

Forty-Third Legislative Assembly, State of North Dakota begun and held at the Capitol in the City of Bismarck, on Tuesday, the second day of January, one thousand nine hundred and seventy-three.

HOUSE CONCURRENT RESOLUTION NO. 3006
(From Legislative Council Study)

(Atkinson, Hilleboe, Murphy, Stone)

A concurrent resolution directing the Legislative Council to continue the study directed by House Concurrent Resolution No. 3050 adopted by the Forty-second Legislative Assembly, relating to the revision and modernization of the criminal laws of this state, and directing the Legislative Council to seek available federal funds to assist the Council in carrying out the study.

WHEREAS, the Legislative Council's interim Committee on Judiciary "B" has, after considerable effort, completed a revision of the basic criminal code of North Dakota, contained in Title 12 of the Century Code; and

WHEREAS, that Committee was assigned the task of completing a revision of the entire body of criminal laws of North Dakota, but was unable to do more than revise Title 12, due to lack of time; and

WHEREAS, there is now even greater need for revision of the remainder of the statutory definitions located throughout the Century Code to make them conform with the new sentencing and offense classification plans; and

WHEREAS, the provisions of the new Title 12.1, if adopted, will not go into effect until July 1, 1975, and should be continuously studied during the interim prior to the Forty-fourth Legislative Assembly;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council is hereby directed to continue its substantive and formal study and revision of the criminal statutes of the state of North Dakota. The Council shall direct its efforts towards a revision of the substance, form, and style of current criminal statutes, towards integration and correlation of those statutes where possible, and towards deletion of outmoded or unnecessary statutory material.

The Council may seek the aid and assistance of the Judicial Council and of other members of the bench and bar, and may counsel with interested citizens. The Council shall seek federal funds to aid in defraying the cost of this revision, and so much of the appropriation to the Legislative Council as may be necessary may be used as matching funding for the revision study. The Legislative Council shall prepare necessary revision legislation and shall make its report and submit the accompanying legislation to the Forty-fourth Legislative Assembly.

FILED APRIL 25 1973

Speaker of the House

Chief Clerk of the House

President of the Senate

Secretary of the Senate

Filed in this office this _____ day of _____,
1973, at _____ o'clock _____ M.

Secretary of State

Tentative Agenda
COMMITTEE ON JUDICIARY "A"

Meeting of Friday, May 18, 1973
Room G-2, State Capitol
Bismarck, North Dakota

- 9:30 a.m. Call to order
Roll call
- 9:45 a.m. Reading of House Concurrent Resolution No. 3006
and presentation of staff background memorandum
- discussion
- 12:00 noon Luncheon recess
- * * * * *
- 1:15 p.m. Reconvene - Continue discussion of Committee
methodology
- 3:30 p.m. Miscellaneous matters
- 4:30 p.m. Adjourn

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:35 a.m. on Friday, May 18, 1973, in Committee Room G-2 of the State Capitol in Bismarck.

Legislative Members present: Senator Freed
Representatives Austin, Hilleboe,
Lundene, Murphy, Rau, Royse,
Stone

Legislative Members absent: Senator H. Kent Jones

Citizen Members present: Judges Heen, Pearce, Teigen;
Messrs. Webb, Wolf

Citizen Members absent: Judge Glaser, Professor Lockney

Also present: Mr. Thomas Kelsch, Mr. Robert
Wefald

The Chairman welcomed the members of the Committee, and called on all Committee members to introduce themselves to each other. The Chairman noted that in addition to the Committee Counsel, Mr. John Graham, the Committee was also to be staffed by Mr. Robert Wefald, and the Chairman introduced Mr. Wefald. The Chairman noted that all of the citizen members of the Committee would have full voting rights and would be in all ways equal to the legislative members of the Committee.

The Chairman called on the Committee Counsel to read a staff background memorandum, a copy of which is attached hereto as Appendix "A".

Following the reading of the memo, Judge Heen questioned the use of the word "imprisonment" in reference to the potential maximum sentences for misdemeanors. He asked if it were possible to sentence a Class B misdemeanor to the Penitentiary under the current version of Senate Bill No. 2045.

The Committee Counsel noted that SB 2045 did not contain a reference to a particular place of incarceration, and therefore it was conceivable, under SB 2045 standing alone, that a Class B misdemeanor could be sentenced to the Penitentiary. The Committee Counsel also noted that the current definitions of various misdemeanors include use of the word "imprisonment".

He went on to note that the last interim Committee had deliberately left open the question of where a sentence of incarceration was to be served, so that misdemeanants with longer terms could serve it in the Penitentiary, if local jail facilities were not adequate. However, the Committee Counsel noted that the last interim Committee did not visualize the use of the Penitentiary as a place of incarceration for Class B misdemeanants.

Judge Heen said that if Class B misdemeanants could be sentenced to the Penitentiary, or Class A misdemeanants for that matter, the question of costs, and who was to pay them, would become relevant.

The Committee discussed the offense classification and sentencing plan further. Representative Lundene inquired as to why the only available sentencing alternatives were imprisonment or a fine. The Chairman noted that those were the only two maximums stated in the offense and sentencing classification plan. However, the section immediately following that section sets forth a wide range of sentencing alternatives, including the use of "work details".

In regard to the fact that the draft of Senate Bill No. 2045 does not contain language specifying the place of imprisonment, Judge Teigen noted that there is a case presently pending involving the North Dakota Controlled Substances Act. He indicated that the case revolved around Section 19-03.1-23 (1), which sets forth the penalties for the major charges of delivery or possession of hard narcotics. Mr. Thomas Kelsch noted that the Attorney General's office is presently defending against a writ of habeas corpus claiming that, the place of imprisonment being unclear, the defendant should be imprisoned as a misdemeanant. Mr. Kelsch noted that the trial judge had certified a question of law to the Supreme Court and that is where the matter presently stands.

The Committee continued to discuss the question of who should pay the costs if misdemeanants were sentenced to the State Penitentiary. Representative Murphy stated he believed that the question of who should assume costs should not be taken up in the Criminal Code but should be resolved in other statutes.

The Committee Counsel noted that a document prepared for Committee deliberation would limit sentencing for felonies to the State Penitentiary, and thus might alleviate some of Judge Heen's concern. Mr. Webb noted that Section 12.1-32-13 specifically sets forth judicial discretion to sentence a person convicted of a felony to the county jail or the State Industrial School where the person convicted was a minor.

Mr. Wolf stated that there were other problems involved in sentencing misdemeanants to the Penitentiary. He indicated that capability of a pre-sentence investigation may not be available to the court sentencing a misdemeanant, and that persons should not be sentenced to the Penitentiary without having a pre-sentence investigation done.

The Chairman invited comments from everyone on the Committee concerning the question of whether a place of incarceration should be

specified in Senate Bill No. 2045, as well as any other comments which should be made regarding Senate Bill No. 2045. The Chairman directed the staff to distribute enrolled copies of that bill to members of the Committee. The Committee Counsel noted that a Table of Contents to the bill would be mailed to Committee members in the very near future.

The Committee Counsel stated that the principal thing which the Committee should accomplish today was to establish a basic procedure to be followed in carrying out the study. He said that the procedure could essentially be the same, if the Committee approves, as the procedure utilized during the last legislative interim in carrying out the study and revision effort which resulted in Senate Bill No. 2045.

This procedure consists of the following steps:

1. The staff prepares a revision draft consisting of revision or elimination of all of the sections in a given title accompanied by staff comments.
2. The staff presents an overview of that draft to the Committee, noting the highlights, and indicating any sections which the staff proposes for elimination.
3. The Committee discusses the staff presentation and asks questions concerning any individual sections.
4. The Committee makes any amendments which it desires.
5. The Committee accepts the entire Title revision and moves on to another title revision.

Where appropriate, the presentation of the revisions done to a particular title will be made in the presence of an official from the state agency, if any, most interested in that Code Title. The staff will have had previous contacts with representatives of the relevant state agencies, in order that their thoughts on the subjects to be considered will have been reflected by the staff in its draft.

The Chairman noted that the staff must be careful to point out to the agencies that the Committee is not going to be engaged in the creation of new criminal offense statutes, but only in the revision or elimination of existing criminal offense statutes. Therefore, state agencies are to restrict their discussion and suggestions to existing criminal statutes.

Mr. Wolf stated he believed that the Committee should set up a rough agenda, with the first few meetings being devoted to the continuing revision, and a meeting later this year or early next year being devoted to review of Senate Bill No. 2045. He stated that the Committee should take steps to notify the various organizations of the desirability of their reviewing Senate Bill No. 2045 and making comments to the Committee.

The Committee Counsel stated that a later review of SB 2045 would be desirable, as it will not be generally available to the public until after distribution of the Session Laws, which will take place approximately July 1, 1973. In addition, after the Committee has gone through several meetings concerning new revision material, it may feel the need for review of the sentencing provisions of Senate Bill No. 2045.

Representative Murphy noted that while the Bench and Bar were adequately represented on the Committee, the Committee was missing representation from the Peace Officers' Association. He said that it would be desirable to have the viewpoint of the man who was actively engaged in field law enforcement. Representative Stone agreed with Representative Murphy and said such representation would be helpful in selling the Committee's product during the next legislative session. The Chairman stated that it would be possible to contact the Peace Officers' Association and ask them to appoint a representative.

Representative Stone noted that it would be desirable for the Combined Law Enforcement Council to receive notices of the meetings of the Committee. The Committee Counsel said he believed that the Law Enforcement Council was already on our mailing list, but he would check to make certain.

Mr. Kelsch noted that the State's Attorneys' Association was going to discuss the feasibility of arranging regional workshops at its June meeting. The regional workshops would be designed to explain Senate Bill No. 2045, and invitations to the workshops would include local law enforcement officers.

The Chairman noted that the Committee had a great number of sections which it must cover during its study period. The Committee Counsel noted that the exact number of those sections was 829, as determined by a search, through use of a computer, of the entire text of the Century Code. Mr. Kelsch asked if the search included sections which prohibit certain action without assigning any penalty at all. The Committee Counsel stated that the search would not encompass those sections, and that the staff had not envisioned looking into sections of that nature. Representative Hilleboe said he felt that those types of sections should be looked into and that penalties should be assigned, if appropriate, or the sections should be dropped.

The Committee further discussed the desirability of law enforcement officer representation on the Committee. IT WAS MOVED BY REPRESENTATIVE STONE AND SECONDED BY MR. WEBB that the Committee membership include one or more members of the Peace Officers' Association.

Mr. Wolf noted that the Peace Officers' Association included state's attorneys and judges among its membership, and thus a selection from that Association did not ensure that field law enforcement officers would be serving on the Committee. Therefore, IT WAS MOVED BY MR. WOLF AND SECONDED BY REPRESENTATIVE STONE that the Sheriffs' Association and Peace Officers' Association each be requested to appoint a Committee member.

Judge Pearce suggested that, in light of the fact that the Committee had named its own citizen membership thus far, the Committee name the field law enforcement officer membership also. He stated that he had a candidate from the local police force in mind.

After much discussion of the method of appointment, THE SUBSTITUTE MOTION, PUT BY MR. WOLF, FAILED. THEREAFTER, THE MAIN MOTION CARRIED, and the Chairman stated that he would take action to secure a list of potential Committee members from the Peace Officers' Association, from which he would name one or two Committee members.

IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that the various interested state organizations and state agencies be notified of the Committee's tentative schedule, and of their right to comment on and criticize Senate Bill No. 2045. Mr. Wolf stated that the SBAND news should take notice of the fact that the Committee would receive comments on and criticisms of Senate Bill No. 2045.

Mr. Webb noted that the staff procedure should not be to simply follow the Century Code titles in numerical order, and instead that the staff should have discretion to order the Committee's agenda so that the weightier material would be interspersed with the lighter material.

The Committee discussed its meeting schedule and the number of meetings necessary. The Committee Counsel suggested that the Committee meet in June, and then meet every month thereafter through the end of the legislative interim.

Mr. Wolf questioned whether it would be desirable to create a Committee portfolio system whereby smaller groups could review those Century Code titles which involve other state agencies, and which might give rise to the need for some Committee "expertise". After much discussion, it was decided that any subcommittee assignments which might be made would be made on an ad hoc basis.

Mr. Wefald inquired of the Committee as to what policy should be used in regard to the concept of a "violation" category of offenses. He stated that the knowledge would be useful to the staff in its revision work. Judge Pearce said the staff should make recommendations for those offenses which it felt might fall within a violation category and report to the Committee in the alternative, i.e., with the offense either listed as a Class B misdemeanor or a "violation".

IT WAS THEN MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that the staff be directed to use the method of procedure as outlined by the Committee Counsel above, except that the staff is to have discretion as to the order of presentation of materials, and in addition, is to note whether a particular offense could fall within a "violation" offense category.

The Committee discussed the next meeting date, and it was decided that the Committee would attempt to meet in late June. The meeting date, however, was left up to the Chairman.

The Chairman noted again that all members were members for quorum purposes, and he hoped that as many members as possible would attend each Committee meeting so that the Committee would not be unable to transact business for lack of a quorum.

Having no other business before it, the Chairman, without objection, declared the meeting of the Committee adjourned, subject to the call of the Chair, at 12:10 p.m.



John A. Graham
Assistant Director

APPENDIX "A"

Prepared by the staff of the
Legislative Council for use by
the Committee on Judiciary "A"
May 1973

BACKGROUND TO CRIMINAL CODE REVISION STUDY

House Concurrent Resolution No. 3006 directs the Legislative Council to continue a "substantive and formal study and revision" of the criminal statutes of North Dakota which will be carried out by the Committee on Judiciary "A". This study is a followup to the legislative interim study carried out after the 1971 Legislative Session. The result of that study was passage of Senate Bill No. 2045 which revised the criminal offense definition portions of Title 12 of the Century Code (with the exception of a few sections to be mentioned later).

The Study Committee's effort in the current interim is to be directed to three main areas:

1. Revision of substance, form, and style of the remaining criminal statutes (e.g., to make them conform to the offense classification system provided in Senate Bill No. 2045);
2. To integrate and correlate the remaining statutes where possible (e.g., to put all weapons control statutes together in one place, all drug use prevention and control statutes together in one place, etc.); and
3. To delete outmoded or unnecessary statutory material.

REVIEW OF S.B. 2045

In addition, the Committee has the responsibility, implied in the resolution, and implicit in the passing of Senate Bill No. 2045, to act as a forum for comments, suggestions, and criticisms concerning Senate Bill No. 2045, some of which have already arisen and were noted during the 1973 Legislative Session.

For instance, the definition of "felony" in Subsection 9 of Section 12.1-01-04, and the definition of "misdemeanor" in Subsection 20 of Section 12.1-01-04 need to be refined, as there is some confusion as to whether a person who is sentenced to exactly one year should be classified as a felon or a misdemeanant. Another example is a comment concerning the desirability of repealing Sections 12-55-24 and 16-01-04 which deal with a felon's right to vote, and the methodology of restoring felons' civil rights, which statutes conflict with Chapter 12.1-33 of Senate Bill No. 2045.

The Committee has two letters on file relating to the definition of the mental disease or defect "defense" contained in Senate Bill

No. 2045. Both of the letters, one from District Judge Eugene Burdick, and one from Mr. Paul Kaelen of the National Council on Crime and Delinquency, are very critical of the formula utilized in SB 2045. Thus, that definition may be one which the Committee would desire to review.

FLAG-CARRYING PROVISIONS

In addition to Senate Bill No. 2045, the previous Committee recommended several other bills including Senate Bill No. 2050, which provided for the repeal of Sections 12-07-07, 12-07-08, and 12-07-09. This bill was submitted to the Legislative Council and the Legislature because the previous Committee believed that those statutes were an anachronism.

The statutes referred to related to the carrying or display of flags of unfriendly foreign nations, or the use of display of red or black flags where such use, exhibit, or display would "tend to occasion a breach of the public peace". The statutes were initially enacted as an initiated measure adopted June 30, 1920, and have not been amended since that time.

The Senate, during the 1973 session, failed to pass Senate Bill No. 2050. Since the three sections will be the only ones remaining in the first 44 chapters of old Title 12, after July 1, 1975, the Committee may well wish to again recommend their repeal or transfer to another chapter.

In considering these sections, the Committee should be aware that the penalty provisions in Section 12-07-09 do not comport with the penalty classification plan set forth in Senate Bill No. 2045. In addition, the "breach of public peace" regarding the prevention of which the statutes are primarily directed, can be prosecuted, after July 1, 1975, as an instance of disorderly conduct in most cases.

To the extent that a violation of Section 12-07-08 could be construed as "sedition" against the Federal Government, it would probably be inoperative because prosecutions for sedition against the United States have been pre-empted to federal prosecutors by Act of Congress. See Pennsylvania v. Nelson, 350 U.S. 497 (1955).

VIOLATION

The last interim Committee initially had included an additional offense classification known as "violation" or "infraction". Toward the latter end of the previous revision project, the previous Committee dropped the "violation" category, but the Committee recognized that such a category may be worthwhile in considering the numerous criminal statutes outside of Title 12 (and 12.1). At any rate, the policy decision as to whether to propose the creation of a "violation" or "infraction" category is before the Committee.

All of the comprehensive Criminal Codes available to the former Committee for study during its revision project provided for an offense category known by various names, but similar in that it defined an offense for which no sentence of imprisonment was available. The newly proposed federal Criminal Code, however, does not contain an offense for which no sentence of imprisonment is available (see S.1, introduced by Senator McClellan on January 4, 1973). The nomenclatures for non-incarcerative offense classifications include the following:

1. Colorado - Class II petty offense
2. Model Penal Code - Violation
3. Illinois Unified Code of Corrections (tentative final draft) - Petty offense
4. Kentucky Penal Code (final draft) - Violation
5. Proposed Ohio Criminal Code - Minor misdemeanor
6. Proposed Federal Criminal Code (National Commission on Reform of Federal Criminal Laws) - Infraction

Examples of the types of crimes which have been listed as "violations" or their equivalent include: "public gaming" in Ohio; loitering in Kentucky; and littering (where only one item is thrown) in Colorado.

In addition, the following are examples of "violations" which occur outside of a comprehensive criminal code, i.e., in Wisconsin: official failing to investigate arson; advertising relative to abortifacients; drunk or reckless flying; minor utilizing false identification card; and inexcusable failure to attend court.

PROCEDURE

There are several methods by which the staff could proceed to carry out the revision project. The staff recommendation is that the procedure be similar to that used during the previous legislative interim. That is, that the staff revise the statutes on a title-by-title basis, with presentation being primarily through a staff overview of the entire title, with opportunities thereafter for in-depth questions from Committee members and subsequent approval or amendment.

Although there is no "model act" for all of these various types of statutes, they will all have to be related to the Senate Bill No. 2045 penalty classification plan. The offense definition language which is common to Senate Bill No. 2045 will also be, where applicable, made common to the staff drafts for this Committee.

In order to provide a quick review for members of the former interim Committee and to familiarize new members of this committee with the sentencing provisions under Senate Bill No. 2045, the following chart is presented:

<u>Classification (grade) of offense:</u>	<u>Maximum punishment (imprisonment and fine)</u>
1. Class A felony (e.g., murder, forced sexual activity resulting in injury, or kidnapping where the victim is not released alive and in a safe place prior to trial).	20 years' imprisonment \$10,000 fine, or both.*
2. Class B felony (e.g., manslaughter, arson, and armed robbery where the offender does not use the weapon with which he is, or pretends to be, armed).	10 years' imprisonment, \$5,000 fine, or both*
3. Class C felony (e.g., bribery, negligent homicide, aggravated assault, or the procuring of an abortion).	5 years' imprisonment, \$5,000 fine, or both.*
4. Class A misdemeanor (e.g., physical obstruction of a governmental function, eavesdropping on jury proceedings, criminal coercion, or soliciting or attempting an abortion).	1 year imprisonment, \$1,000 fine, or both.
5. Class B misdemeanor (e.g., engaging in a riot, simple gambling, prostitution, or a violation of the Sunday closing laws).	30 days' imprisonment, \$500 fine, or both.*

*(Note: The sentences available upon conviction of any class felony may be extended upon a particular finding that the offender is dangerous, a professional criminal, or a persistent offender. The extended sentence range permits a doubling of the maximum sentence of imprisonment for Class B and Class C felonies, and permits a sentence of up to life imprisonment in the case of a Class A felony).

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TYPED *Sail*
PROOF READ *W. L. Hall*
DATE *6/21/73*

Tentative Agenda

COMMITTEE ON JUDICIARY "A"

Meeting of Monday and Tuesday, June 25-26, 1973
Room G-2, State Capitol
Bismarck, North Dakota

Monday:

- 9:30 a.m. Call to order
Roll call
Minutes of previous meeting
- 9:45 a.m. Consideration of Title 1 (NDCC), General Provisions
- 10:00 a.m. Consideration of Title 63 (NDCC) Weeds - Representation from the Agriculture Department
- 11:00 a.m. Consideration of Title 4 (NDCC), Agriculture - Representation from the Agriculture Department
- 12:00 noon Luncheon recess
- *****
- 1:15 p.m. Reconvene - discussion of Committee administrative matters
- 1:30 p.m. Continue consideration of Title 4
- 2:30 p.m. Consideration of Title 2 (NDCC), Aeronautics - Representation from the Aeronautics Commission
- 3:30 p.m. Consideration of Title 5 (NDCC), Alcoholic Beverages - Representation from the Attorney General's and Treasurer's offices
- 5:00 p.m. Recess until Tuesday morning

Tuesday:

- 9:00 a.m. Reconvene - consideration of Title 61 (NDCC), Waters - Representation from the Water Commission
- 11:00 a.m. Consideration of Title 60 (NDCC), Warehousing - Representation from the Public Service Commission
- 12:00 noon Luncheon recess
- *****
- 1:15 p.m. Reconvene - Consideration of Title 64 (NDCC), Weights, Measures, and Grades - Representation from the Public Service Commission
- 2:30 p.m. Consideration of Title 65 (NDCC), Workmen's Compensation - Representation from the Workmen's Compensation Bureau
- 4:00 p.m. Consideration of Title 62 (NDCC), Weapons
- 5:00 p.m. Adjourn

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

Meeting of Monday and Tuesday, June 25 and 26, 1973
Room G-2, State Capitol
Bismarck, North Dakota

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:30 a.m. on Monday, June 25, 1973, in Committee Room G-2 of the State Capitol.

Legislative members present: Senators Freed, Jones
Representatives Austin, Hilleboe, Lundene,
Murphy, Rau, Royse, Stone

Citizen members present: Judges Teigen, Heen, Pearce
Professor Lockney
Mr. Wolf

Citizen members absent: Judge Glaser
Mr. Webb

Others present: Mr. Robert Holte, Combined Law Enforcement
Council;
Mr. Tom Kelsch, Burleigh County State's
Attorney;
Mr. Adin Helgeson, Mr. Richard Bresnahan,
and Mr. Doug Schultz, Public Service
Commission;
Mr. Quentin Retterath and Mr. David Evans,
Workmen's Compensation Bureau;
Mr. Jim DuBois, Northwestern Bell Telephone
Company

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the reading of the minutes be dispensed with and that the minutes be approved as mailed.

The Chairman welcomed the members of the Committee and noted that this would be the first meeting at which actual drafts of statutes would be considered. In addition, he noted that the Committee would have one or more meetings in the future in which it would consider amendments to Senate Bill No. 2045 as passed.

The Committee then discussed a proposed amendment to the only criminal section in Title 1 (Section 1-03-03) reading as follows:

- 1 "No person, prior to the hour of two o'clock p.m. of the day set apart
- 2 as Memorial Day, shall engage in ball games, horse racing, sports, or any

3 entertainment which will interfere with the proper observance of such day.
4 Any violation of this section shall be punishable by a fine of not less than
5 five dollars nor more than one hundred dollars, or by imprisonment in the
6 county jail for not more than thirty days."

The staff recommendation was that the section be repealed as archaic, unenforceable, and unconscionably vague. The staff noted that should the section be retained it could well be classified as a "violation". The Committee Counsel noted that the section was enacted in 1911 and had not been amended since that time.

IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY PROFESSOR LOCKNEY that Section 1-03-03 be repealed. Judge Heen noted that in many instances the statute was honored and that some park boards keep their ball diamonds closed until after 2 p.m. on Memorial Day. Representative Royse inquired as to whether a city could enact an ordinance covering this subject. The Chairman replied in the affirmative. Mr. Wolf noted that this statute has been used in Bismarck and that it should be retained as it is valuable.

Representative Murphy stated that he believed the statute should be repealed. For instance, he felt that it might be construed to prohibit fishing. Mr. Wolf noted that at one time its provisions had been utilized to stop a rock concert which was planned to run all day Sunday.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED, with five dissenting votes, that consideration of Section 1-03-03 be set aside until a "violation" category may be created, and that the section be considered at that time.

The Committee next considered Title 63 dealing generally with weeds, particularly Section 63-01.1-15, which is the only penalty section in that title. That section reads as follows:

- 1 "1. Any person who violates the provisions of subsection 2 of section
2 63-01.1-12 shall be guilty of a misdemeanor and shall be subject
3 to a fine of not to exceed one hundred dollars, plus costs, for the
4 first offense, and a fine of five hundred dollars, plus costs, for
5 any subsequent offense. The weed control officers or control
6 authorities shall institute necessary criminal actions under this
7 subsection.
- 8 2. Persons failing to comply with the rules, regulations, and notices
9 promulgated pursuant to the provisions of this chapter shall be
10 subject to a civil penalty not to exceed five hundred dollars.

11 Necessary court action may be pursued by the weed control officer
12 or authority."

Mr. Bob Wefald, Assistant Committee Counsel, noted that he had conducted a conference with the Commissioner of Agriculture concerning this section, and the Commissioner agreed that the section could well be classified in the "violation" category of offense.

Professor Lockney suggested that perhaps it was time for the Committee to seriously consider creation of a "violation" classification. The Chairman inquired if this would be the wish of the Committee.

Professor Lockney stated that he would like to see the staff do research regarding the degree of difference between a "violation" offense classification and a civil penalty, and also would like to see the various ramifications of decreeing particular action to be a "violation" fully researched. For instance, what result in terms of disqualification occurs when one is convicted of a "violation"?

The Chairman directed the staff to draft a "violation" offense classification, and, at the request of Mr. Wolf, also directed that the draft provide for an increase in offense classification to a class B misdemeanor for second and subsequent similar offenses.

Representative Murphy inquired as to whether there wasn't enough flexibility in the class B misdemeanor classification to allow a non-incarcerative sentence. Mr. Wolf explained that the "Argersinger" decision of the United States Supreme Court mandated the appointment of counsel for an indigent in any case where there was the potential for a jail sentence.

The Chairman noted the fact that a person who had been charged with a "violation" rather than a misdemeanor may have some effect on him at the time he seeks a job. The Committee continued to discuss the desirability of creating a "violation" category of offense classification and the Chairman again directed the staff to review and draft such an offense classification. Professor Lockney reiterated that the staff should give special recognition to the collateral effects of creation of such an offense classification, with emphasis on the type of procedure which would be used at the trial.

The Committee returned to its discussion of Section 63-01.1-15, and Senator Jones noted that perhaps a jail sentence should not be attached to the section, but rather a violator should lose whatever license has been issued by the state or its political subdivisions.

Representative Rau inquired as to whether "costs" were provided for in the penalty classification plan set out in Senate Bill No. 2045. The Committee Counsel noted that Senate Bill No. 2045 does not mention costs. He felt, however, that costs would be handled the same under the new Criminal Code as they are at present.

Representative Murphy stated he felt that Subsection 1 of Section 63-01.1-15 should be left classified as a class B misdemeanor, because it was conceivable that a person could scatter or dump material containing noxious weed seeds maliciously. The Chairman suggested that perhaps Subsection 1 could be left a class B misdemeanor, and the word "willfully" could be added before the word violates; and Subsection 2 could be classified as a "violation".

Judge Teigen inquired as to whether the section wasn't aimed primarily at commercial operators of harvesting equipment. The Committee Counsel noted that Subsection 1 of Section 63-01.1-15 referred to Subsection 2 of Section 63-01.1-12 which required commercial operators to clean their equipment; required trucks or trailers transporting grain to be covered; and prohibited the scattering or dumping of materials containing noxious weed seeds on land or in the water.

In response to Representative Murphy's comment, Mr. Wolf noted that if a neighbor maliciously dumped materials containing noxious weed seeds on another's land, the victim would have a civil action against the neighbor for trespass, among other things.

IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY REPRESENTATIVE STONE that the draft of Section 63-01.1-15 be accepted as drafted.

The Committee discussed the fact that Subsection 1 of Section 63-01.1-15 contained language indicating that weed control officers or control authorities are to institute necessary criminal actions under the subsection. It was noted that this use of the word "institute" probably referred to the signing of a criminal complaint, and certainly was not intended to allow weed control officers to assume the duties of the State's Attorney.

Thereafter, REPRESENTATIVE MURPHY'S MOTION CARRIED by a vote of 7-ayes, 3-nays.

The Committee discussed Subsection 2 of Section 63-01.1-15, and noted that it provided for a "civil penalty". After much discussion of the meaning of the phrase "civil penalty" and suggestion that perhaps Subsection 2 could be classified as a "violation", the Chairman suggested that further consideration of Subsection 2 be held in abeyance.

The Committee next discussed a proposed revision of criminal sections in Title 4, and the Committee Counsel gave a general overview of that title. He noted that the title dealt mainly with agriculture and the powers and duties of the Commissioner of Agriculture. The Committee Counsel noted that he had discussed each section with the Commissioner and the Commissioner concurred in the staff's draft revision.

The Committee first discussed Section 4-01-18, which reads as follows:

1 4-01-18. OBSTRUCTING COMMISSIONER - PENALTY.) Any person who
2 willfully impedes or obstructs the commissioner in the performance of his
3 duties or refuses to supply him with information requested under the pro-
4 visions of this chapter, is guilty of a class B misdemeanor (((and shall be
5 punished by a fine of not less than ten dollars nor more than fifty dollars,
6 or by imprisonment in the county jail for not less than seven days nor more
7 than thirty days, or by both such fine and imprisonment))).

The Committee Counsel noted that the section dealt with willful obstruction or impedance of the Commissioner or a refusal to supply the Commissioner with information. He indicated that Section 12.1-08-01 of the new Criminal Code prohibited "physical obstruction" of a governmental function, but the Committee Counsel thought that perhaps impedance or obstruction could go beyond direct physical obstruction.

The Committee discussed whether provision for obstruction or impendance of the Commissioner should be contained only in Title 12.1, or whether Title 4 should also contain such provisions. Representative Murphy stated that the Commissioner of Agriculture should not be protected to any greater or lesser extent than any other governmental employee in the performance of a governmental function.

Representative Murphy suggested that Section 12.1-08-01 in the Criminal Code be broadened so that its provisions would cover "non-physical" impendance or obstruction of any government official performing a government function, and that sections like Section 4-01-18 be stricken from the Code. Representative Murphy's suggestion was discussed at length.

Thereafter, Judge Teigen suggested that perhaps "impeding or obstructing" as referred to in Section 4-01-18 did refer to physical impendance or obstruction, and that therefore it would be covered under Section 12.1-08-01. He suggested that perhaps the language relating to "willfully impedes or obstructs the Commissioner in the performance of his duties" could be stricken from Section 4-01-18 and the section could then refer to only a refusal to supply the Commissioner with information.

Thereafter, IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE TEIGEN, AND CARRIED, with Representative Murphy voting in the negative, that the words "willfully impedes or obstructs the Commissioner in the performance of his duties or" be stricken from Section 4-01-18; that the word "him" be stricken after the word "supply" in the same section and that the words "the Commissioner" be substituted for the stricken word "him".

Professor Lockney inquired as to whether Section 12.1-10-02 of the Criminal Code wouldn't cover the remainder of Section 4-01-18. He noted that Section 12.1-10-02 relates to a failure to appear as a witness, to produce information, or to be sworn. Professor Lockney suggested that perhaps the provision making it criminal to fail to supply information to the Commissioner should be limited to those instances wherein the information is sought in an "official proceeding".

The Committee discussed Section 4-02-07, requiring the bonding of a treasurer of a fair association, which reads as follows:

- 1 4-02-07. TREASURER TO GIVE BOND - DUTY OF DIRECTORS - PENALTY.)
- 2 The directors of any fair association shall require the treasurer thereof to give
- 3 a sufficient bond to such directors, conditioned for the faithful keeping of such
- 4 money as may come into his hands as such treasurer. The failure of the direc-
- 5 tors to demand the bond, or of the treasurer to furnish the bond when demand-
- 6 ed, shall constitute a class B misdemeanor.

The Committee discussed whether it was appropriate to require bonds of officials of quasi-public agencies.

IT WAS MOVED BY MR. WOLF AND SECONDED BY REPRESENTATIVE HILLEBOE that the Committee hold further consideration of Section 4-02-07 in abeyance until the Legislative Audit and Fiscal Review Committee (Committee on Budget "A") had prepared its report on a study of bonding.

The Committee discussed this motion at length and Representative Murphy made a substitute motion to repeal Section 4-02-07, which did not receive a second. Judge Heen suggested that the last sentence of the section be deleted. Thereafter, Mr. Wolf withdrew his previous motion.

IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED, with Representative Murphy dissenting, that Section 4-02-07 be amended to delete the last sentence thereof, and to add that no funds may be received by the treasurer of a fair association until he is properly bonded.

Thereafter, the Committee recessed for lunch and reconvened at 1:15 p.m. The Chairman reiterated the need for the Committee to stick to the criminal revision aspect of its work and not to get into substantive changes in the statutes governing the operations of various governmental and quasi-governmental agencies.

The Committee again discussed briefly the creation of a "violation" offense classification. Professor Lockney noted that such a classification would, under the provisions of the proposed federal Criminal Code, not need a culpable state of mind. He said that the lack of a culpability requirement could be useful in defining many petty offenses.

IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the staff draft a "violation" offense classification and that the offense classification contain a set fine limit.

The Committee next discussed Section 4-02.1-24 relating to unlawful acts being carried out on the state fairgrounds and reading as follows:

1 4-02.1-24. UNLAWFUL ACTS.) Any person who shall trespass on, enter,
2 or attempt to enter the grounds upon which the state fair is being held, by
3 jumping, climbing, or passing through any enclosure, or in any manner, ex-
4 cept through the gates provided therefor, or who shall enter such gates or
5 other reserved enclosure, without authority of the board of directors or its
6 authorized officers, or who shall obtain permission to enter the grounds by
7 impersonating another, or by any misrepresentation or false pretense, or who
8 shall be found lurking, lying in wait, or concealed in any building, on the
9 immediate vicinity thereof, with intent to steal, or commit other offenses or
10 mischief, shall be guilty of a class B misdemeanor.

The Committee Counsel noted that the offenses defined in the section were covered by sections in the Criminal Code such as burglary; criminal trespass; criminal mischief; and theft of services. Thereafter, IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 4-02.1-24 be repealed.

The Committee next discussed Section 4-09-24, which reads as follows:

1 4-09-24. PENALTY.) Any person who violates any of the provisions, or

2 who refuses to comply with any of the requirements of this chapter, or of any
3 regulation duly made hereunder (((, or who willfully interferes with the com-
4 missioner or any of his agents in the execution, or on account of the execu-
5 tion, of his or their duties under this chapter and the regulations duly made
6 thereunder,))) shall be guilty of a class B misdemeanor (((and upon convic-
7 tion shall be fined not more than one hundred dollars and costs of prosecution
8 for the first offense nor more than five hundred dollars and costs of prosecu-
9 tion for each subsequent offense))).

The Committee Counsel noted that this was an obvious section for classification as a "violation" as there presently was no potential incarceration attached as a sentence. IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 4-09-24 be adopted except that the offense classification be changed from a class B misdemeanor to a "violation".

The Committee then discussed Section 4-10.1-15, which reads as follows:

1 4-10.1-15. MISDEMEANOR TO VIOLATE PROVISIONS OF THIS CHAPTER.)
2 Any person who willfully violates the provisions of this chapter is guilty of a
3 class B misdemeanor.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY JUDGE TEIGEN, AND CARRIED that the Committee accept Section 4-10.1-15 as drafted.

The Committee next considered Section 4-11-23, which reads as follows:

1 4-11-23. VIOLATIONS OF CHAPTER DEFINED - PENALTY.) Any person
2 subject to the provisions of this chapter, who shall:
3 1. Make any false statement or report as to the grade, condition,
4 markings, quality, or quantity of potatoes received or delivered,
5 or act in any manner so as to deceive the consignor or purchaser
6 thereof;
7 2. Refuse to accept, on agreed terms, any shipment contracted for by
8 him, unless such refusal is based upon a state inspection certificate,
9 secured with reasonable promptness after the receipt of such ship-
10 ment, showing that the kind or quality of potatoes is other than that
11 purchased or ordered by him;

- 12 3. Fail to account for potatoes or to make settlement therefor within
13 the time limited in this chapter, or who shall violate or fail to com-
14 ply with the terms or conditions of any contract entered into by him
15 for the purchase or sale of potatoes;
- 16 4. Purchase for his own account any potatoes received on consignment,
17 either directly or indirectly, without the consent of the consignor;
- 18 5. Issue any false or misleading market quotations, or cancel any quota-
19 tions during the period advertised by him;
- 20 6. Make or collect any commission or charge in excess of that shown in
21 his schedule filed with the commissioner;
- 22 7. Increase the sales charges on potatoes shipped to him by means of
23 "dummy" or fictitious sales;
- 24 8. Fail to keep accurate records and financial accounts of all transactions
25 as a wholesale potato dealer;
- 26 9. Receive potatoes from foreign states or countries for sale or resale,
27 either within or without this state, and give the purchaser the im-
28 pression through any method of advertising or description that the
29 said potatoes are of other than their true origin; or
- 30 10. Violate any of the provisions of this chapter, or any rule or regula-
31 tion made or published thereunder by the commissioner, shall be
32 guilty of a class B misdemeanor, and his license forthwith may be
33 suspended, revoked, or canceled by the commissioner upon ten days'
34 notice and an opportunity to be heard. Upon conviction of such of-
35 fense, or upon conviction in any federal court for violation of the
36 federal statutes relative to the fraudulent use of the mails, or of
37 other criminal acts pertaining to the conduct of his business, the com-
38 missioner forthwith shall revoke and cancel the license of the person
39 so convicted.

The Committee Counsel noted that the section was in a chapter dealing with the regulation of wholesale potato dealers. Senator Jones noted that the current classification is a "misdemeanor" which means that a person could be punished by a maximum of one year in jail. HE THEN MOVED, WITH THE SECOND BY REPRESENTATIVE LUNDENE, that the section be amended to change, in Subsection 10, the classification as a class B misdemeanor to a class A misdemeanor, and that the section then be adopted. THIS MOTION CARRIED.

Judge Pearce inquired as to the extent of the Committee's discretion regarding the assignment of an offense classification to existing criminal sections. The Chairman stated that, to the extent feasible, the Committee should try to match the new offense classification scheme to existing criminal penalties, but that the Committee, for good cause, could make such changes in penalty classification as it saw fit. He noted that the Committee's study resolution was broad enough to encompass any kind of reasonable action regarding the criminal statutes in North Dakota which the Committee should decide to take.

The Committee next discussed Section 4-12-20, which reads as follows:

1 4-12-20. PENALTY - CONFISCATION FOR UNLAWFUL TRANSPORTATION
2 OR MAINTENANCE.) Any person who violates any of the provisions of this
3 chapter, or any regulation or order made pursuant thereto, shall be guilty
4 of a class A misdemeanor and any bees, brood, combs for breeding, or
5 used beekeeping appliances and equipment unlawfully transported or main-
6 tained may be confiscated by the state bee inspector. Any items which are
7 confiscated pursuant to this section shall be disposed of through a sheriff's
8 sale or destroyed if they constitute a disease hazard.

The Committee Counsel noted that Chapter 4-12 dealt with the licensing and regulation of beekeepers, the transportation of bees, and the location of commercial and non-commercial apiaries.

Representative Hilleboe inquired as to whether the type of confiscation authorized under Section 4-12-20 could be utilized in regard to other tools used in criminal activities. Judge Heen replied that confiscation was not available unless it was specifically authorized by law.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 4-12-20 be adopted as drafted.

The Committee considered Section 4-13-14 which makes it a misdemeanor to violate any of the provisions of the chapter establishing the Poultry Improvement Board. The section reads as follows:

1 4-13-14. PENALTY.) A violation of this chapter or the rules and
2 regulations promulgated thereunder shall constitute a class B misde-
3 meanor (((and shall be punishable by a fine of not more than fifty

4 dollars for each offense, and as additional or alternative penalties))),
5 and, in addition, the board may revoke any license issued and may re-
6 strain by injunction the continuance of any operations covered by this
7 chapter.

The Committee Counsel noted that the section could be placed in the "violation" category as there is presently no incarceration punishment available under this section.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 4-13-14 be classified as a "violation", and that the draft then be accepted as amended.

The Committee discussed Section 4-13.1-13, which reads as follows:

1 4-13.1-13. PENALTY.) A willful violation of this chapter shall be a
2 class B misdemeanor ((and shall be punishable by a fine of not more
3 than one hundred dollars, or by imprisonment in the county jail for not
4 more than thirty days, or by both such fine and imprisonment))).

The Committee Counsel noted that the Chapter (4-13.1) deals with turkey promotion and with the collection of the assessment to be utilized by the Poultry Improvement Board in turkey promotion.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that the draft of Section 4-13.1-13 be accepted as submitted.

The Committee discussed Section 4-14-07, which reads as follows:

1 4-14-07. PENALTY.) Any person violating the provisions of this
2 chapter shall be (((punished by a fine of not less than fifty dollars nor
3 more than five hundred dollars for each offense, and in default of the
4 payment of such fine, shall be imprisoned in the county jail for not
5 less than three months nor more than one year))) guilty of a class B
6 misdemeanor.

The Committee Counsel noted that Chapter 4-14 dealt with unfair discrimination in the purchase or sale of farm products, and also contains an anti-monopoly provision.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that the classification of Section 4-14-07 be changed from a class B misdemeanor to a class A misdemeanor and with that amendment, that the section be accepted.

The Committee discussed Section 4-14-10, which reads as follows:

1 4-14-10. CONTRACTS VOID, PENALTY.) All contracts and agree-
2 ments made in violation of sections 4-14-09 through 4-14-11 shall be void.
3 Any person who shall violate any of the provisions of sections 4-14-09
4 through 4-14-11 shall be guilty of a class B misdemeanor (((and shall be
5 punished by a fine of not more than one hundred dollars or by imprison-
6 ment in the county jail for not more than thirty days, or by both such
7 fine and imprisonment))).

Section 4-14-10 sets forth the criminal penalties for violation of Section 4-14-09 which prohibits "unfair trade practices" in the dairy industry, and particularly in the sale of dairy products.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 4-14-10 be accepted as drafted.

The Committee next discussed Section 4-18.1-14, which reads as follows:

1 4-18.1-14. ENTRY, INSPECTION, AND INVESTIGATION.) Authorized
2 representatives of the board shall have access to, and may enter at all
3 reasonable hours, all places of business operated by licensees where raw
4 milk, milk products or frozen dairy products are produced, stored, pro-
5 cessed, manufactured, or sold, or where the licensee maintains books,
6 papers, accounts, records, or other documents related to such activities.
7 The board may subpoena, and any of its authorized representatives may
8 inspect and make copies of, any of such books, papers, records, accounts,
9 or documents and audit the same, all for the purpose of determining
10 whether or not the provisions of this chapter and of any regulations and
11 stabilization plans issued by the board are being complied with.

12 The board may subpoena, and any of its authorized representatives
13 may inspect, audit, and make copies of, relevant books, papers, records,
14 accounts, or other documents of persons doing business with licensees.

15 Any information gained by the board or its representatives through
16 such entry, inspection, or investigation shall be treated as confidential

17 by the board and its representatives and shall be used only for the admin-
18 istration of this chapter; provided, that such persons may divulge such
19 information when called upon to testify in any duly noticed proceeding be-
20 fore the board or in any court proceeding wherein the board is a party,
21 and provided further, that nothing contained in this chapter shall prevent
22 the use of any information procured by the board or its representatives in
23 the compiling and dissemination of general statistical data, containing in-
24 formation procured from a number of licensees, and compiled in such man-
25 ner as not to reveal individual information for any licensee. Any person
26 who divulges confidential information in violation of the provisions of this
27 section to any person, other than members and employees of the board,
28 shall be guilty of a class B misdemeanor.

29 The board may also subpoena and take the testimony under oath of
30 persons believed by the board to have information needed by it in admin-
31 istering and enforcing the provisions of this chapter.

The Committee Counsel noted that Chapter 4-18.1 was the authorizing chapter for the Milk Stabilization Board. However, the only criminal offense defined in that section is the offense of divulging confidential information discovered by officers and employees of the Milk Stabilization Board. Numerous actions by processors, producers, and retail sellers are prohibited (made "unlawful") by the chapter, but no criminal penalty is provided for violation. Instead, the Board is given the authority to suspend or revoke licenses of guilty parties, or, in lieu thereof, to assess civil penalties of up to \$500 per day to be collected by a civil proceeding in an appropriate court.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that the draft of Section 4-18.1-14 be accepted as submitted. (See later motion regarding this section on page 20 of these minutes.)

The Committee discussed Section 4-21.1-16, which reads as follows:

1 4-21.1-16. PENALTIES.) Any person violating any of the provisions
2 of this chapter shall be deemed guilty of a class A misdemeanor ((and
3 shall upon conviction be punished by a fine not exceeding five hundred
4 dollars or by imprisonment not exceeding one year, or both, at the dis-
5 cretion of the court))).

The Committee Counsel noted that Chapter 4-21.1 covered regulation of nurseries and nurserymen, and required that all nursery stock purchased, sold, or distributed in North Dakota must come from officially inspected sources. The chapter further provides that no one may operate a nursery without first being licensed, and the dealer and the agent of a nursery are also to be licensed.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that the Committee accept Section 4-21.1-16 as drafted.

The Committee next considered a draft of Section 4-24-01, which reads as follows:

1 4-24-01. WILLFUL DAMAGE TO THRESHING MACHINE - CONSEQUENTIAL
2 INJURY TO PERSON - PENALTY - CIVIL ACTION FOR DAMAGES.) Every
3 person who (((wantonly, maliciously, or mischievously))) willfully puts,
4 places, or conceals in any sheaf, shock, pile, load, or stack of grain, any
5 (((stone, wood, iron, or other))) substance, which, if fed into a threshing
6 machine, would or could injure such machine or any part thereof or that
7 could or might cause the death (((, maiming,))) or injury of any person
8 employed about the machine, is guilty of the following offenses:
9 1. If the injury results in the death of any person, of manslaughter
10 (((in the first degree)));
11 2. If the injury results in (((maiming or))) injury to any person or
12 breaking of the machine, of a class C felony; and
13 3. In all other cases, of a class A misdemeanor (((, punishable by
14 a fine of not more than one hundred dollars, or by imprisonment
15 in the county jail for not more than one year, or by both such
16 fine and imprisonment))).

17 Every person guilty of a violation of this section shall be liable in a civil
18 action to the owner of the machine injured for all damages arising from such
19 violation, including the actual damage caused, and all damage and loss sus-
20 tained, by the owner by reason of the stoppage caused by the breakage.

The Committee Counsel noted that the staff recommendation was that this section be repealed as all of the offenses defined in it are covered under Title 12.1.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 4-24-01 be repealed.

The Committee considered Section 4-24-02, which reads as follows:

1 4-24-02. INJURING STANDING CROPS, GRAIN, FRUITS, AND VEGETA-
2 BLES - MISDEMEANOR.) Every person who (((maliciously))) willfully in-
3 jures or destroys any standing crops, grain, cultivated fruits or vegetables,
4 the property of another, for which a punishment is not otherwise prescribed,
5 is guilty of a class A misdemeanor.

The staff recommendation was that this section be repealed, and IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY SENATOR JONES, AND CARRIED that Section 4-24-02 be repealed.

The Committee next considered Sections 4-24-03 through 4-24-05, which read as follows:

1 4-24-03. INJURING FRUITS, MELONS, OR FLOWERS IN THE DAYTIME
2 - PUNISHMENT.) Every person (((maliciously or mischievously))) will-
3 fully entering or going upon the premises of another in the daytime with
4 the intent to knock off, pick, destroy, or carry away, or, having lawfully
5 entered or gone upon the premises of another, who afterward wrongfully
6 knocks off, picks, destroys, or carries away any apples, peaches, pears,
7 plums, grapes, or other fruit, melons, or flowers, of any tree, shrub,
8 bush, or vine, (((shall be punished by a fine of not less than five dollars
9 nor more than one hundred dollars, or by imprisonment in the county jail
10 for not more than thirty days))) is guilty of a class B misdemeanor.

1 4-24-04. INJURING FRUITS, MELONS, OR FLOWERS IN THE NIGHTTIME
2 - PUNISHMENT.) Every person (((maliciously or mischievously))) willfully
3 entering or going upon the premises of another in the nighttime, who shall
4 knock off, pick, destroy, or carry away any apples, peaches, pears, plums,
5 grapes, or other fruit, melons, or flowers, of any tree, shrub, bush, or
6 vine, or having entered or gone upon the premises of another in the night-
7 time, with the intent to knock off, pick, destroy, or carry away any fruit,
8 melons, or flowers as aforesaid, and being found thereon, shall be

9 (((punished by a fine of not less than ten dollars nor more than one hun-
10 dred dollars, or by imprisonment in the county jail for not more than thirty
11 days))) guilty of a class B misdemeanor.

1 4-24-05. INJURING TREES - PUNISHMENT.) Every person who
2 (((maliciously or mischievously))) willfully shall bruise, break, or pull up,
3 cut down, carry away, destroy, or in any manner injure any fruit or orna-
4 mental tree, shrub, vine, or material for hedge, growing or standing on the
5 land of another, shall be (((punished by a fine of not less than ten dollars
6 nor more than one hundred dollars, or by imprisonment in the county jail
7 for not more than thirty days))) guilty of a class B misdemeanor.

The Committee Counsel noted that these sections would be covered by the Crimi-
nal Code, and especially the criminal mischief sections, and therefore it was the staff
recommendation that they be repealed. IT WAS MOVED BY REPRESENTATIVE STONE,
SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Sections 4-24-03 through
4-24-05 be repealed.

The Committee discussed Section 4-24-06, which reads as follows:

1 4-24-06. SALE OF CHEMICALLY TREATED GRAIN - MISDEMEANOR.)
2 No person shall sell grain, for the purpose of human or animal consump-
3 tion, which has been chemically treated for insect or fungus control,
4 without informing the purchaser of the fact of such treatment. Any person
5 selling such chemically treated grain without informing the purchaser
6 thereof shall be guilty of a class B misdemeanor (((and shall be punished
7 by a fine of not less than one hundred dollars nor more than five hundred
8 dollars))).

The Committee Counsel noted that to the extent the section defines a problem,
there is no other section in the Century Code, including the Criminal Code, which covers
the actions prohibited by Section 4-24-06. SENATOR JONES MOVED that the section be
adopted as drafted. JUDGE TEIGEN MOVED, IN SUBSTITUTION FOR SENATOR JONES'
MOTION, that the section be amended to change the offense classification from a class B
misdemeanor to a "violation", and then to accept the section as amended. THIS SUBSTI-
TUTE MOTION WAS SECONDED BY JUDGE PEARCE AND LOST by a vote of 5-eyes, 6-nays.

Thereafter, IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED (by a vote of 6-ayes; 5-nays) that Section 4-24-06 be accepted as drafted.

Senator Jones suggested that the Committee give some consideration to providing an exception to the criminal liability under Section 4-24-06 for non-noxious chemical treatments.

The Committee discussed Section 4-25-03, which reads as follows:

1 4-25-03. PENALTY.) Any person violating the provisions of sections
2 4-25-01 and 4-25-02 shall be guilty of a class B misdemeanor (((and upon
3 conviction shall be fined not more than one hundred dollars and cost of
4 prosecution for the first offense nor more than five hundred dollars and
5 costs for prosecution for each subsequent offense))).

The Committee Counsel noted that the provisions of Sections 4-25-01 and 4-25-02 make it unlawful to accept full or partial payment for agricultural seeds unless each transaction is accompanied by a written sales agreement containing certain stated provisions. The Committee Counsel noted that this would be an ideal section to be classified as a "violation".

IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY REPRESENTATIVE STONE that Section 4-25-03 be adopted as drafted.

A SUBSTITUTE MOTION WAS MADE BY PROFESSOR LOCKNEY, SECONDED BY SENATOR JONES, AND CARRIED by a vote of 6-ayes; 5-nays, that Section 4-25-03 be classified as an infraction and, with that amendment, be accepted.

The Committee discussed Section 4-26-12, which reads as follows:

1 4-26-12. PENALTY.) Any person violating any of the provisions of this
2 chapter is guilty of a class B misdemeanor (((and shall be punished by a fine
3 not exceeding one hundred dollars or by imprisonment in the county jail for
4 not more than thirty days or by both such fine and imprisonment))).

The Committee Counsel noted that Chapter 4-26 dealt with the power of the Seed Commissioner to control the cultivation of seed potatoes, and to inspect, test, and approve seed to be planted and grown in a denominated seed potato control area.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that the Committee accept Section 4-26-12 as drafted.

The Committee discussed Section 4-27-12, which reads as follows:

1 4-27-12. PENALTY.) Any person who shall violate any of the provisions
2 of this chapter shall be guilty of a class B misdemeanor (((and shall be

3 punished by a fine of not more than one hundred dollars, or by imprisonment
4 in the county jail for not more than thirty days, or by both such fine and im-
5 prisonment))).

The Committee Counsel noted that this chapter (4-27) dealt with dairy products promotion and created the Dairy Products Promotion Commission. The Commission was funded by an assessment per pound of butterfat produced and sold in the State, with the possibility of a refund to a producer who did not want to participate. Dealers and producers are charged with keeping appropriate records to aid in collection of the assessment.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVES ROYSE AND LUNDENE, AND CARRIED that Section 4-27-12 be accepted as drafted.

The Committee considered Sections 4-28-09 and 4-28.1-05, which read as follows:

1 4-28-09. PENALTY.) Any person violating any of the provisions of this
2 chapter shall be guilty of a class B misdemeanor (((and shall be punished by
3 a fine of not more than one hundred dollars or by imprisonment in the county
4 jail for not more than thirty days or by both such fine and imprisonment))).

1 4-28.1-05. PENALTY.) Any person violating any of the provisions of this
2 chapter shall be guilty of a class B misdemeanor (((and shall be punished by
3 a fine of not more than one hundred dollars or by imprisonment in the county
4 jail for not more than thirty days or by both such fine and imprisonment))).

After discussion, IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 4-28-09 be accepted as drafted. Thereafter, IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 4-28.1-05 be accepted as drafted.

The Committee discussed Section 4-30-53, which reads as follows:

1 4-30-53. PENALTY FOR VIOLATION OF CHAPTER.) Any person violating
2 any of the provisions of this chapter or the rules and regulations of the dairy
3 department for which another penalty is not specifically provided is guilty of
4 a class B misdemeanor (((, and shall be punished for each offense by a fine
5 of not less than twenty-five dollars nor more than one hundred dollars, or by
6 imprisonment for not more than thirty days, or by both such fine and imprison-
7 ment))).

The Committee Counsel noted that Chapter 4-30 dealt with the regulation of dairy products and the licensing of milk processors and producers.

The Committee Counsel also noted that Section 4-30-52 presently provides for the disposal of illegal milk products in the manner provided in Chapter 19-02 of the Century Code. He noted that the relevant sections of that chapter have been repealed, and that it may be appropriate to amend Section 4-30-52 so that it referred to the appropriate sections in Chapter 19-02.1, which latter chapter replaced the repealed Chapter 19-02.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 4-30-53 be accepted as drafted.

The Committee considered Section 4-33-08, which reads as follows:

1 4-33-08. PENALTIES.) Any person who shall violate any of the provisions
2 of this chapter or who shall alter, forge, or counterfeit, or use without author-
3 ity any certificate or permit or other document provided for in this chapter or
4 in the regulations of the commissioner provided for in this chapter, shall be
5 deemed guilty of a class A misdemeanor (((and shall upon conviction thereof,
6 be punished by a fine not exceeding five hundred dollars or by imprisonment
7 not exceeding one year, or both, in the discretion of the court))). Any per-
8 son who has knowingly moved any regulated article into this state from any
9 quarantined area of any other state, which article has not been treated or
10 handled under provisions of the quarantine and regulations, in effect at the
11 point of origin, shall be guilty of a class A misdemeanor (((and shall be
12 subject to the foregoing penalty provision for this chapter))).

The Committee Counsel noted that Chapter 4-33 deals with the control and elimination of "plant tests", and gives the Commissioner of Agriculture authority to quarantine in order to prevent or retard the spread of a given type of plant test. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 4-33-08 be accepted as drafted.

The Committee discussed Section 4-34-10, which reads as follows:

1 4-34-10. REMITTANCE OF ASSESSMENTS COLLECTED - PENALTIES.) All
2 assessments collected by licensed dealers, selling agencies at terminal markets,
3 auction markets, or local brand inspectors shall be remitted to the North Dakota
4 beef commission within thirty days following the month during which the assess-
5 ments were received. The assessments shall be accompanied by remittance

6 forms as prescribed and furnished by the commission. All moneys shall be
7 remitted by the commission to the state treasurer and deposited by him in the
8 North Dakota beef commission fund and are hereby appropriated to the commis-
9 sion and shall be disbursed by the commission in accordance with the provi-
10 sions of this chapter. Any licensed dealer, selling agency at terminal markets,
11 auction markets, or any local brand inspector who collects assessments but who
12 fails to remit the same within sixty days after the time provided in this section
13 shall be guilty of a class B misdemeanor (((and punished by a fine of not less
14 than twenty-five dollars nor more than one hundred dollars, or by imprison-
15 ment in the county jail for not more than thirty days, or by both such fine and
16 imprisonment))). Any licensed dealer, or any owner or operator of a live-
17 stock selling agency at a terminal market, or any livestock auction market
18 operator failing to collect assessments as provided in this chapter shall be
19 guilty of a class B misdemeanor (((and shall be punished by a fine of not less
20 than twenty-five dollars nor more than one hundred dollars, or by imprison-
21 ment in the county jail for not more than thirty days, or by both such fine and
22 imprisonment))). Any person who sells cattle from the state of North Dakota
23 outside the state or to an out-of-state buyer who willfully fails to remit the
24 assessments within sixty days as required by this chapter shall be guilty of a
25 class B misdemeanor (((and shall be punished by a fine of not less than twenty-
26 five dollars nor more than one hundred dollars, or by imprisonment in the
27 county jail for not more than thirty days, or by both such fine and imprison-
28 ment))). Assessments unpaid on the date on which they are due and payable
29 shall be increased by a ten percent nonrefundable penalty on the amount of
30 the assessments and the commission is authorized to sue for and collect the
31 same.

The Committee Counsel stated that Chapter 4-34 creates the North Dakota Beef Commission which has authority to collect a beef promotion assessment of \$.10 per head of cattle sold in or from North Dakota.

IT WAS MOVED BY REPRESENTATIVE AUSTIN, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 4-34-10 be accepted as drafted.

Judge Teigen indicated that the Committee ought to reconsider its action in adopting Section 4-18.1-14 as drafted, since its penalty classification was that of a class B misdemeanor, whereas current law more closely approximated a class A misdemeanor. In addition, he noted that Section 12.1-13-01 of the new Criminal Code, which relates to illegal disclosure of confidential information given to a government agency, is classified as a class A misdemeanor. JUDGE TEIGEN, WITH A SECOND BY REPRESENTATIVE ROYSE, MOVED that the Committee reconsider its action whereby it adopted Section 4-18.1-14, WHICH MOTION CARRIED.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE RAU, AND CARRIED by a vote of 9-ayes; 2-nays, that Section 4-18.1-14 be classified as a class A misdemeanor, and when so amended be approved.

The Committee discussed a proposed revision of the criminal offense definition sections in Title 5 of the Century Code, which sections read as follows:

1 5-01-03. PENALTY.) Any person distributing alcoholic beverages in this
2 state without compliance with the provisions of this title is guilty of a class A
3 misdemeanor.

1 5-01-04. MANUFACTURE OF ALCOHOLIC BEVERAGES PROHIBITED - EXCEP-
2 TIONS.) Any person manufacturing alcoholic beverages within this state is
3 guilty of a class B misdemeanor and property used for same is subject to dis-
4 position by the court except any person may establish a brewery for the manu-
5 facture of malt beverages or a distillery or other plant for the distilling, manu-
6 facturing, or processing of liquor within this state if he has secured a license
7 from the state treasurer. Such license shall be issued on a calendar-year basis
8 with a fee of five hundred dollars. Said license shall allow sale to only
9 licensed wholesalers.

1 5-01-05.3. DISTURBING THE PEACE - DISORDERLY CONDUCT - PENALTY.)
2 Any person who commits an act which disturbs the public peace or constitutes
3 disorderly conduct is guilty of a class B misdemeanor.

1 5-01-08. PERSONS LESS THAN TWENTY-ONE YEARS PROHIBITED - EXCEP-
2 TIONS.) Any person under twenty-one years of age purchasing, attempting to

3 purchase, or being in possession of alcoholic beverages, or furnishing money
4 to any person for such purchase, or entering any licensed premises where such
5 beverages are being sold or displayed, except a restaurant when accompanied
6 by a parent or legal guardian, or in accordance with section 5-02-06, is guilty
7 of a class A misdemeanor.

1 5-01-08.1. MISREPRESENTATION OF AGE - PENALTY - OBLIGATIONS OF
2 LICENSEE.) Any person who shall misrepresent or misstate his age or the
3 age of any other person, or shall misrepresent his age through presentation
4 of any document purporting to show such person to be of legal age to purchase
5 alcoholic beverages shall be guilty of a class B misdemeanor. Every licensee
6 shall be required to keep a book which such licensee and his employees shall
7 require anyone who has shown documentary proof of his age, which substanti-
8 ates his age to allow the purchase of alcoholic beverages, to sign such book if
9 the age of such person is in question. Such book shall show the date of the
10 purchase, the identification used in making the purchase and the appropriate
11 numbers of such identification, the address of the purchaser, and his signature.

1 5-01-09. DELIVERY TO CERTAIN PERSONS UNLAWFUL.) Any person de-
2 livering alcoholic beverages to a person under twenty-one years of age, an
3 habitual drunkard, an incompetent, or an intoxicated person is guilty of a
4 class A misdemeanor, subject to the provisions of sections 5-01-08, 5-01-08.1
5 and 5-01-08.2.

1 5-01-10. BOTTLE CLUBS PROHIBITED - PENALTY.) Any person operating
2 an establishment whereby persons are allowed to bring their own alcoholic
3 beverages on the premises where the proprietor sells soft drinks, mix, ice, or
4 charges for bringing such beverages on the premises is guilty of a class E
5 misdemeanor.

1 5-01-11. UNFAIR COMPETITION - PENALTY.) No manufacturer shall en-
2 gage in any wholesale alcoholic beverage business, nor shall any manufacturer
3 or wholesaler have any financial interest in any retail alcoholic beverage es-
4 tablishment nor furnish any such retailer with anything of value except whole-
5 salers may:

- 6 1. Extend normal commercial credits to retailers for industry products
7 sold to them. The state treasurer may determine by regulation the
8 definition of "normal commercial credits" for each segment of the
9 industry.
- 10 2. Furnish retailers with beer containers and also equipment for dis-
11 pensing of tap beer provided the expense does not exceed twenty-
12 five dollars per tap per calendar year.
- 13 3. Furnish outside signs to retailers if the sign cost does not exceed
14 one hundred dollars exclusive of costs of erection and repair.
- 15 4. Furnish miscellaneous materials to retailers not to exceed twenty-
16 five dollars per year.

17 Any wholesaler or manufacturer violating the provisions of this section, or any
18 regulation promulgated hereunder, and any retailer receiving benefits thereby,
19 is guilty of a class B misdemeanor.

1 5-01-12. DUTY TO ENFORCE.) (((The inspectors appointed by the attor-
2 ney general shall have all the powers of peace officers anywhere in the state,
3 and all))) All peace officers in the state shall diligently enforce the laws set
4 forth in this title. Any officer failing to do so shall be guilty of a class A
5 misdemeanor. Said officers shall frequently visit all licensed premises to see
6 that all such laws are strictly observed.

1 5-02-01. STATE AND LOCAL RETAIL LICENSE REQUIRED - EXCEPTION.)
2 Any person engaging in the sale of alcoholic beverages at retail without first

3 securing an appropriate license from the attorney general and the governing
4 body of any city, or board of county commissioners if said business is located
5 outside the corporate limits of a city, is guilty of a class B misdemeanor.
6 This section shall not apply to public carriers engaged in interstate commerce.

1 5-02-05. DISPOSAL PROHIBITED ON CERTAIN DAYS - PENALTY.) Anyone
2 who dispenses or permits the consumption of alcoholic beverages on licensed
3 premises after one o'clock a.m. on Sundays, before eight o'clock a.m. on Mon-
4 days, or between the hours of one o'clock a.m. and eight o'clock a.m. on all
5 other days of the week, or who so dispenses or permits such consumption on
6 Memorial Day, Good Friday, Thanksgiving Day, Christmas Day, or after six
7 o'clock p.m. on Christmas Eve, or between the hours of one o'clock a.m. and
8 eight o'clock p.m. on the day of any statewide, special, primary, or general
9 election is guilty of a class B misdemeanor.

1 5-02-06. PERSONS UNDER TWENTY-ONE YEARS PROHIBITED - PENALTY -
2 EXCEPTIONS.) Any licensee who disposes alcoholic beverages to a person un-
3 der twenty-one years of age or who permits such a person to remain on the
4 licensed premises while alcoholic beverages are being sold or displayed is
5 guilty of a class B misdemeanor, subject to the provisions of sections 5-01-08,
6 5-01-08.1, and 5-01-08.2. Any person under twenty-one years of age may
7 remain in a restaurant where alcoholic beverages are being sold if accom-
8 panied by a parent or legal guardian, or if employed by the restaurant as a
9 food waiter, food waitress, busboy, or busgirl under the direct supervision of
10 a person over twenty-one years of age, and not engaged in the sale, disposi-
11 tion, delivery, or consumption of alcoholic beverages. Any establishment
12 where alcoholic beverages are sold may employ persons from eighteen to
13 twenty-one years of age to work in the capacity of musicians under the direct
14 supervision of a person over twenty-one years of age.

1 5-02-07. SALE OF OTHER ITEMS RESTRICTED - PENALTY.) Any licensee
2 selling any item on the licensed premises other than alcoholic beverages, soft
3 drinks, tobacco products, drink mixing supplies, prepackaged preserved sand-
4 wiches or pizzas approved by the state laboratories department, which shall be
5 delivered to the purchaser with the packaging intact, dry-packaged preserved
6 snacks, and preserved pickled products served to the purchaser from the
7 original container, is guilty of a class B misdemeanor, except a licensee may
8 sell alcoholic beverages in a restaurant separated from the room in which alco-
9 holic beverages are opened or mixed if gross sales of food are at least equal
10 to gross sales of alcoholic beverages which are consumed in the dining area,
11 and except that anyone who operates a restaurant in conjunction with his
12 license under this chapter, may serve food in the licensed premises. A local
13 governing body, by ordinance or resolution, may restrict the sale of any of the
14 items set forth in this section, or may determine the hours during which such
15 items may be sold.

1 5-02-08. DISORDERLY CONDUCT PROHIBITED - PENALTY.) Any licensee
2 permitting disorderly conduct on the premises is guilty of a class B misde-
3 meanor.

1 5-03-06. EXAMINATION BY TREASURER - PENALTY FOR IMPROPER RE-
2 TURNS.) The state treasurer may at any reasonable time make an examination
3 of the books and premises of any wholesaler to determine if such wholesaler
4 has fully complied with all statutes and regulations pertaining to his wholesale
5 business. If any wholesaler liable for any taxes imposed by this chapter shall
6 fail to pay such tax on the date payment is due, there shall be added to the tax
7 five percent per month of the total amount of the tax unpaid from the due date
8 of payment until paid. Any wholesaler failing to furnish reports when required

9 shall be assessed a penalty of one hundred dollars for each day such reports
10 are delinquent. The state treasurer may forgive all or part of any penalty for
11 good cause shown. If any wholesaler shall file a fraudulent return, there shall
12 be added to the tax an amount equal to the tax evaded or attempted to be
13 evaded and such wholesaler shall also be guilty of a class C felony. All such
14 taxes and civil penalties may be collected by assessment or distraint, and no
15 court of this state shall enjoin the collection of any such tax or civil penalty.
16 No wholesaler shall purchase alcoholic beverages from a manufacturer after
17 notice from the state treasurer that such manufacturer has failed to file required
18 reports with his office. Any wholesaler may have his license suspended or re-
19 voked for violation of any of the provisions of this title after a hearing conduct-
20 ed similar to that prescribed by this law.

The Committee Counsel noted that Title 5, entitled Alcoholic Beverages, contains offense definitions relating to three distinct areas: First, taxation of alcoholic beverages at the wholesale level; second, licensing of manufacturers, wholesalers, and retailers, and prohibition of unfair competition by wholesalers; and third, a prohibition on the disposition of alcoholic beverages to, or purchase by, minors.

IT WAS MOVED BY JUDGE HEEN that the Committee accept sections 5-01-04, 5-01-11, and 5-03-06 as drafted.

Representative Hilleboe stated that he had a question concerning Section 5-01-11. He wondered why the treasurer was engaged in the regulation of commercial credits in the liquor industry. He stated that he felt this was not a normal province in which the Treasurer ought to act, and that regulation of commercial credits was not carried on in any other industry in that manner. Judge Teigen noted that Subsection 1 of Section 5-01-11 utilized the phrase "each segment" of the liquor industry. He felt that that was an ambiguous phrase.

The Chairman directed the staff to put Section 5-01-11 into a separate bill, and to consider Representative Hilleboe's and Judge Teigen's comments in the draft, which draft would be separate and apart from the main draft which would also contain a version of Section 5-01-11.

At this point REPRESENTATIVE LUNDENE SECONDED JUDGE HEEN'S MOTION to adopt Sections 5-01-04, 5-01-11, and 5-03-06.

JUDGE TEIGEN MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE STONE, to change the penalty classification in Sections 5-01-04 and 5-01-11 to class A misdemeanors.

Mr. Kelsch, the Burleigh County State's Attorney, said he did not believe it realistic to provide for sentences of imprisonment for wholesalers and retailers of alcoholic beverages. The Chairman suggested that the Committee deal with classification of the offenses at this time and look at the substance of the alcoholic beverage control statutes at a later date. JUDGE TEIGEN'S SUBSTITUTE MOTION THEN CARRIED by a vote of 8-ayes; 3-nays.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY JUDGE TEIGEN, AND CARRIED that the Committee accept Section 5-03-06 as drafted.

The Chairman stated that he was seriously considering having the Committee go through Title 5 as a side issue, but that in the meanwhile the staff should prepare a draft of Title 5 in which the penalty classifications more closely approximate the current penalties.

The Committee recessed at 5:05 p.m. and reconvened at 9:00 a.m. on Tuesday, June 26, 1973, at which time they considered a second draft of the provisions of Title 5.

The Committee Counsel noted that the sections relating to manufacturing, licensing (5-01-04); remittance of the alcoholic beverage wholesalers' tax (5-03-06); and unfair competition by wholesalers (5-01-11) have already been acted upon by the Committee. He noted that all of the remaining sections in Title 5 have, in the second draft, been classified as class A misdemeanors.

The Committee Counsel recommended that the section prohibiting disturbance of the peace and disorderly conduct be repealed as it is covered under Section 12.1-31-01 of the new Criminal Code.

The Chairman called on Mr. Kelsch who indicated it was his feeling that some penalties in the draft were too high. He agreed with the Committee Counsel that the disorderly conduct statute in Title 5 could be repealed. He also said that the "bottle club" statute was unenforceable. Mr. Kelsch also felt that the penalty for Section 5-01-08 should be a class B misdemeanor rather than a class A misdemeanor, and that Section 5-01-12 should be deleted.

IT WAS MOVED BY REPRESENTATIVE STONE AND SECONDED BY REPRESENTATIVE LUNDENE that the provisions of Section 5-01-03 providing a penalty for illegal distribution of alcoholic beverages be inserted as part of Section 5-03-01 which is the section regarding the wholesale licensing requirement, and that the penalty classification be set as a class A misdemeanor.

Professor Lockney requested that the question be divided with the first question being simply the deletion of Section 5-01-03; and the question of penalty classification and amendment of Section 5-03-01 being the second question. The Chairman directed that the question be so divided, and on the question of deletion of Section 5-01-03, THE MOTION CARRIED. Thereafter, PROFESSOR LOCKNEY MADE A SUBSTITUTE MOTION regarding Section 5-03-01 to the effect that it be classified as a "violation" (infraction). THIS MOTION WAS SECONDED BY REPRESENTATIVE ROYSE.

REPRESENTATIVE LUNDENE, WITH A SECOND BY JUDGE HEEN, MADE A SUBSTITUTE MOTION that Section 5-03-01 be amended to include the provisions of Section 5-01-03 and be classified as a class A misdemeanor.

The Committee discussed the desirability of having uniformity between the penalty provisions assessed against a retailer who retails alcoholic beverages without a license and against a wholesaler who wholesales alcoholic beverages without a license.

Thereafter, REPRESENTATIVE LUNDENE'S SUBSTITUTE MOTION FAILED by a vote of 6-ayes; 5-nays. PROFESSOR LOCKNEY'S MOTION THEN PASSED by a vote of 6-ayes; 5-nays.

IT WAS MOVED BY SENATOR JONES, SECONDED BY PROFESSOR LOCKNEY, AND CARRIED that Section 5-01-05.3 dealing with disturbing the peace or disorderly conduct be repealed.

The Committee discussed Section 5-01-08 which provides a prohibition against persons under twenty-one years of age purchasing or possessing alcoholic beverages. The Committee discussed the desirability of reducing the proposed offense classification from a class A misdemeanor to a class B misdemeanor.

IT WAS MOVED BY SENATOR JONES AND SECONDED BY REPRESENTATIVE HILLEBOE that Section 5-01-08 be reclassified as a class B misdemeanor. REPRESENTATIVE LUNDENE, WITH A SECOND BY JUDGE HEEN, MADE A SUBSTITUTE MOTION that Section 5-01-08 be accepted as drafted, i.e., classified as a class A misdemeanor. THIS MOTION FAILED, and thereafter SENATOR JONES' MAIN MOTION PASSED.

The Committee discussed Section 5-01-08.1 making it a class A misdemeanor to misrepresent or misstate age with intent to secure alcoholic beverages.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE AND SECONDED BY REPRESENTATIVE ROYSE that the classification of Section 5-01-08.1 be changed to a class B misdemeanor.

REPRESENTATIVE LUNDENE MADE A SUBSTITUTE MOTION, SECONDED BY JUDGE HEEN, that Section 5-01-08.1 be accepted as drafted, i.e., as a class A misdemeanor. THIS MOTION FAILED by a vote of 4-ayes; 6-nays.

Thereafter, REPRESENTATIVE HILLEBOE'S MAIN MOTION PASSED by a vote of 6-ayes; 4-nays.

The Committee discussed Section 5-01-09 and IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY REPRESENTATIVE RAU that the Committee accept the draft of Section 5-01-09 as presented, i.e., as a class A misdemeanor.

REPRESENTATIVE ROYSE MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE HILLEBOE, that Section 5-01-09 be reclassified as a class B misdemeanor. THIS MOTION FAILED.

Thereafter, REPRESENTATIVE LUNDENE'S MAIN MOTION ON SECTION 5-01-09 PASSED.

The Committee discussed Section 5-01-10 prohibiting the operation of "bottle clubs". IT WAS MOVED BY REPRESENTATIVE STONE that Section 5-01-10 be reclassified as a "violation" (infraction).

IT WAS MOVED BY REPRESENTATIVE LUNDENE that Section 5-01-10 be accepted as drafted, i.e., as a class A misdemeanor, WHICH MOTION DID NOT RECEIVE A SECOND.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE that Section 5-01-10 be classified as a class A felony, WHICH MOTION DID NOT RECEIVE A SECOND.

REPRESENTATIVE HILLEBOE SECONDED REPRESENTATIVE STONE'S MOTION WHICH FAILED by a vote of 5-ayes; 6-nays.

REPRESENTATIVE LUNDENE REITERATED HIS MOTION to accept Section 5-01-10 as drafted, and THE MOTION WAS SECONDED BY JUDGE HEEN.

REPRESENTATIVE HILLEBOE MADE A SUBSTITUTE MOTION that Section 5-01-10 be classified as a class B misdemeanor and THIS MOTION WAS SECONDED BY REPRESENTATIVE STONE, AND CARRIED by a vote of 7-ayes and 2-nays. Thus, REPRESENTATIVE LUNDENE'S MAIN MOTION WAS RENDERED MOOT.

