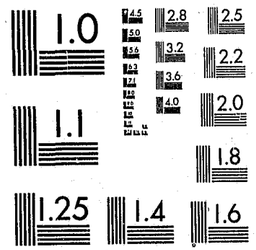

The AAFTI PROJECT

Adjudication Alternatives for Traffic Infractions

CIAL COURTS COMMITTEE

Final Report • December 1980 • Salem, Oregon

The AAFTI PROJECT

Adjudication Alternatives for Traffic Infractions

SPECIAL COURTS COMMITTEE

Final Report • December 1980 • Salem, Oregon

TABLE OF CONTENTS

PART IV. CONSTITUTIONAL ISSUES

PART V. FINDINGS AND RECOMMENDATIONS

PART VI. PROPOSED LEGISLATION

PART VII. BIBLIOGRAPHY

APPENDIX

FOREWORD

In 1973, the Chief Justice of the Oregon Supreme Court established the Special Courts Committee as a permanent unit within the Oregon Judicial Conference. The committee's express function is to deal with substantive and procedural matters of concern to the courts in an informed and responsive manner. Before undertaking this project, the committee had been actively involved in implementing major changes in motor vehicle and district court laws and procedures. We have continued to try to identify particular problems in these areas and propose reasonable solutions for them.

The committee is comprised predominately of district court judges; however, municipal judges and justices of the peace also have representative members on the committee. And for the dual purposes of the AAFTI Project and the concurrent work on proposed amendments to the vehicle code, several other members were named to the committee to represent the views of district attorneys, law enforcement and the Motor Vehicles Division. This additional membership broadened the base and perspective of the committee, providing an important informational link with these other groups.

The committee began looking into the possibility of undertaking this project in the Spring of 1979, with Linda Stiller of the State Court Administrator's Office conducting preliminary research and investigating funding possibilities. In June, the committee decided to move ahead on the project and applied for a grant from the Oregon Traffic Safety Commission to fund a full-time study of the subject of adjudication alternatives for traffic infractions. During the Fall, Douglas Bray, the committee's regular staff aide from the State Court Administrator's Office, completed the next phase of getting the project underway by securing OTSC and Emergency Board approval. In December the committee hired a project administrator, and in January 1980 the "AAFTI Project" commenced in earnest.

The committee's methodology has been to meet monthly during the project to set policy for a three-member staff which worked full-time researching the laws and programs of other states, compiling data about the existing Oregon system and preparing discussion papers for

the meetings. In addition, some committee and staff members made on-site visits to observe and evaluate first-hand the traffic infraction adjudication methods in New York, Rhode Island, Seattle, California and Washington, D.C.

During this project the committee has tried to learn as much as possible about alternative systems by making a critical, fact-finding appraisal of them. We found out that each of the other systems we examined has desirable features to commend it — and some details that, in our view, could still be improved upon. It became manifestly clear to us from our study that no ideal scheme for handling traffic infraction cases has yet been devised. Moreover, it is fair to state that Oregon's existing traffic court system is, in our opinion, superior to most of the former systems in those jurisdictions that were moved thereby to adopt alternative approaches.

We firmly believe, though, that some system changes should be tried in Oregon and started on as soon as possible. "Administrative adjudication," the concept of using hearing officers in an informal setting, instead of judges in a court setting, to decide minor traffic offenses, has been successfully adopted in several other parts of this country. Additional states, also, are facing the growing burdens of proliferating cases and problem drivers and are seeking faster and more effective ways of dealing with those concerns.

The committee generally hold the view that administrative adjudication can be a practical, effective and cost-beneficial means of handling traffic infractions in Multnomah County. Nonetheless, we also believe that more information about such a system needs to be gained before Oregon can make an intelligent judgment on the merits of its actual workability in this state. Our study of the operating programs of other states has led most of us to surmise that administrative adjudication would be successful in our most populous county. A carefully planned and thoroughly evaluated test program would carry the idea beyond the stage of informed opinion to a positive position based on demonstrable evidence.

The committee's approach to the AAFTI Project reflects the attitude — consistent with the general philosophy of the Oregon Judicial Conference — that the judges of this state should not

passively await statehouse solutions to courthouse problems. Lex De Futuro, Judex De Praeterito. "The law provides for the future, the judge for the past." If that ancient legal maxim were ever so, it is indeed no longer true. The present-day judge is expected to be much more than a mere decider of cases. He or she must also be an administrator, a manager, a planner, and a problem solver. Accordingly, members of the bench must cooperatively explore new ways of using their time and resources to more efficiently discharge their multiple duties and responsibilities. Granting that the recommendations described in this report will require the approval and assistance of the other two branches of government, the impetus behind these proposals for meeting the mounting workload of the courts comes — as it properly should — from those selfsame courts.

The proposals set forth in this report call upon the state to make a substantial commitment to a "trial run" of an entirely different kind of traffic infraction adjudication system. We are not insensitive to the reality that the concept of removing the judge from the time-honored role of handling traffic cases is opposed by some groups and individuals, for a variety of reasons. But the committee believes that the potential benefits of administrative adjudication merit more than an occasional academic appraisal and now should be singularly scrutinized under actual working conditions in Multnomah County.

The leaders of this state have seldom been reticent about trying new or innovative solutions to public problems. Thus a developmental approach can hardly be considered as being unprecedented in a state that has achieved a respected reputation throughout the country for being in the front ranks of states with imaginative substantive and procedural law reform. The proposed demonstration program is, we think, altogether in keeping with Oregon's past record of noteworthy accomplishments.

SPECIAL COURTS COMMITTEE
AAFTI Project
604 Executive House
325 - 13th Street, N.E.
Salem, OR 97310
(503) 373-1488

ACKNOWLEDGEMENTS

The committee and its staff are much indebted to the many persons who generously gave of their time and expertise to assist us during this project.* We gratefully acknowledge the courtesies and assistance extended to us by the following offices, generally, and the following individuals, particularly:

CALIFORNIA TRAFFIC ADJUDICATION BOARD;
Thomas J. Novi, Executive Director.

NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES;
Sidney Berke, Director, Administrative Adjudication Bureau; Sal Amato, Supervising Law Judge.

RHODE ISLAND DEPARTMENT OF TRANSPORTATION;
A. Charles Moretti, Director, Administrative Adjudication Division.

SEATTLE MUNICIPAL COURT; Robert Milloy, Court Administrator; John Vercimak, Supervising Magistrate.

In addition, we wish to thank several other states for furnishing information and materials: Florida, Maryland, Michigan, Minnesota, North Dakota, Ohio, Vermont, Washington and Wisconsin.

Funding for the AAFTI Project was provided by a National Highway Traffic Safety Administration grant from the Oregon Traffic Safety Commission, and for their kind assistance and support we thank the following:

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION;
George D. Brandt, Chief, Adjudication Branch;
William Hall, Regional Administrator; William O. Kingman, Area Director for Oregon.

OREGON TRAFFIC SAFETY COMMISSION; Gil W. Bellamy, Administrator; Michael Baldwin, Deputy Administrator; Dean Blakley, Traffic Safety Representative.

Our on-site visit to the New York Administrative Adjudication Bureau, an "exemplary project" of the Host Program of the Law Enforcement Assistance Administration, was coordinated and partially paid for by that program. We appreciate the helpfulness of Jack Herzig, Program Director, and Betsy Lindsay, Program Coordinator, in arranging for that most informative visit.

Many others who we haven't named cheerfully helped us along the way. Hearing officers, clerks, systems technicians and a variety of traffic and adjudication program specialists gave us their best. Collectively, we thank them all.

Closer to home, we needed and received the cooperation and assistance of Dorothy Coy, Multnomah County District Court Administrator, and her staff during the project, and we thank them all for their help.

The chairman and the project administrator express their sincere appreciation to Chief Justice Denecke and the Oregon Judicial Conference for the confidence they have shown in the committee and this project. But, of course, we accept full responsibility for any shortcomings or omissions in the work product.

Finally, the committee and the project staff thank the State Court Administrator, Elizabeth Belshaw, and the members of her staff, particularly Doug Bray, who efficiently smoothed the wrinkles in the administrative details of the operation.

*The opinions, findings and recommendations in this report, unless expressly indicated otherwise, are those of the Special Courts Committee and not necessarily those of any other agency or person.

MEMBERSHIP OF THE SPECIAL COURTS COMMITTEE

Judicial Conference Members

Chairman, Judge Philip T. Abraham, Multnomah County District Court
Judge Donald C. Ashmanskas, Washington County Circuit Court
Judge Thomas C. Beck, Marion County District Court
Judge Wayne H. Blair, Klamath County District Court
Judge Alan C. Bonebrake, Washington County District Court
Judge Robert D. Burns, Clackamas County District Court
Judge George F. Cole, Clatsop County District Court
Judge Ross G. Davis, Jackson County District Court
Judge Robert E. Jones, Coos County District Court
Judge Gerald O. Kabler, Douglas County District Court
Judge William O. Lewis, Linn County District Court
Judge James A. Mason, Columbia County District Court
Judge Maurice K. Merten, Lane County Circuit Court
Judge William L. Richardson, Court of Appeals

Other Members

Nita Bellows, Justice of the Peace, Ontario
James T. Brouillette, Deputy Chief, Portland Police Bureau
Jerome S. Cooper, Deputy District Attorney, Washington County
James Hunter, Motor Vehicles Division, Salem
Michael D. Schrunk, Attorney at Law, Portland
Judge Wayne M. Thompson, Municipal Court, Salem
Major Harris L. Kirby,* Oregon State Police, Salem

Committee Staff

Douglas M. Bray, State Court Administrator's Office

AAFTI Project Staff

Donald L. Paillette, Project Administrator
Joseph S. Olexa, Research Assistant
Kathleen Arnold, Administrative Assistant

*Alternate, Lt. James R. Phillips

PART I.

PROJECT PERSPECTIVES

PART I. PROJECT PERSPECTIVES

BACKGROUND

The AAFTI Project marks the second time in the past seven years that a state body has considered traffic infraction adjudication alternatives. The 1973-75 Legislative Interim Committee on Judiciary reviewed administrative adjudication in connection with its major revision of the vehicle laws. Its report, noting that one of its main objectives was "to examine the feasibility of establishing an administrative adjudication system to replace the existing court system for handling traffic cases," stated:

> "The Committee thoroughly examined all facets of the 'administrative adjudication' system devised by the State of New York whereby minor traffic offenses (major offenses remain in the criminal courts) have been entirely removed from the courts and are adjudicated before hearings officers within the Motor Vehicles Department. Although administrative adjudication may merit further consideration by this state in the future, we believe that such a scheme is not appropriate for Oregon's needs, at least for the present time...."[1]

The AAFTI Project is, then, "further consideration" of the subject of administrative adjudication, and a timely and logical sequel to the earlier legislative study. The first step in any effort to adopt an alternative method for handling traffic infractions is the removal of criminal penalties and procedures applying to most traffic offenses. The 1975 vehicle code partially accomplished this, and this committee's recommendations follow through with the decriminalization of traffic infractions, thereby permitting a non-judicial method of handling such offenses.

In assessing the 1975 decision to retain court processing of traffic infractions, it's important to bear in mind that the Judiciary Committee proposed, and the legislature adopted, a different method of dealing with traffic court backlog; one which has since been foreclosed by the Oregon Supreme Court. The 1975 vehicle code "decriminalized" the first offense for driving under the influence, in an attempt to remove the constitutional requirement for a jury trial; however, the court held the statutes violated Article I, section 11

of the Oregon Constitution, thereby restoring the requirement for a jury trial, even though no possible jail penalty attaches for the offense. Brown v. Multnomah County District Court, 280 Or 95, 570 P2d 52 (1977). The backlog of jury trials, particularly in district court, has continued to be a problem. Multnomah County has been especially pressed by the large volume of DUII cases.

The committee attempted to respond to Brown and submitted a number of proposals to the 1979 Legislature (HB 3046) which failed to pass. The Special Courts Committee adjudication recommendations, while not dealing directly with DUII or other Class A infractions, propose to alleviate the traffic offense caseloads by an approach that would free judges from the other infractions, i.e., those of the Class B, C and D variety.

PROJECT OBJECTIVES

In its grant application,* the committee at the outset of this project stated its primary objectives as follows: (1) to examine the status of administrative, parajudicial and quasi-administrative adjudication efforts across the country, (2) to provide an analysis of the economic, legal and public implications of alternative traffic adjudication systems in Oregon, (3) to assess the ability of existing administrative systems to support an alternative traffic adjudication function, (4) to determine whether there are any major impediments to changing the traditional traffic adjudication system, and (5) to explore their potential effects on the traffic safety and judicial systems in the state.

With all of the above objectives in mind, the committee (mindful of its time and resources constraints) set about to acquire as much information and to gather as many materials as possible on the subject of alternative traffic infraction adjudication systems (see Part III).

In the course of attaining its stated goals, the committee hoped to find definitive answers to a number of hard questions about these alternative approaches. Would they relieve congestion in the

*Highway Safety Project No. 80-01-01-6-307K

courts? Would they improve traffic safety? Would they be more convenient to cited motorists? Would they reduce excessive in-court police time? Would they result in more uniform and appropriate sanctions for traffic law violators? Could any one of these different systems be shown to be superior to the others? And then, the most important and critical question of all: Which traffic infraction adjudication system would best serve the community and the People of the State of Oregon?

The key decision to be addressed by the committee during the AAFTI Project was the selection of which alternate approach, if any, it would recommend as the result of its study of the feasibility of changing the traditional court system. The primary distinction between the modified judicial and administrative approach lies in the designation of authority for adjudication. While the courts retain supervisory authority under the modified system, a purely administrative approach calls for supervision by an independent state agency.

In as much as both of these alternative approaches allow "non-judge" handling of traffic infractions, the desirable elements of an improved system are equally available under either --- provided that speedy access to driver records is assured. The key features of the alternatives that were examined by the committee are discussed further in Part III of this report.

PART II.

OREGON'S EXISTING TRAFFIC INFRACTION ADJUDICATION SYSTEM

PART II. OREGON'S EXISTING TRAFFIC INFRACTION ADJUDICATION SYSTEM

THE DISTRICT COURTS*

In recent years, the district court caseload has increased dramatically; attributable, mainly, to the burgeoning number of traffic cases. Oregon district courts now handle nearly a half-million traffic infractions annually.

In 1972, the total number of all cases in these courts was only 364,818. By 1978, that total had soared to 603,892 cases, resulting in increased backlogs and undesirable docket delays. During the same year, some 455,000 traffic infraction cases were filed in the district courts, or about 75 percent of the total number of all cases. (In 1978, an additional 172,000 traffic infractions were filed in the municipal courts, and 145,000 in justice courts.) This massive volume of cases has made the timely exchange of information between the courts and the Motor Vehicles Division difficult. Consequently, the system, judicially and administratively, has been unable to deal as effectively as it should with problem drivers and repeat offenders.

The traditional way of coping with ever-increasing caseloads and their attendant problems has been to add more judges to the court system. But this is an admittedly expensive (and temporary) solution; and state and local governments alike have become growingly concerned about the escalating cost of running the courts. Another measure within the court system has been to dispose of traffic cases by greater use of bail forfeiture and other substitutes for court appearance by offenders. These considerations, plus other factors such as limited funding sources, expense to litigants and the distinct possibility that some kinds of high-volume but relatively minor cases might be processed just as well, perhaps better, by an alternative method, moved the committee to take up this project.

*1978 STATE COURT ADMIN. ANN. REP. (The number of traffic infractions filed in district courts decreased slightly in 1979.)

STATISTICS RELATED TO TRAFFIC CASE VOLUME IN DISTRICT COURTS

In an attempt to gain a clearer understanding of the existing traffic infraction adjudication system, and the impact of such cases on the courts, the committee surveyed 13 selected courts regarding the volume, sources and disposition of traffic offenses. Of the courts participating in the survey, all but one were district courts. For comparison purposes, one municipal court voluntarily took part in the survey.

The staff mailed comprehensive questionnaires to each of the courts in May 1980 reguesting data on almost every aspect of their traffic case volume, with particular attention to traffic infractions, including driving while under the influence of intoxicants (DUII). Ten of the courts were able to provide varying amounts of information that was being sought.* Three district courts did not respond.

Data were requested for all of 1979 and the period of June 1980 relating to:

- The number of citing agencies in each county.
- The number and type of citation by issuing agency.
- The number of citations paid by mail.
- The number of arraignments by class of infraction.
- The number of guilty pleas at arraignment.
- The number of trials by class of infraction.
- The number of judge hours spent on infraction trials and trial preparation as well as on other duties associated with traffic infractions.
- The number of DUII related complaints, arraignments and trials.
- The number of judge hours spent on DUII trials and trial preparation.
- The number of judge hours spent on other duties related to DUIIs.
- The number of jury trials for DUII infractions and crimes.
- The number of appeals from traffic trials.

*Clackamas, Clatsop, Columbia, Coos (North Bend), Douglas, Klamath Lane, Multnomah and Washington County District Courts and Salem Municipal Court.

- The average time from arraignment to trial for a traffic infraction.
- The amount of traffic related revenue.
- The annual budget of the district courts.

Most district courts were unable to respond completely and to furnish all the data requested. The primary finding of the survey was that most courts did not have the kind of record-keeping systems that enabled them to respond easily to the questions asked. Those courts that did answer most of the queries frequently advised us that a great deal of effort was required to obtain the data because their records simply were not designed to keep track of such data. However, enough courts did provide sufficient information that certain "ball park" estimates can be made regarding the numbers and disposition of traffic citations in these courts. These data indicate a wide variation in both the numbers of traffic citations processed by each court and the pattern by which they are disposed of.

District courts outside Multnomah County averaged 19,090 cases of all kinds in 1979 while Multnomah County reported 160,877 cases, eight times the statewide average. Other district courts averaged 14,133 traffic infractions in 1979 while Multnomah County reported 110,306 traffic infractions, again eight times the statewide average. Traffic infractions account for 73% of all cases filed in district courts, while in Multnomah County they account for 69% of the total cases filed.

The average district court judge outside of Multnomah County hears 10,454 cases per year, of which 7,739 are traffic infractions. In Multnomah County each judge hears an average of 12,375 cases per year. However, because the Multnomah County District Court assigns 2.3 judges to hear traffic cases exclusively, each judge hears an average of 47,959 traffic infractions per year.

Many traffic citations are paid by mail in district court with the percentage ranging from a low of 8% to a high of 79%. In Multnomah County 26% of the violators paid their citation by mail.

Other selected statistics provide some information on the nature and distribution of traffic citations in the district courts:

- Number of agencies citing motorists into court ranged from one (Salem Municipal Court) to thirteen (Clackamas County) with the average district court receiving citations from six different agencies.
- Class A traffic infractions averaged 8% of all citations.
- The number of cited motorists who appeared for arraignment averaged 30%.
- Of those appearing for arraignment, Class A infractions amounted to 14% of the total number of citations.
- Of those appearing for arraignment, 75% pled guilty.
- Of those who pled not guilty at arraignment, 81% went to trial.
- Class A infractions accounted for 37% of the total traffic infraction trials heard.
- District courts received an average of 1,971 DUII related complaints in 1979.
- District courts handled an average of 1,361 DUII arraignments in 1979.
- District courts handled an average of 636 DUII trials in 1979.
- An average of 317 jury trials for DUII infractions and crimes were scheduled in each district court in 1979.
- An average of 10 appeals from traffic trials were taken in 1979 in each district court.
- The average time from arraignment to trial for a traffic infraction in 1979 was six months for a jury trial and three months for a non-jury trial. The range was from three to eleven months for a jury trial and one to six months for a non-jury trial.
- Traffic related revenue in 1979 averaged $896,558 with a range of $200,000 to $2,300,930.
- The average district court reported a budget of $763,509 in 1979 with a range of $100,000 to $3,165,213.

PART III.

ALTERNATIVE TRAFFIC INFRACTION ADJUDICATION SYSTEMS

PART III. ALTERNATIVE TRAFFIC INFRACTION ADJUDICATION SYSTEMS

ADJUDICATION ALTERNATIVES

The available alternatives for adjudicating "decriminalized" traffic offenses (traffic infractions) consist of three basic approaches: The Judicial Approach; The Modified Judicial Approach; and The Administrative Approach.

The Judicial Approach

The responsibility for adjudication is vested in the judicial branch of government and the decision-making and sanctioning functions are performed only by duly constituted members of the judiciary.

