial requested.
- Allows court to require payment of additional base fine amount if base fine amount appears to be inadequate based on previous convictions and other factors.

- Clarifies when warrant of arrest may be issued for failure to appear on violation charge.
- Allows court to require defendant to appear for trial in any violation proceeding or in any category of violation proceedings.
- Retains existing law on trials of violations.
- Allows court to enter default judgments in violation proceedings if defendant fails to make appearance as required.
- Specifies what a judgment may provide for in a violation proceeding. Distinguishes between default and nondefault judgments.
- Establishes single criminal statute for failure to appear in violation proceeding. Specifies that failure to appear is Class A misdemeanor.

V. BASE FINE AMOUNTS FOR VIOLATIONS

- Codifies rules for setting base fine amounts for violations.
- Attempts to retain existing base fine amounts for violations to extent possible.

VI. JURISDICTION OF COURTS

- Clarifies jurisdiction of municipal courts over violations and crimes.
- Eliminates obsolete provisions on jurisdiction of justice courts.

VII. ADJUSTMENTS TO ORS CHAPTER 161

- Retains existing provisions authorizing district attorney to treat misdemeanor as violation.
- Creates new provision authorizing court to treat misdemeanor as violation, with consent of district attorney, solely for purpose of entering default judgment against defendant on the violation.

VIII. ABSTRACTS OF CONVICTION FOR VIOLATIONS

- Consolidates provisions requiring courts to deliver abstracts of conviction.

IX. PROCEDURES FOR CRIMINAL CITATIONS

- Clarifies use of citation for crimes. Prohibits use of violation citation for crimes.
- Allows more than one crime to be cited on a single citation, but requires separate citation for DUII.
- Allows criminal citation to be issued with or without complaint. Specifies that local DA can decide if criminal citation may be issued with complaint prepared by peace officer.
- Allows DA to decide whether to review criminal citations issued with complaint before citations are filed with court.

X. CITATION FORMS

- Directs Supreme Court to adopt citation forms.
- Requires use of uniform form except as specifically provided.

XI. VIOLATION OF AGENCY RULES

- Authorizes agency to adopt by rule specific fines or violation classifications for violations of the agency's rules when law specifies that violation of the agency's rules is an offense.

XII. VIOLATION OF ORDINANCES

- Authorizes political subdivision to adopt by ordinance specific fines or violation classifications for violations of the political subdivision's ordinances when law specifies that violation of the ordinances of the political subdivision is an offense.

XIII. TRAFFIC OFFENSES

- Conforms laws on traffic offenses. Eliminates "major traffic offenses" category.

XIV. BOATING VIOLATIONS

- Conforms laws on boating offenses.

XV. PARK AND RECREATION VIOLATIONS

- Conforms laws on park and recreation violations.

XVI. FIRE PREVENTION VIOLATIONS

- Conforms laws on fire prevention violations.

XVII. WILDLIFE AND COMMERCIAL FISHING VIOLATIONS

- Conforms laws on wildlife and commercial fishing violations.

XVIII. FOREST MANAGEMENT VIOLATIONS

- Conforms laws on forest management violations.

XIX. WEIGHTS AND MEASURES VIOLATIONS

- Conforms laws on weights and measures violations.

XX. SCHOOL ATTENDANCE VIOLATIONS

- Conforms laws on school attendance violations.

XXI. AERONAUTICS VIOLATIONS

- Conforms laws on aeronautics violations.

XXII. MISCELLANEOUS ADJUSTMENTS FOR ELIMINATION OF INFRACTIONS

- Eliminates all statutory references to infractions that cannot be editorially removed by Legislative Counsel.

XXIII. STATUTORY ADJUSTMENTS FOR VIOLATION CLASSIFICATIONS

- Adjusts statutes creating violations to fit those violations into categories established by draft.

XXIV. STATUTORY ADJUSTMENTS FOR ELIMINATION OF BAIL

- Eliminates most statutory references to “bail” and “bail forfeitures.”