The Committee discussed Section 5-01-12 which provides that peace officers must diligently enforce the liquor laws, and makes it a class A misdemeanor for a peace officer to fail to do so. The Committee Counsel noted that Section 12.1-11-06 also made it a class A misdemeanor for a public servant, including peace officers, to refuse to perform their duties.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 5-01-12 be repealed.

The Committee discussed Section 5-02-01 which requires liquor retailers to be licensed. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE ROYSE, AND UNANIMOUSLY CARRIED that Section 5-02-01 be accepted as drafted, i.e., classified as a class A misdemeanor.

The Committee discussed Section 5-02-05 which prohibits disposal of alcoholic beverages on certain days. IT WAS MOVED BY PROFESSOR LOCKNEY AND SECONDED BY REPRESENTATIVE ROYSE that Section 5-02-05 be reclassified as a "violation" (infraction). REPRESENTATIVE LUNDENE MADE A SUBSTITUTE MOTION, SECONDED BY JUDGE HEEN, AND CARRIED to accept Section 5-02-05 as drafted, i.e., classified as a class A misdemeanor. Thus, THE MAIN MOTION FAILED.

The Committee discussed Section 5-02-06 prohibiting persons under 21 years of age from remaining on licensed premises. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 5-02-06 be accepted as drafted, i.e., classified as a class A misdemeanor.

The Committee discussed Section 5-02-07 prohibiting the sale of certain items on premises licensed for the sale of alcoholic beverages. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 5-02-07 be repealed.

The Committee discussed Section 5-02-08 which makes a licensee who permits disorderly conduct on his premises guilty of a class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY SENATOR JONES, AND CARRIED that Section 5-02-08 be repealed.

The Committee next discussed proposed revisions to criminal offense definitions in Title 60. Mr. Wefald noted that he had had discussions with Mr. Richard J. Bresnahan the Director of the Warehouse Division of the Public Service Commission, and they had agreed that only one section should be omitted, because it was covered under Title 12.1, and that section was Section 60-02-34.

The Committee discussed Section 60-02-10, which reads as follows:

1 60-02-10. WAREHOUSE LICENSE TO BE POSTED - PENALTY - REVOCATION
2 OF LICENSE.) The license obtained by a public warehouseman shall be posted
3 in a conspicuous place in the public warehouse licensed. Any public warehouse-
4 man who shall transact business without first procuring a license (((, upon con-
5 viction, shall be fined not less than twenty-five dollars for each day such busi-
6 ness is carried on))) shall be guilty of a class B misdemeanor. The commission
7 shall revoke the license of any warehouse for cause upon notice and hearing.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the classification of Section 60-02-10 be changed to a "violation" (infraction), and that after the word "procuring" the words "and conspicuously posting" be added.

The Committee discussed Section 60-02-12, which reads as follows:

1 60-02-12. CHEATING OR FALSE WEIGHING - PENALTY.) Any person,
2 who knowingly shall cheat, or weigh falsely any wheat or other agricultural
3 product, or who shall violate any of the provisions of this chapter, where
4 punishment is not specifically provided for, shall be guilty of a class A misde-
5 meanor (((and shall be punished by a fine of not less than two hundred dollars
6 nor more than one thousand dollars, or by imprisonment in the county jail for a
7 period of not more than one year))).

IT WAS MOVED BY REPRESENTATIVE STONE AND SECONDED BY REPRESENTATIVE ROYSE that Section 60-02-12 be accepted as drafted. The Committee discussed the fact that a portion of the section, relating to cheating and weighing falsely, could be covered under the "theft" provisions of the new Criminal Code. It was suggested that Section 60-02-12 could be footnoted to make reference to the theft provisions in the Criminal Code.

REPRESENTATIVE MURPHY MADE A SUBSTITUTE MOTION to delete Section 60-02-12. THIS MOTION FAILED FOR LACK OF A SECOND.

PROFESSOR LOCKNEY THEN MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE RAU, AND CARRIED to delete from the section the following words commencing in line 2 ", who knowingly shall cheat, or weigh falsely any wheat or other agricultural product, or", and to change the classification of the section to a "violation" (infraction).

The Committee discussed Section 60-02-21, which reads as follows:

1 60-02-21. ISSUANCE OF INFORMAL MEMORANDA FORBIDDEN - PENALTY.)

2 (((The failure of a warehouseman))) A warehouseman who fails to issue a re-
3 ceipt, as is provided in sections 60-02-13 and 60-02-14, or the issuance of
4 slips, memoranda, or any other form of receipt embracing a different ware-
5 house or storage contract than is provided for specifically in this chapter, shall
6 be (((deemed a misdemeanor))) guilty of a class A misdemeanor.

Mr. Wefald noted that the words "the issuance of" preceding the word "slips" would, in the context of the section, have to be changed to "who issues". IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that that correction, as noted by Mr. Wefald, be made, and that the section be classified as a class A misdemeanor.

The Committee discussed Section 60-02-29, which reads as follows:

1 60-02-29. ALLOWANCE FOR DOCKAGE - PENALTY FOR VIOLATION.) Any
2 public warehouseman within this state, who shall violate the provisions of sec-
3 tion 60-02-28, shall be guilty of a class B misdemeanor (((and shall be punish-
4 ed by a fine of not less than ten dollars nor more than one hundred dollars, or
5 by imprisonment in the county jail for not less than ten days nor more than
6 thirty days, or by both such fine and imprisonment))).

Mr. Wefald noted that Section 60-02-29 refers to Section 60-02-28 which requires all public warehousemen to remove and make allowance for dockage of grain before testing it. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 60-02-29 be accepted as drafted.

The Committee discussed Section 60-02-34, which reads as follows:

1 (((60-02-34. REFUSAL TO DELIVER GRAIN - LARCENY.) Every warehouse-
2 man who, after demand and payment or tender of storage charges, willfully
3 shall neglect or refuse to deliver to the person making such demand the full
4 amount of grain of the grade and kind to which he is entitled, or to pay the
5 market value thereof, shall be guilty of larceny.)))

Mr. Wefald noted that this section was covered under the "theft" section of the Criminal Code and could be deleted here. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY PROFESSOR LOCKNEY, AND CARRIED that Section 60-02-34 be repealed.

The Committee discussed Section 60-02-39, which reads as follows:

1 60-02-39. WAREHOUSE NOT TO BE CLOSED WITHOUT PERMISSION FROM

2 COMMISSION.) Every licensed warehouse shall be kept open for business in
3 order to serve the public. Upon application and sufficient cause shown, the
4 commission may allow any warehouse to be closed for such length of time as
5 may be stated in the order issued therein. An application to close shall make
6 provision for the redemption of outstanding storage tickets satisfactory to the
7 commission. Any such public warehouseman who shall close his warehouse
8 without first having received permission from the commission to close shall be
9 guilty of a class A misdemeanor and the license issued may be revoked by the
10 commission.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY SENATOR JONES,
AND CARRIED that Section 60-02-39 be accepted as drafted.

The Committee discussed Section 60-03-05, which reads as follows:

1 60-03-05. ROVING GRAIN OR HAY BUYER MUST CARRY LICENSE - PENALTY
2 FOR TRANSACTING BUSINESS WITHOUT LICENSE AND GIVING A BOND.) The
3 licensee shall have his license in his possession at all times while he is engaged
4 in the business of roving grain or hay buyer and must exhibit the said license
5 to each and every person from whom he purchases grain thereunder. Any roving
6 grain or hay buyer who shall transact business without first procuring a license
7 and giving a bond as herein provided shall be guilty of a class B misdemeanor
8 (((and shall be punished accordingly))).

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE MURPHY,
AND CARRIED that Section 60-03-05 be accepted as drafted.

The Committee discussed Section 60-03-06, which reads as follows:

1 60-03-06. CHEATING OR FALSE WEIGHING - PENALTY.) Any person who
2 knowingly shall cheat the seller of grain by false weight or otherwise, or who
3 shall violate any provisions of this chapter where punishment is not otherwise
4 provided for, shall be guilty of a class A misdemeanor (((and shall be punished
5 by a fine of not less than two hundred dollars nor more than one thousand
6 dollars, or by imprisonment in the county jail for not less than ninety days nor
7 more than one year, or by both such fine and imprisonment))).

It was noted that portions of the language of Section 60-03-06 which relate to cheating or false weighing could be deleted as it was covered by the "theft" provisions of the new Criminal Code.

IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the words "CHEATING OR FALSE WEIGHING"; and the words "knowingly shall cheat the seller of grain by false weight or otherwise, or who", commencing in line 2, should be deleted from Section 60-03-06, and the section should be classified as a "violation" (infraction).

Professor Lockney suggested that, since Section 60-03-06 had been approved as a "violation", the Committee should also make Section 60-03-05 a "violation". IT WAS MOVED BY PROFESSOR LOCKNEY AND SECONDED BY REPRESENTATIVE ROYSE that the Committee reconsider its action in adopting Section 60-03-05, and that Section 60-03-05 be reclassified as a "violation" (infraction). THIS MOTION LOST.

The Committee discussed Section 60-03-07, which reads as follows:

1 60-03-07. COMMISSION MAKES RULES AND REGULATIONS GOVERNING
2 ROVING GRAIN OR HAY BUYERS.) The commission shall make such rules and
3 regulations governing the business of roving grain or hay buyers and shall
4 issue such licenses as may be necessary and proper for the carrying into effect
5 of the purposes of this chapter. Any person or corporation violating any of
6 such rules or regulations is guilty of a class A misdemeanor ((and shall be
7 punished accordingly))).

IT WAS MOVED BY PROFESSOR LOCKNEY AND SECONDED BY REPRESENTATIVE ROYSE that the section be amended to delete the words "or corporation" after the word "person" in line 5, and to reclassify the section as a "violation" (infraction).

REPRESENTATIVE STONE MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED by a vote of 8-ayes; 2-nays to make Section 60-03-07 a class B misdemeanor, and to delete the words "or corporation" after the word "person" in line 5.

The Committee discussed Section 60-05-05, which reads as follows:

1 60-05-05. PENALTY FOR INTERFERING WITH EXAMINER.) Any person who
2 interferes with the examiner in the performance of his duties is guilty of a
3 class B misdemeanor ((and shall be punished by a fine of not less than twenty-
4 five dollars nor more than one hundred dollars, or by imprisonment in the coun-
5 ty jail for not less than ten days nor more than thirty days, or by both such
6 fine and imprisonment))).

Mr. Wefald noted that there was a possibility that Section 60-05-05 was covered under Section 12.1-08-02, at least in regard to forceful prevention or interference with duties. The Committee Counsel noted that the definition of "public servant" in the Criminal Code would certainly cover Public Service Commission examiners, and the only question was whether one could interfere with an examiner by other than a physical obstruction or the creation of a substantial risk of bodily injury.

IT WAS MOVED BY SENATOR JONES, SECONDED BY PROFESSOR LOCKNEY, AND CARRIED that Section 60-05-05 be deleted, and that the staff reconsider the drafts of Section 12.1-08-01 and 12.1-08-02 in light of Section 60-05-05 and similar sections.

The Committee discussed Section 60-06-06, which reads as follows:

1 60-06-06. PENALTY FOR VIOLATION OF APPLICANT'S RIGHTS.) If the cor-
2 poration owning, leasing, or operating the railway at a station or siding on
3 which a public warehouse has been erected, either directly or indirectly, by any
4 agent, servant, or attorney, interferes with the construction or operation of said
5 warehouse or elevator upon said selected site, or refuses to render the service
6 necessary for the proper maintenance and operation of said elevator or warehouse
7 as asked for in the application and petition mentioned in section 60-06-02, it is
8 guilty of a class A misdemeanor.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 60-06-06 be repealed.

The Committee discussed Section 60-07-10, which reads as follows:

1 60-07-10. VIOLATIONS - PENALTY.) Any person or corporation violating
2 the provisions of this chapter is guilty of a class A misdemeanor ((and shall
3 be punished by a fine of not more than one thousand dollars))).

The Committee Counsel noted that Chapter 60-07 deals with the licensing and bonding of storage companies other than grain storage companies.

IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the words "or corporation" be deleted from the section, and that it be reclassified as a "violation" (infraction).

The Committee discussed Section 60-09-05 which provides that it is a class B misdemeanor for a weighmaster to weigh wrongfully, or to issue a false ticket and which reads as follows:

1 60-09-05. PENALTY FOR WRONGFUL WEIGHING OR ISSUING OF A FALSE
2 SCALE TICKET.) The wrongful weighing or the issuing of a false ticket by a

3 weighmaster or deputy weighmaster shall be a class B misdemeanor (((punish-
4 able by imprisonment in the county jail for not more than thirty days or by a
5 fine of not more than one hundred dollars or by both such fine and imprison-
6 ment))).

It was noted that this section could probably be deleted as it was covered under the "theft" provisions of the Criminal Code. IT WAS MOVED BY REPRESENTATIVE ROYSE AND SECONDED BY REPRESENTATIVE HILLEBOE that Section 60-09-05 be repealed.

The Committee recessed for lunch and reconvened at 1:30 p.m. and considered the motion pending on Section 60-09-05.

REPRESENTATIVE LUNDENE MADE A SUBSTITUTE MOTION to retain Section 60-09-05 as drafted. THIS MOTION WAS SECONDED BY REPRESENTATIVE STONE AND CARRIED by a vote of 5-ayes; 3-nays.

The Committee discussed a draft of a proposed "infraction" offense classification which would become the sixth subsection of Section 12.1-32-01 and would read as follows:

1 "6. Infraction, for which a maximum fine of five hundred dollars may be
2 imposed. All procedural provisions relating to the prosecution of
3 misdemeanors shall apply to the prosecution of infractions. Following
4 conviction of an infraction, the offender may be sentenced in accord-
5 ance with subsection 1 of section 12.1-32-02, except that a term of
6 imprisonment may not be imposed except in accordance with subsection
7 3 of section 12.1-32-05. A person charged with an infraction is not
8 entitled to be furnished counsel at public expense nor to have a trial
9 by jury."

The Chairman directed the members of the Committee to study the infraction draft as it would be taken up early in the next meeting. Mr. Wolf noted that he desired the Committee Counsel to redraft the infraction provision to include the possibility of a class B misdemeanor punishment for the second infraction committed within a given time period.

The Committee turned its attention to the criminal offense definitions contained in Title 64. Mr. Wefald stated that he conducted a telephone conference with Mr. Ray Walton, the Commerce Counsel for the Public Service Commission, and held a meeting with Mr. Adin Helgeson, the Chief Inspector of the Weights and Measures Division of the PSC.

The sections in Title 64 read as follows:

1 64-03-01. FALSE WEIGHTS AND MEASURES - PENALTY.) (((Any person
2 who shall))) It shall be unlawful for any person to:

3 1. Offer or expose for sale, sell, use, or have in his possession a false
4 scale, weight, measure, or weighing or measuring device, for use in
5 buying or selling any commodity or thing, or any weight, measure,
6 or weighing or measuring device which has not been sealed within
7 one year as provided by section 64-02-13;

8 2. Dispose of any condemned weight, measure, or weighing or measur-
9 ing device, or remove any tag placed thereon by any authorized em-
10 ployee of the department;

11 3. Sell, offer, or expose for sale less than the quantity represented;

12 4. Sell, offer for sale, or have in his possession for the purpose of
13 selling, any device or instrument to be used or calculated to falsify
14 any weight or measure;

15 5. Refuse to pay any fee charged for testing and sealing or condemning
16 any scale, weight, measure, or weighing or measuring device

17 (((, shall be guilty of a misdemeanor and shall be punished by a fine of not
18 less than twenty dollars nor more than one hundred dollars, or by imprison-
19 ment in the county jail for not less than ten days nor more than thirty days,
20 and the costs of such proceedings))).

1 64-03-02. FALSE WEIGHTS - PENALTY FOR PUBLIC USE.) (((Any person
2 who knowingly uses))) It shall be unlawful for any person to knowingly use
3 and fraudulently make use of a weight, measure, scale, balance, or beam for
4 the purpose of purchase or sale, or (((who keeps))) to keep such device for
5 public use, which does not conform to the legal standard of weights and
6 measures of the state, or (((who alters))) to alter a weight, measure, scale,

7 balance, or beam after it has been adjusted and sealed so that it does not con-
8 form to such standard ((, and fraudulently makes use thereof, shall be
9 punished by a fine of fifty dollars for each offense))).

1 64-03-03. FRAUDULENTLY INCREASING WEIGHT - PENALTY.) ((Any
2 person who puts or conceals))) It shall be unlawful for any person to place or
3 conceal in any bag, bale, box, barrel, or other package containing goods
4 usually sold by weight any foreign substance for the purpose of increasing the
5 weight of such container or package ((, is punishable by a fine of twenty-five
6 dollars for each offense))).

1 (((64-03-04. BALED HAY - CORRECT WEIGHT - VIOLATION.) Every per-
2 son who puts up or presses any bundle of hay for market and in so doing
3 omits putting the number of pounds in each bundle or bale for which he sells
4 or offers to sell it is guilty of a misdemeanor.)))

1 64-03-05. FUEL REQUIRED TO BE WEIGHED - CORRECT SCALE WEIGHT -
2 SLIP DELIVERED - VIOLATION - PENALTY.) ((Any person selling or deliver-
3 ing))) It shall be unlawful for any person to sell or deliver any coal, lignite,
4 or briquette fuel within any city ((or village))) in this state, where adequate
5 weighing facilities exist, without first having the same weighed or without de-
6 livering to the purchaser a duplicate scale weight slip showing the true weight
7 thereof ((, is guilty of a misdemeanor and shall be punished by a fine of not
8 less than ten dollars nor more than one hundred dollars, or by imprisonment
9 in the county jail for not more than thirty days))).

1 64-03-06. STAMPING FALSE WEIGHT OR TARE - PENALTY.) ((Every
2 person who))) It shall be unlawful for any person to knowingly ((marks)))

3 mark or (((stamps))) stamp false or short weight or false tare on any cask or
4 package, or to knowingly (((sells))) sell or (((offers))) offer for sale any
5 cask or package so marked (((, is guilty of a misdemeanor))).

1 64-03-07. PENALTY FOR VIOLATING PROVISIONS RELATING TO STANDARD
2 MEASUREMENTS AND WEIGHTS.) (((Any person who))) It shall be unlawful
3 for any person to, in buying, (((shall))) take any greater number of pounds
4 or cubic feet to the bushel, barrel, ton, cord, gallon, or fractional part, as
5 the case may be, than is provided by the standards established in this title, or
6 (((who))) to, in selling (((shall))), give any less number (((, shall be guilty
7 of a misdemeanor and shall be punished by a fine of not less than ten dollars
8 nor more than one hundred dollars, or by imprisonment in the county jail for
9 not less than ten days nor more than ninety days))).

1 64-03-08. PENALTY FOR HINDERING AN INSPECTOR IN HIS OFFICIAL
2 DUTIES.) (((Any person who shall))) It shall be unlawful for any person to
3 hinder, impede, restrict, or mislead in any way any employee of the department
4 while in the performance of his official duties (((shall be guilty of a misdemeanor
5 and shall be punished by a fine of not less than twenty dollars nor more than
6 one hundred dollars, or by imprisonment in the county jail for not less than ten
7 days nor more than ninety days for each offense))).

1 64-03-09. GENERAL PENALTY.) Any person who shall violate any of the
2 provisions of this title wherein a special penalty has not been provided shall be
3 guilty of a class B misdemeanor (((and shall be punished by a fine of not more
4 than one hundred dollars, or by imprisonment in the county jail for not more
5 than thirty days, or by both such fine and imprisonment))).

1 64-04-05. PENALTY.) Any person who violates any of the provisions of
2 this chapter or fails to comply with its requirements or any of the rules and
3 regulations issued hereunder, shall be deemed guilty of a class B misdemeanor
4 (((and shall be punished by a fine of not more than one hundred dollars or by
5 imprisonment for not more than thirty days or by both such fine and imprison-
6 ment))).

After discussion, Mr. Wolf inquired as to why it wouldn't be possible to draft one section encompassing all the provisions, relating to criminal offense definitions, contained in Title 64.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 64-03-04 be repealed.

IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the staff redraft the penalty provisions in Title 64 to include, as class B misdemeanors, the provisions of Sections 64-03-01 through 64-03-09, and to eliminate the one-year requirement in Section 64-03-01.

It was understood that, following passage of that motion, Section 64-04-05 would be retained as drafted.

The Committee discussed the criminal offense definitions in Title 65. Mr. Wefald noted that he had met with Mr. David Evans, the Attorney for the Workmen's Compensation Bureau, and had discussed the penal provisions with him. Mr. Evans had suggested that the Bureau could perhaps submit a redraft of Section 65-01-07 to the Legislature for consideration during the 1975 session. He noted that it was the Bureau's desire to omit the criminal penalties from Section 65-01-07 and to change the requirements regarding the employer's reporting and recording of injuries to employees.

Mr. Wefald noted Mr. Evans had also indicated that, in his judgment, Section 65-03-02 dealing with the penalty for violation of safety rules and regulations had been virtually preempted by the federal government, under OSHA, and that the section could be omitted.

The Committee discussed Section 65-01-05, which reads as follows:

1 65-01-05. EMPLOYMENT OF THOSE UNPROTECTED BY INSURANCE UNLAW-
2 FUL - EFFECT OF FAILURE TO SECURE COMPENSATION - PENALTY - INJUNC-
3 TION.) It shall be unlawful for any person, firm, or corporation to employ
4 anyone, or to receive the fruits of the labor of any person, in a hazardous em-
5 ployment as defined in this title, without first making application for workmen's
6 compensation insurance coverage for the protection of such employees by notice
7 to the bureau of the intended employment, the nature thereof and the estimated

8 payroll expenditure for the coming twelve-month period. Failure to secure
9 workmen's compensation coverage for employees by application for workmen's
10 compensation insurance shall constitute a class A misdemeanor (((, punishable
11 by a fine of not more than five hundred dollars or imprisonment for not more
12 than one year, or both. Where the employer is a corporation, the president,
13 secretary and treasurer thereof shall be liable for the failure to secure work-
14 men's compensation coverage under this section))). In addition to the penalties
15 prescribed above the bureau may, by injunction proceedings as provided for in
16 this title, enjoin any employer from unlawfully employing uninsured workers.

The Committee discussed the extent of individual liability of certain corporate officers. It was noted that the provision for individual liability might not refer only to criminal liability, but might also include civil liability. Mr. Evans indicated that it was desirable to retain the reference to the individual liability of corporate officers in order to be able to use that as a prod to the securing of coverage.

IT WAS MOVED BY MR. WOLF, SECONDED BY JUDGE PEARCE, AND CARRIED that triple parentheses be inserted after the word "both" in line 12 of the section (65-01-05); that in line 13, a comma be inserted after the word "secretary", the word "and" following the word "secretary" be deleted, a comma be inserted after the word "treasurer" and the word "thereof" be enclosed in triple parentheses, and after the word "thereof" the words "or person with primary responsibility" be inserted; the triple parentheses in line 14 be deleted; and the words "person, firm, or corporation" in line 3 be deleted and the word "employer" be substituted therefor.

The Committee discussed Section 65-01-07, which reads as follows:

- 1 65-01-07. EMPLOYER MUST KEEP RECORD OF INJURIES TO EMPLOYEES -
2 REPORTS REQUIRED - CONTENTS - PENALTY.) Every employer shall keep a
3 record of all injuries fatal or otherwise received by his employees in the course
4 of their employment. Within one week after the occurrence of an accident re-
5 sulting in injury, report thereof shall be made in writing to the bureau upon
6 blanks to be procured from the bureau for that purpose. Such report shall show:
- 7 1. The name and nature of the business of the employer;
 - 8 2. The location of his establishment or place of work;
 - 9 3. The name, address, and occupation of the injured employees;
 - 10 4. The name, nature, and cause of injury; and
 - 11 5. Such other information as may be required by the bureau.

12 Any employer who refuses or (((neglect))) neglects to make any report required
13 under the provisions of this section shall be guilty of a class B misdemeanor
14 (((and shall be punished by a fine of not more than five hundred dollars for
15 each offense))).

Mr. Evans noted that Section 65-01-07 could be repealed as a new section would have to be submitted for legislative approval in order to provide conformance with the requirements of the Occupational Safety and Health Act.

IT WAS MOVED BY MR. WOLF, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 65-01-07 be repealed.

The Committee discussed Section 65-01-10, which reads as follows:

1 65-01-10. WAIVER OF RIGHTS TO COMPENSATION VOID - DEDUCTION OF
2 PREMIUM FROM EMPLOYEE PROHIBITED - PENALTY.) No agreement by an em-
3 ployee to waive his rights to compensation under the provisions of this title
4 shall be valid. No agreement by any employee to pay any portion of the pre-
5 mium paid or payable by his employer into the fund shall be valid, and any
6 employer who deducts any portion of such premium from the wages or salary of
7 any employee entitled to the benefits of this title is guilty of a class B misde-
8 meanor (((and shall be punished by a fine of not more than one hundred dollars
9 for such offense))).

IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 65-01-10 be reclassified as an infraction, and when so reclassified that it be adopted.

The Committee discussed Section 65-03-02, which reads as follows:

1 65-03-02. PENALTY FOR VIOLATION OF SAFETY RULE OR REGULATION -
2 FINE - PENALTY PREMIUM RATING - EXTENSION OF TIME TO COMPLY.) Any
3 employer who shall fail to comply with any reasonable safety rule or regulation
4 made in accordance with the provisions of this chapter, within twenty days after
5 notice from the bureau or its authorized agent, shall be guilty of a class B mis-
6 demeanor (((and shall be punished by a fine of not less than twenty-five dollars
7 nor more than one hundred dollars))), and, in addition to such fine, the bureau

8 may penalize the premium rating of the employer guilty of such violation in an
9 amount not exceeding ten percent during the year or years in which such viola-
10 tion continues. Upon application and a proper and sufficient showing that the
11 rule or regulation cannot be complied with within the twenty days herein speci-
12 fied, the bureau may extend such time for such period as the facts in each case
13 warrant, but not to exceed three months.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY PROFESSOR LOCKNEY, AND CARRIED that Section 65-03-02 be reclassified as an infraction, and that the words ", in addition to such fine," be deleted from line 7.

The Committee discussed Section 65-04-15, which reads as follows:

1 65-04-15. INFORMATION IN EMPLOYER'S REPORTS CONFIDENTIAL - PENALTY
2 IF EMPLOYEE OF BUREAU DIVULGES INFORMATION.) The information contained
3 in an employer's report to the bureau shall be for the exclusive use and informa-
4 tion of the bureau in the discharge of its official duties and shall not be open to
5 the public nor used in any court in any action or proceeding pending therein un-
6 less the bureau is a party thereto. The information contained in such report,
7 however, may be tabulated and published by the bureau in statistical form for the
8 use and information of the state departments and of the public. Any person in
9 the employ of the bureau who, while acting as an employee of the bureau, shall
10 divulge to any person other than an officer or employee of the bureau any informa-
11 tion secured by him in respect to the transactions, property, or business of any
12 company, firm, corporation, person, association, copartnership, or public utility,
13 shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be
14 disqualified from holding any appointment with the bureau.

15 The workmen's compensation bureau may upon request of the state tax commis-
16 sioner, the secretary of state, or the unemployment compensation division of the
17 employment security bureau furnish to such commissioner or bureau a list or lists
18 of employers showing only the names, addresses, and workmen's compensation
19 bureau file identification numbers of such employers, provided that any such list

20 so furnished shall be used by the tax commissioner, the secretary of state, or
21 the employment security bureau only for the purpose of administering their
22 duties.

Professor Lockney noted that Section 12.1-13-01 made it a class A misdemeanor to disclose confidential information acquired while acting as a public servant, and acquired under a statutory duty of confidentiality. He indicated that that section should be the one under which a person violating the statutory duty of confidentiality established by Section 65-04-15 should be prosecuted.

IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the following sentence replace the last sentence of the first paragraph of Section 65-04-15: "Anyone who is convicted under section 12.1-13-01 shall be disqualified from holding any appointment with the bureau."

The Committee considered Section 65-05-24, which reads as follows:

1 65-05-24. ACCEPTING COMPENSATION AFTER MARRIAGE - PENALTY.) If
2 any person entitled to compensation under this chapter whose compensation
3 ceases upon his or her marriage, fails to notify the bureau of such marriage
4 within sixty days, such person shall be guilty of a class A misdemeanor.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 65-05-24 be accepted as drafted.

The Committee discussed Section 65-05-31, which reads as follows:

1 (((65-05-31. FALSE STATEMENT - PENALTY.) Any person who, in any
2 affidavit required in any claim for compensation, or in any employer's report
3 required by the bureau in connection with any claim for compensation, knowing-
4 ly makes any false statement, is guilty of perjury and shall be punished by a
5 fine of not more than two thousand dollars, or by imprisonment in the peniten-
6 tiary for not more than one year, or by both such fine and imprisonment.)))

The Committee Counsel noted that this section should be deleted as its provisions are encompassed under the provisions of Sections 12.1-11-01 and 12.1-11-02. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 65-05-31 be repealed.

After passage of the motion, Mr. Wolf noted that it would be desirable to have a reference to the penalties for false statements in the statutes relating to the Bureau. He said that having the penalty and operative criminal definition language in Title 12.1 did nothing to notify a potential offender that his act could lead to criminal liability. The Committee Counsel noted that the Bureau, in publishing a paperbound manual of its statutes, could also publish the relevant section in Title 12.1. Judge Pearce stated

that the forms which the Bureau required to be filled out could, at the bottom, contain a statement that the placing of a false statement on this form constitutes a violation of Section 12.1-11-02, and would be punishable thereunder. Mr. Evans agreed that that could be done.

The Committee discussed Sections 65-12-07 and 65-12-08, which read as follows:

1 65-12-07. CERTIFICATE OF INSPECTION REQUIRED - PENALTY.) It shall
2 be unlawful for any person, firm, partnership or corporation to willfully operate
3 a boiler in this state without a valid certificate of inspection. Such operation of
4 a boiler shall constitute a class A misdemeanor on the part of the owner, user or
5 operator thereof (((and shall be punishable by a fine not exceeding five hundred
6 dollars or imprisonment not to exceed six months, or both))). Each day of such
7 unlawful operation should be deemed a separate offense.

1 65-12-08. RULES AND REGULATIONS AND PENALTY FOR VIOLATION.) The
2 bureau shall promulgate rules and regulations for the safe and proper installa-
3 tion, use, operation and inspection of boilers subject to this chapter. Any
4 owner or user of a boiler who fails or refuses to comply with such rules and
5 regulations shall be guilty of a class A misdemeanor.

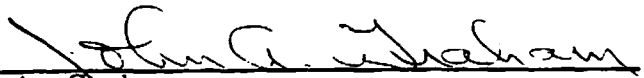
Mr. Wefald explained that these sections had been amended during the 1973 Session, and thus did not yet appear in the pocket parts to the Code. However, they had been revised in the form in which they passed during the 1973 Session. He noted that Section 65-12-07 was classified as a class A misdemeanor which was an increase in punishment (a doubling) over current law. Section 65-12-08 was also classified as a class A misdemeanor which only resulted in an increase in the fine currently authorized.

Representative Royse inquired as to whether the word "owner" in the second sentence of Section 65-12-07 should not be deleted and the words "person, firm, partnership, or corporation" inserted in lieu thereof. Mr. Wefald stated that he did not think so because "owner" was a generic term covering any type of individual or organization "owning" a boiler.

Representative Austin inquired as to whether this section applied to antique boilers, such as those on threshing machines. Mr. Evans replied that if the boiler were going to be used at an exhibition, then it would have to be certificated.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY MR. WOLF, AND CARRIED that Sections 65-12-07 and 65-12-08 be accepted as drafted.

Acting Chairman Jones declared that, without objection, the meeting would be adjourned, subject to the call of the Chair. Hearing no objection, the meeting was declared adjourned at 4:55 p.m. on Tuesday, June 26, 1973.



John A. Graham
Assistant Director

Tentative Agenda

COMMITTEE ON JUDICIARY "A"

Meeting of August 30-31, 1973
Room G-2, State Capitol
Bismarck, North Dakota

OFFICE COPY

TYPED *Klein*

PROOF READ *Paul J. ...*

DATE

Thursday:

- 9:30 a.m. Call to order
Roll call
Minutes of previous meeting
- 9:45 a.m. Consideration of draft relating to an offense classification to be known as an "infraction"
- 12:00 noon Luncheon recess
- 1:15 p.m. Reconvene - Consideration of draft revision of Title 57 criminal offense definitions
- 4:00 p.m. Consideration of draft revision of Title 58 criminal offense definitions
- 5:00 p.m. Recess

* * * * *

Friday:

- 9:00 a.m. Consideration of draft revision of Title 10 criminal offense definitions
- 10:30 a.m. Consideration of draft revision of Section 10-04-18
- 11:00 a.m. Consideration of draft revision of Title 2 criminal offense definitions
- 12:00 noon Luncheon recess
- 1:15 p.m. Reconvene - Continue discussion of Title 2
- 2:00 p.m. Consideration of draft revision of Title 61 criminal offense definitions
- 3:30 p.m. Consideration of draft revision of Title 62 criminal offense definitions
- 5:00 p.m. Adjourn

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, August 30-31, 1973
Room G-2, State Capitol
Bismarck, North Dakota

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:40 a.m. on Thursday, August 30, 1973, in Committee Room G-2 of the State Capitol, Bismarck, North Dakota.

Legislative

Members present: Senator Freed
Representatives Austin, Lundene, Murphy, Rau, Royse,
Stone

Citizen

Members present: Judge Gerald Glaser; Judge Harry Pearce; Police Chief
Glen Eng; Messrs. Rodney Webb and Al Wolf

Legislative

Members absent: Senator Jones
Representative Hilleboe

Citizen

Members absent: Judge Obert Teigen; Judge Douglas Heen; Sheriff Glenn
Wells

Also present:

Mr. Robert Wefald; Mr. James DuBois; Mr. Steven Lies,
Deputy Secretary of State; Mr. Robert Wirtz, State
Tax Department; Mr. Donald Holloway, Securities
Commissioner; Mr. Peter Quist, Deputy Securities
Commissioner; Mr. Ed Bashus, Retailers Association

The Chairman welcomed all members of the Committee and introduced Chief Eng, a newly appointed member of the Committee, and one of two newly appointed members representing the Peace Officers Association.

The Chairman called on the Committee Counsel to review a draft of a proposed "infraction" offense classification, which classification would not authorize imprisonment as a sentence for conviction of a criminal offense. The Committee Counsel noted that the proposal was in two parts, reading as follows:

(A new subsection of section 12.1-32-01)

- 1 6. Infraction, for which a maximum fine of five hundred dollars may be
- 2 imposed on a natural person, or for which a maximum fine of ten
- 3 thousand dollars may be imposed on an organization as defined in
- 4 section 12.1-03-04. Any person convicted of an infraction who has,

5 within one year prior to commission of the infraction of which he
6 was convicted, been previously convicted of an offense classified as
7 an infraction may be sentenced as though convicted of a class B
8 misdemeanor.

1 Section 12.1-32-03.1. PROCEDURE FOR TRIAL OF INFRACTION - INCIDENTS.)

2 1. Except as provided in this subsection, all procedural provisions re-
3 lating to the trial of criminal cases as provided in the statutes or
4 rules relating to criminal procedure shall apply to the trial of a per-
5 son charged with an infraction. A person charged with an infraction
6 is not entitled to be furnished counsel at public expense nor to have
7 a trial by jury unless he may be subject to a sentence of imprison-
8 ment under subsection 6 of section 12.1-32-01.

9 2. Except as provided in this title, all provisions of law and rules of
10 criminal procedure relating to misdemeanors shall apply to infrac-
11 tions, including, but not limited to, the powers of law enforcement
12 officers, the jurisdiction of courts, the periods for commencing ac-
13 tion and bringing a case to trial, and the burden of proof.

14 3. Following conviction of an infraction, the offender may be sentenced
15 in accordance with subsection 1 of section 12.1-32-02, except that a
16 term of imprisonment may not be imposed except in accordance with
17 subsection 3 of section 12.1-32-05.

18 4. If a statute provides that conduct is an infraction without specifically
19 including a requirement of culpability, no culpability is required.

20 5. Following the passage of two years from the date on which an
21 offender was sentenced, or had sentence deferred, on conviction of
22 an infraction, he may petition to have that conviction removed from
23 his records on file with courts and law enforcement agencies. The

24 petition shall be directed to the district court and after hearing, with
25 notice to the state's attorney of the petitioner's county of residence,
26 the court may order that the infraction conviction be expunged from
27 the petitioner's records. A petition under this subsection shall be
28 filed with the clerk of court and shall be accompanied by a twenty-
29 five dollar filing fee. All or a portion of the costs incurred as a
30 result of a hearing pursuant to this subsection may, in the court's
31 discretion, be assessed against the petitioner. A hearing under this
32 section shall be deemed to be a civil proceeding.

The Committee Counsel noted that Subsection 6 defined an offense classification to be known as an "infraction" for which a maximum fine of \$500 could be assessed against a natural person. He noted that an increased fine, up to \$10,000, could be assessed against an "organization". The Committee Counsel indicated that this latter provision was inserted in the draft for discussion purposes only. However, he noted that he was also recommending a separate fine schedule for "organizations".

The Committee Counsel stated that, in accordance with the definition of "offense" contained in Subsection 21 of Section 12.1-01-04, infractions will be "crimes" in North Dakota. The Committee Counsel said that the staff was suggesting that this be the case in order that there be no question as to the procedure to be used (criminal procedure) in the arrest and trial of an offender charged with an infraction, and to differentiate an infraction from a noncriminal violation under Chapter 39-06.1 of the Century Code, dealing with administrative disposition of traffic offenses.

The Committee Counsel noted that Subsection 2 of Section 12.1-32-03.1 was designed to ensure further that procedures to be followed in dealing with a person arrested, and to be tried, for an infraction are the same as those followed when dealing with an alleged misdemeanor.

Subsection 4 of Section 12.1-32-03.1 would establish the proposition that an infraction could be committed without a "guilty mind", i.e., that no culpability is required. The Committee Counsel noted that a provision similar to this was contained in the proposed Federal Criminal Code which the previous interim Committee had used as a model. The only reason that it was dropped from the draft of Senate Bill No. 2045 was because the previous Committee chose not to have an "infraction" classification.

The Committee discussed the idea of a separate infraction fine schedule for "organizations". Mr. Webb inquired as to whether it would comport with the constitutional requirement of equal protection of the law. He noted that an increased fine for organizations in other instances was based on the premise that the organization could not be "jailed". However, in the case of an infraction, no jail sentence was available for a convicted natural person. Mr. Webb noted that he did not have an argument with the concept of a separate fine structure for organizations which was the additional staff proposal.

The Committee discussed the appropriate location, within the Criminal Code, of the proposed fine structure for organizations, and the Committee Counsel noted that it could be an additional subsection to Section 12.1-32-01. No action was taken following this discussion.

(A copy of sections acted upon by the Committee, with Committee changes, is attached to these minutes as Appendix "A".)

After further discussion of Subsection 6 of Section 12-32-01, which creates an "infraction" classification, IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY REPRESENTATIVE MURPHY that the subsection be amended by deleting the words "on a natural person, or for which a maximum fine of ten" in Line 2; deleting Line 3; and deleting the following from Line 4: "section 12.1-03-04".

Judge Pearce noted that he was bothered by the "infraction" classification with relation to Subdivision c of Subsection 1 of Section 12.1-32-09 of the new Criminal Code. He stated that under that subdivision it would be conceivable that a person could be found to be a "persistent offender" if he had been convicted of a Class B felony and two infractions. Judge Pearce stated that he was sure that the Committee did not wish to reach that result.

Representative Murphy inquired as to why the "infraction" type of offenses were not separated out and made non-criminal. Judge Pearce stated that he believed it was because the availability of criminal procedure was desirable and should be maintained.

The Committee then discussed the last sentence of Subsection 6, and more particularly discussed the ways in which the right to counsel of a person charged with a second infraction within one year could be protected.

Thereafter, JUDGE PEARCE'S MOTION STATED ABOVE CARRIED. He then noted that there should be a follow-up amendment to Subdivision c of Subsection 1 of Section 12.1-32-09.

IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY MR. WEBB that Section 12.1-32-01.1 be adopted.

The Committee discussed the relationship of the infraction offense to anti-trust type violations. Judge Pearce noted that the civil action, with its huge monetary judgment potential was what really "hurt" in anti-trust violations.

The Chairman called on Mr. Jim DuBois for comments. He stated that he did not have any comments at this time as he was still attempting to work out what kind of offenses would be covered under the infraction classification. The Committee Counsel noted that that could not be known at this time, as offenses in titles of the Century Code which the staff and the Committee had not considered would certainly be included in the infraction offense classification. Thereafter, JUDGE PEARCE'S MOTION CARRIED and Section 12.1-32-01.1 was adopted.

The Committee discussed Subsection 5 of Section 12.1-32-03.1. Mr. Webb stated that he did not like that section as he did not believe it necessary to provide for the expunging of the record of infraction offenders. Judge Glaser

inquired as to how the physical act of expunging a record would be accomplished. Mr. Webb stated that if such a procedure is to be allowed, why limit it to infractions? Why not provide such a procedure for all convicted offenders after varying amounts of time during which they were on their good behavior?

Judge Pearce stated that he favored the concept of Subsection 5. He did not believe the fact that a person had been convicted of an extremely minor offense should follow him, by being on his record, for the rest of his life.

Mr. Wefald inquired as to whether it might not be appropriate to place the gist of Subsection 5 in a separate statute covering minor crimes. Mr. Webb agreed and suggested that it might be well to consider, at some future date, a separate "expungment" statute.

IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY REPRESENTATIVE RAU that Subsection 5 should be adopted in principle, with substantive and detail changes to be made if necessary, including a change of the word "the" in Line 24 to the word "a".

The Chairman called on Chief Eng for his comments, and the Chief noted that he would favor Judge Pearce's motion at this time, but that the concept of record expungment needed more study. Representative Austin stated that he felt there should be a way to expunge the record of minor offenses. Chief Eng noted that 18-year-old kids are apt to kick up their heels, and that a record of minor offenses committed at that lively age should not follow them forever.

Mr. Webb stated that if the Legislature sees fit to define activity as a criminal offense, then one who sees fit to take that action should pay the consequences, including the fact that a record of his action will be maintained ad infinitum.

Thereafter, JUDGE PEARCE'S MOTION CARRIED with Mr. Webb and Representative Lundene voting in the negative. The Committee recessed for lunch and reconvened at 1:15 p.m.

The Chairman called on Mr. Wefald for an overview of the revised sections in Title 57 of the Century Code. Mr. Wefald noted that he had met with Mr. Kenneth Jakes and Mr. Robert Wirtz, attorneys for the Tax Department, and had reviewed the criminal provisions of Title 57 with them. He indicated that no substantial change in the criminal provisions of the title were being recommended although several sections dealing with personal property tax were being recommended for repeal because the personal property tax itself had been repealed.

The Committee considered Section 57-02-08.1, which reads as follows:

- 1 57-02-08.1. PROPERTY TAX CREDITS FOR PERSONS SIXTY-FIVE YEARS
- 2 OF AGE OR OLDER WITH LIMITED INCOME - PENALTY FOR FALSE STATEMENT.)
- 3 1. Any person sixty-five years of age or older in the year in which
- 4 the tax was levied with an income of three thousand five hundred

dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment up to a maximum reduction of one thousand dollars of assessed valuation on his homestead as defined in section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this subsection regardless of whether or not such person is the head of a family. In no case shall a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection shall not reduce the liability of any person for special assessments levied upon his property. Any person eligible for the exemption herein provided shall sign a statement that he is sixty-five years of age or older and that such income, including that of any dependent, as determined in this chapter does not exceed three thousand five hundred dollars per annum. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. ((Any person knowingly signing a false statement shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment.)) The assessor shall attach such statement to the assessment sheet and shall show the reduction on the assessment sheet.

2. . . .

3. . . .

((4. Any person knowingly signing a false statement in an attempt to qualify for the credit or refund provided by this section shall be

33 guilty of a misdemeanor.)))

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 57-02-08.1 be accepted as drafted.

The Committee discussed Section 57-02-13, which reads as follows:

1 57-02-13. FALSE LIST UNDER OATH - PERJURY.) Every person who
2 willfully makes or gives under oath a false list of his taxable property,
3 or a false list of the taxable property in his use or possession or under
4 his control, and required by law to be listed by him, is guilty of perjury.

Mr. Wefald noted that he and the Tax Department attorneys agreed that this section could be repealed as it is covered by Section 12.1-11-02 of the new Criminal Code dealing with false statements. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY CHIEF ENG, AND CARRIED that Section 57-02-13 be repealed.

The Committee considered Subsection 3 of Section 57-02-21, which reads as follows:

1 57-02-21. TAX EXEMPTION OF PERSONAL PROPERTY OF CERTAIN
2 PERSONS WITH MINIMUM INCOME (((- PENALTY FOR FALSE STATEMENT))).)
3 1. . . .
4 2. . . .
5 3. The household goods, clothing, and musical instruments of any
6 person sixty-five years of age or older with an income of three
7 thousand dollars or less per annum from all sources including the
8 income of any person dependent upon him, including any county,
9 state, or federal public assistance benefits, social security, or other
10 retirement benefits, shall be exempt from personal property taxation.
11 Any person eligible for the exemption herein provided shall sign
12 a statement that he is sixty-five years of age or older and that such
13 income, including that of any dependent, does not exceed three thousand
14 dollars per annum. The term "dependent" shall include the spouse,
15 if any, of the person claiming the exemption. Any person falsely
16 signing such statement shall be guilty of a misdemeanor. The assessor

17 shall attach such statement to the assessment sheet.

18 4. . . .

Mr. Wefald stated that although the Committee would be strictly interested in only the penultimate sentence of the subsection, it was his recommendation, concurred in by the Tax Department officials, that the whole section be repealed as it is no longer operable due to the repeal of the personal property tax.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Subsection 3 of Section 57-02-21 be repealed.

The Committee next discussed Section 57-02-45 which dealt with the willful delivery of a false statement regarding the tax assessment of personal property. Mr. Wefald noted that the Tax Department was recommending that Sections 57-02-42 through 57-02-46 be repealed as they are all related to the now-repealed personal property tax. He stated that, because it contained a criminal penalty, he was joining in the recommendation to repeal Section 57-02-45. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 57-02-45 be repealed.

The Committee discussed Section 57-02-48, which reads as follows:

1 57-02-48. FAILURE TO DESIGNATE BILLBOARD OWNER - PENALTY.)
2 If the owner of such billboard fails to comply with the provisions of section
3 57-02-47 within sixty days after the erection of such billboard such owner
4 shall be guilty of (((a misdemeanor and shall be punished by a fine of not
5 more than one hundred dollars))) an infraction.

Mr. Wefald noted that this section made it a misdemeanor to fail to comply with Section 57-02-47, which required any person erecting or leasing any billboard for advertising purposes to attach a sign or plate to the billboard indicating the name and address of the owner of it. The Committee discussed the taxation of billboards in general. IT WAS THEN MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 57-02-48 be accepted as presented.

The Committee discussed Section 57-02-49, which reads as follows:

1 57-02-49. BILLBOARD REPORTS - CONTENTS - FILING - PENALTY.)
2 On or before the fifteenth day of March of each year every person subject
3 to the provisions of sections 57-02-47 through 57-02-49 shall file with the
4 county auditor of each county in which such person has billboards containing
5 advertisements, a report in writing under oath, containing a description
6 of the property upon which each such billboard is located, such description

7 to be sufficiently complete so that the lot, tract or parcel of land may be
8 identified. Such report shall also list the full and true value in money of
9 each such billboard. Whenever the county auditor shall discover that any
10 of such billboards has been omitted in the assessment of any year, he shall
11 assess such billboards in the manner provided for in chapter 57-14. Any
12 person failing to file a report as required by this section shall be guilty
13 of (((a misdemeanor and shall be punished by a fine of not more than
14 one hundred dollars))) an infraction.

The Committee Counsel noted that the section required a person to file a report concerning the location and ownership of billboards over which he had control. The Committee discussed this section at length, and Representative Murphy stated that he did not believe this type of activity should be a criminal offense.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 57-02-49 be accepted as drafted.

The Committee discussed Sections 57-05-05 and 57-05-09, which deal with the filing of maps of railroad rights-of-way, and with periodic reports by railroad corporations to the Tax Commissioner. Mr. Wefald noted that he had classified both offenses as infractions as they presently did not carry a potential imprisonment penalty. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Sections 57-05-05 and 57-05-09 be accepted as drafted.

The Committee discussed Section 57-15-18, which reads as follows:

1 57-15-18. PENALTY FOR UNLAWFUL WITHDRAWAL OF BUILDING FUNDS.)
2 Every officer participating in the unlawful withdrawal of any school district
3 building fund shall be guilty of a class B misdemeanor, and shall be liable
4 for the loss to such building fund on his official bond.

The Committee discussed this section at length. Particularly discussed was the provision that the officer unlawfully withdrawing school district building funds would be liable for the loss on his official bond. It was suggested that perhaps this language was redundant.

Representative Murphy inquired as to why the section was needed at all, since the theft provisions would cover an embezzlement. The Committee Counsel noted that the section may not be dealing with an embezzlement, but rather with an unlawful expenditure, for instance, if building funds were used to pay for a school parking lot, and such an expenditure was not lawful.

The Committee further discussed the language relating to the liability on an official bond. The Committee Counsel stated he did not believe that this was language common to most "embezzlement"-type statutes.

The Chairman directed the staff to write a letter to the State Bonding Fund regarding Section 57-15-18, concerning whether such language could cause any problems in relation to bond coverage.

IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE RAU, AND CARRIED, with Representative Murphy voting in the negative, that Section 57-15-18 be accepted as drafted.

The Committee discussed Section 57-15-33, which deals with the failure of an officer to report the amount of taxes to be levied in a municipality when he is required by law to do so. Mr. Wefald noted that the staff recommendation, concurred in by Tax Department personnel, was to repeal the section as it was covered under Section 12.1-11-06, which would penalize public servants who refuse to perform their duties. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 57-15-33 be repealed.

The Committee discussed Section 57-15-35, which reads as follows:

- 1 57-15-35. PENALTY FOR EXTENDING TAX BEYOND LEVY LIMIT.)
2 Any county auditor who shall extend taxes in excess of the limitations
3 prescribed by the terms of this chapter shall forfeit a sum of not less than
4 twenty-five dollars and not more than one thousand dollars, the amount
5 to be determined by the court in an action brought in district court by
6 the state's attorney in the name of the state for the benefit of the county
7 general fund, and if such action of the county auditor is willful, he also
8 shall be (((deemed guilty of a misdemeanor, and in addition to the usual
9 penalty, his office shall be deemed vacant))) guilty of a class A misdemeanor.

The Committee Counsel noted that the deletion of the language relating to vacation of office would not be replaced by the provisions of Chapter 12.1-33 because that chapter, relating to disqualifications upon sentence, only spoke of instances where the offender had been convicted of a felony.

IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that the triple parentheses be inserted after the word "deemed" in Line 8; that the underscored words "class A" be inserted before the word "misdemeanor" in the same line; that triple parentheses be inserted after the word "misdemeanor" in Line 8; and that the underscored language in Line 9 be deleted.

The Committee discussed Section 57-15-40, which reads as follows:

1 57-15-40. PENALTY FOR UNLAWFUL WITHDRAWAL OF CONSTRUCTION
2 FUND.) Every officer participating in the unlawful withdrawal of any city
3 construction fund, shall be guilty of a class A misdemeanor, and shall
4 be liable for the loss to such construction fund on his official bond.

The Chairman noted that this section should be included by reference in the letter to the State Bonding Fund. Mr. Webb inquired as to why Section 57-15-40 was classified as a Class A misdemeanor when Section 57-15-18 was classified as a Class B misdemeanor. The Committee Counsel noted that this was strictly an oversight and both offenses should be classified the same.

The Chairman then directed the staff to draft a combined section to cover all unlawful withdrawals, and to include the Bonding Fund (Insurance Commissioner) recommendations in relation to the liability for loss on official bonds.

The Committee then discussed Section 57-22-14 which prohibits the removal or disposal of any personal property which has been assessed for personal property taxes, when the removal or disposal is with intent to avoid payment of the taxes. The section presently classifies that action as a misdemeanor, and the staff recommendation was to classify it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED to accept Section 57-22-14 as drafted.

The Committee discussed Section 57-22-33 which deals with the failure of a sheriff to perform his duties. It was noted that the section provided two possible penalties: one, a deduction from his salary, and the second, a fine of from \$25 to \$100 for each offense. Mr. Wefald noted that the section could be covered by Section 12.1-11-06, which would punish a public servant who refused to perform his duties. The Committee Counsel noted that the definition of "public servant" in Section 12.1-01-04 would certainly include a sheriff. Thereafter, IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 57-22-33 be repealed.

The Committee discussed Section 57-24-05, which reads as follows:

1 57-24-05. REMOVAL OR DESTRUCTION OF POSTED LIST (((A MISDEMEAN-
2 OR))) - PENALTY.) Any person who destroys or removes any delinquent
3 real estate tax list from the place where posted, between the date of
4 posting and the conclusion of the tax sale referred to, shall be guilty
5 of a class A misdemeanor.

Judge Pearce stated that it was his belief that Section 57-24-05 could be repealed as the gist of the offense defined in it is covered by Section 12.1-08-01. He noted that that section prohibited the physical obstruction of a government function. It was obviously a government function to collect real

estate taxes, and anyone who would destroy or remove a delinquent real estate tax list prior to the conclusion of the tax sale would be physically obstructing a governmental function. Thereafter, IT WAS MOVED BY JUDGE PEARCE, SECONDED BY CHIEF ENG, AND CARRIED that Section 57-24-05 be repealed.

The Committee next discussed Section 57-33.1-12, which reads as follows:

1 57-33.1-12. PENALTY.) Any person who willfully fails to comply with
2 the provisions of this chapter (((or willfully delivers or makes a false state-
3 ment of a material fact to the tax commissioner))) is guilty of a class A
4 misdemeanor (((punishable by a fine of not more than five thousand dollars
5 or by imprisonment in the county jail for not more than one year, or by
6 both such fine and imprisonment))).

Mr. Wefald noted that the first omitted words in Lines 2 and 3 were omitted because they were covered by Section 12.1-11-02 prohibiting false statements. He also noted that the classification of the offense as a Class A misdemeanor would reduce the potential fine from \$5,000 (which it is presently) to \$1,000. IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY MR. WEBB that Section 57-33.1-12 be accepted as drafted. Mr. Webb indicated that he was apprehensive of the Committee's action in accepting general penalty sections covering a violation of the provisions of an entire chapter without an in-depth study of that chapter.

Thereafter, REPRESENTATIVE LUNDENE'S MOTION CARRIED, and the Committee held a general philosophical discussion concerning the dangers of accepting general penalty provisions covering entire chapters of the Century Code. The Committee Counsel noted that time would not allow the drafting of more specific sections, although the staff would be on the lookout for grievous over or under-classifications. Mr. Wolf suggested that perhaps each agency should be asked for recommendations as to what it would desire to have done with the general penalty sections which were of principal interest to it.

The Committee Counsel noted that this procedure would be just about as time consuming as having the staff redraft the general penalty provisions, and in addition, many general penalty provisions were not of particular interest to any state agency or political subdivision.

The Committee discussed Section 57-35-15, which reads as follows:

1 57-35-15. PENALTY FOR FALSE RETURN.) Any bank or trust company
2 which, or any officer thereof who, with intent to violate the provisions of
3 this chapter, shall make, render, sign, or verify any false or fraudulent
4 return or statement required under the provisions of this chapter, is guilty
5 of a class A misdemeanor (((and shall be punished by a fine of not more

6 than one thousand dollars, or by imprisonment for a term not to exceed one
7 year, or by both such fine and imprisonment))).

Mr. Wefald noted that the section was probably covered under Section 12.1-11-02 prohibiting the making of false statements in governmental matters. Thereafter, IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 57-35-15 be repealed.

The Committee discussed Section 57-35.1-09, which reads as follows:

1 57-35.1-09. PENALTIES.) If any association which has failed to file
2 a report or which has filed an incorrect or insufficient report, and which
3 has been notified by the tax commissioner of its delinquency, refuses or
4 neglects within thirty days after the mailing of such notice to file a proper
5 report, or if it files a fraudulent return, the commissioner shall determine
6 the tax of such association according to his best information and belief,
7 and shall assess the same at not more than double the amount so determined.
8 The commissioner may allow further time for the filing of a report in such
9 case.

10 Any association which, or any officer thereof who, with intent to violate
11 the provisions of this chapter, shall make, render, sign, or verify any false
12 or fraudulent return, report, or statement required under this chapter,
13 is guilty of a class A misdemeanor (((punishable by a fine of not more than
14 one thousand dollars, or by imprisonment for not to exceed one year, or
15 by both such fine and imprisonment))).

The Committee Counsel noted that the retained language in Lines 10 through 13 which had been classified as a Class A misdemeanor, could be covered under the provisions of Section 12.1-11-02 relating to false documents and statements. Mr. Robert Wirtz, Tax Department attorney, noted that there had been no prosecutions under Section 57-35.1-09, and that the provisions of the second paragraph were probably adequately covered under Section 12.1-11-02. However, he noted that the provision authorizing the Commissioner to double the tax in the case of delinquent taxpayers, or taxpayers who fail to file a return, is an important provision.

The Committee also discussed Section 57-35.2-07, which is very similar to Section 57-35.1-09 except that it deals with banks, trust companies, and building and loan associations. Judge Pearce noted that he intended to make

a motion covering both sections. Thereafter, IT WAS MOVED BY JUDGE PEARCE, SECONDED BY MR. WOLF, AND CARRIED that Lines 10 through 15 of Sections 57-35.1-09 and 57-35.2-07 be deleted.

The Committee discussed the criminal penalty sections in Chapter 57-36 (Sections 57-36-04, 57-36-09, and 57-36-20). IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Sections 57-36-04 and 57-36-09 be accepted as drafted. The Committee then discussed Subsection 2 of Section 57-36-20 which, along with Subsections 1 and 3, reads as follows:

- 1 57-36-20. PENALTIES FOR VIOLATION OF CHAPTER.) Except as
2 otherwise provided in this chapter:
- 3 1. Any person who violates any provision of this chapter shall be (((punished
4 by a fine of not less than one hundred dollars nor more than three
5 hundred dollars and shall be committed to the county jail until such fine
6 and the costs of prosecution are paid, but for a period not exceeding
7 six months, and all))) guilty of a class A misdemeanor. All cigarettes,
8 cigarette papers, snuff, cigars or other tobacco products in his possession
9 or in his place of business shall be confiscated and forfeited to the state;
- 10 2. Any consumer who purchases any package of cigarettes which does not
11 bear the stamp or insignia placed thereon pursuant to the provisions of
12 this chapter, and any person who shall use or consume within this
13 state any cigarette, unless the same shall be taken from a package or
14 container having attached thereto the stamp or insignia required by this
15 chapter, shall be guilty of a class B misdemeanor (((, and shall be
16 punished by a fine of not less than one hundred dollars and not more
17 than three hundred dollars, and the costs of prosecution, and shall be
18 committed to the county jail until such fine and costs are paid, but
19 for a period not exceeding six months)));
- 20 3. Any person violating any provision of this chapter, or maintaining a
21 place where cigarettes, cigarette papers, snuff, cigars or other tobacco
22 products are sold, or kept with intent to sell the same, in violation of

23 the provisions of this chapter, is guilty of keeping and maintaining
24 a nuisance, and the building or place used for the sale or keeping for
25 sale of cigarettes, cigarette papers, snuff, cigars or other tobacco products
26 in violation of such provisions, shall be deemed to be a nuisance, and
27 the maintenance of such place and the keeping and sale of any such
28 items therein shall be enjoined, and such building or place shall be
29 abated as a nuisance.

The Committee also discussed Subsection 3, and it was noted that it was doubtful that the Committee should be creating a nuisance category of offense.

IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE RAU, AND CARRIED, with Representative Lundene voting nay, to accept Subsections 1 and 2 of Section 57-36-20 as drafted and to repeal Subsection 3 of Section 57-36-20.

The Committee considered Section 57-36-21, which makes it unlawful to counterfeit any cigarette stamp or tobacco retailer's license. The staff noted that the offense defined by the section was covered under Section 12.1-24-01 dealing with forgery. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY MR. WOLF, AND CARRIED that Section 57-36-21 be repealed as its provisions are covered by Section 12.1-24-01.

The Committee discussed Subsection 4 of Section 57-36-25 and Subsection 5 of Section 57-36-26, which make reference to the fact that all provisions of the chapter will govern the administration of the taxes levied in those sections. Mr. Wefald noted that the Tax Department recommendation was that the two subsections be deleted as they represent excess verbiage. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Subsection 4 of Section 57-36-25 and Subsection 5 of Section 57-36-26 be deleted; that the draft of Section 57-36-32 relating to the separate additional cigarette tax be accepted as drafted; and that Section 57-36-20 be renumbered so that it will be the last section in Chapter 57-36.

The Committee discussed Section 57-37-30, which reads as follows:

1 57-37-30. PENALTIES.) Any person ((or corporation))) violating
2 any provision of section 57-37-28 or section 57-37-29, shall be ((punished
3 by a fine of not more than one thousand dollars))) guilty of a class A misdemeanor
4 and in addition thereto shall be liable for the amount of the taxes, interest,
5 and penalties due under this chapter on the securities, deposits, or other
6 assets contained in such box or receptacle at the time of any unauthorized

7 access thereto. Such penalties may be enforced in an action brought by
8 the state's attorney or the tax commissioner.

Mr. Wefald noted that the section numbers internally referenced in Section 57-37-30 deal with the duties and responsibilities of persons having commercial custody of safety deposit boxes after the death of the boxholder. He also noted that the entire chapter, 57-37, deals with estate taxes. Mr. Wolf stated he did not believe there should be criminal liability for the actions involved here. He said that the potential liability for the amount of the taxes, interest, and penalties due was enough to deter most agencies holding safety deposit boxes from taking this kind of action, and that adding criminal liability did not increase the deterrent effect.

IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the triple parentheses in Line 3 be deleted; that the underscored language in Line 3 be deleted; and that triple parentheses be inserted after the word "be" in Line 4. In addition, the last sentence of the section is to be reworded so that it refers only to "civil penalties"; and when so amended, the section is to be accepted.

Mr. Wirtz questioned the deletion of the words "or corporation" in Line 1 of Section 57-37-30. The Committee Counsel noted that the definition of "person" in Title 1 included "bodies corporate". The Committee Counsel stated that he believed the section in Title 1 defining "person" would have to be amended so that it would include all conceivable legal entities.

The Committee discussed Section 57-37-32, which reads as follows:

1 57-37-32. PENALTY FOR FALSE STATEMENTS OR REPORTS.) Every
2 person who willfully and knowingly subscribes or makes any false statement
3 of facts, or knowingly subscribes or exhibits any false paper or false
4 report with intent to deceive any appraiser appointed pursuant to the
5 provisions of this chapter, shall be (((punished by a fine of not more than
6 five thousand dollars or by imprisonment for not more than one year,
7 or by both such fine and imprisonment))) guilty of a class A misdemeanor.

Mr. Wefald noted it was likely that this offense was covered under Section 12.1-11-02, Subsection 2, since the hiring of an appraiser by the county court or the Tax Commissioner would seem to make the appraiser's work a governmental matter, and therefore, the penalty in the new Criminal Code for falsifying in relation to a governmental matter would apply.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY MR. WOLF, AND CARRIED that Section 57-37-32 be repealed.

The Committee discussed Subsections 2 and 3 of Section 57-38-45, which read as follows:

1 57-38-45. INTEREST AND PENALTIES.) For failure to make a return
2 or to pay any tax within the time required by this chapter, a taxpayer
3 shall be subjected to penalties and interest as follows:

4 1. . . .

5 2. If any taxpayer does not voluntarily file a return of income within
6 sixty days after the time required by or under the provisions of
7 this chapter, and after notice by the tax commissioner, he shall
8 be subject to a fine of not less than ten dollars and not more than
9 five hundred dollars, and shall pay interest at the rate of one
10 percent for each month or fraction of a month from the time
11 the tax originally was due until the date of payment;

12 3. Any person or any officer or employee of any partnership who,
13 with intent to evade any requirement of this chapter, shall fail
14 to pay any tax, or to make, sign, or verify any return, or to
15 supply any information required by law, or under the provisions
16 of this chapter, or who with like intent shall make, render, sign,
17 or verify any false or fraudulent information, shall be liable to a
18 penalty of not more than one thousand dollars to be recovered
19 by the attorney general, in the name of the state, by action in
20 any court of competent jurisdiction. He also shall be guilty of
21 a class A misdemeanor (((, and shall be punished by a fine of
22 not more than one thousand dollars, or by imprisonment for not
23 more than one year, or by both such fine and imprisonment)))

24 4. . . .

25 5. . . .

26 6. . . .

The Committee Counsel noted that he was not certain as to whether Subsection 2 was intended to be criminal, or whether its provisions were instead in the nature of a civil penalty. The Chairman directed the staff to redraft Section 57-38-45 in consultation with representatives of the Tax Department.

The Committee next discussed Subsection 2 of Section 57-38-57, which reads as follows:

- 1 57-38-57. SECRECY AS TO RETURNS - PENALTY.) The secrecy of
2 returns shall be guarded except as follows:
3 1. . . .
4 2. Violation of this section shall be punished by a fine of not more than
5 one thousand dollars, or by imprisonment in the county jail for not
6 more than one year, or by both such fine and imprisonment. If the
7 offender is an officer or employee of the state, he in addition shall
8 be dismissed from office and shall be incapable of holding any
9 public office in this state for a period of five years thereafter.
10 3. . . .
11 4. . . .

The Committee Counsel noted that this section related to the secrecy of income tax returns. Mr. Wefald stated that the subsection could well be considered covered by the provisions of Section 12.1-13-01, which makes it a Class A misdemeanor to disclose confidential governmental information. The Committee Counsel noted that the provisions relating to the dismissal from office and the incapability of holding other public offices would not apply as the offense was not a felony.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY MR. WOLF, AND CARRIED that Subsection 2 of Section 57-38-57 be repealed as the offense defined therein is covered by Section 12.1-13-01 of the new Criminal Code.

The Committee discussed Subsection 4 of Section 57-38-59, which reads as follows:

- 1 57-38-59. WITHHOLDING FROM WAGES OF NONRESIDENT EMPLOYEES -
2 PENALTY.)
3 1. . . .
4 2. . . .
5 3. . . .
6 4. Every employer shall deduct and withhold from every nonresident

7 employee's wages the amounts required to be deducted and withheld
8 from a nonresident employee's wages until such time as the employee
9 has filed with his employer a signed certificate, in such form as the
10 tax commissioner shall provide, that such employee entitled to wages
11 is a resident of the state of North Dakota as defined for withholding
12 purposes. Such certificate shall contain a written declaration that it
13 is made under the penalties of perjury. Once filed, a certificate shall
14 remain in effect with the employer with (((which))) whom it is filed,
15 until the employee's status shall have changed to that of a nonresident
16 as defined in subsection 4 of section 57-38-58 of the North Dakota
17 Century Code. The employee shall give written notice to his employer
18 within fifteen days after such change in status. The employer upon
19 receiving such written notice shall deduct and withhold from the em-
20 ployee's wages as provided in this section until the employee files
21 with the employer the signed certificate referred to herein. (((Any
22 employee willfully submitting a falsified statement shall be guilty of
23 perjury and punished in accordance with chapter 12-14.))) Any em-
24 ployee willfully failing to give written notice to his employer of his
25 change in status as required herein within the time prescribed shall
26 be subject to the penalty provided for in subsection 3 of section
27 57-38-45 of the North Dakota Century Code. Employers shall be re-
28 quired to make the certificate of residence available to the tax com-
29 missioner upon request.

Mr. Wefald noted that the omitted language commencing on Line 21 and ending on Line 23 was omitted because it was covered by Section 12.1-11-02. The Committee Counsel noted that the language on Line 13 relating to perjury should be changed so that the reference was not to the penalties "of perjury" but rather to the penalties "provided in section 12.1-11-02".

IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Subsection 4 of Section 57-38-59 be amended as suggested by the Committee Counsel, and as so amended be accepted.

The Committee discussed Subsections 2, 3, and 5 of Section 57-39.2-18, which read as follows:

- 1 57-39.2-18. PENALTIES, OFFENSES.)
- 2 1. . . .
- 3 2. Any person who shall sell tangible personal property, tickets or ad-
- 4 missions to places of amusement, and athletic events, or steam, gas,
- 5 water, electricity, and communication service at retail in this state
- 6 after his permit shall have been revoked, or without procuring a
- 7 permit within sixty days after the effective date of this chapter, as
- 8 provided in section 57-39.2-14, or who shall violate the provisions
- 9 of section 57-39.2-09, and the officers of any corporation who shall
- 10 so act, shall be guilty of a class A misdemeanor (((, punishment for
- 11 which shall be a fine of not more than one thousand dollars or im-
- 12 prisonment for not more than one year, or both such fine and im-
- 13 prisonment, in the discretion of the court))).
- 14 3. Any person required to make, render, sign or verify any return or
- 15 supplementary return, who makes any false or fraudulent return with
- 16 intent to defeat or evade the assessment required by law to be made,
- 17 shall be guilty of a misdemeanor and, for each such offense, shall be
- 18 fined not to exceed five hundred dollars or shall be imprisoned in
- 19 the county jail not exceeding one year, or shall be subject to both a
- 20 fine and imprisonment, in the discretion of the court.
- 21 4. . . .
- 22 5. Any person failing to comply with any of the provisions of this chap-
- 23 ter, or failing to remit within the time herein provided to the state
- 24 the tax due on any sale or purchase of tangible personal property
- 25 subject to said sales tax, shall be guilty of a class A misdemeanor
- 26 (((and shall be punished by imprisonment in the county jail not ex-

27 ceeding six months or by a fine of not exceeding five hundred dollars,
28 or by both such fine and imprisonment, in the discretion of the
29 court))). This criminal liability shall be cumulative and in addition
30 to the civil liability for penalties hereinbefore provided.

Mr. Wefald noted that Subsection 3 could be omitted as it was covered by Chapter 12.1-11 dealing with perjury and false statements. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Subsections 2 and 5 of Section 57-39.2-18 be accepted as drafted, and that Subsection 3 of Section 57-39.2-18 be repealed.

The Committee discussed Section 57-39.2-23, which provides that information received in the Tax Department concerning the sales tax is confidential. Mr. Wefald noted he was recommending that the language providing a penalty for divulging such information be deleted, as it is covered under Section 12.1-13-01. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY CHIEF ENG, AND CARRIED that Section 57-39.2-23 be accepted as drafted.

The Committee discussed Sections 57-40.2-08, 57-40.2-12, and Subsections 2 and 4 of Section 57-40.2-15, which all read as follows:

1 57-40.2-08. UNLAWFUL ADVERTISING - PENALTY.) It shall be unlawful
2 for any retailer to advertise or hold out or state to the public or to any pur-
3 chaser, consumer, or user, directly or indirectly, that the tax or any part
4 thereof imposed by this chapter will be assumed or absorbed by the retailer,
5 or that it will not be added to the selling price of the property sold, or if
6 added that it or any part thereof will be refunded. (((Any person violating
7 any provision of this section within this state is guilty of a misdemeanor and
8 shall be punished by a fine of not more than one hundred dollars for each offense
9 or by imprisonment for not to exceed thirty days, or by both such fine and
10 imprisonment.)))

1 57-40.2-12. UNLAWFUL SALE OR SOLICITING - PENALTY.) No agent,
2 canvasser, or employee of any retailer, not authorized by permit from the tax
3 commissioner of this state, shall collect the tax as prescribed by this chapter,
4 nor sell, solicit orders for, nor deliver, any tangible personal property in
5 this state. (((Any such agent, canvasser, or employee violating the provisions
6 of this chapter is guilty of a misdemeanor and shall be punished by a fine of

7 not more than one hundred dollars for each offense, or by imprisonment for
8 not more than thirty days, or by both such fine and imprisonment.)))

1 57-40.2-15. PENALTIES - OFFENSES.)

2 1. . . .

3 2. Any person required to make, render, sign or verify any return or
4 supplementary return, who makes any false or fraudulent return with
5 intent to defeat or evade the assessment required by law to be made,
6 shall be guilty of a misdemeanor and, for each such offense, shall be
7 fined not to exceed five hundred dollars or shall be imprisoned in the
8 county jail not exceeding one year, or shall be subject to both a fine
9 and imprisonment, in the discretion of the court.

10 3. . . .

11 4. Any person failing to comply with any of the provisions of this chapter,
12 or failing to remit within the time herein provided to the state the tax
13 due on any sale or purchase of tangible personal property subject to
14 the tax imposed under the provisions of this chapter, shall be guilty of
15 a class A misdemeanor ((and shall be punished by imprisonment in the
16 county jail not exceeding six months or by a fine of not exceeding five
17 hundred dollars, or by both such fine and imprisonment, in the
18 discretion of the court))). This criminal liability shall be cumulative
19 and in addition to the civil liability for penalties hereinbefore provided.

Mr. Wefald noted that the language suggested for deletion in the first two sections (57-40.2-08 and 57-40.2-12) were covered by the general chapter penalty provision contained in Subsection 4 of Section 57-40.2-15. He also stated that Subsection 2 of that section was being recommended for deletion as its provisions were covered under Section 12.1-11-02 relating to the making of false statements in governmental matters.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that the staff drafts of Sections 57-40.2-08; 57-40.2-12; and Subsection 4 of Section 57-40.2-15 be accepted as drafted; and that Subsection 2 of Section 57-40.2-15 be repealed.

The Committee discussed Section 57-40.3-11, which reads as follows:

1 57-40.3-11. PENALTIES.)

2 1. Any person who shall complete or submit a false or fraudulent
3 "motor vehicle purchaser's certificate" with intent to defeat or
4 evade the tax imposed under this chapter shall be guilty of a
5 misdemeanor, and for each such offense, shall be fined not to
6 exceed five hundred dollars or shall be imprisoned in the county
7 jail not to exceed one year, or shall be subject to both such
8 fine and imprisonment, in the discretion of the court.

9 2. Any person who shall violate any of the provisions of this chapter
10 shall be guilty of a class A misdemeanor ((and shall be punished
11 by a fine of not less than fifty dollars nor more than one hundred
12 dollars, or by imprisonment in the county jail for not less than
13 twenty days nor more than thirty days, or both such fine and
14 imprisonment))).

Mr. Wefald indicated that the staff recommendation was that Subsection 1 could be repealed as the offense defined in it is covered under Section 12.1-11-02 relating to false statements in governmental matters. The Committee Counsel noted that there was a drafting error in Subsection 2 in the classification of the offense defined there as a Class A misdemeanor. In order to make the new classification accord as nearly as possible to the current penalties, it should be classified as a Class B misdemeanor.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Subsection 1 of Section 57-40.3-11 be repealed, and that the remainder of the section then be classified as a Class B misdemeanor.

The Committee discussed Section 57-45-05, which reads as follows:

1 57-45-05. NEGLIGENCE OF DUTY BY OFFICERS - PENALTY.) Every officer
2 or employee of any political subdivision of this state who in any case knowingly
3 neglects or refuses to perform any duty enjoined upon him by any provision
4 in this title, or who consents to or connives at any evasion of the provisions
5 of this title whereby any proceeding is prevented or hindered, shall be guilty
6 of malfeasance in office, and shall be subject to removal from office. Any

7 person aggrieved by the failure of any officer or employee to perform his
8 duties as provided in this ((section)) title may file a complaint (((, and
9 it shall be the duty of the state's attorney to prosecute such violations.
10 Any person convicted of malfeasance in office as provided in this section
11 shall be subject to imprisonment in the county jail for not to exceed thirty
12 days or a fine of not less than two hundred nor more than one thousand
13 dollars))) under section 12.1-11-06. In addition ((to the criminal penalties
14 herein provided))), the state's attorney or any aggrieved party may proceed
15 to obtain a writ of mandamus to compel performance by such officer or
16 employee. Any failure of an officer or employee to do any act at the particular
17 time specified in this title in no manner shall invalidate any tax levy, or
18 any certificate of tax sale, or tax deed.

IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 57-45-05 be accepted as drafted.

The Committee discussed Section 57-45-15 which prohibits the issuance of false tax receipts and the forging of tax receipts. The offense is presently classified as a felony with a potential imprisonment punishment from one to five years. Mr. Wefald stated that the staff recommendation was that the section be repealed as it is covered by Chapter 12.1-11 dealing with perjury, and by Chapter 12.1-24 dealing with forgery. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 57-45-15 be repealed.

The Committee discussed Section 57-50-08, which provides a penalty for violating any of the provisions of Chapter 57-50, which relates to the methods for refunding motor fuel taxes. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 57-50-08 be accepted as drafted.

The Committee discussed Sections 57-51-13 and 57-51-22, which read as follows:

1 57-51-13. FALSE REPORT DEEMED PERJURY.) Any person who shall
2 knowingly make any false oath to any report required by the provisions of
3 this chapter shall be guilty of perjury, and shall be punished as provided
4 for in section 12.1-11-01.