The Modified Judicial Approach

Jurisdiction over the adjudication of traffic offenses is maintained by the court with certain functions in the decision-making and sanctioning process delegated to parajudicial officers.

The Administrative Approach

All functions in the decision-making and sanctioning processes, as well as the preliminary function in the review process, are performed by administrative hearing officers under the supervision of an administrative agency.

The Status of the States[2]

° Twenty-four states continue to classify minor offenses as misdemeanors with imprisonment as a penalty option. In these states, all traffic cases are subject to the full panoply of criminal court procedures — including court appearances, the standard of proof beyond a reasonable doubt and the availability of trial by jury.

° Six additional states also continue to use the misdemeanor classification but have removed imprisonment as a penalty option for the less serious offenses. This releases these states from the obligation to provide court-appointed counsel or trial by jury (caveat) in those cases, but still requires the application of traditional criminal procedures.

° Twelve states have reclassified the relatively minor traffic offenses from crimes to traffic infractions. In these states, no imprisonment is authorized for such offenses, and in some instances, criminal procedures have been modified so that the offense is no longer treated as a crime. (Oregon is counted in this category.)

° Seven states and the District of Columbia have specifically decriminalized traffic infractions, not only declaring them to be civil matters, but also removing all criminal procedures from the handling of such offenses. While "reclassification" clears the path for the development of a modified judicial approach, "decriminalization" permits full administrative proceedings for traffic infractions. (New York leads in this category.)

° The traditional judicial approach is still used in the majority of states. Of course, all 30 states retaining a crime classification for traffic offenses fall in this category, as well as 15 states which have either reclassified or decriminalized lesser offenses, but have not developed adjudication alternatives. In each of these states, decision-making and sanctioning functions can only be performed by judges.

° In another three states and the City of Seattle, the courts have maintained jurisdiction but have adopted modified judicial approaches for adjudicating traffic infractions. In these states, parajudicial officers, called referees, commissioners or magistrates are authorized to adjudicate traffic infractions.

° Two states and the District of Columbia have followed New York's administrative approach where all decision-making, sanctioning and preliminary appeals functions are the responsibility of administrative officers within the Department of Transportation or motor vehicle regulatory agency.

State	Classification of Lesser Offenses (Infraction is used to indicate anything less than a misdemeanor.)	Method of Adjudication
Alabama	Misdemeanor	Traditional judicial
Alaska	Infraction, no jail penalty	Traditional judicial
Arizona	Misdemeanor	Traditional judicial
Arkansas	Misdemeanor	Traditional judicial
California	Infraction, no jail penalty	In October 1980, the Traffic Adjudication Board will begin a 4-year test of an administrative approach in a 2-county pilot project.
Colorado	Misdemeanor, no jail penalty	Traditional judicial

State	Classification of Lesser Offenses	Method of Adjudication
Connecticut	Infraction, no jail penalty	Traditional judicial
Delaware	Misdemeanor	Traditional judicial
District of Columbia	Infraction, no jail penalty, non-criminal proceeding	Administrative adjudication is the responsibility of the Dept. of Transportation.
Florida	Infraction, no jail penalty, non-criminal proceeding	Traditional judicial
Georgia	Misdemeanor	Traditional judicial
Hawaii	Misdemeanor	Traditional judicial
Idaho	Misdemeanor	Traditional judicial
Illinois	Misdemeanor	Traditional judicial
Indiana	Misdemeanor	Traditional judicial
Iowa	Misdemeanor	Traditional judicial
Kansas	Misdemeanor	Traditional judicial
Kentucky	Misdemeanor, no jail penalty	Traditional judicial
Louisiana	Misdemeanor	Traditional judicial
Maine	Infraction, no jail penalty, non-criminal proceeding	Traditional judicial
Maryland	Misdemeanor, no jail penalty	Traditional judicial
Massachusetts	Infraction, no jail penalty	Modified judicial: Motorist may choose to pay by mail, have a non-criminal hearing before a clerk-magistrate or go through the traditional judicial process.
Michigan	Infraction, no jail penalty	Modified judicial
Minnesota	Infraction, no jail penalty	Traditional judicial
Mississippi	Misdemeanor	Traditional judicial
Missouri	Misdemeanor	Traditional judicial
Montana	Misdemeanor	Traditional judicial
Nebraska	Infraction, no jail penalty, non-criminal proceeding	Traditional judicial
Nevada	Misdemeanor	Traditional judicial
New Hampshire	Infraction, no jail penalty, non-criminal proceeding	Traditional judicial
New Jersey	Misdemeanor	Traditional judicial
New Mexico	Misdemeanor	Traditional judicial
New York	Infraction, no jail penalty, non-criminal proceeding	Since 1970 an administrative adjudication system has operated under the Dept. of Motor Vehicles serving New York City, Rochester, Buffalo and Suffolk Co. Further expansion may occur in 1980.
North Carolina	Misdemeanor	Traditional judicial; the state legislature has authorized a feasibility study of administrative adjudication.
North Dakota	Infraction, no jail penalty	Modified judicial
Ohio	Infraction, no jail penalty	Traditional judicial
Oklahoma	Misdemeanor	Traditional judicial
Oregon	Infraction, no jail penalty	Traditional judicial
Pennsylvania	Infraction, no jail penalty	Traditional judicial
Rhode Island	Infraction, no jail penalty, non-criminal proceeding	Since 1975, a statewide system of administrative adjudication has operated under the Dept. of Transportation.
South Carolina	Misdemeanor	Traditional judicial
South Dakota	Infraction, no jail penalty, non-criminal proceeding	Traditional judicial
Tennessee	Misdemeanor	Traditional judicial
Texas	Misdemeanor, no jail penalty	Traditional judicial
Utah	Misdemeanor	Traditional judicial
Vermont	Infraction, no jail penalty	Traditional judicial
Virginia	Infraction, no jail penalty	Traditional judicial; Fairfax County is considering a modified judicial system.
Washington	Traffic infraction as of July 1, 1980, no jail penalty, non-criminal proceeding.	Modified judicial in some courts.
West Virginia	Misdemeanor	Traditional judicial
Wisconsin	Misdemeanor	Traditional judicial
Wyoming	Misdemeanor	Traditional judicial

KEY ELEMENTS OF ADMINISTRATIVE ADJUDICATION

There are several vital features that comprise the administrative adjudication system and make it an effective alternative to court disposition of traffic infractions.

Non-Judicial Hearing Officers. The use of trained hearing officers instead of judges is a key factor in any effort to reduce the costs and workload of the courts.

Informal Hearing Procedures. Replacing traditional court procedures with informal, one-on-one hearings is another feature that reduces the stress on the motorist and the burden on the courts.

Appeals Procedures. Ready access to judicial review is an essential constitutional safeguard for the motorist whose case is determined by administrative adjudication. To satisfy this requirement yet minimize the demands on the appellate courts, a two-level appeals process is provided under the system: The motorist may appeal to an administrative appeal board with ultimate access to judicial review.

Centralized Data Processing. Access to an updated driving record of any cited motorist is a key feature that permits fast identification of problem drivers.

Improved Pay-by-Mail Procedures. An efficient pay-by-mail system is crucial to avoid unnecessary personal appearances by violators and keep down costs of processing cases.

Driver Improvement Techniques. Accurate diagnosis of problem drivers and the use of appropriate driver improvement programs are important parts of any sound traffic adjudication system. Quicker identification of repeat offenders and a responsive rehabilitation-oriented approach can be systematically applied under a centralized adjudication method.

NATIONAL SUPPORT FOR ADMINISTRATIVE ADJUDICATION

New York State's innovative but highly successful system has generated national attention and impressive support for the potential benefits of this traffic offense adjudication system.

In 1972, a task force was created within the National Highway Traffic Safety Administration (NHTSA) to study the adjudication of motor vehicle offenses. This body concluded that criminal classification of minor traffic cases was inappropriate, and ineffective.[3] In 1973, a national advisory commission of the Law Enforcement Assistance Administration (LEAA) recommended that all minor traffic cases be made infractions and subject to administrative disposition.[4]

The law enforcement community has gone on record as supporting administrative adjudication. In 1970, the International Association of Chiefs of Police resolved to endorse the concept as an alternative to mandatory court appearance for all moving hazardous violations.[5] Additional federal support for new methods of traffic infraction adjudication was provided by the Highway Safety Act of 1973 which recommended administrative adjudication and directed additional research in this area. As a result, NHTSA funded a demonstration program known as "Special Adjudication for Enforcement" (SAFE) to develop and evaluate alternative systems. Under the SAFE program

in 1975, Rhode Island's Department of Transportation began the first statewide administrative system based on the New York model.

NEW YORK'S ADMINISTRATIVE ADJUDICATION SYSTEM[6]

Administrative adjudication has developed in this country during only the past decade. New York pioneered the administrative concept through its Department of Motor Vehicles (DMV). In 1969, The New York City Criminal Court was inundated by 4.6 million traffic cases. Criminal traffic cases amounted to 100,000; moving violations were 700,000 in number; and nonmoving violations 3,800,000. New York State enacted a new law, effective July 1, 1970, transferring responsibility for adjudicating traffic infractions (minor offenses) from the courts to the State Department of Motor Vehicles. A companion bill transferred nonmoving infractions to the Parking Violations Bureau of the city's Transportation Administration.

An Administrative Adjudication Bureau (AAB) was created within DMV. The enabling act declared the AAB's proceedings to be civil in nature without the possibility of a jail sentence and removing jury trial requirements. Since 1970, the vast majority of the moving violations has been handled by AAB leaving the criminal courts with responsibility for only those cases classified as crimes. As a direct result of AAB, 18 judges and five courtrooms in New York City have been freed of hearing traffic offenses. In recognition of the benefits realized by New York City, the cities of Buffalo and Rochester sought and obtained, in 1973, an amendment to the original legislation, thereby permitting AAB to establish adjudication facilities in those two cities. Since then, the heavily populated parts of Suffolk County (Long Island) have acquired an AAB operation. Nassau County and the cities of Syracuse and Yonkers might adopt the program soon.

The administrative adjudication program is operated by the Traffic Violations Bureau of the New York State Department of Motor Vehicles which handles most moving traffic violations. Jurisdiction over all criminal traffic offenses, such as a vehicular homicide, driving while intoxicated, reckless driving and leaving the scene of an accident, remains with the courts.

The system constitutes a merger of traffic offense adjudication and driver licensing functions into a single system under the leadership of its director who is the system manager. Its computer handles all records processing and provides accurate and current information to hearing officers and others.

When a motorist is cited, if the TVB has jurisdiction, the summons explains the three pleading options: If the plea is "guilty" or "not guilty," the motorist may mail it to the central office or appear in person at a local field office. If the motorist wants to plead "guilty with an explanation" he must do so in person at the field office. Approximately 90 percent of all motorists cited plead either guilty or guilty with explanation.

The pleas are processed in a way that requires all persistent or dangerous violators to appear in person. Hearing of pleas of guilty with an explanation are held promptly and do not require the appearance of the police officer. Contested hearings are scheduled to hold down hearing room congestion by coordinating hearing officer and police officer schedules with hearing room availability.

Hearings are less rigidly structured than courtroom trials but give everyone the opportunity to be heard. Sanctions imposed are based on the nature of the violation and the motorist's past driving record. Sanctions range from monetary fines through assignment to driver training sessions to license suspension and revocation. The proceedings are civil in nature with jail sentences excluded as a sanctioning alternative.

Appeals of either the decision or the sanction go to a three-member administrative appeals board. Judicial review of an adverse appellate decision is available to all motorists, though it is rarely used.

Some of the benefits said to have been gained by New York as the result of administrative procedures:

° By creating a system which focuses exclusively on traffic offenses, criminal court congestion has been reduced. Since 1970, eighteen judges and five court-rooms in New York City and an additional two judges and two courtrooms each in Buffalo and Rochester have been freed from traffic offense adjudication.

° By permitting motorists to plead and pay fines by mail, the adjudication process has been made more convenient.

° By merging the licensing authority with the traffic offense adjudication authority, the sanctioning process has been improved by providing for immediate access to and update of driver records. There has been more uniformity in sanctions imposed.

° Using a computer system to speed processing of data has reduced the time between citation and case disposition. A case which is heard now takes between 45 and 60 days to process, compared with delays of up to a year or more when the criminal courts were processing them.

° By establishing pre-set police precinct schedules, the amount of time police are required to spend at hearings has been reduced by approximately 50 percent.

° By using hearing officers (now called "administrative law judges") instead of judicial personnel, costs have been reduced.

° Simplified hearing procedures have aided motorists in presenting their cases and have allowed hearings to be conducted more efficiently while still assuring due process of law.

° An administrative appeal process has replaced judicial review processes. Judicial review has been sought in only about 20 of 2,000 administrative appeals in one five-year period.

° The number of scofflaws (motorists who evade summonses) has been reduced by 25 percent.

There are three major areas in which cost savings and other benefits are claimed by New York as a result of administrative adjudication. For two of these — criminal courts and police — it is difficult to obtain quantitative information. However, it is generally agreed that the amount of time that police officers spend in courts on traffic-related matters has been substantially reduced. Similarly, administrative adjudication has helped to improve the operation of the criminal court system by removing non-criminal traffic cases from its jurisdiction. Such reductions can reasonably be expected to lead to lower costs for police and courts services, or increased services in other areas, or a combination of these effects.

The third major area in which New York reports cost savings and other benefits is in the actual operation of the program. Although pre-program cost and revenue figures are not available, it has reportedly increased overall revenues 25 percent, while reducing operating costs when compared with the prior court system. This is said to be partly due to the greater number of summonses being issued, reduction in the number of summonses ignored, and a consequent increase in numbers of motorists adjudicated. It is also due to increasing efficiency in the operation of the adjudication system, which is largely a result of New York's sophisticated computer processing system. Since the operation began, there are sufficient statistics to demonstrate that the initial investment was certainly justified in terms of its associated receipts and expenses.

New York admits that the development and implementation of its system for processing data on complaints, pleas and sanctions has been an expensive and time-consuming process. The basic system had been developed by the state's Department of Motor Vehicles when the adjudication bureau began operating in 1970. Since then, the NYMVD has made many improvements, but it has completed the major investment phase. All of the development expenses were charged against revenues. It took over two years before total receipts from the system exceeded total expenses. Since then, system receipts have continued to grow faster than operating expenses, according to New York officials.

The net difference between receipts and expenses is distributed among the participating cities on the basis of the revenue received from each and the differing costs involved in providing services to each.

It's apparent that the computerized data processing system employed by the Bureau has been largely responsible for the increased efficiency. A manual system for processing adjudication data was considered when the program was being set up in New York City; however, it was rejected because it would have been at least as expensive, and would have more than doubled the estimated time needed to process a summons. The system has eliminated personnel who would otherwise have been required for handling paper, verifying data and

statistical updating. It has removed the need for office space for dead files and provided checks and balances throughout the adjudication process, thereby eliminating many mistakes.

Administrative adjudication proceedings are civil in nature and the standard of proof is by "clear and convincing" evidence rather than proof "beyond a reasonable doubt."

With the exception of the Deputy Commissioner and Counsel to the Department of Motor Vehicles, all employes in the program are in the Civil Service. This includes the director, supervising referees, senior referees, referees, and all clerks, stenographers and cashiers. All must take competitive civil service examinations and selection is from among the top three names on the list for any given position. All hearing officers are lawyers and Department of Motor Vehicles referees with at least four years of trial or administrative law experience.

THE RHODE ISLAND SYSTEM[7]

The Administrative Adjudication Division (AAD) was created within the Rhode Island Department of Transportation in July 1977 following a two-year, federally-funded demonstration project. The AAD director is an assistant director of transportation. The AAD consists of a management staff and four operating sections:

° Violation Section - Responsible for issuance and control of traffic summonses to all police departments in the state, and for receipt and recording all mail responses to summonses.

° Hearing Section - Responsible for conducting hearings for traffic violations.

° Driver Retraining Section - Responsible for conducting driver retraining schools for persons referred by the hearing section.

° Data System Section - Responsible for data processing of major transactions related to AAD, i.e., driver records, fines accounting, summons control, verification of eligibility of motorist to pay by mail, warning and suspension notices and hearings docket scheduling and notification of motorists.

Certain traffic offenses are excluded from AAD:

- Driving to endanger resulting in death.
- Driving while under the influence.
- Reckless driving.
- Driving without a valid license or after denial, suspension or revocation of license.
- Hit and run involving P.I. or P.D. to an attended vehicle.
- Driving vehicle without consent of owner.
- Possession of a stolen vehicle.
- Local ordinance violations in some towns.

The above offenses are heard in district court and traditional criminal court procedures apply.

The police officer issues the offender a traffic citation on a standard form supplied by AAD. If the offense cannot be paid by mail or there are multiple offenses arising from the same incident, the officer tells the offender that the person will need to appear for hearing and will be notified by mail as to the date, time and place.

A copy of each citation is sent by the issuing department to the Violation Section of AAD within 48 hours. That section converts it to data processing form and enters it into the data system. If the offense requires a hearing, the motorist is notified and the case is placed on the hearing docket.

If the offense can be paid by mail, the officer enters the applicable fine on the face of the citation according to a standard schedule. The officer gives the motorist a copy of the citation and tells the person of the option of paying by mail if the person chooses to admit the offense and meets the conditions of the summons.

The issuing department sends the pay-by-mail summons to the Violation Section where it is entered into the data system. This process checks for an additional pay-by-mail eligibility criterion, i.e., that the motorist has not had another violation during the previous 12 months.

If the eligibility is verified, a pay-by-mail card is punched and returned to the Violation Section. This process also enters into the data system's outstanding summons record the fact that the

summons has been issued. If the motorist is not eligible for pay-by-mail, the case is set for hearing.

When the Violation Section receives the motorist's copy of the citation along with payment, as called for, it matches it with the pay-by-mail card previously made and enters the payment into the data system. If advised that the motorist wants to contest the citation, the section sends a hearing notice to the person and enters the case on the hearing docket.

Upon receipt of payment from the motorist, the Violation Section removes the summons from the outstanding summons file and records it as disposed. If payment is not received within 14 days from the date of the citation, the data system prints a warning notice informing the person that, failure to respond within 10 days will result in license suspension. Such action also prevents the scofflaw from renewing his or her license.

The regulations require a motorist to attend an AAD hearing on a traffic offense in four specific circumstances:

1. The offense is of a type that cannot be paid by mail.
2. The motorist has had another violation in the previous 12 months.
3. The motorist is charged with multiple violations on the same summons.
4. The motorist is eligible to pay by mail, but wants to contest the charge.

The Rhode Island experience has shown approximately a seventy percent/thirty percent split between summonses paid by mail and those disposed of at hearings.

Three pleas are provided for under the Rhode Island system: Admit the violation; Admit with Explanation; and Deny the violation.

Following an Admit plea, the hearing officer (commissioner) may question the motorist regarding the violation before sustaining the charge. If the plea is Admit with Explanation, the commissioner hears the explanation and then sustains or dismisses the charge.

If the charge is sustained, the commissioner has three types of sanctions, singly or in combination, from which to choose: (1) a $500 maximum fine; (2) a one-year maximum driver's license suspension;

and (3) referral to driver retraining school. The stated purpose of the sanction is to emphasize safe driving instead of punishment of the offender. Hearing results are entered into the data system, and a person failing to appear as required is suspended until the person complies with the hearing order.

The Rhode Island AAD data system periodically prints a list of persons who require hearings. Each case is manually scheduled for the next available hearing session at the site nearest the issuing police department. The schedule is reentered into the data system which generates hearing notices, dockets and driver history abstracts for the case.

Three full-time commissioners conduct the AAD hearings at seven sites on a periodic basis. Some sixty cases per day are scheduled for each site. A commissioner must be a lawyer licensed to practice in the state, and is appointed by the Governor for a six-year term. The standard of proof is the same as in New York, clear and convincing evidence.

A person may take an appeal to an AAD Appeal Board and then to the Rhode Island courts. During a two-year period (1975-77), only 154 appeals were filed. Reportedly, "no substantial issues of law" have been raised against the system. AAD hearings are tape (cassette) recorded to preserve a record for appeal.

During the program's demonstration period, AAD handled 137,316 traffic citations, with 100,036 paid by mail and 37,280 heard. Summonses paid by mail accounted for $2,069,000 in fines, while the sum of $853,578 was paid at hearings.