XXV. STATUTORY ADJUSTMENTS FOR ORDINANCES AND AGENCY RULES

- Provides cross-reference for statutes that specify that violation of ordinance or agency rule is an offense.

XXVI. MISCELLANEOUS PROVISIONS

- Specifies that draft operates only prospectively.
- Provides that draft takes effect January 1, 2000.

APPENDIX C-2
REPEAL OF ORS CHAPTER 239 (LC 326)

The Oregon Law Commission is directed by law to “[discover] defects and anachronisms in the law and [recommend] needed reforms.” ORS 173.338. Pursuant to a request from the commission, David Heynderickx, Deputy Legislative Counsel, made a presentation at the March 13, 1998 meeting of the commission on the current status of ORS chapter 239. A copy of the report submitted to the commission is attached to this appendix. The commission requested that a draft be prepared to repeal ORS chapter 239, and established a workgroup to notify interested parties and conduct public hearings. Upon receiving no objection to the repeal of the provisions of ORS chapter 239, the commission voted to introduce LC 326 in the 1999 Legislative Assembly for the purpose of eliminating a large number of obsolete laws.

APPENDIX C-3
STATE V. CHENEY, 92 Or. App. 633 (1988)
REPEAL OF ORS 161.062 (LC 339)

The Legislative Counsel is directed to “[e]xamine the published opinions of any judge of the Supreme Court, the Court of Appeals and the Oregon Tax Court of this state for the purpose of discovering and reporting to the [Oregon Law] Commission any statutory defects, anachronisms or omissions mentioned therein.” ORS 173.335. Pursuant to this direction, Bill Taylor, Deputy Legislative Counsel, reported to the commission on the case of State v. Cheney, 92 Or. App. 633 (1988) at the March 13, 1998 meeting of the commission. A copy of Mr. Taylor’s report is attached to this appendix.

Pursuant to the report, the commission appointed a workgroup to consider what action should be taken. The workgroup recommended that ORS 161.062 be repealed as having been repealed by implication by the enactment of Ballot Measure 10 (1986). The commission adopted this recommendation and voted to introduce LC 339 in the 1999 Legislative Assembly for the purpose of repealing ORS 161.062.

APPENDIX C-4

DUNNING V. CORRECTIONS FACILITY SITING AUTHORITY, 325 Or. 269 (1997) JUDICIAL REVIEW OF PRISON SITING DECISIONS (LC 525)

The Legislative Counsel is directed to “[e]xamine the published opinions of any judge of the Supreme Court, the Court of Appeals and the Oregon Tax Court of this state for the purpose of discovering and reporting to the [Oregon Law] Commission any statutory defects, anachronisms or omissions mentioned therein.” ORS 173.335. Pursuant to this direction, Bill Taylor, Deputy Legislative Counsel, reported to the commission on the case of Dunning v. Corrections Facility Siting Authority, 325 Or. 269 (1997) at the December 9, 1997 meeting of the commission. A copy of Mr. Taylor’s report is attached to this appendix.

Pursuant to the report, the commission appointed a workgroup to consider what action should be taken. The workgroup held several meetings and recommended that the statutes governing the standards for certain prison siting decisions, and for judicial review of those standards, be amended in the manner proposed by LC 525 (September 23, 1998 draft). Under this proposal:

(1) A prison siting authority is required to state on the record why, in the judgment of the authority, a refusal to adopt a condition proposed by a member of the public is in the public interest. This change addresses the problem identified in Dunning under the current law, which requires the authority to give “the reasons for not adopting any of the proposed conditions” submitted to the authority.

(2) The statute governing judicial review of the decision is amended to eliminate the discrepancy between the record considered by the siting authority as opposed to the record considered by the Supreme Court on review.

The commission adopted the workgroup’s recommendation and voted to introduce LC 525 for consideration by the 1999 Legislative Assembly.