1 57-51-22. PENALTY.) Any person intentionally violating any of the
2 provisions of this chapter is guilty of a class A misdemeanor. Each day's
3 failure to file a report within the period of time fixed in this chapter shall
4 constitute a separate offense.

Mr. Wefald noted that Chapter 57-51 related to the assessment of an oil and gas gross production tax. He stated that the staff recommendation was that Section 57-51-13 be repealed as it is covered by Section 12.1-11-01. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 57-51-13 be repealed and Section 57-51-22 be accepted as presented, except that the last sentence should be deleted.

The Committee then discussed Section 57-52-19, which reads as follows:

1 57-52-19. PENALTIES.) Any person violating any provision of this
2 chapter shall be guilty of a class B misdemeanor ((and upon conviction
3 shall be punished by a fine of not less than twenty-five dollars nor more
4 than one hundred dollars, or by imprisonment of not more than thirty days,
5 or by both such fine and imprisonment))). Upon such conviction the state
6 tax commissioner shall revoke for a period of not less than one year the
7 special fuel dealer's license of any special fuel dealer convicted of violating
8 this chapter. (((The fine and imprisonment and revocation of license, provided
9 for in this section, shall be in addition to any other penalty imposed by other
10 provisions of this chapter.)))

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 57-52-19 be accepted as drafted.

The Committee discussed Section 57-53-08, which provides penalties for violating Chapter 57-53, which deals with special fuel dealers' licenses and the additional special excise tax on special fuels. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 57-53-08 be accepted as drafted.

The Committee discussed Section 57-54-23, which reads as follows:

1 57-54-23. PENALTY.) Any dealer, purchaser, or other person (((who
2 makes any false statement or report, or))) who collects or causes to be
3 repaid to him or to any other person, any tax to which he is not entitled,

4 or who violates any other provision of this chapter, is guilty of a class A
5 misdemeanor (((and shall be punished by a fine of not more than five hundred
6 dollars or by imprisonment in the county jail for not more than ninety days,
7 or by both such fine and imprisonment))).

Mr. Wefald noted that the language deleted on Lines 1 and 2 was recommend-
ed for deletion due to the fact that it was covered by Section 12.1-11-02.
IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY CHIEF ENG,
AND CARRIED that Section 57-54-23 be accepted as drafted.

The Committee discussed Section 57-55-07, which deals with the purchase
and display of a mobile home tax decal and provides penalties for failure to
make application for the decal or to display it properly. IT WAS MOVED BY
REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED
that Section 57-55-07 be accepted as drafted.

The Committee next discussed Section 57-55-08, which places the duty
on the owner or manager of a mobile home park, or on a mobile home dealer,
to display a notice listing the requirements of the mobile home tax law, and
requiring the owner or manager to make a written report annually to the County
Director of Tax Equalization. Mr. Wefald noted he was suggesting that the
offense of refusing to make the report be classified as an infraction. Mr. Wolf
noted that the sentence setting forth the punishment used the word "refuses"
in reference to a refusal to make the annual report. Mr. Wolf stated that it
would be extremely difficult to prove that a person had refused to make a report
unless one could prove that he had been specially requested to do so. He
suggested that the word "fails" be substituted for the word "refuses". The
Committee Counsel suggested that perhaps the legislative intent was to make
a request for compliance a prerequisite to criminal prosecution.

Thereafter, IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE
LUNDENE, AND CARRIED, with four negative votes, that the word "fails" be
substituted for the word "refuses" in Line 15 of Section 57-55-08, and when
so amended the section be accepted.

The Committee then recessed until 9:00 a.m. on Friday, August 31, at
which time they took up a proposed revision of certain sections in Title 10.
The Committee Counsel noted that he had discussed these sections with Mr.
Ben Meier, the Secretary of State.

The Committee discussed Subsection 2 of Section 10-15-35, which reads
as follows:

- 1 10-15-35. BOOKS AND RECORDS - PENALTY FOR REFUSAL TO PRODUCE.)
2 2. In any proceedings, or upon petition for such purpose any court
3 of record may, upon notice and after hearing at which proper
4 cause is shown, and upon suitable terms, order any of the coopera-
5 tive's books or records, and any other pertinent documents in
6 its possession, or duly authenticated copies thereof, to be brought

7 within this state. Such documents shall be kept at such place
8 and for such time and purposes as the order designates. Any
9 cooperative failing to comply with the order is subject to dissolution,
10 and its directors and officers are liable for contempt of court, and
11 may be punished as provided for in section 12.1-10-01.

The Committee Counsel noted that the subsection had been amended solely for the purpose of clarifying the fact that the contempt referred to in the subsection was criminal contempt. IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY REPRESENTATIVE ROYSE that Subsection 2 of Section 10-15-35 be accepted as drafted.

Mr. Wolf questioned whether the contempt referred to should be criminal when one considers all of the procedural ramifications attendant upon a criminal contempt citation.

IT WAS MOVED BY MR. WOLF that after the word "for" the word "civil" should be inserted, and after the word "court" the words "or criminal contempt punishable as provided in section 12.1-10-01" be inserted and that the underscored material in Lines 10 and 11 be deleted. This motion failed for lack of a second.

Thereafter, REPRESENTATIVE LUNDENE, WITH THE CONSENT OF HIS SECOND, WITHDREW HIS MOTION, and no further motion being made, no change is proposed in Subsection 2 of Section 10-15-35.

The Committee discussed Section 10-15-53, which reads as follows:

1 10-15-53. FILING DOCUMENTS (((- PENALTY FOR FALSE DOCUMENT))).)
2 (((1.))) When any document is to be filed, duplicate originals shall be
3 delivered to the secretary of state. He shall stamp on both the date
4 of filing and return one to the cooperative with his certificate of filing
5 (((2. Whoever causes any document to be filed, knowing such to be false
6 in any material respect, may be fined not more than one thousand
7 dollars or imprisoned not more than three years, or both.)))

The Committee Counsel recommended Subsection 2 of the section be deleted as the offense defined therein is covered by Section 12.1-11-02. IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 10-15-53 be accepted as drafted.

The Committee discussed Subsection 2 of Section 10-15-58, which reads as follows:

1 10-15-58. USE OF TERM "COOPERATIVE" - PENALTY FOR IMPROPER
2 USE.)

3 1. . . .

4 2. No other person may use the term "cooperative", or any variation
5 thereof, as part of his corporate or other business name or title,
6 nor may any other person in any other manner represent himself
7 to be a cooperative. ((Whoever violates this subsection may be
8 fined not more than one hundred dollars))) A violation of this
9 subsection is an infraction. Each day of improper use constitutes
10 a separate offense.

11 3. . . .

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTA-
TIVE MURPHY, AND CARRIED that the last sentence of the subsection be deleted
and that, with that deletion, the subsection be accepted.

The Committee next discussed Sections 10-23-03, 10-23-08, and 10-28-03,
which provide the penalties which are to be imposed upon corporations, and
officers and directors, for refusing to answer lawful interrogatories sent to
them by the Secretary of State. It was noted that the offense in each section
was phrased in terms of failing or refusing to answer truthfully and fully.
Representative Murphy indicated he believed that this was a case where the
offense should not be committed unless the offender refused to answer after
a request to do so. The Committee Counsel noted that this would almost always
be the case since the sending of the interrogatories would be the act which
would trigger the potential criminal penalties, and the sending of those interroga-
tories would act as notice.

Thereafter, IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED
BY REPRESENTATIVE ROYSE, AND CARRIED that the words "fails or" be stricken
from each of Sections 10-23-03, 10-23-08, and 10-28-03, and that all three
sections be classified as Class B misdemeanors; and that with those changes
they be accepted as drafted.

The Committee Counsel noted that Section 10-28-04 also related to a failure
or refusal to answer interrogatories, and contained the same problems as the
preceding three sections. IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTA-
TIVE RAU, AND CARRIED that the words "fails or" be stricken from Section
10-28-04, and that when so amended it be accepted.

The Committee discussed the minutes of the meeting of June 25-26, 1973.
Thereafter, IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENT-
ATIVE RAU, AND CARRIED that the minutes of the meeting of June 25-26, 1973,
be accepted as presented.

The Committee again discussed the proposed Subsection 6 of Section 12.1-32-01, which was the new subsection creating the "infraction" classification. The Committee's discussion centered primarily around the last sentence of that subsection which authorized Class B misdemeanor sentencing for a second infraction conviction within one year. It was noted that this could cause problems by requiring the judge to know that a defendant had been previously convicted of an infraction within a one-year period.

Mr. Wolf suggested that the second infraction could be charged as a misdemeanor, rather than an infraction. Mr. Wolf stated that a new Subsection 7 should be added to Section 12.1-32-01 spelling this out, and allowing the charge for a second infraction within a one-year period to be a charge for a misdemeanor.

Representative Rau suggested that the following language could be used: "A second offense defendant shall be informed that he will be charged as a misdemeanant."

Judge Glaser suggested that a sentence could be added to the end of Subsection 6 reading as follows: "If the prosecution contends the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor." JUDGE GLASER THEN MOVED, SECONDED BY MR. WOLF, AND CARRIED that Subsection 6 of Section 12.1-32-01 be amended by adding a sentence as suggested above.

The Chairman noted that Mr. Holloway and Mr. Quist were present for the consideration of Section 10-04-18, which provides penalties for violations of Chapter 10-04, which deals with supervision, by the Securities Commissioner, of the issuance of sale of securities. The section reads as follows:

1 10-04-18. PENALTIES.) Any person who (((shall))) willfully (((violate)))
2 violates any provision of this chapter or (((who willfully violates))) any rule
3 or order of the commissioner made pursuant to the provisions of this chapter,
4 or who (((shall engage))) engages in any act, practice, or transaction declared
5 by any provision of this chapter to be unlawful shall (((upon conviction
6 thereof be sentenced to pay a fine of not less than five hundred dollars nor
7 more than five thousand dollars or imprisonment in the penitentiary for not
8 less than one year nor more than five years, or in the county jail for not
9 less than three months nor more than one year, or both such fine and
10 imprisonment))) be guilty of a class C felony.

The Committee Counsel noted that the trend in several states which had recently revised their securities laws was to increase the penalties involved; for instance, California had just increased its maximum penalty to 10 years, and Arkansas to 15 years. The Committee Counsel noted that the Securities Commissioner had not desired an increase in North Dakota's statute, but had hoped that it would not be lowered below a Class C felony. Mr. Holloway stated that he agreed with the Committee Counsel's statement of his position.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY MR. WOLF, AND CARRIED that Section 10-04-18 be accepted as drafted.

The Committee discussed Subsection 5 of Section 12.1-32-03.1 set forth at length on Page 2. The subsection provides for the expungment of an infraction conviction from the record. After much discussion, IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that action on Subsection 5 of Section 12.1-32-03.1 be deferred at this time and that the staff give consideration to the creation of a complete expungment statute when the topic is next discussed. Judge Glaser suggested that the staff check the proposed Federal Code of Evidence in regard to this problem.

IT WAS THEN MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED, with Mr. Webb voting in the negative, that Subsection 6 of Section 12.1-32-01 and Section 12.1-32-03.1, without Subsection 5 thereof, as amended be adopted by the Committee.

Mr. Webb explained that his position in opposition to creation of an infraction classification was basically that there is a tendency in modern legislation towards "over-criminalization" and the infraction offense classification would probably increase this tendency. Further, he felt that if one were to be charged with activities which were denominated "criminal", then that person should be entitled to counsel, and he questioned the desirability of creating an offense classification which would deny the right to counsel. Mr. Wolf stated that his rationale for voting in favor of an infraction offense classification was simply because of the opportunity to deny the right to counsel.

The Committee next discussed Section 1-03-03, which reads as follows:

1 1-03-03. SPORTS ON MEMORIAL DAY - PENALTY.) No person, prior
2 to the hour of two o'clock p.m. on the day set apart as Memorial Day, shall
3 engage in ball games, horse racing, sports, or any entertainment which
4 will interfere with the proper observance of such day. Any violation of
5 this section shall be (((punishable by a fine of not less than five dollars
6 nor more than one hundred dollars, or by imprisonment in the county jail
7 for not more than thirty days))) a class B misdemeanor.

The Committee Counsel noted that this section had been before the Committee previously, but that further consideration of it had been held in abeyance pending the creation of an infraction offense classification. The section was now being brought back before the Committee classified as an infraction.

Mr. Wolf noted that this section was useful in preventing certain potentially undesirable activities on Memorial Day. He questioned whether one could be arrested or jailed for an infraction. The Committee Counsel stated that the law of arrest would certainly apply to an infraction, as this was what was intended by Subsection 2 of Section 12.1-32-03.1.

Representative Rau suggested that the word "organized" could be inserted before the word "ball" in Line 3 of the section, thus limiting the crime to participation in sporting events which were probably operated for a profit. Mr. Wolf stated he wouldn't be opposed to moving the time stated in the section from 2:00 p.m. to 12:00 noon, but that he did wish to retain the section.

IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE RAU, AND CARRIED by a vote of 5 - ayes, 4 - nays, that the words "organized or commercial" be added before the word "ball" in Line 3 of Section 1-03-03, and that when so amended the section be accepted.

The Committee recessed at 12:05 p.m. for lunch and reconvened at 1:00 p.m. at which time it commenced consideration of Title 58 and the criminal sections therein, which read as follows:

1 58-07-04. PENALTY FOR NEGLECT.) If a township clerk willfully neglects
2 or refuses to perform any of the duties required of him under this chapter,
3 he is guilty of (((a misdemeanor and shall be punished by a fine of not
4 less than ten dollars nor more than fifty dollars. The penalty provided in
5 this section shall not be exclusive but shall be in addition to any other penalty
6 provided by the laws of the state))) an infraction.

1 58-08-08. TOWNSHIP MONEYS TO BE DEPOSITED IN TOWNSHIP NAME -
2 PENALTY FOR VIOLATION.) A township treasurer shall not deposit, in his
3 own name, moneys belonging to the township, in any bank, savings bank,
4 trust company, or other fiduciary institution. All township moneys shall
5 be deposited in the name of the township, and any interest on such moneys
6 shall be credited to the township fund. Any person violating any provision
7 of this section shall be guilty of a class A misdemeanor.

1 58-12-06. OVERSEER PROHIBITED FROM TAKING CONTRACT WORK -
2 PENALTY.) The overseer shall not perform any road work by contract
3 for any person, corporation, or group of persons. Any person violating
4 the provisions of this section shall be guilty of a class B misdemeanor
5 (((and shall be punished by imprisonment in the county jail for not more
6 than ten days or by a fine of not more than one hundred dollars))).

Mr. Wefald stated that each section deals primarily with misconduct in office by township officials and could probably be covered by Sections 12.1-11-06 and 12.1-13-03, which deal with the refusal by a public servant to perform his duty, and public servants having an interest in public contracts.

However, he noted that the sections had simply been presented to the Committee with a recommended amendment to make the offense classification most closely correspond with the current potential penalties.

IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY REPRESENTATIVE AUSTIN that all three sections (58-07-04, 58-08-08, and 58-12-06) be accepted as drafted.

REPRESENTATIVE MURPHY MADE A SUBSTITUTE MOTION WHICH WAS SECONDED BY REPRESENTATIVE STONE to adopt Section 58-07-04 and Section 58-08-08 and to repeal Section 58-12-06.

Representative Murphy said that he saw no sense in Section 58-12-06, especially since it would prohibit an overseer from performing road work outside of his own township. Representative Rau stated it was his belief that all three sections should be deleted except for the operative (non-criminal language) of Section 58-08-08. Thereafter, THE SUBSTITUTE MOTION BY REPRESENTATIVE MURPHY PREVAILED by a vote of 6 - ayes, 2 - nays.

The Committee discussed the criminal offense definitions contained in Title 2 of the Century Code. The Committee Counsel noted that he had discussed the revision of these sections with Mr. Harold Vavra, the Executive Director of the Aeronautics Commission, prior to the last meeting of the Committee. Mr. Vavra had indicated at that time that he did not feel his presence necessary when the Committee considered the sections.

The Committee considered Section 2-03-10, which reads as follows:

- 1 2-03-10. RECKLESS OPERATION - OPERATION WHILE INTOXICATED -
2 TAMPERING WITH AIRCRAFT - MISDEMEANORS - PENALTIES.)
- 3 1. Any person who shall operate any aircraft within the airspace over,
4 above, and upon the lands and waters of this state, carelessly and
5 heedlessly in willful ((or wanton)) disregard of the rights or
6 safety of others, or without due caution and circumspection in a
7 manner so as to endanger or be likely to endanger any person or
8 property, shall be guilty of a class A misdemeanor.
- 9 2. Whoever operates, or attempts to operate, any aircraft in this state
10 on any airport, landing field, or landing strip, or whoever operates,
11 or attempts to operate, any aircraft in the air in this state while

12 in an intoxicated condition or while under the influence of alcoholic
13 beverages or any depressant, stimulant, or hallucinogenic or other
14 narcotic drug, shall be guilty of a class A misdemeanor.

15 3. No person may act or attempt to act as a crew member of any aircraft
16 or start an engine or attempt to start an engine of any aircraft within
17 eight hours after the consumption of any alcoholic beverage or while
18 using any drug that affects his faculties in any way contrary to
19 safety. Anyone violating the provisions of this subsection shall be
20 ((punishable by a fine of not less than one hundred dollars nor more
21 than five hundred dollars, or by imprisonment not exceeding one
22 year, or by both such fine and imprisonment))) guilty of a class A
23 misdemeanor.

24 (((3.))) 4. No person shall, without express or implied authority of the owner,
25 operate, climb upon, enter, manipulate the controls or accessories
26 of, set in motion, remove parts or contents therefrom, or otherwise
27 tamper with any civil aircraft within this state with intent to injure
28 the same or cause inconvenience to the owner or operator thereof,
29 or knowingly cause or permit the same to be done. Any person who
30 violates any of the provisions of this subsection shall be guilty of
31 a class B misdemeanor (((, and upon the conviction thereof shall
32 be punishable by a fine of not to exceed one hundred dollars or by
33 imprisonment for not to exceed three months))).

The Committee Counsel noted that he no longer believed that the words "or other narcotic drug" should be added to Subsection 2, since the list preceding those additional words should cover every type of controlled substance.

IT WAS MOVED BY REPRESENTATIVE STONE AND SECONDED BY REPRESENTATIVE RAU that Subsection 2 of Section 2-03-10 be amended by striking the unscored words "or other narcotic drug", and that with that amendment the section be accepted.

MR. WOLF MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE STONE, AND CARRIED to delete the word "or" preceding the words "landing strip" in Subsection 2, and add the words "or in the air" after the word and

comma "strip,"; insert triple parentheses before and after the words "any depressant, stimulant, or hallucinogenic or"; delete the underscored words "or other narcotic drug"; and insert after the words "beverages or" the following: "any controlled substance as defined in section 19-03.1-01"; and when so amended that the entire section be adopted.

The Committee discussed Section 2-03-13 which provides a penalty for violation of Sections 2-03-11 or 2-03-12, which sections deal with the erection of obstructions near airport runway approaches, and the necessity of filing notice with the Aeronautics Commission prior to building any structure over 200 feet in height.

IT WAS MOVED BY REPRESENTATIVE AUSTIN, SECONDED BY CHIEF ENG, AND CARRIED that Section 2-03-13 be accepted as drafted.

The Committee next discussed Section 2-04-12, which reads as follows:

1 2-04-12. ENFORCEMENT AND REMEDIES.) Each violation of this chapter
2 or of any regulations, orders, or rulings promulgated or made pursuant
3 to this chapter, shall constitute a class B misdemeanor, and (((shall be
4 punishable by a fine of not more than five hundred dollars or imprisonment
5 for not more than ninety days or by both such fine and imprisonment, and)))
6 each day a violation continues to exist shall constitute a separate offense.
7 In addition, the political subdivision or agency adopting zoning regulations
8 under this chapter may institute in any court of competent jurisdiction, an
9 action to prevent, restrain, correct or abate any violation of this chapter,
10 or of airport zoning regulations adopted under this chapter, or of any order
11 or ruling made in connection with their administration or enforcement, and
12 the court shall adjudge to the plaintiff such relief, by way of injunction
13 (which may be mandatory) or otherwise, as may be proper under all the
14 facts and circumstances of the case, in order fully to effectuate the purposes
15 of this chapter and of the regulations adopted and orders and rulings made
16 pursuant thereto.

The Committee Counsel noted that the section provided penalties for violations of Chapter 2-04 which relates to airport zoning and the creation or maintenance of airport hazards. IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that the triple parentheses in Line 3 should be removed from in front of the word "shall" and inserted in front of the comma following the word "misdemeanor"; that the triple parentheses in Line 5 should be deleted; and that a triple parentheses should be inserted after the word "offense" in

Line 6; and with those amendments the section be accepted.

The Committee next discussed Section 2-05-09, which reads as follows:

1 2-05-09. RECKLESS OPERATION OF AIRCRAFT.) No person shall
2 operate an aircraft in the air, or on the ground or water, (((while under
3 the influence of alcoholic beverages, narcotics, or other habit-forming drug,
4 nor operate an aircraft in the air or on the ground or water))) in a careless
5 or reckless manner so as to endanger life or property. Any person violating
6 the provisions of this section shall be guilty of a class A misdemeanor.

The Committee Counsel noted that the language indicated for deletion from Section 2-05-09 was included in the language of Subsection 2 of Section 2-03-10. Mr. Webb noted that the language of Section 2-05-09 relating to operating under the influence of alcohol was much broader than the corresponding language of Section 2-03-10, even after the Committee amendment thereto. The Committee Counsel noted that the remaining provisions of Section 2-05-09 were probably also covered by Subsection 1 of Section 2-03-10. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 2-05-09 be repealed.

Mr. Webb again noted that there was a policy question here concerning the extent to which one wanted to regulate the drunken operation of aircraft. He stated that he felt the Committee should set forth a policy on this question. Thereafter, REPRESENTATIVE STONE MOVED to reconsider the action by which the Committee had adopted Section 2-03-10. The Chairman, in lieu of Representative Stone's motion, directed the staff to redraft Sections 2-03-10 and 2-05-09, and to do them in alternative fashion.

The Committee discussed Section 2-05-17, which provides penalties for the violation of Chapter 2-05 relating to the registration of pilots and aircraft. It was noted that Section 2-05-17 should be included in the Chairman's request for a staff redraft, as the section, as it presently reads, could be read as interfering with the operation of Section 2-05-09. Therefore, the Chairman directed the staff to include Section 2-05-17 in its redraft.

The Committee next discussed Section 2-05-18, which provides penalties for aerial spraying without a license. IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 2-05-18 be accepted as drafted.

The Committee discussed Section 2-07-13, which reads as follows:

1 2-07-13. PENALTY.) Any person contracting for or conducting any
2 weather modification activity without being licensed in accordance with the
3 provisions of this chapter or otherwise violating the provisions thereof
4 shall be guilty of a class B misdemeanor (((and upon conviction shall be

5 punished by a fine of not less than fifty dollars nor more than one hundred
6 dollars or by imprisonment in the county jail for thirty days, or by both
7 such fine and imprisonment))).

The Committee Counsel noted that the provisions of Chapter 2-07 include the licensing of persons engaged in weather modification, and a requirement that persons about to engage in weather modification activities give a surety bond. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 2-07-13 be accepted as drafted.

The Committee next considered the criminal offense definition sections contained in Title 61 of the Century Code. Mr. Wefald noted that Title 61 contained most of North Dakota's law relating to waters. He stated that he had reviewed the offense definition sections with Mr. Clifford Jochim of the Water Commission staff. He indicated that generally, Mr. Jochim felt that none of the present penal provisions in Title 61 should be eliminated. Mr. Wefald said that Mr. Jochim had also indicated a desire not to have any of the offenses defined in Title 61 classified as infractions, since, in his judgment, the Water Commission needed the "clout" of potential sentences of imprisonment.

The Chairman noted that it had generally been the Committee's method of operation to reduce the number of criminal offense definitions, and to repeal offense definitions outside of Title 12.1 when those definitions were covered by a general criminal section in Title 12.1. For instance, the Chairman noted that many if not all of the sections in Chapter 61-01 would be covered by general crimes defined in Title 12.1. In light of the Committee's desire to reduce the number of criminal offense definitions outside of Title 12.1, the Chairman asked the staff to redraft Chapter 61-01.

The Committee discussed Section 61-04-12, which reads as follows:

1 61-04-12. USE OF UNSAFE WORKS A MISDEMEANOR - DUTY OF STATE'S
2 ATTORNEY.) The use of works for the storage, diversion, or carriage of
3 water, at any time after an inspection thereof by the state engineer and
4 receipt of notice from him that the same are unsafe for the purpose for which
5 they are used, until the receipt of notice from him that in his opinion they
6 have been made safe, shall be a class A misdemeanor. In case of any violation
7 of this section, the state engineer shall give prompt notice to the state's
8 attorney of the county in which such works are located. The state's attorney,
9 at once, shall proceed against the owner, and all parties responsible for
10 such violation.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED with Mr. Webb voting in the negative, that Section 61-04-12 be accepted as drafted.

The Committee discussed Sections 61-06-23 and 61-08-15, which deal with officers and directors of irrigation districts having an interest in contracts with the district, or accepting a commission or compensation in regard to the issuance of any irrigation district bonds. Mr. Wefald noted that these two sections were probably covered by Section 12.1-13-03 relating to a public servant's interest in public contracts.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Sections 61-06-23 and 61-08-15 be repealed.

The Committee commenced discussion of the criminal sections in Chapter 61-14 when Mr. Wolf suggested that before any more time was taken in looking at these sections, consideration should be given to having them redrafted, as they are verbose and, in many instances, seem to deal with items which may not be appropriate for criminal law.

IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the staff of the Legislative Council direct a letter to the Water Commission requesting that representatives of the Commission review the penal provisions of Title 61 with the Legislative Council staff, and make recommendations to the Committee for the recodifying, revision, and modernization of those sections.

Thereafter, without objection, the Chairman declared the meeting adjourned, subject to the call of the Chair. The meeting adjourned at 3:40 p.m. on Friday, August 31, 1973.


John A. Graham
Assistant Director

Section 12.1-32-01 (S.B. 2045) is to be amended by adding a new subsection to read as follows:

- 1 6. Infraction, for which a maximum fine of five hundred dollars may be
2 imposed. Any person convicted of an infraction who has, within one
3 year prior to commission of the infraction of which he was convicted,
4 been previously convicted of an offense classified as an infraction may
5 be sentenced as though convicted of a class B misdemeanor. If the
6 prosecution contends that the infraction is punishable as a class B
7 misdemeanor, the complaint shall specify that the offense is a misdemeanor.

1 Section 12.1-32-03.1 PROCEDURE FOR TRIAL OF INFRACTION - INCIDENTS.)

- 2 1. Except as provided in this subsection, all procedural provisions relating
3 to the trial of criminal cases as provided in the statutes or rules relating
4 to criminal procedure shall apply to the trial of a person charged with
5 an infraction. A person charged with an infraction is not entitled to
6 be furnished counsel at public expense nor to have a trial by jury unless
7 he may be subject to a sentence of imprisonment under subsection 6 of
8 section 12.1-32-01.
- 9 2. Except as provided in this title, all provisions of law and rules of
10 criminal procedure relating to misdemeanors shall apply to infractions,
11 including, but not limited to, the powers of law enforcement officers,
12 the jurisdiction of courts, the periods for commencing action and
13 bringing a case to trial, and the burden of proof.
- 14 3. Following conviction of an infraction, the offender may be sentenced
15 in accordance with subsection 1 of section 12.1-32-02, except that a
16 term of imprisonment may not be imposed except in accordance with
17 subsection 3 of section 12.1-32-05, or subsection 6 of section 12.1-32-01.
- 18 4. If a statute provides that conduct is an infraction without specifically

19 including a requirement of culpability, no culpability is required.

20 5. [to be redrafted]

1 12.1-32-01.1 ORGANIZATIONAL FINES.) Any organization, as defined
2 in section 12.1-03-04, shall, upon conviction, be subject to a maximum fine
3 in accordance with the following classification:

4 1. For a class A felony, a maximum fine of fifty thousand dollars.

5 2. For a class B felony, a maximum fine of thirty-five thousand dollars.

6 3. For a class C felony, a maximum fine of twenty-five thousand dollars.

7 4. For a class A misdemeanor, a maximum fine of fifteen thousand dollars.

8 5. For a class B misdemeanor, a maximum fine of ten thousand dollars.

9 Nothing in this section shall be construed as preventing the imposition of the
10 sanction provided for in section 12.1-32-03, nor as preventing the prosecution
11 of agents of the organization under section 12.1-03-03.

1 57-02-08.1. PROPERTY TAX CREDITS FOR PERSONS SIXTY-FIVE YEARS
2 OF AGE OR OLDER WITH LIMITED INCOME (((- PENALTY FOR FALSE STATEMENT))).)

3 1. Any person sixty-five years of age or older in the year in which the
4 tax was levied with an income of three thousand five hundred dollars
5 or less per annum from all sources, including the income of any person
6 dependent upon him, including any county, state, or federal public
7 assistance benefits, social security, or other retirement benefits,
8 shall receive a reduction in the assessment up to a maximum reduction
9 of one thousand dollars of assessed valuation on his homestead as
10 defined in section 47-18-01, except that this exemption shall apply
11 to any person who otherwise qualifies under the provisions of this
12 subsection regardless of whether or not such person is the head of
13 a family. In no case shall a husband and wife who are living together

14 both be entitled to the credit as provided for in this subsection upon
 15 their homestead. The provisions of this subsection shall not reduce
 16 the liability of any person for special assessments levied upon his
 17 property. Any person eligible for the exemption herein provided
 18 shall sign a statement that he is sixty-five years of age or older
 19 and that such income, including that of any dependent, as determined
 20 in this chapter does not exceed three thousand five hundred dollars
 21 per annum. The term "dependent" shall include the spouse, if any,
 22 of the person claiming the exemption. (((Any person knowingly
 23 signing a false statement shall be guilty of a misdemeanor and shall
 24 be punished by a fine of not more than five hundred dollars, or by
 25 imprisonment in the county jail for not more than thirty days, or by
 26 both such fine and imprisonment.))) The assessor shall attach such
 27 statement to the assessment sheet and shall show the reduction on
 28 the assessment sheet.

29 2. . . .

30 3. . . .

31 (((4. Any person knowingly signing a false statement in an attempt to
 32 qualify for the credit or refund provided by this section shall be
 33 guilty of a misdemeanor.)))

1 57-02-13. FALSE LIST UNDER OATH - PERJURY.) [repealed]

1 57-02-21. TAX EXEMPTION OF PERSONAL PROPERTY OF CERTAIN PERSONS
 2 WITH MINIMUM INCOME (((- PENALTY FOR FALSE STATEMENT))).)

3 1. . . .

4 2. . . .

5 3. [repealed]

6 4. . . .

1 57-02-45. CRIMINAL PENALTY.) [repealed]

1 57-02-48. FAILURE TO DESIGNATE BILLBOARD OWNER - PENALTY.)

2 If the owner of such billboard fails to comply with the provisions of section
3 57-02-47 within sixty days after the erection of such billboard such owner shall
4 be guilty of (((a misdemeanor and shall be punished by a fine of not more
5 than one hundred dollars))) an infraction.

1 57-02-49. BILLBOARD REPORTS - CONTENTS - FILING - PENALTY.)

2 On or before the fifteenth day of March of each year every person subject
3 to the provisions of sections 57-02-47 through 57-02-49 shall file with the
4 county auditor of each county in which such person has billboards containing
5 advertisements, a report in writing under oath, containing a description of
6 the property upon which each such billboard is located, such description to
7 be sufficiently complete so that the lot , tract or parcel of land may be identified.
8 Such report shall also list the full and true value in money of each such billboard.
9 Whenever the county auditor shall discover that any of such billboards has been
10 omitted in the assessment of any year, he shall assess such billboards in the
11 manner provided for in chapter 57-14. Any person failing to file a report as
12 required by this section shall be guilty of (((a misdemeanor and shall be punished
13 by a fine of not more than one hundred dollars))) an infraction.

1 57-05-05. MAPS OF RAILROAD RIGHT-OF-WAY - FILING - PENALTY

2 FOR VIOLATION.) Each railroad corporation doing business in this state shall
3 file a map, within six months after location of its right-of-way, with the county
4 auditor of each county in which such railroad or any part thereof may be
5 located, showing:

6 1. The exact location of all rights-of-way and sidetracks, showing on

7 which side of section and other lines its property is located in each
8 assessment district in each county, owned or occupied by such
9 railroad corporation;

10 2. The number of acres in each parcel of land included by such railroad
11 corporation in such county as a right-of-way; and

12 3. A description of any other property owned by said corporation in
13 each assessment district in such county.

14 In subsequent years, said corporation need only file maps showing any changes
15 that have been made since the report of the previous year. Any railroad corpora-
16 tion which shall violate any of the provisions of this section shall be (((punished
17 by a fine of not less than fifty dollars nor more than five hundred dollars)))
18 guilty of an infraction and also shall be liable for the expense incurred as
19 provided in section 57-05-10 in procuring the information in any manner other
20 than that provided in this chapter, to be collected in a civil action in the name
21 of the state.

1 57-05-09. FAILURE OF RAILROAD CORPORATION TO MAKE REPORTS
2 TO COUNTY AUDITOR AND STATE TAX COMMISSIONER - PENALTY.) Every
3 railroad corporation which neglects or fails to comply with the provisions of
4 this chapter shall be (((punished by a fine of not less than fifty dollars nor
5 more than five hundred dollars))) guilty of an infraction.

1 57-15-18. PENALTY FOR UNLAWFUL WITHDRAWAL OF BUILDING FUNDS.)
2 [to be redrafted]

1 57-15-33. PENALTY FOR FAILURE TO CERTIFY LEVY. [repealed]

1 57-15-35. PENALTY FOR EXTENDING TAX BEYOND LEVY LIMIT.)
2 Any county auditor who shall extend taxes in excess of the limitations prescribed
3 by the terms of this chapter shall forfeit a sum of not less than twenty-five
4 dollars and not more than one thousand dollars, the amount to be determined
5 by the court in an action brought in district court by the state's attorney in
6 the name of the state for the benefit of the county general fund, and if such
7 action of the county auditor is willful, he also shall be (((deemed))) guilty
8 of a class A misdemeanor (((, and in addition to the usual penalty, his office
9 shall be deemed vacant))).

1 57-15-40. PENALTY FOR UNLAWFUL WITHDRAWAL OF CONSTRUCTION
2 FUND.) [to be redrafted]

1 57-22-14. UNLAWFUL TO DISPOSE OF PERSONAL PROPERTY WITHOUT
2 PAYING TAX.) Any person who shall remove from this state, or dispose of
3 any personal property which has been assessed for personal property taxes,
4 with intent to avoid the payment of such taxes and without paying the same,
5 shall be guilty of a class A misdemeanor.

1 57-22-33. PENALTIES.) [repealed]

1 57-24-05. REMOVAL OR DESTRUCTION OF POSTED LIST A MISDEMEANOR.)
2 [repealed]

1 57-33.1-12. PENALTY.) Any person who willfully fails to comply with
2 the provisions of this chapter (((or willfully delivers or makes a false statement
3 of a material fact to the tax commissioner))) is guilty of a class A misdemeanor

4 (((punishable by a fine of not more than five thousand dollars or by imprison-
5 ment in the county jail for not more than one year, or by both such fine and
6 imprisonment))).

1 57-35-15. PENALTY FOR FALSE RETURN.) [repealed]

1 57-35.1-09. PENALTIES.) If any association which has failed to file
2 a report or which has filed an incorrect or insufficient report, and which
3 has been notified by the tax commissioner of its delinquency, refuses or neglects
4 within thirty days after the mailing of such notice to file a proper report, or
5 if it files a fraudulent return, the commissioner shall determine the tax of such
6 association according to his best information and belief, and shall assess the
7 same at not more than double the amount so determined. The commissioner
8 may allow further time for the filing of a report in such case.

9 (((Any association which, or any officer thereof who, with intent to
10 violate the provisions of this chapter, shall make, render, sign, or verify
11 any false or fraudulent return, report, or statement required under this chapter,
12 is guilty of a misdemeanor (((punishable by a fine of not more than one thousand
13 dollars, or by imprisonment for not to exceed one year, or by both such fine
14 and imprisonment))).

1 57-35.2-07. PENALTIES.) If any bank, trust company or building
2 and loan association which has failed to file a return or which has filed an
3 incorrect or insufficient return, and which has been notified by the tax commis-
4 sioner of its delinquency, refuses or neglects within thirty days after the
5 mailing of such notice to file a proper return, or if it files a fraudulent return,
6 the commissioner shall determine the tax according to his best information and
7 belief, and shall assess such tax at not more than double the amount so

8 determined. The commissioner may allow further time for the filing of a return
9 in such case.

10 (((Any bank, trust company, or building and loan association which,
11 or any officer thereof who, with intent to violate the provisions of this chapter,
12 shall make, render, sign, or verify any false or fraudulent return, report,
13 or statement required under this chapter, is guilty of a misdemeanor punishable
14 by a fine of not more than one thousand dollars, or by imprisonment for not
15 to exceed one year, or by both such fine and imprisonment.)))

1 57-36-09. RECORDS TO BE KEPT BY DISTRIBUTORS AND REPORTS

2 MADE - PENALTY.) Distributors shall keep records and make reports relating
3 to purchases and sales of cigarettes, cigarette papers, snuff, cigars or other
4 tobacco products made by them, and shall be punished for failure so to do,
5 as follows:

6 1. . . .

7 2. . . .

8 3. Any person violating any provision of this section shall be guilty
9 of a misdemeanor and shall be punished by a fine of not less than
10 one hundred dollars nor more than one thousand dollars, or by imprison-
11 ment in the county jail for not more than sixty days, or by both such
12 fine and imprisonment. The attorney general at the request of the
13 state tax commissioner may revoke any license if the licensee does not
14 make the report herein provided for.

1 57-36-04. REVOCATION OF LICENSE - PENALTY.) The attorney general
2 may revoke the license of any dealer or distributor for failure to comply with
3 any of the provisions of this chapter, or any of the rules or regulations

4 prescribed by the tax commissioner or the attorney general. When a license
5 has been legally revoked, no license shall be issued again to the licensee for
6 a period of one year thereafter. (((Any))) No person (((who))) shall sell
7 any cigarettes, cigarette papers, snuff, cigars, or tobacco after his license
8 has been revoked as provided in this chapter (((, is guilty of a misdemeanor
9 and shall be punished by a fine of not less than one hundred dollars nor more
10 than three hundred dollars, and the costs of prosecution, and shall be committed
11 to the county jail until such fine and costs are paid, but not for a period
12 exceeding six months, and all cigarettes, cigarette papers, snuff, cigars, or
13 tobacco in his possession shall be seized and forfeited to the state))).

1 57-36-20. PENALTIES FOR VIOLATION OF CHAPTER.) Except as
2 otherwise provided in this chapter:

3 1. Any person who violates any provision of this chapter shall be (((punish-
4 ed by a fine of not less than one hundred dollars nor more than
5 three hundred dollars and shall be committed to the county jail until
6 such fine and the costs of prosecution are paid, but for a period
7 not exceeding six months, and all))) guilty of a class A misdemeanor.

8 All cigarettes, cigarette papers, snuff, cigars or other tobacco products
9 in his possession or in his place of business shall be confiscated
10 and forfeited to the state;

11 2. Any consumer who purchases any package of cigarettes which does
12 not bear the stamp or insignia placed thereon pursuant to the provisions
13 of this chapter, and any person who shall use or consume within
14 this state any cigarette, unless the same shall be taken from a package
15 or container having attached thereto the stamp or insignia required
16 by this chapter, shall be guilty of a class B misdemeanor (((, and
17 shall be punished by a fine of not less than one hundred dollars

18 and not more than three hundred dollars, and the costs of prosecution,
19 and shall be committed to the county jail until such fine and costs are
20 paid, but for a period not exceeding six months)); (Section to be
21 renumbered]

22 3. [repealed]

1 57-36-21. UNLAWFUL TO COUNTERFEIT STAMPS OR INSIGNIA.)

2 [repealed]

1 57-36-25. CIGARS, SNUFF AND OTHER TOBACCO PRODUCTS - EXCISE
2 TAX ON WHOLESALE PURCHASE PRICE - (((PENALTY -))) REPORTS -
3 COLLECTION - ALLOCATION OF REVENUE.)

4 1. . . .

5 2. . . .

6 3. . . .

7 4. [repealed]

1 57-36-26. CIGARS, SNUFF AND OTHER TOBACCO PRODUCTS - EXCISE
2 TAX PAYABLE BY DEALERS - REPORTS - PENALTIES - COLLECTION - ALLOCATION
3 OF REVENUE.)

4 1. . . .

5 2. . . .

6 3. . . .

7 4. . . .

8 5. [repealed]

1 57-36-32. SEPARATE AND ADDITIONAL TAX ON THE SALE OF CIGARETTES -
2 COLLECTION - ALLOCATION OF REVENUE - TAX AVOIDANCE PROHIBITED
3 (((- PENALTY))).) There is hereby levied and assessed and there shall be

4 collected by the proper officer and paid to the state treasurer for crediting
5 to the general fund, upon all cigarettes sold in this state, an additional tax,
6 separate and apart from all other taxes, of one-half mill on each such cigarette,
7 to be collected as existing taxes on cigarettes sold are, or hereafter may be,
8 collected, by use of appropriate stamps and under similar accounting procedures.
9 No person, firm, or corporation shall transport or bring or cause to be shipped
10 into the state of North Dakota any cigarettes as provided herein, other than
11 for delivery to wholesalers in this state, without first paying such tax thereon
12 to the state treasurer. (((Any person, firm or corporation violating any of the
13 provisions of this section shall be guilty of a misdemeanor.)))

1 57-37-30. PENALTIES.) Any person ((or corporation)) violating any
2 provision of section 57-37-28 or section 57-37-29, shall be ((punished by a
3 fine of not more than one thousand dollars, and in addition thereto shall be)))
4 liable for the amount of the taxes, interest, and penalties due under this
5 chapter on the securities, deposits, or other assets contained in such box or
6 receptacle at the time of any unauthorized access thereto. Such civil penalties
7 may be enforced and collected in an action brought by the state's attorney
8 or the tax commissioner.

1 57-37-32. PENALTY FOR FALSE STATEMENTS OR REPORTS.) [repealed]

1 57-38-45. INTEREST AND PENALTIES.) [to be redrafted]

1 57-38-57. SECRECY AS TO RETURNS - PENALTY.) The secrecy of
2 returns shall be guarded except as follows:

- 3 1. . . .
- 4 2. [repealed]

5 3. . . .

6 4. . . .

1 57-38-59. WITHHOLDING FROM WAGES OF NONRESIDENT EMPLOYEES -
2 PENALTY.)

3 1. . . .

4 2. . . .

5 3. . . .

6 4. Every employer shall deduct and withhold from every nonresident
7 employee's wages the amounts required to be deducted and withheld
8 from a nonresident employee's wages until such time as the employee
9 has filed with his employer a signed certificate, in such form as the
10 tax commissioner shall provide, that such employee entitled to wages
11 is a resident of the state of North Dakota as defined for withholding
12 purposes. Such certificate shall contain a written declaration that
13 it is made under the penalties ((of perjury)) provided in section
14 12.1-11-02. Once filed, a certificate shall remain in effect with the
15 employer with ((which)) whom it is filed, until the employee's
16 status shall have changed to that of a nonresident as defined in
17 subsection 4 of section 57-38-58 of the North Dakota Century Code.
18 The employee shall give written notice to his employer within fifteen
19 days after such change in status. The employer upon receiving
20 such written notice shall deduct and withhold from the employee's
21 wages as provided in this section until the employee files with the
22 employer the signed certificate referred to herein. ((Any employee
23 willfully submitting a falsified statement shall be guilty of perjury
24 and punished in accordance with chapter 12-14.))) Any employee
25 willfully failing to give written notice to his employer of his change

26 in status as required herein within the time prescribed shall be
27 subject to the penalty provided for in subsection 3 of section 57-38-45
28 of the North Dakota Century Code. Employers shall be required
29 to make the certificate of residence available to the tax commissioner
30 upon request.

1 57-39.2-18. PENALTIES, OFFENSES.)

2 1. . . .

3 2. Any person who shall sell tangible personal property, tickets or
4 admissions to places of amusement, and athletic events, or steam,
5 gas, water, electricity, and communication service at retail in this
6 state after his permit shall have been revoked, or without procuring
7 a permit within sixty days after the effective date of this chapter, as
8 provided in section 57-39.2-14, or who shall violate the provisions
9 of section 57-39.2-09, and the officers of any corporation who shall
10 so act, shall be guilty of a class A misdemeanor (((, punishment for
11 which shall be a fine of not more than one thousand dollars or imprison-
12 ment for not more than one year, or both such fine and imprisonment,
13 in the discretion of the court))).

14 3. [repealed]

15 4. . . .

16 5. Any person failing to comply with any of the provisions of this chapter,
17 or failing to remit within the time herein provided to the state the
18 tax due on any sale or purchase of tangible personal property subject
19 to said sales tax, shall be guilty of a class A misdemeanor (((and
20 shall be punished by imprisonment in the county jail not exceeding
21 six months or by a fine of not exceeding five hundred dollars, or
22 by both such fine and imprisonment, in the discretion of the court))).

23 This criminal liability shall be cumulative and in addition to the
24 civil liability for penalties hereinbefore provided.

1 57-39.2-23. INFORMATION DEEMED CONFIDENTIAL (((- PENALTY))).)

2 It shall be unlawful for the commissioner, or any person having an administrative
3 duty under this chapter, to divulge, or to make known in any manner whatever,
4 the business affairs, operations, or information obtained by an investigation ((or))
5 of records and equipment of any person or corporation visited or examined
6 in the discharge of official duty, or the amount or sources of income, profits,
7 losses, expenditures or any particulars thereof, set forth or disclosed in any
8 return, or to permit any return or copy thereof or any book containing any
9 abstract of particulars thereof to be seen or examined by any person except
10 as provided by law. The commissioner may authorize examination of such
11 returns by other state officers, and at his discretion furnish to the tax officials
12 of another state, the multistate tax commission, the District of Columbia, the
13 United States and its territories, any information contained in the tax returns
14 and reports and related schedules and documents filed pursuant to this chapter,
15 and in the report of an audit or investigation made with respect thereto, provided
16 only that said information be furnished solely for tax purposes; and the multistate
17 tax commission may make said information available to the tax officials of any
18 other state, the District of Columbia, the United States and its territories for
19 tax purposes. (((Any person violating the provisions of this section shall be
20 guilty of a misdemeanor and punishable by a fine of not to exceed one thousand
21 dollars.)))

22 The commissioner is nereby authorized to furnish to the workmen's compen-
23 sation bureau or to the unemployment compensation division of the employment
24 security bureau upon request of either a list or lists of holders of permits issued
25 pursuant to the provisions of this chapter or chapter 57-40.2, together with the

26 addresses and tax department file identification numbers of such permit holders,
27 provided that any such list shall be used by the bureau to which it is furnished
28 only for the purpose of administering the duties of such bureau. The commission-
29 er, or any person having an administrative duty under this chapter, is hereby
30 authorized to announce that a permit has been revoked.

1 57-40.2-08. UNLAWFUL ADVERTISING (((- PENALTY))).) It shall be
2 unlawful for any retailer to advertise or hold out or state to the public or to
3 any purchaser, consumer, or user, directly or indirectly, that the tax or
4 any part thereof imposed by this chapter will be assumed or absorbed by the
5 retailer, or that it will not be added to the selling price of the property sold,
6 or if added that it or any part thereof will be refunded. (((Any person violating
7 any provision of this section within this state is guilty of a misdemeanor and
8 shall be punished by a fine of not more than one hundred dollars for each
9 offense or by imprisonment for not to exceed thirty days, or by both such
10 fine and imprisonment.)))

1 57-40.2-12. UNLAWFUL SALE OR SOLICITING (((- PENALTY))).) No
2 agent, canvasser, or employee of any retailer, not authorized by permit from
3 the tax commissioner of this state, shall collect the tax as prescribed by this
4 chapter, nor sell, solicit orders for, nor deliver, any tangible personal property
5 in this state. (((Any such agent, canvasser, or employee violating the provisions

6 of this chapter is guilty of a misdemeanor and shall be punished by a fine
7 of not more than one hundred dollars for each offense, or by imprisonment
8 for not more than thirty days, or by both such fine and imprisonment.)))

1 57-40.2-15. PENALTIES - OFFENSES.)

2 1. . . .

3 2. [repealed]

4 3. . . .

5 4. Any person failing to comply with any of the provisions of this chapter,
6 or failing to remit within the time herein provided to the state the
7 tax due on any sale or purchase of tangible personal property subject
8 to the tax imposed under the provisions of this chapter, shall be
9 guilty of a class A misdemeanor (((and shall be punished by imprison-
10 ment in the county jail not exceeding six months or by a fine of
11 not exceeding five hundred dollars, or by both such fine and imprison-
12 ment, in the discretion of the court))). This criminal liability shall
13 be cumulative and in addition to the civil liability for penalties herein-
14 before provided.

1 57-40.3-11. (((PENALTIES))) PENALTY.)

2 (((1. Any person who shall complete or submit a false or fraudulent "motor
3 vehicle purchaser's certificate" with intent to defeat or evade the tax
4 imposed under this chapter shall be guilty of a misdemeanor, and for
5 each such offense, shall be fined not to exceed five hundred dollars or
6 shall be imprisoned in the county jail not to exceed one year, or shall
7 be subject to both such fine and imprisonment, in the discretion of the
8 court.

9 2.))) Any person who shall violate any of the provisions of this chapter shall
10 be guilty of a class B misdemeanor (((and shall be punished by a fine
11 of not less than fifty dollars nor more than one hundred dollars, or by
12 imprisonment in the county jail for not less than twenty days nor more
13 than thirty days, or both such fine and imprisonment))).

1 57-45-05. NEGLECT OF DUTY BY OFFICERS - PENALTY.) Every officer

2 or employee of any political subdivision of this state who in any case knowingly
3 neglects or refuses to perform any duty enjoined upon him by any provision
4 in this title, or who consents to or connives at any evasion of the provisions
5 of this title whereby any proceeding is prevented or hindered, shall be guilty
6 of malfeasance in office, and shall be subject to removal from office. Any
7 person aggrieved by the failure of any officer or employee to perform his duties
8 as provided in this (((section))) title may file a complaint (((, and it shall be
9 the duty of the state's attorney to prosecute such violations. Any person convicted
10 of malfeasance in office as provided in this section shall be subject to imprisonment
11 in the county jail for not to exceed thirty days or a fine of not less than two
12 hundred nor more than one thousand dollars))) under section 12.1-11-06.

13 In addition (((to the criminal penalties herein provided))), the state's attorney

14 or any aggrieved party may proceed to obtain a writ of mandamus to compel
15 performance by such officer or employee. Any failure of an officer or employee
16 to do any act at the particular time specified in this title in no manner shall
17 invalidate any tax levy, or any certificate of tax sale, or tax deed.

1 57-45-15. FRAUDULENT TAX RECEIPTS - PENALTY.) [repealed]

1 57-50-08. PENALTY.) Any person violating any of the provisions of this
2 chapter is guilty of a class A misdemeanor.

1 57-51-13. FALSE REPORT DEEMED PERJURY.) [repealed]

1 57-51-22. PENALTY.) Any person intentionally violating any of the provi-
2 sions of this chapter is guilty of a class A misdemeanor. (((Each day's failure to
3 file a report within the period of time fixed in this chapter shall constitute a separate
4 offense.)))

1 57-52-19. PENALTIES.) Any person violating any provision of this chapter
2 shall be guilty of a class B misdemeanor (((and upon conviction shall be punished
3 by a fine of not less than twenty-five dollars nor more than one hundred dollars,
4 or by imprisonment of not more than thirty days, or by both such fine and imprison-
5 ment))). Upon such conviction the state tax commissioner shall revoke for a period
6 of not less than one year the special fuel dealer's license of any special fuel dealer
7 convicted of violating this chapter. (((The fine and imprisonment and revocation
8 of license, provided for in this section, shall be in addition to any other penalty
9 imposed by other provisions of this chapter.)))

1 57-53-08. PENALTIES.) Any person violating any provision of this chapter
2 shall be guilty of a class B misdemeanor (((and shall be punished by a fine of
3 not less than twenty-five dollars nor more than one hundred dollars, or by imprison-
4 ment in the county jail for not more than thirty days, or by both such fine and impri-
5 sonment))). Upon conviction the state tax commissioner may revoke for a period
6 of not less than one year the special fuel dealer's license of any special fuel dealer
7 convicted of violating this chapter. (((The fine and imprisonment and revocation
8 of license, provided for in this section, shall be in addition to any other penalty
9 imposed by other provisions of this chapter.)))

1 57-54-23. PENALTY.) Any dealer, purchaser, or other person (((who
2 makes any false statement or report, or))) who collects or causes to be repaid to
3 him or to any other person, any tax to which he is not entitled, or who violates
4 any other provision of this chapter, is guilty of a class A misdemeanor (((and
5 shall be punished by a fine of not more than five hundred dollars or by imprison-
6 ment in the county jail for not more than ninety days, or by both such fine and
7 imprisonment))).

1 57-55-07. FAILURE TO MAKE APPLICATION OR TO DISPLAY DECAL -
2 ILLEGAL USE OF DECAL - PENALTY.) Any person who fails to make application
3 pursuant to the provisions of this chapter, or who shall use or allow to be used
4 a tax decal of any mobile home taxed pursuant to the provisions of this chapter
5 for any purpose other than the purpose for which it was issued, or who fails to
6 attach such decal pursuant to the provisions of this chapter, shall be guilty of a
7 class B misdemeanor (((and punished by a fine of not more than one hundred
8 dollars, or by imprisonment for not more than thirty days, or by both such fine
9 and imprisonment))).

1 57-55-08. DUTY OF MOBILE HOME PARK OPERATORS AND LICENSED MOBILE
2 HOME DEALERS - PENALTY.) It shall be the duty of the owner, operator, or manager
3 of each mobile home park or lot, or any mobile home dealer to display in his office,
4 in a conspicuous place, a notice listing the provisions and requirements of this
5 chapter. Such notice shall be subscribed by the state tax commissioner and shall
6 be furnished by the director of tax equalization of the county in which the owner,
7 operator, or manager of the mobile home park or lot, or mobile home dealer,
8 resides. It shall be the duty of the owner, operator, or manager of each mobile
9 home park or lot to make an annual written report on or before December first of
10 each year to the director of tax equalization of such county. Such report shall
11 list the number of mobile homes and the name of the owner of each mobile home
12 which is located within each such mobile home park or lot. In addition, it shall
13 be the duty of such owner, operator, or manager to furnish a quarterly report
14 providing the name and date of arrival of each mobile home owner who was not
15 listed on the last annual report. Any person who (((refuses))) fails to make a
16 report as required by this section shall (((, after the first offense,))) be guilty
17 of (((a misdemeanor and punished by a fine of not more than one hundred dollars,
18 or by imprisonment for not more than thirty days, or by both such fine and imprison-
19 ment))) an infraction.

1 10-15-53. FILING DOCUMENTS (((- PENALTY FOR FALSE DOCUMENT)))
2 (((1.))) When any document is to be filed, duplicate originals shall be delivered
3 to the secretary of state. He shall stamp on both the date of filing and
4 return one to the cooperative with his certificate of filing.
5 (((2. Whoever causes any document to be filed, knowing such to be false in
6 any material respect, may be fined not more than one thousand dollars
7 or imprisoned not more than three years, or both.)))

1 10-15-58. USE OF TERM "COOPERATIVE" - PENALTY FOR IMPROPER USE.)

2 1. . . .

3 2. No other person may use the term "cooperative", or any variation thereof,
4 as part of his corporate or other business name or title, nor may any
5 other person in any other manner represent himself to be a cooperative.

6 ((Whoever violates this subsection may be fined not more than one hundred
7 dollars.)) Each day of improper use constitutes a separate offense. A
8 violation of this subsection is an infraction.

9 3. . . .

10
11 10-23-03. PENALTIES IMPOSED UPON CORPORATIONS.) Each corporation,
12 domestic or foreign, that ((fails or)) refuses to file its annual report for any
13 year within the time prescribed by section 10-23-02 shall be subject to a penalty
14 of ten percent of the license fee which would be payable if it were filing its articles
15 of incorporation at the time such annual report was to have been filed.

16 Each corporation, domestic or foreign, that fails or refuses to answer truth-
17 fully and fully within the time prescribed by section 10-23-09 interrogatories
18 propounded by the secretary of state, shall be deemed to be guilty of a class B
19 misdemeanor ((and upon conviction thereof may be fined in any amount not
20 exceeding five hundred dollars)).

1 10-23-08. PENALTIES IMPOSED UPON OFFICERS AND DIRECTORS.) Each
2 officer and director of a corporation, domestic or foreign, who ((fails or)) refuses
3 within the time prescribed by section 10-23-09 to answer truthfully and fully inter-
4 rogatories propounded to him by the secretary of state ((, or who signs any articles,
5 statement, report, application or other document filed with the secretary of state

6 which is known to such officer or director to be false in any material respect.)))
7 shall be (((deemed to be))) guilty of a class B misdemeanor (((, and upon convic-
8 tion thereof may be fined in any amount not exceeding five hundred dollars))).

1 10-28-03. PENALTIES IMPOSED UPON CORPORATION.) Each corporation,
2 domestic or foreign, that (((fails or))) refuses to answer truthfully and fully within
3 the time prescribed by section 10-28-05 interrogatories propounded by the secretary
4 of state, shall be (((deemed to be))) guilty of a class B misdemeanor (((and upon
5 conviction thereof may be fined in any amount not exceeding five hundred dollars))).

1 10-28-04. PENALTIES IMPOSED UPON DIRECTORS AND OFFICERS.) Each
2 director and officer of a corporation, domestic or foreign, who (((fails or))) refuses
3 to answer truthfully and fully interrogatories propounded to him by the secretary
4 of state in accordance with the provisions of section 10-28-05 (((, or who signs
5 any articles, statement, report, application, or other document filed with the
6 secretary of state which is known to such officer or director to be false in any
7 material respect.))) shall be (((deemed to be))) guilty of a class B misdemeanor
8 (((, and upon conviction thereof may be fined in any amount not exceeding five
9 hundred dollars))).

1 10-04-18. PENALTIES.) Any person who (((shall))) willfully (((violate)))
2 violates any provision of this chapter or (((who willfully violates))) any rule
3 or order of the commissioner made pursuant to the provisions of this chapter, or
4 who (((shall engage))) engages in any act, practice, or transaction declared by
5 any provision of this chapter to be unlawful shall (((upon conviction thereof be
6 sentenced to pay a fine of not less than five hundred dollars nor more than five
7 thousand dollars or imprisonment in the penitentiary for not less than one year

8 nor more than five years , or in the county jail for not less than three months nor more
9 than one year, or both such fine and imprisonment))) be guilty of a class C felony.

1 1-03-03. SPORTS ON MEMORIAL DAY - PENALTY.) No person, prior
2 to the hour of two o'clock p.m. of the day set apart as Memorial Day, shall
3 engage in organized or commercial ball games, horse racing, sports, or any
4 entertainment which will interfere with the proper observance of such day.
5 Any violation of this section shall be (((punishable by a fine of not less than
6 five dollars nor more than one hundred dollars, or by imprisonment in the
7 county jail for not more than thirty days))) an infraction.

1 58-07-04. PENALTY FOR NEGLECT.) If a township clerk willfully
2 neglects or refuses to perform any of the duties required of him under this
3 chapter, he is guilty of (((a misdemeanor and shall be punished by a fine
4 of not less than ten dollars nor more than fifty dollars. The penalty provided
5 in this section shall not be exclusive but shall be in addition to any other penalty
6 provided by the laws of the state))) an infraction.

1 58-08-08. TOWNSHIP MONEYS TO BE DEPOSITED IN TOWNSHIP NAME -
2 PENALTY FOR VIOLATION.) A township treasurer shall not deposit, in his
3 own name, moneys belonging to the township, in any bank, savings bank,
4 trust company, or other fiduciary institution. All township moneys shall be
5 deposited in the name of the township, and any interest on such moneys shall
6 be credited to the township fund. Any person violating any provision of this
7 section shall be guilty of a class A misdemeanor.

1 58-12-06. OVERSEER PROHIBITED FROM TAKING CONTRACT WORK -
2 PENALTY.) [repealed]

1 2-03-10. RECKLESS OPERATION - OPERATION WHILE INTOXICATED -
2 TAMPERING WITH AIRCRAFT - MISDEMEANORS - PENALTIES.) [to be redrafted]

1 2-03-13. PENALTY.) Each violation of sections 2-03-11 or 2-03-12 or
2 any regulations, orders, or rulings promulgated or made pursuant to this
3 chapter shall constitute a class A misdemeanor.

1 2-04-12. ENFORCEMENT AND REMEDIES.) Each violation of this chapter
2 or of any regulations, orders, or rulings promulgated or made pursuant to
3 this chapter, shall constitute a class B misdemeanor (((and shall be punish-
4 able by a fine of not more than five hundred dollars or imprisonment for not
5 more than ninety days or by both such fine and imprisonment, and each day
6 a violation continues to exist shall constitute a separate offense))). In addition,
7 the political subdivision or agency adopting zoning regulations under this
8 chapter may institute in any court of competent jurisdiction, and action to
9 prevent, restrain, correct or abate any violation of this chapter, or of airport
10 zoning regulations adopted under this chapter, or of any order or ruling made
11 in connection with their administration or enforcement, and the court shall
12 adjudge to the plaintiff such relief, by way of injunction (which may be
13 mandatory) or otherwise, as may be proper under all the facts and circumstances
14 of the case, in order fully to effectuate the purposes of this chapter and of the
15 regulations adopted and orders and rulings made pursuant thereto.

1 2-05-09. RECKLESS OPERATION OF AIRCRAFT.) [to be redrafted]

1 2-05-17. PENALTY.) [to be redrafted]

1 2-05-18. LICENSE FOR AERIAL SPRAYING - REGULATIONS - PENALTIES.)

2 No person shall engage in aerial spraying without first obtaining a license for
3 each aircraft used in such activities as provided in this section. Application
4 shall be made for such license to the North Dakota aeronautics commission upon
5 forms provided by the commission for such purpose. Upon the payment of a
6 license fee of fifteen dollars for each aircraft to be licensed, and upon compli-
7 ance with such reasonable rules and regulations as may be promulgated by
8 the aeronautics commission for the safety and protection of persons and property,
9 the commission shall issue a license for such aircraft to be used in aerial
10 spraying. Persons engaged in private spraying shall be required to pay the
11 same fee for the use of aircraft for this purpose, and shall comply with all
12 rules and regulations promulgated by the commission for aerial spraying. The
13 license and fees provided in this section shall be in addition to any other
14 license or registration required by law, and the proceeds shall be deposited
15 in the aeronautics distribtuion fund. One-half of the proceeds shall be distributed
16 by the state treasurer from the aeronautics distribution fund to the county
17 treasurer upon vouchers prepared by the commission, to be divided equally
18 to approved publicly owned or operated airfields in said county. The remain-
19 ing fifty percent shall be transferred to the state general fund.

20 Any person violating any provision of this section or rules or regulations
21 promulgated under the authority of this section shall be (((punished by a fine
22 of not exceeding one hundred dollars or by imprisonment for not more than
23 thirty days or by both such fine and imprisonment))) guilty of a class B
24 misdemeanor.

1 2-07-13. PENALTY.) Any person contracting for or conducting any
2 weather modification activity without being licensed in accordance with the

3 provisions of this chapter or otherwise violating the provisions thereof shall be
4 guilty of a class B misdemeanor (((and upon conviction shall be punished by
5 a fine of not less than fifty dollars nor more than one hundred dollars or by
6 imprisonment in the county jail for thirty days, or by both such fine and impri-
7 sonment))).

1 61-04-12. USE OF UNSAFE WORKS A MISDEMEANOR - DUTY OF STATE'S
2 ATTORNEY.) The use of works for the storage, diversion, or carriage of
3 water, at any time after an inspection thereof by the state engineer and receipt
4 of notice from him that the same are unsafe for the purpose for which they
5 are used, until the receipt of notice from him that in his opinion they have
6 been made safe, shall be a class A misdemeanor. In case of any violation
7 of this section, the state engineer shall give prompt notice to the state's attorney
8 of the county in which such works are located. The state's attorney, at once,
9 shall proceed against the owner, and all parties responsible for such violation.

1 61-06-23. OFFICERS NOT TO BE INTERESTED IN CONTRACT - PENALTY.)
2 [repealed]

1 61-08-15. OFFICER OF IRRIGATION DISTRICT ACCEPTING COMMISSION
2 OR COMPENSATION IN REGARD TO BONDS - MISDEMEANOR.) [repealed]

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Tentative Agenda

Committee on Judiciary "A"

Meeting of Thursday and Friday, October 25-26, 1973
Committee Room G-2, State Capitol
Bismarck, North Dakota

Thursday:

- 9:30 a.m. Call to order
Roll call
Minutes of previous meeting
 - 9:45 a.m. Consideration of criminal sections in Title 50, PUBLIC WELFARE
 - 11:00 a.m. Consideration of criminal sections in Title 53, SPORTS AND AMUSEMENTS
 - 12:00 noon Luncheon recess
 - 1:15 p.m. Reconvene - consideration of criminal sections in Title 62, WEAPONS
 - 3:00 p.m. Consideration of criminal sections in Title 51, SALES AND EXCHANGE
 - 5:00 p.m. Recess
- *****

Friday:

- 9:00 a.m. Reconvene - consideration of criminal sections in Title 11, COUNTIES
- 11:00 a.m. Consideration of criminal sections in Title 8, CARRIAGE
- 12:00 noon Luncheon recess
- 1:15 p.m. Reconvene - consideration of criminal sections in Title 6, BANKS AND BANKING
- 3:15 p.m. Consideration of criminal sections in Title 7, BUILDING AND LOAN ASSOCIATIONS
- 5:00 p.m. Adjourn

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, October 25 and 26, 1973
Room G-2, State Capitol
Bismarck, North Dakota

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:40 a.m. in Committee Room G-2 on Thursday, October 25, 1973.

Legislative

Members present: Senators Freed, Jones
Representatives Austin, Hilleboe, Lundene, Rau, Royse

Citizen

Members present: Judges Teigen, Heen, Glaser
Sheriff Glen Wells
Police Chief Glen Eng
Mr. Rodney Webb
Mr. Al Wolf

Legislative

Members absent: Representatives Murphy, Stone

Citizen

Member absent: Judge Pearce

Also present:

Mr. Wayne Anderson and Mr. Burt Riskedahl, Social
Service Board
Mr. Bill Daner, North Dakota Bankers Association
Mr. James DuBois, Northwestern Bell Telephone Co.
Mr. Robert Wefald

The Committee Counsel noted that the minutes of the previous meeting would not be available until the second day of this meeting.

The Chairman called on Mr. Robert Wefald for a presentation of the proposed revision of criminal sections in Title 50. Mr. Wefald noted that he had met with Mr. Wayne Anderson and Mr. Burt Riskedahl of the Social Service Board, and that those two attorneys were present to aid the Committee at this time. (All sections which the Committee considered at this meeting are attached, with Committee action reflected, as Appendix "A".)

The Committee next discussed Sections 50-01-18, 50-01-23, and 50-01-24, which read as follows:

1 50-01-18. REFUSAL OF POOR PERSON TO WORK - VAGRANT.) If any
2 person applying for poor relief under the provisions of this chapter is able
3 to work and refuses to do so when given the opportunity, the county welfare
4 board shall refuse any further aid to such person except aid to his admission
5 to the county poor asylum, if there is one, where he shall be compelled
6 to labor. If there is no poor asylum in the county, a person applying for
7 poor relief who refuses to work shall be considered a vagrant, and upon
8 a complaint made by any other person he shall be prosecuted and punished
9 in the manner prescribed in cases of vagrancy.

1 50-01-23. SENDING PAUPER OUT OF COUNTY UNLAWFUL - PROSECUTION.)
2 Every person who, except in the manner provided in this title, sends or
3 causes to be sent any pauper or person who is, or is likely to become, an
4 object of public charity, into any county of this state other than the county
5 where such pauper or person properly belongs, is guilty of a misdemeanor.
6 Any violation of this section may be prosecuted either in the county from
7 which such pauper is sent or in the county to which he is sent.

1 50-01-24. PENALTY FOR BRINGING PAUPER INTO THE COUNTY.)
2 Every person who shall bring into and leave any pauper in any county
3 wherein such pauper has not a lawful residence, knowing such person to
4 be a pauper, shall be punished by a fine of one hundred dollars.

Mr. Wefald stated that these three sections are being recommended for omission, since they are believed to be unconstitutional and unenforceable, and since in addition the "vagrancy" statute, Section 12-42-04, will be repealed on July 1, 1975. Mr. Wefald also noted that Section 50-01-24, if it involved duress, would be covered under the new kidnapping provisions.

Judge Heen inquired as to whether the language in Section 50-01-18, relating to refusal to work, is not necessary. Mr. Wayne Anderson stated that that language is not, to the best of his knowledge, covered elsewhere, and should be retained in Section 50-01-18.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY SENATOR JONES, AND CARRIED that the word and hyphen "- VAGRANT" be deleted from the title of Section 50-01-18; that triple parentheses be inserted around the word "shall" in Line 4 and around the words "any further" in that same line, and the word "may" be inserted in the same line before the word "refuse"; in Line 4 everything after the word "person" be deleted, and the remainder of the section. Lines 5 through 9, be deleted.

Judge Teigen inquired as to how a similar New York law fared in the U. S. Supreme Court. Mr. Anderson noted that the U. S. Supreme Court had upheld the New York law.

IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY JUDGE GLASER, AND CARRIED that Sections 50-01-23 and 50-01-24 be repealed.

The Committee discussed Section 50-01-25, which reads as follows:

1 50-01-25. FRAUDULENT ACTS - PENALTY.) Whoever knowingly obtains
2 (((or attempts to obtain,))) or aids or abets another in obtaining assistance
3 under this chapter, by means of a (((willfully))) false statement or represent
4 tion, by means of impersonation, by assisting knowingly in the transfer
5 or assignment of property, or by other fraudulent device, to which the
6 applicant is not entitled, or assistance greater than that to which he is justly
7 entitled, is guilty of a class A misdemeanor (((and shall be punished by a
8 fine of not more than five hundred dollars, or by imprisonment in the
9 county jail for not more than twelve months, or by both such fine and
10 imprisonment))). In assessing the penalty, the court shall take into
11 consideration, along with other facts, the amount of money fraudulently
12 received.

Mr. Wefald noted that the section could be repealed as it is covered by the theft provisions, more particularly Section 12.1-23-02, and by the false statement provisions of Section 12.1-11-02. The Committee discussed the theft provisions at length, and whether they would be appropriate to replace Section 50-01-25. Mr. Anderson stated that he thought the "transfer or assignment of property" provisions should be retained, and this statement was considered at length. Thereafter, IT WAS MOVED BY JUDGE HEEN that Section 50-01-25 be accepted as drafted. After further discussion, THIS MOTION WAS WITHDRAWN.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED, with Representative Lundene voting nay, that Section 50-01-25 be repealed.

The Committee next discussed Section 50-09-13, which reads as follows:

1 50-09-13. DISCLOSURE OF INFORMATION CONTAINED IN RECORDS -
2 PENALTY.) Except for purposes directly connected with the administration
3 of aid to dependent children and in accordance with the rules and regulations
4 of the state agency, it shall be a class A misdemeanor for any person to
5 solicit, disclose, receive, make use, or to authorize, knowingly permit,
6 participate, or acquiesce in the use, of any list of names of, or any informa-
7 tion concerning, persons applying for or receiving such assistance if the
8 information is derived directly or indirectly from the records, papers, files,
9 or communications of the state or county or subdivisions or agencies thereof,
10 or acquired in the course of the performance of official duties.

The Committee Counsel noted that this section could be reworded so as to prohibit the disclosure of information, and the penalty provision could be put over to Section 12.1-13-01, which is the general penalty section dealing with disclosure of governmental information.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE RAU, AND CARRIED, with Judge Heen voting in the negative, to accept Section 50-09-13 as drafted. Judge Heen mentioned that the section arises quite often in district court, and that it has been construed as not allowing the release of information even to a district court considering a case wherein the information is relevant.

The Committee next discussed Section 50-09-23, which reads as follows:

1 50-09-23. FRAUDULENT ACTS - PENALTY.) Whoever knowingly obtains
2 (((, or attempts to obtain))), or aids or abets any person to obtain, by
3 means of a ((willfully)) false statement or representation, by impersonation,
4 or other fraudulent device, assistance to which he is not entitled, or assistance
5 greater than that to which he is justly entitled, is ((punishable by a fine
6 of not more than five hundred dollars, or by imprisonment for not more than
7 one year in the penitentiary or the county jail, or by both such fine and
8 imprisonment))) guilty of a class A misdemeanor. In assessing the penalty,
9 the court shall take into consideration the amount of money fraudulently received

Mr. Wefald noted that this section could be repealed as it is basically covered by the theft and false statement provisions of the new Criminal Code. IT WAS MOVED BY JUDGE GLASER, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED with Representative Lundene voting in the negative, that Section 50-09-23 be repealed.

Judge Teigen noted that with regard to Section 50-09-13, Judge Heen's problem could be solved if the language "except for use by a court in an action involving such persons" would be added at the end of the section.

Senator Jones noted that the representatives of the Social Service Board that were present had indicated they would be drafting a bill to revise certain sections of Title 50. He said that if their revision effort fails, then Judge Teigen's proposed language could be added to the Committee's bill. Mr. Wolf inquired as to whether a court could not get this type of information as a matter of inherent right. Judge Heen stated the court decisions on the subject were generally very narrowly restrictive of the court's right to see this type of file.

IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE TEIGEN, AND CARRIED that the Committee's previous action in adopting Section 50-09-13 be reconsidered, and that the section be further amended by adding the following language after the last word "duties" in the section: ", except for use by a court in an action involving such persons"; and that when so amended the section be readopted.

The Committee next considered Section 50-10-08, which reads as follows:

1 50-10-08. BIRTH REPORT OF CRIPPLED CHILD - USE - CONFIDENTIAL -
2 PENALTY FOR DISCLOSING INFORMATION.) The information contained in
3 the report furnished the state agency under the provisions of section 50-10-07
4 concerning a child with a visible congenital deformity may be used by the
5 state agency for the care and treatment of the child pursuant to the provisions

6 of this chapter. The report shall be confidential and shall be solely for
7 the use of the state agency in the performance of its duties. It shall not
8 be open to public inspection nor considered a public record except for the
9 purposes set forth in this section. Any person or agency disclosing such
10 confidential information in violation of the provisions of this section is guilty
11 of a class B misdemeanor (((and shall be punished by a fine of not more
12 than fifty dollars and the costs of the prosecution, or by imprisonment in
13 the county jail for not more than thirty days))).

Mr. Wefald noted that the last sentence of the section could be deleted,
as the penalty for unlawful release of confidential information is provided in Section
12.1-13-01.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY MR. WOLF,
AND CARRIED, with Representative Lundene voting in the negative, that the last
sentence of Section 50-10-08 be deleted, and that the section then be adopted
as amended.

The Committee next discussed Section 50-11-10, which reads as follows:

1 50-11-10. PENALTY.) Any person, whether owner, manager, operator
2 or representative of any owner, operator or manager, who violates any of
3 the provisions of this chapter, is guilty of a class B misdemeanor (((and
4 shall be punished by a fine of not more than one hundred dollars, or by
5 imprisonment in the county jail for not more than thirty days, or by both
6 such fine and imprisonment))).

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE
ROYSE, AND CARRIED that Section 50-11-10 be accepted as drafted.

The Committee next discussed Section 50-12-17, which reads as follows:

1 50-12-17. PENALTY.) No person shall place any child other than his
2 or her own in family homes for adoption or otherwise without a license so
3 to do from the (((public welfare))) social service board. Every person who
4 violates any provision of this chapter is guilty of a class A misdemeanor.

Mr. Wefald noted that the attorneys for the Social Service Board thought
that it might be desirable to raise the penalty classification for the offense defined
in Section 50-12-17 to a Class C felony, as the offense is a serious one. The

Committee discussed the section at length, including a discussion of the meaning of the word "place" in Line 1 of the section, and whether doctors or attorneys who help such a "placement" would or would not be liable under the statute.

IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE TEIGEN, AND CARRIED, with the Chairman voting in the negative, that the words "or otherwise" be inserted in triple parentheses in Line 2 of Section 50-12-17.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that the penalty classification for Section 50-12-17 be changed to a Class C felony.

The Committee next discussed Section 50-18-08, which provides a penalty for a violation of the provisions of the chapter dealing with boarding homes for the aged and infirm, and requiring them to be licensed and to maintain certain records. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 50-18-08 be accepted as drafted.