The volume of summonses paid by mail during the period was reported to be about three percent higher than the total in the 24 months immediately before the project. The number of persons appearing at hearings was said to be 70 percent higher than the number appearing for like violations in the courts in the two previous years. Apparently, this difference resulted from AAD's ability to enforce personal appearance when required.

Rhode Island reports that AAD has had a major impact on the state's court system. Removal of most traffic cases caused an almost

immediate 17 percent reduction in case backlog and has allowed the district courts to go ahead with a restructuring of the court system.

AAD also notes savings to police departments as the result of reduced need for police prosecutors at traffic case arraignments, less time spent at contested hearings than at contested court cases and reduction of clerical tasks in defaulted cases.

Operational costs for AAD during the second year amounted to just under $539,000, covering nine professional and 23 clerical positions, facilities, equipment, travel, supplies and data processing. AAD estimates that the unit cost of handling a summons by mail was $2.86, and the cost of a hearing disposition was $13.47.

As noted by AAD, cost comparisons with the district courts are difficult to make because of limited court data. Salary costs for commissioners are less than for judges; however, AAD has added functions, e.g., the data system, not available to the courts. The courts maintained fixed facilities throughout the state, while AAD uses donated space on a periodic basis. But AAD's travel costs are higher. The average AAD hearing cost is compared to the 1974 district court average hearing cost of $19.56.

The AAD system is reported to have proven a workable and desirable one, and has presented no major problems that would deter its adoption in other locales.

THE CALIFORNIA SYSTEM[8,9]

In 1971, a preliminary study of the California driver and motor vehicle traffic safety system concluded that a detailed feasibility analysis should be made to assess the advantage of adjudicating minor traffic offenses administratively instead of in the existing court system. In 1975, the California Legislature requested that such a study be conducted by the Department of Motor Vehicles. The results of the feasibility study led to legislative approval in 1978 of a pilot program.

The Administrative Adjudication Pilot Program is being operated under the direction of a five-member Traffic Adjudication Board (TAB)

in the municipal court districts of Sacramento and Yolo Counties. After a twenty-one month planning period (federally funded), the program became operational on October 1, 1980.

° From October 1, 1980 to October 1, 1984, traffic safety violations occurring within the project jurisdiction are processed and adjudicated administratively, rather than in the municipal courts.

° The adjudication process is handled by civil service hearing officers.

° The emphasis of the process is on traffic safety, rather than violator punishment.

° Sanctions are imposed by using a uniform sanction guide taking into account the driver's prior record.

° Hearing officer decisions are based on "proof beyond a reasonable doubt."

° Hearing officer decisions may be appealed to the Traffic Adjudication Board and thereafter to the Superior Court.

° Individuals, at their option, have the right to have the citation adjudicated through the court system.

The TAB is independent of any state department, but is given computer support by the Department of Motor Vehicles. Planning and operation of the pilot program is the responsibility of an executive director appointed by the TAB, subject to civil service rules.

All fines and assessments are to be deposited in the Traffic Adjudication Fund which was created by the enabling act and appropriated to the State Controller for disbursement to county auditors according to fixed existing formulas. In appeals, administrative fees and transcript costs will be collected from the appellant. After the planning period, TAB became subject to the regular state agency budgeting process and receives state funding for the program.

The objectives of the program are:

° To provide uniformity and consistency in the adjudication and sanctioning process by using areawide rules and regulations and a traffic safety-oriented sanction guide.

° To update the driver record on a timely basis so as to have better control of bad drivers.

° To improve the ability of law enforcement to identify suspended or revoked licenses.

° To free the courts involved from spending time and energy on traffic infraction processing.

° To provide a less costly system by eliminating prosecutor costs, reducing police overtime costs and employing hearing officers instead of judges.

° To move the focus of traffic infraction adjudication from the criminal court adversary environment to an informal administrative hearing setting that will stress traffic safety.

° To increase public convenience by permitting cited persons to appear only once to obtain hearings and giving them the option to appear at any hearing office.

The pilot project is to be closely evaluated each year of operation by independent consultants who will measure the effectiveness of the new system in accomplishing its stated objectives.

THE SEATTLE MODIFIED JUDICIAL SYSTEM[10]

The Seattle modified judicial system was created in mid-1974 as a Special Adjudication for Enforcement (SAFE) program of the National Highway Traffic Safety Administration and the Seattle Municipal Court. The system, with some modifications from the original concept, remains as a permanent traffic infraction disposition procedure in that court. The same basic system was later instituted in the King County, Washington District Court,[11] and the Washington State Legislature recently authorized "district court commissioners" to hear and determine traffic infractions throughout the state, trained pursuant to rules promulgated by the Washington Supreme Court. [Enrolled House Bill 101 (1979)]

The Seattle system employs an informal hearing system for minor traffic infractions in an effort to improve traffic safety. The objectives are to:

° Apply swift and fair adjudication to traffic defendants.

° Identify problem drivers and refer them to appropriate corrective programs.

° Remove chronic traffic-law violators from the roads.

- Implement cost effective adjudication and rehabilitation programs.
- Reduce the traffic case burden of the municipal courts.
- Reduce traffic violations and accidents.

The central features of the system include:

- Appearance for adjudication at the defendant's discretion, without having to wait for a court date.
- Having defendant's driving records immediately available by video terminal access to state files for the adjudicator at the time the case is heard.
- Informal, "one-on-one," adjudication process where the defendant and adjudicating magistrate discuss the case, and the magistrate renders a disposition.
- Counseling of offenders, and diagnosis of their driving problems, by trained driver improvement analysts.
- Application of traditional punitive sanctions of fines and license suspensions, where appropriate.
- Application of general and problem-specific driver rehabilitation training programs, where appropriate.
- Education of the public concerning the SAFE program.

The Seattle approach is a variant of the concept of decriminalization of minor traffic offenses and their resolution by administrative adjudication. It was developed in response to a perceived need to free the courts of traffic-related case burdens and reduce traffic-related injuries and losses of lives and property.

Prior to implementing the SAFE program, the City of Seattle decriminalized traffic offenses by removing the jail sanctions except for the following which remained in the court system:

- Driving while under the influence of alcohol or drugs.
- Reckless driving.
- Driving while license suspended or revoked.
- Hit and run driving, involving an attended vehicle or a pedestrian injury.

Certain other infractions were deemed to require a hearing before a magistrate for adjudication:

- Charges arising from an accident.

- Speeding in excess of 15 mph over the posted limit.
- Failure to yield right-of-way.
- Following too close.
- Negligent driving.
- Fourth infraction within two years or third charge in one year.

While defendants can still forfeit bail for the amount of the fine via the mails and some defendants are still required to have their cases heard in formal municipal court proceedings, the majority of those receiving a citation for a traffic offense follow an entirely different procedure. Under the Seattle procedure, bail notices are printed by computer for the Traffic Violations Bureau within 12 to 24 hours from the time the citation is written. Defendants are then informed that they may appear at the TVB (or return bail by mail) within 10 days of the bail notice mailing date. Previously, a cited defendant could anticipate a delay of nearly 60 days before his case could be tried; now the period of time between citation and trial averages 30 days.

Three magistrates were selected and hired by the municipal court. They are qualified as pro tem judges in the municipal court and are required to be members of the Washington State Bar. Magistrates receive specialized training in arraignments, trials, sentencing and other court procedures.

Defendants either schedule an appointment with the magistrate for a hearing or just appear at the Traffic Violations Bureau (TVB) as a "walk-in." Initially, it took an average of 52 minutes to process a case, excluding any time spent in rehabilitation programs. The defendant spent about six minutes with the magistrate and eleven minutes with a Driver Improvement Analyst (DIA). Because of lack of funds, the DIA aspect of the system was discontinued upon completion of the SAFE demonstration program.

During the 21 months in which records were kept following the introduction of the demonstration program, 86 percent of the defendants saw a magistrate within one hour. Today, the TVB schedules eight defendants for every ten-minute period with the three magistrates and assumes a 10-15 percent no-show rate.

During the actual hearing process the magistrate reviews the facts of the case with the defendant and renders a finding. The magistrate may:

- Refer the case to court on the basis of insufficient facts to render undisputed judgment of guilt or innocence.
- Find the defendant not guilty (determinations of not guilty, stricken or dismissed).
- Find the defendant guilty upon an admission of guilt. Guilty decisions are followed by fines, levied in part or in toto or suspended. Jail cannot be imposed as a sanction because of the decriminalization of the traffic offenses.

During the 21-1/2 months in which data was gathered following introduction of the new procedures, 41,660 minor traffic cases were processed. Of these, 65 percent involved mandatory appearances, 36 percent were speeding cases and 28 percent were multiple offenders, having three citations in one year or four in two years. The caseload averaged 101 per day or 505 per week (the present caseload averages 155 per day).

Eighty-nine percent of the cases were judged guilty during the 21-1/2 month study period. Approximately 8.5 percent of the cases were referred to court for formal trial (prior court appeal rate was 17 percent). Offenders were fined an average of $20, of which $10 was typically suspended. For offenders assigned to driver rehabilitation and also fined, the amounts suspended were higher. Twenty percent of the defendants were referred to some form of driver improvement program. Less than .3 percent (135 drivers) of the defendants received recommendations of driver license suspensions.

Based on established volumes, it cost $13.22 to process a SAFE case. Comparable costs for formal court trial and bail forfeiture was $40 and $9 per case, respectively. The diagnostic-rehabilitation component of SAFE accounted for 61 percent of the administrative cost. Adding costs incurred by the defendant (fine and time) and savings due to recidivism prevention allegedly produced a net societal economic cost of $17.35 per case.

PART IV.

CONSTITUTIONAL ISSUES

PART IV. CONSTITUTIONAL ISSUES

THE CONSTITUTIONALITY OF THE ADMINISTRATIVE ADJUDICATION PROPOSAL

A. Introduction

The successful implementation of an administrative adjudication pilot program for Multnomah County to replace the current judicial approach in handling traffic infractions requires careful attention to laws presently on the books and to constitutional mandates of due process, separation of powers and equal protection. To that end, the proposed new system was researched in light of federal and state constitutional doctrines.

B. Analysis

The separation of powers doctrine defines the limits within which the powers currently vested in the judiciary relative to traffic infraction adjudication may be transplanted to hearings conducted by the Traffic Infraction Adjudication Board (TIAB), an independent agency of the Executive Branch. The concept of separated and divided powers is an integral part of the U. S. Constitution and focuses on the degree to which various governmental arrangements comport with, or threaten to undermine, either the independence and integrity of one of the branches or levels of government, or the ability of each to fulfill its mission in checking the others so as to preserve the interdependence without which independence can become domination.[15]

It is important to note that while separation of powers is explicit in the constitution, principles of federalism prevent federal courts or agents from imposing federal separation-of-powers notions on states choosing to structure themselves along different lines. Most states, however, have chosen to follow the federal constitutional model and have incorporated separation of powers doctrines into their constitutions.

Two provisions of the Oregon Constitution delineate separation of powers. Article III, section 1 states:

> "The powers of the Government shall be divided into three separate departments, the Legislative, the Executive, and the Judicial; and no person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided."

Article VII (amended), section 1 states:

> "The judicial power of the state shall be vested in a supreme court and in such other courts as may from time to time be created by law."

The central consideration, then, is whether the adjudication of traffic offenses by the Traffic Infraction Adjudication Board would constitute the exercise of "judicial power," within the meaning of the Oregon Constitution. The answer, in brief, is that it would not, provided a number of caveats are observed. These center on:

- The criminal or civil nature of the traffic offense.
- The nature of the sanctions that may be applied.
- The measure of judicial review afforded by the courts after the agency has rendered a decision.
- The due process protections afforded in the administrative adjudication model.

Decriminalization of Traffic Infractions

The administrative adjudication of traffic offenses presupposes that these offenses are not considered criminal, in terms of the right to a jury trial or possible jail sanctions. As long as jury trials are available or jail sentences can be imposed, these offenses will necessarily fall under the jurisdiction of the criminal courts with the full course of due process rights.[16] Therefore, the first step in the implementation of administrative adjudication is the decriminalization of traffic offenses. The 1975 Oregon Legislature took this first step toward administrative adjudication of traffic offenses by reclassifying the majority of vehicle code offenses in the noncriminal category of "traffic infractions." A traffic infraction, while it is an offense inasmuch as it is punishable by

a monetary sanction or other civil penalty, is not a "crime" because no imprisonment attaches to it.[17]

ORS 484.350(1) describes a traffic infraction as an offense punishable only by a fine, forfeiture, suspension or revocation of a license or other privilege, or other civil penalty. The decriminalization is further emphasized in ORS 484.350(2) which states that a person who commits a traffic infraction shall not suffer any disability or legal disadvantage based upon conviction of crime. This comports with the public understanding that we do not put people in jail as punishment for committing minor traffic offenses and the fact that the deterrent value of incarceration as a penalty in minor traffic cases had largely been eroded by its infrequent use. (See also, ORS 161.505, 161.515.)

In decriminalizing minor traffic offenses the legislature recognized the very real distinction between regulatory violations and true crimes. In the case of "true" crimes, culpability must be a prerequisite to criminality since individual interests must be protected and the criminal act is the one which poses the menace to society. The criminal judicial machinery which was fashioned to ferret out morally delinquent behavior is ill-adapted to the everyday enforcement of a large number of traffic regulations in which the subjective blameworthiness of individual offenders is not of prime importance.[18] To redefine minor traffic offenses as an administrative problem rather than a criminal one allows the legislature to develop new and more effective solutions to an everyday problem that affects the vast majority of citizens.

Sanction Authority

Decriminalization of minor traffic offenses further marks a shift in emphasis away from a penal orientation to one related to the improvement of highway safety through driver improvement. Civil sanctions such as suspended or restricted licenses, compulsory driver education and/or retraining, and monetary sanctions, are intended to directly improve the driving capabilities of the offending driver or otherwise protect public safety by limiting a violator's use of his vehicle. Researchers have long noted that human behavior

is most effectively modified when sanctions for undesired behavior are certain and swift. Models of administrative adjudication in other states have proven that a higher percentage of traffic offenders are processed faster (in terms of time from citation to conviction) than in the traditional court system. To date, researchers have been hard pressed to scientifically document direct affects on traffic safety. However, since traffic safety is directly related to driver behavior and thus to human behavior, it is a complex phenomenon and our inability to show statistical correlations in program evaluation may be due as much to inadequate measurement technique as to lack of program effectiveness.

What is clear, however, is that traditional methods of treating traffic offenses as criminal have proven to be costly, time consuming and of little effect in improving traffic safety. The ultimate sanction, the administrative revocation of the driver's license, is a form of driver capital punishment and, to the extent it is enforced, improves traffic safety by removing the offender from the highway.

This shift in emphasis from criminal to civil sanctions has been noted in state courts which have considered the administrative revocation of a driver's license. In Bell v. Department of Motor Vehicles, 6 WASH App 736, 496 P2d 545, 548 (1972), the court said:

> "[We] have previously noted that the department's function is regulatory and not penal in nature.... The purpose of enacting [the revocation statute] was to protect the public, not to punish the licensee...."

A similar approach was followed in Beamon v. Department of Motor Vehicles, 4 Cal. Rptr. 396 (1960), where the court found that the purpose of administrative adjudication:

> "...is to make the streets and highways safe by protecting the public from incompetence, lack of care and willful disregard of the rights of others by drivers."

In Oregon, courts have long recognized the authority of administrative agencies to impose sanctions that were within the grant of authority delegated by the legislature. "A...rule is valid... if it is within the legislative delegation of authority[19] and is reasonably calculated to accomplish the legislative purpose."[20] Oregon courts have recognized that civil penalties assessed by an

administrative board that are within the statutory maximum are considered within the board's authority and discretion, and are reluctant to modify them.[21] Actions by an agency are entitled to deference by courts when the agency acts reasonably and within its statutory power[22] and such actions enjoy a strong presumption of constitutionality.[23] The nature of administrative discretion as reasonable means to a desired end has been described by the Oregon Supreme Court (Linde, J.):

> "Administrative discretion is not a magic word. It is only a range of responsible choice in pursuing one or several objectives more or less broadly indicated by the legislature (or, in Oregon, sometimes by the people themselves) under various circumstances pertinent to these objectives. This applies to a discretionary choice of sanctions just as to other delegated authority. If administrative penalties are to be distinquished from criminal punishment, one reason at least is that they are enacted as means toward some purposive policy."[24]

For sentencing purposes, ORS 484.355 classifies traffic infractions into four classifications, A through D. Statutory limits for each class of infractions are set by ORS 484.360 as follows:

- $1,000 for a Class A traffic infraction.
- $250 for a Class B traffic infraction.
- $100 for a Class C traffic infraction.
- $50 for a Class D traffic infraction.

ORS 484.365 makes a Class A traffic infraction a misdemeanor if the driver has been convicted of a Class A traffic infraction or traffic crime within a five-year period immediately preceding the commission of the offense. Class A traffic infractions will not be heard in administrative adjudication. A judge and the Motor Vehicles Division both have statutory authority to suspend a person's license to operate a motor vehicle for varying periods of time. These statutory maximums and the authority to suspend the motorist's license will remain unchanged under administrative adjudication.

Given that the more drastic sanction of revocation or suspension of the motorist's license is clearly within the authority of the administrative agency, the less severe alternative of a monetary sanction within the limits imposed by the legislature appears to be constitutional as well.

In summary, the sanction authority of an administrative agency is directly related to the difference between criminal and civil penalties. Criminal penalties are imposed to punish a wrongdoer while civil remedies are designed to redress a past wrong or prevent a future one. The goals obviously overlap, but the general principle is clear. So long as the sanctions are intended and fashioned primarily to deter the wrongdoer in order to preserve safety on the public highways, rather than to punish the individual traffic violator, no constitutional infirmity arises in the move from the courts to an administrative agency.

Draft section, 35(5) specifies that any sanction imposed in a case shall be remedial, instead of punitive, and shall be for the purpose of modifying and improving driver behavior. To this end, the proposal gives the hearing officers authority to order a person to participate in driver improvement and reformation programs instead of, or in addition to, paying a monetary sanction. From this level of sanction to the revocation or suspension of a driver's license, a broad range of possible sanctions exist which enable the TIAB to tailor the sanction to suit both the offense and the offender.

Judicial Review

Review by the courts of administrative adjudication is a requirement of the separation of powers doctrine.[25] Review of the administrative adjudication of traffic infractions is initially in the TIAB, which under proposed section 39 constitutes an appeals board for review of decisions of hearing officers. Under section 42, the board may reverse or modify the determination of a hearing officer that imposes a sanction upon an appellant if it decides that:

- The hearing officer acted in a manner contrary to the law or the rules of the board;
- The hearing officer's determination is not supported by the evidence; or
- The sanction imposed by the hearing officer exceeds the hearing officer's authority.

The board may also remand a case to a hearing officer if it determines that further proceedings are necessary to complete the record or otherwise ensure fairness of the hearing.

If the motorist is dissatisfied with the findings of the review board, he has a statutory right to judicial review under the Administrative Procedures Act in the Court of Appeals.[26] Thus, the judiciary has the power to make the final determination of the constitutionality or legality of the legislative and executive action thereby conforming to the requirements of the separation of powers doctrine.

Procedural Due Process

In considering the due process safeguards necessary in a certain adjudication, the controlling factor is not the mere legal characterization of the individual's interest, nor whether the governmental entity which impinges on that interest is judicial or administrative. The test, simply stated, is whether the adjudication seriously affects, or may result in adverse consequences to the individual. If so, he is entitled to procedural due process safeguards. This right does not depend on the forum of the adjudication, but rather the balancing of the interests involved. The safeguards required vary with the situation and are most demanding in criminal prosecutions. Although administrative due process has been less demanding, certain parallels exist.[27]

The landmark case of Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970) sets the modern day context in which the "rudimentary due process" requirements necessary in administrative proceedings are placed. In finding that an informal review with the welfare claimant's caseworker prior to termination of benefits was violative of "rudimentary due process" requirements, the court held that a full evidentiary hearing was necessary prior to termination of the claimant's welfare benefits. In reaching this conclusion, the court reasoned that the due process procedures required "under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action."[28]

In Bell v. Burson, 402 U.S. 535, 539, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971), the court addressed the question of due process require-

ments in a driver's license suspension case. By statute, Georgia suspended a driver's license when he failed to post a security bond following an accident. In failing to provide a hearing prior to suspending the license, the court found that the state had denied the driver due process of law in violation of the fourteenth amendment. Once the driver's license is issued, the court stated, its continued possession may become essential in the pursuit of a livelihood. Suspension of the license thus adjudicates important interests of the licensee and cannot be taken without a formal hearing. Relevant constitutional restraints, said the court, "limit state power to terminate an entitlement whether the entitlement is denominated a 'right' or a 'privilege'." Thus the court intended to apply broadly the concept that an individual is constitutionally entitled to a hearing prior to being deprived of a significant interest, of which the driving privilege was so labeled.