The Committee next discussed Section 50-19-15, which reads as follows:

1 50-19-15. PENALTY.) Every person who violates any of the provisions
2 of this chapter (((, or who makes any false statements on reports to the
3 division or its agent, or to the state department of health.))) is guilty of
4 a class B misdemeanor (((and shall be punished by a fine of not more than
5 one hundred dollars or by imprisonment in the county jail for not more than
6 thirty days or by both such fine and imprisonment))).

Mr. Wefald noted that Chapter 50-19 deals with maternity homes for unmarried mothers and requires them to be licensed. He stated that the language relating to false statements was deleted as it is covered by Section 12.1-11-02 prohibiting false statements in governmental matters.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 50-19-15 be accepted as drafted.

The Committee discussed Section 50-20-06, which reads as follows:

1 50-20-06. PENALTY.) Every person who violates any of the provisions
2 of this chapter (((, or who makes any false statements on reports to the
3 division of child welfare or its agent, or to the state department of health.)))
4 is guilty of a class B misdemeanor (((, and shall be punished by a fine
5 of not more than one hundred dollars or by imprisonment in the county
6 jail for not more than thirty days or by both such fine and imprisonment))).

Mr. Wefald noted that Section 50-20-06 was in a chapter which required certain reports to be made to the Social Service Board, including the reporting of children born with congenital deformities. He stated that the language concerning the making of false statements was being recommended for omission as it was covered by Section 12.1-11-02 of the new Criminal Code.

Senator Jones noted that Sections 50-10-07 and 50-20-02 both dealt with requiring reports of certain birth defects.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 50-20-06 be accepted as drafted.

The Committee next discussed Section 50-22-05, which reads as follows:

1 50-22-05. PENALTY.) Any person conducting a solicitation in violation
2 of the provisions of this chapter ((or filing false information hereunder)))
3 shall be guilty of a class A misdemeanor ((punished by a fine of not to
4 exceed one thousand dollars or by imprisonment for not more than six months
5 in jail, or both, and each officer or agent of a charitable organization who
6 knowingly authorizes or conducts such solicitation in violation of this chapter,
7 shall be subject to the penalty provided in this section))).

Mr. Wefald noted that Chapter 50-22 requires charitable organizations wishing to solicit contributions in North Dakota to be licensed by the Secretary of State. After discussion, IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 50-22-05 be accepted as drafted.

The Committee discussed Section 50-24-31, which reads as follows:

1 50-24-31. CONFIDENTIAL CHARACTER OF RECORDS - PENALTY.)
2 All applications, information, and records concerning any applicant or
3 recipient of assistance to aged, blind, or disabled under the provisions
4 of this chapter shall be confidential and shall not be disclosed nor used
5 for any purpose not directly connected with the administration of assistance
6 to the aged, blind, or disabled; except that upon the personal written request
7 of any elected public official the records of the names, addresses, and amounts
8 of assistance shall be open for his inspection by the state or county welfare
9 board. Such information shall not be used for any political or commercial
10 purpose or made public in any manner. Any person using any application,
11 information, or records concerning any applicant or recipient of assistance

12 official capacity or for purposes not directly connected with the administration
13 of assistance to the aged, blind, or disabled is guilty of a class A misdemeanor.

It was noted that the last sentence of Section 50-24-31 could possibly be omitted, as the provision for criminal liability for misuse of confidential governmental materials is provided by Section 12.1-13-01. In response to a question, Mr. Anderson noted that the Federal Government would be taking over the assistance to the aged, blind, and disabled programs, but that there would be existing records kept as a result of state administration of those programs, and that those records should probably remain confidential.

Judge Teigen noted that the last sentence dealt with the "use" of the information or records beyond official capacity or for purposes not directly connected with the administration of the programs, and wondered whether that language was not broader than the disclosure provisions of Section 12.1-13-01. The Committee Counsel stated that he thought it was, but wondered what kind of use would be harmful unless it resulted in disclosure. After further discussion, it was decided that the language regarding the "use" of the records had value and should be retained. Thereupon, IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 50-24-31 be accepted as drafted.

The Committee next considered Section 50-24-39, which reads as follows:

1 50-24-39. FRAUDULENT ACTS - PENALTY.) Whoever knowingly
2 obtains, (((or attempts to obtain,))) or aids or abets another, by means
3 of a (((willfully))) false statement or representation, or by impersonation,
4 or by other fraudulent device, assistance to the aged, blind, or disabled
5 to which he is not entitled, or assistance greater than that to which he is
6 justly entitled, is guilty of a class A misdemeanor (((and shall be punished
7 by a fine of not more than five hundred dollars, or by imprisonment in the
8 county jail for not more than twelve months, or by both such fine and
9 imprisonment. In assessing the penalty, the court shall take into considera-
10 tion, along with other factors, the amount of money fraudulently received))).

Mr. Wefald noted that this section was being recommended for omission since the provisions contained in it were covered under various provisions of Title 12.1.

During the discussion concerning this section, it was noted that it covered fraudulent transfers to make the transferor eligible for public assistance. It was also noted that if these transfers exceeded \$100 they would be classified as a felony under the theft provisions, and that anyone participating knowingly in the transfers would be guilty of facilitating or soliciting the felony, and could also be punished.

IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY CHIEF ENG. AND CARRIED that Section 50-24-39 be repealed.

Thereafter, the Committee recessed for lunch at 12:07 p.m. and reconvened at 1:30 p.m., at which time it considered Section 53-01-19, which presently makes it a misdemeanor to hold a public boxing match, or allow your buildings or grounds to be used for such a match, without a license from the Secretary of State. The staff draft would simply change the classification to a Class B misdemeanor. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the staff draft of Section 53-01-19 be accepted.

The Committee next discussed Sections 53-02-08 and 53-02-15. Mr. Wefald noted that Section 53-02-08 requires that a peace officer be in attendance at any public dance or music festival, and makes it a misdemeanor if a dance or music festival is held without a peace officer present. Section 53-02-15 simply provides a general penalty for violating any provision of Chapter 53-02. Mr. Wefald noted that the staff draft of Section 53-02-08 would now make it "unlawful" to hold a dance or music festival without a peace officer being present, and the punishment for so doing would be provided by Section 53-02-15, which would be reclassified as a Class B misdemeanor.

The Committee then launched into a lengthy discussion concerning the setting of fees for the peace officers who were "chaperones" at public dances or music festivals. Thereafter, IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY SHERIFF WELLS, AND CARRIED that Sections 53-02-08 and 53-02-15 be accepted as drafted.

The Committee next discussed Sections 53-03-08 and 53-04-08, which read as follows:

1 53-03-08. PENALTY.) Any person who shall violate any of the provisions
2 of this chapter shall be guilty of a class B misdemeanor (((and shall be
3 punished by a fine of not less than fifty dollars nor more than five hundred
4 dollars, or by imprisonment in the county jail for not more than ninety
5 days, or by both such fine and imprisonment))).

1 53-04-08. PENALTY.) Any person engaged in the operating or displaying
2 to the public of any amusement devices in violation of any of the provisions
3 of this chapter is guilty of a class B misdemeanor (((and shall be punished
4 by a fine of not more than one hundred dollars, or by imprisonment in the
5 county jail for not more than thirty days, or by both such fine and imprison-
6 ment. Each machine displayed to the public upon which such person has
7 failed to secure a license shall constitute a separate offense))).

IT WAS MOVED BY JUDGE HEEN AND SECONDED BY SENATOR JONES that Sections 53-03-08 and 53-04-08 be accepted as drafted.

Thereafter, discussion ensued concerning the language making it a separate offense for each machine displayed on which a license had not been secured. It was noted that the word "devices" was used in Line 2, and that word probably coordinated with the last sentence. Representative Rau stated that he thought that there should be only one offense no matter how many machines were operated without licensing, but that the offense should be classified as a Class A misdemeanor. Judge Teigen suggested that the word "devices" in Line 2 be enclosed in triple parentheses, and that the words "device, whether one or more." be inserted immediately after the word "devices". Judge Heen accepted this amendment to his motion, and his second consented, and thereafter THE MOTION CARRIED.

The Committee discussed Section 53-05-06, which provides that it is a misdemeanor to violate the provisions of Sections 53-05-02, 53-05-03, or 53-05-05. Senator Jones inquired as to why Section 53-02-08 was classified as a Class B misdemeanor while Section 53-05-06 was classified as a Class A misdemeanor. The Committee Counsel noted that the Class A misdemeanor classification for Section 53-05-06 was closest to the penalty presently provided, while a Class B misdemeanor was closest to the penalty presently provided for a violation of Section 53-02-08, if a violation of that section is to be punished under the general chapter penalty in Section 53-02-15.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 53-05-06 be reclassified as a Class B misdemeanor, and, as so amended, be accepted.

The Committee next discussed Section 53-05-07, which makes it a crime to screen a pool or billiard hall, bowling alley, soft drink parlor, or card parlor from clear view from the public street. Mr. Wefald recommended that this section be omitted as it is antiquated, unenforceable, and forbade action which was no longer contrary to the mores of the community. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 53-05-07 be repealed.

The Committee discussed Section 53-06-11, which provides a penalty for the violation of Chapter 53-06 which deals with licensing games and amusements. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 53-06-11 be accepted as drafted.

The Committee next discussed the criminal sections in Title 51 of the Century Code. Mr. Wefald noted that he had reviewed the provisions in this title with Mr. Conrad Ziegler of the Attorney General's office. He stated that several of the provisions were being recommended for omission as being antiquated, but that most of the changes had been in the classifications of the offenses.

The Committee discussed Section 51-04-05, which reads as follows:

- 1 51-04-05. FAILURE OF AFFIDAVIT (((- PENALTY))) If the affidavit
- 2 filed as prescribed in section 51-04-04 shows that the sale is not of the kind
- 3 or character proposed to be advertised or represented, or fails to disclose
- 4 the facts as required, then the county auditor shall refuse the applicant

5 a license for the sale. Should a license be issued to the applicant, it shall
6 state that the applicant is authorized and licensed to sell such goods, wares,
7 and merchandise, and advertise and represent and hold forth the same as
8 being sold as such insurance, bankrupt, insolvent, assignee, trustee,
9 testator, executor, administrator, receiver, syndicate, wholesaler or
10 manufacturer, or closing out sale, or as a sale of any goods, wares and
11 merchandise damaged by smoke, fire, water, or otherwise, as shown in
12 the affidavit.

13 The affidavit shall be sworn to by the applicant before a person authorized
14 to administer oaths. (((Every person making a false statement of any
15 fact in such affidavit shall be guilty of perjury and shall be punished
16 for such offense as is provided by the criminal code of this state.)))

It was noted that Chapter 51-04 deals with the licensing of "transient merchants", and that the definition of transient merchant in Chapter 51-04 would probably include housewives holding rummage sales. At Judge Teigen's suggestion, the Chairman directed the staff to write to the Judicial Council regarding the desirability of requiring that housewives be licensed as transient merchants.

Thereafter, IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 51-04-05 be accepted as drafted.

The Committee next discussed Section 51-04-10, which provides a penalty for violation of the provisions of Chapter 51-04 for which another penalty is not specifically provided. IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 51-04-10 be accepted as drafted.

The Committee next discussed Section 51-05-04, which provides a penalty for violation of the preceding three sections. Those sections require county treasurers to be given notice of auction sales in order to ensure collection of personal property taxes. The Committee Counsel noted that he intends to write a letter to the legal staff of the Tax Department suggesting that these sections be revised so that their coverage extends only to personal property assessed by the State Board of Equalization.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 51-05-04 be reclassified as an infraction and when so amended be adopted.

The Committee discussed Section 51-05-06, which reads as follows:

1 51-05-06. GOODS SUBJECT TO AUCTION DUTIES AT ANOTHER PLACE
2 NOT TO BE SOLD AT AUCTION - PENALTY.) No auctioneer shall expose

3 to sale by public auction any articles liable to auction duties at any place
4 other than that designated, except goods sold in original packages, as
5 imported pictures, household furniture, libraries, stationery, and such
6 bulky articles as usually have been sold in warehouses, or in the public
7 streets, or on the wharves. Any person violating the provisions of this
8 section is guilty of (((a misdemeanor and shall be punished by a fine
9 of not more than two hundred fifty dollars for each offense))) an infraction.

Mr. Wefald stated that the staff was recommending the section for omission as it no longer serves any useful purpose. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 51-05-06 be repealed.

Section 51-05-08 was next discussed. The section provides that a person who carries on, is interested in, or is employed about an auction sale, and knows that goods are being sold which are damaged, yet which are offered as sound, is guilty of a misdemeanor. During discussion of this section it was noted that it also applied to the auctioneer himself.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 51-05-08 be accepted as drafted.

The Committee next discussed Section 51-05-10, which reads as follows:

1 51-05-10. FAILURE TO RENDER ACCOUNT - PENALTY.) Every
2 auctioneer, every partner or clerk of an auctioneer, and every person
3 in any way connected in business with an auctioneer, who willfully fails
4 to render any semiannual or other account by law required to be rendered.
5 at the time or in the manner prescribed by law, or who willfully fails to
6 pay over any duties legally payable by him at the time and in the manner
7 prescribed by law, is guilty of a class B misdemeanor.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that triple parentheses be placed before the word "semiannual" in Line 4; in the same line that triple parentheses be placed after the word "other" and that the words "report or" be inserted before the word "account"; and still in the same line that triple parentheses be inserted around the words "by law"; and that in Line 5, triple parentheses be inserted before the second word "or"; and that in Line 7, triple parentheses be inserted after the word and comma, "law,".

The Committee next discussed Section 51-05-11, which reads as follows:

1 51-05-11. FRAUD OR DECEIT COMMITTED BY AUCTIONEER - PENALTY.)
2 Every auctioneer, every partner or clerk of any auctioneer, and every
3 person in any way connected in business with an auctioneer, who commits
4 any fraud or deceit, or by any fraudulent means whatever seeks to evade
5 or defeat the provisions of the laws of this state relating to auctions,
6 is guilty of a class A misdemeanor, and in addition to the punishment
7 prescribed therefor is liable in treble damages to any party injured thereby.

IT WAS MOVED BY SENATOR JONES AND SECONDED BY REPRESENTATIVE AUSTIN that Section 51-05-11 be changed to a Class B misdemeanor and then accepted. REPRESENTATIVE LUNDENE MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 51-05-11 be accepted as drafted.

The Committee next discussed Section 51-05-13, which requires an auctioneer to be licensed, bonded, etc. The section also covers reciprocity for nonresident auctioneers, and provides that executors or administrators, sheriffs, and persons selling purebred or registered livestock at auction need not comply with the section. The section is presently classified as a misdemeanor punishable by a maximum of a \$100 fine, and the staff proposal is to reclassify it as an infraction.

The Committee discussed the exception for persons selling purebred or registered livestock at auction, and no one could adequately explain the reason for it. It was suggested that it was perhaps because such auctioneers would be licensed under the Federal Packers and Stockyards Act.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY SENATOR JONES, AND CARRIED that Section 51-05-13 be accepted as drafted.

The Committee discussed Section 51-06-03, which provides a general penalty for violation of the provisions of Chapter 51-06, dealing with the cash value and redemption of trading stamps. IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 51-06-03 be accepted as drafted.

The Committee discussed Section 51-07-04, which reads as follows:

1 51-07-04. SELLING GOODS BEARING COUNTERFEIT TRADEMARK -
2 MISDEMEANOR.) Every person who, with intent to represent such goods
3 as the genuine goods of another, sells or keeps for sale any goods upon
4 which any counterfeit trademark has been affixed, knowing the same to
5 be counterfeited, is guilty of a class A misdemeanor. The word "goods"

6 as used in this section includes every kind of goods, wares, merchandise,
7 compound, or preparation, which may be kept or offered for sale lawfully.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 51-07-04 be accepted as drafted.

The Committee discussed Section 51-07-04.1, which reads as follows:

1 51-07-04.1. DEFACING, DESTROYING, OR ALTERING SERIAL NUMBERS
2 ON FARM MACHINERY - PENALTY.) It (((shall be))) is unlawful for any
3 person (((who, with fraudulent intent, shall))) to willfully:

- 4 1. Deface, destroy, alter, or remove the serial number on any
5 tractor, combine, corn picker or any other heavy farm machinery
6 that carries a factory serial number;
- 7 2. Place or stamp other than the original serial number upon any
8 tractor, combine, corn picker or any other heavy farm machinery
9 that carries a factory serial number; and
- 10 3. Sell or offer for sale any tractor, combine, corn picker or any other
11 heavy farm machinery bearing an altered or defaced serial number
12 other than the original.

13 Any person, who shall violate any of the provisions of (((the))) this section
14 shall be guilty of a class B misdemeanor (((and shall be punished by a fine
15 of not more than five hundred dollars or by imprisonment in the county jail
16 for not more than sixty days))).

Representative Rau inquired as to why the section applied to "heavy" farm machinery, but no one was able to answer. Representative Hilleboe inquired as to the result if a farmer wanted to knock the serial number off his own machinery. It was noted that the section would cover that kind of activity, and was probably designed to do so, since the removing or alteration of a serial number on a piece of machinery made it easier to transfer once stolen. Representative Hilleboe suggested that the classification be changed to a Class A misdemeanor.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that the small letter "a." be inserted after the numeral and period "1." in Line 4; that the underscored word "or" be inserted after the semicolon in Line 6; that triple parentheses be inserted before and after the numeral and period "2." in Line 7 and an underscored period and letter "b." be inserted

before the word "Place" in Line 7; that triple parentheses be inserted around the numeral and period "3." in Line 10, and that an underscored numeral and period "2." be inserted after the ending triple parentheses in Line 10; that triple parentheses be inserted before the second word "any" in Line 13, and in the same line, that the triple parentheses be deleted before the word "the"; and that the capital letter "B" in Line 14 be deleted and the capital letter "A" be inserted in lieu thereof.

The Committee then discussed Section 51-07-08, which requires automobile, firefighting equipment, and farm machinery manufacturers to maintain a "supply depot" in North Dakota if they intend to sell or deliver their products in North Dakota.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY SENATOR JONES, AND CARRIED that Section 51-07-08 be repealed.

The Committee discussed Section 51-07-12, which provides that automobile purchasers are to be given evidence of insurance protection if the financing organization requires that the automobile be covered by insurance. If the insurance furnished does not contain liability coverage (for both bodily injury and property damage) then the policy, if it is to be filed with the lending agency, is to have imprinted or stamped upon it a notice that it does not include liability coverage. Failure to comply with these provisions is to be classified as a Class B misdemeanor.

IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE HEEN, AND CARRIED that Section 51-07-12 be accepted as drafted.

The Committee then discussed Section 51-07-13, which reads as follows:

1 51-07-13. LABELING IMPORTED MEATS SOLD.)
2 1. No person (((, firm, or corporation))) shall knowingly sell or offer
3 for sale in the state of North Dakota any meat, whether fresh, frozen,
4 or cured, which is imported from outside the boundaries of the
5 United States, or any meat product containing in whole or in part
6 such imported meat, without first indicating this fact by placing labels
7 on each quarter, half, or whole carcass of such meat, or on each
8 . case, package, tray, or display containing such imported meat.
9 2. Any person (((, firm, or corporation))) who shall violate any
10 of the provisions of this section shall be guilty of a class B misdemeanor
11 (((and upon the first conviction shall be punished by a fine of
12 not less than fifty dollars nor more than one hundred dollars, or
13 by imprisonment in the county jail for not less than thirty days,
14 or by both such fine and imprisonment. For each second or

15 successive conviction of such offense against the provisions of
16 this section, the fine shall not be less than one hundred dollars
17 nor more than five hundred dollars, or by imprisonment in the
18 county jail for not less than ninety days, or by both such fine
19 and imprisonment))).

The Committee discussed this section at length, noting that many canned meats which are imported indicate on their face that they are imported, yet the section would require the retailer to further label them.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that the word "or" before the word "cured" in Line 4 be inserted in triple parentheses, and that the words "or processed," be inserted after the word and comma "cured," in that same line; that triple parentheses be inserted before the word "without" in Line 6; that triple parentheses be inserted after the word "indicating" in Line 6; that the underscored word "if" be inserted before the word "this" in Line 6; that triple parentheses be placed before the word "by" in Line 6; that triple parentheses be placed after the word "placing" in Line 6; that the underscored words "is not shown by" be inserted before the word "labels" in Line 6; that the underscored words "or printing" be inserted after the word "labels" in Line 6; and that the underscored material "can," be inserted after the word "package," in Line 8, and that when so amended, the section be accepted.

The Committee discussed Sections 51-08-01 and 51-08-03. Mr. Wefald noted that Chapter 51-08 deals with prohibitions on pools and trusts, and that the chapter is essentially North Dakota's anti-trust and anti-price-fixing statute. Section 51-08-01 will now make it unlawful to create or enter into a pool or trust agreement; and Section 51-08-03 will make it a Class A misdemeanor to violate any of the provisions of Chapter 51-08.

It was noted that Section 51-08-05 would prohibit corporations which violated the provisions of the chapter from doing business in North Dakota, and would require the Secretary of State to cancel their charter or authority to do business.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Sections 51-08-01 and 51-08-03 be accepted as drafted.

The Committee discussed Section 51-08-04, which reads as follows:

1 51-08-04. PENALTY FOR MEMBERS OF CORPORATION, PARTNERSHIP,
2 OR ASSOCIATION VIOLATING PROVISIONS OF CHAPTER.) Every person who,
3 as president, manager, director, stockholder, receiver, agent, or other
4 employee of any corporation, on behalf of the corporation mentioned in
5 section 51-08-03, or as a member of any partnership or association of
6 individuals, violates any of the provisions of this chapter, shall be

7 ((punished by a fine of not more than two thousand dollars, or by
8 imprisonment in the county jail for not more than one year, or by both
9 such fine and imprisonment))) guilty of a class A misdemeanor.

Mr. Wefald stated that the staff was recommending that this section be omitted since its provisions are covered by Title 12.1, and especially Section 12.1-03-03.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY SENATOR JONES, AND CARRIED that Section 51-08-04 be repealed.

After further discussion of Section 51-08-05, IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE HEEN, AND CARRIED that Section 51-08-05 be repealed. It was noted that the rationale for this motion was that this section was within the scope of the Committee's jurisdiction because it attached an additional penalty to corporate entities for criminal activities which was not attached to other persons or legal entities which could violate the provisions of Chapter 51-08.

The Committee discussed Section 51-09-02, which establishes a penalty for violation of Section 51-09-01 which prohibits unfair discrimination in the sale of commodities. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SENATOR JONES, AND CARRIED, with Representative Lundene voting in the negative, that Section 51-09-02 be accepted as drafted.

The Committee discussed Section 51-10-05, which reads as follows:

1 51-10-05. ADVERTISING, OFFERING OR SELLING ARTICLE AT LESS
2 THAN COST - PENALTY.) Any retailer or wholesaler who shall advertise,
3 offer to sell, or sell any article of merchandise at less than cost to such
4 retailer or wholesaler as defined in this chapter, or who gives, offers to
5 give, or advertises the intent to give away any article of merchandise, with
6 the intent, or with the effect of injuring competitors and destroying competition,
7 shall be guilty of a class A misdemeanor. Proof of any such advertising,
8 offer to sell or to give away, or sale or gift, of any article of merchandise
9 by any retailer or wholesaler at less than cost, as defined in this chapter,
10 shall be prima facie evidence of a sale below cost.

Mr. Wefald stated that the staff was recommending this section for repeal as being antiquated and no longer of any use. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED, with the Chairman voting in the negative, that Section 51-10-05 be repealed.

The Committee discussed Section 51-10-14, which reads as follows:

1 51-10-14. RETAILER'S LICENSE - PENALTY.) The state trade commission
2 shall require and provide for the annual registration and licensing of every
3 retailer now or hereafter doing business within this state, which license
4 shall not be transferable. Upon the payment of an annual fee of two dollars
5 and fifty cents, the state trade commission shall issue an annual license to
6 such persons as may be qualified by law to engage in the business of making
7 sales at retail. Each retailer shall secure a separate license for each place
8 of business within the state for which a retail sales or use tax permit is
9 required pursuant to the laws of this state. Every person ((, firm, or
10 corporation))) engaging in business as a retailer without procuring a current
11 and valid license as provided in chapter 51-10 ((of the North Dakota Century
12 Code, as amended,))) shall be guilty of (((a misdemeanor and punishable by
13 a fine of not more than one hundred dollars))) an infraction.

The Committee Counsel noted that this section was a portion of the statutes relating to the Trade Commission, and that the license required under this section was not, in fact, being required because the Trade Commission did not have an appropriation and therefore was not functioning. However, it was felt that if the statute is to be retained on the books, it should be reclassified in accordance with the new Criminal Code.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY MR. WEBB, AND CARRIED, with Senator Jones voting in the negative, that Section 51-10-14 be accepted as drafted.

The Committee then recessed at 4:58 p.m. and reconvened at 9:00 a.m. on Friday, October 26, 1973.

The Committee considered Section 51-12-02, which provides a penalty for violation of Section 51-12-01 which prohibits false and misleading advertising.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 51-12-02 be accepted as drafted.

The Committee discussed Sections 51-12-04; 51-12-05; 51-12-06; and 51-12-07. These sections prohibit the use of the terms "army", "navy", "P-X", or similar terms in relation to the sale of goods from stores, where the use of those terms may lead the public to believe that the store is operated by the United States Government; and also prohibit a representation that a piece of goods has a relationship with or was made for the United States Government.

Mr. Wefald noted that the sections were being recommended for repeal as they did not appear to be necessary any more. IT WAS MOVED BY JUDGE HEEN, SECONDED BY MR. WEBB, AND CARRIED that Sections 51-12-04; 51-12-05, 51-12-06, and 51-12-07 be repealed.

The Committee discussed Section 51-12-13, which provides the penalty for violation of certain stated sections which cover false advertising and other business misrepresentations. The penalty is set as a Class B misdemeanor.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 51-12-13 be accepted as drafted.

The Committee discussed Section 51-13-07, which reads as follows:

1 51-13-07. PENALTIES.) Any person who shall willfully ((and
2 intentionally))) violate any provisions of this chapter shall be guilty of
3 a class A misdemeanor ((and upon conviction shall be punished by imprison-
4 ment for not more than one year or a fine not exceeding five hundred dollars,
5 or by both such fine and imprisonment))). A willful violation of sections
6 51-13-02 or 51-13-03 by any person shall bar his recovery of any credit
7 service charge, delinquency, or collection charge or refinancing charge on
8 the retail installment contract involved.

IT WAS MOVED BY MR. WEBB, SECONDED BY SHERIFF WELLS, AND CARRIED that the underscored comma in Line 7 be deleted and reinserted after the word "charge" in the same line, and that, when so amended, the section be accepted.

The Committee discussed Section 51-14-05, which provides a penalty for violation of the provisions of the chapter dealing with revolving charge accounts, and would be reclassified by the staff as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 51-14-05 be accepted as drafted.

Thereafter, the Committee discussed the criminal sections contained in Title 8 of the Century Code. The first section to be discussed was Section 8-08-06, which the Committee Counsel noted had been discussed with Mr. Bruce Hagen, Public Service Commissioner.

The Committee Counsel noted that the Public Service Commission and the Health Department did not feel a responsibility for enforcement of this section. In light of that fact, and of the fact that it has not been amended since its enactment in 1911, the Committee Counsel suggested that it could be repealed. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SHERIFF WELLS, AND CARRIED that Section 8-08-06 be repealed.

The Committee next discussed Section 8-08-10, which would require taxis, passenger buses, and school buses to be equipped with shatterproof glass. The section would make all persons, including members of school boards and boards of education, liable for violation of its terms.

After discussion, it was noted that a section such as this would no longer be needed as all glass was shatterproof at any rate, and further, that criminal liability for a failure to equip a vehicle with shatterproof glass was probably not appropriate. IT WAS MOVED BY SENATOR JONES, SECONDED BY MR. WEBB, AND CARRIED that Section 8-08-10 be repealed.

The Committee Counsel noted that Section 39-29-41 of the Motor Vehicle Code required that all new motor vehicles which are to be sold in the State be equipped with safety glazing material wherever glazing material is used in doors, windows, and windshields, and that the provisions of that section applied to all motor vehicles, including passenger buses and school buses.

The Committee discussed Section 8-10-06, which requires telegraph companies to transfer messages from other telegraph companies where the other telegraph companies do not have lines running to the point of address. The Committee discussed this section and decided it was outdated and that criminal liability was not appropriate in any case. Therefore, IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 8-10-06 be repealed.

The Committee next discussed Section 8-10-07, which currently makes it a felony to cut or tap a telegraph or telephone wire or to obstruct or delay the transmission of a message.

The Committee Counsel noted that the various activities prohibited by this section are covered under Sections 12.1-23-03, relating to theft of services; 12.1-15-02, relating to interception of wire or oral communications; 12.1-21-05, relating to damaging the property of another; and 12.1-21-06, relating to tampering with or damaging a public service facility. However, he noted that the penalties attached to most of those sections were in the Class A misdemeanor classification, while the pena attached to Section 8-10-07 was in the felony class.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY MR. WEBB, AND CARRIED that Section 8-10-07 be repealed.

The Committee then discussed Section 8-10-07.1, which reads as follows:

- 1 8-10-07.1. TELEPHONE CALLS WITH INTENT TO ANNOY - CLASS A
- 2 MISDEMEANOR.) Any offense committed by use of a telephone as herein set
- 3 out may be deemed to have been committed at either the place at which
- 4 the telephone call or calls were made or at the place where the telephone
- 5 calls were received, and any person shall be guilty of a class A misdemeanor
- 6 who:

- 7 1. (((With))) Telephones another with intent to annoy, harass, terrify,
8 intimidate, or offend; or telephones another or addresses to such
9 other person any threat to inflict injury to any person or to the
10 property of any person (((shall be guilty of a misdemeanor))).
- 11 2. Makes a telephone call with intent to annoy another and without
12 disclosing his true identity to the person answering the telephone,
13 whether or not conversation ensues from making the telephone call
14 (((, is guilty of a misdemeanor))).

The Committee Counsel noted that this section was covered in part by Section 12.1-17-07, but that, in a letter, an attorney for Northwestern Bell has indicated that this section (8-10-07.1) is broader because it did not limit the threats which could be made to those of "violent felony" as does Section 12.1-17-07. In addition, Section 12.1-17-07 doesn't allow the venue of the criminal action to be at either the place from which the call was made or the place to which it was made. Finally, the Committee Counsel noted that all offenses listed under Section 8-10-07.1 would be classified as Class A misdemeanors, while only threat of violent felony would be a Class A misdemeanor under Section 12.1-17-07, with the remainder of the offenses listed therein being Class B misdemeanors.

The Committee Counsel stated that it would be possible to remove the desirable provisions from Section 8-10-07.1 and insert them into Section 12.1-17-07.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY MR. WEBB, AND CARRIED that the desirable provisions of Section 8-10-07.1, i.e., the venue provision and the provision relating to threats to inflict injury to person or property, be removed from Section 8-10-07.1 and placed in Section 12.1-17-07, and that Section 8-10-07.1 be repealed.

The Committee next discussed Section 8-10-07.2, which reads as follows:

- 1 8-10-07.2. UNLAWFUL USE OF TELECOMMUNICATION DEVICES
2 - PENALTY.) A person shall be guilty of a class A misdemeanor if he
3 willfully:
- 4 1. Makes or possesses any device adapted or which can be adapted
5 to obtain telecommunication services, or to conceal from any supplier
6 of telecommunication services the existence, place of origin, or the
7 destination of any telecommunication;
- 8 2. Sells, gives, or otherwise transfers to another, such a device; or

9 3. Offers or advertises such a device for sale, or offers or advertises
10 plans or instructions for making or assembling the same;
11 under circumstances evincing intent to use such a device, or to allow such
12 a device, or plans or instructions therefor, to be used, or knowing or
13 having reason to believe that the same is intended to be used to fraudulently
14 obtain telecommunications services ((shall be guilty of a misdemeanor)).

The Committee Counsel noted that the section seemed to be covered by Section 12.1-23-03, dealing with theft of services, and is also repetitive of the provisions of Section 49-21-21, and especially Subsection 5 of that section, which prohibits the use of any "device" to obtain any "telecommunications service" fraudulently.

Mr. James DuBois of Northwestern Bell pointed out that the key points made by Section 8-10-07.2 had to do with possession of a device which could be adapted to obtain telecommunications service fraudulently, and the advertising of such devices.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 8-10-07.2 be accepted as drafted.

The Committee then discussed Section 8-10-07.3, which prohibits the publication of the number or a code of an existing or nonexistent telephone credit card, or of the numbering or coding which is employed in the issuance of telephone credit cards, with intent that it be used to fraudulently obtain telecommunications services.

The Committee Counsel noted that there was no section in the basic Criminal Code which would cover this activity, since Section 8-10-07.3 simply made it a crime to publish with intent that the fraudulent number be used, regardless of whether it is in fact used. Mr. DuBois pointed out that this type of thing was quite common in the larger urban areas, with the fraudulent numbers being printed in the underground newspapers.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SENATOR JONES, AND CARRIED that Section 8-10-07.3 be accepted as drafted.

The Committee then discussed Section 8-10-08, which makes it an offense to willfully take down, remove, or obstruct a telegraph or telephone wire. The Committee Counsel noted that the section is covered by Section 12.1-21-06 which prohibits tampering with or damaging a public service. Mr. DuBois stated that he had no objection to the section being repealed. Thereafter, IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 8-10-08 be repealed.

The Committee discussed Section 8-10-09, which reads as follows:

1 8-10-09. DISCLOSING TELEGRAPH AND TELEPHONE MESSAGES
2 - PENALTY.) Every person who wrongfully shall obtain, or attempt to

3 obtain, any knowledge of a telegraphic or telephonic message, by connivance
4 with a clerk, operator, messenger, or other employee of a telegraph or
5 telephone company, and every clerk, operator, messenger, or other employee
6 who willfully shall divulge to any but the person for whom it was intended,
7 the contents of any telephonic or telegraphic message entrusted to him for
8 transmission or delivery, or the nature thereof, or who willfully shall
9 refuse or neglect duly to transmit or deliver any such message, shall be
10 (((punished by imprisonment in the county jail for not more than six months,
11 or by a fine of not more than one thousand dollars, or by both such fine
12 and imprisonment))) guilty of a class A misdemeanor.

The Committee Counsel noted that the word "willfully" should have been substituted for the word "wrongfully" in Line 2 of the section, as "wrongfully" was no longer a standard of culpability under the new Criminal Code.

IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 8-10-09 be amended by inserting the word "wrongfully" in Line 2 in triple parentheses; and inserting the word "willfully" before the word "shall" in Line 2, and that when so amended the section be accepted.

The Committee then discussed Section 8-10-10, which prohibits a person from hiding a telegram which he might have in his possession and which is addressed to another person. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SENATOR JONES, AND CARRIED that Section 8-10-10 be adopted subject to insertion in another place in the Code if found appropriate.

The Committee then moved on to consider the criminal provisions in Title 62, Weapons. The Committee Counsel noted that the Title 62 revision was prepared by the staff without consultation with any state agency, as the sections did not apply to any particular state agency.

The Committee discussed Section 62-01-02, which reads as follows:

1 62-01-02. COMMITTING CRIME WHEN ARMED - PUNISHMENT.) Any
2 person who shall commit or attempt to commit murder, manslaughter, except
3 manslaughter arising out of the operation of an automobile, kidnaping,
4 mayhem, assault to do great bodily harm, or any other aggravated assault,
5 robbery, burglary, extortion, larceny, making or possessing burglar's
6 instruments, buying or receiving stolen property, aiding escape from prison,
7 or unlawfully possessing or distributing habit-forming narcotic drugs, when

8 armed with a pistol, may be punished by imprisonment for not more than
9 ten years in addition to the punishment provided for the crime.

The Committee Counsel stated that the section could be omitted since it is covered by Section 12.1-32-09 (1)(e) concerning the provision for extended sentences for crimes wherein the participant used a firearm or other destructive device.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY CHIEF ENG, AND CARRIED that Section 62-01-02 be repealed.

The Committee discussed Section 62-01-11, which reads as follows:

1 62-01-11. SELLING PISTOL TO MINORS PROHIBITED - PENALTY.)
2 Any person who shall sell, barter, hire, lend, or give any pistol to any
3 minor under the age of seventeen years shall be guilty of a class A
4 misdemeanor (((and shall be punished by a fine of not less than one hundred
5 dollars, nor more than one thousand dollars, or by imprisonment for not
6 less than three months nor more than one year, or by both such fine and
7 imprisonment))).

IT WAS MOVED BY JUDGE GLASER AND SECONDED BY MR. WEBB that Section 62-01-11 be accepted as drafted.

Representative Hilleboe suggested that some changes be made in the language of Section 62-01-11, especially with reference to the use of the word "minor". For instance, he thought that the word "CERTAIN" ought to be added before the word "MINORS" in the title, since the section applied only to minors under age 17. He also thought that the words "any minor" in Lines 2 and 3 should be deleted and replaced by the words "a person".

Thereafter, JUDGE GLASER'S MOTION CARRIED, with three dissenting votes.

The Committee next discussed Section 62-01-20, which provides penalties for violation of Chapter 62-01 where another penalty is not specifically provided. IT WAS MOVED BY SHERIFF WELLS, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 62-01-20 be accepted as drafted.

The Committee then discussed Section 62-02-06, which prohibits the sale of machine guns, submachine guns, automatic rifles, etc. The Committee Counsel noted that Section 62-02-06 can be omitted as it is covered by Section 12.1-26-03 of the Criminal Code concerning trafficking in and receiving limited-use firearms.

IT WAS MOVED BY REPRESENTATIVE RAU AND SECONDED BY SHERIFF WELLS that Section 62-02-06 be repealed. Thereafter, it was noted that Section 62-02-06 also prohibits possession of machine guns, etc. The Chairman then directed the staff to amend Section 12.1-26-03 to include "possession" of such unlawful weapons, and thereafter, REPRESENTATIVE RAU'S MOTION CARRIED.

The Committee then discussed Section 62-03-03, which provides a penalty for violation of the provisions of Chapter 62-03, which deals with the carrying of explosives and concealed weapons.

IT WAS MOVED BY MR. WEBB, SECONDED BY SENATOR JONES, AND CARRIED that Section 62-03-03 be accepted as drafted.

The Committee next discussed Section 62-04-01, which prohibits the use or sale of a "silencer". IT WAS MOVED BY SENATOR JONES, SECONDED BY MR. WEBB, AND CARRIED that Section 62-04-01 be accepted as drafted.

The Committee then discussed Section 62-04-02, which prohibits the willful discharge of a firearm, air gun, or other weapon in a public place where there is a person to be endangered thereby. The Committee Counsel noted that the section could easily be omitted as it is covered under Section 12.1-17-03 dealing with reckless endangerment. IT WAS MOVED BY SHERIFF WELLS, SECONDED BY MR. WEBB, AND CARRIED that Section 62-04-02 be repealed.

The Committee then discussed Section 62-04-03, which reads as follows:

1 62-04-03. USE OF FIREARMS BY CHILDREN PROHIBITED - PENALTY.)
2 Any parent, guardian, or other person having charge or custody of any
3 minor child under fifteen years of age who permits such child to carry or
4 use in public any firearm of any description loaded with powder and lead,
5 except when such child is in the company and under the direct control
6 of such parent, guardian, or other person authorized by the parent or
7 guardian, is guilty of a class B misdemeanor (((, and shall be punished
8 by a fine of ten dollars and costs, or in lieu thereof, by imprisonment
9 in the county jail for a period of fifteen days))).

The Committee discussed the fact that the phrase "minor child" contained a redundancy, since the phrase "minor under fifteen years of age" adequately described the subject of the section.

IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE HILLEBOE AND SHERIFF WELLS, AND CARRIED that Section 62-04-03 be amended by inserting triple parentheses around the word "child" in Line 3; by inserting triple parentheses around the words "such child" in Line 3, and inserting the underscored words "that minor" before the word "to" in the same line; inserting triple parentheses around the words "such child" in Line 5 and inserting the underscored word "he" before the word "is" in that same line; and inserting triple parentheses around the word "such" in Line 6 and inserting the underscored word "the" before the word "parent" in that same line; and when so amended that the section be adopted.

The Committee considered Section 62-04-05, which prohibits the manufacture, sale, or keeping for sale of any blank cartridge or firecracker exceeding more than three inches in length and one-half inch in diameter. The section is reclassified

as a Class A misdemeanor.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED, with the Chairman voting in the negative, that Section 62-04-05 be accepted as drafted.

The Committee recessed for lunch at 12:10 p.m. and reconvened at 1:30 p.m. at which time it considered the criminal sections in Title 6 of the Century Code. The Committee Counsel noted that he had discussed these sections with the State Examiner, Mr. Gilbert Ellwein, and with Mr. Bill Daner.

The Committee first discussed Section 6-01-29, which reads as follows:

1 6-01-29. OBSTRUCTING OR MISLEADING EXAMINER - PENALTY.)
2 Every person who, when required to do so, shall refuse or neglect to make
3 any return or exhibit, or to make or give any information required by the
4 examiner, or who willfully shall obstruct or mislead the examiner in the
5 execution of his duties, or who in any manner shall hinder a thorough
6 examination by the examiner, shall be guilty of a class C felony ((and
7 shall be liable to a fine of one thousand dollars and imprisonment in the
8 penitentiary for a term of not more than one year))).

The Committee Counsel noted that the recommendation for making this a Class C felony was based almost entirely on the fact that the offense was presently denominated a felony, although the punishment set out thereafter was similar to present misdemeanor punishment. IT WAS MOVED BY SENATOR JONES AND SECONDED BY REPRESENTATIVE LUNDENE that Section 6-01-29 be accepted as drafted.

Mr. Daner noted that the type of offenses involved here would often cause the offender to run afoul of federal law and thus also be subject to federal penalties, for instance, if the Bank were a member of the FDIC. Mr. Daner also stated that an effective deterrent to this type of activity was the potential civil penalty. He recommended that Section 6-01-29 be reclassified as a Class A misdemeanor. REPRESENTATIVE LUNDENE MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE RAU, AND CARRIED, with Senator Jones voting in the negative, that Section 6-01-29 be reclassified as a Class A misdemeanor, and when so reclassified be accepted.

The Committee discussed Section 6-03-10, which provides a general penalty for violating the provisions of Chapter 6-03 which sets forth the powers and duties of banks and also specifics concerning bank financing.

IT WAS MOVED BY JUDGE GLASER, SECONDED BY SHERIFF WELLS, AND CARRIED that Section 6-03-10 be accepted as drafted.

The Committee then considered Section 6-03-20, which requires the president, or other officer in charge of a bank, to notify the State Examiner immediately if there is an impairment of capital or reduction of capital stock of the bank, and makes it a misdemeanor if this is not done.

Representative Hilleboe noted that the word "MISDEMEANOR" was used in the title of Section 6-03-20, whereas generally the word used has been "PENALTY". IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SENATOR JONES, AND CARRIED that the word "PENALTY" be substituted for the word "MISDEMEANOR" or "FELONY" in captions of the sections which will be considered by the Committee henceforth, and that Section 6-03-20 be accepted as drafted.

The Committee discussed Section 6-03-38, which reads as follows:

1 6-03-38. ASSETS NOT TO BE USED IN OTHER BUSINESS - EXCEPTIONS -
2 VIOLATION A MISDEMEANOR.) No bank, except as otherwise authorized
3 in this title, shall employ its money or other assets as principal, directly
4 or indirectly, in trade or commerce, nor shall it employ or invest any of
5 its assets or funds in the stock of any corporation, bank, partnership, firm,
6 or association, provided, however, that a state bank may to the extent that
7 banks subject to the laws of the federal government are permitted to do so,
8 purchase shares of stock in small business investment companies organized
9 under Public Law No. 85-699, 85th Congress, known as the Small Business
10 Investment Act of 1958, and any amendments thereto, or chapter 10-30 of the
11 North Dakota Century Code, but in no event shall any state bank hold shares
12 in small business investment companies in an amount aggregating more than
13 two percent of the bank's capital and surplus, nor in speculative margins of
14 stock, bonds, grain, provisions, produce, or other commodities, except that
15 it shall be lawful for a bank to make advances for grain or other products
16 in store or in transit to market, and to invest in stocks of subsidiary corporations,
17 when the activities of such corporations are incidental to banking activities,
18 with the specific approval of the state banking board for each such subsidiary.
19 The state banking board shall have the same power to make rules and regulations
20 for the subsidiary corporations, and to examine its records and affairs, as
21 it has for other financial corporations under the provisions of section 6-01-04.

23 would be detrimental to the interests of a bank's depositors, it may direct
24 the bank to divest itself of such subsidiary investments. In addition to the
25 above, the state banking board shall have power to issue regulations authorizing
26 state banks to engage in any banking activity in which such banks could engage
27 where they operated as national banks at the time such authority is granted,
28 notwithstanding any restriction elsewhere contained in this Code. Any officer,
29 director, or employee of any bank who shall invest or use its funds contrary
30 to the provisions of this title shall be guilty of a class A misdemeanor.

The Committee Counsel inquired of Mr. Daner whether the word "where" in Line 27 should not be "were". Mr. Daner replied affirmatively.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY MR. WOLF, AND CARRIED that the word "where" in Line 27 be inserted in triple parentheses and the word "were" be inserted immediately before the word "they" in the same line; and that when so amended, the section be accepted.

The Chairman stated that the Committee would now consider sections without motion if there were no changes to be recommended from the staff draft, and at the end of such consideration would then consider a single motion covering all of the sections for which no change was recommended.

Thereafter, the Committee considered Sections 6-03-56, prohibiting unlawful borrowing by bank officers or employees; 6-03-60, prohibiting loans to and purchases from officers and employees of banks; 6-03-61, prohibiting a banking association from making a loan in excess of the lawful maximum; 6-03-63, setting the maximum rate of interest payable on bank deposits; 6-03-72, relating to unlawful certification of checks or bank drafts; and 6-05-16, regulating the way in which directors or officers of a bank may become indebted to the bank.

The Committee discussed Section 6-06-05, which reads as follows:

1 6-06-05. USE OF "CREDIT UNION" RESTRICTED - (((MISDEMEANOR)))
2 PENALTY.) It shall be (((a misdemeanor))) unlawful for any person, associa-
3 tion, copartnership, or corporation, domestic or foreign, except corporations
4 organized in accordance with the provisions of this chapter, to use the words
5 "credit union" in their name or title, and any person, association, copartner-
6 ship, or corporation violating this section shall forfeit to the state one hundred
7 dollars for every day, or part thereof, during which such violation continues.
8 The state examiner may recover such forfeited sums in a civil action, and
9 shall deposit any sums recovered or collected with the state treasurer.

The Committee Counsel noted that this section was changed to make it coordinate with the like section in the banking chapter, i.e., that the penalty for unlawful use of the title "credit union" should be a civil forfeiture to the State, rather than criminal liability.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SENATOR JONES, AND CARRIED that the word "PENALTY" in Line 2 of Section 6-06-05 be deleted and the underscored word "FORFEITURE" be inserted in lieu thereof.

The Committee discussed Sections 6-07-06 and 6-07-08, dealing respectively with receipt of deposits by an insolvent bank, and participation by bank directors in fraudulent insolvency.

The Committee then discussed Section 6-08-05, which reads as follows:

1 6-08-05. BANK OFFICER OR EMPLOYEE OVERDRAWING OWN ACCOUNT
2 GUILTY OF MISDEMEANOR.) Every director, officer, agent, (((teller, clerk,
3 or servant))) or employee of any bank, banking association, or savings bank,
4 who knowingly overdraws his account with such bank, and thereby wrongfully
5 obtains money, notes, or funds of such bank, is guilty of a class A misdemeanor.

It was noted that the reference to "savings bank" contained in the section could be deleted as this type of institution no longer existed. The Committee Counsel also noted that the use of the word "wrongfully" was now inappropriate in light of the new standards of culpability set forth in the Criminal Code.

The Committee further discussed Section 6-08-05 in terms of making bank officers and directors liable for any instance in which they misuse the power granted to them in that capacity. The Chairman directed the staff to redraft Section 6-08-05 to make it more general relating to misuse of the powers granted to bank directors and officers.

The Committee discussed Section 6-08-09, which provides a general penalty for a bank officer who violates any provision of Title 6 for which a specific penalty is not provided. It was noted that the word "hereinbefore" utilized in this section might imply that sections in Title 6 which follow it in numerical sequence would not be related to this section. Therefore, IT WAS MOVED BY JUDGE GLASER, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that the word "hereinbefore" in Section 6-08-09 be inserted in triple parentheses.

The Committee discussed Section 6-08-11 which provides a general penalty for a violation of law on the part of the director of a "moneyed association or corporation" if a specific penalty is not otherwise provided. The staff draft classified the penalty as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY MR. WEBB, AND CARRIED that Section 6-08-11 be reclassified as a Class B misdemeanor, and when so amended, that it be accepted.

The Committee considered 6-08-12, which makes it a felony for any officer or employee of a state agency or political subdivision, subject to examination by the state examiner, to make false statements or entries in the books of the

agency or subdivision. The Committee Counsel noted that this section is covered by Section 12.1-11-02 of the Criminal Code, except that the Criminal Code section referred to carries a lesser penalty.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED, with five members voting in the negative, that Section 6-08-12 be repealed.

The Committee next discussed Section 6-08-13, dealing with false statements to obtain credit from a banking association. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 6-08-13 be repealed.

The Committee discussed Section 6-08-14, which reads as follows:

1 6-08-14. FALSE STATEMENTS CONCERNING BANK VALUES - MISDEMEANOR
2 Any person who knowingly makes or publishes any book, prospectus, notice,
3 report, statement, exhibit, or other publication containing any statement which
4 is willfully false and which is intended to give and does give a substantially
5 greater or less apparent value to the shares, bonds, or property, or any
6 part thereof, of any state banking association than said shares, bonds, property
7 or any part thereof shall possess in fact, is guilty of a class A misdemeanor.

The Committee Counsel noted that the word "willfully" in Line 4 should be inserted in triple parentheses, as use of that word creates a conflict with the culpability standard "knowingly" set in Line 2 of the section. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the word "willfully" in Line 4 of Section 6-08-14 be inserted in triple parentheses

The Committee discussed Sections 6-08-15, 6-08-16, and 6-08-16.1. These sections deal respectively with slander or libel of the credit of a bank; issuing a check without sufficient funds; and issuing a check without having an account in the bank on which it is issued. The Chairman noted that these sections would be considered in the overall motion adopting all concerned sections where there was no controversy.

The Committee then considered Sections 6-08-17, 6-08-18, and 6-08-19. These sections provided specific punishments for felonies, misdemeanors, and punishments for corporations or associations, and were related particularly to Title 6. The Committee Counsel recommended that all three sections be repealed as they conflict with either the offense classifications set forth in Senate Bill No. 2045, or with the provisions of that bill relating to corporate and organizational criminal responsibility.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY SENATOR JONES, AND CARRIED that Sections 6-08-17, 6-08-18, and 6-08-19 be repealed

The Committee discussed Section 6-08-28, which provides a penalty for nonperformance of the statutory requirements to be followed by foreign banks or trust companies which serve in a fiduciary capacity in North Dakota.

The Committee discussed Section 6-09-13, which requires that all collection items be paid to the Bank of North Dakota at par value. The Committee Counsel noted that Mr. Herbert Thorndal, President of the Bank of North Dakota, said that the section could be repealed as unnecessary, noting the existence of Section 6-03-68.1. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 6-09-13 be repealed.

The Committee discussed Section 6-10-08, which provides a general penalty for the violation of Chapter 6-10 which provides for regulation of agents for deposits.

Thereafter, the Chairman called for a motion accepting all of those sections in Title 6 which the Committee had just reviewed, and on which there had not been specific action. IT WAS MOVED BY SHERIFF WELLS, SECONDED BY SENATOR JONES, AND CARRIED that Sections 6-03-56; 6-03-60; 6-03-61; 6-03-63; 6-03-72; 6-05-16; 6-06-05; 6-07-06; 6-07-08; 6-08-09; 6-08-14; 6-08-15; 6-08-16; 6-08-16.1; 6-08-28; and 6-10-08 be accepted as drafted, and in the case of Sections 6-06-05 and 6-08-14, as amended.

The Chairman then called for a motion approving the minutes of the meeting of the Committee on August 30-31, 1973. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY CHIEF ENG, AND CARRIED that the minutes of the meeting of August 30-31, 1973, be approved as distributed.

The Committee next discussed a proposed amendment to Subsection 25 of Section 12.1-01-04, which subsection contains a definition of the term "person". The Committee Counsel noted that during previous meetings of the Committee, numerous sections had been considered in which the phrase "person or corporation" (or similar phrase) was used. In each instance the staff had deleted the word "or corporation" and had indicated that it would present a revision of existing law so that the word "person" would include, where relevant, all legal entities which might be subject to criminal liability.

The Committee Counsel noted that, rather than amending Section 1-01-28, which contains the general definition of "person", the draft amends the existing definition of "person" in the new Criminal Code and makes the definition applicable to all sections of the Century Code which define crimes.

The text of the subsection proposed by the staff reads as follows:

1 SECTION . AMENDMENT.) Subsection 25 of section 12.1-01-04 of
2 chapter 116 of the 1973 Session Laws of the state of North Dakota is hereby
3 amended and reenacted to read as follows:
4 25. (((("Person")))) As used in this title and in sections outside this
5 title which define offenses, "person" includes, where relevant,
6 a corporation, partnership, unincorporated association, or other

7 legal entity. When used to designate a party whose property may
8 be the subject of action constituting an offense, the word "person"
9 includes a government which may lawfully own property in this
10 state;

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Subsection 25 of Section 12.1-01-04, defining the word "person", be accepted as drafted.

The Committee then discussed the draft revision of criminal sections in Title 7, dealing with savings and loan associations.

The Committee discussed Section 7-02-06, which would prohibit an officer or employee of a savings and loan association from attempting to collect interest at a rate higher than provided by law.

IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY SHERIFF WELLS, AND CARRIED that Section 7-02-06 be accepted as drafted.

The Committee discussed Section 7-03-07, which reads as follows:

- 1 7-03-07. OBTAINING PROPERTY BY FRAUD, FALSE BOOKKEEPING
2 AND REPORTS - PREVENTING INSPECTION OF BOOKS - FELONY.) Any
3 director, officer, agent, or employee of any building and loan association
4 who:
- 5 1. Willfully (((receives or possesses himself of any of its property
6 otherwise than in payment for a just demand, or))), with intent
7 to defraud, omits to make, or cause or direct to be made, a full
8 and true entry in its books and accounts of the receipt by him of
9 any of the property of such association;
 - 10 2. Concurs in omitting to make any material entry thereof;
 - 11 3. Willfully makes or concurs in making or publishing any written
12 report, exhibition, or statement of its affairs or pecuniary condition,
13 containing any material statement which is false; or
 - 14 4. Having the custody or control of its books, willfully refuses or
15 neglects to make any proper entry in the books of such associa-
16 tion as required by law, or to exhibit or allow the same to be

17 inspected and extracts to be taken therefrom by the state examiner,
18 his chief deputy, or any of his examiners,
19 is guilty of a class C felony.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SENATOR JONES, AND CARRIED that the word "neglects" in Line 15 of Section 7-03-07 be inserted in triple parentheses, and the underscored word "fails" be inserted before the word "to" in the same line, and that when so amended the section be accepted.

It was then noted that Section 6-01-29, previously considered by the Committee, had been classified as a Class A misdemeanor, and was essentially the same offense as that defined in Section 7-03-07, Subsection 4.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SHERIFF WELLS, AND DEFEATED by a vote of 5 ayes, 6 nays, that the action by which Section 7-03-07 was accepted be reconsidered.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that the action by which Section 6-01-29 was accepted be reconsidered, and that the section be reclassified as a Class C felony, and when so reclassified be accepted.

The Committee considered Section 7-03-09, which provided a general penalty for violation of Chapter 7-03 relating to the powers, duties, and removal of officers and directors of savings and loan associations.

IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 7-03-09 be reclassified as a Class B misdemeanor, and that when so amended, the section be accepted.

The Committee discussed Section 7-05-04, which makes it the duty of the State Examiner and employees in his office to keep information obtained in the course of an examination of a savings and loan association confidential.

IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 7-05-04 be redrafted to provide that a breach of confidentiality would be a violation of Section 12.1-13-01, and when so redrafted, that the section be referred back to the Committee.


The Committee discussed Section 7-08-01, which prohibits an association or corporation from acting as a savings and loan association without first having a certification of authority to do business from the State Examiner. The Committee Counsel noted that the staff draft classified the section as a Class C felony upon recommendation of the State Examiner. The Committee Counsel noted that the last sentence of the section could be deleted if the felony classification were retained, since aiding or assisting the felony would be inchoate offenses under the general Criminal Code.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 7-08-01 be accepted as drafted with the exception that the last sentence of that section be inserted in triple parentheses. Mr. Webb voted in the negative on this motion.

The Committee discussed Section 7-08-04, which prohibits the willful slander of credit of a savings and loan association. IT WAS MOVED BY SENATOR JONES, SECONDED BY SHERIFF WELLS, AND CARRIED that Section 7-08-04 be accepted as drafted.

The Committee discussed Section 7-08-06, which provides general penalties for felonies and misdemeanors defined in Title 7. The Committee Counsel noted that this section would be superfluous after the new Criminal Code came into effect. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 7-08-06 be repealed.

There being no further business to come before the Committee, the Chairman declared the meeting adjourned, and the meeting adjourned at 4:00 p.m. on Friday, October 26, 1973.



John A. Graham
Assistant Director

APPENDIX "A"

1 50-01-18. REFUSAL OF POOR PERSON TO WORK (((- VAGRANT))).)

2 If any person applying for poor relief under the provisions of this
3 chapter is able to work and refuses to do so when given the oppor-
4 tunity, the county welfare board (((shall))) may refuse (((any
5 further))) aid to such person (((except aid to his admission to
6 the county poor asylum, if there is one, where he shall be compelled
7 to labor. If there is no poor asylum in the county, a person
8 applying for poor relief who refuses to work shall be considered
9 a vagrant, and upon a complaint made by any other person he shall
10 be prosecuted and punished in the manner prescribed in cases of
11 vagrancy))).

50-01-23. (To be repealed.)

50-01-24. (To be repealed.)

50-01-25. (To be repealed.)

1 50-09-13. DISCLOSURE OF INFORMATION CONTAINED IN RECORDS -
2 PENALTY.) Except for purposes directly connected with the administra-
3 tion of aid to dependent children and in accordance with the rules and
4 regulations of the state agency, it shall be a class A misdemeanor
5 for any person to solicit, disclose, receive, make use, or to autho-
6 rize, knowingly permit, participate, or acquiesce in the use, of any
7 list of names of, or any information concerning, persons applying

8 for or receiving such assistance if the information is derived
9 directly or indirectly from the records, papers, files, or communica-
10 tions of the state or county or subdivisions or agencies thereof, or
11 acquired in the course of the performance of official duties, except
12 for use by a court in an action involving such persons.

50-09-23. (To be repealed.)

1 50-10-08. BIRTH REPORT OF CRIPPLED CHILD - USE - CONFIDENTIAL
2 (((- PENALTY FOR DISCLOSING INFORMATION))).) The information con-
3 tained in the report furnished the state agency under the provisions
4 of section 50-10-07 concerning a child with a visible congenital
5 deformity may be used by the state agency for the care and treat-
6 ment of the child pursuant to the provisions of this chapter. The
7 report shall be confidential and shall be solely for the use of
8 the state agency in the performance of its duties. It shall not
9 be open to public inspection nor considered a public record except
10 for the purposes set forth in this section. (((Any person or agency
11 disclosing such confidential information in violation of the pro-
12 visions of this section is guilty of a misdemeanor and shall be
13 punished by a fine of not more than fifty dollars and the costs
14 of the prosecution, or by imprisonment in the county jail for not
15 more than thirty days.)))

1 50-11-10. PENALTY.) Any person, whether owner, manager,
2 operator or representative of any owner, operator, or manager,
3 violates any of the provisions of this chapter, is guilty of a

4 class B misdemeanor (((and shall be punished by a fine of not more
5 than one hundred dollars, or by imprisonment in the county jail for
6 not more than thirty days, or by both such fine and imprisonment))).

1 50-12-17. PENALTY.) No person shall place any child other
2 than his or her own in family homes for adoption (((or otherwise)))
3 without a license so to do from the (((public welfare))) social
4 service board. Every person who violates any provision of this
5 chapter is guilty of a (((misdemeanor))) class C felony.

1 50-18-08. PENALTY.) Any person who violates any provisions
2 of this chapter shall be guilty of a class B misdemeanor (((, and upon
3 conviction shall be punished by a fine of not more than one hundred
4 dollars or by imprisonment in the county jail for not more than
5 thirty days, or by both such fine and imprisonment))).

1 50-19-15. PENALTY.) Every person who violates any of the pro-
2 visions of this chapter (((, or who makes any false statements on
3 reports to the division or its agent, or to the state department
4 of health,))) is guilty of a class B misdemeanor (((and shall be
5 punished by a fine of not more than one hundred dollars or by impri-
6 sonment in the county jail for not more than thirty days or by both
7 such fine and imprisonment))).

1 50-20-06. PENALTY.) Every person who violates any of the
2 provisions of this chapter (((, or who makes any false statements
3 on reports to the division of child welfare or its agent, or to the

4 state department of health,))) is guilty of a class B misdemeanor
5 (((, and shall be punished by a fine of not more than one hundred
6 dollars or by imprisonment in the county jail for not more than
7 thirty days or by both such fine and imprisonment))).

1 50-22-05. PENALTY.) Any person conducting a solicitation in
2 violation of the provisions of this chapter (((or filing false in-
3 formation hereunder))) shall be guilty of a class A misdemeanor
4 (((punished by a fine of not to exceed one thousand dollars or by
5 imprisonment for not more than six months in jail, or both, and
6 each officer or agent of a charitable organization who knowingly
7 authorizes or conducts such solicitation in violation of this chap-
8 ter, shall be subject to the penalty provided in this section))).

1 50-24-31. CONFIDENTIAL CHARACTER OF RECORDS - PENALTY.)
2 All applications, information, and records concerning any applicant
3 or recipient of assistance to aged, blind, or disabled under the
4 provisions of this chapter shall be confidential and shall not be
5 disclosed nor used for any purpose not directly connected with the
6 administration of assistance to the aged, blind, or disabled; except
7 that upon the personal written request of any elected public official
8 the records of the names, addresses, and amounts of assistance shall
9 be open for his inspection by the state or county welfare board.
10 Such information shall not be used for any political or commercial
11 purpose or made public in any manner. Any person using any appli-
12 cation, information, or records concerning any applicant or recipient
13 beyond his official capacity or for purposes not directly connected

14 with the administration of assistance to the aged, blind, or dis-
15 abled is guilty of a class A misdemeanor.

50-24-39. (To be repealed.)

1 53-01-19. HOLDING MATCH OR CONTEST WITHOUT LICENSE A MIS-
2 DEMEANOR.) Any:

3 1. Person who, without a license from the secretary of
4 state, shall:

5 a. Send or cause to be sent, published, or otherwise
6 made known, any challenge to fight or engage in any
7 public boxing, sparring, or wrestling exhibition or
8 contest, with or without gloves, for any prize,
9 reward, or compensation, or at which any admission
10 fee is charged, either directly or indirectly; or

11 b. Go into training preparatory for such exhibition or
12 contest; or

13 c. Act as a trainer, aider, arbiter, backer, referee,
14 umpire, second, surgeon, assistant, or attendant at
15 such exhibition or contest, or any preparation for
16 the same; and

17 2. Owner or lessee of any grounds, building, or structure,
18 permitting the same to be used for such match, exhibition,
19 or contest

0 shall be guilty of a class B misdemeanor. This section shall not
21 apply to boxing or sparring or wrestling exhibitions held or to
22 be held under a license issued by the secretary of state in keeping
23 with the rules and regulations prescribed.

1 53-02-08. OFFICER OF LAW TO BE IN ATTENDANCE AT PUBLIC
2 DANCE OR MUSIC FESTIVAL.) It shall be the duty of the sheriff
3 in any county in which any public dance or music festival is held
4 outside of an incorporated city, and of the chief peace officer of
5 the city where the dance or music festival is held within the
6 limits of a city, to police such dance or music festival so that
7 law and order are there maintained. The person conducting any
8 such dance or music festival, before the dance or music festival
9 shall be held, shall pay to such sheriff or peace officer the
10 expense of any deputy sheriff or special officer required for the
11 proper policing of such dance or music festival, and no such dance
12 or music festival shall be permitted to proceed unless such officer
13 is present and his fees are paid. The holding of such dance or
14 music festival without giving notice thereof to the sheriff of
15 the county or the peace officer of the city, and without making
16 provision for the policing thereof, is (((a misdemeanor))) unlawful.
17 No person, directly or indirectly interested or concerned in the
18 giving, holding, or conducting of such public dance or music festi-
19 val, or connected with the person conducting the same, shall be
20 eligible to appointment under this section as a special officer.

1 53-02-15. GENERAL PENALTY.) Except as otherwise may be pro-
2 vided, any person violating any provision of this chapter is guilty
3 of a class B misdemeanor (((and shall be punished by a fine of not
4 less than twenty-five dollars nor more than one hundred dollars,
5 or by imprisonment in the county jail for not less than ten days
6 nor more than thirty days, or by both such fine and imprisonment))).

1 53-03-08. PENALTY.) Any person who shall violate any of the
2 provisions of this chapter shall be guilty of a class B misdemeanor
3 ((and shall be punished by a fine of not less than fifty dollars
4 nor more than five hundred dollars, or by imprisonment in the county
5 jail for not more than ninety days, or by both such fine and
6 imprisonment))).

1 53-04-08. PENALTY.) Any person engaged in the operating or
2 displaying to the public of any amusement ((devices)) device,
3 whether one or more, in violation of any of the provisions of this
4 chapter is guilty of a class B misdemeanor ((and shall be punished
5 by a fine of not more than one hundred dollars, or by imprisonment
6 in the county jail for not more than thirty days, or by both such
7 fine and imprisonment. Each machine displayed to the public upon
8 which such person has failed to secure a license shall constitute
9 a separate offense))).

1 53-05-06. PENALTY.) Any person who violates any provision
2 of sections 53-05-02, 53-05-03, or 53-05-05 is guilty of a class B
3 misdemeanor ((and shall be punished by a fine of not more than one
4 thousand dollars, or by imprisonment in the county jail for not
5 more than twelve months, or by both such fine and imprisonment))).

53-05-07. (To be repealed.)

1 53-06-11. PENALTY.) Any person violating any of the pro-
2 visions of this chapter shall be guilty of a class B misdemeanor

3 ((and shall be punished by a fine of not more than five hundred
4 dollars, or by imprisonment in the county jail for not more than
5 ninety days, or by both such fine and imprisonment))).

1 51-04-05. FAILURE OF AFFIDAVIT (((- PENALTY))).) If the
2 affidavit filed as prescribed in section 51-04-04 shows that the
3 sale is not of the kind or character proposed to be advertised or
4 represented, or fails to disclose the facts as required, then the
5 county auditor shall refuse the applicant a license for the sale.
6 Should a license be issued to the applicant, it shall state that
7 the applicant is authorized and licensed to sell such goods, wares,
8 and merchandise, and advertise and represent and hold forth the
9 same as being sold as such insurance, bankrupt, insolvent, assignee,
10 trustee, testator, executor, administrator, receiver, syndicate,
11 wholesaler or manufacturer, or closing out sale, or as a sale of
12 any goods, wares and merchandise damaged by smoke, fire, water, or
13 otherwise, as shown in the affidavit.

14 The affidavit shall be sworn to by the applicant before a per-
15 son authorized to administer oaths. (((Every person making a
16 false statement of any fact in such affidavit shall be guilty of
17 perjury and shall be punished for such offense as is provided by
18 the criminal code of this state.)))

1 51-04-10. PENALTY.) Any person violating any of the provi-
2 sions of this chapter, for which another penalty is not specific ly
3 provided, is guilty of a class B misdemeanor (((and shall be punished
4 by a fine of not less than fifty nor more than one hundred dollars, ▲

5 or by imprisonment in the county jail for not more than thirty days,
6 or by both such fine and imprisonment))).

1 51-05-04. PENALTY.) Any person violating any of the provi-
2 sions of sections 51-05-01, 51-05-02, or 51-05-03 shall be guilty
3 of (((a misdemeanor and shall be punished by a fine of not more
4 than fifty dollars for each offense))) an infraction.

51-05-06. (To be repealed.)

1 51-05-08. SALE OF DAMAGED GOODS BY AUCTION WHEN GOODS OFFERED
2 AS SOUND - PENALTY.) Every person carrying on, interested in, or
3 employed about, the business of selling property or goods by auction,
4 who sells in a damaged condition any goods or property which he
5 offers as sound or in a good condition, is guilty of a class B
6 misdemeanor.

1 51-05-10. FAILURE TO RENDER ACCOUNT - PENALTY.) Every auction-
2 eer, every partner or clerk of an auctioneer, and every person in
3 any way connected in business with an auctioneer, who willfully fails
4 to render any (((semiannual or other))) report or account (((by law)))
5 required to be rendered, at the time or in the manner prescribed
6 by law, (((or who willfully fails to pay over any duties legally
7 payable by him at the time and in the manner prescribed by law,)))
3 is guilty of a class B misdemeanor.

1 51-05-11. FRAUD OR DECEIT COMMITTED BY AUCTIONEER - PENALTY.)
2 Every auctioneer, every partner or clerk of any auctioneer, and
3 every person in any way connected in business with an auctioneer,
4 who commits any fraud or deceit, or by any fraudulent means what-
5 ever seeks to evade or defeat the provisions of the laws of this
6 state relating to auctions, is guilty of a class A misdemeanor,
7 and in addition to the punishment prescribed therefor is liable in
8 treble damages to any party injured thereby.

1 51-05-13. AUCTIONEER'S LICENSE - FEE - BOND - PENALTY.)
2 1. No person shall conduct any auction sale in this state as
3 an auctioneer until he has filed with the public service
4 commission an application for an annual auctioneer's
5 license at least ten days prior to the date such applicant
6 is to conduct his first auction sale. The original applica-
7 tion shall be in writing, verified, and filed, showing
8 the name, residence and post-office address of the appli-
9 cant. Applications for renewal of said annual license
10 shall be on such forms as may be designated therefor by
11 the commission. The fee for the annual license or renewal
12 thereof is ten dollars which shall accompany the applicatio
13 The license number shall appear on all advertising of sales
14 conducted by such auctioneer, immediately following the
15 name of such auctioneer.
16 2. At the time of filing the application the applicant shall
17 file with the public service commission a surety bond in
18 the penal sum of one thousand dollars, running to the state

19 of North Dakota for the use and benefit of any person who
20 might be injured by said licensee's improper conduct of
21 such auction sale.

22 3. Nonresident auctioneers may conduct sales within the state
23 only if the state of residence of such nonresident auction-
24 eers grants similar privileges to North Dakota resident
25 auctioneers. A nonresident thus authorized to conduct
26 sales within the state shall be subject to the same require-
27 ments of law as is a resident auctioneer.

28 4. Nothing in this section shall require an executor or admin-
29 istrator of an estate, or any sheriff or other person selling
30 property pursuant to execution or other court order, to be
31 licensed in order to conduct such sale in connection
32 with their official duty, nor shall the provisions of
33 this section apply to the selling at auction of purebred
34 or registered livestock.

35 5. Any person violating the provisions of this section is
36 guilty of an infraction (((a misdemeanor, and shall be
37 punished by a fine of not more than one hundred dollars.
38 Each such sale held without the payment of a license fee
39 as herein required shall constitute a separate offense))).

1 51-06-03. PENALTY.) Any person violating any of the provisions
2 of this chapter is guilty of a class B misdemeanor (((and shall be
3 punished by a fine of not more than one hundred dollars or by impri-
4 sonment in the county jail for not more than thirty days or by both
5 such fine and imprisonment))).

1 51-07-04. SELLING GOODS BEARING COUNTERFEIT TRADEMARK -
2 MISDEMEANOR.) Every person who, with intent to represent such goods
3 as the genuine goods of another, sells or keeps for sale any goods
4 upon which any counterfeit trademark has been affixed, knowing the
5 same to be counterfeited, is guilty of a class A misdemeanor. The
6 word "goods" as used in this section includes every kind of goods,
7 wares, merchandise, compound, or preparation, which may be kept or
8 offered for sale lawfully.

1 51-07-04.1. DEFACING, DESTROYING, OR ALTERING SERIAL NUMBERS
2 ON FARM MACHINERY - PENALTY.) It ((shall be)) is unlawful for
3 any person ((who, with fraudulent intent, shall)) to willfully:
4 1. a. Deface, destroy, alter, or remove the serial number
5 on any tractor, combine, corn picker or any other
6 heavy farm machinery that carries a factory serial
7 number; or
8(((2.))) b. Place or stamp other than the original serial number
9 upon any tractor, combine, corn picker or any other
10 heavy farm machinery that carries a factory serial
11 number; and
12(((3.)))2. Sell or offer for sale any ((tractor, combine, corn
13 picker or any other)) such heavy farm machinery bearing
14 an altered or defaced serial number other than the
15 original.

16 Any person ((,)) who shall violate ((any of the provisions of
17 the)) this section shall be guilty of a class A misdemeanor ((and
18 shall be punished by a fine of not more than five hundred dollars or
19 by imprisonment in the county jail for not more than sixty days)).

51-07-08. (To be repealed.)

1 51-07-12. AUTOMOBILE SALES FINANCE CONTRACTS - INFORMATION
2 OF INSURANCE PROTECTION TO BE GIVEN - WARNING REQUIRED - PENALTY.)

- 3 1. Purchasers of automobiles under sales finance contracts,
4 when required by a dealer, bank, or other finance agency
5 or company, to furnish insurance on any motor vehicle, in
6 connection with the financing of such motor vehicle, shall
7 be furnished by the seller evidence of the insurance pro-
8 tection. Such insurance evidence must be in the form of
9 a regular insurance binder or policy or certificate of
10 insurance. The original policy or certificate of insurance
11 clearly stating the coverage afforded by the policy shall
12 be delivered to the purchaser within a reasonable time after
13 execution of the insurance order. The certificate shall
14 display the premium charged for each coverage afforded.
- 15 2. If the insurance required by any dealer, bank, or other
16 finance agency or company does not provide insurance for
17 bodily injury liability or property damage liability,
18 then the policy of insurance or the certificate of insur-
19 ance, if the policy is filed with the payee, shall have
20 imprinted or stamped thereon a notice that such policy does
21 not include bodily injury liability or property damage
22 liability insurance. The imprinting or stamping of such
23 notice shall be in such manner or form as may be approved
24 by the commissioner of insurance.

25 3. Any person failing to comply with the provisions of this
26 chapter shall be guilty of a class B misdemeanor (((and
27 shall be punished by a fine of not more than five hundred
28 dollars or by imprisonment in the county jail for not more
29 than six months or by both such fine and imprisonment))).

1 51-07-13. LABELING IMPORTED MEATS SOLD.)

2 1. No person (((, firm, or corporation))) shall knowingly sell
3 or offer for sale in the state of North Dakota any meat,
4 whether fresh, frozen, (((or))) cured, or processed, which
5 is imported from outside the boundaries of the United States
6 or any meat product containing in whole or in part such
7 imported meat, (((without first indicating))) if this fact
8 (((by placing))) is not shown by labels or printing on each
9 quarter, half, or whole carcass of such meat, or on each
10 case, package, can, tray, or display containing such
11 imported meat.

12 2. Any person (((, firm, or corporation))) who shall violate
13 any of the provisions of this section shall be guilty of a
14 class B misdemeanor (((and upon the first conviction shall
15 be punished by a fine of not less than fifty dollars nor
16 more than one hundred dollars, or by imprisonment in the
17 county jail for not less than thirty days, or by both such
18 fine and imprisonment. For each second or successive con-
19 viction of such offense against the provisions of this
20 section, the fine shall not be less than one hundred dollars
21 nor more than five hundred dollars, or by imprisonment in
22 the county jail for not less than ninety days, or by both

1 51-08-01. POOLS AND TRUSTS PROHIBITED (((- MISDEMEANOR.)
2 Any))) It shall be unlawful for any corporation organized under
3 the laws of this state or doing business in this state, or any
4 partnership, association, or individual, (((creating, entering into,
5 or becoming))) to create, enter into, or become a member of, or a
6 party to, any pool, trust, agreement, contract, combination, or con-
7 federation, to regulate or fix the price of any article of merchan-
8 dise, commodity, or property, or to fix or limit the amount or quantity
9 of any article, property, merchandise, or commodity to be manufactured,
10 mined, produced, exchanged, or sold in this state (((is guilty of a
11 misdemeanor))).

1 51-08-03. PENALTY FOR VIOLATION OF CHAPTER.) Any person
2 violating any of the provisions of this chapter, is guilty of a
3 class A misdemeanor (((and shall be punished by a fine of not less
4 than one hundred dollars nor more than five thousand dollars))).

51-08-04. (To be repealed.)

51-08-05. (To be repealed.)

1 51-09-02. PENALTY FOR UNFAIR DISCRIMINATION.) Any person
2 (((, firm, company, association, or corporation))) violating any of
3 the provisions of section 51-09-01 shall be (((punished by a fine of
4 not less than two hundred dollars nor more than five thousand dollars,
5 or by imprisonment in the county jail for not more than one year, or
6 by both such fine and imprisonment))) guilty of a class A misdemeanor.

51-10-05. (To be repealed.)

1 51-10-14. RETAILER'S LICENSE - PENALTY.) The state trade
2 commission shall require and provide for the annual registration
3 and licensing of every retailer now or hereafter doing business
4 within this state, which license shall not be transferable. Upon
5 the payment of an annual fee of two dollars and fifty cents, the
6 state trade commission shall issue an annual license to such persons
7 as may be qualified by law to engage in the business of making sales
8 at retail. Each retailer shall secure a separate license for each
9 place of business within the state for which a retail sales or use
10 tax permit is required pursuant to the laws of this state. Every
11 person (((, firm, or corporation))) engaging in business as a retailer
12 without procuring a current and valid license as provided in
13 chapter 51-10 (((of the North Dakota Century Code, as amended,)))
14 shall be guilty of (((a misdemeanor and punishable by a fine of
15 not more than one hundred dollars))) an infraction.

1 51-12-02. PENALTY.) Any person (((, firm, corporation, partner-
2 ship, or association or any employee or agent thereof))) who violates
3 any of the provisions of section 51-12-01 is guilty of a class B mis-
4 demeanor (((and shall be punished by a fine of not to exceed one hundre
5 dollars or by imprisonment in the county jail for not more than
6 thirty days, or by both such fine and imprisonment))).

51-12-04. (To be repealed.)

51-12-05. (To be repealed.)

51-12-06. (To be repealed.)

51-12-07. (To be repealed.)

1 51-12-13. PENALTY.) Any person (((, firm, corporation,
2 partnership or association or any employee or agent thereof))) who
3 violates any of the provisions of sections 51-12-08 through
4 51-12-12 is guilty of a class B misdemeanor (((and shall be punished
5 by a fine of not to exceed one hundred dollars or by imprisonment
6 in the county jail for not more than thirty days, or by both such
fine and imprisonment))).

1 51-13-07. PENALTIES.) Any person who shall willfully (((and
2 intentionally))) violate any provisions of this chapter shall be
3 guilty of a class A misdemeanor (((and upon conviction shall be
4 punished by imprisonment for not more than one year or a fine not
5 exceeding five hundred dollars, or by both such fine and imprison-
6 ment))). A willful violation of sections 51-13-02 or 51-13-03 by
7 any person shall bar his recovery of any credit service charge,
8 delinquency or collection charge, or refinancing charge on the
9 retail installment contract involved.

1 51-14-05. PENALTY.) Any person who shall violate any pro-
2 vision of this chapter shall be guilty of a class A misdemeanor
3 (((and upon conviction shall be punished by a fine not exceeding

4 five hundred dollars, or by imprisonment in the county jail for
5 not more than one year, or by both such fine and imprisonment))).
6 Any revolving charge account or any act in the making or collection
7 of any revolving charge account which violates the provisions of
8 this chapter shall result in the forfeiture of all credit service
9 charges that have been paid or that may become due or payable
10 thereunder, and in the event that such violation is willful, the
11 retail seller shall have no right to collect, receive, or retain
12 any principal, credit service charge, interest, or other charge
13 whatsoever.

8-08-06. (To be repealed.)

8-08-10. (To be repealed.)

8-10-06. (To be repealed.)

8-10-07. (To be repealed.)

8-10-07.1. (To be repealed and its desirable provisions placed
in Section 12.1-17-07.)

1 8-10-07.2. UNLAWFUL USE OF TELECOMMUNICATION DEVICES - PENALTY.)

2 A person shall be guilty of a class A misdemeanor if he willfully:

- 3 1. Makes or possesses any device adapted or which can be
4 adapted to obtain telecommunication services, or to conce
5 from any supplier of telecommunication services the existence
6 place of origin, or the destination of any telecommunication.

2. Sells, gives, or otherwise transfers to another, such a device; or

3. Offers or advertises such a device for sale, or offers or advertises plans or instructions for making or assembling the same;

under circumstances evincing intent to use such a device, or to allow such a device, or plans or instructions therefor, to be used, or knowing or having reason to believe that the same is intended to be used to fraudulently obtain telecommunications services (((shall be guilty of a misdemeanor))).

8-10-07.3. (((FRAUDULENT))) UNLAWFUL PUBLICATION OF TELECOMMUNICATION CREDIT CARD NUMBERS OR CODES. Every person who (((fraudulently))) willfully publishes the number or code of an existing, canceled, revoked, expired, or nonexistent credit card, or the numbering or coding which is employed in the issuance of credit cards, with the intent that it be used or with knowledge or reason to believe that it will be used to avoid the payment of any lawful telecommunication toll charge shall be guilty of a class A misdemeanor.

8-10-08. (To be repealed.)

8-10-09. DISCLOSING TELEGRAPH AND TELEPHONE MESSAGES - PENALTY. Every person who (((wrongfully))) willfully shall obtain, or attempt to obtain, any knowledge of a telegraphic or telephonic message, by connivance with a clerk, operator, messenger, or other employee of a telegraph or telephone company, and every clerk, operator, messenger,

6 or other employee who willfully shall divulge to any but the person
7 for whom it was intended, the contents of any telephonic or tele-
8 graphic message entrusted to him for transmission or delivery, or the
9 nature thereof, or who willfully shall refuse or neglect duly to
10 transmit or deliver any such message, shall be (((punished by impris-
11 sonment in the county jail for not more than six months, or by a
12 fine of not more than one thousand dollars, or by both such fine and
13 imprisonment))) guilty of a class A misdemeanor.

1 8-10-10. SECRETING TELEGRAPHIC DISPATCH.) Every person having
2 in his possession any telegraphic dispatch addressed to another, who
3 (((maliciously))) willfully secretes, conceals, or suppresses (((the
4 same))) it, is guilty of a class A misdemeanor.

62-01-02. (To be repealed.)

1 62-01-11. SELLING PISTOL TO MINORS PROHIBITED - PENALTY.) Any
2 person who shall sell, barter, hire, lend, or give any pistol to any
3 minor under the age of seventeen years shall be guilty of a class A
4 misdemeanor (((and shall be punished by a fine of not less than one
5 hundred dollars, nor more than one thousand dollars, or by imprison-
6 ment for not less than three months nor more than one year, or by
7 both such fine and imprisonment))).

1 62-01-20. PENALTIES.) Any person who shall violate any pro
2 vision of this chapter, for which another penalty is not specifically
3 provided, shall be guilty of a class C felony (((and shall be punished

4 by imprisonment in the penitentiary for not less than one year nor
5 more than ten years))).

62-02-06. (To be repealed.)

1 62-03-03. PENALTY.) Any person who violates any provision
2 of this chapter is guilty of a class C felony (((and shall be punished
3 by imprisonment in the penitentiary for not more than two years or in
4 the county jail for not more than one year or by a fine of not more
5 than one hundred dollars, or by both such fine and imprisonment))).

1 62-04-01. USE AND SALE OF "SILENCER" PROHIBITED - PENALTY.)
2 Any person who sells, offers for sale, or uses any device for or
3 attachment to any firearm which will silence or deaden the sound or
4 natural report of the weapon when it is discharged shall be guilty
5 of a class A misdemeanor (((and shall be punished by a fine of not
6 less than fifty dollars nor more than one hundred dollars, or by
7 imprisonment in the county jail for not less than ninety days nor
8 more than six months, or by both such fine and imprisonment))).
9 The use of any such device by a member of the national guard or of
10 of the regular army, on any rifle range in this state under the
11 supervision of a commissioned officer shall not be a violation of
12 this section.

62-04-02. (To be repealed.)

1 62-04-03. USE OF FIREARMS BY CHILDREN PROHIBITED - PENALTY.)

2 Any parent, guardian, or other person having charge or custody of
3 any minor (((child))) under fifteen years of age who permits (((such
4 child))) that minor to carry or use in public any firearm of any
5 description loaded with powder and lead, except when (((such child)))
6 he is in the company and under the direct control of (((such))) the
7 parent, guardian, or other person authorized by the parent or
8 guardian, is guilty of a class B misdemeanor (((, and shall be punished
9 by a fine of ten dollars and costs, or in lieu thereof, by imprisonment
10 in the county jail for a period of fifteen days))).

1 62-04-05. MANUFACTURE, USE, AND SALE OF BLANK CARTRIDGE FIREARMS

2 AND FIRECRACKERS PROHIBITED.) Any person who manufactures, uses,
3 sells, or keeps for sale within this state any blank cartridge pistol,
4 blank cartridge revolver, or other blank cartridge firearm, or blank
5 cartridge caps containing dynamite, or firecrackers exceeding more
6 than three inches in length and one-half inch in diameter, is guilty
7 of a class A misdemeanor.

1 6-01-29. OBSTRUCTING OR MISLEADING EXAMINER - PENALTY.)

2 Every person who, when required to do so, shall refuse or neglect
3 to make any return or exhibit, or to make or give any information
4 required by the examiner, or who willfully shall obstruct or mislead
5 the examiner in the execution of his duties, or who in any manner
6 shall hinder a thorough examination by the examiner, shall be guilty
7 of a class C felony (((and shall be liable to a fine of one thousand
8 dollars and imprisonment in the penitentiary for a term of not more
9 than one year))).

1 6-03-10. VIOLATION OF POWERS - PENALTY.) Any banking association
2 violating the provisions of the preceding sections of this chapter
3 relating to powers, at the discretion of the state banking board,
4 shall forfeit its charter. Any officer, director, or employee who
5 knowingly violates or permits the violation of any of such provisions
6 is guilty of a class B misdemeanor.

1 6-03-20. IMPAIRMENT OF CAPITAL - NOTICE TO STATE EXAMINER -
2 (((MISDEMEANOR))) PENALTY.) The president, cashier, or other officer
3 in active charge of any state banking association shall notify the
4 state examiner immediately by (((registered or))) certified mail of
5 any impairment of capital or reduction of capital stock thereof, and
6 any such officer failing so to do is guilty of a class B misdemeanor.

1 6-03-38. ASSETS NOT TO BE USED IN OTHER BUSINESS - EXCEPTIONS -
2 (((VIOLATION A MISDEMEANOR))) PENALTY.) No bank, except as otherwise
3 authorized in this title, shall employ its money or other assets as
4 principal, directly or indirectly, in trade or commerce, nor shall it
5 employ or invest any of its assets or funds in the stock of any corpo-
6 ration, bank, partnership, firm, or association, provided, however, that
7 a state bank may to the extent that banks subject to the laws of the
8 federal government are permitted to do so, purchase shares of stocks
9 in small business investment companies organized under Public Law
10 No. 85-699, 85th Congress, known as the Small Business Investment
11 Act of 1958, and any amendments thereto, or chapter 10-30 of the
12 North Dakota Century Code, but in no event shall any state bank
13 hold shares in small business investment companies in an amount

14 aggregating more than two percent of the bank's capital and surplus,
15 nor in speculative margins of stock, bonds, grain, provisions, pro-
16 duce, or other commodities, except that it shall be lawful for a bank
17 to make advances for grain or other products in store or in transit
18 to market, and to invest in stocks of subsidiary corporations, when
19 the activities of such corporations are incidental to banking acti-
20 vities, with the specific approval of the state banking board for
21 each such subsidiary. The state banking board shall have the same
22 power to make rules and regulations for the subsidiary corporations,
23 and to examine its records and affairs, as it has for other financial
24 corporations under the provisions of section 6-01-04. In the event
25 that the state banking board determines that such investments would
26 be detrimental to the interests of a bank's depositors, it may dir
27 the bank to divest itself of such subsidiary investments. In addition
28 to the above, the state banking board shall have power to issue
29 regulations authorizing state banks to engage in any banking activity
30 in which such banks could engage (((where))) were they operated as
31 national banks at the time such authority is granted, notwithstanding
32 any restriction elsewhere contained in this Code. Any officer,
33 director, or employee of any bank who shall invest or use its funds
34 contrary to the provisions of this title shall be guilty of a class A
35 misdemeanor.

1 6-03-56. UNLAWFUL BORROWING, REDISCOUNTING, ENDORSING, PLEDG-
2 ING BY OFFICERS, EMPLOYEES, AND ACCESSORIES - (((MISDEMEANOR))) PENALTY
3 Any officer, director, agent, or employee of any state banking asso-
4 ciation who shall borrow money for, or on behalf or in the name of such

5 association or obligate any such association upon rediscounted
6 paper, or pledge any of the assets of such association in violation
7 of the provisions of this chapter shall be guilty of a class A
8 misdemeanor and shall be personally liable to the association for
9 any loss it shall sustain on account of such illegal action, but
10 no such violation shall affect the validity of any loan, endorsement,
11 or pledge in the hands of any federal reserve bank or federal lending
12 agency or commercial bank correspondent who shall have loaned money
13 to the association or discounted its paper in good faith and in
14 reliance upon a certified copy of a resolution complying with
15 section 6-03-52.

1 6-03-60. LOANS TO AND PURCHASES FROM DIRECTORS, OFFICERS,
2 AND EMPLOYEES - RESTRICTIONS - CONDITIONS - PENALTY - CIVIL LIABILITY.)
3 No director, officer, or employee of any state banking association,
4 nor the state examiner, nor any deputy, shall be permitted to borrow
5 any of the funds of the state banking association without first
6 obtaining the approval of a majority of the board of directors of
7 said banking association, excluding from such majority any director
8 whose application is to be acted upon, and no action upon any loan
9 herein provided for shall be taken by the board in the presence of
10 the applicant. Every loan provided for herein shall be upon like
11 and equal security, required of other borrowers and shall be in
12 strict conformity with the association's rules and regulations. No
13 officer of any state banking association shall borrow from or other-
14 wise become indebted to any state banking association of which he
15 is an officer in an aggregate amount exceeding ten thousand dollars

16 for any loan or extension of credit, other than a loan secured
17 by a first mortgage on his residence. At no time shall any combi-
18 nation of loans or extensions of credit or both made by a state
19 banking association to an officer of that association exceed an
20 aggregate amount of thirty thousand dollars.

21 No director, officer, or employee of a bank shall sell to such
22 bank, directly or indirectly, any mortgage, bond, note, stock, or
23 other property whatsoever without first obtaining the written
24 approval of the board of directors. The action of the board of
25 directors in connection with the loans and discounts required under
26 this section shall be made a matter of permanent record in the
27 minute books of the banking association. Any shareholder, officer,
28 or director of any banking association who knowingly shall violate
29 the provisions of this section shall be held liable in his personal
30 and individual capacity for all loss or damage which the association
31 or any person shall sustain in consequence thereof and shall be
32 guilty of a class A misdemeanor. The state examiner may require,
33 at any time, the payment, or repurchase of loans, securities or
34 obligations herein referred to.

1 6-03-61. EXCESSIVE LOAN - VALIDITY - PENALTY - PERSONAL
2 LIABILITY.) Whenever a state banking association allows any person,
3 copartnership, or corporation to become indebted to it, directly or
4 indirectly, in excess of the amount, exclusive of interest, per-
5 mitted by this title, the officer, director, or employee thereof
6 willfully permitting or approving such loan is guilty of a class B
7 misdemeanor, and in addition thereto, shall be liable personally

8 to the association for the amount of such loan in excess of the
9 statutory limit. Unauthorized loans, however, shall not be invalid.

1 6-03-63. INTEREST ON DEPOSITS - RATE PAYABLE - (((MISDEMEANOR)))
2 PENALTY.) No state banking association shall pay interest on deposits,
3 directly or indirectly, at a greater rate than four percent per annum
4 unless authorized by the state banking board to pay a greater rate,
5 which in no case shall exceed six percent per annum. The board may
6 grant permission to pay a rate of interest exceeding four percent on
7 deposits, but the rate so granted shall be uniform within any county.
8 Any officer, director, or employee of any association violating the
9 provisions of this section, directly or indirectly, is guilty of a
1 class B misdemeanor.

1 6-03-72. CERTIFICATION OF CHECKS, DRAFTS, AND ORDERS -
2 (((VIOLATION A MISDEMEANOR))) PENALTY.) It shall be unlawful for
3 an officer, clerk, or agent of any state banking association to
4 certify any check, draft, or order drawn upon the association unless
5 the person drawing the same has on deposit with the association at
6 the time of such certification an amount of money equal to the amount
7 specified therein, and upon such certification, the amount of such
8 certified check, draft, or order shall be immediately charged against
9 the account of such drawer. Any officer or employee of any banking
10 association who willfully violates the provisions of this section
11 is guilty of a class B misdemeanor.

1 6-05-16. INDEBTEDNESS OF DIRECTORS - PROHIBITION AND EXCEPTION
2 (((EMBEZZLEMENT))) THEFT - PENALTY.) Such corporation shall not loan
3 its funds, moneys, capital, trust funds, or any other property whatso-
4 ever to any director, officer, agent, or other employee thereof, nor
5 shall any such director, officer, agent, or other employee become in a
6 manner indebted to said corporation by means of any overdraft, prom-
7 issory note, account, endorsement, guaranty, or other contract what-
8 soever unless such indebtedness shall have been approved or authorized
9 first by the board of directors, or an investment committee created
10 by it, and such approval entered in the minutes of the proceedings
11 of such board or committee. Any such director, agent, or employee
12 who shall become indebted to said company, contrary to the provisions
13 hereof, shall be guilty of the crime of (((embezzlement))) theft t
14 the amount of such indebtedness from the time such indebtedness shall
15 have been created, and shall be punished in the manner prescribed by
16 (((the laws of this state for embezzlement of a like amount)))
17 section 12.1-23-05. The execution and delivery of the official
18 bond of such officer, agent, or employee, or his endorsement of
19 commercial paper, however, shall not be considered as an indebted-
20 ness for the purpose of this section.

1 6-06-05. USE OF "CREDIT UNION" RESTRICTED - (((MISDEMEANOR)))
2 FORFEITURE.) It shall be (((a misdemeanor))) unlawful for any per-
3 son, association, copartnership, or corporation, domestic or foreign,
4 except corporations organized in accordance with the provisions of
5 this chapter, to use the words "credit union" in their name or
6 title, and any person, association, copartnership, or corporation

7 violating this section shall forfeit to the state one hundred dollars
8 for every day, or part thereof, during which such violation continues.
9 The state examiner may recover such forfeited sums in a civil action,
10 and shall deposit any sums recovered or collected with the state
11 treasurer.

1 6-07-06. INSOLVENT BANK OR OFFICER RECEIVING DEPOSIT -
2 (((FELONY))) PENALTY.) No banking institution shall accept or receive
3 on deposit, with or without interest, any coins, notes, bills, drafts,
4 checks, or certificates circulating as money or currency, when such
5 banking institution is insolvent under subsection 1 of section 6-07-03.
6 If any such institution shall receive or accept or deposit any such
7 deposits as aforesaid when insolvent, any officer, director, cashier,
8 or manager thereof, knowing of such insolvency, who knowingly shall
9 receive or accept, be accessory or permit or connive at receiving
10 or accepting on deposit therein or thereby, any such deposit as
11 aforesaid, shall be guilty of a class B felony.

1 6-07-08. DIRECTORS PARTICIPATING IN FRAUDULENT INSOLVENCY -
2 (((FELONY))) PENALTY.) In every case of a fraudulent insolvency
3 of a moneyed corporation or association, every director thereof
4 who participated in such fraud, if no other punishment is prescribed
5 therefor by this Code, is guilty of a class B felony.

6-08-05. (To be redrafted.)

1 6-08-09. BANKING ASSOCIATION OFFICERS - PUNISHMENT FOR
2 VIOLATION OF DUTY - (((MISDEMEANOR))) PENALTY.) Any officer of
3 any banking association violating, or knowingly permitting to be
4 violated, any provision of this title, violation of which has not
5 (((hereinbefore))) specifically been designated as a crime, is
6 guilty of a class B misdemeanor.

1 6-08-11. PUNISHMENT FOR VIOLATION OF DUTY BY DIRECTOR OF
2 MONEYED CORPORATION - (((MISDEMEANOR))) PENALTY.) Every director
3 of any moneyed association or corporation who willfully does any
4 act as such director which is expressly forbidden by law, or who
5 willfully omits to perform any duty by law expressly imposed upon
6 him as such director, if the punishment for such act or omission
7 is not prescribed otherwise by this Code, is guilty of a class B
8 misdemeanor.

6-08-12. (To be repealed.)

6-08-13. (To be repealed.)

1 6-08-14. FALSE STATEMENTS CONCERNING BANK VALUES - (((MISDE-
2 MEANOR))) PENALTY.) Any person who knowingly makes or publishes any
3 book, prospectus, notice, report, statement, exhibit, or other publica-
4 tion containing any statement which is (((willfully))) false and which
5 is intended to give and does give a substantially greater or less appar-
6 ent value to the shares, bonds, or property, or any part thereof, of
7 any state banking association than said shares, bonds, property, or any
8 part thereof shall possess in fact, is guilty of a class A misdemeanor.

1 6-08-15. SLANDER OR LIBEL OF BANK - SAFE DEPOSIT, ANNUITY,
2 SURETY, OR TRUST COMPANY - AIDING OR ABETTING - (((MISDEMEANOR)))
3 PENALTY - LIABILITY FOR DAMAGES.) Any person who willfully and
4 maliciously shall make, circulate, or transmit to another or to
5 others, any false statement, rumor, or suggestion, written, printed,
6 or by word of mouth, which directly or by inference is derogatory
7 to the financial condition, or which affects the solvency or finan-
8 cial standing, of any state or national bank, or of any annuity,
9 safe deposit, surety, or trust company authorized to do business
10 in this state, or who shall counsel, aid, procure, or induce another
11 to start, transmit, or circulate any such false statement or rumor,
12 is guilty of a class A misdemeanor, and in addition thereto shall
13 be liable in damages to such association, or corporation, or the
14 receiver thereof, to be recovered in a civil action brought for that
15 purpose.

1 6-08-16. ISSUING CHECK OR DRAFT WITHOUT SUFFICIENT FUNDS OR
2 CREDIT - NOTICE - TIME LIMITATION - PENALTY.) 1. Any person who
3 for himself or as the agent or representative of another, or as an
4 officer or member of a firm, company, copartnership, or corporation
5 makes or draws or utters or delivers any check, draft, or order for
6 the payment of money upon a bank, banker, or depository, and at the
7 time of such making, drawing, uttering or delivery, or at the time
8 of presentation for payment if made within one week after the original
9 delivery thereof, has not sufficient funds in or credit with such
10 bank, banker, or depository to meet such check, draft, or order in
11 full upon its presentation, shall be (((punished by a fine of not

12 less than twenty-five dollars, and not more than two hundred fifty
13 dollars, or by imprisonment in the county jail for not more than
14 three months, or by both such fine and imprisonment))) guilty of a
15 class B misdemeanor. The word "credit" as used in this section shall
16 mean an arrangement or understanding with the bank, banker, or
17 depository for the payment of such check, draft, or order. The
18 making of a postdated check knowingly received as such, or of a
19 check issued under an agreement with the payee that the same would
20 not be presented for payment for a time specified, shall not consti-
21 tute a violation of this section. This section shall not be construed
22 to nullify or supersede any of the provisions of chapter 12-38.

23 2. . . .

1 6-08-16.1. ISSUING CHECK OR DRAFT WITHOUT ACCOUNT - PENALTY.)
2 Any person who shall issue any check, draft, or order upon any bank,
3 for the payment of money, and, at the time of such issuance does
4 not have an account with such bank, shall be guilty of a class A
5 misdemeanor (((and shall be punished by a fine of not more than
6 five hundred dollars, or by imprisonment in the county jail for
7 not more than one year, or by both such fine and imprisonment))).

6-08-17. (To be repealed.)

6-08-18. (To be repealed.)

6-08-19. (To be repealed.)

1 6-08-28. PENALTY.) Any bank or trust company violating any
2 provisions of sections 6-08-25 through 6-08-28 shall be guilty of
3 a class A misdemeanor and, upon conviction thereof, (((shall be
4 subject to a fine of not exceeding ten thousand dollars, and))) may,
5 in the discretion of the court, be prohibited thereafter from serving
6 in this state in any fiduciary capacity.

6-09-13. (To be repealed.)

1 6-10-08. PENALTY.) Any person (((, partnership, association,
2 or officer of any corporation,))) violating the provisions of this
3 chapter is guilty of a class A misdemeanor (((and shall be punished
4 by a fine of not more than one thousand dollars, or by imprisonment
5 for not more than one year, or by both such fine and imprisonment))).

1 SECTION . AMENDMENT.) Subsection 25 of section 12.1-01-04
2 of chapter 116 of the 1973 Session Laws of the state of North Dakota
3 is hereby amended and reenacted to read as follows:

4 25. (((("Person")))) As used in this title and in sections out-
5 side this title which define offenses, "person" includes,
6 where relevant, a corporation, partnership, unincorporated
7 association, or other legal entity. When used to designate
8 a party whose property may be the subject of action consti-
9 tuting an offense, the word "person" includes a government
1 which may lawfully own property in this state;

1 7-02-06. EXCESSIVE COLLECTIONS AND CHARGES - PENALTY.)

2 Any officer, agent, or employee of an association collecting or
3 attempting to collect any penalty, fine, or premium of any kind
4 whatsoever, or any interest at a rate higher than provided by this
5 chapter, except as hereinbefore provided for delinquent payments
6 or installments, is guilty of a class B misdemeanor.

1 7-03-07. OBTAINING PROPERTY BY FRAUD, FALSE BOOKKEEPING
2 AND REPORTS - PREVENTING INSPECTION OF BOOKS - (((FELONY))) PENALTY.)

3 Any director, officer, agent, or employee of any building and loan
4 association who:

- 5 1. Willfully (((receives or possesses himself of any of its
6 property otherwise than in payment for a just demand, or),
7 with intent to defraud, omits to make, or cause or direct
8 to be made, a full and true entry in its books and accounts
9 of the receipt by him of any of the property of such
10 association;
- 11 2. Concurs in omitting to make any material entry thereof;
- 12 3. Willfully makes or concurs in making or publishing any
13 written report, exhibition, or statement of its affairs
14 or pecuniary condition, containing any material statement
15 which is false; or
- 16 4. Having the custody or control of its books, willfully
17 refuses or (((neglects))) fails to make any proper entry
18 in _____ of such association as required by law, or
19 to exhibit or allow the same to be inspected and extracts to be
20 taken therefrom by the state examiner, his chief deputy, or

21 any of his examiners,
22 is guilty of a class C felony.

1 7-03-09. PENALTIES IN GENERAL.) Any director, officer, agent,
2 or employee of any building and loan association knowingly violating,
3 or knowingly permitting to be violated, any provision of this title,
4 the violation of which is not designated specifically in this title
5 to be a crime, is guilty of a class B misdemeanor.

7-05-04. (To be redrafted.)

1 7-08-01. OPERATION WITHOUT AUTHORITY PROHIBITED.) No associa-
2 tion or corporation, whether foreign or domestic, shall do business
3 or attempt to do business as defined in this title without first
4 complying with its provisions and without having received a certificate
5 of authority to do business from the state examiner as provided in
6 this title. Any association or corporation violating any of the
7 provisions of this title shall be (((fined not less than two hundred
8 fifty dollars and not more than one thousand dollars for each and
9 every such violation))) guilty of a class C felony. (((Any person
10 who aids or assists any such association or corporation to do business
11 contrary to the provisions of this title is guilty of a misdemeanor.)))

1 7-08-04. SLANDER AND LIBEL - (((FELONY))) PENALTY.) Any
2 person who willfully and maliciously shall make, circulate, or
3 transmit to another or to others, any statement, rumor, or suggestion,
4 written, printed, or by word of mouth, which is directly or by

5 inference derogatory to the financial condition or which affects
6 the solvency or financial standing of any domestic or foreign
7 building and loan association or corporation doing business in this
8 state, or who shall counsel, aid, procure, or induce another to
9 start, transmit, or circulate any such statement or rumor, shall
10 be guilty of a (((felony))) class A misdemeanor, and in addition
11 thereto shall be liable in damages to such association or corporation,
12 or the receiver thereof, to be recovered in a civil action brought
13 for that purpose.

7-08-06. (To be repealed.)

Tentative Agenda

DATE 12-6-73

COMMITTEE ON JUDICIARY "A"

Meeting of Monday and Tuesday, December 10-11, 1973
Committee Room G-2, State Capitol

Monday:

- 9:30 a.m. Call to order
Roll call
Minutes of previous meeting
- 9:45 a.m. Consideration of criminal sections in Title 11, NDCC
- 11:15 a.m. Consideration of criminal sections in Title 48, NDCC
- 12:00 noon Luncheon recess
- 1:15 p.m. Reconvene - Consideration of criminal sections in Title 52, NDCC
- 2:30 p.m. Consideration of criminal sections in Title 61, NDCC
- 4:00 p.m. Consideration of criminal sections in Title 46, NDCC
- 5:00 p.m. Recess

Tuesday:

- 9:00 a.m. Reconvene - Consideration of criminal sections in Title 49, NDCC
- 11:00 a.m. Consideration of criminal sections in Title 47, NDCC
- 12:00 noon Luncheon recess
- 1:15 p.m. Consideration of criminal sections in Title 54, NDCC
- 3:30 p.m. Consideration of criminal sections in Title 55, NDCC
- 4:30 p.m. Adjourn

M E R R Y C H R I S T M A S ! !

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

Meeting of Monday and Tuesday, December 10-11, 1973
Room G-2, State Capitol
Bismarck, North Dakota

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:40 a.m. on Monday, December 10, 1973.

Legislative

Members present: Senators Freed, Jones
Representatives Austin, Hilleboe, Lundene, Rau, Royse,
Stone

Citizen

Members present: Judges Heen, Glaser, Pearce
Mr. Al Wolf

Legislative

Member absent: Representative Murphy

Citizen

Members absent: Judge Teigen
Mr. Rodney Webb
Sheriff Glen Wells
Police Chief Glen Eng

Also present:

Mr. Ed Bashus, N. D. Retail Association
Mr. James DuBois, Northwestern Bell Telephone Co.
Mr. Thomas Kelsch, Burleigh County State's Attorney
Mr. Lawrence Watson, Counsel, Employment Security
Bureau
Mr. Ray Walton, Commerce Counsel, Public Service
Commission

The Committee Counsel apologized for the delay in preparation of the minutes of the previous meeting, and noted that they would be mailed to members of the Committee shortly after this meeting.

The Committee then commenced discussion of the criminal sections in Title 11 of the Century Code.

The Committee discussed Section 11-09-09, which relates to the powers of a board of county commissioners under a county managership form of government. The crime defined in the section, in Subsection 3, is for failure or refusal to obey lawful order of the board, presently a misdemeanor, and classified as a Class A misdemeanor in the draft. In addition, the Committee Counsel noted that Subsection 4 authorized the county commission to exercise a "contempt" power

of sorts. IT WAS MOVED BY JUDGE HEEN, SECONDED BY SENATOR JONES, AND CARRIED that Section 11-09-09 be accepted as drafted.

The Committee next discussed Section 11-09-38, which is also in the chapter relating to an optional county manager form of government. The section makes it an offense for county commissioners to interfere with appointed county officials. The staff simply reclassified the section as a Class A misdemeanor, as it is a misdemeanor in current law. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 11-09-38 be accepted as drafted.

The Committee next discussed Section 11-10-22, which reads as follows:

1 11-10-22. UNLAWFUL FOR OFFICER TO PURCHASE COUNTY WARRANT
2 OR EVIDENCE OF DEBT - PENALTY.) Every person who, while an officer
3 of any county of this state or the deputy or clerk of any such officer,
4 directly or indirectly, buys or traffics in, or in anywise becomes a party to
5 the purchase of, any county warrant or order, or any bill, account, claim,
6 or evidence of indebtedness of his county, for any sum less than the full
7 face value thereof, is guilty of ((a misdemeanor, and shall be punished
8 by a fine of not less than fifty dollars nor more than five hundred dollars)))
9 an infraction.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 11-10-22 be accepted as drafted.

The Committee discussed Section 11-13-10, which requires a county auditor to attach a certificate to each abstract of title presented to him for that purpose. The certificate will show the amount of taxes due and unpaid against the land described in the abstract. The auditor is required to collect a 25-cent fee for each abstract so certified. The section is presently classified as a misdemeanor punishable by a \$100 fine and has been reclassified as an infraction.

The Committee discussed this section at length. The discussion included the rationale for the charging of and the disposition of the fees. The Committee Counsel noted that, in accordance with Section 11-10-14, the fees must be turned over to the county treasurer monthly and credited to the county general fund.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 11-13-10 be accepted as drafted.

The Committee discussed Section 11-14-05, which was essentially the same as Section 11-13-10 except that it applied to the county treasurer. IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 11-14-05 be accepted as drafted.

The Committee discussed Section 11-14-20, which provided for a monetary forfeiture by a county treasurer if he loaned money belonging to his county. The Committee Counsel inquired of the Committee whether that type of activity should constitute a criminal offense. The consensus of the Committee was that no action should be taken regarding Section 11-14-20.

The Committee discussed Section 11-15-15, which reads as follows:

1 11-15-15. PENALTIES FOR NOT REPORTING OR TURNING OVER FEES.)
2 A sheriff who, by neglect or otherwise, shall fail to make out the report
3 to the board of county commissioners showing the fees earned and collected,
4 is guilty of (((a misdemeanor, and shall be punished by a fine of not
5 less than ten dollars nor more than one hundred dollars))) an infraction.
6 A sheriff who, by neglect or otherwise, shall fail to collect the fees and
7 turn them over to the county treasurer, or who shall make a false report
8 to the board of county commissioners, is guilty of a class C felony.

Senator Jones noted that the provisions of this section were covered generally by Sections 12.1-11-06, which makes it a Class A misdemeanor for public servants to knowingly refuse to perform their duties, and 12.1-11-02 which prohibits the making of false statements. It was further noted that these sections would not go into effect until 1975.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY SENATOR JONES, AND CARRIED that Section 11-15-15 be repealed as it is covered by Sections 12.1-11-02 and 12.1-11-06.

The Committee discussed Section 11-15-23, which presently makes it a misdemeanor for a sheriff to "appropriate" any or all of the salary owed to any clerk or deputy in his office to himself. The Committee Counsel stated that this section was probably covered under Section 12.1-23-02 dealing with theft, except for the question of whether the "salary" has become the "property of another" within the meaning of that section. The consensus of the Committee was that the theft provisions applied to Section 11-15-23. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 11-15-23 be repealed.

The Committee discussed Section 11-15-28, which prohibits the sheriff, deputy sheriff, sheriff's employee, or a constable from collecting or attempting to collect notes and other accounts for pay except as required in the performance of his official duties. A violation of the section is made a misdemeanor, punishable by a fine of \$100 presently, and has been reclassified by the staff as an infraction. Senator Jones noted that under the section, the county commissioners could require the sheriff to collect notes, since the section provides that if such collection is required "in the performance of the duties of his office" it is not unlawful. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 11-15-28 be accepted as drafted.

The Committee discussed Section 11-16-04, which makes it a misdemeanor, punishable by a fine of from \$50 to \$200, for a state's attorney to refuse or neglect to account for or pay over the public moneys received by him.

Judge Heen stated that one of the problems with this section was in defining the phrase "public moneys". For instance, what happens to funds received by a state's attorney from a private citizen in payment of a claim, such as an alimony claim, by another private citizen. Are those moneys "public moneys"? It was noted that perhaps this section, or illegal disposal of moneys which could not be classified as "public moneys", would probably be covered by the theft provisions of the new Criminal Code.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY SENATOR JONES, AND CARRIED that Section 11-16-04 be accepted as drafted.

The Committee discussed Section 11-16-05, which sets out restrictions on the powers of a state's attorney. It was noted that Subsection 4 prohibited a state's attorney from acting as attorney for any party in a civil action depending upon or arising out of a state of facts from which a pending criminal prosecution has also arisen. Mr. Kelsch brought up the question of a state's attorney who defended criminal cases in other counties, but noted that Subsection 4 did not apply to that question.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 11-16-05 be accepted as drafted.

The Committee discussed Section 11-17-05, which requires the clerk of a district court to keep a fee book in his office and to enter all fees received in the book. It also requires the clerk to deposit the money with the county treasurer at the end of each calendar month. The Committee Counsel noted that the last sentence, penalizing the clerk for failing to carry out the foregoing duties, was covered by Section 12.1-11-06, dealing with a public servant who refuses to perform his duties, and could be omitted.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY JUDGE HEEN, AND CARRIED that triple parentheses be inserted around the hyphen and word "- PENALTY" in Line 2 (section heading), and that triple parentheses be inserted at the beginning of Line 12 and at the end of the section, thus deleting the last sentence of the section, and that when so amended the section be accepted.

The Committee discussed the problem of public servants collecting excessive fees and where criminal liability coverage was provided for such action. The Committee Counsel noted that Section 12.1-12-03 (1)(c), which prohibits a public servant from accepting a fee or compensation for services not rendered or to which he was not legally entitled, is the section which provides criminal liability in such an instance.

The Committee discussed Section 11-18-06 in conjunction with its previous discussion. That section reads as follows:

- 1 11-18-06. REGISTER OF DEEDS TO KEEP FEE BOOK - MONTHLY REPORTS -
- 2 PENALTY.) The register of deeds shall keep a book provided by the county

3 in which shall be entered each item of fees for services rendered. Within
4 three days after the close of each calendar month and also at the end of
5 his term of office, he shall file with the county auditor a statement under
6 oath showing the fees which he has received as such officer since the date
7 of his last report. A register of deeds who shall neglect or omit to charge
8 or collect the fees allowed by law for services rendered, or who shall
9 fail or neglect to keep a record of the same or to make a correct statement
10 thereof to the county auditor, with intent to evade the provisions of this
11 section, shall be guilty of a class A misdemeanor.

The Committee Counsel noted that the last sentence of the section could be deleted, as failure to perform the duties was covered under Section 12.1-11-06, relating to a public servant refusing to perform his duty.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY SENATOR JONES, AND CARRIED that the hyphen and word "- PENALTY" in Lines 1 and 2 be inserted in triple parentheses, and that the last sentence of the section also be enclosed in triple parentheses with the underscored words "class A" deleted.

The Committee discussed Section 11-18-12, which reads as follows:

1 11-18-12. RECORD, WHEN COMPLETE - PENALTY FOR ALTERATION.)
2 The affixing of the signature of the register of deeds to a recorded instrument
3 shall complete the record thereof. Any person who thereafter willfully
4 erases, adds to, interlines, mutilates, conceals, destroys, or in any manner
5 changes the record is guilty of a class C felony ((and shall be punished
6 by imprisonment in the penitentiary for not less than one year nor more
7 than five years, and, if an officer, in addition thereto, shall forfeit his
8 office))).

The Committee Counsel stated that the section was covered by Section 12.1-11-05, which prohibits tampering with public records. However, he noted that that section classifies the offense as a Class C felony only if it is committed by the public servant having custody of the records. In other cases it is classified as a Class A misdemeanor. Section 11-18-12 classified all such mutilation as a felony.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 11-18-12 be repealed.

The Committee discussed Section 11-19A-07, which reads as follows:

1 11-19A-07. DEATH TO BE REPORTED TO CORONOR BY PHYSICIAN OR
2 PERSONS DISCOVERING BODY - PENALTY.) (((It shall be the duty of any)))
3 Any person who discovers the body or acquires the first knowledge of the
4 death of any person, and (((by))) any physician (((called or in attendance
5 to such))) with knowledge that a person (((who shall have))) died as a
6 result of (((abortions criminally or self-induced, or other))) abortion,
7 criminal or violent means, (((or by))) casualty, suicide, (((accidental
8 deaths))) or accident, died suddenly when in apparent good health in
9 a suspicious or unusual manner, (((to))) shall immediately notify the
10 office of coroner of the known facts concerning the time, place, manner,
11 and circumstances of such death, and any other information which may
12 be required pursuant to this chapter. Any person who shall willfully
13 touch, remove, or otherwise disturb the body of any such deceased person,
14 or the clothing or any articles upon or near such body without authoriza-
15 tion of the coroner or law enforcement officer present shall be guilty of
16 a class A misdemeanor.

It was noted that the section was strangely drafted since it referred both to a failure to report and to a willful disturbance or removal of a deceased body. The Committee Counsel noted that the penalty provided by the section does not apply to failure to report, but only to the willful removal or disturbance of the body or the scene of the discovery of the body. Representative Rau stated that he believed that the section ought to provide a penalty for failure to report.

The Committee discussed the feasibility of splitting the section into two sections, one dealing with the failure to report, and one dealing with willful disturbance of the scene of the discovery of the body. Senator Jones suggested that the words ", or any law enforcement officer," be inserted after the word "coroner" in Line 10 of the section, in order to obviate the problems in immediately notifying the coroner when the person required to report does not even know who the coroner is.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 11-19A-07 be split so that the last sentence would constitute a separate section, and so that failure to report would be classified as a Class A misdemeanor; and adding the words ", or any law enforcement officer," after the word "coroner" in Line 10.

Thereafter, the Committee recessed for lunch at 12:02 p.m. and reconvened at 1:05 p.m., at which time it considered Section 11-20-15. That section prohibits the removal of surveyors' markers. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 11-20-15 be accepted as drafted.

The Committee discussed Section 11-21-09, which makes it a misdemeanor, punishable by a fine of not less than \$100, for a public administrator to charge an attorney's fee for administration of estates as the public administrator. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 11-21-09 be accepted as drafted.

The Committee discussed Section 11-23-11, which reads as follows:

- 1 11-23-11. PENALTY FOR VIOLATING COUNTY BUDGET PROVISIONS.)
- 2 Any officer violating any of the provisions of this chapter is guilty of (((a
- 3 misdemeanor and shall be punished by a fine of not less than one
- 4 hundred dollars nor more than three hundred dollars))) an infraction.

Senator Jones questioned whether this section was needed, since an officer who violated the provisions of Chapter 11-23 would be covered by the provisions of Section 12.1-11-06, especially in cases where the sections within Chapter 11-23 set forth the officer's duty specifically.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY JUDGE HEEN, AND CARRIED that Section 11-23-11 be repealed.

The Committee discussed Section 11-28-09, which makes it a misdemeanor, punishable by a fine of not more than \$25, or by imprisonment in the county jail for not more than 10 days, or both, to violate any rule or regulation of a board of county park commissioners. The Committee Counsel noted that the section had been classified by the staff as an infraction, because it was felt that a board of county park commissioners should not be able to promulgate a rule or regulation to which would attach a possibility of incarceration. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY SENATOR JONES, AND CARRIED that Section 11-28-09 be accepted as drafted.

Judge Pearce noted that municipal park boards can pass ordinances which provide for jail sentences. The ordinances would be treated the same as city ordinances for the purpose of applying the general penalty provisions of state law.

The Committee discussed Section 11-28-20, which was similar to Section 11-28-09 except that it dealt with rules and regulations promulgated by a board of joint park commissioners. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 11-28-20 be accepted as drafted.

The Committee discussed Section 11-29-32, which provides a penalty for an official who conspires to make a profit directly or indirectly under the provisions of the chapter relating to seed, feed, or fuel loans. The present penalty is a

felony. It was noted that this section is no longer needed, as Chapter 11-29 is outdated and the section will be covered under the general conspiracy provisions and under Sections 12.1-12-03 and 12.1-12-05 of the new Criminal Code.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 11-29-32 be repealed.

Judge Pearce, referring again to the sections which had related to rules and regulations of county park commissioners and joint county commissioners, noted that Subsection 3 of Section 40-49-12 authorized city boards of park commissioners to pass park ordinances. That same subsection set a maximum penalty for violation of such ordinances at \$100, and 30 days' imprisonment. He noted that this section should be consistent with the corresponding sections in Title 11. The Chairman directed the staff to take cognizance of Judge Pearce's comments when it redrafted the criminal provisions in Title 40.

The Committee considered Section 11-29-33, which reads as follows:

1 11-29-33. PENALTIES.) Any person who, contrary to the provisions
2 of this chapter, sells, transfers, takes, or carries away, or in any manner
3 disposes of any of the seed grain, feed, or tractor fuel furnished by the
4 county under this chapter, or who uses or disposes of any of the seed
5 grain, feed, or tractor fuel for any purpose other than that stated in his
6 application, or who sells, transfers, takes, or carries away, or in any
7 manner disposes of, any of the crop produced from the sowing or planting
8 of seed grain furnished under this chapter contrary to the provisions of
9 the same, is guilty of a class B misdemeanor ((and shall be punished
10 by a fine of not less than fifty dollars, nor more than one thousand dollars,
11 or by imprisonment in the county jail for a term of not less than ninety
12 days, and shall pay all the costs of the prosecution))). Any person found
13 guilty of false swearing under any of the provisions of this chapter shall
14 be (((deemed to have committed perjury))) punished in accordance with
15 section 12.1-11-01. After the county has obtained a lien under this chapter
16 and the seed obtained thereunder has been sown, any seizure of the crop
17 or interference therewith, except by the applicant and those in his employ
18 for the purpose of harvesting, threshing, and marketing the same to pay
19 the loan, shall be deemed a conversion.

The Committee discussed the sentence commencing on Line 12 and ending on Line 15. Mr. Wefald questioned whether the sentence should not be deleted, rather than amended as per the staff proposal. Mr. Wefald said that the punishment would be more appropriate under Section 12.1-11-02 rather than the "perjury" provisions of the Criminal Code. Deleting the sentence commencing on Line 12 and ending on Line 15 would accomplish the change he desired.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY SENATOR JONES, AND CARRIED that triple parentheses be inserted around the sentence commencing on Line 12 and ending on Line 15, and that when so amended, the section be accepted.

The Committee discussed Section 11-33-21, which reads as follows:

1 11-33-21. GENERAL PENALTIES FOR VIOLATION OF ZONING REGULATIONS
2 AND RESTRICTIONS.) A violation of any provision of this chapter or the
3 regulations and restrictions made thereunder shall constitute (((the maintenance
4 of a public nuisance and upon conviction there shall be a penalty of a fine
5 of not more than two hundred dollars or imprisonment in the county jail
6 for not more than thirty days or by both such fine and imprisonment)))
7 a class B misdemeanor, and may be enjoined as a public nuisance.

The Committee Counsel noted that he had added the underscored language at the end of the section in order to ensure that the actions stated therein were both a crime (Class B misdemeanor) and a public nuisance. The section as presently drafted indicated that a person would be convicted of a public nuisance which was not appropriate. Mr. Kelsch stated that he had drafted the section, which was enacted in 1973. His intent was to ensure that a violation of zoning regulations and restrictions would constitute a public nuisance. However, he admitted that there could be a problem in delineating between the maintenance of a public nuisance and the commission of a criminal offense.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that the triple parentheses in Line 3 preceding the word "the" be deleted and that triple parentheses be inserted prior to the word "upon" in Line 4; that the words "shall be" be inserted before the word "a" in Line 7; and that the words ", and may be enjoined as a public nuisance" be deleted in Line 7; and that when so amended the section be accepted.

The Committee next discussed the provisions of Title 52 of the Century Code. Mr. Wefald noted that he had discussed these provisions on the telephone with Mr. Lawrence Watson of the Employment Security Bureau and that Mr. Watson, an attorney, was present at the meeting.

Mr. Watson noted that a bill was passed last Session authorizing the Legislative Council to delete references to "title" in Chapters 52-01 through 52-06, and to insert "the North Dakota unemployment compensation law" in lieu thereof (see Chapter 400, 1973 Session Laws). He asked if this Committee couldn't also make that type of change as it went along in Title 52. The Committee Counsel replied that that could be done.

Mr. Watson noted that the Employment Security Bureau was funded in great part by federal funds, and that federal rules and regulations required that all changes in the state statutes relating to the Employment Security Bureau had to be checked by the Federal Government. He noted that failure to do so, or the passage of a statute which violated federal law or regulations, could result in a loss of federal funds. Therefore, he requested that any action taken by the Committee be subject to review by the appropriate federal agency. The Chairman directed the Committee Counsel to write to Mr. Watson following the meeting and note what action the Committee had taken in regard to Title 52 of the Century Code.

The Committee discussed Section 52-01-04, which reads as follows:

1 52-01-04. PENALTY FOR DISCLOSURE OF INFORMATION OR USE OF
2 LIST OF NAMES.) Any (((employee, appeals referee, member of any
3 appeals tribunal, executive director,))) person who, in violation of the
4 provisions of section 52-01-03, makes any disclosure of information obtained
5 from any employing unit or individual in the administration of the North
6 Dakota unemployment compensation law, or any person who has obtained
7 any list of applicants for work, claimants, or recipients of benefits from
8 the bureau under any pretext whatever, who uses or permits the use of
9 such list for any political purpose, is guilty of a class B misdemeanor ((and
10 shall be punished by a fine of not less than twenty dollars nor more than one
11 hundred dollars, or by imprisonment in the county jail for not longer than
12 ninety days, or by both such fine and imprisonment))).

The Committee Counsel noted that Section 12.1-13-01 made the disclosure of confidential information, by a public servant, a Class A misdemeanor. The Committee Counsel noted that Section 52-01-04 prohibited anyone from using or permitting the use of a list of unemployment compensation claimants for a political purpose, or making any disclosure of information obtained as a result of the administration of the North Dakota Unemployment Compensation law. Thus, Section 52-01-04 was broader than Section 12.1-13-01.

The Chairman noted that the first five and one-half lines of Section 52-01-04, as they presently read, would be covered by Section 12.1-13-01. Therefore, those lines could be deleted.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that the words "DISCLOSURE OF INFORMATION OR" in Line 1 of Section 52-01-04 be inserted in triple parentheses, and the words "FOR POLITICAL PURPOSES" be inserted after the word "NAMES" in Line 2; that the triple parentheses, the word "person", and the underscored comma in Line 3 be deleted; that triple parentheses be inserted after the word "any" in Line 6; and that when so amended the section be accepted.

It was noted that the first five and one-half lines could be deleted, because the prohibition on releasing information was contained in Section 52-01-03, and Section 12.1-13-01 would make it a misdemeanor to disclose it.

The Committee discussed Section 52-06-38, which provides a penalty for making a false statement with intent to increase the amount of any benefit or other payment made under the unemployment compensation statutes of this or any other state, or of the Federal Government. The Committee Counsel noted that this section was covered by Section 12.1-11-02 on false statements, and by Chapter 12.1-23 on theft. IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 52-06-38 be repealed.

The Committee next discussed Section 52-06-39, which reads as follows:

1 52-06-39. PENALTY FOR FALSE STATEMENT OR FAILURE TO DISCLOSE
2 MATERIAL FACT TO PREVENT OR REDUCE BENEFITS.) Any (((employing
3 unit, any officer or agent of an employing unit, or any other))) person
4 who makes a false statement or representation knowing it to be false, or
5 who knowingly fails to disclose a material fact, to prevent or to reduce
6 the payment of benefits to any individual entitled thereto, or to avoid becoming
7 or remaining a subject employer, or to avoid or to reduce any contribution
8 or other payment required from an employing unit under this title or under
9 the unemployment compensation law of any state or of the federal government,
10 or who willfully fails or refuses to make any such contribution or other
11 payment, or to furnish any reports required under this title, or to produce
12 or permit the inspection or copying of records as required under this title,
13 is guilty of a class B misdemeanor (((and shall be punished by a fine
14 of not less than twenty dollars nor more than one hundred dollars, or by
15 imprisonment in the county jail for not more than ninety days, or by both
16 such fine and imprisonment. Each such false statement, representation,
17 or failure to disclose a material fact, and each day of such failure or refusal
18 shall constitute a separate offense))).

Mr. Wefald noted that the language relating to the making of false statements or representations commencing in Line 4 and ending in Line 10 was covered by Section 12.1-11-02, and suggested that that language could be omitted and the language relating to willfully failing or refusing to make required contributions or other payments could be retained.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY SENATOR JONES, AND CARRIED that triple parentheses be inserted before the word "FOR" in Line 1 and after the word "BENEFITS" in Line 2; that triple parentheses be inserted before the word "who" in Line 4; that triple parentheses be inserted after the first word "or" in Line 10; that triple parentheses be inserted around the word "such" in Line 10 and insert the word "required" thereafter; and that, when so amended, the section be accepted.

Mr. Watson stated that he believed this amendment could cause problems, as there might not be adequate coverage concerning false statements. The provisions of Section 12.1-11-02 were pointed out. Mr. Wefald also noted that Section 52-06-40 provided a general penalty for violation or failure to perform a duty under Chapter 52-06, and that section reads as follows:

1 52-06-40. PENALTY FOR VIOLATION OR FAILURE TO PERFORM DUTY
2 WHERE NO PENALTY PROVIDED.) Any person who willfully violates any
3 provision of this title, or any order, rule, or regulation thereunder, the
4 violation of which is unlawful or the observance of which is required under
5 the terms of this title, and for which a penalty is neither prescribed in this
6 title nor provided by any other applicable statute, is guilty of a class B
7 misdemeanor (((and shall be subject to the punishment prescribed in section
8 52-06-39. Each day such violation continues shall be deemed to be a separate
9 offense))) .

IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY REPRESENTATIVE STONE that Section 52-06-40 be amended by inserting triple parentheses before the word "the" in Line 3; and by inserting triple parentheses after the word and comma "title," in Line 5, and that when so amended the section be adopted.

Thereafter, the Committee discussed the need for Section 52-06-39 in light of the general penalty provisions in Section 52-06-40. It was noted that a person who willfully failed or refused to make a required contribution would be in violation of Section 52-06-40, which also provides for a standard of culpability at the same level, i.e., willfully. Thereafter, JUDGE PEARCE'S MOTION regarding Section 52-06-40 CARRIED.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that the Committee reconsider its action by which it amended and accepted Section 52-06-39. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE HEEN, AND CARRIED that Section 52-06-39 be repealed.

The Committee next considered Section 52-09-18 which is in a chapter dealing with Social Security and reads as follows:

1 52-09-18. AGENT AND ATTORNEY MAY REPRESENT CLAIMANT -
2 REGULATIONS - FEES - PENALTY.) The bureau may prescribe rules and
3 regulations governing the recognition of agents or other persons, other

4 than attorneys as hereinafter provided, representing claimants before
5 the bureau, and may require of such agents or other persons, before being
6 recognized as representatives of claimants that they shall show that they are
7 of good character and in good repute, possessed of the necessary qualifica-
8 tions to enable them to render such claimants valuable service, and otherwise
9 competent to advise and assist such claimants in the presentation of their
10 cases. An attorney in good standing who is admitted to practice before
11 the supreme court of the state, shall be entitled to represent claimants
12 before the bureau.

13 The bureau may, by rule and regulation, prescribe the maximum fees
14 which may be charged for services rendered in connection with any claim
15 before the bureau under this chapter, and any agreement in violation of
16 such rules and regulations shall be void. Any person who shall, with
17 intent to defraud, in any manner (((willfully and))) knowingly deceive,
18 mislead, or threaten any claimant or prospective claimant or beneficiary
19 under this chapter by word, circular, letter or advertisement, or who shall
20 knowingly charge or collect directly or indirectly any fee in excess of the
21 maximum fee, or make any agreement directly or indirectly to charge or
22 collect any fee in excess of the maximum fee (((,))) prescribed by the
23 bureau shall be deemed guilty of a class B misdemeanor (((and, upon
24 conviction thereof, shall for each offense be punished by a fine not exceeding
25 five hundred dollars or by imprisonment not exceeding one year, or both))).

Mr. Wefald suggested that the gist of the offense was to make an agreement, regardless of intent, to charge in excess of the fee prescribed by the Bureau. Therefore, the language dealing with intent to defraud commencing in Line 16 and ending in Line 21 could be deleted.

IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY REPRESENTATIVE HILLEBOE that triple parentheses be inserted before the comma and word ", with" in Line 16; and that triple parentheses be inserted after the first word "or" in Line 21; and that thereafter the section, as amended, be accepted. Senator Jones inquired as to why attorneys were excepted from the first paragraph of the section which deals with rules and regulations governing the recognition of persons who could represent claimants before the Bureau. The Committee Counsel pointed

out that attorneys could do so at any rate, and the section only provided for an enlargement of the classes of persons who could represent claimants before the Bureau. Thereafter, JUDGE PEARCE'S MOTION CARRIED, with Senator Jones voting in the negative.

The Committee discussed Section 52-09-19, which reads as follows:

1 52-09-19. FALSE STATEMENT - PENALTY.) Whoever, for the purpose
2 of causing an increase in any payment authorized to be made under this
3 chapter, or for the purpose of causing any payment to be made where
4 no payment is authorized under this chapter, shall make or cause to be
5 made any false statement or representation as to the amount of any wages
6 paid or received or the period during which earned or paid, or whoever
7 makes or causes to be made any false statement of a material fact in any
8 application for any payment under this chapter, or whoever makes or causes
9 to be made any false statement, representation, affidavit, or document
10 in connection with such an application, shall be guilty of a class A misdemeanor
11 (((and upon conviction thereof shall be fined not more than one thousand
12 dollars or imprisoned for not more than one year, or both))).

Mr. Wefald noted that this section was covered by Section 12.1-11-02 on false statements, and also by Chapter 12.1-23 on theft. IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE HEEN, AND CARRIED that Section 52-09-19 be repealed.

The Committee next discussed the criminal provisions in Title 48 of the Century Code. Mr. Wefald said that he had held a meeting with Mr. Edwin Zuern of the Director of Institutions' office. He noted that there were three criminal sections in Title 48, and that no substantial changes were being recommended.

The Committee considered Section 48-05-05, which reads as follows:

1 48-05-05. PUBLIC BUILDINGS AND PARKS - OPENING FOR PUBLIC
2 MEETINGS - PENALTY FOR VIOLATION.) Any officer of the state of North
3 Dakota, any municipality therein, or any subdivision thereof, having custody
4 and control of any public building or public park suitable for holding
5 public meetings therein, when petitioned so to do by twenty-five resident
6 taxpayers of the state, municipality, or political subdivision owning said
7 building or public park, shall open said building or park for any public

8 meeting which is to be nonsectarian and nonfraternal in character. No such
9 public building shall be used for such purpose when in actual and necessary
10 use in carrying out the purpose for which it was constructed. Any person
11 violating the provisions of this section is guilty of (((a misdemeanor))) an
12 infraction.

The Committee Counsel stated that the word "state" was added to Line 6 of the section in order to make the section coordinate, since the opening lines of the section referred to officers of the state, a municipality, or any political subdivision. The Committee discussed this section at length, noting that it could cause problems in its utilization.

IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 48-05-05 be repealed. Mr. Wolf stated that the intent of his motion was not to try to stop public meetings in public buildings, but only to recognize that this section, which was generally vague, would be inappropriate to accomplish the goals of the Legislature in passing it.

The Committee discussed Section 48-05-06, which reads as follows:

1 48-05-06. ALCOHOLIC BEVERAGES AND DRUGS IN PENAL OR CHARITABLE
2 INSTITUTIONS PROHIBITED.) Every person who shall take, send, or
3 introduce any alcoholic beverage (((, narcotic, or other habit-forming
4 drug of any kind))) or controlled substance as defined in chapter 19-03.1
5 into any of the buildings or upon any of the premises of any penal or
6 charitable institution of this state, or of any county, or city thereof, except
7 upon the express authority of the physician or chief executive officer of
8 such institution, given in writing, is guilty of a class B misdemeanor
9 (((and shall be punished by a fine of not more than one hundred dollars,
10 or by imprisonment in the county jail for not more than thirty days, or
11 by both such fine and imprisonment))).

The Committee Counsel noted that the section had been drafted in part to correspond to the provisions of the same section as it was presented to the Committee on Judiciary "B". He stated that the two sections, as finally adopted by each Committee, would be identical, so that there would be no conflict in the language should they both be passed. Judge Pearce stated that he believed there should be a higher penalty for this offense than classification as a Class B misdemeanor, even though that classification most closely followed the current maximum penalty (a fine of \$100 or imprisonment for 30 days, or both).

IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 48-05-06 be reclassified as a Class A misdemeanor, and when so reclassified, that it be accepted.

The Committee considered Section 48-09-05, which provides a general penalty for any person who violates the provisions of the chapter (48-09) which deals with concessions in public buildings, e.g., the concession let to run the Capitol Lunchroom. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 48-09-05 be accepted as drafted.

The Committee next discussed the criminal provisions in Title 46. Mr. Wefald stated that he had held a telephone conference with Mr. Harold Nelson, the State Printer, to discuss these provisions. He also stated that there were only four sections in Title 46 which imposed criminal penalties, and that no substantial change was made in any of the sections.

The Committee discussed Section 46-02-16, which reads as follows:

- 1 46-02-16. VOUCHER FOR PRINTING - CONTENTS - PENALTY.) Every
2 voucher for public printing and binding mentioned in section 46-02-15
3 shall have thereon or attached thereto a duly verified affidavit setting
4 forth:
- 5 1. That the prices charged are reasonable and just in accordance
6 with law;
 - 7 2. That no agreement, combination, or understanding exists with any
8 other person, firm, or corporation in the printing and publishing
9 business fixing the charges therein for such printing and binding; and
 - 10 3. That no agreement or understanding exists by which a division
11 of any portion of the amounts charged has been or is to be made,
12 either directly or indirectly, with any board or member thereof,
13 or any person or official authorized or empowered to secure public
14 printing mentioned in section 46-02-15.
- 15 Any person (((, firm, or corporation))) violating the provisions of section
16 46-02-15, (((and))) or this section, is guilty of a class A misdemeanor.

The Committee Counsel noted that Section 46-02-15 required public printing to be done in North Dakota "where practicable", and that Section 46-02-16 provided a penalty for violation of that section. He asked whether criminal liability should attach on the basis of such a nebulous standard. The Committee Counsel also noted that the provisions of Subsections 2 and 3 of Section 46-02-16 dealt with

combinations in restraint of trade which are covered under other statutes, and kickbacks to public officials which are covered under the new Criminal Code. Therefore, the section is not really necessary.

IT WAS MOVED BY MR. WOLF, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 46-02-16 be repealed. The Chairman noted that this repealer was due to the fact that the basic provisions of the section were covered by other criminal statutes, and to the fact that the provisions of Section 46-02-15, while acceptable as a standard of "civil" conduct, were too vague a standard to allow attachment of criminal liability.

The Committee next discussed Section 46-02-17, which provides a penalty for failure on the part of the printers to serial number all receipts, warrants, checks, and other orders for payment printed on behalf of "municipalities". IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 46-02-17 be accepted as drafted.

The Committee discussed Section 46-02-19, which makes it unlawful for public officials to place their names on public documents in type larger than the type used to print the name of the office.

The Committee discussed this section at length, and several members indicated that the most desirable course of action would be to repeal it. However, it was recognized that the section had political ramifications which went far beyond the seriousness of the offense as looked at from a "purely" criminal law standpoint.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 46-02-19 be accepted as drafted.

The Committee discussed Section 46-05-05, which reads as follows:

1 46-05-05. RATES FOR POLITICAL ANNOUNCEMENTS - LABELING POLITICAL
2 MATTER - PENALTY FOR VIOLATION.) For the publication of political
3 announcements of candidates before any primary or general election, no
4 newspaper in this state shall charge more than the legal rates for the
5 publication of legal notices. All paid political matter and political announce-
6 ments shall be labeled "political advertisement". Any person violating the
7 provisions of this section is guilty of a class A misdemeanor.

The Committee Counsel questioned whether it was necessary to retain criminal liability for the action defined in this section. He wondered whether civil liability for the amount of any excess charge would not be adequate. In addition, he noted that the material in the penultimate sentence was also covered by sections in Title 16 of the Century Code.

Representative Hilleboe inquired as to why the State should put itself in the position of forcing newspapers to charge a certain rate for advertisements. He said he did not think that the problem was one which required a uniform rate

throughout the State. He thought that the problem was discrimination between candidates by a particular newspaper, and that the statute would better be aimed at discriminatory pricing by a particular newspaper, rather than at the creation of a statewide maximum rate.

IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY REPRESENTATIVE ROYSE to accept Section 46-05-05 as drafted. SENATOR JONES, WITH A SECOND BY REPRESENTATIVE HILLEBOE MOVED to amend the main motion to make Section 46-05-05 an infraction. THIS MOTION CARRIED, with the Chairman and Representative Lundene voting in the negative. Thereafter, THE MAIN MOTION, AS AMENDED, CARRIED, with the Chairman and Representative Lundene voting in the negative.

The Committee discussed the criminal provisions in Title 61 of the Century Code, which is the State's water law. The Committee Counsel noted that this was the second draft of these provisions, and that they had again been discussed with Mr. Clifford Jochim, Legal Counsel to the Water Commission.

The Committee discussed Section 61-01-07, which reads as follows:

1 61-01-07. OBSTRUCTION OF WATERCOURSES - PENALTY.) If any
2 person (((, municipality, or corporation, without authority of law, willfully)))
3 illegally obstructs any ditch, drain, or watercourse, or diverts the water
4 therein from its natural or artificial course, (((such person or corporation)))
5 he shall be liable to the party suffering injury from (((such))) the obstruction
6 or diversion for the full amount of the (((injury occasioned thereby)))
7 damage done, and, in addition (((thereto))), (((is))) shall be guilty of a
8 class B misdemeanor (((and shall be punished by a fine of not more than
9 one hundred dollars, or in lieu thereof, the offending party, if not a corpora-
10 tion, may be imprisoned in the county jail for a period of not more than three
11 months))).

The Committee Counsel noted that the State Water Commission desired that the criminal penalty provided in this section be retained, and the staff recommendation was that the section be retained. The rationale was that, while the civil liability might suffice in some cases, the State Water Commission had been able to use the threat of criminal liability to cause persons to remove such obstructions, or to halt construction of such obstructions.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY JUDGE HEEN, AND CARRIED that Section 61-01-07 be accepted as drafted. Senator Jones voted in the negative.

The Committee discussed Section 61-01-08, which presently makes it a misdemeanor to obstruct the free navigation of any "navigable watercourse within this state". The Committee Counsel noted that the staff recommendation was that the section be repealed as the criminal activity proscribed therein is covered in Section 61-01-07 just adopted. He stated that the State Water Commission staff concurred in this recommendation.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 61-01-08 be repealed.

The Committee discussed Section 61-01-09, which reads as follows:

1 61-01-09. DESTRUCTION OF DAMS - PENALTY.) Every person who
2 (((maliciously))) willfully destroys or tampers with any dam or structure
3 erected to (((create hydraulic power))) retain water or any embankment
4 necessary for the support thereof, or who (((maliciously))) willfully makes
5 or causes to be made, any aperture in such dam or embankment, with intent
6 to destroy the same, is guilty of a class A misdemeanor.

Representative Hilleboe noted that Section 61-14-07 was very similar to Section 61-01-09 in that they both dealt with interference with or destruction of dams or other structures erected to retain water.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 61-01-09 be accepted as drafted. Thereafter, the Committee recessed at 5:05 p.m. and reconvened at 9:00 a.m. on Tuesday, December 11, 1973. (Note: The remaining sections in the staff draft of the criminal provisions in Title 61 were not covered at this meeting.)

The Committee discussed the criminal provisions in Title 49 of the Century Code. Mr. Wefald noted that he had met with Mr. Ray Walton, the Commerce Counsel for the Public Service Commission, and that they had discussed the criminal provisions in Title 49. Mr. Wefald pointed out that Mr. Walton was present, and could help with any questions the Committee might have concerning this title.

Mr. Wefald stated that during the course of his discussion with Mr. Walton they had noted that Chapters 49-08 through 49-17, concerning railroads, were extremely antiquated and in need of total revision. He indicated that Mr. Walton had stated an intention to recommend to the PSC that those chapters be completely revised so that the provisions could be made more consistent with current practice, and to take into consideration those areas in which the PSC no longer has jurisdiction due to preemption of jurisdiction by the Interstate Commerce Commission.

The Committee considered Section 49-04-14, which provides a penalty for a common carrier who issues free passes, and for persons using free passes, except in certain cases. The present offense is classified as a misdemeanor subject to a maximum fine of \$500. The staff reclassified the offense as an infraction. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 49-04-14 be accepted as drafted.

The Committee discussed Section 49-07-01, which reads as follows:

1 49-07-01. VIOLATION (((BY PUBLIC UTILITY))) OF COMMISSION
2 ORDER OR RULE - PENALTY.) Any (((public utility which))) person who
3 violates or fails to comply with any provision of this title, or (((which)))
4 who fails, omits, or neglects to obey, observe, or comply with any order,
5 decision, decree, rule, direction, demand, or requirement of the commission,
6 or any part or provision thereof, in a case in which no other penalty has
7 been provided, shall be (((punished by a fine of not less than five hundred
8 dollars nor more than two thousand dollars for each and every offense)))
9 guilty of a class A misdemeanor.

IT WAS MOVED BY JUDGE HEEN AND SECONDED BY REPRESENTATIVE LUNDENE that Section 49-07-01 be accepted as drafted. Mr. Walton noted that the Public Service Commission would like also to have the right to assess civil penalties for violations of its rules or regulations, or of statutes related to the PSC. During the course of the discussion on his comment, it was pointed out that the Committee would not get engaged in the drafting of statutes to create strictly civil penalties, as its workload in handling criminal statutes was almost overwhelming already. Thereafter, JUDGE HEEN'S MOTION CARRIED.

The Committee discussed Section 49-07-02, which reads as follows:

1 49-07-02. EACH VIOLATION A SEPARATE OFFENSE.) Every violation
2 of any provision of this title or of any order, decision, decree, rule,
3 direction, demand, or requirement of the commission, or any part or portion
4 thereof, by any corporation or person, is a separate and distinct offense,
5 and in case of a continuing violation, each day's continuance thereof shall
6 be deemed to be a separate and distinct offense.

Mr. Wefald noted that the section was recommended for repeal because it is inconsistent with previous Committee recommendations on similar provisions.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 49-07-02 be repealed.

The Committee discussed Section 49-07-04, which reads as follows:

1 49-07-04. PERSONAL LIABILITY OF OFFICER, AGENT, OR EMPLOYEE -
2 PENALTY.) Every officer, agent, or employee of any public utility who:
3 1. Violates, fails to comply with, or aids or abets any violation by

- 4 any public utility of any provision of this title;
- 5 2. Fails to obey, observe, or comply with any order, decision, rule,
6 direction, demand, or requirement of the commission, or any
7 part or provision thereof; or
- 8 3. Procures, aids, or abets any public utility in its failure to obey,
9 observe, and comply with any such order, decision, rule, direction,
10 demand, or requirement, or any part or provision thereof,
11 in a case in which no other penalty has been provided, is guilty of a
12 misdemeanor and shall be punished by a fine of not more than one thousand
13 dollars, or by imprisonment in a county jail for not more than one year,
14 or by both such fine and imprisonment.

The Committee discussed Section 49-07-05 in conjunction with Section 49-07-04, and the former section reads as follows:

- 1 49-07-05. LIABILITY OF PERSONS OTHER THAN PUBLIC UTILITY -
2 PENALTY.) Every person (((, either individually or acting as an officer,
3 agent, or employee of a corporation other than a public utility,))) who (((:
4 1. Violates any provision of this title or fails to observe, obey, or
5 comply with any order, decision, rule, direction, demand, or
6 requirement of the commission, or any part or portion thereof; or
7 2. Procures,))) aids (((,))) or abets any (((such))) public utility
8 in its violation of the provisions of this title or in its failure to
9 obey, observe, or comply with any (((such))) order, decision,
10 rule, direction, demand, or requirement, or any part or portion
11 thereof,
12 in a case in which no other penalty has been provided, is guilty of a
13 class A misdemeanor (((and shall be punished by a fine of not more than
14 one thousand dollars, or by imprisonment in a county jail for not more
15 than one year, or by both such fine and imprisonment))).

Mr. Wefald noted that both sections (49-07-04 and 49-07-05) were being recommended for repeal since they are covered by provisions of the new Criminal Code, and by Section 49-07-01 as amended by this Committee. However, he stated, if the Committee wished to retain the possibility of prosecution for soliciting or facilitating a misdemeanor, then Section 49-07-05, as amended in the staff draft, should be retained.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Sections 49-07-04 and 49-07-05 be repealed.

The Committee next discussed Section 49-08-16, which reads as follows:

1 49-08-16. MAINTENANCE OF RAILROAD CORPORATION'S OFFICE IN
2 STATE - RECORDS.) Every railroad corporation organized and doing
3 business in this state under the laws or authority thereof shall have and
4 maintain a public office or place in the state for the transaction of its
5 business where transfers of its stock shall be made and in which shall
6 be kept for public inspection books in which shall be recorded:

- 7 1. The amount of capital stock subscribed and by whom;
- 8 2. The names of the owners of its stock and the amount owned by
9 them respectively;
- 10 3. The amount of stock paid in and by whom;
- 11 4. The transfers of said stock;
- 12 5. The amount of its assets and liabilities; and
- 13 6. The names and places of residence of its officers.

14 Any corporation violating any of the provisions of this section or of section
15 49-08-15 shall be (((punished by a fine of not less than one hundred dollars
16 nor more than five thousand dollars))) guilty of a class A misdemeanor, and
17 its corporate rights shall be subject to forfeiture.

The Committee discussed this section at length, and it was noted that it is a restatement of the provisions of Section 140 of the Constitution. That section also went on to provide that the Legislature is to provide suitable penalties for failure to obey the mandates of the section. Section 49-08-16 represents a fulfillment of that constitutional mandate.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 49-08-16 be accepted as drafted. Mr. Walton noted that there were no railroad corporations organized as such in this State, i.e., the railroads operating in this State were not North Dakota corporations.

The Committee next discussed Section 49-11-07, which reads as follows:

1 49-11-07. RAILROAD CROSSING - FAILURE TO CONSTRUCT OR MAINTAIN -
2 PENALTY.) Any (((railroad corporation which))) person who shall violate
3 any of the provisions of sections 49-11-05 (((and))) or 49-11-06 shall be
4 (((punished by a fine of not less than twenty-five dollars nor more than
5 one hundred dollars))) guilty of an infraction, and shall be liable for all
6 damages caused thereby.

Senator Jones noted that the section should probably apply only to railroad corporations, as opposed to "persons", since Sections 49-11-05 and 49-11-06 apply only to "railroad corporations". IT WAS MOVED BY SENATOR JONES AND SECONDED BY JUDGE PEARCE to amend Section 49-11-07 by deleting the triple parentheses around the words "railroad corporation which" in Line 2 and by deleting the words "person who" in the same line.

The Committee then discussed the desirability of raising the penalty for violation of this section, and noted that the section was covered under Section 49-07-01 which made it a Class A misdemeanor to violate any provision of the title. Thereafter, SENATOR JONES, WITH THE CONSENT OF HIS SECOND, WITHDREW HIS MOTION.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY JUDGE HEEN, AND CARRIED that Section 49-11-07 be repealed.

The Committee discussed Section 49-11-19, which prohibits anyone from blocking or obstructing railroad crossings for more than 15 consecutive minutes. Mr. Wefald noted that the offense was presently a misdemeanor, punishable by a fine of from \$10 to \$50, and that the staff had reclassified the section as an infraction.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 49-11-19 be accepted as drafted.

The Committee discussed Section 49-11-22, which provides that a person who owns a locomotive and fails to sound a warning device at a road or street is guilty of a misdemeanor, punishable by a fine of \$50. The staff has reclassified the section as an infraction.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 49-11-22 be accepted as drafted.

Judge Glaser inquired about the use of the word "person" in Section 49-11-22 in place of the phrase "railroad corporation". After discussion, it was decided that that word was appropriate in this section.

The Committee discussed Section 49-11-23, which reads as follows:

1 49-11-23. LIABILITY OF ENGINEER FOR FAILURE TO SOUND BELL,
2 HORN, OR WHISTLE OF LOCOMOTIVE AT CROSSING.) Every locomotive
3 engineer who does not cause a warning device to be sounded as required
4 by section 49-11-21 shall be guilty of a misdemeanor and shall be punished
5 by a fine of not more than fifty dollars or by imprisonment in the county
6 jail for not more than thirty days or by both such fine and imprisonment.

It was noted that this section differed from Section 49-11-22 in that this section related to the locomotive engineer, while the other section related to the person who owned the locomotive. It was also noted that, due to staff error, the section had been recommended for repeal, so it had not been reclassified. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 49-11-23 be reclassified as an infraction and when so reclassified that it be adopted.

The Committee discussed Section 49-11-29, which reads as follows:

1 49-11-29. FAILURE TO CONSTRUCT FENCE, CATTLE GUARD, SWINGING
2 GATE - PENALTY.) Any person (((, company, or corporation))) owning
3 or operating any line of railroad within this state and refusing or neglecting
4 to comply with any of the provisions of sections 49-11-24 through 49-11-28
5 shall be guilty of a class A misdemeanor (((, and every thirty days' continuance
6 of such refusal or neglect shall constitute a separate and distinct offense))).
7 A prosecution or conviction under sections 49-11-24 through 49-11-28 shall
8 not relieve such person (((, company, or corporation))) from liability for
9 the maiming or killing of livestock on such right-of-way by reason of his
10 (((or its))) negligence (((or the negligence of his or its employees))).