From Goldberg v. Kelly, supra, and subsequent cases addressing administrative actions, such as Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), the court has defined certain procedural protections which must be provided the accused. These protections trace the course of the process whereby the state enforces its will upon the citizen. They involve:

- Adequate and timely notice.
- Speedy hearing.
- Impartial decision maker.
- Opportunity to be heard.
- Disclosure of evidence.
- Confrontation and cross-examination.
- Right to representation.
- Written decision.

The court has been reluctant to specify too strictly within these procedural categories but has relied upon the touchstone of "fundamental fairness" as the guide to due process adequacy.

In Oregon, before the administrative adjudication process can begin, a "notice to appear" must be issued by a peace officer. ORS 484.100 authorizes a police officer to arrest or issue a citation to a person for a traffic offense.

Due process requires that the alleged violator be afforded adequate and timely notice. Notice is adequate when it (1) describes the conduct of the party charged, (2) sets forth the violation alleged, (3) delineates the possible sanctions which may attach, should the party be found in violation, and (4) apprises the party of his right to have a hearing on the matter.[29] Presently, the Uniform Traffic Citation and Complaint as described in ORS 484.150 and 484.160 meets the due process requirements as set forth above. Draft section 16 authorizes the board to make necessary modifications in the UTC to accommodate procedural differences between administrative adjudication and the court system.

Notice must also be timely in order to afford the alleged violator an opportunity to prepare his defense. Section 22 of the draft sets 10 days after the date of the summons or the appearance date shown on the face of the summons as the minimum time for response. This would appear to satisfy the requisites of timeliness.[30]

Draft section 22(1) allows a person who admits to the charge with or without an explanation, to answer by the date shown on the face of the summons. This permits the citing officer to specify a date at the time he delivers the summons to the motorist, as is presently the case under ORS 484.160(1), and an appearance or plea on or before that date, as under ORS 484.190(2).

Section 22(2) of the draft proposal is meant to accelerate the process in those cases where the motorist contests the charge, so that an early hearing can be provided. If the person appears on the appearance date and denies the charge, a new hearing date would be necessary for a contested hearing. However, a denial with a waiver of confrontation would enable the hearing officer to provide a summary hearing on the date of the "walk-in."

Due process also requires that the accused be brought to a "speedy trial" at least in a criminal prosecution. It appears that courts have avoided establishing rote time limits to determine whether a proceeding is "speedy," but rather have intentionally retained language denoting reasonableness. Other states which have adopted models of administrative adjudication of traffic infractions schedule hearings within 30 to 60 days of the citation. In most

cases this appears to be a marked improvement over the time required in a court where a hearing may be scheduled as much as six months to a year after the citation. While no time is established for a hearing in the draft and the actual time required will depend on docket load, it seems reasonable to expect that the proposed system will at least be the equal of other administrative systems and that a hearing would be scheduled within 30 days. If the motorist so desires, it would also be possible to "clear" the citation the same day he receives it as a "walk-in/admit" unscheduled case at the hearings office. This would certainly appear to meet the requirements for a "speedy" hearing in an administrative process.

The due process requirements for the hearing itself are reasonably straight-forward. The hearing officer himself must, of course, be impartial. Impartiality is determined with reference to: (1) the personal attitudes of the hearing officer, and (2) his interest in the outcome. Proper screening in the initial hiring and an adequate program of training would do much towards insuring impartiality and fairness on the part of the hearing officers. Hearing officers under section 28(3) are required to be members of the Oregon State Bar except that the board is authorized by section 28(4) to waive this requirement if it is satisfied that the person possesses the necessary experience and training.

Even though the hearing officer may be completely impartial in that he holds no prejudice or biased attitudes, the actual setting may provide "interests" or "attachments" that may tend to prejudice the hearing officer or create an appearance of prejudice. The Supreme Court, in Ward v. Village of Monroeville, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972), in which a town mayor also sat as the judge in traffic cases, held that the mayor was not a disinterested or an impartial judicial officer since he had a direct, personal and pecuniary interest in reaching a conclusion against the violator. The Court did not finally decide whether the judge was actually biased but only that the conflicting interests arising from the same person holding two positions, one partisan and the other judicial, constituted a denial of due process.

Another aspect of the "interest" problem involves a potential conflict with the hearing officer also serving as a "prosecutor" in

certain cases. In Wong Yong Sung v. McGroth, 339 U.S. 33, 45-56, 70 S.Ct. 445, 94 L.Ed. 616 (1950), the court found that while a complete separation of investigation and prosecuting functions from adjudication functions is not necessary, some safeguards intended to ameliorate the ends of commingling functions are needed. Therefore, due process does allow a combination of judging and prosecuting in the administrative process, but if the record showed a bias or prejudice on the part of the agency, its decision would not be upheld.

Conduct of Hearings

The due process requirement of an opportunity to be heard on the subject of the notice is met by proposed section 17 which provides that a cited person shall answer the summons by personally appearing on the return date at the time and place specified therein. If a cited person so chooses, he may answer in person or by mail in one of four options:

1. Admit;
2. Admit with explanation;
3. Deny; or
4. Deny with waiver of confrontation.

However, if the offense charged, if sustained, might result in the suspension or revocation of the person's driver's license, or if the seriousness of the traffic infraction charged or the cited person's driving record indicate that a personal appearance by the person before a hearing officer is necessary for driver reformation purposes, the driver must answer in person under section 20(2).

The administrative adjudication hearing itself will be conducted by a hearing officer in an impartial and informal manner as required by proposed section 29 and will be electronically recorded in a manner provided by rule of the board.

Section 29(3) provides that a cited person may appear with or by an attorney, but an attorney shall not be appointed at public expense. The requirement that hearings be informal (section 29(1)) means that the interaction between the cited motorist and the hearing officer be such that the adjudication be accomplished without the necessity of a professional advocate.

Section 32(2) provides that a cited person shall have the right to testify, to call and examine witnesses, and introduce other evidence on any matter relevant to the hearing. The hearing officer has authority to issue subpenas for witnesses or documents as needed.

Evidence in contested cases is controlled by ORS 183.450(1), (2), (3) and (4) which excludes irrelevant, immaterial or unduly repetitious evidence but allows "all other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their affairs." The plaintiff's burden of proof is a preponderance of the evidence as already provided for in traffic infraction cases under ORS 484.375(2).

If sustaining the charge, the hearing officer is required to consider the driver's record before imposing any sanction. This information will allow the hearing officer to impose suitable and effective sanctions and is a key element in the traffic safety process in that it makes possible an identification of poor drivers and the taking of appropriate measures.

The entry of the adjudication both on the electronic tape in the hearing room and on the driver's record with the MVD meets the writing requirement of a final due process finding as well as verbally communicating it to the motorist.

C. Equal Protection and Due Process Under the Oregon Constitution

Challenges to state laws alleging lack of "equal protection" usually cite OR. CONST., art. I, §20, which reads:

> "No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."

The interpretation of this clause by the Oregon Supreme Court has had a long and varied history. Early decisions focused upon the "uniformity" of laws which had a local application or were applicable only to particular classes. In Ladd v. Holmes, 40 Or 167, 172, 66 P 714 (1901), the court said:

> "A law may be general, however, and have but a local application, and it is none the less general and uniform, because it may apply to a designated class, if it operates equally upon all the subjects within the class for which the rule is adopted; and, in determining whether a law is general or special, the court will look at its substance and necessary operation, as well as to its form and phraseology."

The court continued to grapple with the "general-local" distinction and early on adopted the test of "reasonable distinction" in State v. Savage, 96 Or 53, 184 P 567 (1920) where the court said:

> "The general rule is that no one may be subject to any greater burdens and charges than are imposed on others in the same calling or condition or in like circumstances, and no burden can be imposed on one class of persons, natural or artificial, which is not, in like conditions, imposed on all other classes. A statute infringes this quaranty if it singles out for discriminatory legislation particular individuals not forming an appropriate class, and imposes upon them burdens or obligations or subjects them to rules from which others are exempt.
>
> "If the statute applies only to one class of persons and imposes upon them duties not common to others, there must exist in the relations to such persons to the state, to the public, or to individuals some reasonable ground of distinction sufficient to show that the classification is not merely personal and arbitrary, else there will be a denial of the equal protection of the law."

The court in Savage at 58 also compared OR. CONST., art. I, §20, with the fourteenth amendment to the U. S. Constitution, saying: "The provisions of the state constitution are the antithesis of the Fourteenth Amendment in that they prevent the enlargement of the rights of some in discrimination against the rights of others." Although this statement is referred to in later cases it appears to be a distinction without a difference in that no claims based on the distinction have been located. Further, while noting the difference between the two constitutional clauses, the court decided the tests as to both provisions are the same and that legislative judgment was to be respected unless "palpably arbitrary."

Two decades later the Oregon court stated again that legislative classifications must be given broad interpretation:

> "The guarantee of equal protection of the law admits of the exercise of a wide scope of discretion and avoids

only what is done without any reasonable basis, and therefore is purely arbitrary.... The classification is not arbitrary if any state of facts reasonably can be conceived that would sustain it, and the existence of that state of facts at the time the law was enacted must be assumed.... Moreover, it is well settled that a classification having some reasonable basis does not offend against the Federal Constitution merely because it is not made with mathematical nicety or because in practice it results in some inequality.... 'The 14th Amendment,' said Justice Holmes ..., 'is not a pedagogical requirement of the impracticable.' Finally, as stated by Mr. Justice Roberts..., 'judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with the question whether it so lacks any reasonable basis as to be arbitrary.'"[31]

In Namba v. McCourt, 185 Or 579, 603-4, 204 P2d 569 (1949), the court articulated a more specific test of equal protection when it said:

> "...no classification can be countenanced unless it is based upon real and substantial differences which are relevant to the purpose which the act seeks to achieve, and the purpose itself is a permissible one."

However, the Oregon court chose not to apply this more specific test of equal protection and veered away from the close scrutiny of legislative enactments required to identify "real and substantive differences which are relevant to the purpose which the act seeks to achieve" as required by Namba. Instead, the court chose to view equal protection challenges under the Oregon Constitution as the same as the 14th amendment and refused to examine legislation unless "palpably arbitrary."

> "The controlling principles which guide the courts in determining questions of alleged unconstitutionality or class legislation are the same whether it is the equal protection clause of the 14th Amendment of the Constitution of the U. S. which is invoked, or the privileges and immunities provision in Article 1, section 20 of the Oregon Constitution. Fundamentally, classification is a matter committed to the discretion of the legislature and the courts will not interfere with the legislative judgement unless it is palpably arbitrary."[32]

In 1970, Professor Linde argued that the Oregon Constitution contains neither a "due process" clause nor an "equal protection" clause and claims based on article I, sections 10 and 20 to support such allegations were in error.[33] According to Linde, article I,

section 10 is a guarantee of legal remedies for private injuries and cannot be used to support a due process claim. Similarly, Linde argued that there is no guarantee of equal protection to be found in the Oregon Constitution, article I, section 20. The concern of section 20, he said, was first with royal, later with legislative favoritism. "...since the essence of a section 20 claim is that others have been granted a special advantage, it must always involve a comparison, not a direct attack on the validity of the law even if it applied equally to all."[34] "The burden of a claim citing article I, section 20...is always and only the denial of an advantage enjoyed by a specified class of others under legally indistinquishable circumstances; it is not a source for due-process-type judicial review of the substance of governmental policy apart from the asserted discrimination."[35] He concluded that, "When Oregon lawyers and judges invoke due process or equal protection, they are in the area of federal law."[36]

Later in an Oregon Supreme Court opinion, Justice Linde applied his earlier analysis of the Oregon Constitution to a case at hand and looked to the federal constitution for support of due process or equal protection claims:

> "In common parlance a claimed denial of due process of law may intend simply a claim of illegality of failure to follow what the claimant asserts to be the law. But when a state law is attacked for failure to provide due process, we are in the realm of the fourteenth amendment, where guidance must be found in the decisions of the United States Supreme Court."[37]

The U. S. Supreme Court has developed two tests for use in applying equal protection principles to allegedly discriminatory legislative classifications. The "strict scrutiny" test is used only where a "suspect class" or a "fundamental right" is involved. Under that test, the state must demonstrate a "compelling state interest" justifying the classification.[38]

In cases not involving a suspect class or fundamental right, the court uses a "rational basis" test. Under this standard, a legislative classification does not violate the equal protection clause merely because it is imperfect, so long as the classification has some reasonable basis.[39]

D. Other Oregon Constitutional Questions

Would a pilot program applicable only to Multnomah County amount to a "local law," and thus violate OR. CONST., art. IV, §23? The section reads, in pertinent part:

> "The Legislative Assembly shall not pass special or local laws, in any of the following enumerated cases, that is to say: ...(3) Regulating the practice in Courts of Justice;...."

Courts have interpreted this section broadly and as early as 1871 decided that a law operating east of the Cascades exclusively was not objectionable.[40] The Oregon Supreme Court also decided that the legislature was to have some latitude in interpreting this constitutional section. In Portland v. Hirsch-Weis Mfg. Co., 123 Or 571, 263 P 901 (1928), the court said, "Practice in courts of justice does not include special proceedings where the legislature might in its discretion give or withhold jurisdiction." Further, the court recognized that urban areas may have special problems requiring different treatment from the rest of the state. In Foeller v. Housing Authority of Portland, 198 Or 205, 259, 265 P2d 752 (1953) the court said:

> "Differences in the size of cities may call for differences in legislative treatment. Classification of cities upon the basis of their population is not improper if their difference in size has a reasonable bearing upon their needs and the conditions to which a legislator should give heed."

Moreover, an amendment adopted in 1962, partly abrogates article IV, section 20(3). Article VII (amended), section 20(3), provides:

> "Notwithstanding the provisions of section 23, Article IV of this Constitution, laws creating courts inferior to the Supreme Court or prescribing and defining the jurisdiction of such courts or the manner in which such jurisdiction may be exercised, may be made applicable:
>
> (1) To all judicial districts or other subdivisions of this state; or
>
> (2) To designated classes of judicial districts to other subdivisions; or
>
> (3) To particular judicial districts or other subdivisions."

Programs of Other States

Experience in other states which have implemented administrative adjudication of traffic infractions is instructive in considering the constitutionality of a similar program in Oregon. New York, which pioneered administrative adjudication of traffic infractions in New York City in 1969 and later extended the program to other large cities in the state, dealt with the constitutional questions involved in Rosenthal v. Hartnett, 36 N.Y.2d 269, 326 N.E.2d 811 (N.Y. 1975). The New York Court of Appeals therein held that the legislature could, despite a claim of denial of equal protection of the law, in cities above a certain population floor, constitutionally authorize administrative rather than judicial adjudication of traffic infractions and, as an incident thereto, despite a claim of denial of due process, establish "clear and convincing evidence" as the required quantum of proof for a determination of guilt where such determination could result in the imposition of a fine but not imprisonment.

The court said that the transfer of adjudication of traffic infractions to the jurisdiction of an administrative agency under the executive branch was clearly authorized. It noticed that the volume of traffic on the state highways and the congestion in criminal courts are both facts of such magnitude as to require no demonstration. The court cited the legislative declaration of findings and purpose for the enactment of the statute:

> "The legislature hereby finds that the incidence of crime in the larger cities of this state has placed an overwhelming burden upon the criminal courts thereof. This burden, when coupled with the responsibility for adjudicating such non-criminal offenses as traffic infractions, has resulted in a situation in which the prompt and judicious handling of cases becomes virtually impossible. Despite the efforts of all concerned, this situation has often resulted in the lengthy incarceration of defendants before trial, and the inability to grant a trial date for periods of up to one year, and longer. Because the injustice resulting from the present system cannot be corrected unless the workload of the criminal courts is substantially reduced, the legislature finds that it is necessary and desirable to establish a system for the administrative adjudication of traffic infractions in cities having a population of one million

or more. Such a system will not only contribute to the more judicious disposition of criminal matters, by reducing the overwhelming workload of the criminal courts, but will also provide for the speedy and equitable disposition of charges which allege moving violations." (at 813)

The court found no substance to petitioner's contention that he was denied due process of law by the use of the "clear and convincing evidence" standard of proof in the administrative adjudication since civil fines and penalties are routinely imposed by administrative action where the predicate therefore has been found on lesser standards than guilt beyond a reasonable doubt. The court also rejected petitioner's claim that he was denied equal protection of the law and cited Salsburg v. Maryland, 346 U.S. 545, 814, 74 S.Ct. 280, 98 L.Ed. 281, to the effect that equal protection does not require territorial uniformity of law within a state.

In 1975, Florida enacted laws to decriminalize traffic infractions and simplify the process of adjudication, which were challenged on constitutional grounds. Arguments based on alleged violations of due process, equal protection and separation of powers were all rejected by the Supreme Court of Florida in State v. Webb, 335 So.2d 826 (Fla. 1976); Levitz v. State, 339 So.2d 655 (Fla. 1976); and State v. Johnson, 345 So.2d 1069 (Fla. 1977).

Perhaps most instructive for Oregon are two California cases which deal with equal protection and special legislation problems. Whittaker v. Superior Ct., 66 Cal. Rptr. 710, 68 Cal.2d 357, 438 P2d 358 (1968), dealt with an equal protection challenge to appeal procedures in the California judicial system which differed depending on the population of the county involved. The California court said:

> "It is clear...that neither the equal protection clause of the U. S. Constitution, nor those provisions of the state constitution which embody the principle of equality before the law, proscribe legislative classification per se. On the contrary such constitutional provisions, which in general assure that persons in like circumstances be given equal protection and security in the enjoyment of their rights...permit classification 'which has a substantial relation to a legitimate object to be accomplished....' So long as such a classification 'does not permit one to exercise the privilege while refusing it to another of like qualifications,

under like conditions and circumstances, it is unobjectionable upon this ground....' Finally, it is to be observed that a classification based on legislative experience is presumed valid and will not be rejected unless plainly arbitrary. 'Statutory discrimination between classes which are in fact different must be presumed to be relevant to a permissible legislative purpose, and will not be deemed to be a denial of equal protection if any state of facts could be conceived which would support it.'

"It is in the context of these well-settled principles that we state the principle question in this case: Does the classification here in question, whereby multiple judge appellate departments of the superior court exist only in those counties having a municipal court, bear a substantial and reasonable relationship to a legitimate legislative objective?

"We first observe that the courts of this nation, both federal and state, have on several occasions upheld against constitutional attack legislative classifications permitting the application of different judicial procedures in different geographical areas or political subdivisions. [The court here reviewed Missouri v. Lewis, 101 U.S. 22, ___ S.Ct. ___, 25 L.Ed. 989 (1879); Mallett v. State of North Carolina, 181 U.S. 589, 21 S.Ct. 730, 45 L.Ed. 1015 (1901); New York State Assn. of Trial Lawyers v. Rockefeller, 267 F.Supp. 148 (S.D.N.Y. 1967); and Walbers v. Piggins, 2 Mich. App. 145, 138 N.W.2d 772 (1966).]

"The principle which we derive from these cases, ...is this: Legislative classification as to treatment and procedure within a state judicial system according to factors such as geographic area, population or other relevant considerations does not deny equal protection of the laws unless such classification is shown to be palpably arbitrary and without a sound basis in reason.

"The fact that the legislature has not chosen to make population itself the determinative factor, and has instead chosen the presence or absence of a municipal court, does not render the scheme arbitrary....