The Committee discussed the fact that, because the section referred to a person who is "operating" in this State, it might cause engineers to be liable for violation of the section. However, after further discussion it was decided that the phrase "any line of railroad" when used in conjunction with the word "operating" did not indicate the operation of a particular train, but rather the "operation" of a railroad business. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 49-11-29 be accepted as drafted.

Mr. Walton questioned whether the language of Section 49-11-22 should not be amended to include "operation" of the engine. However, it was felt that if this were done, the engineer's criminal liability would be carried from Section

49-11-23 into Section 49-11-22. This was not thought desirable, since Section 49-11-22 also contains provision for civil liability.

The Committee then discussed Section 49-12-02, which requires railroad corporations to maintain stations and station agents under certain conditions, and punishes them by a fine of not less than \$2,000 if they fail to do so. The staff recommendation was that the section be repealed as antiquated. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 49-12-02 be repealed.

The Committee next considered Section 49-12-05. This section provides penalties for a violation of Section 49-12-04, which prohibits transferring of a railroad ticket unless the transferor is licensed to make such a transfer. It was noted that this section was covered by Section 49-07-01 which forbids a violation of the provisions of the title. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 49-12-05 be repealed.

The Committee discussed Section 49-12-07, which reads as follows:

1 49-12-07. REDEMPTION OF COUPON OR TICKET BY AGENT - RESALE OF
2 UNUSED PORTION OF TICKET - PENALTY.) The owners of every railroad
3 (((situated or))) operated in whole or in part within this state shall provide
4 for the redemption, under reasonable precautions, of (((the whole or of
5 any coupon of))) any ticket or ticket coupon sold by an authorized agent,
6 which the purchaser, for any reason other than (((the))) expiration of
7 the time (((limited in said))) limitation on the ticket (((for the use thereof))),
8 has not used. In case of a ticket not used and in case of a coupon or a
9 ticket partially used, redemption shall be at a rate which shall be equal
10 to the difference between the price paid for the whole ticket and the cost
11 of a ticket between the points for which (((the used portion of said ticket)))
12 it was actually used. Such ticket or coupon shall be presented for such
13 redemption to any authorized agent before the time (((therein limited for
14 the use thereof shall have))) limitation has expired. (((The deposit of
15 such))) Mailing of a ticket (((or part of))) , coupon, or partial ticket
16 (((in the post office))), addressed to any (((such))) agent, with postage
17 thereon duly paid, before the expiration of the time limited on any such
18 ticket (((or part of))), partial ticket, or coupon shall be deemed (((such)))
19 presentation under this section. Any person who shall sell any (((such)))

20 ticket or the unused portion or coupon thereof, otherwise than by (((the)))
21 presentation (((of the same))) for redemption, shall be guilty of a class A
22 misdemeanor (((and shall be punished by a fine of not more than five hundred
23 dollar's, or by imprisonment for not more than one year, or by both such fine
24 and imprisonment))). When any licensed ticket selling agent or any railroad
25 corporation shall sell, barter, or transfer to any person any mileage book,
26 commutation ticket, or excursion ticket at any reduced rate authorized by
27 law, and when such mileage book, commutation ticket, or excursion ticket
28 by the terms thereof shall be limited in respect to the time in which the same
29 shall be used, such mileage book, commutation ticket, or excursion ticket
30 shall be redeemed by said railroad corporation subject to the provisions of
31 this chapter.

In response to a question, Mr. Walton noted that the PSC had rules and regulations dealing with the redemption of railroad tickets. After noting that the section was recommended by the staff for repeal, Senator Jones inquired as to whether repeal of the section would have the effect of removing the basis for the PSC rulemaking power in this area. Mr. Walton replied that he did not think so, as the PSC's rulemaking power was based on more general statutes.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY SENATOR JONES, AND CARRIED, with the Chairman voting in the negative, to repeal Section 49-12-07.

The Committee considered Section 49-12-08, which makes it an offense for a railroad agent to unreasonably refuse to redeem a ticket or partial ticket. Mr. Wefald noted that this section was recommended for repeal in accordance with the previous staff recommendation for repeal of Section 49-12-07 with which this section would coordinate. This section (49-12-08) reads as follows:

1 49-12-08. REFUSAL TO REDEEM COUPON OR TICKET - PENALTY.)
2 Any (((railroad corporation which by any of its authorized ticket selling
3 agents within this state unreasonably))) person who shall unreasonably
4 refuse to redeem any ticket, coupon (((of a ticket or any))), or partial
5 ticket as required by section 49-12-07 shall be (((punished by a fine of
6 not more than five hundred dollars for each offense))) guilty of an infraction.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY SENATOR JONES, AND CARRIED that Section 49-12-08 be repealed.

The Committee considered Section 49-12-09, which reads as follows:

1 49-12-09. PENALTY FOR FRAUDULENT USE OR TRANSFER OF COUPON,
2 TICKET, OR PASS.) (((Whenever any person in the employ of any))) Any
3 railroad corporation (((doing business in this state fraudulently shall
4 neglect))) employee who fails to cancel or return, to the proper officer or
5 agent of the corporation, any coupon, ticket, or pass, with intent to permit
6 the same to be used in fraud of any railroad corporation, or (((if))) any
7 person (((shall))) who:

8 1. (((Steal))) Steals or (((embezzle any such coupon, ticket, or pass)))
9 embezzles;

10 2. Fraudulently (((stamp, print, or sign any such ticket, coupon,
11 or pass))) stamps, prints, or signs; or

12 3. Fraudulently (((sell or put into circulation any such ticket, coupon,
13 or pass,))) sells or circulates

14 (((said person))) any ticket, coupon, or pass is guilty of a class C felony
15 (((and shall be punished by imprisonment in the penitentiary for a period
16 of not more than five years))).

Mr. Wefald noted that the staff recommendation was for repeal of this section as its provisions are covered under Chapter 12.1-23 dealing with theft. However, he pointed out that a violation of Section 49-12-09 would always be a felony, whereas a violation of the theft provisions where the property or services garnered by the theft were under \$100 in value would not be a felony.

IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 49-12-09 be repealed.

The Committee considered Section 49-12-10, which reads as follows:

1 49-12-10. DISCRIMINATION IN PRICE OF TICKET - PENALTY.) No
2 (((ticket))) selling agent (((authorized and))) licensed under (((the
3 provisions of))) this chapter, and no railroad corporation, shall (((charge,
4 demand, collect, or receive from, or))) sell, (((barter, transfer, or assign
5 to, any person, firm, company, corporation, or association))) nor shall
6 any person buy, any ticket of any class (((whatever))) entitling the

7 purchaser or holder (((thereof))) to transportation by (((the))) railroad
8 (((issuing such ticket))) for a greater or (((less sum or))) lesser price
9 than is charged (((, demanded, collected, or received by such ticket
10 selling agent or railroad corporation))) for a similar ticket of the same
11 class. Any person (((, ticket selling agent, or railroad corporation)))
12 violating the provisions of this section shall be guilty of (((a misdemeanor
13 and shall be punished by a fine of not more than one thousand dollars
14 for each offense))) an infraction.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY JUDGE PEARCE, AND CARRIED
that Section 49-12-10 be repealed.

The Committee discussed Section 49-12-12, which reads as follows:

1 49-12-12. PENALTY FOR FAILURE OF RAILROAD TO MAINTAIN TELEPHONE
2 CONNECTIONS.) Any railroad corporation violating the provisions of
3 section 49-12-11 shall be (((punished by a fine of not less than one hundred
4 dollars nor more than two hundred dollars for each offense))) guilty of an
5 infraction.

Mr. Wefald noted that the staff was recommending this section for repeal
also. He stated that the section referred to internally in Section 49-12-12 requires
a railroad to maintain telephones for its passengers. A violation of that section
could be covered under Section 49-07-01.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE ROYSE,
AND CARRIED that Section 49-12-12 be repealed.

The Committee next discussed Section 49-12-16, which reads as follows:

1 49-12-16. PENALTY FOR VIOLATION OF SANITARY REGULATIONS FOR
2 RAILWAY STATIONS.) Any person (((, firm or corporation))) failing to
3 comply with the provisions of sections 49-12-13, 49-12-14, and 49-12-15
4 shall be (((punished by a fine of not less than twenty dollars nor more
5 than one hundred dollars))) guilty of an infraction.

Mr. Wefald noted that the sections internally referred to require the cleaning
of waiting rooms and the maintenance of separate toilets for men and women.
He stated that these provisions, if violated, would be punishable under Section
49-07-01.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 49-12-16 be repealed.

The Committee then considered Section 49-12-22, which reads as follows:

1 49-12-22. PENALTY FOR FAILURE TO BUILD PLATFORM AND ERECT
2 SCALES.) Every railroad corporation neglecting or refusing to comply
3 with the requirements of sections 49-12-17, 49-12-18, 49-12-19, 49-12-20,
4 and 49-12-21 shall be guilty of (((a misdemeanor and shall be punished by
5 a fine of not less than five hundred dollars for each thirty-day period such
6 failure shall continue after notice is given as is provided in section 49-12-17)))
7 an infraction.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY SENATOR JONES, AND CARRIED that Section 49-12-22 be repealed.

The Committee considered Section 49-12-24, which reads as follows:

1 49-12-24. CIVIL PENALTY FOR FAILURE TO LIGHT DEPOT PLATFORM
2 PROPERLY.) Any railroad corporation violating the provisions of section
3 49-12-23 shall be (((punished by a fine of))) subject to a civil penalty of
4 not less than five dollars nor more than ten dollars for each day during
5 which (((such))) the violation continues. The penalty may be collected in
6 a civil action commenced by the public service commission. Any moneys
7 collected shall be deposited in the state treasury.

The Committee Counsel noted that the section had been amended to refer to a civil penalty, since it was not clear what was intended initially, and since a criminal penalty for failure to properly light a station platform could attach under Section 49-07-01. It was the consensus of the Committee that a separate civil penalty in such small amounts as stated in Section 49-12-24 was not necessary. Therefore, IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 49-12-24 be repealed.

The Committee next discussed Section 49-13-15, which reads as follows:

1 49-13-15. PENALTY FOR VIOLATION OF SAFETY REGULATIONS.)
2 Any (((railroad corporation))) person violating any of the provisions of
3 sections (((49-13-01,))) 49-13-02, (((49-13-03,))) 49-13-04, 49-13-05,
4 49-13-06, 49-13-07, 49-13-08, (((49-13-09, 49-13-10,))) and 49-13-11

5 (((, and 49-13-13))) shall be (((punished by a fine of not less than one
6 hundred dollars nor more than five hundred dollars for each such violation.
7 Each day that any locomotive engine or car is operated or used, or structure
8 or obstruction is maintained, in violation of the provisions of this chapter,
9 shall constitute a separate offense))) guilty of an infraction. The commission
10 shall (((lodge with))) inform the state's attorney of the proper county
11 (((information))) of any (((such))) violation (((as may come))) which comes
12 to its (((knowledge))) attention.

Mr. Wefald noted that the sections internally referred to covered such things as headlights on locomotives, distance between railroad tracks, removal of obstructions between tracks, required clearance over tracks, the construction of cabooses, provision of sufficient air equipment on rolling stock, and the manning of passenger trains containing more than four cars.

IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 49-13-15 be repealed as criminal liability could attach for violation of the sections referred to therein under Section 49-07-01.

The Committee considered Section 49-13-19, which provides a penalty for violation of Section 49-13-18, which sets forth the maximum hours of service which railroad employees may perform during a given time period. It was noted that this section would be covered, as far as criminal liability was concerned, under Section 49-07-01. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 49-13-19 be repealed.

Senator Jones inquired as to the status of Section 49-13-17, which provides a penalty for failure to provide shelter for railroad employees during working hours. The Committee Counsel stated that the section was inadvertently overlooked by both the computer, in its search of the statutes, and the staff in their subsequent rechecking. The Committee Counsel read the text of Section 49-13-17 as follows:

1 49-13-17. FAILURE TO PROVIDE SHELTER FOR EMPLOYEES - PENALTY.)

2 Any company, corporation, person, or receiver violating the provisions of
3 section 49-13-16, and failing to provide for the shelter and protection of
4 its employees, is guilty of a misdemeanor and shall be punished by a fine
5 of not less than one hundred dollars nor more than five hundred dollars
6 for the first offense, and for each subsequent offense by a fine of not less
7 than five hundred dollars nor more than ten thousand dollars.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED, with Representative Lundene voting in the negative, that Section 49-13-17 be repealed.

The Committee next discussed Section 49-13-20, which reads as follows:

1 49-13-20. INTOXICATED ENGINEER OR CONDUCTOR - PENALTY.)

2 Every person who is intoxicated while ((in charge)) acting as engineer
3 of a locomotive engine, or while acting as conductor or driver upon a
4 railroad train or car, is guilty of a class A misdemeanor.

It was noted that this section should include being under the influence of narcotics, especially in regard to the engineer. Noting the date of origination of the section, it was thought probably that the word "intoxicated" referred only to being under the influence of alcoholic beverages and not narcotics. It was suggested that the section be redrafted to make it accord with Section 39-08-21 of the Traffic Code, but to treat conductors on a different plane than engineers. The Chairman directed the staff to redraft Section 49-13-20 in accordance with the Committee discussion.

The Committee considered Section 49-13-21, which reads as follows:

1 49-13-21. SWEEPING PASSENGER COACHES - VIOLATION - PENALTY.)

2 Railroad coaches or cars shall not be swept while occupied by passengers
3 except when:

4 1. Such sweeping shall be done with a vacuum cleaner or other
5 similar device;

6 2. The floor of such car previously shall have been moistened thoroughly
7 with water or oil; or

8 3. Sufficient sweeping compound is used to keep down the dust.

9 Any ((violation of this section by any)) person ((or corporation))
10 violating this section shall be ((punishable by a fine of not more than
11 twenty-five dollars)) guilty of an infraction.

Mr. Wefald noted that this section was being recommended for repeal and thereafter, IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 49-13-21 be repealed.

The Committee then considered Sections 49-13-23, 49-13-26, 49-13-27, and 49-13-28. Those sections read as follows:

1 49-13-23. PENALTY FOR FAILURE TO REPORT WRECKS AND ACCIDENTS.)

2 Every person who shall violate any of the provisions of sections 49-13-22
3 and 49-13-24 is guilty of a class A misdemeanor ((and shall be punished

4 by a fine of not less than five hundred dollars nor more than two thousand
5 dollars, or by imprisonment in the county jail for not less than thirty days
6 nor more than one year, or by both such fine and imprisonment))).

1 49-13-26. RAILROAD EMPLOYEE'S NEGLECT OF DUTY - PENALTY.)

2 Every (((engineer, conductor, brakeman, switchtender, or other)))
3 officer (((, agent,))) or (((servant))) employee of any railroad corporation
4 who is guilty of any willful violation or omission of (((his))) duty, as
5 (((such))) an officer (((, agent, or servant))) or employee, by which
6 human life or safety is endangered, the punishment for which is not otherwise
7 prescribed, is guilty of a class A misdemeanor.

1 49-13-27. LIGHTS REQUIRED ON TRACK MOTOR CARS.) Any person
2 operating or controlling any railroad shall equip each of its track motor
3 cars (((used during the period from thirty minutes before sunset to thirty
4 minutes after sunrise,))) with:

- 5 1. An electric headlight of such construction and of sufficient candle
6 power to render plainly visible, from thirty minutes before sunset
7 to thirty minutes after sunrise, at a distance of not less than
8 three hundred feet in advance of such track motor car, any track
9 obstruction, landmark, warning sign or grade crossing; (((and)))
- 10 2. A rear electric red light of such construction and of sufficient
11 candle power as to be plainly visible, from thirty minutes before
12 sunset to thirty minutes after sunrise, at a distance of three hundred
13 feet (((.)));
- 14 3. A windshield and windshield wiper for cleaning rain, snow,
15 and other moisture from said windshield. Such windshield
16 wiper shall be maintained in good order and so constructed

17 as to be controlled or operated by the operator of the track motor
18 car; and

19 4. A canopy or top, if requested by the foreman, of such construction
20 as to adequately protect the occupants of said track motor car
21 from the rays of the sun, rain, or inclement weather.

22 Any person violating the provisions of this section shall be guilty of
23 (((a misdemeanor and shall be punished by a fine of one hundred dollars
24 for each violation))) an infraction.

1 49-13-28. WINDSHIELDS AND WINDSHIELD WIPERS REQUIRED ON TRACK
2 MOTOR CARS - CANOPIES - PENALTY.) Any person operating or controlling
3 a railroad shall equip each of its track motor cars with:

4 1. A windshield and windshield wiper for cleaning rain, snow,
5 and other moisture from said windshield. Such windshield wiper
6 shall be maintained in good order and so constructed as to be
7 controlled or operated by the operator of the track motor car;

8 2. A canopy or top, if requested by the foreman, of such construction
9 as to adequately protect the occupants of said track motor car from
10 the rays of the sun, rain, or inclement weather.

11 Any person violating the provisions of this section shall be guilty of a
12 misdemeanor and shall be punished by a fine of one hundred dollars for
13 each violation.

 Mr. Wefald noted that Section 49-13-23 provided a penalty for violation
of Sections 49-13-22 and 49-13-24, which related to the reporting of railroad
wrecks and commission investigations into the same. He noted that these sections
could be repealed as a failure to comply with them would be covered under Section
49-07-01.

 Mr. Wefald stated that Section 49-13-27 had been drafted as a composite
section including the provisions of Section 49-13-28, and the section now required
lights and windshield-wiping equipment on "track motor cars". Thus, Section
49-13-28 could be repealed.

Judge Glaser inquired as to whether Section 49-13-27 as redrafted should not include a provision that the cars had to be used during the relevant time period, i.e., 30 minutes before sunset to 30 minutes after sunrise. After discussion, it was decided that this was desirable since it would be difficult to enforce if the cars were not, in fact, in use. Therefore, the Chairman directed the staff to redraft Section 49-13-27 so that it related to the use of the "track motor cars". IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Sections 49-13-23, 49-13-26, and 49-13-28 be repealed.

The Committee then considered Section 49-15-18, which provides a general penalty for a violation of Chapter 49-15 dealing with regulation of railroad rates. Mr. Walton stated that he thought the section should be repealed for consistency's sake, since other general penalties and specific penalties have been repealed because criminal liability would be provided under Section 49-07-01. Thereafter, IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE GLASER, AND CARRIED that Section 49-15-18 be repealed.

The Committee then discussed Sections 49-17-02 and 49-17-03, which read as follows:

1 49-17-02. UNLAWFUL RIDING ON TRAINS - PENALTY.) Any person
2 violating any of the provisions of section 49-17-01 shall be (((punished
3 by imprisonment in the county jail for not less than ten days nor more
4 than thirty days, or by a fine of not less than ten dollars nor more than
5 seventy-five dollars))) guilty of a class B misdemeanor.

1 49-17-03. MALICIOUS INJURY TO RAILROAD PROPERTY - PENALTY.)

2 Every person who (((maliciously))) willfully shall:

3 1. Remove, displace, injure, or destroy any part of any railroad,
4 or any branch, branchway, switch, turnout, bridge, viaduct,
5 culvert, embankment, station house, or other structure or fixture,
6 or any part thereof, attached to or connected with any railroad; or

7 2. Place any obstruction upon the rails or track of any railroad or
8 any branch, branchway, or turnout connected with any railroad,

9 shall be (((punished by imprisonment in the penitentiary for not less than one
10 year nor more than four years, or in the county jail for not less than six
11 months))) guilty of a class C felony.

The Committee Counsel noted that these sections could be repealed because they were either covered by Section 49-07-01 or by the Criminal Code, e.g., malicious injury to property. The Committee also discussed Section 49-17-04 which dealt with liability for death resulting from malicious injury to railroad property. The Committee Counsel noted that that section was covered by Chapter 12.1-16 covering criminal homicide.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE GLASER, AND CARRIED that Sections 49-17-02, 49-17-03, and 49-17-04 be repealed.

Thereafter, the Chairman called for a motion ratifying all action taken before noon on the previous day during which period the Committee was one member short of a quorum. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY JUDGE PEARCE, AND CARRIED that all action taken before 12:00 noon on Monday, December 10, 1973, by the Committee on Judiciary "A" was hereby ratified by the Committee with a quorum present.

The Committee then discussed Section 49-17-05, which prohibits using railroad tracks for highway purposes and provides a penalty for violation. Judge Glaser stated that the section could cover the use of "handcars" and "track motor cars". However, it was thought highly unlikely that a court would construe the section that way.

IT WAS MOVED BY JUDGE GLASER, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 49-17-05 be accepted as drafted.

The Committee discussed Section 49-17-06, which prohibits the removal of a signal light or the making of a false signal on railroad property. The section is punishable by imprisonment in the penitentiary for from three to 10 years presently, and the staff noted that there was an error in classifying it as a Class A misdemeanor.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE GLASER, AND CARRIED to amend Section 49-17-06 to reclassify it as a Class C felony, and when so amended to adopt the section.

The Committee considered Section 49-17-08, which provides a penalty for violation of Section 49-17-07, which forbids a minor, under 15 years of age, from approaching within 10 feet of railroad rolling stock or entering any roundhouse. The Committee Counsel noted that he had initially thought that the section was covered by the criminal trespass section of the new Criminal Code, but that that was probably not the case. However, any minor in violation of Section 49-17-07 would be prosecutable under Section 49-07-01. If the minor is under 15 years of age, he must be handled in juvenile court.

The Committee briefly discussed Sections 49-17-11 through 49-17-16, relating to the powers of station agents to act as peace officers. The Chairman determined that further discussion of the sections would be out of order, since they did not deal with criminal offense definitions or criminal liability.

The Committee considered Section 49-18-44, which provides a penalty for violation of the chapter which deals with motor carriers. Mr. Walton noted that this section should probably be repealed to maintain consistency with previous Committee action in relying on Section 49-07-01 for a general penalty. Mr. Wefald pointed out that the penalty for violation of this section was less than the penalty for violation of Section 49-07-01.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 49-18-44 be repealed.

Mr. Wefald noted that the next five sections were being recommended for repeal and that they could be considered together. The Chairman agreed and directed him to go ahead. Mr. Wefald noted that Section 49-19-22 prohibited pipeline carriers from violating the provisions of that chapter, or any rule or regulation promulgated by the PSC. He stated that this section would be covered by Section 49-07-01.

Section 49-19-24 prohibits anyone from discriminating against any other user of a common pipeline. This section also was recommended for repeal as unnecessary.

Mr. Wefald noted that Section 49-19-25 dealt with fraudulent consumption of gas through illegal connections to existing pipelines. He stated that this section could be repealed as it is covered by the general theft provisions of the new Criminal Code (see Chapter 12.1-23).

Mr. Wefald noted that Section 49-20-12 deals with malicious injury to electric supply lines, and noted that the section could be repealed as it is covered by Section 12.1-21-05.

Section 49-20-13, Mr. Wefald stated, dealt with the fraudulent use of electric current, through illegal connections to existing electric lines. He stated that this section could be repealed since it is covered by the theft provisions of Chapter 12.1-23.

The Committee then discussed Section 49-21-20, which provides a penalty for violation of Sections 49-21-18 and 49-21-19, which deal with the refusal of persons to surrender party lines to other persons who need them for emergency purposes, and with the responsibility of the telephone company to print a notice regarding this requirement of surrendering of party lines in their telephone directories. The Committee discussed these provisions at length. Thereafter, IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE PEARCE, AND CARRIED that Sections 49-19-22, 49-19-24, 49-19-25, 49-20-12, and 49-20-13 be repealed.

IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 49-21-20 be accepted as drafted.

The Committee then considered Section 49-21-21, which reads as follows:

1 49-21-21. FRAUDULENT TELECOMMUNICATIONS - PENALTY.) Any
2 individual, corporation, or other person, who, with intent to defraud or to
3 aid and abet another to defraud any individual, corporation, or other person,
4 of the lawful charge, in whole or in part, for any telecommunications service,
5 shall obtain or attempt to obtain, or aid and abet another to obtain or to
6 attempt to obtain, any telecommunications service by:

7 1. Charging such service to an existing telephone number or credit
8 card number without the authority of the subscriber thereto or the

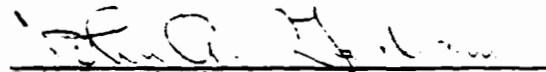
- 9 legitimate holder thereof; or
- 10 2. Charging such service to a nonexistent, false, fictitious, or counter-
- 11 feit telephone number or credit card number or to a suspended,
- 12 terminated, expired, canceled, or revoked telephone number or
- 13 credit card number; or
- 14 3. Use of a code, prearranged scheme, or other similar stratagem
- 15 or device whereby said person, in effect, sends or receives
- 16 information; or
- 17 4. Installing, rearranging, or tampering with any facilities or equipment,
- 18 whether physically, inductively, acoustically, or electronically; or
- 19 5. Any other trick, stratagem, impersonation, false pretense, false
- 20 representation, false statement, contrivance, device, or means,
- 21 shall, when the value of the services is two hundred dollars or less,
- 22 be guilty of a class A misdemeanor, or, when the value of the services
- 23 exceeds two hundred dollars, shall be guilty of a class C felony (((, and
- 24 shall be punished by imprisonment in the state penitentiary for not more
- 25 than two years, or by a fine of not more than one thousand dollars, or
- 26 by both such fine and imprisonment))).

The staff noted that the section was recommended for repeal as its provisions were covered by Chapter 12.1-23 on theft. The Committee Counsel also noted that there was a letter, with a memorandum attached, from Mr. James DuBois of Northwestern Bell Telephone Company (a copy of that letter and memorandum is attached to these minutes as Appendix "B") which oppose repeal of Section 49-21-21. The Committee Counsel stated that he felt that Section 49-21-21 was adequately covered by the theft provisions, noting the definition of "deception" in Subsection 1 of Section 12.1-23-10 which included the use of a "credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services . . . where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized, and . . . where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument". In addition, the Committee Counsel noted that "deception" is defined to include "any other scheme to defraud".

Mr. DuBois noted that the memorandum from the Northwestern Bell attorney suggested that if a section were to be repealed, then the definitions section in the theft provisions (Section 12.1-23-10) should be amended to include a definition

of "false token". The Committee Counsel said that the definition of "deception" seemed to be extensive enough to include the utilization of false tokens, and that it was not necessary to specifically provide for them by amendment of the definitions section. IT WAS MOVED BY JUDGE HEEN, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 49-21-21 be repealed. The Chairman directed the Committee Counsel to write a letter to Mr. DuBois explaining the Committee's action.

The Chairman noted that because of the lack of time to complete another title before scheduled adjournment, the Committee would adjourn, subject to the call of the Chair. The Committee adjourned at 3:45 p.m.



John A. Graham
Counsel

APPENDIX "A"

1 52-01-04. PENALTY FOR (((DISCLOSURE OF INFORMATION OR)))
2 USE OF LIST OF NAMES FOR POLITICAL PURPOSES.) Any (((employee,
3 appeals referee, member of any appeals tribunal, executive director,
4 who in violation of the provisions of section 52-01-03, makes any
5 disclosure of information obtained from any employing unit or
6 individual in the administration of the North Dakota unemployment
7 compensation law, or any))) person who has obtained any list of
8 applicants for work, claimants, or recipients of benefits from
9 the bureau under any pretext whatever, who uses or permits the
10 use of such list for any political purpose, is guilty of a class B
11 misdemeanor (((and shall be punished by a fine of not less than
12 twenty dollars nor more than one hundred dollars, or by imprisonment
13 in the county jail for not longer than ninety days, or by both such
14 fine and imprisonment))).

52-06-38. (To be repealed.)

52-06-39. (To be repealed.)

1 52-06-40. PENALTY FOR VIOLATION OR FAILURE TO PERFORM DUTY
2 WHERE NO PENALTY PROVIDED.) Any person who willfully violates any
3 provision of this title, or any order, rule, or regulation thereunder,
4 (((the violation of which is unlawful or the observance of which is
5 required under the terms of this title,))) and for which a penalty
6 is neither prescribed in this title nor provided by any other
7 applicable statute, is guilty of a class B misdemeanor (((and shall
8 be subject to the punishment prescribed in section 52-06-39. Each

9 day such violation continues shall be deemed to be a separate
10 offense))).

1 52-09-18. AGENT AND ATTORNEY MAY REPRESENT CLAIMANT -
2 REGULATIONS - FEES - PENALTY.) The bureau may prescribe rules and
3 regulations governing the recognition of agents or other persons,
4 other than attorneys as hereinafter provided, representing claimants
5 before the bureau, and may require of such agents or other persons,
6 before being recognized as representatives of claimants that they
7 shall show that they are of good character and in good repute,
8 possessed of the necessary qualifications to enable them to render
9 such claimants valuable service, and otherwise competent to advise
10 and assist such claimants in the presentation of their cases. An
11 attorney in good standing who is admitted to practice before the
12 supreme court of the state, shall be entitled to represent claimants
13 before the bureau.

14 The bureau may, by rule and regulation, prescribe the maximum
15 fees which may be charged for services rendered in connection with
16 any claim before the bureau under this chapter, and any agreement
17 in violation of such rules and regulations shall be void. Any per-
18 son who shall ((, with intent to defraud, in any manner willfully
19 and knowingly deceive, mislead, or threaten any claimant or
20 prospective claimant or beneficiary under this chapter by word,
21 circular, letter or advertisement, or who shall knowingly charge
22 or collect directly or indirectly any fee in excess of the maximum
23 fee, or))) make any agreement directly or indirectly to charge or
24 collect any fee in excess of the maximum fee (((,))) prescribed
25 by the bureau shall be deemed guilty of a class B misdemeanor (((and,

26 upon conviction thereof, shall for each offense be punished by a
27 fine not exceeding five hundred dollars or by imprisonment not
28 exceeding one year, or both))).

52-09-19. (To be repealed.)

48-05-05. (To be repealed.)

1 48-05-06. ALCOHOLIC BEVERAGES AND DRUGS IN PENAL OR CHARI-
2 TABLE INSTITUTIONS PROHIBITED.) Every person who shall take, send,
3 or introduce any alcoholic beverage (((, narcotic, or other habit-
4 forming drug of any kind))) or controlled substance as defined in
5 chapter 19-03.1 into any of the buildings or upon any of the pre-
6 mises of any penal or charitable institution of this state, or of
7 any county, or city thereof, except upon the express authority of
8 the physician or chief executive officer of such institution, given
9 in writing, is guilty of a class A misdemeanor (((and shall be
10 punished by a fine of not more than one hundred dollars, or by
11 imprisonment in the county jail for not more than thirty days, or
12 by both such fine and imprisonment))).

1 48-09-05. PENALTY.) (((Anyone))) Any person violating any
2 of the provisions of this chapter (((shall be punished by a fine
3 of not less than twenty-five dollars nor more than one hundred
4 dollars, or by imprisonment in the county jail for not more than
5 thirty days, or by both such fine and imprisonment))) is guilty
6 of a class B misdemeanor.

46-02-16. (To be repealed.)

1 46-02-17. SERIAL NUMBERING OF FORMS - PENALTY.) All printed
2 forms for acknowledging the receipt of cash, and for warrants, checks,
3 or other orders for the payment or disbursement of funds supplies
4 to municipalities, as defined by chapter 21-03 of the title
5 Governmental Finance, shall be serially numbered by the printer,
6 and no printer shall furnish any unnumbered copies of said forms
7 to any municipality. Any person violating the provisions of this
8 section shall be guilty of a class A misdemeanor.

1 46-02-19. UNLAWFUL FOR PUBLIC OFFICIALS TO PLACE NAME ON
2 PUBLIC DOCUMENTS IN LARGE-SIZE TYPE - PENALTY.) It shall be
3 unlawful for any elected or appointed state, county, or local
4 official to print his name, or cause his name to be printed, upon
5 any public documents, reports, promulgated rules and regulations,
6 envelopes, or stationery or publications paid for by the state or
7 its political subdivisions unless his name is printed in a
8 smaller-size type than the printed name of the office, department,
9 or agency as it appears on such material. (((The provisions of
10 this section shall not apply to the use of printed stocks of forms
11 and supplies on hand on July 1, 1967.))) Any person (((who shall
12 violate))) violating the provisions of this section shall be guilty
13 of (((a misdemeanor and punished by a fine of not more than one
14 hundred dollars))) an infraction.

1 46-05-05. RATES FOR POLITICAL ANNOUNCEMENTS - LABELING
2 POLITICAL MATTER - PENALTY FOR VIOLATION.) For the publication
3 of political announcements of candidates before any primary or
4 general election, no newspaper in this state shall charge more than
5 the legal rates for the publication of legal notices. All paid
6 political matter and political announcements shall be labeled
7 "political advertisement". Any person violating the provisions
8 of this section is guilty of (((a misdemeanor))) an infraction.

1 61-01-07. OBSTRUCTION OF WATERCOURSES - PENALTY.) If any person
2 (((, municipality, or corporation, without authority of law, willfully
3 illegally obstructs any ditch, drain, or watercourse, or diverts the
4 water therein from its natural or artificial course, (((such person
5 or corporation))) he shall be liable to the party suffering injury
6 from (((such))) the obstruction or diversion for the full amount
7 of the (((injury occasioned thereby))) damage done, and, in addition
8 (((thereto))), (((is))) shall be guilty of a class B misdemeanor
9 (((and shall be punished by a fine of not more than one hundred
10 dollars, or in lieu thereof, the offending party, if not a corpora-
11 tion, may be imprisoned in the county jail for a period of not more
12 than three months))).

61-01-08. (To be repealed.)

1 61-01-09. DESTRUCTION OF DAMS - PENALTY.) Every person who
2 (((maliciously))) willfully destroys or tampers with any dam or
3 structure erected to (((create hydraulic power))) retain water or

4 any embankment necessary for the support thereof, or who (((malicious-
5 ly))) willfully makes or causes to be made, any aperture in such
6 dam or embankment, with intent to destroy the same, is guilty of
7 a class A misdemeanor.

1 49-04-14. PENALTY FOR ISSUING FREE PASSES.) Any common
2 carrier violating any of the provisions of section 49-04-11 shall
3 be deemed guilty of (((a misdemeanor and shall be subject to a
4 fine of not more than five hundred dollars for each offense)))
5 an infraction. Any person, other than the persons excepted in
6 sections 49-04-11 and 49-04-12, who uses any such free ticket,
7 free pass, or free transportation, shall be (((subject to a like
8 penalty))) guilty of an infraction.

1 49-07-01. VIOLATION (((BY PUBLIC UTILITY))) OF COMMISSION
2 ORDER OR RULE - PENALTY.) Any (((public utility which))) person
3 who violates or fails to comply with any provision of this title,
4 or (((which))) who fails, omits, or neglects to obey, observe, or
5 comply with any order, decision, decree, rule, direction, demand,
6 or requirement of the ~~com~~mission, or any part or provision thereof,
7 in a case in which no other penalty has been provided, shall be
8 (((punished by a fine of not less than five hundred dollars nor
9 more than two thousand dollars for each and every offense))) guilty
10 of a class A misdemeanor.

49-07-02. (To be repealed.)

49-07-04. (To be repealed.)

49-07-05. (To be repealed.)

1 49-08-16. MAINTENANCE OF RAILROAD CORPORATION'S OFFICE IN
2 STATE - RECORDS.) Every railroad corporation organized and doing
3 business in this state under the laws or authority thereof shall
4 have and maintain a public office or place in the state for the
5 transaction of its business where transfers of its stock shall
6 be made and in which shall be kept for public inspection books in
7 which shall be recorded;

- 8 1. The amount of capital stock subscribed and by whom;
- 9 2. The names of the owners of its stock and the amount owned
10 by them respectively;
- 11 3. The amount of stock paid in and by whom;
- 12 4. The transfers of said stock;
- 13 5. The amount of its assets and liabilities; and
- 14 6. The names and places of residence of its officers.

15 Any corporation violating any of the provisions of this section or
16 of section 49-08-15 shall be (((punished by a fine of not less
17 than one hundred dollars nor more than five thousand dollars)))
18 guilty of a class A misdemeanor, and its corporate rights shall
19 be subject to forfeiture.

49-11-07. (To be repealed.)

1 49-11-19. BLOCKING OR OBSTRUCTING CROSSING WITH TRAIN -
2 PENALTY.) Any (((railroad corporation, conductor, brakeman,
3 engineer, switchman, or other employee of any railroad corporation,)))
4 person in charge or in control of any railroad car, engine, or
5 train of cars, who, for a period of more than fifteen consecutive
6 minutes (((at any one time))), shall obstruct or block any railroad
7 crossing, rural highway, or (((village or))) city street, by
8 placing (((thereon))) or permitting any car, engine, or train of
9 cars to stand or remain stationary (((on any such crossing))) thereon,
10 is guilty of (((a misdemeanor and shall be punished by a fine of
11 not less than ten dollars nor more than fifty dollars for each
12 offense))) an infraction. The provisions of this section do not
13 apply to cities (((or villages))) which have or may have ordinances
14 covering the same subject matter.

1 49-11-22. LIABILITY (((OF RAILROAD CORPORATION))) FOR FAILURE
2 OF LOCOMOTIVE TO SOUND BELL, HORN, OR WHISTLE AT CROSSING.) The
3 (((railroad corporation))) person owning (((the))) a locomotive
4 which fails to sound its warning device at any road or street
5 crossing as required by section 49-11-21 shall be guilty of (((a
6 misdemeanor and shall be punished by a fine of fifty dollars)))
7 an infraction and shall be liable for all damages which shall be
8 sustained by any person by reason of such neglect.

1 49-11-23. LIABILITY OF ENGINEER FOR FAILURE TO SOUND BELL,
2 HORN, OR WHISTLE OF LOCOMOTIVE AT CROSSING.) Every locomotive
3 engineer who does not cause a warning device to be sounded as required

4 by section 49-11-21 shall be guilty of (((a misdemeanor and shall
5 be punished by a fine of not more than fifty dollars or by imprison-
6 ment in the county jail for not more than thirty days or by both
7 such fine and imprisonment)))an infraction.

1 49-11-29. FAILURE TO CONSTRUCT FENCE, CATTLE GUARD, SWINGING
2 GATE - PENALTY.) Any person (((, company, or corporation))) owning
3 or operating any line of railroad within this state and refusing
4 or neglecting to comply with any of the provisions of sections
5 49-11-24 through 49-11-28 shall be guilty of a class A misdemeanor
6 (((, and every thirty days' continuance of such refusal or neglect
7 shall constitute a separate and distinct offense))). A prosecution
8 or conviction under sections 49-11-24 through 49-11-28 shall not
9 relieve such person (((, company, or corporation))) from liability
10 for the maiming or killing of livestock on such right-of-way by
11 reason of his (((or its))) negligence (((or the negligence of his
12 or its employees))).

49-12-02. (To be repealed.)

49-12-05. (To be repealed.)

49-12-07. (To be repealed.)

49-12-08. (To be repealed.)

49-12-09. (To be repealed.)

49-12-10. (To be repealed.)

49-12-12. (To be repealed.)

49-12-16. (To be repealed.)

49-12-22. (To be repealed.)

49-12-24. (To be repealed.)

49-13-15. (To be repealed.)

49-13-17. (To be repealed.)

49-13-19. (To be repealed.)

49-13-20. (To be redrafted.)

49-13-21. (To be repealed.)

49-13-23. (To be repealed.)

49-13-26. (To be repealed.)

49-13-27. (To be redrafted.)

49-13-28. (To be repealed.)

49-15-18. (To be repealed.)

49-17-02. (To be repealed.)

49-17-03. (To be repealed.)

49-17-04. (To be repealed.)

1 49-17-05. USE OF RAILROAD TRACKS FOR HIGHWAY PURPOSES -
2 PENALTY.) No person shall drive any vehicle or animal upon or
3 use any railroad track in this state as a highway. This section
4 shall not apply to highway crossings over any line of railway in
5 the state, nor to depot grounds, station grounds, nor switches
6 and sidetracks intended for the use of shippers or the consignees
7 of freight. Any person violating the provisions of this section
8 is guilty of a class B misdemeanor.

1 49-17-06 REMOVING OR MAKING SIGNAL LIGHT ON RAILROAD
2 PROPERTY - PENALTY.) Every person who unlawfully masks, alters,
3 or removes any light or signal, or willfully exhibits any false
4 light or signal with intent to bring any locomotive, railway car,
5 or train or cars into danger, shall be (((punished by imprisonment
6 in the penitentiary for not less than three years nor more than
7 ten years))) guilty of a class C felony.

49-17-08. (To be repealed.)

49-18-44. (To be repealed.)

49-19-22. (To be repealed.)

49-19-24. (To be repealed.)

49-19-25. (To be repealed.)

49-20-12. (To be repealed.)

49-20-13. (To be repealed.)

1 49-21-20. PENALTY.) Any person who shall violate any of the
2 provisions of sections 49-21-18 and 49-21-19 shall be guilty of
3 a class B misdemeanor (((and shall be punished by a fine of not
4 less than fifty dollars nor more than one hundred dollars, or by
5 imprisonment in the county jail for not less than ten days nor
6 more than thirty days, or by both such fine and imprisonment))).

49-21-21. (To be repealed.)

1 11-09-09. POWERS OF BOARD OF COUNTY COMMISSIONERS - FAILURE
2 OF WITNESS TO OBEY ORDER OF BOARD IS A MISDEMEANOR.) The board of
3 county commissioners of a county which has adopted any form of
4 county managership shall be the policy-determining body of the county
5 and shall have the following powers:

- 6 1. To exercise all of the powers of the county as a body
7 politic and corporate in the manner provided in this chapter;
- 8 2. To levy taxes and to appropriate county funds;
- 9 3. To inquire into the official conduct of any officer or
10 office under its control and to investigate the accounts,
11 disbursements, bills, and receipts of any county officer.
12 For these purposes, it may subpoena witnesses, administer
13 oaths, and require the production of books, papers, and
14 other evidence. If a witness fails or refuses to obey any
15 lawful order of the board, he shall be deemed guilty of a
16 class A misdemeanor; and
- 17 4. To preserve order in its sessions and enforce obedience
18 for this purpose by fines not exceeding five dollars or
19 by imprisonment in the county jail for not more than
20 twenty-four hours.

(See also Section 11-11-10 with regard to Subsection 4.)

1 11-09-38. BOARD OF COUNTY COMMISSIONERS NOT TO INTERFERE IN
2 APPOINTMENTS OR REMOVALS - PENALTY.) In a county which has adopted
3 any form of county managership, neither the board of county commis-
4 sioners nor any of its committees or members shall direct or request
5 the appointment or removal of any person by the county manager or
6 any of his subordinates nor in any manner take part in the appoint-
7 ment or removal of officers or employees in the administrative
8 service of the county. Except for the purpose of inquiry or in an
9 emergency, the board of county commissioners and its members shall
10 deal with that portion of the administrative service over which the
11 county manager is responsible solely through the manager. Neither

12 the board of county commissioners nor its members shall give orders
13 to any subordinate of the county, either publicly or privately.
14 Any member of the board of county commissioners who violates any
15 provision of this section shall be guilty of a class A misdemeanor
16 and, in addition to the penalty prescribed for such an offense,
17 shall forfeit his office.

1 11-10-22. UNLAWFUL FOR OFFICER TO PURCHASE COUNTY WARRANT OR
2 EVIDENCE OF DEBT - PENALTY.) Every person who, while an officer of
3 any county of this state or the deputy or clerk of any such officer,
4 directly or indirectly, buys or traffics in, or in anywise becomes
5 a party to the purchase of, any county warrant or order, or any
6 bill, account, claim, or evidence of indebtedness of his county,
7 for any sum less than the full face value thereof, is guilty of
8 ((a misdemeanor, and shall be punished by a fine of not less than
9 fifty dollars nor more than five hundred dollars))) an infraction.

1 11-13-10. AUDITOR TO CERTIFY ABSTRACTS - FEES - PENALTY FOR
2 NONCOMPLIANCE.) The county auditor shall attach his certificate to
3 each abstract of title covering real estate within his county which
4 is presented to him for that purpose. The certificate shall show
5 the amount of taxes due and unpaid against, and any tax title affect-
6 ing, the land described in the abstract as the same appears from the
7 records of his office. He shall collect the sum of twenty-five
8 cents for each abstract so certified. Each failure or refusal to
9 comply with the requirements of this section shall constitute ((a
10 misdemeanor and shall be punished by a fine of not exceeding one
11 hundred dollars))) an infraction.

1 11-14-05. COUNTY TREASURER TO CERTIFY ABSTRACTS - FEES -
2 PENALTY FOR NONCOMPLIANCE.) The county treasurer shall attach his
3 certificate to each abstract of title covering real estate within
4 his county which is presented to him for that purpose. The certifi-
5 cate shall show the amount of taxes due and unpaid against the land
6 described in the abstract, or any tax title affecting the land
7 described in the abstract as the same appears from the records in
8 his office. He shall collect the sum of twenty-five cents for each
9 abstract so certified. Each failure or refusal to comply with the
10 requirements of this section shall constitute ((a misdemeanor and
11 shall be punished by a fine of not exceeding one hundred dollars))
12 an infraction.

1 11-14-20. LOANING COUNTY FUNDS - PENALTY.) If any county
2 treasurer shall loan any money belonging to his county, with or
3 without interest, or shall use the same for his own purposes, he
4 shall forfeit and pay, for every such offense, not more than five
5 hundred dollars nor less than one hundred dollars. The forfeiture
6 shall be recovered for the benefit of the county in an action brought
7 by the state of North Dakota.

11-15-15. (To be repealed.)

11-15-23. (To be repealed.)

1 11-15-28. SHERIFF OR CONSTABLE PROHIBITED FROM COLLECTING
2 NOTES - PENALTY.) No sheriff, deputy sheriff, employee in the

3 sheriff's office, or constable, while holding such office, or employ-
4 ment, shall accept for collection, collect, or attempt to collect
5 from any person, firm, or association within his county for pay,
6 profit, or remuneration, any note, account, or claim of any nature
7 or description except as required in the performance of the duties
8 of his office. Any violation of the provisions of this section
9 shall constitute (((a misdemeanor punishable by a fine of not more
10 than one hundred dollars))) an infraction.

1 11-16-04. PENALTY FOR FAILURE TO PAY OVER MONEYS.) Whenever
2 the state's attorney shall refuse or neglect to account for or pay
3 over the public moneys received by him, he is guilty of (((a mis-
4 demeanor and shall be punished by a fine of not less than fifty
5 dollars nor more than two hundred dollars))) an infraction.

1 11-16-05. RESTRICTIONS ON POWERS OF STATE'S ATTORNEY - PENALTY
2 FOR BREACH OF DUTY.) The state's attorney shall not:
3 1. Present a claim, account, or other demand for allowance
4 against the county, except for his own services, nor in
5 any way advocate the relief asked for by the claim or
6 demand of another.
7 2. Be eligible to or hold any judicial office except that of
8 United States commissioner.
9 3. Receive a fee or reward from or on behalf of a prosecutor
10 or other individual for services in any prosecution or
11 business to which it is his official duty to attend.
12 4. Be concerned as attorney or counsel for any party, other
13 than the state or county, in any civil action depending

14 upon, or arising out of, a state of facts upon which a
15 pending and undetermined criminal prosecution depends.

16 5. Be concerned as attorney or counsel for any party, other
17 than the state or county, in any action or proceeding
18 whatsoever when employed by a county having a population
19 exceeding thirty-five thousand.

20 A violation of any provision of this section shall constitute (((a
21 misdemeanor punishable by a fine of not less than one hundred dollars
22 and not more than five hundred dollars))) an infraction, and the
23 offender may be removed from office.

1 11-17-05. CLERK TO KEEP FEE BOOK - MONTHLY REPORT TO COUNTY
2 AUDITOR (((- PENALTY))).) The clerk of the district court shall
3 keep as a public record in his office a book to be provided by the
4 county in which he shall enter all money received by him as fees
5 for services rendered as such clerk. Within three days after the
6 close of each calendar month and also at the close of his term of
7 office, such clerk shall file with the county auditor a statement
8 under oath showing the amount of fees which he has received as such
9 officer since the date of his last report, and within three days
10 thereafter he shall deposit with the county treasurer the total sum
11 of such fees, except such fees as he is authorized expressly to
12 retain. (((A clerk of court who shall neglect or omit to charge
13 or collect the appropriate fees provided for in this chapter, or
14 who shall fail or neglect to keep a record of the same, or to make
15 a correct statement thereof to the county auditor, with intent to
16 evade any provision of this chapter, shall be guilty of a misdemeanor.

1 11-18-06. REGISTER OF DEEDS TO KEEP FEE BOOK - MONTHLY
2 REPORTS (((- PENALTY))).) The register of deeds shall keep a book
3 provided by the county in which shall be entered each item of fees
4 for services rendered. Within three days after the close of each
5 calendar month and also at the end of his term of office, he shall
6 file with the county auditor a statement under oath showing the
7 fees which he has received as such officer since the date of his
8 last report. (((A register of deeds who shall neglect or omit to
9 charge or collect the fees allowed by law for services rendered,
10 or who shall fail or neglect to keep a record of the same or to
11 make a correct statement thereof to the county auditor, with intent
12 to evade the provisions of this section, shall be guilty of a
13 misdemeanor.)))

11-18-12. (To be repealed.)

11-19A-07. (To be redrafted.)

1 11-20-15. SECTION CORNERS - HOW MADE - REMOVAL OF MARKERS -
2 PENALTY.) The surveyor, when employed by private landowners (((,)))
3 as provided in section 11-20-14, shall sink into the earth at all
4 section and quarter post corners a column of concrete or a cement
5 block at least two feet high, twelve inches square at the base, and
6 six inches square at the top. He shall carefully describe the same
7 in the records of his survey. He also shall dig pits and shall mark
8 and record new witness trees wherever possible to do so. Any person
9 who willfully shall cut down, destroy, deface, or injure any living

10 witness tree, or who shall remove a corner post in any shape as
11 above established, is guilty of (((a misdemeanor and shall be
12 punished by a fine of not less than twenty-five dollars nor more
13 than fifty dollars))) an infraction.

1 11-21-09. PUBLIC ADMINISTRATOR NOT TO CHARGE ATTORNEY'S FEES
2 - PENALTY.) A public administrator shall not charge a fee as an
3 attorney in the administration of the estates of decedents of which
4 he shall be the administrator. Any person who shall violate this
5 section is guilty of (((a misdemeanor and shall be punished by a
6 fine of not less than one hundred dollars))) an infraction.

11-23-11. (To be repealed.)

1 11-28-09. VIOLATION OF ANY RULE OR REGULATION ((A MISDEMEANOR));
2 - PENALTY - INJUNCTION.) Violation of any rule or regulation of
3 the board of county park commissioners shall be (((a misdemeanor
4 and shall be punished by a fine of not to exceed twenty-five dollars,
5 or by imprisonment in the county jail for not to exceed ten days,
6 or by both such fine and imprisonment))) an infraction, and in
7 addition, the board of county park commissioners shall have remedy
8 by injunction to enjoin the operation or maintenance of any establish-
9 ment, concession, or activity prohibited by the rules and regulations
10 of the board.

1 11-28-20. VIOLATION OF RULES - PENALTY.) The violation of
2 any rule or regulation of the board of joint park commissioners

3 shall be (((a misdemeanor and shall be punished by a fine of not
4 to exceed one hundred dollars, or by imprisonment in the county
5 jail for not to exceed thirty days, or by both such fine and impri-
6 sonment))) an infraction. The courts of the county wherein such
7 violation occurred shall have jurisdiction over any such violation.
8 In addition, the board of joint park commissioners shall have remedy
9 by injunction to enjoin the operation or maintenance of any establish-
10 ment, concession, or activity prohibited by the rules and regulations
11 of the board.

11-29-32. (To be repealed.)

1 11-29-33. PENALTIES.) Any person who, contrary to the provi-
2 sions of this chapter, sells, transfers, takes, or carries away, or
3 in any manner disposes of any of the seed grain, feed, or tractor
4 fuel furnished by the county under this chapter, or who uses or
5 disposes of any of the seed grain, feed, or tractor fuel for any
6 purpose other than that stated in his application, or who sells,
7 transfers, takes, or carries away, or in any manner disposes of,
8 any of the crop produced from the sowing or planting of seed grain
9 furnished under this chapter contrary to the provisions of the
10 same, is guilty of a class B misdemeanor (((and shall be punished
11 by a fine of not less than fifty dollars, nor more than one thou-
12 sand dollars, or by imprisonment in the county jail for a term of
13 not less than ninety days, and shall pay all the costs of the
14 prosecution. Any person found guilty of false swearing under
15 any of the provisions of this chapter shall be deemed to have

16 committed perjury))). After the county has obtained a lien under
17 this chapter and the seed obtained thereunder has been sown, any
18 seizure of the crop or interference therewith, except by the appli-
19 cant and those in his employ for the purpose of harvesting, threshing,
20 and marketing the same to pay the loan, shall be deemed a conversion.

1 11-33-21. GENERAL PENALTIES FOR VIOLATION OF ZONING REGULA-
2 TIONS AND RESTRICTIONS.) A violation of any provision of this
3 chapter or the regulations and restrictions made thereunder shall
4 constitute the maintenance of a public nuisance and (((upon con-
5 viction there shall be a penalty of a fine of not more than two
6 hundred dollars or imprisonment in the county jail for not more
7 than thirty days or by both such fine and imprisonment))) shall be
8 a class B misdemeanor.

APPENDIX "B"



Northwestern Bell

Bismarck, North Dakota

December 10, 1973

Senator Howard Freed, Chairman
Committee on Judiciary "A"
State Capitol
Bismarck, North Dakota

Dear Senator Freed:

On December 11 your committee will be considering Title 49 of the Century Code which contains a section important to the telephone industry and its customers. I have asked our legal department to review Section 49-21-21 to see if it was necessary to retain it in the Code. They inform me that although the new sections 12.1-23-03 and 12.1-23-10 might generally cover theft of some service, the loss of 49-21-21 would leave in doubt two crimes which are both serious and peculiar to the telephone business.

As you know, the use of electronic devices (EG. "Blue Boxes") are responsible for many millions of dollars loss to the telephone industry annually. Also, the use of nonexistent or fictitious credit cards account for substantial losses in our business unlike any other business of which I am aware. Consequently, the best defense to these problems in North Dakota is to retain Section 49-21-21. If the committee feels it is necessary to repeal this section, I am attaching a memorandum prepared by our legal department which suggests some points which might be considered in amending other sections of the Code.

If I can be of any further help in furnishing information relating to this subject, I would be glad to help.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James S. DuBois".

James S. DuBois
Executive Assistant

Attachment

Legal Department
November 21, 1973

M E M O R A N D U M

Re: Repeal of Section 49-21-21

The new "Theft of Services" sections in the North Dakota Criminal Code, particularly Sections 12.1-23-03 and 12.1-23-10, have not specifically prohibited the use of electronic devices to fraudulently obtain telephone service or the use of fictitious or nonexistent credit cards for the same purpose.

Although Section 8-10-07.2, N.D.C.C. has been entitled "Unlawful use of telecommunications devices," only the making or possessing is prohibited. Theft through use of such a device is obviously too serious to warrant the misdemeanor penalty there, and should rightfully be included under a felony section, as it is now under Section 49-21-21, N.D.C.C.

One way to correct the problem would be to add a definition of "false token" to Section 12.1-23-10 which would include ". . . installing, rearranging, or tampering with any facilities or equipment, whether physically, inductively, acoustically or electronically."

Another approach would be to include a separate definition, adding said language to the seven meanings of "deception" already found in 12.1-23-10. For example:

"(viii) installing, rearranging, or tampering with any facilities or equipment, whether physically, inductively, acoustically, or electronically"

The use of nonexistent or fictitious telephone or credit card numbers could be prohibited by Section 12.1-23-10, by amending "deception" to include a separate definition as follows:

"(ix) using a nonexistent, false, fictitious, or counterfeit credit card or telephone number"

While the suggestions above will not entirely replace a repeal of Section 49-21-21, they should help to avoid challenges of inapplicability and vagueness when an accused is charged with particular telephone-related crimes.

Wm. A. Claerhout
Attorney

Tentative Agenda

COMMITTEE ON JUDICIARY "A"

Meeting of February 14-15, 1974
Room G-2, State Capitol
Bismarck, North Dakota

Thursday, February 14

- 9:30 a.m. Call to order
Roll call
Minutes of previous meeting
- 9:45 a.m. Consideration of draft revision of criminal section in
Title 45, NDCC
- 10:00 a.m. Presentation by Mr. Ed Bashus concerning Section 51-10-05
which the Committee has recommended for repeal
- 10:15 a.m. Consideration of criminal sections in Title 38, NDCC
- 11:15 a.m. Consideration of criminal sections in Title 42, NDCC
- 12:00 noon Luncheon recess
- 1:15 p.m. Reconvene - Consideration of criminal sections in
Title 61, NDCC
- 2:30 p.m. Consideration of criminal sections in Title 13, NDCC
- 3:30 p.m. Consideration of criminal sections in Title 41, NDCC
- 4:00 p.m. Consideration of criminal sections in Title 44, NDCC
- 5:00 p.m. Recess

Friday, February 15

- 9:00 a.m. Reconvene - Consideration of remaining criminal (and
related) sections in Title 12, NDCC
- 11:00 a.m. Consideration of criminal sections in Title 55, NDCC
- 11:30 a.m. Consideration of criminal sections in Title 47, NDCC
- 12:00 noon Luncheon recess
- 1:15 p.m. Reconvene - Consideration of criminal sections in
Title 54, NDCC
- 5:00 p.m. Adjourn

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, February 14-15, 1974
Room G-2, State Capitol
Bismarck, North Dakota

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:40 a.m. on Thursday, February 14, 1974, in Room G-2, State Capitol, Bismarck, North Dakota.

Members present: Senators Freed, Jones
Representatives Austin, Hilleboe, Murphy, Royse

Citizen members present: Judges Teigen, Heen, Glaser, Pearce
Mr. Rodney Webb
Chief Ed Anderson

Legislative members absent: Representatives Lundene, Rau, Stone

Citizen members absent: Sheriff Glen Wells, Mr. Al Wolf

Others present: Mr. Willis Van Heuvelen, Executive Director, State Health Department
Mr. David Evans, Workmen's Compensation Bureau
Mr. Reis Hall, Superintendent, State Industrial School
Mr. James Sperry, Superintendent, N. D. Historical Society
Mr. Wallace Truwe, Deputy Director, State Park Service
Mr. Jim DuBois, Northwestern Bell Telephone Co.
Mr. Joel Melarvie, N. D. Motor Carriers Association
Mr. Jess Cooper, N. D. Petroleum Council
Mr. John Smith, N. D. Beverage Dealers Association
Mr. Ed Bashus, N. D. Retail Association

The Committee commenced discussion of Section 45-11-08 which is the only criminal section in Title 45 of the Century Code. That section reads as follows:

- 1 45-11-08. UNLAWFUL USE OF FICTITIOUS PARTNERSHIP NAME - PENALTY.)
- 2 Every person transacting business in the name of a person as a partner
- 3 who is not interested in his firm, or transacting business under a firm name
- 4 in which the designation "and company" or "& Co." is used without represent-
- 5 ing an actual partner, except in (((the))) cases in which the continued use
- 6 of a copartnership name is authorized by law, is guilty of a class A misdemeanor.

The Committee discussed this section at length, and it was finally noted that it was the end section in the entire chapter dealing with fictitious partnership names. Thereafter, the Chairman directed the staff to redraft the section to make it a general penalty section for the entire chapter, and to take into account the substantive provisions of the section if that were necessary. (Note: The text of all sections as acted upon, or indications of Committee action are attached hereto as Appendix "A".)

The Chairman recognized Mr. Ed Bashus, North Dakota Retail Association, for a brief discussion concerning the Committee's previous action with regard to Section 51-10-05, which the Committee had recommended for repeal.

Mr. Bashus asked that the Committee reconsider its action in recommending repeal of Section 51-10-05 on the basis that numerous retailers would like to see the section retained, and that there would be a danger in putting a repealer of that section in the general criminal revision bill, as it could be the subject of intensive debate. He suggested that if the section were to be repealed, it should be done by a separate bill. Senator Jones noted that if the section were retained for repeal in the basic criminal statute revision bill and the Retail Association objected, they could seek an amendment to the main bill.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the Committee reconsider the action by which it recommended repeal of Section 51-10-05. That section was then again before the Committee and reads as follows:

1 51-10-05. ADVERTISING, OFFERING OR SELLING ARTICLE AT LESS
2 THAN COST - PENALTY.) Any retailer or wholesaler who shall advertise,
3 offer to sell, or sell any article of merchandise at less than cost to such
4 retailer or wholesaler as defined in this chapter, or who gives, offers
5 to give, or advertises the intent to give away any article of merchandise,
6 with the intent, or with the effect of injuring competitors and destroying
7 competition, shall be guilty of a class A misdemeanor. Proof of any such
8 advertising, offer to sell or to give away, or sale or gift, of any article
9 of merchandise by any retailer or wholesaler at less than cost, as defined
10 in this chapter, shall be prima facie evidence of a sale below cost.

The Committee discussed the last sentence of the section which establishes a prima facie presumption. It was noted that this presumption was probably not appropriate, and that its language was redundant, in that it provided that proof of a sale at less than cost shall be prima facie evidence of a "sale below cost".

IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY JUDGE TEIGEN to delete the last sentence of the section commencing after the period on line 7, and then to accept the section as initially drafted.

Representative Hilleboe stated he thought a Class A misdemeanor designation for this offense was too high, and stated that it should be no more than an infraction. Chief Anderson wondered who would be responsible for enforcing the statute of this type, and the Committee launched into a general discussion concerning the difficulty of enforcement and prosecution. REPRESENTATIVE MURPHY, WITH THE CONSENT OF HIS SECOND, THEN WITHDREW HIS MOTION. IT WAS MOVED BY REPRESENTATIVE HILLEBOE AND SECONDED BY MR. WEBB that the staff

be directed to redraft Section 51-10-05 to put the burden of proof on the prosecution, and to delete the last sentence. The Chairman then directed the staff to redraft Section 51-10-05 in accordance with the motion, and the MOTION BECAME MOOT.

The Chairman introduced Chief Ed Anderson of Fargo to the Committee and pointed out that he was serving as a full member of the Committee in place of Glen Eng who had resigned from the Stanley police force. The Chairman then called for approval of the minutes of the two preceding meetings of the Committee.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the minutes of the meetings of December 10-11, 1973, and October 25-26, 1973, be approved as mailed.

The Committee then discussed the criminal provisions in Title 38 of the Century Code. Mr. Wefald said that he had discussed the sections in a telephone conversation with Mr. David Evans, Counsel for the Workmen's Compensation Bureau. Mr. Wefald noted that Mr. Evans was present at the meeting.

The Committee discussed Section 38-01-08, which reads as follows:

1 38-01-08. PENALTIES FOR VIOLATION OF PROVISIONS OF TITLE RELAT-
2 ING TO COAL MINES.) Any person who shall:
3 1. Willfully ((neglect,)) refuse ((,)) or fail to perform any duty
4 required of him under the provisions of this title relating to coal
5 mines;
6 2. Violate any provision of this title relating to mining;
7 3. Obstruct the inspector or interfere with him in the performance
8 of his duties ((, or attempt so to do)); or
9 4. Refuse to comply with any instruction given by the inspector
10 pursuant to any provision of this title,
11 shall be guilty of a class A misdemeanor ((and,)) unless another penalty
12 is specifically provided for such violation ((, shall be punished by a fine
13 of not more than five hundred dollars or by imprisonment in the county
14 jail for not more than six months, or by both such fine and imprisonment)).
15 If the person found guilty of any such violation is a mine foreman holding
16 a certificate issued under the applicable provisions of this title, the inspector,
17 by order, may revoke such certificate for a period of not more than two years.

Questions were raised concerning the deletion of the word "neglect" in line 3 of the text, and the Committee Counsel noted that its suggested deletion was in accordance with previous Committee action wherein the word "neglect" had been deleted because it suggested a noncriminal frame of mind.

IT WAS MOVED BY SENATOR JONES AND SECONDED BY REPRESENTATIVE HILLEBOE that Section 38-01-08 be accepted as drafted. Judge Teigen questioned the use of the word "willfully" in Subsection 1 of this section, noting that there were no standards of culpability specifically attached to the other subsections. The Committee Counsel noted that where no other standard is stated in the text of the section, the standard will be "willfully". Thereafter, SENATOR JONES' MOTION CARRIED.

The Committee discussed Section 38-04-03 which makes it a felony to operate a coal mine unless full workmen's compensation insurance premiums have been paid. Senator Jones inquired as to whether there wasn't a general penalty covering failure to secure workmen's compensation coverage. The Committee Counsel pointed out Section 65-01-05 which makes it a misdemeanor, punishable by up to a \$500 fine or imprisonment for one year, to fail to secure coverage for eligible employees. The Committee discussed at length the necessity for having a separate section relating to the operation of the business without coverage when there was a general penalty for failure to secure coverage.

Mr. Evans pointed out that this section (38-04-03) might have a tie-in with a federal statute which now allows states to secure relatively inexpensive coverage for "Black Lung disease".

IT WAS MOVED BY SENATOR JONES, SECONDED BY MR. WEBB, AND CARRIED that Section 38-04-03 be repealed and that the staff request Mr. Evans of the Workmen's Compensation Bureau to communicate with appropriate representatives of the Federal Government concerning any potential detrimental effect which could result from this repeal.

The Committee discussed Section 38-04-10 which prohibits the operation of a coal mine without a license, or the failure or refusal to comply with provisions of Chapter 38-04 which deals with the licensing of coal mines. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 38-04-10 be accepted as drafted.

The Committee then discussed Section 38-06-62.1 which requires anyone who is going to use explosives underground to give notice to any owner or operator of an underground mine located within one mile of the proposed point of explosion. Mr. Evans stated that the Bureau was in favor of retaining this particular section.

IT WAS MOVED BY SENATOR JONES AND SECONDED BY MR. WEBB that Section 38-06-62.1 be accepted as drafted. Representative Hilleboe inquired as to the necessity for repeating the statement of penalty classification (i.e., that violation of the section would be a Class A misdemeanor), when the general penalty section for the entire chapter was also a Class A misdemeanor. Thereafter, SENATOR JONES, WITH THE CONSENT OF HIS SECOND, RESTATED HIS MOTION so as to result in deletion of the last sentence of the section, and then acceptance of the section. THE MOTION THEN CARRIED.

The Committee discussed Section 38-06-64, which reads as follows:

1 38-06-64. PENALTIES FOR VIOLATING PROVISIONS OF CHAPTER OR
2 SAFETY RULES PROMULGATED BY INSPECTOR.) Every mine owner or
3 operator or other person who willfully shall fail (((, neglect,))) or refuse
4 to comply with any of the safety rules promulgated by the inspector under
5 the provisions of this chapter, shall be guilty of a class B misdemeanor
6 ((and shall be punished by a fine of not more than one hundred dollars,
7 or by imprisonment in the county jail for not more than thirty days, or by
8 both such fine and imprisonment))). Any person who (((shall violate)))
9 violates any provision of this chapter for which another penalty is not
10 specifically provided shall be guilty of a class A misdemeanor ((and

11 shall be punished by a fine of not more than five hundred dollars, or
12 by imprisonment in the county jail for not more than six months, or by
13 both such fine and imprisonment))).

The Committee discussed the section, and noted that in previous sections the violation of rules promulgated by the agency given authority to promulgate rules by the chapter has been treated the same as a violation of the explicit provisions of the chapter. IT WAS MOVED BY REPRESENTATIVE HILLEBOE AND SECONDED BY CHIEF ANDERSON that triple parentheses be inserted before the comma in line 5; that the words "class B" in line 5 be deleted; that the triple parentheses in line 6 be deleted; that the triple parentheses after the word "imprisonment" in line 8 be deleted; that triple parentheses be inserted behind the word "person" in line 8; and that the word "or" be inserted before the word "who" in line 8; and that when so amended the section be accepted. Mr. Webb stated that, as a matter of general criminal philosophy, it was not a good thing to allow criminal liability to attach to activities which are defined by agencies over which the Legislature has no control. Thereafter, REPRESENTATIVE HILLEBOE'S MOTION CARRIED.

The Committee next discussed Section 38-08-16, which reads as follows:

1 38-08-16. CIVIL PENALTY.) (((1.))) Any person who violates any
2 provision of this chapter, or any rule, regulation, or order of the commission
3 shall be subject to a civil penalty of not more than one thousand dollars
4 for each act of violation and for each day that such violation continues,
5 unless the penalty for such violation is otherwise specifically provided for
6 and made exclusive in this chapter.

7 (((2. If any person, for the purpose of evading this chapter, or
8 any rule, regulation, or order of the commission, shall make or cause to
9 be made any false entry or statement in a report required by this chapter
10 or by any such rule, regulation, or order, or shall make or cause to be
11 made any false entry in any record, account, or memorandum required
12 by this chapter, or by any such rule, regulation, or order, or shall omit,
13 or cause to be omitted, from any such record, account, or memorandum,
14 full, true, and correct entries as required by this chapter or by any such
15 rule, regulation, or order, or shall remove from this state or destroy,
16 mutilate, alter or falsify any such record, account, or memorandum, such
17 person shall be guilty of a misdemeanor and, upon conviction, shall be
18 subject to a fine of not more than five thousand dollars or imprisonment
19 for a term not exceeding six months, or to both such fine and imprisonment.

20 3. Any person knowingly aiding or abetting any other person in the
21 violation of any provision of this chapter, or any rule, regulation, or order
22 of the commission shall be subject to the same penalty as that prescribed
23 by this chapter for the violation by such other person.

24 4.))) The penalties provided in this section shall be recoverable by
25 suit filed by the attorney general in the name and on behalf of the commission,
26 in the district court of the county in which the defendant resides, or in which
27 any defendant resides, if there be more than one defendant, or in the district
28 court of any county in which the violation occurred. The payment of any
29 such penalty shall not operate to legalize any illegal oil, illegal gas, or
30 illegal product involved in the violation for which the penalty is imposed,
31 or to relieve a person on whom the penalty is imposed from liability to
32 any other person for damages arising out of such violation.

Mr. Wefald noted that the section had been amended in order to clarify whether the section was attempting to assess a criminal or civil penalty, and to remove the subsections that deal with false statements or false entries in governmental matters and facilitation or solicitation of offenses defined in Chapter 38-08, which chapter deals with control and regulation of petroleum resources. Mr. Wefald noted that the statute as redrafted by the staff would clarify the situation and resolve it in favor of assessing a "civil penalty" recoverable by the Attorney General.

IT WAS MOVED BY REPRESENTATIVE AUSTIN, SECONDED BY JUDGE TEIGEN, AND CARRIED that the draft of Section 38-08-16 be accepted as presented by the staff. Mr. Webb and Representative Royse voted in the negative on the motion, and Mr. Webb indicated that his negative vote was because he did not believe that there should be such "civil penalties", as the concept of a "penalty" was one which appropriately belonged in the criminal law.

The Committee next discussed Section 38-14-12, which reads as follows:

1 38-14-12. PENALTIES.) Any person required by this chapter to have
2 a permit who engages in surface mining in an area where the overburden
3 shall exceed ten feet in depth, without previously securing a permit to do
4 so as prescribed by this chapter, is guilty of a class A misdemeanor (((,
5 and on conviction thereof shall be fined not less than fifty dollars nor more
6 than one thousand dollars. Each day of operation without the permit required
7 by this chapter shall be deemed a separate violation))).

8 Any person (((who knowingly and willfully violates any regulation
9 issued or approved pursuant to this chapter or makes any false statement,
10 representation, or certification in any application, record, report, plan,
11 or other document filed or required to be maintained under this chapter,
12 or))) who willfully falsifies, tampers with, or (((knowingly and))) willfully
13 renders inaccurate, any monitoring device or method required to be main-
14 tained under this chapter, shall (((, upon conviction, be punished by a
15 fine of not more than ten thousand dollars, or by imprisonment for not
16 more than six months, or by both such fine and imprisonment))) be guilty
17 of a class A misdemeanor.

18 Notwithstanding any other provision of this chapter, the commission
19 may by injunctive procedures, without bond or other undertaking, proceed
20 against any operator found to be surface mining without a permit or in violation
21 of the provisions of this chapter, or the rules and regulations promulgated
22 thereunder. No liability whatsoever shall accrue to the commission or its
23 authorized representative in proceeding against any operator pursuant to
24 this section.

Mr. Wefald noted that the staff was recommending changes in the draft so as to delete the language on lines 9 through 11 relating to false statements in governmental matters, rather than deleting both those provisions and the provisions relating to willful violation of a regulation issued under the strip mine reclamation chapter.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY MR. WEBB, AND CARRIED that Section 38-14-12 be amended by deleting the triple parentheses before the word "who" in line 8 and inserting triple parentheses before and after the words "knowingly and" in that same line; inserting triple parentheses before the second word "or" in line 9; inserting triple parentheses after the comma in line 11 and deleting the triple parentheses after the word "or" in line 12; deleting the triple parentheses after the word "and" in line 12, and inserting triple parentheses after the word "willfully" in that same line; and when so amended that the section be accepted.

The Committee next considered the sections in Title 42 of the Century Code which define crimes. The first section considered was Section 42-01-15 which presently prohibits the maintenance of a "public nuisance" and, if another punishment is not specifically prescribed, makes it a misdemeanor. The staff redraft of the section would classify it as a Class A misdemeanor.

IT WAS MOVED BY CHIEF ANDERSON, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 42-01-15 be accepted as drafted. Thereafter, the Committee recessed for lunch at 12:02 p.m. and reconvened at 1:00 p.m., at which time the Committee discussed Section 42-02-01, which reads as follows:

1 42-02-01. WHO MAY BRING ABATEMENT.) The attorney general,
2 his assistant, an officer or authorized employee of the state health department,
3 the state's attorney, or any citizen of the county where a common nuisance
4 exists or is maintained, may bring an action in the name of the state to
5 abate and perpetually to enjoin the nuisance.

The Committee Counsel noted that this section was being recommended for amendment on the basis of a motion passed by the Committee on Natural Resources "B" which reads:

"IT WAS MOVED BY REPRESENTATIVE ATKINSON, SECONDED BY SENATOR LEE, AND UNANIMOUSLY CARRIED that the Natural Resources "B" Committee ask the Judiciary "A" Committee to give particular attention to the nuisance laws in its criminal law revision study and give special emphasis to the need for strong public and private nuisance laws as a part of environmental control, and that it call upon the State Health Department for any assistance in this regard."

The Committee Counsel noted that he had discussed the Title 42 provisions with Mr. Willis Van Heuvelen, Executive Director of the Health Department, and that Mr. Van Heuvelen was present. The Committee Counsel indicated that the proposed amendment to Section 42-02-01 had the approval of Mr. Van Heuvelen because it would tend to clarify the department's authority to bring action to abate a nuisance.

Mr. Van Heuvelen noted that the department is often called upon to take action against nuisances of all types, and that the only statutory statement regarding its right to abate them has to do with air pollution-type nuisances.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SENATOR JONES, AND CARRIED that Section 42-02-01 be amended by inserting triple parentheses before the word "his" in line 2 and after the word and comma "assistant," in the same line; deleting the underscored material on line 2 and inserting in lieu thereof the words "the state health officer"; and inserting triple parentheses around the word "common" in line 3.

It was noted that these amendments were designed to ensure that authorization existed to bring an action for any type of nuisance. In addition, the language relating to "assistants" was deleted because a reference to the principal official includes anyone working in his agency.

The Committee next discussed Section 42-02-04 which deals with abatement of common nuisances, and provides that when a common nuisance is closed, any person breaking it open can be punished for contempt. The principal staff amendment is to clarify the reference to indicate that it will be criminal contempt. The Committee Counsel noted that again the section raised the question as to what is a "common" nuisance. Mr. Van Heuvelen noted that Section 23-05-04 of the Century Code authorized local boards of health to abate or remove "any nuisance", and to charge the expense thereof against the lot or parcel of land upon which the work was done. Mr. Webb questioned whether we were not limiting the scope of Section 42-02-04 by use of the word "common".

The Committee then discussed the use of the word "constable", wondering whether such an officer existed. The Chairman directed the staff to check on the use of the word "constable", and to redraft Sections 42-02-04, 42-02-05, and 42-02-10, noting the difference between the terms "common nuisance", "public nuisance", and "nuisance".

The Committee then considered the criminal sections in Title 61 of the Century Code, and specifically Subsections 1 and 2 of Section 61-28-08, which read as follows:

- 1 61-28-08. PENALTIES - INJUNCTIONS.)
- 2 1. Any person who willfully violates this chapter or any permit condition
- 3 or limitation implementing this chapter shall be punished by a
- 4 fine of not more than twenty-five thousand dollars per day of violation,
- 5 or by imprisonment in the county jail for not more than one year,
- 6 or both. If the conviction is for a violation committed after a first
- 7 conviction of such person under this paragraph, punishment shall
- 8 be by a fine of not more than fifty thousand dollars per day of

9 violation, or by imprisonment in the county jail for not more than
10 two years, or by both.

11 2. Any person who knowingly makes any false statement, representation,
12 or certification in any application, record, report, plan or other
13 document filed or required to be maintained under this chapter or
14 who falsifies, tampers with, or knowingly renders inaccurate any
15 monitoring device or method required to be maintained under this
16 chapter, shall upon conviction, be punished by a fine of not more than
17 ten thousand dollars or by imprisonment in the county jail for not
18 more than six months, or by both.

The Committee Counsel noted that he was not recommending amendments to either Subsection 1 or Subsection 2 of this section. He stated that he was in receipt of a letter from the Denver office of the Environmental Protection Agency, wherein it was stated that amendment of these two subsections to make them accord with the penalty classification format established by Senate Bill No. 2045 "would seriously jeopardize the assumption of the National Pollutant Discharge System by the State of North Dakota". Committee Counsel stated that it was his recommendation that the Committee issue a directive to the staff of the Legislative Council to contact the North Dakota Congressional Delegation seeking necessary changes in the relevant federal statutes to allow North Dakota to adhere to its predetermined penalty classification format.

Mr. Van Heuvelen stated that he would support the staff recommendation, but would hope that legislative action to reclassify these subsections would not be successful until the Federal Government had agreed that they could be reclassified without loss of the State's right to assume the National Pollutant Discharge System. He noted that the permit program would be taken over by the Health Department this spring. Mr. Van Heuvelen indicated that a Committee motion to reclassify the two subsections at this time would not jeopardize assumption of the permit system. However, should the Committee's recommendation, made in the form of the motion referred to, pass the Legislature without prior concessions from the Federal Government, then the permit system program might be jeopardized.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND UNANIMOUSLY CARRIED that Subsections 1 and 2 of Section 61-28-08 be redrafted so as to classify them as Class A misdemeanors in accordance with the penalty classification format contained in the new Criminal Code passed during the 1973 Legislative Session.

The Chairman directed the staff to address letters to our Congressional Delegation, and other interested persons, explaining the Committee's actions with regard to Subsections 1 and 2 of Section 61-28-08.

The Committee next considered Section 61-01-10, which reads as follows:

1 61-01-10. INTERFERENCE WITH PIERS OR BOOMS - PENALTY.) Every
2 person who, without authority of law, interferes with any pier, boom, or
3 dam, lawfully erected or maintained upon any waters within this state or
4 who hoists any gate in or about any such structure, is guilty of a class A
5 misdemeanor.

The Committee Counsel stated that the staff recommendation was that this section be repealed as its provisions were essentially covered by Sections 61-01-09 and 12.1-21-05. He indicated that the legal staff of the State Water Commission concurred in this repeal recommendation. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 61-01-10 be recommended for repeal.

The Committee next discussed Section 61-01-11, which reads as follows:

1 61-01-11. REMOVING OR INJURING PILES - PENALTY.) Every person
2 who (((maliciously draws up or))) willfully removes (((, cuts, or otherwise)))
3 or injures any piles fixed in the ground and used for securing any bank
4 or dam, of any river, canal, drain, aqueduct, marsh, reservior, pool,
5 dock, quay, jetty, or lock, shall be (((punished by imprisonment in the
6 penitentiary for not more than five years and not less than two years, or
7 by imprisonment in a county jail for not more than one year, or by a
8 fine of not more than five hundred dollars, or by both such fine and
9 imprisonment))) guilty of a class A misdemeanor.

The Committee Counsel noted that the staff recommendation was that this section be repealed as it was covered by Section 12.1-21-05 defining criminal mischief. He indicated that the Water Commission attorney concurred in this recommendation.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 61-01-11 be repealed.

The Committee next discussed Section 61-01-12, which reads as follows:

1 61-01-12. FOULING WATERS WITH GAS TAR OR OTHER REFUSE -
2 PENALTY.) Every person who throws or deposits any gas tar or refuse
3 of any gas house or factory into any public waters, river, or stream, or
4 into any sewer or stream emptying into any such public waters, river,
5 or stream, is guilty of a class A misdemeanor.

The Committee Counsel noted that the Water Commission staff concurred in the Legislative Council staff recommendation that this section be repealed. In addition, he noted that the Legislative Council's Committee on Natural Resources "B" was also recommending repeal of this section, because its provisions were covered by more general statutes prohibiting pollution of public waters. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 61-01-12 be repealed.

The Committee next discussed Section 61-01-13, which reads as follows:

1 61-01-13. FOULING PUBLIC WATERS WITH DEAD ANIMALS OR OTHER
2 REFUSE - PENALTY.) Every person who deposits or places, or causes
3 to be deposited or placed, any (((dead animal, offal, or other))) refuse
4 matter offensive to the sight or smell or deleterious to health, upon the

5 banks or in the waters of any lake, river, or stream (((so far as the same
6 is))) within the jurisdiction of this state, is guilty of (((a misdemeanor, and
7 shall be punished by a fine of not less than twenty dollars nor more than
8 one hundred dollars))) an infraction.

The Committee Counsel stated that the staff recommendation, concurred in by the Water Commission staff and by the Committee on Natural Resources "B", was that this section be repealed. (Note: Section 61-01-14 makes internal reference to Section 61-01-13.)

IT WAS MOVED BY MR. WEBB, SECONDED BY SENATOR JONES, AND CARRIED that Section 61-01-13 be repealed.

The Committee next considered the provisions of Section 61-01-16, which reads as follows:

1 61-01-16. ERECTION OF GUARDS WHEN CUTTING ICE - PENALTY FOR
2 FAILURE TO DO SO.) All persons (((and corporations))) cutting ice in
3 or upon any waters within the boundaries of this state, for the purpose of
4 removing such ice for sale, shall surround the cuttings and openings
5 made with fences or bushes or other guards sufficient to warn all persons
6 of such cuttings and openings, and shall maintain the same until ice has
7 formed again in such openings to a thickness of at least six inches. Any
8 person violating this section is guilty of a class A misdemeanor.

The Committee Counsel questioned whether this section is necessary, and noted that if it is, perhaps its coverage should not be limited solely to commercial endeavors. In addition, he noted that the particular neglect which was prohibited by the section was probably covered by Section 12.1-17-03 defining the new offense of "reckless endangerment". He indicated that the Water Commission staff had no comment regarding this section.

Chief Anderson stated that the action mandated by this section was very necessary, as it was extremely dangerous to cut ice without providing warnings and protections around the opening. He indicated that there had been some unfortunate incidents, or near incidents, on the Red River near Fargo.

The Committee discussed the possibility of deleting the words "for sale" on line 4 in order to ensure coverage of anyone who cut and removed ice from any waters within the boundaries of this State. The desirability of deleting the entire section and leaving coverage of this type of behavior under Section 12.1-17-03 was also discussed. The Committee consensus was that it would be desirable to leave the provisions in this section so as to set a standard, knowing violation of which could be prosecutable under Section 12.1-17-03.

IT WAS MOVED BY SENATOR JONES AND SECONDED BY CHIEF ANDERSON that the words "or commercial use" be inserted after the word "sale" on line 4, and that triple parentheses be inserted before and after the last sentence of the section; and that the words "class A" be deleted from line 8. Judge Teigen suggested that the motion be amended to make specific reference to the fact that criminal penalties for failure to obey the standards set forth in Section 61-01-16

could be found in Section 12.1-17-03. SENATOR JONES, WITH THE APPROVAL OF HIS SECOND, ACCEPTED JUDGE TEIGEN'S PROPOSAL AS PART OF HIS MOTION, AND THEREAFTER THE MOTION CARRIED.

The Committee next discussed Section 61-01-22 which would require a person to have a permit to drain water from certain natural impoundments, and provides that failure to secure a permit prior to such drainage renders the person civilly liable and guilty of a misdemeanor punishable by a fine of not more than \$100. The Committee Counsel noted that this section had been reclassified as an infraction. He said that the Water Commission staff desired retention of criminal liability in this section and that the "infraction" level was considered appropriate by that staff.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE GLASER, AND CARRIED, with Senator Jones voting in the negative, that Section 61-01-22 be approved as drafted.

The Committee next discussed Section 61-01-25 which provides a penalty for anyone violating any of the provisions of Chapter 61-01 for which another penalty was not specifically provided, or for violating any rule or regulation of the state engineer for which another penalty was not specifically provided. The offense is presently classified as a misdemeanor punishable by a fine of not more than \$500, by imprisonment for not more than 30 days, or by both. The Committee Counsel stated that the staff draft reclassified it as a Class B misdemeanor. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 61-01-25 be accepted as drafted.

The Committee next discussed the provisions of Section 61-04-12, which reads, in its revised version, as follows:

1 61-04-12. USE OF UNSAFE WORKS A MISDEMEANOR - DUTY OF STATE'S
2 ATTORNEY.) The use of works for the storage, diversion, or carriage
3 of water, at any time after an inspection thereof by the state engineer and
4 receipt of notice from him that the same are unsafe for the purpose for which
5 they are used, until the receipt of notice from him that in his opinion they
6 have been made safe, shall be a class A misdemeanor. In case of any violation
7 of this section, the state engineer shall give prompt notice to the appropriate
8 state's attorney (((of the county in which such works are located. The
9 state's attorney, at once))), who shall proceed immediately against the owner,
10 and all parties responsible for such violation.

Representative Hilleboe noted that the section heading should use the word "PENALTY" instead of the words "A MISDEMEANOR". In addition, he stated that the section should be worded so that the emphasis was on any person using diversion, storage, or water carriage works shall be guilty, instead of the wording presently used.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY MR. WEBB, AND CARRIED that triple parentheses be inserted around the words "A MISDEMEANOR" in the section heading and that "- PENALTY" be inserted following the second triple parentheses in line 1; that triple parentheses be inserted before the word "The" in line 2 and after the word "of" in the same line, and that the words

"any person using" be inserted after the second triple parentheses in line 2; insert the word "and" following the comma in line 5; insert the words "guilty of" following the word "be" in line 6; insert triple parentheses before the word "In" in line 6; delete the word "appropriate" in line 7, and delete the triple parentheses in line 8; delete the triple parentheses and word "who" in line 9 and delete the word "immediately" in the same line; and insert triple parentheses after the period in line 10.

Representative Hilleboe noted that he was troubled by the section just covered by the Committee, i.e., Section 61-01-25. He wondered how the Legislature could check on what rules and regulations were being promulgated by the various state agencies. He said that he was afraid there was very little legislative control over the rules and regulations which were promulgated once the Legislature had given a general authorization for them to be promulgated. The Committee discussed this fact at length, and it was noted that many of the rules and regulations were on file with the Secretary of State, but were not generally indexed, and it was difficult to find a specific rule dealing with a specific topic.

Judge Teigen suggested that one way in which the Legislature could gain a modicum of control over the regulations and rules issued by the various executive agencies would be to require legislative confirmation of all rules and regulations passed prior to any regular session. The Committee Counsel indicated that the Legislature would need several sessions in order to confirm all of the existing rules.

Representative Hilleboe suggested that the staff prepare a study resolution calling for a continuing study of those criminal statutes which authorize the passage of rules and regulations which then have the effect of criminal law, with the study to include a comprehensive look at the rules and regulations presently in force. The Chairman directed the staff to prepare such a resolution for the Committee's consideration.

The Committee next considered Section 61-06-23, which reads as follows:

1 61-06-23. OFFICERS NOT TO BE INTERESTED IN CONTRACT - PENALTY.)
2 No director nor any officer named in this chapter shall be interested in any
3 manner, directly or indirectly, in any contract awarded or to be awarded
4 by the board, or in the profits to be derived therefrom, nor shall he
5 receive any gratuity or bribe. For any violation of the provisions of this
6 section, such officer or director shall be guilty of a class C felony (((. and
7 his conviction shall work a forfeiture of his office, and he shall be punished
8 by a fine of not more than five thousand dollars, or by imprisonment in the
9 penitentiary for not more than five years, nor less than one year))).

The staff recommended that this section be repealed as its provisions were covered by Sections 12.1-13-03 and 12.1-12-01. The Committee Counsel noted that the Water Commission staff concurred in this recommendation. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY CHIEF ANDERSON, AND CARRIED that Section 61-06-23 be repealed.

The Committee next considered Section 61-08-15, which reads as follows:

1 61-08-15. OFFICER OF IRRIGATION DISTRICT ACCEPTING COMMISSION
2 OR COMPENSATION IN REGARD TO BONDS - MISDEMEANOR.) Any officer
3 of an irrigation district who accepts from a bidder, or prospective bidder,
4 for bonds, a commission or compensation for services of any nature rendered
5 in connection with the issuance, sale, or delivery of such bonds is guilty
6 of a class A misdemeanor.

The Committee discussed this section and it was concluded that its provisions were covered by the provisions of Section 12.1-13-03 which prohibited a public servant from having an interest, directly or indirectly, in a sale, lease, or contract which he is authorized to enter into in his official capacity. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 61-08-15 be repealed.

The Committee discussed Section 61-14-06 which provides that it is unlawful to take water from a diversion ditch without use of an appropriate measuring device. The Committee Counsel noted that this section had been amended to strike the words "a misdemeanor" and to substitute the word "unlawful" therefor in order that the penalty for the section might be keyed to the general penalty section contained in Section 61-14-11.

IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 61-14-06 be accepted as drafted.

The Committee next discussed Section 61-14-07, which read as follows:

1 61-14-07. UNLAWFUL INTERFERENCE WITH RIGHTS TO USE OF WATER
2 - PENALTY.) Any person (((, association, or corporation,))) interfering
3 with or injuring or destroying any (((dam,))) headgate, weir, benchmark,
4 or other appliance for the diversion, storage, apportionment, or measure-
5 ment of water, or for any hydrographic surveys, or who shall interfere
6 with any person (((or persons))) engaged in the discharge of duties connected
7 therewith, shall be guilty of a class A misdemeanor, and also shall be liable
8 for the injury or damage resulting from such unlawful act. The state
9 engineer and the person in charge of an irrigation work, and their authorized
10 assistants and agents, may enter upon private property for the performance
11 of their respective duties, but shall do no unnecessary injury thereto.

The Committee Counsel noted that the word "dam" had been deleted because destruction or willful tampering with dams was covered in Section 61-01-09. IT WAS MOVED BY CHIEF ANDERSON, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 61-14-07 be accepted as drafted.

The Committee next discussed Section 61-14-08 which makes it unlawful to use water to which another person is entitled without authorization; and also makes it unlawful to begin or carry on construction of storage or water carrying

works until a permit has been issued. The Committee Counsel noted that the word "unlawful" had been substituted for the words "a misdemeanor" in order to allow reliance on the general penalty section, Section 61-14-11, for the criminal penalty for a violation of Section 61-14-08. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 61-14-08 be accepted as drafted.

The Committee considered Section 61-14-09, which reads as follows:

1 61-14-09. BRIDGES OVER DITCHES OR CANALS - PENALTY.) The
2 owner of any ditch, canal, or other structure for storing or carrying
3 water, shall construct and maintain a substantial bridge where the same
4 crosses any highway or publicly traveled road, not less than fourteen
5 feet wide, or shall reconstruct the road in a substantial manner and in
6 a convenient location for public travel. Any violation of the provisions
7 of this section shall be a class A misdemeanor. The board of county
8 commissioners shall be authorized to construct any bridge or road, if
9 not built by the owner of the works within three days after the obstruction
10 of the road, and may recover the expense thereof and costs in a civil
11 suit, unless the same shall be paid by the owner of the works within ten
12 days after demand therefor. The board of county commissioners may make
13 reasonable requirements as to the size and character of any such bridge
14 along a public highway, or for the necessary reconstruction of such a road,
15 and upon failure to comply therewith, may do the necessary work and collect
16 the expense thereof and costs as hereinbefore provided. After the construction
17 of such bridge or road as part of a public highway, the same shall be main-
18 tained by the board of county commissioners.

The staff recommendation regarding this section was that the provision for criminal liability be deleted, as it was quite sufficient to authorize a board of county commissioners to recover the cost of constructing a bridge or road in a civil suit. The Committee Counsel noted that the Water Commission staff concurred in this recommendation.

IT WAS MOVED BY REPRESENTATIVE AUSTIN, SECONDED BY JUDGE GLASER, AND CARRIED that on line 6 triple parentheses be inserted before the word "Any"; and that in line 7 the words "class A" be deleted and that triple parentheses be inserted after the period.

The Committee next considered Section 61-14-10 which makes it unlawful to place or maintain an obstruction in a water diversion or storage works, or to prevent convenient access thereto. Presently, the section is classified as a misdemeanor, but the staff recommendation is that that classification be deleted, and that reliance be placed on the general penalty provision in Section 61-14-11 for punishment of violations of Section 61-14-10. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 61-14-10 be accepted as drafted.

The Committee next considered Section 61-14-11 which provides a general penalty for violation of the provisions of Chapter 61-14. The staff draft would set the penalty at a Class B misdemeanor, as the present potential penalty is from \$20 to \$250 in fines, or up to six month's imprisonment, or both.

IT WAS MOVED BY CHIEF ANDERSON, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 61-14-11 be accepted as drafted.

The next section to be considered by the Committee was Section 61-14-15 which presently provides that it is a misdemeanor to divert water from an irrigation ditch or interfere with an irrigation ditch without the permission of the owner. Presently, the offense is punishable by a fine of from \$25 to \$50. The staff draft would reclassify it as an infraction. IT WAS MOVED BY JUDGE HEEN, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 61-14-15 be accepted as drafted.

The Committee next considered Section 61-15-08, which reads as follows:

1 61-15-08. DRAINAGE OF MEANDERED LAKE - PENALTY.) Any person
2 who, without written consent of the state engineer (((who))), shall drain
3 or cause to be drained, or who shall attempt to drain any lake or pond,
4 which (((shall have been))) has been meandered (((and its metes and bounds
5 established))) by the government of the United States in the survey of public
6 lands, shall be guilty of a class B misdemeanor (((and shall be punished
7 by imprisonment in the county jail for not more than ninety days, or by
8 a fine of not more than five hundred dollars, or by both such fine and
9 imprisonment))).

The Committee Counsel noted that the Water Commission staff concurred in the amendments which were done for the sake of clarification. IT WAS MOVED BY MR. WEBB, SECONDED BY CHIEF ANDERSON, AND CARRIED that Section 61-15-08 be accepted as drafted.

The Committee considered Section 61-16-44 which presently makes it a misdemeanor, punishable by a fine of no more than \$50 or by imprisonment for no more than 30 days, or by both fine and imprisonment, to violate any of the provisions of Chapter 61-16 which relates to the powers and duties, and organization of water management districts. The staff revision reclassified the section as a Class B misdemeanor. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 61-16-44 be accepted as drafted.

The Committee considered Section 61-20-04, which reads as follows:

1 61-20-04. ARTESIAN OR FLOWING WELLS - PENALTY FOR (((VIOLATION
2 OF PROVISIONS OF CHAPTER))) CERTAIN ACTIONS.) The owner or person
3 in control of an artesian or flowing well, who shall:
4 1. Allow (((the same))) it to flow without a valve or (((sufficient
5 contrivance))) other device for checking the flow as required by
6 law, or without proper repair of pipes and valves;

7 2. Interfere with the (((same when properly adjusted by the proper
8 authorities))) well, valve, or other device: or
9 (((3. Permit the water to waste unnecessarily;
10 4.)))3. Permit the water to run upon the lands of another or into the
11 ditches along any public road except a regularly established
12 drainage ditch (((; or
13 5.)))4. Interfere with any officer duly authorized to inspect the same or
14 measure its flow or pressure))),
15 shall be guilty of a class B misdemeanor (((and shall be punished by a
16 fine of not less than five dollars nor more than fifty dollars))). The
17 provisions of this section (((also))) shall also apply to the officer or members
18 of a board in charge of wells belonging to the state, or any county, township,
19 or municipality.

Representative Murphy inquired as to why Subsection 3 was deleted. The Committee Counsel stated that he felt the subsection would be extremely difficult to enforce as a criminal statute, and that it might be subject to attack as void due to vagueness. After further discussion, the Committee consensus seemed to be that Subsection 3 would be enforceable. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED, with Senator Jones voting in the negative, to reinstate Subsection 3 of Section 61-20-04 and then accept the section as drafted.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the Committee reconsider its action by which it amended and approved Section 61-20-04, and further amend the section by adding the word "or" at the end of line 9; and delete the triple parentheses and number and period "4." in line 13, and that when so amended the section be accepted. Judge Teigen explained that this amendment was made because the present Subsection 5 of Section 61-20-04 was covered by the provisions of Section 12.1-08-01 which prohibits physical obstruction of a governmental function.

The Committee next discussed Section 61-21-39 which provides the procedure for petitioning for construction of a "lateral drain" and says that anyone who violates any provisions of the section is guilty of a misdemeanor punishable by a fine of not more than \$100 or by imprisonment for not more than 30 days or by both. The staff draft has reclassified it as a Class B misdemeanor. A question arose concerning the definition of "lateral drain", and the Committee Counsel, quoting from Subsection 4 of Section 61-21-01, noted that a lateral drain was "a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain, provided that a determination by the board as to whether an existing or proposed drain is a lateral or a new drain within the meaning of this subsection shall be conclusive when entered upon the records of such board". The board referred to in the definition of "lateral drain" is the board of drainage commissioners appointed by a board of county commissioners.

IT WAS MOVED BY CHIEF ANDERSON, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 61-21-39 be accepted as drafted.

The Committee next considered Section 61-27-57, which reads as follows:

1 61-27-57. PENALTY FOR VIOLATION ((OF CHAPTER)) OF RULES
2 AND REGULATIONS.) If any person ((willfully and maliciously shall
3 remove any surveyor's stake set along the line of any drain laid out under
4 the provisions of this chapter, or shall obstruct or injure any such drain,
5 or))) shall violate any valid rule or regulation promulgated by the board,
6 (((for each and every such offense))) he shall be guilty of ((a misdemeanor
7 and shall be punished by a fine of not more than twenty-five dollars together
8 with such sum as will be required to repair such damage and costs of suit.
9 Such penalty may be recovered in an action by the board))) an infraction.
10 The board may bring a civil action to recover damages resulting from violations,
11 plus costs of suit, and all sums recovered (((Whenever the amount of any
12 recovery shall be collected it))) shall be deposited with the county treasurer
13 to the credit of the proper drain fund.

The Committee Counsel noted that the deleted language in lines 2 through 5 was covered by Section 12.1-21-05 prohibiting criminal mischief. He noted that the section provided that criminal liability should attach to rules and regulations promulgated by board of drainage commissioners. Senator Jones noted that there was a great deal of danger in this rulemaking power by local boards, especially where the rules promulgated were not checked for compliance with law by the Attorney General. SENATOR JONES MOVED to delete from Section 61-21-57 that language which made a violation of the rules or regulations promulgated by the board a criminal offense. It was noted that such a violation would be an infraction in accordance with the staff redraft. It was noted that an infraction classification had usually been assigned thus far in the Committee's study when dealing with criminal liability for rules and regulations promulgated by local boards. SENATOR JONES' MOTION FAILED for lack of a second. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with four negative votes, that Section 61-21-57 be adopted as drafted.

The Committee next considered Section 61-27-14 which provides a penalty for violating the provisions of Chapter 61-27 dealing with regulations of the use of motorboats and other watercraft. Presently, the section provides a maximum punishment of a fine of \$100 or imprisonment for 30 days, or both. The staff draft reclassifies this section as a Class B misdemeanor. IT WAS MOVED BY CHIEF ANDERSON, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 61-27-14 be accepted as drafted.

The Committee next considered the provisions of Title 41 which embodies the Uniform Commercial Code. The first section to be considered was Section 41-02-48 which was amended simply to delete references to larceny and substitute references to "theft" under Chapter 12.1-23. IT WAS MOVED BY JUDGE HEEN, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 41-02-48 be accepted as drafted.

The Committee then considered Section 41-03-80 which provides that it is unlawful to take a renewal promissory note or other negotiable obligation without cancelling and returning the original, or marking or causing the original to be marked renewed. Presently, this section is classified as a misdemeanor and the staff redraft reclassified it as a Class A misdemeanor. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 41-03-80 be accepted as drafted.

The Committee then considered the revised sections which define offenses contained in Title 13 of the Century Code. The first section considered was Section 13-01-11, which reads as follows:

1 13-01-11. FRAUDULENT CONVENYANCE (((A MISDEMEANOR)))
2 - PENALTY.) (((Every))) A person who (((, being))) is a party to any
3 conveyance or assignment of any interest in real or personal property
4 (((, or of any interest therein, made or created))) entered into with
5 intent to defraud prior or subsequent purchasers, or to hinder (((, delay,
6 or defraud))) creditors (((or other persons))), except those with a security
7 interest in the property involved, and every person who, (((being privy
8 to or))) knowing of such conveyance (((,))) or assignment (((, or charge))),
9 willfully puts (((the same in))) it to use as having been made in good
10 faith, is guilty of a class A misdemeanor.

The Committee Counsel noted that this section did not seem to be covered by Section 12.1-23-08 which prohibits the transfer of property with intent to defraud a creditor who has a security interest in that property, and therefore should probably be retained. IT WAS MOVED BY JUDGE HEEN, SECONDED BY CHIEF ANDERSON, AND CARRIED that Section 13-01-11 be accepted as drafted.

The Committee next considered Section 13-01-12, which reads as follows:

1 13-01-12. REMOVING OR DISPOSING OF PROPERTY TO DEFRAUD
2 CREDITORS - (((MISDEMEANOR))) PENALTY.) Every person who removes
3 any of his property (((out of any))) from a county with intent to prevent
4 a levy thereon under execution or attachment, or who secretes, assigns,
5 conveys, or otherwise disposes of any of his property with intent to defraud
6 any creditor or to prevent the property from being made liable for the
7 payment of his debts, and every person who receives any property with
8 such intent, is guilty of a class A misdemeanor.

IT WAS MOVED BY CHIEF ANDERSON, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 13-01-12 be accepted as drafted.

Judge Heen raised questions about the deletion of the language "or other persons" from line 6 of Section 13-01-11. The Committee Counsel stated that the language was deleted because the staff could not think of who "other persons" would be if they were not creditors. Judge Heen suggested that they might be one of the parties to a marriage, or the victim of a tort-feasor. Judge Teigen

pointed out instances in North Dakota history where personal sureties for governmental officials had transferred property in order to avoid a levy upon that property in satisfaction of a claim against the surety. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE HEEN, AND CARRIED that the Committee reconsider its action by which it accepted the staff draft of Section 13-01-11.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE HEEN, AND CARRIED that in line 5 after the first comma beginning triple parentheses should be inserted before the second word "or", the next set of beginning triple parentheses should be deleted; insert an underscored comma after the word "creditors" in line 6; and delete the triple parentheses around the prepositional phrase "or other persons" in line 6.

The Committee next considered Section 13-01-13, which reads as follows:

1 13-01-13. UNLAWFULLY PREFERRING CREDITORS - PENALTY.) Every
2 person who, knowing that his property is insufficient for the payment of
3 all his lawful debts, shall assign, transfer, or deliver any property for the
4 benefit of any creditor or creditors upon any trust or condition that any
5 creditor shall receive a preference or priority over any other, (((except
6 in the cases in which such a preference is expressly allowed to be given
7 by law,))) or with intent to create such a preference or priority, is guilty
8 of a class A misdemeanor. This section shall not apply to the giving or
9 creating of preferences expressly allowed by law.

IT WAS MOVED BY SENATOR JONES, SECONDED BY CHIEF ANDERSON, AND CARRIED that the word "creditor" should be added after the word "other" on line 5, and that with that amendment the section should be accepted.

The Committee next considered Section 13-03-22, which reads as follows:

1 13-03-22. PENALTY.) Any person who (((shall violate))) violates
2 any of the provisions of this chapter or regulations or orders promulgated
3 thereunder shall be guilty of a class A misdemeanor (((and shall be punished
4 by a fine of not more than one thousand dollars or by imprisonment of not
5 more than one year, or both such fine and imprisonment))). Any contract
6 of loan (((or any))) made or containing provisions in violation of this
7 chapter is void. Any act (((in its making or collection))) in collecting
8 a loan which violates the provisions of this chapter shall have the result of
9 voiding the contract of loan (((and))). A lender shall have no right to
10 collect, receive, or retain any principal, interest or charges whatsoever
11 on a void contract of loan.

The Committee Counsel noted that this section was in a chapter dealing with small loans, and that the provisions of the chapter were administered by the office of the State Examiner. The penalty classification had been discussed with Mr. Alf Hager by telephone. IT WAS MOVED BY REPRESENTATIVE HILLEBOE,

SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 13-03-22 be accepted as drafted.

Judge Teigen indicated that he was still having problems with Section 13-01-11, especially with the language in lines 7, 8, and 9 having to do with willfully putting a previous fraudulent conveyance to use as having been made in good faith. He suggested that in line 7, everything after the word "involved" be deleted and that the remainder of the section be deleted and that the following words be substituted: "who knowingly participates in such a conveyance or assignment is guilty of a class A misdemeanor". The Committee Counsel suggested that this would cause grammatical difficulties since the initial reference on line 2 was to "a person who is a party", and would exclude persons who were not parties to the initial conveyance or assignment. Judge Teigen stated that the word "A" in line 2 should be deleted and replaced with the word "Any" in order that the section would refer to any person who was a party to any conveyance, thus covering a series of conveyances after the first one made to defraud prior or subsequent purchasers, creditors, or other persons.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY SENATOR JONES, AND CARRIED that the Committee reconsider its action by which it amended and then adopted Section 13-01-11. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY SENATOR JONES, AND CARRIED that Section 13-01-11 be amended by deleting the word "A" in line 2 and inserting in lieu thereof the word "Any"; by inserting triple parentheses before the second word "or" on line 5 and deleting the triple parentheses before the second comma in the same line, and inserting an underscored comma after the word "creditors" in line 6; deleting the triple parentheses before and after the prepositional phrase "or other persons" in line 6; inserting triple parentheses before the word "and" in line 7, and inserting ending triple parentheses after the word "person" in the same line; inserting triple parentheses before the second comma in line 7, and deleting the triple parentheses before the word "being" in that same line; deleting the triple parentheses and underscored material in line 8; deleting the triple parentheses and underscored material in line 9; inserting triple parentheses after the word and comma "faith," in line 10, and inserting the following words immediately after those triple parentheses: "knowingly participates in such a conveyance or assignment".

The Committee next considered Section 13-05-10 which provides a penalty for violating Chapter 13-05 which deals with collection agencies, and is administered by the Department of Banking and Financial Institutions.

IT WAS MOVED BY CHIEF ANDERSON, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 13-05-10 be accepted as drafted.

The Committee next discussed Section 13-06-02, which reads as follows:

- 1 13-06-02. PENALTIES.) Except as otherwise provided herein, no person
- 2 shall engage in the business of debt adjusting. Whoever shall engage in
- 3 the business of debt adjusting shall be guilty of a class B misdemeanor ((and
- 4 upon conviction thereof shall be fined not more than five hundred dollars
- 5 or imprisoned for not more than six months, or both))).

The Committee Counsel noted that this section was in a chapter relating to "debt adjusting" and prohibiting it in most instances. Debt adjusting, he stated, is defined in Subsection 1 of Section 13-06-01 as "the making of a contract, express

or implied, with a debtor whereby the debtor agrees to pay a certain amount of money or other thing of value periodically to the person engaged in the debt adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon". He noted that the chapter had been passed during the last legislative session.

Discussion arose concerning the need for the first sentence of Section 13-06-02. The Committee Counsel stated that it was probably needed to ensure the applicability of the exemptions from coverage of the chapter provided for in Section 13-06-03. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that triple parentheses be inserted around the entire text of Section 13-06-02 and that the following language be added at the end of that section: "Any person who engages in the business of debt adjusting, unless exempted under the provisions of section 13-06-03, shall be guilty of a class A misdemeanor."

Thereafter, the Committee recessed until 9:00 a.m. on Friday, February 15, 1974, at which time it took up a discussion of the provisions of Title 12.

The Committee discussed Sections 12-07-07 through 12-07-09 which prohibit the carrying or displaying of red or black flags, or flags of enemy nations. The Committee Counsel noted that these sections should be repealed and a separate bill was introduced during the last session to do so. He stated that if the Committee decides not to recommend outright repeal, then the three sections should be moved to Title 12.1, preferably near Section 12.1-07-02. In addition, he suggested that the three sections be redrafted and combined into one section as a Class B misdemeanor. Finally, the Committee Counsel noted that whatever was to be done affirmatively would have to be done in a separate bill, because the three sections were enacted as an initiated measure in 1920.

Chief Anderson noted that the sections did not specifically cover the displaying of offensive banners, and wondered whether that should not be covered. The Chairman suggested that if that were to be covered, it be drafted as a separate bill, rather than as part of these sections, so that it would not become involved in the necessity of having a super-majority for passage.

IT WAS MOVED BY SENATOR JONES, SECONDED BY CHIEF ANDERSON, AND CARRIED, with two negative votes, that Sections 12-07-07 through 12-07-09 be repealed, with the repeal provision contained in a separate bill draft; but that the staff also draft an alternative to simply reclassify these sections in accordance with the classification formula proposed in Senate Bill No. 2045, with such reclassification to also be in a separate bill.

The Committee next considered Section 12-44-22, which reads as follows:

1 12-44-22. NEGLECT OF DUTY OF JAILER - PENALTY.) Any jailer
2 in charge of a county jail who (((shall neglect or refuse to conform to)))
3 violates the rules and regulations established by the district judges, or who
4 (((shall neglect or refuse))) refuses to perform any other duty required
5 of him by this chapter, shall be (((punished by a fine of not less than ten
6 dollars nor more than one hundred dollars for each failure or neglect of
7 duty))) guilty of an infraction.

The Committee Counsel noted that Section 12-44-20 provides for the appointment of a "jailer" who must be one of the sheriff's deputies. The Committee discussed whether the section was covered by Section 12.1-11-06 dealing with a public servant who refuses to perform his duties.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY MR. WEBB, AND CARRIED that Section 12-44-22 be repealed.

The Committee next discussed Section 12-44-27. Senator Jones, noting that the section provided the penalty for violation of Section 12-44-25 and 12-44-26, suggested that they could be combined. IT WAS MOVED BY JUDGE TEIGEN AND SECONDED BY REPRESENTATIVE AUSTIN that Section 12-44-27 be adopted as presented.

Mr. Webb stated that he objected to the office, and candidacy forfeiture provisions, noting that perhaps they might be considered unconstitutional. Other members of the Committee discussed the desirability, on some occasions, to be able to give prisoners alcohol. It was noted that there is a particular problem when is was no doctor in the immediate vicinity of the jail. Thereafter, JUDGE TEIGEN'S MOTION FAILED. Senator Jones then reiterated that Sections 12-44-25 through 12-44-27 should be combined. The Chairman directed the staff to redraft Sections 12-44-25 through 12-44-28.

The Committee next discussed Section 12-44-36, which reads as follows:

1 12-44-36. CRUEL TREATMENT OF PRISONERS BY OFFICER - PENALTY.)
2 If any ((officer or other))) person treats ((any))) a prisoner in a cruel
3 or inhuman manner, he shall be ((punished by a fine of not more than
4 one thousand dollars, or by imprisonment in the county jail for not more
5 than twelve months, or by both such fine and imprisonment))) guilty of
6 a class A misdemeanor.

Senator Jones noted that the section now applied to all persons, as it had in the past, and that the title should not refer to cruel treatment of prisoners only by a jail officer. IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE TEIGEN, AND CARRIED that the words "BY OFFICER" in line 1 be inserted in triple parentheses, and that when so amended the section be adopted.

The Committee next considered Section 12-44-37 which mandates that an officer in charge of a prisoner is to use all necessary and appropriate means to protect the prisoner from insult and annoyance by others, and to prevent others from communicating with the prisoner. A person who persists in insulting, annoying, or communicating with the prisoner after being warned to desist by an officer is presently punishable by a fine of not more than \$10, or by imprisonment for not more than three days. The staff has reclassified this section as an infraction. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 12-44-37 be adopted as drafted.

The Committee next considered Section 12-46-07, which reads as follows:

1 12-46-07. MEMBERS OF BOARD AND OFFICERS OF INSTITUTIONS
2 NOT TO BE INTERESTED IN CERTAIN CONTRACTS - PENALTY.) ((No
3 member of the board of administration))) The director of institutions
4 shall not be interested, either directly or indirectly, in any contract

5 for the purchase of building materials, supplies, or other articles for the
6 use of the state (((training))) industrial school, and no officer of (((such)))
7 that institution shall be interested, either directly or indirectly, in any
8 such contract (((for the purchase of building materials, supplies, or
9 other articles for the use of the institution of which he is an officer))).
10 A violation of this section shall constitute a class A misdemeanor.

The Committee Counsel noted that this section could be repealed as its provisions are covered by Section 12.1-13-03 which prohibits public officers from having an interest in contracts which relate to their office. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 12-46-07 be repealed.

The Committee next considered Section 12-46-21, which reads as follows:

1 12-46-21. AIDING INMATES TO ESCAPE - (((MISDEMEANOR))) PENALTY.)
2 Every person who aids or assists any person committed to the state (((training)))
3 industrial school in escaping or attempting to escape therefrom or from any
4 officer thereof, or who knowingly conceals such person after escaping, is
5 guilty of a class A misdemeanor.

The Committee Counsel noted that this section could be repealed as its provisions are covered by Sections 12.1-08-06, 12.1-08-03, and 12.1-06-02 dealing with escape, hindering law enforcement, and criminal facilitation. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 12-46-21 be repealed.

Mr. Hall stated that he did not have any comments with regard to Sections 12-46-07 and 12-46-21, and thanked the Chairman and members of the Committee for inviting him to be in attendance.

The Committee next considered Section 12-47-23, which reads as follows:

1 12-47-23. WARDEN TO MAINTAIN DISCIPLINE (((- ASSISTANCE -
2 PENALTY FOR FAILING TO ASSIST WARDEN))).) All necessary means
3 shall be used, under the direction of the warden, to maintain order in the
4 penitentiary, enforce obedience, suppress insurrections, and effectually
5 prevent escapes even at the hazard of life. (((For this purpose, the warden
6 may command, at all times, the aid of the officers of the penitentiary and
7 of the citizens outside the premises thereof. Any citizen refusing to obey
8 such command shall be liable to such fines, penalties, and forfeitures as
9 are provided in section 12-19-13.)))

The Committee Counsel noted that this section, and the remaining sections in Title 12, had been discussed with Warden Robert Landon and Chief Parole Officer Irv Riedman. During discussion on this section it was noted that it might possibly conflict with the provisions of Subdivisions d and e of Subsection 2 of Section 12.1-05-07 dealing with the limits on the use of deadly force.

The Committee discussed the necessity for the language on lines 4 and 5 intimating that deadly force can be used. It was suggested that all necessary means suggests that, if necessary, deadly force can be used. In addition, the Committee discussed the desirability of having the word "effectually" in line 4 as it added nothing.

IT WAS MOVED BY JUDGE TEIGEN AND SECONDED BY JUDGE PEARCE that Section 12-47-23 be amended by inserting triple parentheses around the word "effectually" in line 4, and inserting triple parentheses before the word "even" in line 5; deleting the triple parentheses in line 5; deleting the period after the numerals in line 9, and inserting a period following the ending triple parentheses in line 9; and that when so amended the section be accepted.

Judge Heen stated that he wanted the minutes to reflect that, by passing this motion, the Committee takes no position at this time as to what the means utilized to maintain order, enforce obedience, suppress insurrections, and prevent escapes might be. Thereafter, THE MOTION PASSED.

The Committee next discussed Section 12-47-24, which reads as follows:

1 12-47-24. REFRACTORY INMATES MAY BE RESTRAINED.) Whenever
2 any inmate of the penitentiary offers violence to any (((officer or guard
3 thereof or to any))) other person ((or inmate)), either within the grounds
4 or premises of the penitentiary or at any place where said inmate may be
5 or may be employed, or attempts to do any injury to the buildings or any
6 workshop of appurtenances thereof, or disobeys or resists any reasonable
7 command of any officer or guard, (((such))) any officer or guard (((shall)))
8 may use (((all))) reasonable means to defend himself (((and))) or another,
9 or to enforce the observance of discipline.

The Committee Counsel noted that this section did not seem to conflict with Subsection 2 of Section 12.1-05-05, and that it was, in fact, broader than the simple use of force authorized by that subsection. The Committee discussed the use of the word "REFRACTORY" in the section heading. The Committee Counsel said that he thought the word "refractory" meant difficult to handle or disobedient. IT WAS MOVED BY CHIEF ANDERSON, SECONDED BY JUDGE HEEN, AND CARRIED that Section 12-47-24 be approved but that the word "REFRACTORY" in the section heading be inserted in triple parentheses and the word "PENITENTIARY" be inserted after "REFRACTORY", and that the word "other" be inserted after the word "any" in line 4.

Judge Teigen suggested that the words "or attempts to do any injury to any other person" be added after the word "offers" in line 2 and that the word "violence" be deleted.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE PEARCE, AND CARRIED that the Committee reconsider the action by which it approved Section 12-47-24; that it amend Section 12-47-24 by inserting triple parentheses around the word "REFRACTORY" in line 1, and inserting the word "PENITENTIARY" prior to the word "INMATES" in that same line; inserting the word "violence" in line 2 in triple parentheses and after the word "violence" insert the the words "or attempts to do any injury" in that same line; insert the words "or property"

after the word "person" in line 3; add the word "other" after the word "any" in line 4, and insert triple parentheses prior to the first word "or" in that same line; and insert triple parentheses after the comma in line 6, insert ";" immediately thereafter, and insert the words "whenever any inmate" after the first word "or" in that same line; and when so amended that the section be accepted.

Because Mr. James Sperry, Superintendent of the State Historical Society, and Mr. Wallace Truwe, Deputy Director of the State Park Service, were present, the Committee suspended its consideration of the provisions in Title 12 and took up consideration of the provisions in Title 55. Mr. Wefald noted that he had met with Mr. Sperry and reviewed the criminal provisions with him and indicated that Mr. Sperry had expressed concern that Sections 12-41-03 and 12-41-04 would be repealed by Senate Bill No. 2045. Those sections dealt with the destruction of antiquities and valuable writings. The staff noted that the sections were repealed because they are covered by Section 12.1-21-05 defining criminal mischief. Mr. Sperry said that if the Council staff believed that Sections 12-41-03 and 12-41-04 are covered by Section 12.1-21-05, he would have no further comment in regard to them.

The Committee considered Section 55-02-03, which reads as follows:

1 55-02-03. RULES AND REGULATIONS TO PROTECT STATE MONUMENTS.)
2 The superintendent of the state historical board, when so authorized by
3 the board, shall have the power to make and enforce suitable rules and
4 regulations relating to the protection, care, and use of any state monument
5 and the violation of any such regulation shall constitute a class B misdemeanor
6 (((and shall be punishable by a fine of not exceeding one hundred dollars
7 or by imprisonment for not more than thirty days or by both such fine
8 and imprisonment))).

Senator Jones inquired as to the definition of a "state monument". Mr. Sperry stated there were problems with that phrase as it was not defined in the Code. He said that it surely included state historical sites, but that the definition was unclear.

Judge Pearce stated that he was greatly troubled by this type of section which authorized jail sentences for violations of rules and regulations concerning which the Committee had no knowledge. He indicated that, in the area of preservation of "state monuments", the rules might deal with relatively petty matters, but a person violating them would be potentially subject to 30 days' imprisonment. Judge Pearce stated that he would much prefer to see the section classified as an infraction.

Senator Jones inquired of Mr. Sperry regarding the number of regulations which the Society had now. Mr. Sperry replied that he knew of only two major regulations under this section: One dealt with the limitation on the horsepower of powerboats that could operate on a certain lake, and the other put limitations on the operation of snowmobiles in a certain park.

The Chairman noted that the staff had been directed to draft a study resolution for an in-depth study of the rules and regulations to which criminal penalties could be attached. Judge Pearce said that he was happy to hear that such a study was going to take place, but said that he felt that, until the study is completed, the Committee ought to ensure that a violation of an unknown rule or regulation could be no more than an infraction.

IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY JUDGE HEEN to change Section 55-02-03 from a Class B misdemeanor to an infraction, and when so reclassified to adopt the section.

The Chairman noted that, although he was not speaking against the motion, the agencies, when they appeared before the legislative standing committees on this Committee's bill, could make arguments for increasing the penalty from an infraction to some grade of misdemeanor based on examples of flagrant violations of important rules or regulations. Judge Pearce noted that a counter-argument could be made on the basis of potential jail sentences for the most petty rules or regulations. Judge Heen reminded the Committee that a second infraction within a given time period could be charged as a misdemeanor, and this might be the way to handle a flagrant violator of rules and regulations regardless of the nature of the particular rule or regulation violated. Thereafter, JUDGE PEARCE'S MOTION CARRIED.

The Committee next considered Section 55-03-07. This section presently makes it a misdemeanor to violate any of the provisions of Chapter 55-03 which provides for the protection of prehistoric sites and deposits. Mr. Sperry stated that he felt the section should be classified as a Class B misdemeanor, even though that would result in an absolute increase in penalty, since the present provision for incarceration is conditioned upon nonpayment of a fine.

IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE PEARCE, AND CARRIED that the staff draft revision of Section 55-03-07 be accepted.

The Committee discussed Section 55-08-03. The Committee Counsel noted that, in discussions with members of the staff of the State Park Service, it had been suggested that this section be classified as an infraction. The reason was to allow the promulgation of rules and regulations which could, with legislative changes, be prosecuted in a summary manner by the State Park Service.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Subsection 8 of Section 55-08-03 be reclassified as an infraction, and that when so reclassified it be accepted.

The Committee again took up the criminal provisions in Title 12, considering particularly Section 12-48.1-04, which reads as follows:

- 1 12-48.1-04. WILLFUL FAILURE TO RETURN - PENALTY.) Any inmate
- 2 released from actual confinement under a release plan who willfully fails
- 3 to return to the designated place of confinement at the time specified in
- 4 the plan shall be deemed to have escaped from the penitentiary and shall
- 5 be punished as provided in section 12.1-08-06.

The Committee Counsel noted that this section was in the chapter dealing with educational and work release from the penitentiary. He indicated that there was some question as to whether it was covered under Section 12.1-08-06. The Committee discussed the meaning of "temporary leave" in Subsection 1 of Section 12.1-08-06, and it was determined that that language covered such things as release under a work release or education release plan. Therefore, Section 12-48.1-04 could be repealed.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY CHIEF ANDERSON, AND CARRIED that Section 12-48.1-04 be repealed as its provisions were encompassed within Section 12.1-08-06 dealing with escape from lawful authority. Judge Pearce asked that the staff be directed to write a letter to the Warden indicating the reason for repeal of Section 12-48.1-04. The Chairman so directed.

The Committee next considered Section 12-49-04, which reads as follows:

1 12-49-04. WARDEN ACCOUNTING OFFICER - DUTY (((- PENALTY
2 FOR NEGLECT OF DUTY))).) The warden of the penitentiary shall keep
3 a true and accurate account of all notes, evidences of indebtedness, and
4 money received by him for the sale of the product of the twine and cordage
5 plant. At the end of each month he shall turn over all money so received
6 to the state treasurer and take his receipt therefor. He at the same time
7 shall furnish the state auditor with a statement showing the amount of money
8 received and the source from which it came. All sums placed in the hands
9 of the state treasurer, arising from sales of the product of said plant, shall
10 be placed to the credit of the general fund. ((The warden shall be subject
11 to a fine of not less than one hundred dollars nor more than five hundred
12 dollars for failure to carry out the provisions of this section.))

The Committee Counsel stated that Warden Landon had recommended that this section be repealed as the twine and cordage plant no longer operates. In addition, he noted that the penalty for failure to carry out the duties described in this section could be deleted if the Committee chose not to repeal the section because the penalty was provided under Section 12.1-11-06 which would punish public servants who do not perform their duties. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 12-49-04 be repealed.

The Committee next considered Section 12-52-06, which reads as follows:

1 12-52-06. PAROLE VIOLATOR GUILTY OF MISDEMEANOR.) Any person
2 paroled from the state (((training))) industrial school who violates the
3 conditions of his parole during the term thereof is guilty of a class A
4 misdemeanor.

The Committee discussed the fact that this section made parole violation a separate offense which was unusual. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 12-52-06 be repealed.

The Committee discussed Section 12-53-12, which reads as follows:

1 12-53-12. RELEASE FROM PROBATION - PERIOD OF PROBATION.)
2 Whenever it is the judgment of the parole board that a person on probation
3 has satisfactorily met the conditions of his probation, it shall cause to be
4 issued to said person a final discharge from further supervision. The length
5 of the period of probation shall not be (((less than the minimum term nor)))

6 more than the maximum term for which he might have been imprisoned, except
7 that in cases where the defendant has been found guilty of abandonment or
8 nonsupport of his wife or children, the period may be continued for as long
9 as responsibility for support continues.

The Committee Counsel noted that the language in the section which was deleted was in accordance with the abolition of minimum terms of imprisonment contained in Senate Bill No. 2045. Representative Hilleboe noted that the language "his wife" was not appropriate in light of the aim of ensuring that legislation provided equal protection of the law to all persons regardless of their sex.

Thereafter, IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY JUDGE TEIGEN, AND CARRIED that the words "his wife" on line 8 be inserted in triple parentheses, and the word "spouse" be inserted thereafter on the same line; and that when so amended the section be accepted.

The Committee next discussed Section 12-53-15, which reads as follows:

1 12-53-15. WHEN PROBATION MAY BE TERMINATED.) Whenever the
2 parole board, the court, or the state's attorney (((,))) shall have reason
3 to believe (((such defendant is violating))) there has been a violation of
4 the terms of his probation, (((such))) the probationer shall be brought before
5 the court wherein the probation was granted for a hearing upon the alleged
6 violation. For this purpose any peace officer or state parole officer may
7 re-arrest the probationer without warrant or other process. Costs incurred
8 in bringing the probationer before the court shall be borne by the county
9 wherein the probation was granted. The court may thereupon, in its
10 discretion, (((without notice revoke and terminate such probation, pronounce
11 judgment, and deliver defendant to the sheriff to be transferred to the
12 penitentiary or other state institution in accordance with the sentence imposed)))
13 take such action as is authorized by subsection 4 of section 12.1-32-07.

The Committee Counsel noted that the substantive amendment (lines 10 through 13) was designed to make this section coordinate with the probation revocation provisions of Senate Bill No. 2045 (see Section 12.1-32-07).

Mr. Webb noted that there were problems in arresting parole or probation violators without a warrant and wondered if other procedures had been looked into. The Committee Counsel noted that the Criminal Code did not deal with the procedures for arrest of parole violators, and that that topic had not been taken into account in revising Section 12-53-15. Judge Heen said part of the problem was with the sentence which began on line 6. He stated that peace officers would like to have authority to arrest a known parolee who was obviously violating one of the terms of his parole without need for first reporting that violation. The Committee Counsel said that he felt the impetus of the section was from the parole board, a court, or a state's attorney, rather than from a peace officer in the field. Judge Heen stated that was the thrust of the section, but that peace officers would like to see it changed.

Chief Anderson, noting that probation and parole were becoming tools which were utilized more and more often, said that peace officers would certainly like to see a means for parole revocation which was not as time consuming as the present means.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY CHIEF ANDERSON, AND CARRIED that the word "board" in line 2 of Section 12-53-15 be inserted in triple parentheses, and the word "officer" be inserted after the word "board" on that same line; delete the triple parentheses before the word "such" in line 3. insert triple parentheses before the word "defendant" on that same line, delete the words "there has been a violation of" and insert the words "probationer has violated" in lieu thereof in line 3; insert triple parentheses around the hyphenated word "re-arrest" in line 7, and insert the word "take" in lieu thereof; and insert the words "in custody" after the word "probationer" in line 7; and that when so amended the section be accepted.

The Committee recessed for lunch and reconvened at 1:30 p.m. at which time it took up Section 12-59-06 which deals with the general powers of the Parole Board, and which was revised to make specific reference to Section 12.1-11-01 as the section which provides the punishment for perjury. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 12-59-06 be accepted as drafted.

The Committee then considered Section 12-59-10 which sets forth the parties who are to receive notice of an application for parole. The Committee Counsel indicated that he had amended the section only to correct the spelling of the word "prosecuted". IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 12-59-10 be accepted as drafted.

The Committee next considered Section 12-60-14, which reads as follows:

1 12-60-14. VIOLATION OF CHAPTER - MISDEMEANOR.) The (((neglect
2 or))) refusal of any officer to make any report, or to do or perform any act
3 required to be made or performed by him in any provision of this chapter shall
4 constitute (((a misdemeanor, and such officer shall be punished by a fine
5 of not less than five dollars nor more than twenty-five dollars))) an infraction.
6 Such (((neglect or))) refusal also shall constitute nonfeasance in office and
7 shall subject the officer to removal from office.

The Committee noted that the provisions of this section were basically covered by Section 12.1-11-06, and thereafter IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 12-60-14 be repealed.

The Committee then considered the revision of criminal sections in Title 44 of the Century Code, considering first Section 44-04-02, which reads as follows:

1 44-04-02. PENALTY FOR FAILURE TO MAKE REPORT.) Any public
2 officer who is required to make an official report to any other officer or
3 board, who willfully (((neglects))) refuses to make such report or perform
4 such official duty at the time and substantially in the manner required by

5 law, shall be guilty of (((a misdemeanor and shall be punished by a fine
6 of not more than five dollars for each day's default))) an infraction.

It was noted that the provisions of Section 44-04-02 were covered by Section 12.1-11-06, but that Section 44-04-02 set a lower penalty for failure to conform to its provisions. IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 44-04-02 be repealed.

Mr. Wefald next read Section 44-04-11 as follows:

1 44-04-11. OFFICES TO BE KEPT WHERE REQUIRED BY LAW - PENALTY
2 (((FOR VIOLATION))) No county, township, or municipal officer (((in
3 this state))) shall keep his office or any books, papers, records, or other
4 property pertaining to his office, at any place other than that (((in which he
5 is))) required by law (((to keep such office))). Any officer violating the
6 provisions of this section is guilty of a class A misdemeanor.

The Committee discussed the meaning of this section at great length and JUDGE PEARCE MADE A MOTION to reword the section, WHICH WAS SUBSEQUENTLY WITHDRAWN. It was noted that, to the extent the law required an officer's office to be maintained in a particular place, a failure to do so would be a violation of Section 12.1-11-06.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE PEARCE, AND CARRIED, with Senator Jones voting in the negative, that Section 44-04-11 be repealed. Representative Hilleboe inquired as to whether Section 12.1-11-06 which mandates that public servants shall do their duty was applicable to a failure to obey the provisions of valid rules and regulations. The Committee Counsel stated that he believed the section was applicable to a violation of valid rules or regulations by a public servant.

The Committee next considered Section 44-04-17, which reads as follows:

1 44-04-17. VARIOUS OFFICERS' RESTRICTIONS - PENALTY.) No public
2 officer, member of any board, bureau or commission, nor any employee or
3 appointee thereof, shall use his office or position for the purpose of effecting
4 the sale or purchase of any equipment, merchandise or service (((for)))
5 from which he will benefit financially. Any person violating the provisions
6 of this section is guilty of a class A misdemeanor (((and shall be punished
7 by a fine of not less than one hundred dollars nor more than one thousand
8 dollars, and removal from office))).

Mr. Wefald noted that this type of unlawful activity seems to be covered under Section 12.1-13-03 which prohibits public servants from having a personal interest in public contracts which they have authority, either alone or in conjunction with others, to enter into.

IT WAS MOVED BY MR. WEBB, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 44-04-17 be repealed.

The Committee considered Section 44-06-13, which reads as follows:

1 44-06-13. ACTING AS NOTARY WHEN DISQUALIFIED - PENALTY.)
2 Any notary public who exercises the duties of his office with knowledge
3 that his commission has expired or that he is disqualified otherwise, or who
4 appends his official signature to any document when the parties thereto have
5 not appeared before him, is guilty of (((a misdemeanor and shall be punished
6 by a fine of one hundred dollars for each offense))) an infraction, and shall
7 also (((shall))) be removed from office by the secretary of state.

The Committee discussed this section at length noting that it contained two separate offenses: First, exercising the office of notary knowing that his commission has expired; and second, appending an official signature to a document when the parties executing the document have not appeared before him. It was noted that the first offense defined in Section 44-06-13 may well be covered by Section 12.1-13-04, Subsection 1, Subdivision a. The Chairman directed the staff to redraft Section 44-06-13 to make two separate offenses of it if necessary, and if not necessary, to redraft it in such a way as to include only the necessary offense definitions.

The Committee next considered Section 44-08-05, which reads as follows:

1 44-08-05. UNLAWFUL EXPENSE AND TRAVELING ACCOUNT - PENALTY -
2 CIVIL ACTION.) Any person violating any of the provisions of sections
3 44-08-03 and 44-08-04 or regulations issued pursuant to section 44-08-04.1
4 is guilty of a class A misdemeanor (((and shall be punished by imprisonment
5 in a county jail for not more than one year, or by a fine of not more than
6 five hundred dollars, or by both such fine and imprisonment))). In addition
7 to the criminal penalties herein imposed, any person who receives public funds
8 for the discharge of a public duty in excess of the amounts allowed by law
9 shall, thirty days after a demand for a return of such excess amounts has
10 been made by the attorney general, be subject to a civil suit to be brought
11 by the attorney general for the recovery of the amount received in excess
12 of that lawfully allowed.

Mr. Wefald noted that the sections referred to internally provided rates of travel expense reimbursement for state employees. The Committee discussed the probability that this section was encompassed within the provisions of Chapter 12.1-23 dealing with theft.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 44-08-05 be amended by inserting triple parentheses before the word "UNLAWFUL" in line 1; inserting triple parentheses after the word "Any" in line 7, and inserting the following material in that same line before the word "person": "CIVIL RECOVERY OF PUBLIC FUNDS.) Any"; and that when so amended the section be accepted.

The Committee next considered Section 44-08-05.1, which reads as follows:

1 44-08-05.1. VOUCHERS - REQUIREMENTS FOR APPROVAL - PENALTY -
2 ACTION FOR VIOLATIONS.) Any public officer or employee who has the
3 power to approve a voucher for a department, agency, or institution for
4 travel expenses or any other state expenditure of public funds shall determine
5 before approving such voucher the following:

6 1. That the expenditure for travel or other expenditures were for
7 lawful and official purposes;

8 2. If for travel expense, that the travel actually occurred, and that
9 the sums claimed for travel expenses are actually due the individual
10 who is seeking reimbursement, allowance, or payment;

11 3. If the voucher is for expenditure other than travel expense, that the
12 expenditure is lawful and that the voucher contains no false claims.

13 Any public officer or employee who willfully approves a voucher with
14 knowledge it contains false or unlawful claims or that it does not otherwise
15 meet the requirements of this section for approval, shall be guilty of
16 (((a misappropriation of public funds and shall be subject to the penalty
17 prescribed by section 12-10-02))) theft and punishable under the provisions
18 of chapter 12.1-23. Any public officer or employee who shall without the
19 use of ordinary care and diligence negligently approve a voucher for a
20 department, agency, or institution containing false or unlawful claims or
21 which does not otherwise meet the requirements of this section for approval,
22 shall be personally liable for any funds improperly expended. The director
23 of the department of accounts and purchases, members of the state auditing
24 board, state auditor, or any other person who has knowledge of an actual
25 or possible violation of this section shall make such information known to
26 the attorney general. The attorney general shall investigate any alleged
27 violations and if a violation appears to exist he shall criminally prosecute
28 under (((section 12-10-02))) chapter 12.1-23 or bring a civil suit for
29 the recovery of such funds as may actually have been improperly paid
30 against the payee and officer or employee who approved such voucher in
31 violation of any of the above requirements or shall bring both such criminal
32 action (((or))) and civil suit. The officer or employee who approves any
33 voucher negligently shall have the right of subrogation against the payee
34 of such voucher in the event public funds have been improperly paid to
35 the payee.

Representative Hilleboe, noting that lines 26 through 28 provide that the Attorney General is to prosecute any criminal violations of Section 44-08-05.1, discussed the problems that arose in seeking a criminal prosecution of the Cass County agent of the Motor Vehicle Registrar. He indicated there ought to be some way to provide for prosecution. Judge Teigen read Section 54-12-04 of the Century Code which provides that the Attorney General is to prosecute when he receives a written demand to do so from a judge of the district court for the appropriate county.

Representative Hilleboe noted that like this section (44-08-05.1), the sections relating to the Legislative Audit and Fiscal Review Committee also provided that the Attorney General "shall immediately prosecute . . . as provided by law" (see Section 54-35-02.2). He noted that this section had not resulted in a prosecution by the Attorney General, but rather that the matter had been left in the hands of the Cass County State's Attorney, who had not taken action.

After further discussion of this problem and of Section 44-08-05.1, the Chairman directed the staff to redraft the section, after discussions with the Attorney General to determine his feelings and desires concerning the language on lines 26 through 32.

The Committee then considered Section 44-08-15, which reads as follows:

- 1 44-08-15. VIOLATION AND PENALTY.) Any person who with intent
2 to defraud uses on a public security or an instrument of payment:
3 1. A facsimile signature, or any reproduction of it, of any authorized
4 officer, or
5 2. Any facsimile seal, or any reproduction of it, of this state or any
6 of its departments, agencies, public bodies, or other instrumentalities
7 or of any of its political subdivisions
8 is guilty of a class C felony.

Mr. Wefald commented that this section was covered by Section 12.1-24-01 prohibiting forgery. However, the potential penalties under Section 12.1-24-01 are higher than the potential penalties for violation of this section.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 44-08-15 be repealed.

Judge Teigen again discussed the provisions of Section 54-12-04 noting that it authorized the Attorney General to prosecute with or without the consent of the relevant state's attorney. The Committee Counsel stated that he believed this was simply a statutory indication that the state's attorney would not have veto power over the request by the district judge for help from the Attorney General. Representative Hilleboe stated that something had to be done in this area as a state's attorney is not under a duty to prosecute unless he feels that he should, and statutory situation is unclear with regard to whether the Attorney General then ought to prosecute.

Representative Hilleboe stated that he felt the Attorney General ought to have the right to go to any county and prosecute on behalf of the State. Judge Teigen read Sections 54-12-02 and 54-12-03 which indicate that the Attorney General and his assistants may institute and prosecute all cases in which the State is a

party, and set out the method by which the county is to pay expenses incurred by the Attorney General in investigating or prosecuting a case within that county.

Representative Hilleboe suggested that at a future meeting the Attorney General, or his assistant, should be invited to appear before the Committee and explain what the position of his office is with regard to prosecuting criminal matters arising in the several counties. The Committee Counsel noted that such testimony from the Attorney General would be well within the jurisdiction of the Committee since the Committee would be considering other statutes wherein the statement was made that the Attorney General is to prosecute violations of those statutes. The Chairman directed the staff to invite the Attorney General to a future meeting of the Committee to discuss these matters.

The Committee commenced consideration of the criminal sections in Title 47 of the Century Code, beginning with Section 47-14-11, which reads as follows:

1 47-14-11. CRIMINAL PENALTY FOR USURY.) Any person (((, whether
2 in his own individual right or as the agent, servant, or representative
3 of any individual, firm, corporation, or association,))) who shall take,
4 receive, reserve, or charge a usurious rate of interest, in addition to
5 being liable for the penalties and forfeitures specified in section 47-14-10,
6 shall be guilty of a class A misdemeanor ((and shall be punished by
7 imprisonment in the county jail for not more than ninety days, or by a
8 fine of not more than three hundred dollars, or by both such imprisonment
9 and fine))).

Representative Hilleboe inquired as to whether, in light of the fact that "criminal usury" was covered in the new Criminal Code, simply usury should have a criminal penalty attached to it. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 47-14-11 be reclassified as a Class B misdemeanor and when so reclassified the section be accepted.

The Committee discussed Section 47-16-24, which reads as follows:

1 47-16-24. LESSEE MUST GIVE WRITTEN NOTICE BEFORE REMOVAL OF
2 PROPERTY FROM PREMISES.) Any person (((, firm, association, or
3 corporation))) occupying premises under a written lease, who fraudulently
4 and clandestinely removes his goods, chattels, or personal property from
5 any leased or demised premises without first giving due notice to the
6 landlord, his agent, or duly authorized attorney, is deemed guilty of a
7 class B misdemeanor ((and shall be punished by a fine of not less than
8 twenty dollars nor more than two hundred dollars, or by imprisonment
9 in the county jail for not less than ten days nor more than ninety days,
10 or by both such fine and imprisonment))).

The Committee discussed the constitutionality of this section, since the goods and chattels belong to the lessee. It was noted that perhaps this placed an unconstitutional restriction on the right to travel. At any rate, it was the consensus

of the Committee that the section ought to be repealed, and IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 47-16-24 be recommended for repeal.

The Committee next considered Section 47-19-07, which reads as follows:

1 47-19-07. PLACE FOR RECORDING INSTRUMENTS - FEE ENDORSED -
2 NOTIFICATION OF STATE TAX COMMISSIONER.) An instrument entitled
3 to be recorded must be recorded by the register of deeds of the county
4 in which the real property affected thereby is situated. The register
5 of deeds in each case must endorse the amount of his fee for the recording
6 on the instrument recorded.

7 If any deed, except a deed issued through a judicial, probate, or tax
8 sale proceeding, is recorded more than six months after the date of its
9 acknowledgment, the register of deeds, on such forms as the state tax
10 commissioner may prescribe, shall notify the state tax commissioner of the
11 recording of such deed before the end of the month following the month
12 in which such deed was filed for record, and the willful neglect or refusal
13 to furnish such list to the state tax commissioner as provided herein shall
14 be punishable as provided in (((sections 12-08-03 and 12-08-04))) section
15 12.1-11-06.

Judge Pearce noted that the last three lines essentially set forth the offense defined in Section 12.1-11-06, and that it would be unnecessary to refer to that section here if those three lines were deleted. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that triple parentheses be inserted before the comma in line 12 of Section 47-19-07; and that the triple parentheses before the word "sections" be deleted in line 14; that the underscored material on lines 14 and 15 be deleted; and that when so amended the section be accepted.

The Committee then discussed Section 47-20.1-12 which currently makes it a misdemeanor punishable by a fine of from \$25 to \$100 to disturb, remove, or change any United States Government survey corner or other monument erected by a registered land surveyor. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 47-20.1-12 be accepted as drafted.

The Committee discussed Section 47-21-11 which provides that anyone who violates the provisions of the chapter relating to copyrighted works would be guilty of a misdemeanor. The staff had reclassified the section as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 47-21-11 be accepted as drafted.

The Committee discussed Section 47-23-10, which reads as follows:

1 47-23-10. VIOLATIONS - PENALTY.) Any person (((, firm, corporation,
2 or organization))) using the North Dakota trademark who:
3 1. Does not comply with the provisions of this chapter;

- 4 2. Fails to include in the trademark his ((or its)) license number;
- 5 3. Uses a license number other than the one assigned;
- 6 4. Uses the trademark upon an article not conforming with the
- 7 standards established; or
- 8 5. Uses the trademark without first registering his ((or its)) product,
- 9 is guilty of a class B misdemeanor ((, and shall be punished by a fine
- 10 of not less than ten dollars nor more than one hundred dollars, together
- 11 with costs for the first offense, and for subsequent offenses, by a fine
- 12 of not less than one hundred dollars nor more than one thousand dollars,
- 13 together with costs, or by imprisonment in the county jail for not more
- 14 than sixty days, or by both such fine and imprisonment)).

The Committee discussed this section and decided that the penalty was too high for the offenses covered. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 47-23-10 be reclassified as an infraction, and when so reclassified that the section be accepted.

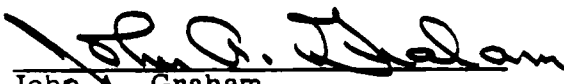
The Committee considered Section 47-27-03, which reads as follows:

1 47-27-03. PENALTY - HUNTING LICENSE FORFEITED.) Anyone who
2 shall violate the provisions of this chapter shall be ((punished by a fine
3 of not less than twenty-five dollars nor more than one hundred dollars,
4 or by imprisonment in the county jail for not more than thirty days, or by
5 both such fine and imprisonment,))) guilty of a class B misdemeanor and,
6 in addition, shall be civilly liable for any damages that may result, directly
7 or indirectly, because of livestock entering or escaping through such open
8 gate or bars. Violations of this chapter occurring while hunting are also
9 subject to section 20.1-01-23 concerning hunting license forfeiture.

The Committee discussed the fact that the provisions of the section, contained on lines 8 and 9, relating to hunting license forfeiture would be better placed in Title 20.1.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 47-27-03 be amended by inserting triple parentheses before the comma in line 7; and inserting triple parentheses after the word "forfeiture" in line 9; and that when so amended the section is to be accepted, and the staff is to include provision for license forfeiture for failure to close fences or for taking fences down in the appropriate spot in Title 20.1.

The Committee discussed its next meeting date, and the Chairman noted that it would probably be in the latter part of March. Thereafter, without objection, the Chairman declared the meeting adjourned subject to the call of the Chair.


John A. Graham
Assistant Director

45-11-08. (to be redrafted)

51-10-05. (to be redrafted)

1 38-01-08. PENALTIES FOR VIOLATION OF PROVISIONS OF TITLE RELATING
2 TO COAL MINES.) Any person who shall:
3 1. Willfully ((neglect,)) refuse ((,)) or fail to perform any duty
4 required of him under the provisions of this title relating to coal
5 mines;
6 2. Violate any provision of this title relating to mining;
7 3. Obstruct the inspector or interfere with him in the performance of
8 his duties ((, or attempt so to do)); or
9 4. Refuse to comply with any instruction given by the inspector pursuant
10 to any provision of this title,
11 shall be guilty of a class A misdemeanor ((and,)) unless another penalty is
12 specifically provided for such violation ((, shall be punished by a fine of not
13 more than five hundred dollars or by imprisonment in the county jail for not
14 more than six months, or by both such fine and imprisonment)). If the person
15 found guilty of any such violation is a mine foreman holding a certificate issued
16 under the applicable provisions of this title, the inspector, by order, may revoke
17 such certificate for a period of not more than two years.

38-04-03. (to be repealed)

1 38-04-10. PENALTY FOR VIOLATION OF CHAPTER.) Every mine owner
2 or operator who:
3 1. Operates a coal mine without a license as provided by this chapter; or
4 2. Willfully fails ((, neglects,)) or refuses to comply with any other
5 provision of this chapter,
6 except where another penalty is specifically provided for, is guilty of a class B
7 misdemeanor ((and shall be punished by a fine of one hundred dollars, or by
8 imprisonment in the county jail for not more than thirty days, or by both such
9 fine and imprisonment)).

1 38-06-62.1. USE OF EXPLOSIVES UNDERGROUND - NOTICE TO UNDERGROUND
2 MINE OWNERS AND OPERATORS - PENALTY.) Any person who carries on any activity
3 in this state requiring the use of explosives detonated beneath the surface of the
4 earth shall give notice to any underground mine owner or underground mine operator,

5 the location of whose mine is filed in the office of the state coal mine inspector,
6 at least twenty-four hours before any such activity using explosives is carried
7 on providing such activity is to be carried on within a one mile radius of any
8 such underground mine. Compliance with this section shall not be construed
9 to limit civil liability that may arise as a result of such use of explosives. (((Any
10 person violating the provisions of this section shall be guilty of a misdemeanor.)))

1 38-06-64. PENALTIES FOR VIOLATING PROVISIONS OF CHAPTER OR SAFETY
2 RULES PROMULGATED BY INSPECTOR.) Every mine owner or operator or other
3 person who willfully shall fail (((, neglect,))) or refuse to comply with any of the
4 safety rules promulgated by the inspector under the provisions of this chapter
5 (((, shall be guilty of a misdemeanor and shall be punished by a fine of not
6 more than one hundred dollars, or by imprisonment in the county jail for not
7 more than thirty days, or by both such fine and imprisonment. Any person))) or
8 who (((shall violate))) violates any provision of this chapter for which another penalty
9 is not specifically provided shall be guilty of a class A misdemeanor (((and shall
10 be punished by a fine of not more than five hundred dollars, or by imprisonment
11 in the county jail for not more than six months, or by both such fine and imprison-
12 ment))).

1 38-08-16. CIVIL PENALTY.) (((1.))) Any person who violates any provision
2 of this chapter, or any rule, regulation, or order of the commission shall be
3 subject to a civil penalty of not more than one thousand dollars for each (((act
4 of))) violation and for each day that such violation continues, unless the penalty
5 for such violation is otherwise specifically provided for and made exclusive in
6 this chapter.

7 (((2. If any person, for the purpose of evading this chapter, or any rule,
8 regulation, or order of the commission, shall make or cause to be made any false
9 entry or statement in a report required by this chapter or by any such rule,
10 regulation, or order, or shall make or cause to be made any false entry in any
11 record, account, or memorandum required by this chapter, or by any such rule,
12 regulation, or order, or shall omit, or cause to be omitted, from any such record,
13 account, or memorandum, full, true, and correct entries as required by this
14 chapter or by any such rule, regulation, or order, or shall remove from this
15 state or destroy, mutilate, alter or falsify any such record, account, or memorandum,
16 such person shall be guilty of a misdemeanor and, upon conviction, shall be subject
17 to a fine of not more than five thousand dollars or imprisonment for a term not
18 exceeding six months, or to both such fine and imprisonment.

19 3. Any person knowingly aiding or abetting any other person in the viola-
20 tion of any provision of this chapter, or any rule, regulation, or order of the
21 commission shall be subject to the same penalty as that prescribed by this chapter
22 for the violation by such other person.

23 4.))) The penalties provided in this section shall be recoverable by suit
24 filed by the attorney general in the name and on behalf of the commission, in
25 the district court of the county in which the defendant resides, or in which any
26 defendant resides, if there be more than one defendant, or in the district court
27 of any county in which the violation occurred. The payment of any such penalty
28 shall not operate to legalize any illegal oil, illegal gas, or illegal product involved
29 in the violation for which the penalty is imposed, or to relieve a person on whom
30 the penalty is imposed from liability to any other person for damages arising out
31 of such violation.

1 38-14-12. PENALTIES.) Any person required by this chapter to have a
2 permit who engages in surface mining in an area where the overburden shall
3 exceed ten feet in depth, without previously securing a permit to do so as prescribed
4 by this chapter, is guilty of a class A misdemeanor (((, and on conviction thereof
5 shall be fined not less than fifty dollars nor more than one thousand dollars. Each
6 day of operation without the permit required by this chapter shall be deemed a
7 separate violation))).

8 Any person who (((knowingly and))) willfully violates any regulation issued
9 or approved pursuant to this chapter ((or makes any false statement, representation,
10 or certification in any application, record, report, plan, or other document filed
11 or required to be maintained under this chapter,))) or who willfully falsifies,
12 tampers with, or (((knowingly and willfully))) renders inaccurate, any monitoring
13 device or method required to be maintained under this chapter, shall (((, upon
14 conviction, be punished by a fine of not more than ten thousand dollars, or by
15 imprisonment for not more than six months, or by both such fine and imprison-
16 ment))) be guilty of a class A misdemeanor.

17 Notwithstanding any other provision of this chapter, the commission may by
18 injunctive procedures, without bond or other undertaking, proceed against any
19 operator found to be surface mining without a permit or in violation of the provisions
20 of this chapter, or the rules and regulations promulgated thereunder. No liability
21 whatsoever shall accrue to the commission or its authorized representative in
22 proceeding against any operator pursuant to this section.

1 42-01-15. MAINTAINING PUBLIC NUISANCE (((IS A MISDEMEANOR)))
2 - PENALTY.) Every person who maintains or commits any public nuisance, the
3 punishment for which is not otherwise prescribed, or who willfully omits to perform
4 any legal duty relating to the removal of a public nuisance, is guilty of a class A
5 misdemeanor.

1 42-02-01. WHO MAY BRING ABATEMENT.) The attorney general, (((his
2 assistant,))) the state health officer, the state's attorney, or any citizen of the
3 county where a (((common))) nuisance exists or is maintained, may bring an
4 action in the name of the state to abate and perpetually to enjoin the nuisance.

42-02-04. (to be redrafted)

42-02-05. (to be redrafted)

42-02-10. (to be redrafted)

61-01-10. (to be repealed)

61-01-11. (to be repealed)

61-01-12. (to be repealed)

61-01-13. (to be repealed)

1 61-01-16. ERECTION OF GUARDS WHEN CUTTING ICE - PENALTY FOR
2 FAILURE TO DO SO.) All persons (((and corporations))) cutting ice in or upon
3 any waters within the boundaries of this state, for the purpose of removing such
4 ice for sale or commercial use, shall surround the cuttings and openings made
5 with fences or bushes or other guards sufficient to warn all persons of such cuttings
6 and openings, and shall maintain the same until ice has formed again in such
7 openings to a thickness of at least six inches. Any person violating this section
8 (((is guilty of a misdemeanor))) may be prosecuted under section 12.1-17-03.