"Finally, we emphasize that the classification here at issue is not of that 'hostile or invidious' nature which offends the spirit of equal protection.... no contention is here made that the appellate review in fact received by petitioners was other than fair and impartial. The fact that they might have received a fair and impartial review of their appellate claims by three judges instead of one had their appeal originated in another county is of no consequence herein. If it be granted that fair review of lower court judgements is a consti-

tutional requirement, there is certainly no requirement that such review assume that same form in all cases...." (at 367-368, 370-372)

The other California case, McGlothen v. Dept. of Motor Vehicles, 140 Cal. Rptr. 168 (1977), involved a challenge to a four-county experimental program dealing with rehabilitation of intoxicated drivers. There the California court said equal protection considerations will not preclude the legislative branch from prescribing experimental programs. Because of the similarity of the four-county program to the demonstration program proposed for Multnomah County, the California opinion in McGlothen is particularly relevant.

In that case, petitioner, who suffered a second drunk driving conviction, sought an order to be allowed to participate in an experimental county rehabilitation program rather than have his license revoked. Petitioner was not a resident of one of the four counties participating in the program and claimed the restriction of the scope of the program constituted special or local legislation contrary to the California Constitution and also a denial of equal protection of the laws and a grant of special privileges and immunities under same.

The state defended the four-county program, saying that the statute by its terms limited the application of the program "...in order to determine which types of program can most effectively provide for treatment of persons convicted of drunk driving" and that the Office of Alcohol Program Management was mandated to approve several types of programs in four or fewer counties deemed most appropriate in order to prepare for effective implementation statewide. The department pointed out that it was prudent and reasonable to determine how the newly proposed regulatory procedure would work before applying it statewide.

In upholding the four-county program, the court cited Salsburg v. Maryland, 346 U.S. 545, 74 S.Ct. 280, 98 L.Ed. 281 (1954), saying:

> "In examining the discrepancy in treatment which results from the two-year experimental program in light of equal protection standards, the following principles are governing: The right to drive a motor vehicle on the public highways is not such a fundamental right as to require strict scrutiny of any law which appears to

> classify the driving privileges of persons otherwise similarly situated, and to necessitate a compelling state interest before such classification must be justified.... It does not violate equal protection of the laws for the legislature to provide that local authorities may provide alternatives to the criminal justice system for those found in a public place under the influence of intoxicating liquor.... Territorial uniformity is not a constitutional requisite under the Equal Protection Clause of the Fourteenth Amendment. McGowan v. Maryland, 366 U.S. 420, 427, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961), Salsburg v. Maryland, supra at 550-552.... Nor is it absolutely required by the provisions of the California Constitution. Whittaker v. Superior Court, 68 Cal.2d 357, 367-68, 370-72, 66 Cal. Rptr. 710, 438 P2d 358 (1968).... The text in Whittaker appears applicable here. There the court stated: 'Legislative classification as to treatment and procedure within a state judicial system according to factors such as geographical area, population, or other relevant considerations, does not deny equal protection of the laws unless such classification is shown to be palpably arbitrary and without a sound basis in reason.' (68 Cal.2d at 370; 438 P2d at 368)
>
> "...Equal protection considerations will not preclude the legislative branch from prescribing experimental programs. See Marshall v. United States, 414 U.S. 417, 428-430, 94 S.Ct. 700, 38 L.Ed.2d 618 (1974) and McGinnis v. Ropter, 410 U.S. 263, 270 and 277, 93 S.Ct. 1055, 31 L.Ed.2d 282 (1973)."

Conclusion

The proposal for the administrative adjudication of traffic infractions appears to meet the constitutional requirements of separation of powers, due process and equal protection.

When implemented, the proposed act should make more court time available for both criminal and civil cases and benefit the motorist and taxpayer at large by providing more rapid and effective methods of adjudicating traffic infractions at a lower cost than at present. The motorist's constitutional rights are protected by due process guarantees incorporated in the adjudication process, including the right to appeal in the courts. The limited duration of the demonstration program will enable the legislature to evaluate this innovative approach, both as to cost effectiveness and public acceptance,

by a time certain. The state's lawmakers can then make an informed decision whether to terminate or continue the program.

In light of the public interests to be served by the rapid and effective adjudication of traffic infractions, a demonstration program appears to be a reasonable means to a government purpose that is both permissible and desirable.

PART V.

FINDINGS AND RECOMMENDATIONS

PART V. FINDINGS AND RECOMMENDATIONS

FINDINGS

Based upon the examination and evaluation made by the committee during the AAFTI Project of both the existing court system and the alternative traffic infraction adjudication systems described in this report, as well as the cost-benefit study of those alternatives made by its independent contractor, Science Applications, Inc., the Special Courts Committee finds that:

1. The Multnomah County District Court has an especially heavy volume of traffic offense cases that causes undesirable delays in handling those cases and impairs the ability of that court to deal effectively with traffic cases and its other civil and criminal cases.

2. An alternative adjudication system would be a faster and more cost-effective method for processing Class B, C and D traffic infractions.

3. Of the two alternatives, administrative adjudication or modified judicial, an administrative adjudication system would be the most efficient and feasible system for reducing traffic case congestion in the courts.

4. Administrative adjudication of traffic infractions should be held to be constitutional and not violative of the doctrines of due process, equal protection or separation of powers under the federal or state constitutions.

5. Administrative adjudication of traffic infractions should be tested in Multnomah County in a practical way by means of a demonstration program in order to determine its capabilities and the feasibility of such a system.

6. Federal funding will be necessary in order to start and to operate an administrative adjudication pilot program in Oregon.

RECOMMENDATIONS

Based upon the above findings, the Special Courts Committee recommends that:

1. A three-year demonstration program of administrative adjudication of traffic infractions be conducted in Multnomah County between the dates of July 1, 1982 and June 30, 1985.

2. A bill for an Act to authorize such demonstration program be submitted by the committee to the Oregon Legislature in January 1981.

3. The Oregon Judicial Conference endorse and support the adoption of this committee's recommendations.

4. The 61st Legislative Assembly enact the committee's bill and authorize a demonstration program for evaluating the practical application in Multnomah County of an administrative adjudication system for traffic infractions, contingent upon the availability of federal funding for such a program.

PART VI.

PROPOSED LEGISLATION

PART VI. PROPOSED LEGISLATION

SUMMARY

Key Features of Administrative Adjudication Program Proposal

GENERAL: Authorizes a three-year demonstration program for administrative adjudication of Class B, C and D traffic infractions in Multnomah County. Dates of proposed program: July 1, 1982 to June 30, 1985, preceded by a one-year start-up period.

ADJUDICATION BOARD: Creates a five-member Traffic Infraction Adjudication Board, appointed by the Governor, as part of the Executive Branch to administer the program. Three of the five persons to be from Multnomah County, appointed from a list of five nominees prepared by the county commission. Three of the five members of the board to be active members of the Bar. The board would be authorized to appoint a seven-member advisory committee to assist it.

AUTHORITY OF THE BOARD: Rule-making authority under Administrative Procedures Act. Would hire staff, appoint hearing officers, act as an appeals board, adopt a schedule of monetary sanctions, and do all things necessary to prepare for and conduct the program. Would report results of program to 1983 and 1985 Legislative Assemblies.

PURPOSES OF PILOT PROGRAM: To determine whether administrative adjudication would:

(1) Be more economical than existing system.
(2) Be faster.
(3) Result in more uniformity of sanctions.
(4) Improve driver safety.
(5) Be favorably received by the public.

CITATION AND ANSWER PROCEDURES: The proposal provides for expanded use of answer by mail. Four types of answers: Admit, Admit with explanation, Deny and Deny with waiver of confrontation.

Procedures would be fully decriminalized. There would be no custodial arrests for traffic infractions and no bail required, but schedule of monetary sanctions authorized.

HEARINGS: A cited motorist could have either a summary hearing without the citing officer present or a contested hearing with the officer and witnesses.

INFORMAL PROCEEDINGS: The program would stress informality and speedy disposition of cases with usually only one personal appearance by persons requesting or required to appear for a hearing.

HEARING OFFICERS: Trained hearing officers instead of judges would conduct hearings. Requirement that they be lawyers could be waived by the board if, because of background and training, an individual were determined to be qualified to serve as a hearing officer.

EDPS SYSTEM: The program would develop and be served by a computer system linking the hearings process with the Motor Vehicles Division for quick on-line access to drivers' records. The system would also be used to identify drivers who would be required to appear before a hearing officer because of their driving record, and to schedule hearings, print notices, etc.

APPEALS: Aggrieved motorists could appeal to the board, with ultimate appeal to the Court of Appeals.

SANCTIONS: The program would emphasize driver improvement rather than punitive sanctions. Hearing officers would have authority to impose fines, and in appropriate cases, order driver's license suspension. License suspension would also be available to the board in cases in which a cited person fails to answer the summons. Sanctions, as well as the citation and hearing procedures, would be civil in nature.

FUNDING: The program is designed to be state-operated and federally-funded, but the county would continue to receive the same revenue as under existing law, ORS 484.250, during the demonstration period.

ADMINISTRATIVE ADJUDICATION OF TRAFFIC INFRACTIONS

A PROPOSAL FOR A DEMONSTRATION PROGRAM

INTRODUCTORY NOTE: This draft embraces the Special Courts Committee's proposal for a demonstration program of administrative adjudication of traffic infractions in Multnomah County. The draft contains both text and expositive comment; the committee will submit a bill that includes the same substantive provisions to the 1981 Legislative Assembly.

The organizational format and concept for this proposal is based upon CAL. VEH. CODE, Chap. 722 (1978) and N.Y. VEH. & TRAFFIC LAW, Article 2A (1972), with modifications and additional provisions as considered necessary or desirable for an Oregon program.

ARTICLE 1. GENERAL PROVISIONS

SECTION 1. Definitions. As used in this Act, unless the context requires otherwise:

(1) "Board" means the State Traffic Infraction Adjudication Board.

(2) "Cited person" means a person who has been issued a traffic citation and summons to appear on a charge of committing a traffic infraction.

(3) "Citing officer" means a police officer or other person authorized by law to issue a traffic citation.

(4) "Contested hearing" means a hearing at which a cited person, the citing officer and any witnesses are present.

(5) "Division" means the Motor Vehicles Division.

(6) "Hearing officer" means a person appointed by the board to conduct administrative adjudication hearings and discharge other duties as authorized by law.

(7) "Summary hearing" means a hearing at which a cited person waives the right to confront the citing officer and any witnesses.

(8) "Traffic Adjudication Office" means a location designated by the board for the conduct of administrative adjudication hearings and related activities under this Act.

(9) "Traffic infraction" has the meaning defined in subsection (1) of ORS 484.350, but shall not include any Class A traffic infraction.

COMMENTARY

This section sets forth definitions for basic terms used in subsequent sections of the draft. In as much as administrative adjudication of traffic infractions would be a marked departure from the existing court adjudication of these offenses, most of the terms are new.

The proposed system would be limited to the less serious traffic infractions, i.e., those classified by statute as Class B, C or D, consequently, subsection (9) of this section specifically excludes Class A traffic infractions from the definition. Subsection (1) of ORS 484.350 describes "traffic infraction" as follows:

> "An offense defined in the Oregon Vehicle Code is a traffic infraction if it is so designated in the statute defining the offense or if the offense is punishable only by a fine, forfeiture, suspension or revocation of a license or other privilege, or other civil penalty."

ORS 484.355 classifies the infractions into the four categories and ORS 484.360 provides the maximum fine for each category.

SECTION 2. Statement of purpose. The Legislative Assembly finds that administrative adjudication of certain traffic infractions may improve traffic safety and result in other benefits for the citizens of this state, and that to measure those benefits it is necessary and in the public interest to authorize a demonstration program.

COMMENTARY

This section states the leading purpose of the bill, to authorize a demonstration program to measure the possible benefits of administrative adjudication of traffic infractions, and the policy behind that purpose. Article

3 of the draft contains the specific authorization and requirements for the demonstration program.

ARTICLE 2. TRAFFIC INFRACTION ADJUDICATION BOARD

SECTION 3. Creation of board. (1) There is established a State Traffic Infraction Adjudication Board consisting of five members appointed by the Governor. The board shall be part of the Executive Branch of state government.

(2) Each member of the board serves at the pleasure of the Governor. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

COMMENTARY

The above section creates a five-member administrative adjudication board (TIAB) within the Executive Branch. Although the board would be coordinated closely with the Motor Vehicles Division, under this draft it would be an independent state agency, not part of the Department of Transportation. The term of office of the members would be for the duration of the demonstration program, subject to ORS 236.140 and other laws governing executive appointments.

SECTION 4. Appointment of members; qualifications. (1) The members of the board must be citizens of this state who are well informed on the state's motor vehicle laws, traffic case adjudication practices and procedures, traffic safety or traffic law enforcement.

(2) Multnomah County shall have three persons among the first board members appointed by the Governor. These persons shall be appointed from a list of at least five nominees prepared by the Multnomah County Commission and submitted to the Governor. The list of nominees shall include at least three active members of the Oregon State Bar.

(3) Of the five members of the board, at least three shall be active members of the Oregon State Bar, and at least one shall be a person who has experience in traffic law enforcement.

COMMENTARY

The need for certain expertise by members of the Traffic Infraction Adjudication Board is obvious, and the section prescribes their qualifications. Multnomah County, site for the demonstration program, would have the majority of members on the board. Three of the five members would be required to be lawyers because of the appellate review function the board is given under Article 5, infra.

SECTION 5. Per diem and allowances of board members. A member of the board shall receive a per diem allowance of $30 when the member is engaged in the performance of official duties, including travel time. In addition, subject to any applicable law regulating travel and other expenses of state officers and employes, the member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties.

COMMENTARY

The board would consist of part-time members who would serve without compensation, but be entitled to a statutory per diem plus travel expenses. This approach is consistent with long-standing state policy and tradition. (See, ORS 492.495.)

SECTION 6. Election of chairperson; quorum; meetings. (1) The board shall elect one of its members as chairperson at its first meeting.

(2) A majority of the members of the board constitutes a quorum for the transaction of business.

(3) The board shall meet at least once every month at a place, day and hour determined by the board. The board also shall meet at other times and places specified by the call of the chair or of a majority of the members of the board.

COMMENTARY

This section merely states the basics for initial board activity. Secretarial and other support assistance would be provided by the executive director hired by the board under §7.

Monthly board meetings are required under subsection (3) of the above section; however, the committee anticipates the need for more frequent meetings at times, particularly during the starting-up phase of the demonstration program.

SECTION 7. Appointment of director and other employes. (1) The board shall appoint an executive director who shall be its chief administrative officer. The board shall prescribe the duties for the executive director and fix the person's compensation.

(2) Subject to any applicable provisions of the State Civil Service Law, the executive director shall appoint other employes as may be needed to discharge the duties of the board as provided in this Act, prescribe their duties and fix their compensation.

COMMENTARY

An able, full-time administrator to assist the TIAB would be crucial to the successful planning, development and execution of the program. This section authorizes that person's appointment and prescribes some of the managerial responsibilities of the position.

SECTION 8. Rulemaking authority and duties of board. The board shall:

(1) In accordance with applicable provisions of ORS chapter 183, make reasonable rules necessary for the administration of this Act.

(2) Locate and lease suitable offices and hearing rooms and purchase or lease equipment, furniture, books and supplies necessary to conduct the activities of the program.

(3) Appoint hearing officers, qualified as provided in section 28 of this Act, as may be necessary to hear and determine cases arising under this Act.

(4) Hear and consider, in accordance with sections 39 to 43 of this Act, all appeals from decisions of hearing officers.

(5) Adopt a schedule for payment of monetary sanctions by cited persons without personal appearance.

COMMENTARY

Section 8 grants rulemaking authority to the TIAB and specifies its general powers and duties. The board would be a "state agency" under ORS 183.025 and subject to the applicable provisions of the Administrative Procedures Act.

SECTION 9. Data processing system. (1) The board shall contract for the design, installation and development of an electronic data processing system for the demonstration program.

(2) The division shall assist and coordinate with the board to ensure that necessary data processing interface is available for the demonstration program.

COMMENTARY

A key feature of the administrative adjudication program will be the computer system to provide on-line access by hearing officers to drivers' records. Other essential functions of the system will be identification of drivers who must appear for hearings, notification of motorists, scheduling of hearings and records-keeping.

SECTION 10. Advisory committee. (1) The board may appoint an advisory committee of seven members to assist the board in developing rules, procedures and evaluation guidelines for the administrative adjudication demonstration program established under sections 11 to 14 of this Act.

(2) The advisory committee shall meet within 15 days of its creation and elect a chairperson.

(3) A member of the advisory committee shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employes, the member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of the member's official duties.

COMMENTARY

This section would authorize, but not require, the TIAB to appoint an advisory committee to help in getting the demonstration program underway. The section does

not spell out the qualifications for membership on the committee, but it would be reasonable to expect a diverse representation of views from the public and private sectors.

ARTICLE 3. DEMONSTRATION PROGRAM

SECTION 11. Demonstration program authorized. (1) To measure the practical application of the administrative adjudication of traffic infractions, the board shall conduct a demonstration program.

(2) Only the area of the state within the geographical jurisdiction of the Multnomah County District Court shall be included in the demonstration program.

(3) The demonstration program shall begin on July 1, 1982 and end on June 30, 1985.

COMMENTARY

Subsection (1) of this section directs TIAB to conduct a demonstration program of administrative adjudication of traffic infractions.

Subsection (2), relying on the authority of OR. CONST., art. VII (amended), §26, specifically designates the geographical jurisdiction of the Multnomah County District Court as the area of the state included in the demonstration program.

Subsection (3) notes that the test program would become operational in about one year after passage of the Act, with a three-year program life for evaluation purposes.

SECTION 12. Applicability of demonstration program and procedures. (1) During the demonstration program, administrative adjudication procedures shall apply solely and exclusively to traffic infractions occurring within the jurisdiction of the Multnomah County District Court.

(2) A municipality contracting with the Multnomah County District Court for the adjudication of offenses occurring within the municipality may contract with the board for administrative adjudication of Class B, C and D traffic infractions during the period of July 1, 1982 to June 30, 1985.

COMMENTARY

During the three-year demonstration program, no Class B, C or D traffic infractions would be processed in the district court. Beginning on July 1, 1982 all persons cited for such infractions would be cited to answer the charge to the TIAB hearing office in the county.

Subsection (2) of the section takes note of the existing voluntary arrangement that the towns of Gresham and Troutdale have with the court for handling offenses committed within those towns. Such towns would have the option under this proposal to have traffic infractions processed administratively during the program.

Factors such as population density and annual number of traffic infraction cases are, presumably, reasonable criteria for distinguishing Multnomah County from the rest of the state for the purposes of a test program for the alternate system. Similar classifications in other states have been upheld by their courts. See, Rosenthal v. Hartnett, 36 N.Y.2d 269, 367 N.Y.S.2d 247, 326 N.E. 2d 811 (1975); Whittaker v. Superior Court of Shasta County, 68 Cal.2d 357, 66 Cal. Rptr. 710, 438 P2d 358 (1968).

SECTION 13. Purposes of demonstration program. (1) The demonstration program shall examine whether administrative adjudication of traffic infractions would:

(a) Be more economical than the existing system.

(b) Be faster than the existing system.

(c) Result in most consistent and uniform sanctions for traffic offenders.

(d) Improve driver safety.

(e) Be favorably received by drivers.

(2) The demonstration program shall develop a model system for fast and fair disposition of traffic infraction offenses under the supervision of the board.

COMMENTARY

The principal objective of the proposed program is to determine if administrative disposition of traffic infractions would be preferable to the existing court adjudication method. This section articulates that objective in terms of five particularized areas of inquiry to be examined by TIAB in the course of developing a model system.

SECTION 14. Evaluation of demonstration program; reports required. The board shall submit a preliminary report on the program to the 62nd Legislative Assembly, and a final report to the 63rd Legislative Assembly. An evaluation prepared by a consultant who is retained by the board and is independent of the state shall be submitted with each report. The evaluation shall include, but not be limited to, an analysis of the costs and benefits of administrative adjudication, both quantifiable and non-quantifiable, as they relate to the judicial system, law enforcement, local government, traffic law offenders and state agencies. Affected agencies shall provide any data required for the evaluation.

COMMENTARY

Although the proposal allows for a planning and implementation period of approximately a year (see §67), the duration of the demonstration program itself would be three years. This would provide for a reasonably sufficient time period in which to fairly evaluate the workability of an administrative adjudication scheme.

To try to ensure the integrity of the program evaluation, TIAB would be required to contract with an independent consultant for an impartial, professional analysis of the cost and benefits of the program. A preliminary report would be submitted to the Oregon Legislature in 1983, and a final report in 1985. All aspects of the program and their effects on the courts, state agencies, local governments and motorists would be evaluated in these reports.

ARTICLE 4. ADMINISTRATIVE ADJUDICATION PROCEDURES

SECTION 15. Scope of Act. Notwithstanding any inconsistent provision of ORS 484.010 to 484.435, sections 16 to 43 of this Act shall govern, within the geographical limits and time period prescribed in this Act, the procedure for the citation, adjudication and disposition of a traffic infraction.

COMMENTARY

Although we have tried to identify conflicts between the new sections and existing law and have proposed necessary amendments to several traffic

procedure statutes (see infra), any remaining inconsistencies would be resolved by this section.

SECTION 16. Traffic citation form. The board is authorized to prescribe by rule the form for the citation and complaint to be used for all traffic infractions specified in this Act. However, the form shall be, where appropriate, substantially the same as the Uniform Citation and Complaint described in ORS 1.525 and 484.150.

COMMENTARY

The use of the UTC for traffic cases in the state is well-settled, and the committee has no intent or desire to disturb that usage. Nonetheless, the procedural differences between administrative adjudication and the court system would require some modifications in the form to be made. The board would have authority to make such changes, but would be expected to retain the basic form now prescribed by statute and the Supreme Court.

SECTION 17. Answer generally. Except as otherwise provided in sections 19 to 22 of this Act, or by the rules of the board, a cited person shall answer the summons by personally appearing on the return date at the time and place specified therein.

COMMENTARY

As does the New York statute on which it is based, this section specifies a personal appearance by a cited person as the basic manner for answering a traffic infraction summons. However, the following sections create many exceptions to that requirement, and, in fact, are framed so as to facilitate, as do New York's regulations, the answer and disposition of such cases by mail. See, N.Y. VEHICLE and TRAFFIC LAW, Art. 2-A, §225 (1978).

SECTION 18. Citations; answer options. A cited person shall have the following answer options by mail or personal appearance:

(1) Admit;

(2) Admit with explanation;

(3) Deny; or

(4) Deny with waiver of confrontation.

COMMENTARY

Section 18 departs from the New York scheme and, instead, follows the California approach prescribed for its multi-county administrative adjudication pilot program by CAL. VEH. CODE, Chap. 722 (1978). The California citation answer options are cast in non-criminal language that seems more appropriate for an administrative system. Furthermore, they allow for a waiver of confrontation, which is consistent with the primary objective of a simplified, informal adjudication system.

SECTION 19. Answer by mail generally. Notwithstanding section 17 of this Act, a cited person may answer the summons by mail, as provided in sections 20 and 21 of this Act.

COMMENTARY

This section merely calls attention to the answer by mail provisions which are set forth in the next two sections.

SECTION 20. Answer by mail admitting charge. (1) Except as otherwise provided in subsection (2) of this section, if admitting the alleged traffic infraction, the cited person may complete an appropriate answer form on the back of the summons and mail it to the traffic adjudication office and address shown in the summons. The person shall enclose a check or money order in the amount of the monetary sanction scheduled for the traffic infraction, as specified in the summons, and submit it with the answer.

(2) Notwithstanding subsection (1) of this section, no cited person shall be allowed to admit the traffic infraction by mail if:

(a) The offense charged, if sustained, might result in the suspension or revocation of the person's driver's license; or

(b) The seriousness of the traffic infraction charged or the cited person's driving record indicates that a personal appearance by the person before a hearing officer is necessary for driver reformation purposes.

(3) The board, under the criteria set forth in subsection (2) of this section, shall fix by rule the cases in which a cited person is required to appear personally before a hearing officer.

COMMENTARY

Subsection (1) of this section provides that if a cited person admits the charge, answer and payment by mail is ordinarily allowed. These provisions are comparable with ORS 484.190.

Subsection (2) nevertheless requires a personal appearance by the motorist before a hearing officer if the offense charged might result in loss of the person's driver's license or the seriousness of the offense or the person's driving record show an apparent need for such an appearance.

Subsection (3), as does the New York Act, directs the agency to prescribe appropriate rules covering personal appearance requirements within the legislative guidelines.

SECTION 21. Answer by mail denying charge. If denying the alleged traffic infraction, the cited person may complete an appropriate answer form on the back of the summons and mail it to the traffic adjudication office and address shown in the summons. Upon receiving the denial, the board shall enter it in the records, set a date for hearing and notify the cited person by return mail of the date of the hearing.

COMMENTARY

This section creates procedures for a denial by mail. The intent of the draft is to eliminate multiple personal appearances by a motorist, and in those instances where a hearing is desired, to set and hear the case with minimum delay. The proposal does not require posting of security to accompany the answer, and differs in that respect from the approach taken by other administrative adjudication systems. New York regulation (§125.1) requires a $15.00 security deposit, for example, when a "not guilty" plea is not entered on time.

SECTION 22. Time limits for answering summons. (1) A cited person who admits or admits with explanation the alleged traffic infraction shall answer the summons on or before the appearance date shown on the face of the summons.

(2) A cited person who denies or denies with waiver of confrontation the alleged traffic infraction shall answer the summons not later than 10 days after the date of the summons. If the answer

is not made within the 10 day period, but is made on or before the appearance date shown on the face of the summons, the hearing officer shall accept and enter the answer. If the delay in making the answer results in the inability to conduct a hearing on the appearance date, the hearing office shall notify the cited person and set a new hearing date.

(3) An answer by mail shall be considered to be made on the date of the postmark.

COMMENTARY

Section 22 fixes the times within which a person must respond to the "ticket."

Subsection (1) allows a person who admits to the charge, with or without an explanation, to answer by the date shown on the face of the summons. This permits the citing officer to specify a date at the time he delivers the summons to the motorist, as is presently the case under ORS 484.160(1), and an appearance or plea on or before that date, as under ORS 484.190(2).

Subsection (2) of the section is meant to accelerate the process in those cases where the motorist contests the charge, so that an early hearing can be provided. If the person appears on the appearance date and denies the charge, a new hearing date in most cases would be necessary for a contested hearing. However, as under the California system, a denial with waiver of confrontation would enable the hearing officer to provide a summary hearing on the date of the "walk-in."

Subsection (3) makes the date of the mail answer the date shown on the postmark.

SECTION 23. Summary hearing. If denying the alleged traffic infraction with a waiver of confrontation, the cited person may appear for a summary hearing on or before the date and time specified in the summons. The hearing officer shall not proceed with a summary hearing unless the person executes a written waiver of confrontation.

COMMENTARY

This section adopts the California summary hearing system which permits the motorist to waive confrontation of witnesses, but deny the charge and have a hearing before a hearing officer. There are two important advantages to this approach: First, it should permit a cited

person to "tell his side of the story" without unreasonable delay or successive visits to the hearing office. Second, because the plaintiff's case would be presented by the allegations on the complaint and any written reports, with no officer required to testify, valuable police time would be saved.

SECTION 24. Waiver of confrontation. (1) A waiver of confrontation shall include a stipulation by the cited person that the hearing officer may determine the case on the basis of the allegations in the complaint, any written statements by the citing officer and the cited person's written explanation or testimony.

(2) If a cited person submits a denial and a waiver of confrontation by mail, but fails to appear for summary hearing on or before the appearance date shown on the face of the summons, the hearing officer may make a determination of the charge on the basis of the complaint and any written statements received.

(3) If the charge is determined under subsection (2) of this section, the hearing officer shall notify the cited person by mail of the determination. If the charge is sustained, the person shall also be informed of any monetary sanction imposed and the time and manner in which the person is to pay the sanction or otherwise comply with the order of the hearing officer.

COMMENTARY

Section 24 describes the legal effect of a waiver of confrontation and the hearing officer's authority in such event to determine the case without oral testimony.

Subsection (2) extends the summary hearing concept to permit a waiver of confrontation by mail. The hearing officer in such cases would determine the charge solely on the basis of written statements without any summary hearing being held. This provision would be similar to waiver of hearing and bail forfeiture by the court under existing ORS 484.190 and 484.200.

Subsection (3) requires notification to the cited person of the determination and any sanction in a case decided without hearing.

SECTION 25. Change of answer. A cited person shall be allowed a change of answer before the start of any hearing. After beginning a hearing, the hearing officer, in his discretion, may allow a change of answer.

COMMENTARY

This section permits a cited person a change of answer before the start of a hearing, as a matter of right. After the hearing begins, a change of answer would be discretionary with the hearing officer.

SECTION 26. Driver's license suspension provisions. The board or hearing officer may order the suspension of the driver's license of any cited person who fails to answer, appear or otherwise comply with the requirements of a traffic infraction summons or any other order of the board. The suspension shall remain in effect until the person answers, appears or otherwise complies with the requirements of the summons or order, and the division reinstates the license under ORS 482.505. The division shall charge no fee to the board for a license suspension under this section.

COMMENTARY

Under existing law, the court may issue a warrant for the arrest of a person who fails to appear as required on a traffic charge. (ORS 484.230) In civil administrative proceedings, no such power is held by a hearing officer; therefore, some other efficient manner of dealing with the problem of "scofflaws" is needed. The New York and Rhode Island administrative adjudication systems have used license suspension as an effective device to enforce appearance requirements. ORS 484.210 now permits license suspension for failure to appear for court hearing. Becuase of the license suspension provisions, no posting of security is required to accompany a denial under §21, supra.

SECTION 27. Traffic offenses adjudicated by court. If both a traffic infraction and a crime or Class A traffic infraction are committed by a person as part of the same episode, the traffic infraction shall be heard by the court that adjudicates the crime or Class A traffic infraction.

COMMENTARY

The proposed program would be limited to Class B, C and D traffic infractions. In order to avoid the potential problem of related charges being filed in two different forums, when both a traffic infraction and a crime or Class A infraction arise out of the same episode, this section places jurisdiction over both with the court which hears the more serious offense.

SECTION 28. Hearing officers. (1) Subject to the minimum requirements prescribed in this section, the board shall by rule establish procedures for recruiting, appointing and training qualified persons to serve as hearing officers.

(2) A hearing officer shall be an unclassified state employe and serve at the pleasure of the board. The board shall set the salary ranges for hearing officer positions.

(3) Except as provided in subsection (4) of this section, a hearing officer shall be a member of the Oregon State Bar, a citizen of the United States and a resident of the State of Oregon.

(4) Notwithstanding subsection (3) of this section, the board, if satisfied that the person possesses the necessary experience and training, may waive the requirement that the person be a member of the Oregon State Bar in order to serve as a hearing officer.

COMMENTARY

The use of trained hearing officers in lieu of judges is a key element in any strategy to reduce the costs and workload of the courts. For example, New York's hearing officers are lawyers trained in traffic law, and their salaries are about two-thirds those of judges.

Section 28 delegates to TIAB authority to set the procedures for recruiting and training competent hearing officers, and to set their salaries. A basic requirement that a hearing officer be a lawyer may be waived under certain circumstances.

SECTION 29. Conduct of hearings. (1) An administrative adjudication hearing shall be conducted by a hearing officer in an impartial and informal manner. All hearings shall be electronically recorded in a manner provided by rule of the board.

(2) A hearing officer may continue a hearing for good cause.

(3) A cited person may appear with or by an attorney, but an attorney shall not be appointed at public expense.

COMMENTARY

This section establishes standards for conducting hearings, stressing the objectives of impartiality and informality of the proceedings. TIAB would be authorized to select the most economical means of recording the hearings under subsection (1). Subsection (2) grants hearing officers the authority to continue a hearing for cause. Subsection (3) states the "right to counsel" provisions, but because no criminal action or penalty would be involved, there would not be, presumably, any right to appointed counsel. This would be consistent with ORS 484.390(1) and in compliance to the probable requirements of Brown v. Multnomah County District Court, 280 Or 95, 570 P2d 52 (1977).

SECTION 30. Transfer of other offenses to court. If a hearing officer believes that a filed charge constitutes, on its face, an offense other than a traffic infraction, he shall transfer the case to the appropriate court for disposition, and notify the defendant in writing of the transfer.

COMMENTARY

The purpose of this section is to provide for the transfer of any case which alleges a traffic offense that exceeds the jurisdictional limitations of the board, i.e., a crime or Class A traffic infraction. The section does not authorize transfer of cases after hearing on the merits, but covers only those complaints that are erroneously filed with the board instead of a court.

SECTION 31. Witnesses at contested hearings. (1) A person giving evidence at a contested hearing shall testify under oath or affirmation.

(2) In any hearing, or in the discharge of any duties imposed under this Act, a member of the board or a hearing officer is authorized to administer oaths and certify to acts and records of the board.

(3) The hearing officer may call any witness to testify and may question any witness.

COMMENTARY

This section covers sworn testimony at contested hearings, and the board's authority to administer oaths and certify to board records. Although hearings would be informal, the hearing officer is empowered to call and question witnesses to facilitate the fact-finding process.

SECTION 32. Evidence by officer and cited person at hearings. (1) The citing officer, if required to be present, shall testify first and present any other relevant evidence relating to the circumstances of the traffic infraction citation.

(2) A cited person shall have the right to testify, to call and examine witnesses and introduce other evidence on any matter relevant to the hearing. The hearing officer shall issue subpenas for witnesses or documents as provided in ORS 183.440.

(3) Evidence in contested cases shall be admitted or excluded by the hearing officer as provided by subsections (1), (2), (3) and (4) of ORS 183.450.

COMMENTARY

Subsection (1) of this section simply states the order in which evidence in a contested hearing would be presented.

Subsection (2) states the procedural rights of a cited person at a hearing. The issuance and enforcement of witness subpenas would be controled by ORS 183.440, which provides:

> "(1) The agency shall issue subpenas to any party to a contested case upon request upon a showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpena, other than the parties or officers or employes of the agency, shall receive fees and mileage as prescribed by law for witnesses in civil actions.
>
> "(2) If any person fails to comply with any subpena so issued or any party or witness refuses to testify on any matters on which he may be lawfully interrogated, the judge of the circuit court of any county, on the application of the agency or of a designated representative of the agency or of the party requesting the issuance of the subpena, shall compel obedience by proceedings for contempt as in the case of

> disobedience of the requirements of a subpena issued from such court or a refusal to testify therein."

Strict rules of evidence would not apply in administrative adjudication hearings, and subsection (3) of section 32 incorporates by reference the pertinent parts of the APA's evidentiary provisions.

SECTION 33. Hearing officer findings; burden of proof. (1) After due consideration of the evidence, the hearing officer shall determine whether the charge has been sustained or not sustained and make an appropriate finding.

(2) The plaintiff's burden of proof shall be a preponderance of the evidence.

COMMENTARY

In accord with the civil nature of administrative adjudication, there would be no verdict or determination of "guilt." The hearing officer's finding would be that the charge is "sustained" or "not sustained." The standard of proof would be the civil standard that already applies in traffic infraction cases under ORS 484.375(2).

SECTION 34. Use of driver's record prescribed. The hearing officer shall not consider a cited person's driving record before determining whether or not the person committed the traffic infraction. If sustaining the charge, the hearing officer shall consider the driver's record before imposing any sanction.

COMMENTARY

On-line access to an updated driving record of a cited person is vital to permit the quick identification of problem drivers and immediate availability of the record at the time of adjudication. One of the principal objectives of the program is to develop the capability of furnishing the hearing officer with the information needed for imposition of suitable and effective sanctions.

SECTION 35. Sanctions that hearing officer may impose. (1) If finding that a charge against a cited person is sustained, a hearing officer, under rules of the board, shall have authority to impose any sanction or combination of sanctions provided by this section.

(2) A hearing officer may order a person to pay a monetary sanction not exceeding the amount of the fine authorized by ORS 484.360 for the traffic infraction.

(3) A hearing officer shall have the same authority to order the suspension or limitation of a person's driver's license as provided for judges under ORS 484.415.

(4) A hearing officer shall have authority to order a person to participate in a driver improvement or other authorized reformation program.

(5) Any sanctions imposed in a case shall be remedial, instead of punitive, and for the purpose of improving driver behavior.

COMMENTARY

This section authorizes a considerable range of sanctions that could be imposed by a hearing officer. Ordinarily, the sanction would be a fine only; however, for the repeat offender other remedial action such as license suspension might be indicated.

SECTION 36. Notice to Motor Vehicles Division, authority to issue temporary licenses. (1) If a person's driver's license is ordered suspended under section 26, 35 or 37 of this Act, or limitations placed upon the person's driving by a hearing officer, the board shall send a copy of the order, along with the person's driver's license, if available, to the division.

(2) A hearing officer, under rules of the board, shall be authorized to issue a temporary driver's license to a person in connection with any order entered under section 26, 35 or 37 of this Act.

COMMENTARY

Subsection (1) requires notification of any order affecting a person's driving privileges to be sent by the board to MVD to ensure timely entry in the division's records.

Subsection (2) permits hearing officers to issue temporary licenses in appropriate cases. This provision is intended to prevent undue hardship on a motorist whose license is suspended, but needs to "get home" from the

hearing. It also would permit temporary driving until a date certain that would be set by the hearing officer in connection with any order entered in the case, such as instalment payment.

SECTION 37. Payment of monetary sanctions; suspension of license for nonpayment. (1) When a person is ordered to pay a monetary sanction for committing a traffic infraction, the person shall immediately pay the sanction in full. However, for good cause shown, the hearing officer may grant permission for payment by instalment.

(2) Hearing officers, under rules of the board, shall have authority to order suspension of a person's driver's license until the person pays the sanction in full.

COMMENTARY

A cited person would ordinarily pay the monetary sanction immediately; however, in appropriate cases, the hearing officer could allow instalment payments. The payment requirements would be enforced by license suspension, if necessary.

SECTION 38. Effect of administrative adjudication determination; reporting requirements. (1) For the purpose of any statute relating to the authority of the division to suspend or revoke a driver's license or take other action, an administrative adjudication admission or determination that a person has committed a traffic infraction shall have the same effect as a conviction by a court.

(2) The board shall report forthwith to the division the names and offenses committed in all cases in which there is an admission or determination that a person has committed a traffic infraction.

COMMENTARY

For the purposes of any action by MVD based upon a person's driving record, these determinations, although not made by a court, would be considered the same as a "conviction."

The objective of the board would be to make the system capable of reporting daily the information necessary for MVD to maintain current and accurate driver records. Reliable and readily accessible records will be vital to the success of the proposed program. At

CONTINUED

1 OF 2

the same time, the division should rightfully expect the board to make every effort to ensure that needed information about case determinations is provided by TIAB on a regular and timely basis. Subsection (2) is comparable in its requirements to ORS 484.240.

ARTICLE 5. ADMINISTRATIVE APPEAL; JUDICIAL REVIEW

SECTION 39. Appeals board. The board constitutes an appeals board for review of decisions of hearing officers. A panel of three members of the board shall be sufficient to hear and decide an appeal.

COMMENTARY

Instead of proposing a separate appeals board as exists under the New York AAB, the draft follows the California approach of having the board itself function in an administrative appeals capacity. Three members of the five-member TIAB will be lawyers with traffic law experience, permitting appeals to be handled on a more cost-effective basis than with a separate board.

SECTION 40. Appeals; notice; record. (1) A cited person who is aggrieved by a determination of a hearing officer may appeal as provided in sections 40 to 43 of this Act.

(2) Except as otherwise provided by rule of the board, a record of the hearing resulting in the determination appealed from must be submitted to the board on appeal.

(3) As used in subsection (2) of this section, "record" means an audio record made by a recording device designated by the board.

(4) The appellant shall give written notice of appeal to the board within 10 days of the date of the determination appealed from.

COMMENTARY

Subsection (1) of the section states the appeal rights of an aggrieved motorist. Subsections (2) and (3) prescribes the type of record needed for an appeal. The section contemplates an inexpensive, yet reliable, system which could make the record quickly and easily available to an appellant.

Under subsection (4) a maximum of 10 days would be allowed for taking an administrative appeal from a

hearing officer's determination in a case. The length of time allowed is consistent with the policy of the entire proposal to avoid unnecessary delays in the adjudication process.

SECTION 41. Perfecting and hearing of appeals; fees and costs. (1) A person appealing from an adverse determination shall do so in a form and manner provided by the board. Any record of a hearing which constitutes the basis for the determination shall be reviewed only if it is submitted by the appellant.

(2) An appeal shall not be perfected until the appellant has submitted all forms or documents and paid the filing fee as required by the board.

(3) The record of any hearing shall be provided by the board to the appellant at its cost.

(4) The fee for filing an appeal shall be set by the board. No appeal shall be accepted by the appeals board unless the required fee has been paid.

(5) Each appeal filed under this Act shall be heard by the board, which shall make an appropriate entry in its records.

COMMENTARY

Subsections (1) and (2) of this section prescribe the requirements for perfecting an appeal. The appellant would be responsible for obtaining the record of the hearing in question and submitting it to the appeals board. The particulars of the administrative appeal process would be covered by rule of the board pursuant to the basic legislative directive.

Under subsection (3), the cost of the electronic record necessary for appeal would be in addition to the filing fee prescribed in subsection (4). This cost would either be that incurred by the board in making the copy of the record itself or in having it made by a private contractor.

As required by subsection (2), the payment of the filing fee is a condition for perfecting an appeal. Subsection (4) provides that the filing fee would be as fixed by the board pursuant to rule, but the committee expects the amount of the fee to be modest, consistent with administrative costs. New York AAB Regulation 126.2, for instance, requires a non-refundable appeals fee of $10.00 plus a $5.00 transcript deposit.

SECTION 42. Authority of appeals board; disposition of cases. (1) The board may reverse or modify the determination of a hearing officer that imposes a sanction upon an appellant if it decides that:

(a) The hearing officer acted in a manner contrary to the law or the rules of the board;

(b) The hearing officer's determination is not supported by the evidence; or

(c) The sanction imposed by the hearing officer exceeds the hearing officer's authority.

(2) The board may remand a case to a hearing officer if it determines that further proceedings are necessary to complete the record or otherwise ensure fairness of the hearing.

COMMENTARY

Subsection (1) of this section establishes three grounds for reversal or modification by the appeals board of a hearing officer's determination.

Under subsection (2) the board may send an inadequate or incomplete record back for additional proceedings as necessary for fundamental fairness to the parties involved.

SECTION 43. Orders by appeals board; judicial review. (1) An order affirming, modifying or reversing the decision of the hearing officer shall be in writing and a copy thereof shall be mailed or otherwise delivered to the appellant. Where appropriate, the board may order that any monetary sanction, fees or costs paid by the appellant shall be returned to the appellant.

(2) Judicial review of a decision of the appeals board shall be as provided in ORS chapter 183.

COMMENTARY

Subsection (1) requires the board to furnish the appellant with a copy of any order in the case, and may order the refund of any monetary sanction or fees paid by appellant, in appropriate cases.

Access to judicial review is an important constitutional safeguard for the motorist who participates in a non-judicial hearing. To satisfy this requirement

yet minimize the burden on the judiciary, the proposal makes a two-level appeals process available. The earlier sections provide for appeal to a higher administrative level, whereas subsection (2) covers ultimate judicial review by the Court of Appeals under the APA. The New York and Rhode Island experiences with administrative adjudication clearly show that nearly all appealed cases are resolved at the administrative appeal level.

ARTICLE 6. MISCELLANEOUS PROVISIONS

SECTION 44. Application of Administrative Procedures Act. Except as otherwise provided in section 45 of this Act, ORS 183.310 to 183.510 applies to the Traffic Infraction Adjudication Board.

SECTION 45. Application of certain sections; exceptions. ORS 183.415, 183.425, 183.430, 183.435, subsection (6) of 183.450, ORS 183.460, 183.462, subsections (1) to (4) of 183.464 and ORS 183.470 do not apply to the Traffic Infraction Adjudication Board.

COMMENTARY

Sections 44 and 45 deal with the application of the APA to TIAB. The board and some of its proceedings would be subject to the usual administrative procedures; however, the unique character of TIAB and its adjudicative role would not be compatible with some parts of ORS chapter 183.

Section 46. ORS 419.533 is amended to read:

419.533. (1) A child may be remanded to a circuit, district, justice or municipal court of competent jurisdiction or, where established, an administrative adjudication hearing office for disposition as an adult if:

(a) The child is at the time of the remand 16 years of age or older;

(b) The child committed or is alleged to have committed a criminal offense or a violation of a municipal ordinance; and

(c) The juvenile court determines that retaining jurisdiction will not serve the best interests of the child because the child is

not amenable to rehabilitation in facilities or programs available to the court.

(2) The juvenile court shall make a specific, detailed, written finding of fact to support any determination under paragraph (c) of subsection (1) of this section.

(3) The juvenile court may enter an order directing that all cases involving violation of law or ordinance relating to the use or operation of a motor vehicle, boating laws or game laws be remanded to criminal or municipal court or administrative adjudication hearing office, subject to the following conditions:

(a) That the criminal or municipal court or hearing office prior to hearing a case, other than a case involving a parking violation, in which the defendant is or appears to be under 18 years of age notify the juvenile court of that fact; and

(b) That the juvenile court may direct that any such case be remanded to the juvenile court for further proceedings.

(4) After the juvenile court has entered an order remanding a child to an adult court or hearing office for doing an act which is [a violation] an offense or which if done by an adult would constitute [a violation of] an offense under a law or ordinance of the United States or a state, county or city, the court may enter a subsequent order providing that in all future cases involving the same child, the child shall be remanded to the appropriate court or hearing office without further proceedings under subsections (1) and (3) of this section except that a finding under subsection (2) of this section may be reviewed and renewed before the case can be remanded.

(5) The juvenile court may at any time direct that the subsequent order entered under subsection (4) of this section shall be vacated or that a pending case be remanded to the juvenile court for further proceedings. The court may make such a direction on any case but shall do so and require a pending case to be remanded to the juvenile court if it cannot support the finding required under subsection (2) of this section.

COMMENTARY

This juvenile code section is amended to permit remand of juveniles to hearing offices for adult disposition in the same manner as is now provided for traffic court proceedings.

Section 47. ORS 484.020 is amended to read:

484.020. Except as otherwise provided in sections 1 to 38 of this 1981 Act, all proceedings concerning traffic offenses shall conform to the provisions of ORS 1.510, 1.520 and 484.010 to 484.435.

COMMENTARY

The statute is amended to allow for the new administrative adjudication procedures.

Section 48. ORS 484.030 is amended to read:

484.030. (1) A circuit or district court has concurrent jurisdiction of all state traffic offenses, except that the circuit court has exclusive jurisdiction of the trial of criminally negligent homicide and of felonies.

(2) A justice court, for offenses committed within the county, and a city court, for offenses committed within the jurisdictional authority of the city, have concurrent jurisdiction of all state traffic offenses, except that they do not have jurisdiction of the trial of any felony.

(3) The city attorney shall have authority to prosecute in the name of the state for a state traffic offense committed within the jurisdictional authority of the city as provided in subsection (2) of this section, and in any appeal therefrom, except as provided in ORS 180.060.

(4) The State Traffic Infraction Adjudication Board, as provided in sections 1 to 38 of this 1981 Act, has concurrent jurisdiction with the courts of traffic infractions.

COMMENTARY

The above amendment grants necessary traffic infraction jurisdiction to TIAB.

Section 49. ORS 484.150 is amended to read:

484.150. (1) Except for violation of laws governing parking of vehicles, a traffic citation conforming to the requirements of this section shall be used for all traffic infraction offenses, and may be used for any traffic misdemeanor offense in this state. This section does not prohibit the use of a uniform citation:

(a) For offenses other than traffic offenses.

(b) Containing other language in addition to that specified in this section.

(c) As modified to meet the authorized requirements of the State Traffic Infraction Adjudication Board under section 16 of this 1981 Act.

(2) The citation shall consist of at least four parts. Additional parts may be inserted by law enforcement agencies for administrative use. The required parts are:

(a) The complaint.

(b) The abstract of record.

(c) The police record.

(d) The summons.

(3) Each of the parts shall contain the information or blanks required by rules of the Supreme Court under ORS 1.525.

(4) The complaint shall contain a form of certificate in which the complaint shall certify, under the penalties provided in ORS 484.990, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. A certificate conforming to this section shall be deemed equivalent of a sworn complaint.

COMMENTARY

The amendment would make the existing statute consistent with the new provisions of §16 of the draft dealing with the form of the UTC.

Section 50. ORS 484.155 is amended to read:

484.155. (1) A private person may commence an action for a traffic offense by certifying to the complaint before a magistrate, clerk or deputy clerk of the court. This action will be entered in the court record. If the offense is a traffic infraction within the jurisdiction of the State Traffic Infraction Adjudication Board, the certification of the complaint shall be before a hearing officer and entered in the board records.

(2) A complaint under subsection (1) of this section shall contain a form of certificate in which the complainant shall certify, under the penalties provided in ORS 484.990, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. A certificate conforming to this section shall be deemed equivalent of a sworn complaint.

(3) When the complaint is certified by a private person, the court or board shall cause the summons to be delivered to the defendant. The court or board may require the Oregon State Police, the county sheriff's office or any municipal police force within its jurisdiction to serve the summons as provided in subsection (1) of ORS 484.180.

COMMENTARY

The amendment permits a complaint to be filed by a private person, although such actions would probably be rare.

Section 51. ORS 484.160 is amended to read:

484.160. A summons in a traffic offense is sufficient if it contains the following:

(1) The name of the court or hearing office, the name of the person cited, the date on which the citation was issued, the name of the complainant and the time and place at which the person cited is to appear in court or for hearing.

(2) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so, and the date, time and place at which the offense is alleged to have occurred.

(3) A notice to the person cited that a complaint will be filed with the court or hearing office based on the offense.

(4) The amount of bail, if any, or the monetary sanction fixed by the Traffic Infraction Adjudication Board for the offense.

COMMENTARY

This is a conforming amendment to the statute that prescribes the requirements for a traffic summons. The monetary sanction set by TIAB would be a fixed schedule similar to the "bail schedule" now used by the courts.

Section 52. ORS 484.170 is amended to read:

484.170. (1) Except as provided in this section, a complaint in a traffic offense is sufficient if it contains the following:

(a) The name of the court or hearing office, the name of the state or of the city or other public body in whose name the action is brought and the name of the defendant.

(b) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the offense is alleged to have occurred.

(c) A certificate under subsection (4) of ORS 484.150 or under ORS 484.155, signed by the complainant.

(2) The complaint shall be set aside by the court or hearing officer upon motion of the defendant before plea when the complaint does not conform to the requirements of this section. A pretrial ruling on a motion to set aside may be appealed by the state.

(3) Nothing prohibits the court from amending the citation in its discretion.

(4) Subsection (1) of this section also establishes the minimum requirements for a complaint filed in an administrative adjudication proceeding.

COMMENTARY

The amendment would apply the statutory requirements for a traffic complaint to those filed in administrative adjudication proceedings in the same manner as is now required for traffic court cases.

Section 53. ORS 484.180 is amended to read:

484.180. (1) An officer issuing the citation shall cause:

(a) The summons to be delivered to the person cited; and

(b) The complaint and abstract of court record to be delivered to the court[.]; or

(c) The complaint to be delivered to the hearing office.

(2) When a warning has been given a person by an officer at the time of an alleged violation of ORS 481.202, subsection (2) of 482.040 or ORS 483.402 to 483.488 and it is subsequently determined that the person had no valid operator's license at the time of the warning or had previously received two or more such warnings within the preceding year, if a complaint is filed for the alleged violation or for violation of ORS 482.040 or 487.560, delivery of summons may be made on the defendant personally or by mail addressed to the defendant's last-known address. Proof of mailing summons under this subsection is sufficient proof of delivery of summons for purposes of ORS 484.230.

COMMENTARY

The amendment is to accommodate administrative adjudication procedures.

Section 54. ORS 484.190 is amended to read:

484.190. (1) The defendant shall appear in court at the time mentioned in the summons if the citation is for:

(a) A major traffic offense.

(b) Any felony.

(2) Except as otherwise provided in subsection (4) of this section, in other cases, the defendant shall either appear in court at the time indicated in the summons, or [prior to such] before that time shall deliver to the court the summons, together with check or money order in the amount of the bail set forth in the summons, [and inclosing therewith] along with:

(a) A request for a hearing; or

(b) A statement of matters in explanation or mitigation of the offense charged; or

(c) The executed appearance, waiver of hearing and plea of guilty appearing on the summons. A statement in explanation or mitigation also may be inclosed with the guilty plea.

(3) In any case in which the defendant personally appears in court at the time indicated in the summons, if he desires to plead guilty and the judge accepts the plea, the judge shall hear any statement in explanation or mitigation that the defendant desires to make.

(4) Appearance by a cited person for administrative adjudication of a traffic infraction shall be as provided in sections 17 to 27 of this 1981 Act.

COMMENTARY

The amendment is for the purpose of allowing an appearance according to the new provisions of the draft.

Section 55. ORS 484.240 is amended to read:

484.240. (1) The judge or clerk of every court of this state having jurisdiction of any traffic offense, as defined in ORS 484.010, including all local and municipal judicial officers in this state, shall keep a full record of every case in which a person is charged with violation of any such offense. If such person is convicted or his bail is forfeited, an abstract of the conviction or bail forfeiture, except for violation of the size and weight limitations provided by ORS 483.502 to 483.536, shall be sent forthwith to the Motor Vehicles Division.

(2) Each clerk of any court of this state shall, within 10 days after any final judgment of conviction of any person or manslaughter or other felony in the commission of which a vehicle was used, send to the Motor Vehicles Division a certified copy of such judgment. The division shall keep such records in its office, and they shall be open to the inspection of any person during reasonable business hours.

(3) In any case in which a charge is sustained in an administrative adjudication proceeding, the State Traffic Infraction Adjudication Board shall notify the Motor Vehicles Division, as required by the division.

COMMENTARY

The amendment directs the TIAB to report sustained cases to MVD in the same manner required of courts for convictions.

Section 56. ORS 484.250 is amended to read:

484.250. (1) One-half of all fines, costs and forfeited bail collected by the judge, magistrate, [or] clerk of a court or a hearing officer having jurisdiction of a traffic offense shall be paid as follows:

(a) If collected in a state court or hearing office, to the treasurer of the county in which the offense occurred.

(b) If collected in a city court, to the city treasurer.

(2) The other half of such fines, costs and bail shall be paid as follows:

(a) If resulting from prosecutions initiated by or from arrests or complaints made by a member of the Oregon State Police, to the Department of Revenue, who shall apply the money to the credit of the General Fund to be used and expended as are other funds in the General Fund.

(b) If resulting from prosecutions initiated by or from arrests or complaints made by a Highway Division weighmaster, to the Department of Revenue, who shall place the money to the credit of the State Highway Fund, to be used and expended as are other state highway funds.

(c) If resulting from prosecutions initiated by or from arrests or complaints made by a city policeman, to the treasurer of the city, municipal or quasi-municipal corporation by whom such policeman is employed.

(d) If resulting from prosecutions initiated by or from arrests or complaints made by a sheriff, deputy sheriff, county weighmaster

or other peace officer not mentioned in paragraphs (a) to (d) of this subsection, to the treasurer of the county in which the offense occurred, to be credited to the general fund of such county.

(e) If resulting from prosecutions for parking in a winter recreation parking location, to the Department of Revenue, who shall place the money to the credit of the State Highway Fund to be used and expended for the purposes designated by the Oregon Transportation Commission pursuant to ORS 390.795.

(f) In other cases, to the same person to whom payment is made of the half provided for in subsection (1) of this section.

(3) If paragraph (a) or (b) of subsection (2) of this section is applicable, and if the fine or penalty imposed is remitted, suspended or stayed, or the offender against whom the fine or penalty was levied or imposed serves time in jail in lieu of paying the fine or penalty or a part thereof, the committing judge or magistrate shall certify the facts thereof in writing to the Department of Revenue not later than the 10th day of the month next following the month in which the fine was remitted or penalty suspended. If any part of the fine is thereafter paid, it shall be remitted to the judge or magistrate who imposed the fine or penalty, who shall distribute it as provided in subsections (1) or (2) of this section.

(4) Payment of fines, costs and forfeited bail under this section shall be made within the first 20 days of the month following the month in which collected.

COMMENTARY

The distribution of monies collected in traffic infraction cases during the demonstration program would remain the same as for those collected by a judge.

Section 57. ORS 484.375 is amended to read:

484.375. (1) The trial of any traffic infraction shall be by the court without a jury. The trial of any traffic infraction shall not commence until the expiration of seven days from the date of arrest or citation for the traffic infraction unless the defendant waives the seven-day period.

(2) The contested hearing in any administrative adjudication of a traffic infraction shall be by a hearing officer.

[(2)] (3) The state, municipality or political subdivision shall have the burden of proving the alleged traffic infraction by a preponderance of the evidence.

[(3)] (4) The pretrial discovery rules in ORS 135.805 and 135.875 apply to Class A traffic infraction cases, but do not apply to Class B, C or D traffic infractions.

[(4)] (5) The defendant [may] shall not be required to be a witness in the trial or administrative adjudication hearing of any traffic infraction.

COMMENTARY

Subsection (2) is a housekeeping amendment. Subsection (4) removes Class B, C and D traffic infractions from the operation of the criminal pretrial discovery statutes.

Section 58. ORS 484.390 is amended to read:

484.390. (1) At any trial involving a traffic infraction only or administrative adjudication proceeding, defense counsel shall not be provided at public expense.

(2) At any trial involving a traffic infraction only, the district attorney may aid in preparing evidence and obtaining witnesses but shall not appear unless counsel for the defendant appears. The court shall ensure that the district attorney is given timely notice if defense counsel is to appear at trial.

(3) The district attorney shall not appear at any stage of administrative adjudication proceedings.

[(3)] (4) As used in [subsection (2) of] this section, "district attorney" includes, where appropriate, a city attorney and county counsel.

COMMENTARY

The amendment to subsection (1) conforms to §30 of the draft. Subsection (3) departs from the existing provisions covering appearances by prosecutors in traffic

infraction cases. There would be no prosecutor appearance in administrative adjudication proceedings.

Section 59. ORS 484.705 is amended to read:

484.705. (1) As used in ORS 484.700 to 484.750, unless the context requires otherwise, "habitual offender" means any person, resident or nonresident, who within a five-year period, has been convicted of or forfeited bail for the number and kinds of traffic offenses described in paragraph (a) or (b) of this subsection, as evidenced by the records maintained by the division.

(a) Three of more of any one or more of the following offenses:

(A) Manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle;

(B) Driving while under the influence of intoxicants as defined by ORS 487.540;

(C) Driving a motor vehicle while his license, permit or privilege to drive has been suspended or revoked as defined by ORS 487.560;

(D) Reckless driving as defined in ORS 487.550;

(E) Failure of the driver of a motor vehicle involved in an accident resulting in the death of or injury to any person or damage to any vehicle being driven or attended by a person to perform the duties required by subsections (1) and (2) of ORS 483.602; or

(F) Eluding a police officer as provided in ORS 487.555.

(b) Twenty or more of any one or more offenses involving the operation of a motor vehicle which violations are required to be reported to the division, including offenses enumerated in paragraph (a) of this subsection; however, no person shall be considered a habitual offender under this paragraph until his 21st conviction or bail forfeiture within a five-year period when the 20th conviction or bail forfeiture occurs after a lapse of two years or more from the last preceding conviction or bail forfeiture.

(2) The offenses included in paragraphs (a) and (b) of subsection (1) of this section include city traffic offenses, as defined by ORS 484.010, and offenses under any federal law, or any law of

another state, including subdivisions thereof, substantially conforming thereto but do not include nonmoving offenses as defined in ORS 483.380 to 483.545, 487.095, 487.155, 487.575, 487.580, 487.605, 487.615, 487.630, 487.650, 487.710, 487.730, 487.839, 487.841, 487.843, 487.895, 487.900, 487.905, 487.915 to 487.925 and licensing violations provided in ORS chapters 481 and 482.

(3) As used in ORS 484.700 to 484.750, "division" means the Motor Vehicles Division of the Department of Transportation or a similar agency of another state.

(4) For purposes of this section, any admission or determination in an administrative adjudication proceeding that a person committed a traffic infraction shall be considered a conviction.

COMMENTARY

This section amends the statute to permit offenses determined under administrative adjudication to be considered in the same manner as convictions for habitual offender purposes.

Section 60. ORS 484.710 is amended to read:

484.710. It is hereby declared to be the policy of this state:

(1) To provide maximum safety for all persons who travel or otherwise use the public highways of this state;

(2) To deny the privilege of operating motor vehicles on the public highways to persons who by their conduct and record have demonstrated their indifference for the safety and welfare of others and their disrespect for the laws of the state, the orders of her courts and the statutorily required acts of her administrative agencies; and

(3) To discourage repetition of criminal acts by individuals against the peace and dignity of the state and her political subdivisions and other traffic offenses, and to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual offenders who have been convicted of or found to have committed [repeatedly of violations of traffic laws] repeated traffic offenses.

COMMENTARY

This section contains companion amendments to §59.

SUPPLEMENTAL NOTE: The bill that the committee will submit to the 1981 Legislative Assembly may contain additional amendments to existing statutes. Such amendments will be added only if needed to correct oversights or to avoid conflicts with other laws.

SECTION 61. Traffic Infraction Adjudication Board account created. (1) The Traffic Infraction Adjudication Board account is established in the General Fund of the State Treasury. Except for moneys otherwise designated by statute, all fees, assessments, federal contributions, or other moneys received by the board shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously and shall be used by the board for the purposes authorized by this Act.

(2) The board shall keep a record of all moneys deposited in the account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity against which each withdrawal is charged.

COMMENTARY

This section establishes a TIAB account in the General Fund of the state, appropriates all receipts deposited therein for use by the board, and prescribes basic accounting principles in accordance with standard state requirements.

SECTION 62. Acceptance of grants for traffic adjudication program. The board may apply for, accept and receive any grants or other moneys as may be available for the development and operation of the demonstration program authorized in this Act.

COMMENTARY

See commentary to §63, infra.

SECTION 63. Federal provisions control. In all cases where federal grants are involved, the federal laws, rules and regulations applicable thereto shall govern notwithstanding any provision to the contrary in this Act.

COMMENTARY

This section is a standard provision in anticipation of federal funding for the program. (See ORS 291.003) The entire draft proposal is predicated upon such funding being available. Similar programs in other states have qualified for and received federal grants because of strong national support for improved traffic adjudication techniques.

SECTION 64. Fund limitation. The sum of $_____ is established for the biennium beginning July 1, 1981 as the maximum limit for the payment of administrative expenses from fees, revenues or other moneys collected or received by the board.

COMMENTARY

This section will establish the funding limitation for the first two years of the program. Science Applications, Inc. conducted a cost/benefit evaluation of the proposal and estimated cost figures and the contractor's recommendations are detailed elsewhere in this report.

SECTION 65. Captions and headings. The article and section headings or captions used in this Act are used only for convenience in locating or explaining provisions of this Act and are not intended to be part of the statutory law of the State of Oregon.

SECTION 66. Effective date. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and except as provided in subsection (3) of section 11 of this Act, this Act takes effect on July 1, 1981. On condition, however, that sufficient funding has been received from the United States government to carry out the purposes of this Act.

COMMENTARY

Although the demonstration program would not become operative until July 1, 1982 the proposed Act is designed to take effect a year earlier. This would allow for 12 months lead time for planning and preparing the system.

Part VII.

BIBLIOGRAPHY

PART VII. BIBLIOGRAPHY

REFERENCES CITED IN THIS REPORT

1. Foreword to Committee on Judiciary, Proposed Revision Oregon Vehicle Code XIV (Jan. 1975)

2. NHTSA, U. S. Dept. of Transportation, Traffic Laws Commentary (Sept. 1978)

3. NHTSA, U. S. Dept. of Transportation, A Report on the Status and Potential Implications of the Decriminalization of Moving Traffic Violations (May 1973)

4. National Advisory Comm. on Criminal Justice Standards and Goals, LEAA, Courts (1973)

5. NHTSA, U. S. Dept. of Transportation, New Trends in Advanced Traffic Adjudication Techniques (Feb. 1976)

6. LEAA, Natl. Institute of Law Enforcement and Criminal Justice, U. S. Dept. of Justice, An Exemplary Project: Administrative Adjudication Bureau of the New York State Dept. of Motor Vehicles (1975)

7. NHTSA, U. S. Dept. of Transportation, State of Rhode Island Special Adjudication for Enforcement (SAFE) (March 1978)

8. California State Dept. of Motor Vehicles, Administrative Adjudication of Traffic Offenses in California (April 1976)

9. NHTSA, U. S. Dept. of Transportation, Analyzing the Feasibility of the Administrative Adjudication of Traffic Offenses (Oct. 1978)

10. NHTSA, U. S. Dept. of Transportation, Seattle Municipal Court Special Adjudication for Enforcement (SAFE), Final Report (Dec. 1976)

11. NHTSA, U. S. Dept. of Transportation, King County, Washington District Courts, Special Adjudication for Enforcement (SAFE), Final Report (March 1979)

12. Administrative Adjudication Division, Rhode Island Dept. of Transportation, Attitudes and Awareness of Administrative Adjudication, Baseline Survey (Oct. 1975)

13. NHTSA, U. S. Dept. of Transportation, State of Rhode Island Special Adjudication for Enforcement (SAFE), Final Report (March 1978)

14. Supra, n. 10

15. Tribe, AMERICAN CONSTITUTIONAL LAW 15, The Foundation Press (1978)

16. OR. CONST., art. I, §11

17. Committee on Judiciary, Proposed Revision, Oregon Vehicle Code 96 (Jan. 1975)

18. Force, "Administrative Adjudication of Traffic Violations Confronts the Doctrine of Separation of Powers," 49 TUL. L. REV. 84, 114 (1974)

19. Angelos v. Bd. of Dental Examiners, 244 Or 1, 441 P2d 335 (1966); Oregon Newspaper Publishers v. Peterson, 244 Or 116, 415 P2d 21 (1966)

20. Van Ripper v. Liquor Control Commission, 228 Or 581, 365 P2d 109 (1961); Crouse v. Workmen's Compensation Board, 26 Or App 849, 852, 554 P2d 568 (1976)

21. Thoren v. Builders' Board, 21 Or App 148, 533 P2d 1388 (1975)

22. Phillips v. State Bd. of Higher Education, 7 Or App 588, 490 P2d 1005 (1971)

23. State v. Fry Roofing Co., 9 Or App 189, 495 P2d 751 (1972)

24. Dickinson v. Davis, 277 Or 665, 561 P2d 1019 (1977)

25. Force, supra n. 18, at 98

26. School District No. 48 v. Fair Dismissal Appeals Board, 14 Or App 35, 512 P2d 799 (1973)

27. Force, supra n. 18, at 123

28. Goldberg v. Kelly, 397 U.S. 254, 263, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970)

29. Cole v. Arkansas, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948)

30. Goldberg v. Kelly, supra n. 28; See also, State v. Waggoner, 228 Or 334, 365 P2d 291 (1961) and State v. Land, 38 Or App 127, 589 P2d 1141 (1973)

31. Savage v. Martin, 161 Or 660, 91 P2d 273 (1939)

32. Plummer v. Donald M. Drake Co., 212 Or 430, 320 P2d 245 (1958)

33. Linde, "Without Due Process", 49 OR. L. REV. 125 (Feb. 1970)

34. Id at 142

35. Id at 143

36. Id at 146

37. Megdal v. Oregon State Board of Dental Examiners, 288 Or 293, 605 P2d 273 (1980)

38. Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969)

39. Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970)

40. Bird v. Wasco Co., 3 Or 282 (1871)

APPENDIX

APPENDIX

ECONOMIC COST/BENEFIT IMPACTS OF ALTERNATIVE FORMS OF ADJUDICATION ON TRAFFIC INFRACTIONS IN MULTNOMAH COUNTY

To aid in its determination of whether or not to recommend an alternative method for adjudicating traffic infractions, the Special Courts Committee contracted with a private consulting firm to conduct an independent study of the cost/benefit impacts of both an administrative adjudication proposal and a modified judicial proposal for Multnomah County.

From among several firms responding to our request for proposals, the committee chose Science Applications, Inc. of La Jolla, California (SAI) to perform the evaluation because of that firm's expertise in the field and its experience with alternative traffic adjudication systems in other jurisdictions. The co-managers for the two-month SAI study were Donald Macdonald, J.D., and Anthony K. Mason, Ph.D.

The following "Executive Summary" is extracted from the final report of the cost/benefit evaluation made by Messrs. Macdonald and Mason. The length and the comprehensive nature of that report makes it impracticable to set it out in its entirety in this present account of the AAFTI Project. However, the following excerpt accurately summarizes the findings, conclusions and recommendations made by the contractor regarding alternative traffic infraction adjudication systems within the context of a possible demonstration program in Multnomah County.*

*The complete report of the study by SAI is on file at the Salem office of the Special Courts Committee. SAI Report No. 103-1980-52lLJ, Oct. 15, 1980.

EXECUTIVE SUMMARY

Approach

The approach that was utilized included the following tasks:

- General citation processing statistics were developed in Multnomah County in order to be able to estimate numbers of citations that would be processed and revenues that would occur under various options.

- Our records dealing with operating statistics from other jurisdictions throughout the nation were updated in order to check the reasonableness of our estimates of processing costs, volumes and other impacts.

- All entities that would be affected by Administrative Adjudication (AA) or Modified Judicial Adjudication (MJA) were identified and a preliminary analysis was conducted in order to determine the magnitude of impact. As a result of this analysis, detailed cost impact studies were subsequently conducted for the district court and for several law enforcement agencies. Impacts on other entities such as the district attorney's office and the state Motor Vehicles Division (MVD) are noted and addressed in this report but dollar impacts are not included in our assessment of the benefits and costs for AA or MJA. This simplification does not affect findings or recommendations. If these dollar impacts were included, the case for both AA and MJA would be slightly more favorable.

- Assumptions as to policies, organization and operating details of the AA or MJA system beyond those contained in the current draft legislation were made, and the system design, evaluation and operating costs were estimated.

- Future workloads were estimates by evaluating population forecasts for the four-county Portland metropolitan area, and setting workload increases proportional to population trends. For purposes of projecting traffic infractions in Multnomah, population increases in nearby Clark County are included in the population trend analysis, even though Clark is in Washington State.

- All cost and benefit calculations were carried in 1980 dollars over two planning horizons — a 10 year and a 20 year period. While inflation will undoubtedly increase these costs, it was the opinion of the consultant that all costs and benefits would be similarly affected by inflation. This assumption permits the comparison of the economic attractiveness of the adjudication alternatives to be made in 1980 dollars.*

- Two principal measures of economic attractiveness were calculated and displayed for each option.

  1. The year-by-year flow of benefits and costs in 1980 dollars, along with the 10 year and 20 year cumulative totals.

  2. The present worth (present value) of these cash flows at a 10 percent discount rate. When this widely used technique is employed, any project which shows a present worth greater than zero is economically more attractive than "doing nothing." In the sense of this report, "doing nothing" is equivalent to making no changes in the current infraction adjudication system. When comparing the economic attractiveness of alternatives, the alternative with the greatest present worth is the most favorable. The Present Worth is identified as "PW" throughout this report.

- The analysis deals only with the impact of changes and the resulting increase or decrease in adjudication costs and revenues. Accordingly, only the incremental changes in benefits and costs, relative to the current adjudication system, were included in the analysis. It is important to note that only this approach provides the correct numbers for comparison purposes.

Accordingly, we have estimated the cash savings and other economic benefits to Multnomah County that would occur as the result of the State of Oregon operating an AA program, but we have not assigned an accounting-type cost to overall current court infraction processing operations and administration, per se. This latter figure is irrelevant in judging the economic attractiveness of the AA or MJA alternatives because it includes numerous amounts that cannot be realized as savings were AA or MJA to be employed.

*If the reader intends to use the cash flows shown in this report for future budget or appropriation request purposes, a correction must be made for inflation since all future costs have been displayed in 1980 dollars.

The reader should note that the "cost of the current system" is confounded with many other non-infraction related court costs, and, in any event, is not the same as "the savings under AA or MJA." Only the incremental changes brought about by AA or MJA are of interest in this report.

- Other assumptions employed in the analysis include the following:

1. Under the AA alternative, one hearing office location would be created east of downtown Portland, and infractions currently processed by the Gresham branch court would be processed by this one facility.*

2. Under the MJA alternative, the hearings would be conducted in the county courthouse and in Gresham. In Gresham, traffic crimes would be heard by a district court judge on certain days and infractions by the hearing officer on certain other days. When the new Gresham facility is completed, it would be similarly shared.

- The following implementation schedule and planning horizon was employed:

FY 1981-82: One year for system design and policy refinement (time zero was set equal to July 1, 1981).

FY 1982-83 through FY 1984-85: Three years for pilot program operation and evaluation. The transfer of traffic infraction adjudication can be accomplished on a single date, or it can be phased-in in three of four steps, over a six month period. If the transfer is done in phases, all citations written within the sheriff's jurisdiction will be processed by AA during the first two months, and during this period additional personnel will be trained to accommodate citations from the state police. During the second two month period, AA will be processing all tickets from both the sheriff and state police, and will be training the additional staff needed

*If it is determined that it is necessary to hear and process infractions in the City of Gresham, the hearing officer would use the court facilities in Gresham on days the court was not in session. There would be at least three days per week when the facility could be used by an AA hearing officer without conflict with the court. It is the opinion of the consultant that both the current and proposed future Gresham court facilities would permit this form of sharing of facilities, at least for the next several years. In any event, any AA legislation should address the locations provided for walk-in payments and hearings. A "full-service" facility in Gresham has not been assumed in this report.

to accommodate the citation load that will be received from the Portland Police Bureau, commencing on the beginning of the fourth month. At the beginning of the sixth month, all remaining police agencies will begin using the new citation form. Each police agency will have only one citation form for infractions, and all motorists within the same police jurisdiction will be afforded the identical forum for adjudication of the citation.

The six-month phase-in would permit the adjudication agency to work out any bugs in the system, assimilate new personnel on a gradual basis, and would spread the burden of training police, TIAB and other affected organizations over this six-month period. Similar benefits would occur in the court which would experience a gradual rather than abrupt change in workload. However, the decision to transfer all traffic infractions on a single date would not change the overall attractiveness of AA. Because one or the other course must be accepted in order to make the cost benefit calculations, it is assumed here that the AA and MJA programs would be phased in over a six-month period starting July 1, 1982 in order to minimize the transition costs, to all participating entities.*

FY 1985-86 through FY 2001-02: This period represents sixteen years of operation constituting the remainder of an overall 20 year planning horizon.

- We have assumed no change in gross revenues under AA or MJA. An analysis of the impact of AA or MJA on revenues and final policies for revenue distribution following the pilot program should be addressed during the pilot program when operating statistics are in hand. During the pilot program we assumed that all revenues generated by an AA program would be retained by Multnomah County and law enforcement entities as if the citation had been processed in the district court.

- Program evaluation costs totaling $300,000 for AA ($100,000 per year) and $225,000 for MJA ($75,000 per year) were charged against the programs during the pilot program phase (FY 1982-83

*Several of the reviewers of this report disagree with our recommendation for a phased start-up. Our observations of the experience in other jurisdictions coupled with the particular circumstances existing in the Portland area, lead us to this recommendation. A phased start-up would not necessarily be possible or attractive in other areas of the nation, but we believe it should be seriously considered for Multnomah County and that enabling legislation should permit a phased approach.

through FY 1985-86). The consultant believes that this is a reasonable amount, in light of the fact that the California AA evaluation is costing approximately $250,000 per year. It is possible to conduct an evaluation at a lower cost, if the scope of the analysis is reduced. It is also possible that federal funding will be available to pay for the evaluation as well as other aspects of the pilot program and system design. In this report, all evaluation costs have been charged to the state in order to portray the true economic attractiveness of the AA option. If federal funds are employed for the evaluation, the economic attractiveness of AA to the state would be improved over that reported in this document.

Findings

For purposes of presenting the findings we have grouped the affected entities as follows:*

- Multnomah County - essentially the costs and benefits associated with the district court (the sheriff's department is included below with other law enforcement agencies.)
- The State of Oregon - as operator of the AA system (excluding the state police which is included below).
- Law Enforcement Agencies - the Portland Police Bureau, sheriff, state police, Gresham police and Port of Portland police.

*The reader should note that other county and state entities would be affected by AA or MJA. These include the district attorney's office, the Court of Appeals, the state Motor Vehicles Division, and in small ways, numerous administrative and staff functions throughout Multnomah County government. The time allowed for this study would not permit an exhaustive search for, and detailed cost analysis of these impacts, although many are discussed in later sections of this report. In nearly all cases, benefits would be in the form of some small amount of freed time which could be productively applied to other tasks or for improving the quality of service. Were these benefits included, the economic attractiveness of both AA and MJA relative to the current system would be slightly improved. However, the conclusions and recommendations reported in this section would not be changed.

The following categories of benefits and costs were addressed:

- For Multnomah County

1. The economic value of freed judicial department time made possible by simultaneously removing the infraction workload, without changing the number of judicial hours available to the court. Initially, the value of this time is estimated at slightly over $100,000 and diminishes each subsequent year until about the 11th year of the project, when it will have been totally absorbed by increasing non-traffic infraction workloads.

2. Cash savings from the deferral of the creation of the new judicial departments that would have occurred due to increasing future workload. These savings vary from about $60,000 per year to over $300,000 per year, depending on whether a new courtroom is added in a particular year, and the degree to which new positions would be deferred from year to year.

3. The economic value of freed clerical time in the district court. This initially starts at about $250,000 per year and decreases each year until it is fully absorbed by increasing workload in the 7th year.

4. Cash savings from the deferral of the creation of new clerical positions and associated overhead. This is initially about $200,000 per year and increases in each subsequent year.

5. Changes in revenues from bail forfeiture and fines due to increasing numbers of citations over the planning horizon. Higher total revenues are probable under AA, if license suspension and additional warning letters are utilized to reduce the "Failure to Appear" rate. While these higher revenues would significantly enhance the economic attractiveness of AA to all entities, the basis for them was considered too speculative to use as a basis for projecting total benefits. Also, they will be offset, in part, by the loss of the penalty assessment fee that is currently made on warrants. This is an important effect that must be evaluated during the pilot program.

6. The cost of designing and operating an MJA program, if adopted. The incremental costs of the MJA program over the current citation processing costs are estimated at slightly over $200,000. This is not the total cost of MJA. The continued use of some of the existing resources of the court is assumed, and this cost is that needed to be added.

- For the State of Oregon

Benefits and costs are related to:

1. Cash savings from the deferral of the creation of new judicial departments. These vary from about $50,000 per year to over $150,000 per year, depending on the number of positions deferred in a particular year.

2. The costs of designing and operating an AA program, if AA is adopted over MJA. Initial system design costs were estimated at approximately $500,000 and first full year operating costs at about $550,000. The first year operating cost is based on a full year budget of $685,000, which is then reduced by the slower build-up of staff that will accompany the six-month phase-in. $500,000 is considered to provide an adequate budget for system design.

3. Changes in revenues. While total revenue is not changed, the amount to be received by the state will be based upon the revenue distribution scheme used.

- For the Law Enforcement Agencies

1. Overtime savings from reduced number of court appearances and reduced appearance time due to non-confrontation hearing options, and computer scheduling of several hearings for each officer at time designated by police department. First full year savings were estimated to be about $50,000.

2. The economic value of additional on-duty time made available for other officer work by reduced court appearances, for reasons given above. First full year benefits were estimated to be about $20,000.

Our principal economic impact findings are as follows:

Either AA or MJA should be more economically attractive* than the current system. The AA approach is more economically attractive than the MJA approach when the system costs and benefits are aggregated across all affected entities.

The degree of economic attractiveness under AA varies between the state and county and will be dependent, to a large extent, on the way revenues are distributed. However, regardless of the revenue distribution scheme employed, the overall economic impacts of AA are favorable.

*"Economic attractiveness" in this discussion is based on the present worth of discounted cash flows.

Recommendations

The consultant recommends an AA pilot program for the following reasons:

- AA offers the potential of being more economically attractive than either the present system or the MJA option in the jurisdiction of the District Court for Multnomah County.

- Both MJA and AA will produce additional benefits to the public which have not been monetized, and are not included in the strictly economic arguments presented above. One such benefit is the reduced time and cost to a motorist in obtaining a hearing on an infraction.

- Given that the choice is between an AA and MJA pilot program in Multnomah County, AA would be preferable from the standpoint of fully understanding the benefits and costs of alternative adjudication systems in Oregon. An AA pilot program will provide the insight needed to predict the impacts of MJA in Multnomah County while the converse, an MJA pilot program in Multnomah County, will leave substantial unanswered questions as to the costs and benefits of AA in Multnomah County.

END