1 61-01-22. PERMIT TO DRAIN WATERS FROM CERTAIN PONDS, SLOUGHS,
2 OR LAKES INTO A WATERCOURSE OR NATURAL DRAINWAY - PENALTY.) Any
3 person (((, public or private corporation,))) proposing to drain waters from a

4 pond, slough, or lake, which impounds waters gathered therein and drained from
5 an area comprising eighty acres or more into a natural watercourse, as defined
6 by section 61-01-06, or into a draw or natural drainway, before constructing a
7 ditch or facility for the purpose of such drainage shall submit to the state water
8 conservation commission an application for a permit to do so. If sixty percent
9 or more of the watershed or drainage area of such watercourse, draw, or natural
10 drainway is embraced within the boundaries of a water conservation and flood
11 control district, the state water conservation commission shall refer the application
12 to the board of commissioners of such water conservation district for consideration
13 and approval. Such permit shall not be granted until an investigation shall disclose
14 that the quantity of water which will be drained from the pond, slough, or lake,
15 as the case may be, will not exceed the capacity of such watercourse, draw, or
16 drainway to carry, and will not flood lands of lower proprietors. If such investiga-
17 tion shall show that the proposed drainage will cause such watercourse or drainway
18 to overflow and flood the lands of lower landowners, the board of commissioners
19 of the water conservation and flood control district or the state water conservation
20 commission, as the case may be, shall not issue a permit until flowage easements
21 are obtained from owners of lands which might be burdened with the flood waters
22 of such watercourse, draw, or drainway. Such flowage easements shall be filed
23 for record in the office of the register of deeds of the county or counties in which
24 such lands are situated. An owner of land proposing to drain the waters from such
25 pond, slough, or lake into a watercourse or natural drainway shall undertake and
26 agree to pay the expenses incurred in making the required investigation. The
27 provisions of this chapter shall not be construed to limit or restrict the establishment
28 of drains by a board of county commissioners or by a township, and shall not apply
29 to any county which has a board of drain commissioners, or to any drain constructed
30 under the supervision of a state or federal agency.

31 Any person ((or corporation)) draining, or causing to be drained, the
32 waters of a pond, slough, or lake, which impounds waters thereinto from a watershed
33 or drainage area comprising eighty acres or more, into a watercourse without
34 first securing a license or permit to do so, as provided by this chapter, shall
35 be liable for all damage sustained by any person caused by draining such pond,
36 lake, or slough, and shall be (((deemed))) guilty of (((a misdemeanor and shall
37 be punished by a fine of not more than one hundred dollars))) an infraction.

1 61-01-25. PENALTY.) Any person violating any of the provisions of this
2 chapter or any rule or regulation of the state engineer for which another penalty

3 is not specifically provided is guilty of a class B misdemeanor ((and shall be
4 punished for each offense by a fine of not more than five hundred dollars, or by
5 imprisonment for not more than thirty days, or by both such fine and imprisonment))).

1 61-04-12. USE OF UNSAFE WORKS ((A MISDEMEANOR - DUTY OF STATE'S
2 ATTORNEY))) - PENALTY.) ((The use of)) Any person using works for the
3 storage, diversion, or carriage of water, at any time after an inspection thereof
4 by the state engineer and receipt of notice from him that the same are unsafe for
5 the purpose for which they are used, and until the receipt of notice from him
6 that in his opinion they have been made safe, shall be guilty of a class A misdemeanor.
7 ((In case of any violation of this section, the state engineer shall give prompt
8 notice to the state's attorney of the county in which such works are located.
9 The state's attorney, at once, shall proceed against the owner, and all parties
10 responsible for such violation.)))

61-06-23. (to be repealed)

61-08-15. (to be repealed)

1 61-14-06. MEASURING DEVICES - ((PENALTY)) UNLAWFUL TO TAKE
2 WATER WITHOUT USING.) Every ditch owner shall construct and maintain a
3 substantial headgate at the point where the water is diverted, and shall construct
4 a measuring device, of a design approved by the state engineer, at the most
5 practicable point or points for measuring and apportioning the water as determined
6 by the state engineer. The state engineer may order the construction of such device
7 by the ditch owner and if not completed within twenty days thereafter the person
8 in charge of the irrigation works, upon instructions from the state engineer,
9 shall refuse to deliver water to such owner. The taking of water by such ditch
10 owner until the construction of such device and the approval thereof by the state
11 engineer shall be ((a misdemeanor)) unlawful. Such devices shall be so arranged
12 that they can be locked in place, and when locked by the person in charge of
13 the irrigation works or his authorized agent, for the measurement or apportionment
14 of water, it shall be ((a misdemeanor)) unlawful to interfere with, disturb,
15 or change the same, and the use of water through such device after having been
16 interfered with, disturbed, or changed shall be prima facie evidence of the guilt
17 of the person benefited by such interference, disturbance, or change.

1 61-14-07. UNLAWFUL INTERFERENCE WITH RIGHTS TO USE OF WATER -
2 PENALTY.) Any person (((, association, or corporation,))) interfering with or
3 injuring or destroying any (((dam,))) headgate, weir, benchmark, or other
4 appliance for the diversion, storage, apportionment, or measurement of water,
5 or for any hydrographic surveys, or who shall interfere with any person ((or
6 persons))) engaged in the discharge of duties connected therewith, shall be
7 guilty of a class A misdemeanor, and also shall be liable for the injury or damage
8 resulting from such unlawful act. The state engineer and the person in charge
9 of an irrigation work, and their authorized assistants and agents, may enter
10 upon private property for the performance of their respective duties, but shall
11 do no unnecessary injury thereto.

1 61-14-08. UNLAWFUL USE OF WATER AND WASTE (((- PENALTY))).
2 The unauthorized use of water to which another person is entitled, or the willful
3 waste of water to the detriment of another, shall be (((a misdemeanor))) unlawful.
4 It also shall be (((a misdemeanor))) unlawful to begin or carry on any construction
5 of works for storing or carrying water until after the issuance of a permit to
6 appropriate such waters, except in the case of construction carried on under the
7 authority of the United States.

1 61-14-09. BRIDGES OVER DITCHES OR CANALS - PENALTY.) The owner
2 of any ditch, canal, or other structure for storing or carrying water, shall
3 construct and maintain a substantial bridge where the same crosses any highway
4 or publicly traveled road, not less than fourteen feet wide, or shall reconstruct
5 the road in a substantial manner and in a convenient location for public travel.
6 (((Any violation of the provisions of this section shall be a misdemeanor.))) The
7 board of county commissioners shall be authorized to construct any bridge or road,
8 if not built by the owner of the works within three days after the obstruction of
9 the road, and may recover the expense thereof and costs in a civil suit, unless
10 the same shall be paid by the owner of the works within ten days after demand
11 therefor. The board of county commissioners may make reasonable requirements
12 as to the size and character of any such bridge along a public highway, or for
13 the necessary reconstruction of such a road, and upon failure to comply therewith,
14 may do the necessary work and collect the expense thereof and costs as hereinbefore
15 provided. After the construction of such bridge or road as part of a public
16 highway, the same shall be maintained by the board of county commissioners.

1 61-14-10. OBSTRUCTING WORKS (((- PENALTY))) UNLAWFUL.) Whenever
2 any appropriator of water has the right-of-way for the storage, diversion, or
3 carriage of water, it shall be unlawful to place or maintain any obstruction which
4 shall interfere with the use of the works, or prevent convenient access thereto.
5 (((Any violation of the provisions of this section shall be a misdemeanor.)))

1 61-14-11. (((PENALTIES))) PENALTY.) If no penalty is provided specifically,
2 any violation of the provisions of this chapter, declared herein to be (((a misdemeanor,
3 shall be punished by a fine of not more than two hundred fifty dollars nor less
4 than twenty dollars, or by imprisonment in the county jail for not more than six
5 months, or by both such fine and imprisonment))) unlawful, shall be a class B
6 misdemeanor.

1 61-14-15. UNAUTHORIZED DIVERSION OF WATER FROM IRRIGATION DITCHES -
2 PENALTY.) (((No person shall))) It shall be an infraction for any person to
3 divert any of the water from any irrigation ditch in this state or interfere in any
4 manner whatever with any irrigation ditch without first having obtained the permis-
5 sion of the owner of such ditch or of the person or persons lawfully in charge
6 thereof. (((Any person violating this section is guilty of a misdemeanor and shall
7 be punished by a fine of not less than twenty-five dollars nor more than fifty
8 dollars.)))

1 61-15-08. DRAINAGE OF MEANDERED LAKE - PENALTY.) Any person who,
2 without written consent of the state engineer (((who))), shall drain or cause
3 to be drained, or who shall attempt to drain any lake or pond, which (((shall
4 have been))) has been meandered (((and its metes and bounds established)))
5 by the government of the United States in the survey of public lands, shall be
6 guilty of a class B misdemeanor (((and shall be punished by imprisonment in
7 the county jail for not more than ninety days, or by a fine of not more than
8 five hundred dollars, or by both such fine and imprisonment))).

1 61-16-44. PENALTY FOR VIOLATION OF CHAPTER.) Any person violating
2 any of the provisions of this chapter shall be guilty of a class B misdemeanor
3 (((, and shall be punished by a fine of not more than fifty dollars, or by imprison-
4 ment in the county jail for not more than thirty days, or by both such fine and
5 imprisonment))).

1 61-20-04. ARTESIAN OR FLOWING WELLS - PENALTY FOR (((VIOLATION
2 OF PROVISIONS OF CHAPTER))) CERTAIN ACTIONS.) The owner or person in
3 control of an artesian or flowing well, who ((shall)):

- 4 1. ((Allow the same)) Allows it to flow without a valve or ((sufficient
5 contrivance)) other device for checking the flow as required by law,
6 or without proper repair of pipes and valves;
- 7 2. ((Interfere)) Interferes with the ((same when properly adjusted by the
8 proper authorities)) well, valve, or other device;
- 9 3. ((Permit)) Permits the water to waste unnecessarily; or
- 10 4. ((Permit)) Permits the water to run upon the lands of another or
11 into the ditches along any public road except a regularly established
12 drainage ditch ((; or
- 13 5. Interfere with any officer duly authorized to inspect the same or measure
14 its flow or pressure)),

15 shall be guilty of a class B misdemeanor ((and shall be punished by a fine
16 of not less than five dollars nor more than fifty dollars)). The provisions of this
17 section ((also)) shall also apply to the officer or members of a board in charge
18 of wells belonging to the state, or any county, township, or municipality.

1 61-21-39. PETITION FOR A LATERAL DRAIN - BOND OF PETITIONERS -
2 PENALTY.)

- 3 1. All property owners whose property would be affected by a lateral drain
4 may jointly petition the board for the construction of such drain, and
5 shall deposit with the board a good and sufficient bond to be approved
6 by the board, conditioned upon the petitioner or petitioners paying all
7 costs of the proposed lateral drain. Whenever improvements of an
8 original drain are made necessary by the construction of a lateral
9 drain, the costs of such improvements to the original drain shall be
10 charged as part of the cost of construction of the lateral drain and
11 assessed against the property benefited thereby and collected as other
12 assessments are collected. In the event that the board shall determine
13 that such improvements to the original drain are also beneficial to
14 property served by the original drain, the board may assess such portion
15 of the cost of the improvements as it shall determine to property benefited
16 by the original drain. Unless the petitioners agree to construct the
17 lateral drain, the board within ten days shall commence proceedings
18 for the construction of such lateral drain according to the provisions
19 of this chapter. No person shall dig or construct any lateral ditch or

20 drain which will conduct the flow of water from any land or lands into
21 any drain constructed under the provisions of this chapter, except
22 the petitioners as provided in this section. In all instances involving
23 the construction of a lateral drain, the board shall estimate and determine
24 the proportionate share of the cost of the main or original drain which
25 should be paid by such petitioners. The petitioners shall pay into the
26 county treasury the amount so determined, and they shall then be allowed
27 to connect such lateral ditches or drains with the original drain under
28 the direction and superintendence of the board, but at their own cost
29 and expense. The money paid into the county treasury shall be credited
30 to the drainage fund of the specific drain involved.

- 31 2. Where one or more of the property owners to be benefited by the construc-
32 tion of a lateral drain or ditch petition the county drainage board for the
33 construction of a lateral drain or ditch, the county drainage board shall
34 then proceed in the same manner as is used for the establishment of a new
35 drain and thereafter such lateral drain shall constitute a part of the
36 original drain to which it is connected and the affected property shall
37 be a part of such drainage district.
- 38 3. If any such lateral drain or ditch is constructed without complying with
39 the provisions of this section, the county drainage board may fill in
40 or block up the drain or ditch or cause the same to be done, and such
41 cost of filling or blocking the drain or ditch shall be charged to the
42 person or persons causing such lateral drain or ditch to be constructed,
43 and in addition the county drainage board may apply to the district
44 court for an injunction prohibiting such person or persons from construct-
45 ing or continuing the operation of a lateral drain or ditch without complying
46 with the provisions of this section.
- 47 4. Any person violating any of the provisions of this section shall be
48 guilty of a class B misdemeanor (((and shall be punished by a fine of
49 not more than one hundred dollars or by imprisonment in the county
50 jail for not more than thirty days, or by both such fine and imprisonment))).

1 61-21-57. PENALTY FOR VIOLATION OF (((CHAPTER))) RULES AND
2 REGULATIONS.) If any person (((willfully and maliciously shall remove any
3 surveyor's stake set along the line of any drain laid out under the provisions of
4 this chapter, or shall obstruct or injure any such drain, or))) shall violate any
5 valid rule or regulation promulgated by the board, (((for each and every such
6 offense))) he shall be guilty of (((a misdemeanor and shall be punished by a fine

7 of not more than twenty-five dollars together with such sum as will be required
8 to repair such damage and costs of suit. Such penalty may be recovered in an
9 action by the board))) an infraction. The board may bring a civil action to
10 recover damages resulting from violations, plus costs of suit, and all sums recovered
11 ((Whenever the amount of any recovery shall be collected it))) shall be deposited
12 with the county treasurer to the credit of the proper drain fund.

1 61-27-14. PENALTY.) Any person violating any of the provisions of this
2 chapter shall be guilty of a class B misdemeanor (((and shall be punished by a
3 fine of not more than one hundred dollars or by imprisonment in the county jail
4 for not more than thirty days or by both such fine and imprisonment))).

1 61-28-08. PENALTIES - INJUNCTIONS.)

- 2 1. Any person who willfully violates this chapter or any permit condition
3 or limitation implementing this chapter shall be (((punished by a fine
4 of not more than twenty-five thousand dollars per day of violation, or
5 by imprisonment in the county jail for not more than one year, or both.
6 If the conviction is for a violation committed after a first conviction of
7 such person under this paragraph, punishment shall be by a fine of not
8 more than fifty thousand dollars per day of violation, or by imprisonment
9 in the county jail for not more than two years, or by both))) guilty of
10 a class A misdemeanor.
- 11 2. Any person who (((knowingly makes any false statement, representation,
12 or certification in any application, record, report, plan or other document
13 filed or required to be maintained under this chapter or who falsifies,)))
14 tampers with, or knowingly renders inaccurate any monitoring device or
15 method required to be maintained under this chapter (((,))) shall
16 (((upon conviction, be punished by a fine of not more than ten thousand
17 dollars or by imprisonment in the county jail for not more than six months,
18 or by both))) be guilty of a class A misdemeanor.

1 41-02-48. (2-403) POWER TO TRANSFER - GOOD FAITH PURCHASE OF
2 GOODS - "ENTRUSTING".)

- 3 1. A purchaser of goods acquires all title which his transferor had or
4 had power to transfer except that a purchaser of a limited interest
5 acquires rights only to the extent of the interest purchased. A person
6 with voidable title has power to transfer a good title to a good faith
7 purchaser for value. When goods have been delivered under a transaction

8 of purchase the purchaser has such power even though

- 9 a. the transferor was deceived as to the identity of the purchaser, or
10 b. the delivery was in exchange for a check which is later dishonored, or
11 c. it was agreed that the transaction was to be a "cash sale", or
12 d. the delivery was procured through fraud punishable as (((larcenous
13 under the criminal law))) theft under chapter 12.1-23.

14 2. Any entrusting of possession of goods to a merchant who deals in goods
15 of that kind gives him power to transfer all rights of the entruster to
16 a buyer in ordinary course of business.

17 3. "Entrusting" includes any delivery and any acquiescence in retention
18 of possession regardless of any condition expressed between the parties
19 to the delivery of acquiescence and regardless of whether the procurement
20 of the entrusting or the possessor's disposition of the goods have been
21 such as to be (((larcenous under the criminal law))) theft under chapter
22 12.1-23.

23 4. The rights of other purchasers of goods and of lien creditors are governed
24 by the chapters on Secured Transactions (chapter 41-09), Bulk Transfers
25 (chapter 41-06), and Documents of Title (chapter 41-07).

1 41-03-80. RENEWAL OF PROMISSORY NOTE - CANCELLATION AND RETURN
2 OF RENEWED NOTE OR MARKING THEREOF.) No person, firm, or corporation,
3 or state or national bank doing business in this state, shall take from any debtor
4 or other person or concern obligated upon a negotiable promissory note or other
5 negotiable obligation, any renewal thereof without, at the time, either:

- 6 1. canceling and returning to the maker of the renewal the original obligation
7 so renewed; or
8 2. marking or causing to be marked across the face of the renewed instrument
9 in legible writing in ink, or to be typewritten thereon, the word "renewed"
10 or words of like import and effect.

11 Any person, firm, corporation, or bank taking any such renewal note or contract
12 without complying with the provisions of this section shall be liable to any person
13 or concern for all loss or damage suffered thereby, and if the failure so to comply
14 was intentional, shall be guilty of a class A misdemeanor.

1 13-01-11. FRAUDULENT CONVEYANCE (((A MISDEMEANOR))) - PENALTY.)
2 (((Every))) Any person who (((, being))) is a party to any conveyance or assign-
3 ment of any interest in real or personal property (((, or of any interest therein,

4 made or created))) entered into with intent to defraud prior or subsequent
5 purchasers, (((or to hinder, delay, or defraud))) creditors, or other persons
6 except those with security interest in the property involved, (((and every person)))
7 who (((, being privy to or knowing of such conveyance, assignment, or charge,
8 willfully puts the same in use as having been made in good faith))) knowingly
9 participates in such a conveyance or assignment, is guilty of a class A misdemeanor.

1 13-01-12. REMOVING OR DISPOSING OF PROPERTY TO DEFRAUD CREDITORS -
2 (((MISDEMEANOR))) PENALTY.) Every person who removes any of his property
3 (((out of any))) from a county with intent to prevent a levy thereon under execution
4 or attachment, or who secretes, assigns, conveys, or otherwise disposes of any
5 of his property with intent to defraud any creditor or to prevent the property
6 from being made liable for the payment of his debts, and every person who receives
7 any property with such intent, is guilty of a class A misdemeanor.

1 13-01-13. UNLAWFULLY PREFERRING CREDITORS - PENALTY.) Every
2 person who, knowing that his property is insufficient for the payment of all his
3 lawful debts, shall assign, transfer, or deliver any property for the benefit of
4 any creditor or creditors upon any trust or condition that any creditor shall
5 receive a preference or priority over any other creditor, (((except in the cases
6 in which such a preference is expressly allowed to be given by law,))) or with
7 intent to create such a preference or priority, is guilty of a class A misdemeanor.
8 This section shall not apply to the giving or creating of preferences expressly
9 allowed by law.

1 13-03-22. PENALTY.) Any person who (((shall violate))) violates any
2 of the provisions of this chapter or regulations or orders promulgated thereunder
3 shall be guilty of a class A misdemeanor (((and shall be punished by a fine of not
4 more than one thousand dollars or by imprisonment of not more than one year,
5 or both such fine and imprisonment))). Any contract of loan (((or any))) made
6 or containing provisions in violation of this chapter is void. Any act (((in its
7 making or collection))) in collecting a loan which violates the provisions of this
8 chapter shall have the result of voiding the contract of loan (((and the))). A
9 lender shall have no right to collect, receive, or retain any principal, interest
10 or charges whatsoever on a void contract of loan.

1 13-05-10. PENALTY.) Any person violating any of the provisions of
2 this chapter is guilty of a class A misdemeanor (((and shall be punished by a
3 fine of not more than five hundred dollars or imprisonment of not more than
4 one year or both such fine and imprisonment))).

1 13-06-02. PENALTIES.) (((Except as otherwise provided herein, no person
2 shall engage in the business of debt adjusting. Whoever shall engage in the business
3 of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof
4 shall be fined not more than five hundred dollars or imprisoned for not more than
5 six months, or both))) Any person who engages in the business of debt adjusting,
6 unless exempted under the provisions of section 13-06-03, shall be guilty of a
7 class A misdemeanor.

12-07-07. (to be both redrafted and repealed in the alternative)

12-07-08. (to be both repealed and redrafted as alternatives)

12-07-09. (to be both repealed and redrafted as alternatives)

12-14-22. (to be repealed)

12-44-27. (to be redrafted)

12-44-28. (to be redrafted)

1 12-44-36. CRUEL TREATMENT OF PRISONERS ((BY OFFICER))) -
2 PENALTY.) If any (((officer or other))) person treats (((any))) a prisoner in
3 a cruel or inhuman manner, he shall be (((punished by a fine of not more than
4 one thousand dollars, or by imprisonment in the county jail for not more than
5 twelve months, or by both such fine and imprisonment))) guilty of a class A
6 misdemeanor.

1 12-44-37. ANNOYANCE OF PRISONER PROHIBITED - PUNISHMENT.) The
2 officer in charge of a prisoner shall use (((such means as are))) necessary and
3 proper means to protect him from insult and annoyance by others and to prevent
4 others from communicating with him while at labor and in going to and returning
5 from the same. Any person persisting in insulting and annoying or communicating

6 with ((any)) a prisoner, after being first commanded by the officer to desist,
7 shall be ((punished by a fine of not more than ten dollars, or by imprisonment
8 for not more than three days)) guilty of an infraction.

12-46-07. (to be repealed)

12-46-21. (to be repealed)

1 12-47-23. WARDEN TO MAINTAIN DISCIPLINE (((- ASSISTANCE - PENALTY
2 FOR FAILING TO ASSIST WARDEN))).) All necessary means shall be used, under
3 the direction of the warden, to maintain order in the penitentiary, enforce obedience,
4 suppress insurrections, and ((effectually)) prevent escapes ((even at the hazard
5 of life. For this purpose, the warden may command, at all times, the aid of the
6 officers of the penitentiary and of the citizens outside the premises thereof. Any
7 citizen refusing to obey such command shall be liable to such fines, penalties,
8 and forfeitures as are provided in section 12-19-13))).

1 12-47-24. (((REFRACTORY))) PENITENTIARY INMATES MAY BE RESTRAINED.)
2 Whenever any inmate of the penitentiary offers ((violence)) or attempts to do
3 any injury to any ((officer or guard thereof or to any)) other person ((or
4 inmate)) or property, either within the grounds or premises of the penitentiary
5 or at any other place where said inmate may be ((or may be employed, or attempts
6 to do any injury to the buildings or any workshop of appurtenances thereof,)); or
7 whenever any inmate disobeys or resists any reasonable command of any officer
8 or guard, ((such)) any officer or guard ((shall)) may use ((all)) reasonable
9 means to defend himself ((and)) or another, or to enforce the observance of
10 discipline.

12-48.1-04. (to be repealed)

12-49-04. (to be repealed)

12-52-06. (to be repealed)

1 12-53-12. RELEASE FROM PROBATION - PERIOD OF PROBATION.) Whenever
2 it is the judgment of the parole board that a person on probation has satisfactorily
3 met the conditions of his probation, it shall cause to be issued to said person a

4 final discharge from further supervision. The length of the period of probation
5 shall not be ((less than the minimum term nor)) more than the maximum term
6 for which he might have been imprisoned, except that in cases where the defendant
7 has been found guilty of abandonment or nonsupport of ((his wife)) spouse or
8 children, the period may be continued for as long as responsibility for support
9 continues.

1 12-53-15. WHEN PROBATION MAY BE TERMINATED.) Whenever the parole
2 ((board)) officer, the court, or the state's attorney ((,)) shall have reason
3 to believe such ((defendant is violating)) probationer has violated the terms
4 of his probation, ((such)) the probationer shall be brought before the court
5 wherein the probation was granted for a hearing upon the alleged violation.
6 For this purpose any peace officer or state parole officer may ((re-arrest))
7 take the probationer in custody without warrant or other process. Costs incurred
8 in bringing the probationer before the court shall be borne by the county wherein
9 the probation was granted. The court may thereupon, in its discretion, ((without
10 notice revoke and terminate such probation, pronounce judgment, and deliver
11 defendant to the sheriff to be transferred to the penitentiary or other state institution
12 in accordance with the sentence imposed)) take such action as is authorized by
13 subsection 4 of section 12.1-32-07.

1 12-59-06. GENERAL POWERS OF BOARD.) The board may issue process
2 requiring the presence of any person or officer before it, with or without books
3 and papers, in any matters pending before said board. If any such person or
4 officer disobeys the order of the board, the chairman, or acting chairman, of
5 such board ((,)) may apply to any judge of the district court for an order
6 requiring the attendance of such person or officer, with or without books and
7 papers described in the process. The failure of any such person or officer to
8 comply with such order of the district court shall be held to be a contempt of
9 court and shall be punishable accordingly. Any member of the board, the
10 parole officer, or anyone appointed by the board to secure information for said
11 board, shall have the power to examine witnesses and records, and to administer
12 oaths to witnesses. Any witness testifying falsely after the oath has been administered
13 to him shall be guilty of perjury and shall be punished ((accordingly)) as
14 provided in section 12.1-11-01. The board may employ psychiatrists or specialists
15 for mental or medical examination of applicants and may take such reasonable steps
16 as it may deem necessary for proper determination of any matters before it.

1 12-59-10. NOTICE OF APPLICATION FOR PAROLE - TO WHOM AND BY WHOM
2 GIVEN - SERVICE.) Notice of an application for a parole and of the time and
3 place of hearing the same shall be given by the clerk of the board to the judge
4 and the state's attorney who participated in the trial of the applicant, and if
5 the judge or state's attorney is no longer in office, notice also shall be given to
6 his successor in office. Such notice shall set forth the name of the person making
7 application, the crime of which he was convicted, the time and place of the conviction,
8 the sentence imposed, the name of the judge who presided over the trial, and the
9 name of the state's attorney who (((proseruted))) prosecuted the trial of the
10 applicant. Service of such notice shall be made by registered or certified mail.

12-60-14. (to be repealed)

44-04-02. (to be repealed)

44-04-11. (to be repealed)

44-04-17. (to be repealed)

44-06-13. (to be redrafted)

1 44-08-05. (((UNLAWFUL EXPENSE AND TRAVELING ACCOUNT - PENALTY -
2 CIVIL ACTION.) Any person violating any of the provisions of sections 44-08-03
3 or 44-08-04 or regulations issued pursuant to section 44-08-04.1 is guilty of a
4 misdemeanor and shall be punished by imprisonment in a county jail for not more
5 than one year, or by a fine of not more than five hundred dollars, or by both
6 such fine and imprisonment. In addition to the criminal penalties herein imposed,
7 any))) CIVIL RECOVERY OF PUBLIC FUNDS.) Any person who receives public funds
8 for the discharge of a public duty in excess of the amounts allowed by law shall,
9 thirty days after a demand for a return of such excess amounts has been made by
10 the attorney general, be subject to a civil suit to be brought by the attorney
11 general for the recovery of the amount received in excess of that lawfully allowed.

44-08-05.1. (to be redrafted)

44-08-15. (to be repealed)

1 47-14-11. CRIMINAL PENALTY FOR USURY.) Any person (((, whether in
2 his own individual right or as the agent, servant, or representative of any individual,
3 firm, corporation, or association,))) who shall take, receive, reserve, or charge a
4 usurious rate of interest, in addition to being liable for the penalties and forfeitures
5 specified in section 47-14-10, shall be guilty of a class B misdemeanor (((and shall
6 be punished by imprisonment in the county jail for not more than ninety days,
7 or by a fine of not more than three hundred dollars, or by both such imprisonment
8 and fine))).

47-16-24. (to be repealed)

1 47-19-07. PLACE FOR RECORDING INSTRUMENTS - FEE ENDORSED -
2 NOTIFICATION OF STATE TAX COMMISSIONER.) An instrument entitled to be
3 recorded must be recorded by the register of deeds of the county in which the
4 real property affected thereby is situated. The register of deeds in each case
5 must endorse the amount of his fee for the recording on the instrument recorded.
6 If any deed, except a deed issued through a judicial, probate, or tax sale
7 proceeding, is recorded more than six months after the date of its acknowledgment,
8 the register of deeds, on such forms as the state tax commissioner may prescribe,
9 shall notify the state tax commissioner of the recording of such deed before the
10 end of the month following the month in which such deed was filed for record
11 (((, and the willful neglect or refusal to furnish such list to the state tax commissioner
12 as provided herein shall be punishable as provided in sections 12-08-03 and 12-08-04))).

1 47-20.1-12. DISTURBANCE OF SURVEY CORNERS - (((MISDEMEANOR)))
2 PENALTY.) No United States government survey corner nor any corner established
3 by any registered land surveyor, monumented as herein prescribed, shall be
4 disturbed, removed, or in any manner changed by any person in the prosecution
5 of any public or private work. Whoever shall violate any of the provisions of this
6 section shall be guilty of (((a misdemeanor and punished by a fine of not less
7 than twenty-five dollars nor more than one hundred dollars for every offense)))
8 an infraction.

1 47-21-11. COPYRIGHTS - VIOLATION OF PROVISIONS - PENALTY.) Any
2 person who violates the provisions of this chapter is guilty of a class A misdemeanor.

1 47-23-10. VIOLATIONS - PENALTY.) Any person (((, firm, corporation,
2 or organization))) using the North Dakota trademark who:
3 1. Does not comply with the provisions of this chapter;
4 2. Fails to include in the trademark his ((or its)) license number;
5 3. Uses a license number other than the one assigned;
6 4. Uses the trademark upon an article not conforming with the standards
7 established; or
8 5. Uses the trademark without first registering his ((or its)) product,
9 is guilty of ((a misdemeanor, and shall be punished by a fine of not less than
10 ten dollars nor more than one hundred dollars, together with costs for the first
11 offense, and for subsequent offenses, by a fine of not less than one hundred
12 dollars nor more than one thousand dollars, together with costs, or by imprisonment
13 in the county jail for not more than sixty days, or by both such fine and imprison-
14 ment))) an infraction.

1 47-27-03. PENALTY - HUNTING LICENSE FORFEITED.) Anyone who shall
2 violate the provisions of this chapter shall be ((punished by a fine of not less
3 than twenty-five dollars nor more than one hundred dollars, or by imprisonment
4 in the county jail for not more than thirty days, or by both such fine and imprison-
5 ment,))) guilty of a class B misdemeanor and, in addition, shall be civilly liable
6 for any damages that may result, directly or indirectly ((, because of livestock
7 entering or escaping through such open gate or bars. Violations of this chapter
8 occurring while hunting are also subject to section 20.1-01-23 concerning hunting
9 license forfeiture))).

1 55-02-03. RULES AND REGULATIONS TO PROTECT STATE MONUMENTS.)
2 The superintendent of the state historical board, when so authorized by the board,
3 shall have the power to make and enforce suitable rules and regulations relating
4 to the protection, care, and use of any state monument and the violation of any
5 such regulation shall constitute ((a misdemeanor and shall be punishable by a
6 fine of not exceeding one hundred dollars or by imprisonment for not more than
7 thirty days or by both such fine and imprisonment))) an infraction.

1 55-03-07. VIOLATION OF PROVISIONS OF THIS CHAPTER - PENALTY.)
2 Any person violating any provision of this chapter is guilty of a class B misdemeanor
3 and shall forfeit to the state all archaeological, paleontological, or historical
4 articles and materials discovered by him ((, and shall be fined not more than
5 one hundred dollars. In case of failure to pay such fines, he shall be imprisoned

6 in the county jail for a period of not more than thirty days))). Any such violation
7 shall be held to be committed in the county where the exploration or excavation
8 for archaeological, paleontological, or historical material was undertaken.

1 55-08-03. DUTIES - POWERS - LIMITATIONS.) The director of the state
2 parks shall be the administrative and executive head of the service. Subject
3 to the provisions hereof and other applicable laws, he shall have the following
4 powers and duties: . . .

5 8. The director of state parks shall have the power to make and enforce
6 suitable rules and regulations relating to the protection, care and use
7 of any state park, state campground, state recreation area or reserve,
8 and the violation of any such regulation shall constitute ((a misdemeanor
9 and shall be punishable by a fine of not exceeding one hundred dollars
10 or by imprisonment for more than thirty days or both such fine and
11 imprisonment))) an infraction. . . .

TYPED *W. Scheel*
PROOF READ *Karen + P.*
DATE *3/26/74*

Tentative Agenda

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, March 28-29, 1974
Room G-1, State Capitol
Bismarck, North Dakota

Thursday:

- 9:30 a.m. Call to order
Roll call
Minutes of previous meeting
- 9:45 a.m. Consideration of criminal sections in Title 54, NDCC
- 11:15 a.m. Consideration of criminal sections in Title 35, NDCC
- 12:00 noon Luncheon recess
- 1:15 p.m. Reconvene
Consideration of criminal sections in Title 40, NDCC
- 3:00 p.m. Consideration of criminal sections in Title 16, NDCC
- 5:00 p.m. Recess

* * * * *

Friday:

- 9:00 a.m. Reconvene
Consideration of criminal sections in Title 14, NDCC
- 10:15 a.m. Consideration of criminal sections in Title 18, NDCC
- 11:15 a.m. Consideration of criminal sections in Title 21, NDCC
- 12:00 noon Luncheon recess
- 1:15 p.m. Reconvene
Consideration of criminal sections in Title 36, NDCC
- 3:15 p.m. Consideration of criminal sections in Title 15, NDCC
- 5:00 p.m. Adjourn

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, March 28-29, 1974
Room G-1, State Capitol
Bismarck, North Dakota

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:35 a.m. on Thursday, March 28, 1974, in Committee Room G-1, State Capitol, Bismarck, North Dakota.

Legislative members

present:

Senator Freed
Representatives Austin, Hilleboe, Lundene, Murphy, Rau,
Royse

Citizen members

present:

Judges Teigen, Glaser, Pearce

Legislative members

absent:

Senator Jones
Representative Stone

Citizen members

absent:

Judge Heen, Sheriff Wells, Chief Anderson, Mr. Webb,
Mr. Wolf

Others present:

Mr. Wayne Anderson, Social Service Board
Mr. Ken Bergo, Agriculture Department
Mr. James DuBois, Northwestern Bell Telephone Co.
Mr. Tom Kelsch, Burleigh County State's Attorney
Mr. Clair Michels, N. D. Stockmen's Association
Mr. Ed Zuern, Corrections Coordinator, Director of
Institutions' office

The Committee considered the criminal sections in Title 54 of the Century Code, commencing with Section 54-03-18 which provides that any person who commits any of the offenses listed in Section 54-03-17 is guilty of a misdemeanor, and punishable by a maximum of six months' imprisonment, a \$500 fine, or both. The staff had reclassified it as a Class A misdemeanor. The Committee Counsel noted that Section 54-03-17 defines types of activity which the Legislature may punish as contempt. The Committee Counsel inquired as to whether a contempt action by the Legislature would be a bar to prosecution under this section because of double jeopardy. Judge Pearce stated that he believed that was the case.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 54-03-18 be accepted as drafted.

The Committee next discussed Section 54-03.2-15, which reads as follows:

1 54-03.2-15. PENALTIES.) A person guilty of contempt under the provision
2 of this code shall be fined not more than two hundred fifty dollars or
3 imprisoned not more than one hundred eighty days or both, or shall be
4 subject to such other punishment as the legislature or the appropriate
5 house thereof may, in the exercise of its inherent powers, impose prior
6 to and in lieu of the imposition of the aforementioned penalty.

7 If any investigating committee fails in any material respect to comply
8 with the requirements of this code, any person subject to a subpoena or
9 a subpoena duces tecum who is injured by such failure shall be relieved of
10 any requirement to attend the hearing for which the subpoena was issued
11 or, if present, to testify or produce evidence therein; and such failure
12 shall be a complete defense in any proceeding against such person for con-
13 tempt or other punishment.

14 Any person other than the witness concerned or his counsel who violates
15 subsections 7 or 8 of section 54-03.2-12 of this code shall be (((fined not
16 more than two hundred fifty dollars or imprisoned not more than one hundred
17 eighty days, or both))) guilty of a class A misdemeanor. The attorney
18 general, on his own motion or on the application of any person claiming
19 to have been injured or prejudiced by an unauthorized disclosure, may
20 institute proceedings for trial of the issue and imposition of the penalties
21 provided herein. Nothing in this subsection shall limit any power which
22 the legislature or either house thereof may have to discipline a member
23 or employee or to impose a penalty in the absence of action by a prosecuting
24 officer or court.

The Committee discussed the appropriate limitation on punishments imposed by the Legislature in great detail. It was noted that the section seemed to provide alternative penalties which could be applied by a court on the one hand, or the Legislature on the other. Several proposed amendments were stated, and Representative Hilleboe noted that he felt the Legislature, when it is in session, should have the alternative of direct punishment, but that alternative should not exist during the interim, or as the result of actions taken during an interim.

After further discussion, IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that triple parentheses be inserted before the word "the" in line 1 of Section 54-03.2-15 and after the word "code" in line 2; that the words and numerals "section 54-03.2-14" be inserted before the word "shall", and that triple parentheses be inserted before the word "fined" in line 2; that triple parentheses be inserted after the word "both" in line 3, that the words "guilty of class B misdemeanor" be inserted before the comma in line 3, and that triple parentheses be inserted before the word "shall" in that same line; that triple parentheses be inserted after the word "may" in line 5,

and that the words "if tried to the legislative assembly, or an appropriate house thereof, the legislature or the appropriate house may impose such punishment as it deems appropriate" be inserted before the first comma; that triple parentheses be inserted before the second comma in line 5; that triple parentheses be inserted after the word "penalty" in line 6; that the letter "A" in line 17 be deleted and the letter "B" be inserted in lieu thereof; and that the word "subsection" in line 21 be inserted in triple parentheses and the word "section" be inserted before the word "shall" in the same line.

The Committee discussed Section 54-05-01, which reads as follows:

1 54-05-01. CORRUPT MEANS TO INFLUENCE LEGISLATIVE ASSEMBLY -
2 PENALTY.) Any person who:
3 1. Directly or indirectly, gives or agrees to give any money, property,
4 or valuable thing, or any security therefor, to any person for his
5 service or the service of any other person in procuring the passage
6 or defeat of any measure before the legislative assembly or either
7 house thereof, or before any committee thereof, upon the contingency
8 or condition that any measure will be passed or defeated;
9 2. Directly or indirectly, receives or agrees to receive any such money,
10 property, thing of value, or security for such service, upon any
11 such contingency or condition, as set forth in the preceding subsection;
12 or
13 3. Having a pecuniary or other interest, or acting as the agent or
14 attorney of any person, in procuring or attempting to procure the
15 passage or defeat of any measure before the legislative assembly
16 or before either house or any committee thereof, attempts to influence
17 any member of the legislative assembly for or against any measure
18 without first making known to such member the real and true interest
19 he has in such measure, either personally or as such agent or attorney,
20 shall be (((punished by imprisonment in the county jail for not more than one
21 year or by a fine of not more than two hundred dollars))) guilty of a class A
22 misdemeanor.

The Committee discussed Subsections 1 and 2, and it was noted that Subsection 1 was essentially a statement of prohibition of bribery if it related to a public servant, i.e., a legislator, and otherwise was inoperative. Judge Pearce noted that contingent fee agreements are not inherently evil, and that the way to protect against the potential for harm is to tighten up the reporting provisions for lobbyists. JUDGE PEARCE THEN MOVED that Subsections 1 and 2 be deleted and the numeral "3" on line 13 also be deleted. The Committee then discussed the necessity for Subsection 3 itself, and it was pointed out that this is an unrealistic section.

IT WAS THEN MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 54-05-01 be repealed.

The Committee next considered the provisions of Section 54-05-09, which reads as follows:

1 54-05-09. PENALTY.) Any person (((, corporation, or association)))
2 violating any provision of this chapter, for which a penalty is not otherwise
3 provided, (((for such offense shall be fined not less than two hundred dollars
4 nor more than five thousand dollars))) is guilty of a class A misdemeanor.
5 Any person employed as legislative counsel or agent who shall fail to comply
6 with any provision of this chapter, or who shall act as legislative counsel
7 or agent contrary to the provisions of this chapter, unless a penalty is
8 otherwise provided, shall be (((fined not less than one hundred dollars
9 nor more than one thousand dollars))) guilty of an infraction, and shall
10 be disbarred from acting in the capacity of a legislative counsel or agent
11 for the period of three years from the date of such conviction. (((The
12 attorney general, upon information, shall bring prosecutions for the violation
13 of all the provisions of this chapter except section 54-05-01.)))

The Committee discussed this section at length, and it was determined that it would be appropriate to retain the provision concerning prosecutions by the attorney general, but to delete the reference to Section 54-05-01 since that section was being recommended for repeal.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN AND REPRESENTATIVE RAU, AND CARRIED that Section 54-05-09 be further amended by inserting the word "disbarred" in line 10 in triple parentheses and inserting the word "prohibited" before the word "from" in that same line; deleting the triple parentheses on line 11; and inserting triple parentheses before the word "except" in line 13, deleting the period following the numerals "54-05-01" in that same line, and inserting a period after the triple parentheses in that same line.

The Committee next considered the text of Section 54-05-10, which reads as follows:

1 54-05-10. MUNICIPALITIES EXEMPT FROM PROVISIONS OF THIS CHAPTER.)
2 None of the provisions of this chapter, except section 54-05-01, shall apply
3 to municipalities or other public corporations.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that triple parentheses be inserted around the following material in Section 54-05-10: " , except section 54-05-01,".

The Committee then considered Section 54-06-08, which reads as follows:

1 54-06-08. RECORD OF FEES KEPT BY STATE OFFICERS - REPORT TO
2 STATE TREASURER - PENALTY.) Every state officer or deputy state officer
3 required by the Constitution of this state, or by any provision of the laws
4 of this state, to cover into the state treasury all fees and profits arising

5 from such office, shall keep a record of all such fees or profits in a book
6 kept for that purpose. Such book shall be the property of the state. Each
7 officer shall report to the state treasurer monthly the amount of fees or
8 profits received, verified by oath, and at the same time shall pay the amount
9 of such fees or profits to the treasurer, taking duplicate receipts therefor.
10 One of the receipts shall be filed with the department of accounts and purchases
11 forthwith. The department of accounts and purchases shall charge the state
12 treasurer with the amount thereof. Any person violating the provisions of this
13 section is guilty of ((a misdemeanor, and shall be punished by a fine of not
14 less than fifty dollars nor more than one hundred dollars))) an infraction.

The Committee Counsel noted that Section 12.1-11-06 could be relied upon to provide a penalty for this section, except that that section would increase the potential penalty to a Class A misdemeanor. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 54-06-08 be further amended by inserting the word "cover" in line 4 in triple parentheses and insert the word "pay" before the word "into" in that same line; by inserting triple parentheses before the word "Any" on line 12; by deleting the triple parentheses on line 13; by inserting a period after the word "dollars" in line 14, and deleting the words "an infraction", and deleting the period; and in line 2 deleting the dash and the word "- PENALTY".

Representative Hilleboe noted that there were problems with the definitions of "state official" and "public officer", and that those definitions need rewording.

The Committee considered Section 54-06-09.1, which reads as follows:

1 54-06-09.1. CERTIFICATION OF UNLAWFUL EXPENSE AND TRAVELING
2 ACCOUNT - PENALTY - ACTION FOR VIOLATION.) Any person who certifies
3 to an expense and traveling account knowing it to be false is guilty of a
4 class A misdemeanor ((and shall be punished by imprisonment in a county
5 jail for not more than one year, or by a fine of not more than five hundred
6 dollars, or by both such fine and imprisonment))).

Mr. Wefald noted that the staff was recommending this section for omission since its provisions were covered by Section 12.1-11-02 dealing with false statements in governmental matters, and also by Chapter 12.1-23 dealing with theft. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 54-06-09.1 be repealed.

The Committee considered Section 54-06-12 which presently makes it a felony for a "state official" to willfully publish a false statement in regard to any other state department, a state institution, or a state industry where that statement would tend to deceive the public and create distrust or to obstruct, hinder, or delay the state agency concerning which the statement was made.

Mr. Wefald noted that this section was retained because of its felony classification, but that it seemed to be covered by Section 12.1-11-02 and Section 12.1-15-01, the latter section prohibiting criminal defamation. The Committee discussed at length whether in fact Section 12.1-11-02 and Section 12.1-15-01 did cover

this section since the false statement need not necessarily have been made "in a governmental matter", and since criminal defamation applies to natural persons.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 54-06-12 be accepted as drafted.

Representative Hilleboe requested the Committee consider Section 54-06-09 dealing with the mileage and travel expense of state employees. He stated that this section would be much better placed in Title 44 with the other provisions relating to meal and lodging allowances. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 54-06-09 be repealed and that its provision be placed in an appropriate spot in Chapter 44-08 of the Century Code.

The Committee discussed Section 54-10-23, which reads as follows:

1 54-10-23. OBSTRUCTING OR MISLEADING AUDITOR - PENALTY.)
2 Every person who, when required to do so, shall refuse or neglect to make
3 any return or exhibit, or to make or give any information required by
4 the auditor, or who willfully shall obstruct or mislead the auditor in the
5 execution of his duties, or who in any manner shall hinder a thorough
6 examination by the auditor, shall be guilty of a class C felony ((and
7 shall be liable to a fine of one thousand dollars and imprisonment in the
8 penitentiary for a term of not more than one year))).

The Committee Counsel called the Committee's attention to Sections 6-01-29 and 6-08-12 which contain provisions similar to Section 54-10-23 but relate to the Department of Banking and Financial Institutions.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 54-10-23 be accepted as drafted.

The Committee considered Section 54-10-25, which reads as follows:

1 54-10-25. PENALTY FOR STATE AUDITOR OR THOSE UNDER HIS EMPLOY
2 FOR DIVULGING SECRET INFORMATION.) The state auditor and every person
3 performing the examination of any return, report, or other information
4 filed and in the possession of the tax commissioner which is made confidential
5 by law, shall guard the secrecy of any return, report, or other information
6 examined except when otherwise directed by judicial order, or as is otherwise
7 provided by law. Any person violating the provisions of this section shall
8 ((upon conviction be punished by a fine of not more than one thousand
9 dollars, or by imprisonment in the county jail for not more than one year.
10 or by both such fine and imprisonment))) be guilty of a class A misdemeanor
11 and, if the offender is an officer or employee of the state, he, in addition,
12 shall be dismissed from office and shall be ineligible to hold any public
13 office or position in this state for a period of five years thereafter.

Mr. Wefald noted that the provisions of Section 54-10-25 may be covered under Section 12.1-13-01 which prohibits disclosure of confidential information provided government under a stricture of confidence. The Committee discussed lines 11 through 13 of the section at length, noting that a dismissal from office would probably follow for violation of a statutory requirement of confidentiality even though the person would not be required to lose office unless he had been convicted of a felony. The Committee also discussed the desirability of relying on Section 12.1-13-01 for criminal liability, but reclassifying that section as a Class C felony in order to allow removal from office of any public servant convicted under it.

IT WAS MOVED BY JUDGE TEIGEN AND SECONDED BY JUDGE PEARCE that the words "guard the secrecy" on line 5 of Section 54-10-25 be inserted in triple parentheses, and the words "not divulge the contents" be inserted before the word "of" in that same line; and that the last sentence commencing on line 7 be inserted in triple parentheses; and that the section heading be appropriately revised.

The Committee discussed this motion and the extent of coverage of the section at great length, noting that those persons "performing the examination of any return, report, or other information filed and in the possession of the tax commissioner" could include persons who did not work for the State Auditor. It was the consensus of the Committee that the section should be limited in its coverage to governmental employees or persons working under contract with the State Auditor. JUDGE TEIGEN, WITH THE CONSENT OF HIS SECOND, WITHDREW HIS PREVIOUS MOTION.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 54-10-25 be amended by inserting triple parentheses before the word "PENALTY" in line 1; inserting triple parentheses after the word "FOR" in line 2, inserting the words "OF CERTAIN" before the word "SECRET" in that same line, and inserting the word "PROHIBITED" after the word "INFORMATION" in that same line, and inserting triple parentheses before the word "every" in line 2; inserting triple parentheses after the word "performing" in line 3 and inserting the words "any person employed by him to perform" before the word "the" in that same line; inserting the words "guard the secrecy" in line 5 in triple parentheses and inserting the words "not divulge the contents" before the word "of" in that same line; inserting triple parentheses before the word "Any" in line 7, and deleting the triple parentheses before the word "upon" in line 8; deleting the triple parentheses in line 10 and all of the underscored material in that same line and inserting ending triple parentheses at the end of line 13.

The Committee considered Section 54-11-12, which reads as follows:

1 54-11-12. UNLAWFUL PURCHASES BY STATE TREASURER.) Every person
2 who while treasurer of this state, or the deputy or clerk of such treasurer,
3 directly or indirectly, buys or traffics in, or in anywise becomes a party
4 to the purchase of, any state warrant, order, or scrip, or any bill, account,
5 claim, or evidence of indebtedness against the state, for any sum less than
6 the full face value thereof, is guilty of an infraction (((a misdemeanor and
7 shall be punished by a fine of not less than fifty dollars nor more than five
8 hundred dollars))).

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY JUDGE PEARCE, AND CARRIED that in line 3 of Section 54-11-12 the words "in anyway" be inserted in triple parentheses, and that when so amended the section be accepted.

The Committee considered Section 54-14-06, which reads as follows:

1 54-14-06. PENALTY FOR CERTIFYING TO FALSE CLAIM.) Any person,
2 firm, or company falsely certifying, or certifying to any false bill, claim,
3 account, or demand against the state or any political subdivision therein,
4 is guilty of a class A misdemeanor and shall forfeit his right to collect such
5 bill, claim, account, or demand, or any part thereof.

The Committee Counsel suggested that this section could be repealed as its provisions were covered in Section 12.1-11-02 which prohibits the making of false statements or the giving of false writings in governmental matters. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 54-14-06 be repealed.

The Committee considered Section 54-16-05 which presently makes it a misdemeanor, punishable by a fine of from \$10 to \$100, or by imprisonment from 10 to 30 days, or both, for a state official, member of a state board, or head of a state institution or state department to violate the provisions of Section 54-16-03, which makes it unlawful to expend more moneys than were appropriated by the Legislature for a particular purpose. The staff has reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 54-16-05 be accepted as drafted.

The Committee considered Section 54-16-07, which reads as follows:

1 54-16-07. FAILURE TO MAKE REPORT (((- FALSE REPORT))) - PENALTY.)
2 Any officer mentioned in this chapter who fails to make the itemized report
3 (((to the governor, or who in any report made to the governor, willfully
4 makes a misrepresentation or misstatement of the facts regarding such
5 expenditures or other facts embodied in the report,))) required by section
6 54-16-06 is guilty of a class A misdemeanor.

The Committee Counsel noted that the false statements provisions of this section were recommended for omission since they were covered by Section 12.1-11-02. A Committee member then noted that the remainder of the section would be covered by Section 12.1-11-06 which deals with failure by a public servant to do his duty. On that basis, IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 54-16-07 be repealed.

The Committee considered Section 54-16-10, which reads as follows:

1 54-16-10. DEPARTMENTAL EMERGENCY FUNDS - PENALTY.) No moneys
2 appropriated by the legislative assembly to be used for emergency purposes
3 by any state department, state officer, employee, board, commission, bureau,
4 or institution, including the Bank of North Dakota, mill and elevator associa-
5 tion, state hail insurance, fire and tornado, and bonding departments, and

6 the workmen's compensation bureau, shall be expended until such moneys
7 so appropriated, or so much thereof as may be necessary for such appropria-
8 tion, shall have been transferred to the subdivision of the regular appropria-
9 tion in which the emergency exists. No such transfer of emergency funds,
10 hereinbefore referred to, shall be made until an itemized, verified petition,
11 setting forth the facts by virtue of which such emergency exists and the
12 necessity for such expenditure shall have been presented to the state emergency
13 commission, by the department, state officer, board, commission, bureau,
14 or institution desiring such transfer, and shall have been approved in writing
15 by a majority of such commission. Any person who violates the provisions
16 of this section is guilty of a class A misdemeanor.

Representative Lundene noted that there was no longer a state hail insurance entity, and that reference to it should be deleted. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that the following material be inserted in triple parentheses in line 5 of Section 54-16-10: ", state hail insurance", and that when so amended the section be adopted.

The Committee recessed for lunch at 12:07 p.m. and reconvened at 1:15 p.m. at which time it considered Section 54-21.1-11 which presently makes it a misdemeanor, punishable by a fine of not more than \$100, to manufacture or sell a mobile home contrary to the provisions of Section 54-21.1-08 which requires that all mobile homes sold in North Dakota after January 1, 1972, be constructed in accordance with the Uniform Standards Code for Mobile Homes. The staff reclassified the section as an infraction, and IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 54-21.1-11 be accepted as drafted.

The Committee considered Section 54-23-50, which reads as follows:

1 54-23-50. (((MEMBERS OF BOARD AND OFFICERS AND EMPLOYEES
2 OF INSTITUTIONS))) DIRECTOR OF INSTITUTIONS AND EMPLOYEES PROHIBITED
3 FROM ACCEPTING GIFTS - PENALTY.) ((No member of the board, nor
4 any officer, agent, or employee thereof)) Neither the director of institutions
5 nor any of his employees, and no superintendent, officer, manager, or
6 employee of any of the institutions under the charge and control of the
7 ((board)) director of institutions, directly or indirectly, for himself
8 or any other person, or for any institution under the charge of the ((board))
9 director of institutions, shall receive or accept any gift or gratuity from any
10 person ((, firm, or corporation)) dealing in goods, merchandise, or supplies
11 which may be used in any of the institutions, or from any employee,
12 servant, or agent of such person ((, firm, or corporation)). Any person
13 violating the provisions of this section is guilty of a class A misdemeanor.
14 Such violations shall be cause for his removal from office.

Judge Teigen noted that the section should deal with persons who purvey services as well as goods, merchandise, and supplies. Therefore, he suggested that the word "services" be inserted before the word "goods" in line 10. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the word and comma "services," be inserted before the word "goods" in line 10 of Section 54-23-50, and that when so amended the section be accepted.

The Committee considered Section 54-23-51, which reads as follows:

1 54-23-51. ((EMPLOYEES)) DIRECTOR OF INSTITUTIONS - PENALTY
2 FOR INFLUENCING APPOINTMENT.) ((Any member of the board and any
3 officer thereof who exerts)) The director of institutions or any of his
4 employees who exerts any improper influence, by solicitation or otherwise,
5 on the managing officer of any institution under the control of the ((board))
6 director of institutions, in the selection of any employee or assistant, is
7 guilty of a class A misdemeanor.

IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that the word "exerts" in line 4 be deleted and the word "exert" be inserted in lieu thereof; and that when so amended the section be accepted.

The Committee considered Section 54-27-13, which reads as follows:

1 54-27-13. PENALTY FOR EXPENDITURE ((OF)) IN EXCESS OF
2 APPROPRIATION FOR STATE INSTITUTIONS.) Any person violating the
3 provisions of section 54-27-12 ((,)) is guilty of a class B misdemeanor ((and
4 shall be punished by a fine of not less than five hundred dollars, or by impri-
5 sonment in the county jail for not more than sixty days, or by both such fine
6 and imprisonment)), and shall be subject to summary removal from office by
7 the governor, except elected officials who shall be subject to impeachment.

The Committee discussed the fact that the summary removal provisions for other than elected officials were not tied to conviction of an offense. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the following material be inserted after the word "shall" in line 6 of Section 54-27-13: ", upon conviction,"; and that when so amended the section be accepted.

The Committee considered Section 54-27-17, which reads as follows:

1 54-27-17. PENALTY FOR INVESTMENT OF PUBLIC FUNDS WITHOUT
2 CONSENT OF INDUSTRIAL COMMISSION.) Any officer, or the head of any
3 board, bureau, commission, department, institution, or industry of the
4 state violating any of the provisions of section 54-27-16, shall be guilty
5 of a class A misdemeanor ((and shall be punished by a fine of not less than
6 one hundred dollars nor more than one thousand dollars, or by imprisonment

7 in the county jail for not less than thirty days nor more than one year, or
8 by both such fine and imprisonment))).

IT WAS MOVED BY REPRESENTATIVE ROYSE AND SECONDED BY JUDGE TEIGEN that Section 54-27-17 be accepted as drafted. Representative Hilleboe inquired as to why Section 54-27-17 was classified as a Class A misdemeanor when Section 54-11-12 which deals with unlawful purchases by the State Treasurer was classified as an infraction. He stated that he felt it was far more serious to make unlawful purchases than to invest public funds without permission of the Industrial Commission.

REPRESENTATIVE HILLEBOE MOVED A SUBSTITUTE MOTION to reclassify Section 54-27-17 as a Class B misdemeanor, and when so reclassified to accept the section. THIS MOTION WAS SECONDED BY JUDGE PEARCE AND CARRIED.

The Committee next considered Section 54-41-05, which reads as follows:

1 54-41-05. UNAUTHORIZED USE - PENALTY.) No person shall place
2 or cause to be placed upon the coat of arms of this state any advertisement
3 of any nature; or expose such coat of arms to public view when any advertise-
4 ment has been attached thereto; or (((to))) expose to public view for sale
5 or any other purpose or have in his possession for sale, gift or other purpose,
6 any article of merchandise or receptacle for carrying merchandise upon
7 which the coat of arms of this state shall have been produced or attached
8 for the purpose of advertising or calling attention to such article. Any
9 person violating the provisions of this section shall be (((punished by a
10 fine of not to exceed one hundred dollars))) guilty of an infraction.

The Committee discussed this section and its initial viewpoint was that it was unnecessary. IT WAS MOVED BY REPRESENTATIVE HILLEBOE AND SECONDED BY JUDGE PEARCE that Section 54-41-05 be repealed. After further discussion THIS MOTION WAS WITHDRAWN AND IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 54-41-05 be accepted as drafted.

The Committee considered the criminal provisions in Title 35 of the Century Code, commencing with Section 35-01-26, which reads as follows:

1 35-01-26. DESTROYING, CONCEALING, SELLING PROPERTY SUBJECT TO
2 LIEN - PENALTY.) Every person having in his possession or under his control
3 any personal property upon which there is known to him to be a subsisting lien
4 or security interest, by contract, or by operation of law, who willfully destroys,
5 conceals, sells or in any manner disposes of such property or any part thereof
6 otherwise than as prescribed by law, or by the security agreement or materially
7 injures the same without the written consent of the holder of the lien or the
8 secured party, is guilty of a class A misdemeanor if the value of the property
9 does not exceed one thousand dollars, (((and))) or is guilty of a class C felony
10 if the value of the property exceeds one thousand dollars.

The Committee Counsel noted that Section 35-01-26 seemed to conflict with Section 12.1-23-08 which deals with the defrauding of secured creditors. He noted that there was a different grading of offenses in Section 12.1-23-08, and that that section defines the offense in terms of "destruction" of property, but does not use the phrase "materially injures" which is used in Section 35-01-26. The Committee Counsel also noted that Section 12.1-23-08 places emphasis on the actor's intent to prevent collection of the debt, while Section 35-01-26 emphasizes the actor's knowledge of the lien or security interest. He recommended that Section 35-01-26 be repealed, but that Section 12.1-23-08 be kept in mind for possible amendment both with regard to the need for adding the phrase "materially injures" and to provide a definition of "security interest".

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 35-01-26 be repealed, and that the minutes reflect the need for the staff to look at Section 12.1-23-08 for possible amendment.

The Committee considered Section 35-05-03, which reads as follows:

1 35-05-03. BILLS OF SALE AND TRANSFERS CIRCUMVENTING CROP MORTGAGE
2 LAW PROHIBITED - PRESUMPTION - ((MISDEMEANOR)) PENALTY. (((It shall
3 be unlawful for any))) No person (((, firm, corporation, or association to)))
4 shall solicit or procure bills of sale or transfers of whatever nature for the purpose
5 of obtaining title to or liens upon growing crops in circumvention of section
6 35-05-01, and any such bill of sale or transfer shall be void. Any such bill
7 of sale or transfer relating to growing crops shall be presumed to be in violation
8 of this section. Any person (((, firm, corporation, or association violating)))
9 who violates the provisions of this section is guilty of (((a misdemeanor and
10 for each offense shall be subject to a fine of three hundred dollars))) an infraction.

The Committee Counsel noted that the section referred to internally, §35-05-01, prohibits security interests in growing crops, except where the security interest is in favor of certain listed lenders.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with Representative Murphy voting in the negative, that Section 35-05-03 be accepted as drafted.

The Committee considered Section 35-09-04 which presently makes it a misdemeanor to misuse seed covered by a seed lien. The staff reclassified the section as a Class A misdemeanor. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 35-09-04 be accepted as drafted.

The Committee considered the provisions of Section 35-22-13, which reads as follows:

1 35-22-13. FORECLOSURE - ATTORNEY'S AND SHERIFF'S FEES - DIVISION
2 OF ATTORNEY'S FEES UNLAWFUL - PENALTY.) On the foreclosure of any lien
3 or mortgage by advertisement, the person commencing such foreclosure shall
4 be entitled to tax an attorney's fee in the amount of twenty-five dollars, and

5 the sheriff's fee shall not exceed three dollars. No attorney's fee shall be allowed
6 unless the proceeding is conducted under the supervision of a resident licensed
7 attorney (((duly authorized to practice in the courts of this state))). It shall
8 be unlawful for any such attorney to pay or agree to pay any part of such
9 attorney's fee to the party foreclosing the mortgage or other lien, and any
10 attorney violating the provisions of this section is guilty of a class A misdemeanor.

The Committee Counsel noted that this section bears a close relationship to the existing criminal sections prohibiting champerty and maintenance (see Sections 12-17-19 and and 12-17-21). He noted that the sections dealing with champerty and maintenance would be repealed when S. B. 2045 takes effect on July 1, 1975. The Committee Counsel stated that questions could be raised concerning the desirability of a statutory policy which is intended to ensure the retention of an attorney in instances of foreclosure by advertisement. A Committee member noted that the use of foreclosure by advertisement was limited to the Bank of North Dakota as mortgagee, and that the Bank now has a full-time attorney.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 35-22-13 be repealed.

The Committee then considered Section 35-27-08, which reads as follows:

1 35-27-08. CONTRACTOR OR SUBCONTRACTOR IMPROPERLY USING PROCEEDS
2 OF PAYMENT - (((LARCENY))) THEFT.) Any contractor or subcontractor improv-
3 ing real estate within the meaning of this chapter who, with intent to defraud,
4 (((shall use))) uses a payment made to him by the owner of the real estate or
5 the person having the improvement made for any purpose other than (((the)))
6 payment for labor performed upon the improvement, or payment for materials,
7 machinery, or fixtures furnished for the improvement while the labor was
8 performed, or payment for materials, machinery, or fixtures, furnished for
9 the improvement which have not been paid for at the time of the payment, is
10 guilty of (((larceny. If the amount of the payment so used exceeds one hundred
11 dollars, the contractor or subcontractor is guilty of grand larceny. If the
12 amount of the payment so used is the sum of one hundred dollars or less,
13 he is guilty of petit larceny))) theft and is punishable as provided for in
14 section 12.1-23-05.

The Committee Counsel noted that it was unclear whether Subsection 1 of Section 12.1-23-02 covers the activity prohibited by this section. He noted that that subsection prohibited the taking or exercising of unauthorized control over, or making an unauthorized transfer of, property with intent to deprive the owner of the property. He stated that the section also doesn't seem to be covered by Section 12.1-23-08 which prohibits the defrauding of secured creditors. Although Section 35-27-08 seems to deal primarily with misapplication of entrusted funds, it would not be covered by Section 12.1-23-07, which deals with that topic, because that section is limited in its application to fiduciaries and officers and employees of financial institutions.

Judge Pearce stated that he felt the theft provisions did cover this section, and particularly that it was covered by Section 12.1-23-02 (1). He stated that to the extent that a contractor pays money other than to the persons which the owner intended to be paid, he is "exercising unauthorized control over the property of another with intent to deprive the owner thereof".

IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY JUDGE PEARCE that Section 35-27-08 be repealed. Judge Teigen stated that he opposed the motion because of the use of the word "takes" in Subsection 1 of Section 12.1-23-02, since the use of that word implies that the "thief" has to get the property from the victim "unlawfully". The Committee then discussed the fact that the phrase "exercises unauthorized control" was separate and apart from the word "takes" and implied that a person could be guilty of theft even though he had initially gotten the property, which he is charged with stealing, lawfully.

Mr. Kelsch stated that he was against specific definitions of offenses where a general definition would suffice, and in this instance he thought that the theft definition would suffice. Thereafter, JUDGE PEARCE'S MOTION CARRIED with three negative votes.

The Committee then considered Section 35-27-26 which provides that it is unlawful to knowingly include in a statement of lien classes of materials which are not subject to a mechanic's lien. The offense is presently classified as a misdemeanor and the staff has reclassified it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 35-27-26 be accepted as drafted.

The Committee commenced consideration of the criminal sections in Title 40. The first section considered was Section 40-01-08 which provides that it is unlawful to remove a building which is not exempt from taxation until after taxes and special assessments due against it have been paid and the owner has paid into the sinking fund for the retirement of any municipal bonded indebtedness an amount equal to the share of the tax which would then be required against the property to pay his pro rata share of the principal of the bonds. The section is presently classified as a misdemeanor and the staff reclassified it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 40-01-08 be accepted as drafted.

The Committee considered Subsections 26 and 27 of Section 40-05-02 which authorize cities to prohibit petit larceny and establish a "peace bond" procedure. The staff is recommending a revision of these sections to delete the words "petit larceny" and substitute the word "theft", and to delete reference to the words "police magistrate" and substitute the words "municipal judge" therefor.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Subsections 26 and 27 of Section 40-05-02 be accepted as drafted.

The Committee considered Section 40-09-15, which reads as follows:

- 1 40-09-15. SPECIAL POLICE - PRESIDENT OF BOARD MAY CALL - POWERS.)
- 2 Whenever the president of the board of city commissioners shall deem it
- 3 necessary in order to enforce the laws of the city, to avert danger, to
- 4 protect life or property, or in case of riot, outbreak, calamity, or public
- 5 disturbance, or when he has reason to fear any serious violation of law

6 or order, any outbreak, or any other danger to the city, he shall summon
7 into service as a special police force all or as many of the citizens of the
8 city as in his judgment and discretion may be necessary and proper.
9 The summons may be made by proclamation or order addressed to the citizens
10 generally or to those of any ward or subdivision of the city. The special
11 police, while in service, shall be subject to the orders of the president
12 of the board of city commissioners and shall perform such duties as he
13 may require, and while on duty shall have the same power as the regular
14 police officers of the city. Any person who is summoned and who fails
15 to obey, or who appears and fails to perform any duty that may be required
16 by this section shall be (((fined in any sum not exceeding one hundred
17 dollars))) guilty of an infraction.

The Committee Counsel noted that the section was amended simply to clarify that criminal liability was intended rather than civil liability. The Committee Counsel noted that the Committee might choose civil liability. He also stated that the substance of the section was questionable, especially in light of the fact that no provision is specifically made for deputization or for any of the numerous types of a liability which might arise when actions of the kind contemplated by the section were taken. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 40-09-15 be repealed.

The Committee considered Section 40-13-06, which reads as follows:

1 40-13-06. PENALTY FOR ILLEGAL INTEREST IN CONTRACT OF MUNICIPAL-
2 ITY - CONTRACT VOID.) Any officer or member of the governing body
3 of any municipality who by himself or his agent becomes a party to or
4 in any manner interested in any contract work or letting under the authority
5 of the municipality, in violation of law, or who accepts or receives, either
6 directly or indirectly, by himself or through other parties, any valuable
7 consideration or promise for his influence or vote on any such contract
8 or letting, is guilty of (((a misdemeanor and shall be punished by a fine
9 in the sum not to exceed one thousand dollars))) an infraction, and the
10 contract shall be null and void.

The Committee Counsel recommended that this section be repealed as its provisions are covered by Sections 12.1-12-01 (prohibiting bribery) and 12.1-13-03 (prohibiting public servants from having an interest in public contracts which they have authority to let). Judge Pearce noted that the last clause of the section provided that a contract let in violation of it would be null and void. He wondered whether that might not be a valuable provision. However, he stated that he believed that contracts made in violation of law were void at any rate. Mr. Wefald left the room to get a copy of the relevant statutes dealing with contracts in general.

In his absence, the Committee considered Section 40-13-12, which reads as follows:

1 40-13-12. MUNICIPAL OFFICERS LIABLE TO CRIMINAL PROSECUTION -
2 (((FINE))) PENALTY - REMOVAL FROM OFFICE.) Any municipal officer
3 who shall ((be guilty of a palpable omission of duty or who shall)) willfully
4 (((and corruptly be guilty of)) engage in oppression, misconduct, or
5 misfeasance in the discharge of the duties of his office, is guilty of ((a
6 misdemeanor and shall be fined not more than one thousand dollars))
7 an infraction. The court in which the conviction shall be had shall immediately
8 enter an order removing such officer from office.

The Committee Counsel noted that the language relating to "omission of duty" was deleted because it was covered under Section 12.1-11-06. He stated that the language relating to "oppression" was arguably covered under Section 12.1-14-01 which prohibits a person who acts in an official capacity from denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity. The Committee Counsel noted that the section, even as recommended for amendment, may still be subject to challenge as "void for vagueness".

During discussion, members of the Committee questioned the desirability of the last sentence which would allow a court to enter an order upon conviction without a hearing and remove the officer from office. After further discussion, IT WAS MOVED BY JUDGE GLASER, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 40-13-12 be repealed.

The Committee then considered Section 40-13-06 again, and Judge Pearce discussed the provisions of Section 9-08-01, noting that it was probably inapplicable. However, he questioned why the contract should be void, as that might unduly penalize an innocent party.

Thereafter, IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 40-13-06 be repealed.

The Committee next considered Section 40-45-15, which reads as follows:

1 40-45-15. RIGHT TO RETIREMENT ONCE ACQUIRED CAN BE LOST ONLY
2 BY CONVICTION OF FELONY.) After any member of a police department
3 shall have become entitled to be retired under the provisions of this chapter,
4 such right shall not be lost or forfeited by discharge or for any other reason
5 except conviction of a felony.

The Committee Counsel noted that Sections 40-45-15 and 40-46-16 were included in the draft in order to point out an instance of a special additional disqualification resulting from conviction of a felony in addition to those disqualifications set out in Chapter 12.1-33. The Committee discussed these two sections and felt that, although they constituted a disqualification in addition to the ones established in Chapter 12.1-33, it would be best to leave these sections as they constituted a part of the overall plan for city police retirement and municipal employees' retirement.

The Committee discussed Section 40-48-38 which is a general penalty section relating to Chapter 40-48 which relates to municipal planning commissions and municipal master plans. Presently, a violation of that chapter is a misdemeanor, and the staff has reclassified it as a Class A misdemeanor.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 40-48-38 be accepted as drafted.

The Committee then considered Subsection 3 of Section 40-49-12, which reads as follows:

1 40-49-12. . . .
2 3. Pass all ordinances necessary and requisite to carry into effect
3 the powers granted to a board of park commissioners, with such
4 (((fines,))) penalties (((,))) or forfeitures as the board may deem
5 proper. No such (((fine or))) penalty, however, shall exceed
6 (((one))) five hundred dollars (((, and no imprisonment shall
7 exceed thirty days for one offense)))

The Committee Counsel noted that the subsection was in a section, and chapter, dealing with the powers and duties of boards of park commissioners. In accordance with previous action of the Committee, the potential penalty for violation of a regulation (ordinance) of the board has been set at the maximum penalty for commission of an infraction. The Committee discussed the desirability of making reference to "forfeitures" in a statute dealing with the powers of local boards to pass ordinances.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the second set of ending triple parentheses in line 4 be deleted, that ending triple parentheses be inserted after the word "forfeitures", and that when so amended Subsection 3 of Section 40-49-12 be accepted.

The Committee considered Section 40-50-08, which reads as follows:

1 40-50-08. PENALTY IF REGISTER OF DEEDS FILES OR RECORDS A
2 PLAT WITHOUT APPROVAL OF PLANNING COMMISSION.) A register of
3 deeds who shall receive for filing, or who shall record a plat of a subdivision
4 without the approval of the planning commission, if a planning commission
5 has been appointed in the municipality in which the subdivision is located
6 or to which it is attached, shall be guilty of (((a misdemeanor and shall
7 be fined not less than one hundred dollars nor more than five hundred
8 dollars))) an infraction.

Judge Pearce noted that the offense defined in this section was covered by Section 12.1-11-06 mandating that public servants perform their duties.

IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY JUDGE GLASER that Section 40-50-08 be amended by inserting the words "PENALTY IF" in triple parentheses in line 1, inserting the words "FILES OR RECORDS" in triple parentheses in the same line, and inserting the words "NOT TO RECORD" before the word "A" in that same line; inserting triple parentheses around the word "who" in line 3, inserting triple parentheses before the word "receive" in the same line, inserting triple parentheses after the word "shall" in that same line, and inserting the word "not" before the word "record" in that same line; inserting triple parentheses before the comma in line 6; and deleting the underscored material in line 8.

Judge Teigen questioned whether the penalty provided by Section 12.1-11-06 was too high. It was noted that this would simply bring the penalty for a failure of duty by the register of deeds with respect to recording of a plat which did not have planning commission approval into line with other failures to perform duties by public servants.

Judge Glaser noted Section 12.1-02-01 which states: "a person commits an offense only if he engages in conduct . . . in violation of a statute which provides that the conduct is an offense." He asked where the statute, Section 40-50-08, states that it is an offense. The Committee Counsel indicated that Section 40-50-08 does not indicate that it is an offense but it does establish the duty not to record unless the plat has been approved by the planning commission. Once that duty is established, then a failure to carry it out imposes liability under Section 12.1-11-06, because that section states that a knowing refusal to perform a duty "imposed upon him by law" makes a public servant guilty of a Class A misdemeanor.

Judge Teigen questioned the use of the word "without" in line 4 of Section 40-50-08. He stated that the use of that word seems to indicate that a planning commission would have to approve the recording activity by the register of deeds. He stated that he was sure that was not the statute's intent, but rather the intent was that the recording activity not take place unless a subdivision plat has approval. Therefore, he suggested that the word "without" in line 4 be inserted in triple parentheses and the words "unless it has" be inserted before the word "the" in that same line. Judge Pearce and Judge Glaser accepted Judge Teigen's additional amendment, and THE MOTION CARRIED.

The Committee considered Section 40-50-10, which reads as follows:

1 40-50-10. PENALTY IF OFFICER OR OTHER PERSONS NEGLECT TO DO
2 DUTY.) If any officer or person whose duty it is to comply with any of the
3 requirements of this chapter shall neglect or refuse so to do, he shall forfeit
4 and pay a sum not less than ten dollars nor more than one hundred dollars
5 for each month he shall delay a compliance.

The Committee Counsel questioned whether this section was necessary in light of the criminal liability provided by Section 12.1-11-06 which deals with a public servant who refuses to perform statutory duties imposed upon him. He noted, however, that Section 40-50-11 provides that all forfeitures, including others arising under Chapter 40-50, are to be sued for and recovered in the name of the county treasurer. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 40-50-10 be repealed.

The Committee considered several sections (12-44-33, 12-44-39, 29-26-21, 29-27-03, 29-27-04, 40-11-12, and 40-18-12) in light of the U. S. Supreme Court's decisions in Williams v. Illinois and Tate v. Short, which deal with the incarceration of indigents for nonpayment of fines imposed upon them as criminal penalties. The sections were contained in a staff memorandum which was in response to a suggestion from Judge Pearce that the Committee consider the possibility of amending Sections 40-11-12 and 40-18-12 to bring them into accord with Williams and Tate.

The Committee first considered Section 29-26-21, which reads as follows:

1 29-26-21. JUDGMENT FOR FINE AND COSTS.) A judgment that the
2 defendant pay a fine and costs ((also)) may not direct that he be imprisoned
3 until both the fine and costs are satisfied ((, specifying the extent of the
4 imprisonment, which must not exceed one day for every two dollars of the
5 fine and costs, but such imprisonment does not discharge the judgment for
6 fine and costs, nor either))). Response to nonpayment of a fine shall be
7 as provided for in section 12.1-32-05.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU,
AND CARRIED that Section 29-26-21 be accepted as drafted.

The Committee then considered the proposed amendments to Section 29-27-03,
which reads as follows:

1 29-27-03. JUDGMENT FOR IMPRISONMENT OR FINE AND IMPRISONMENT.)
2 If a judgment is for imprisonment, ((or a fine and imprisonment until such
3 fine is paid)) initially or as response to nonpayment of fine in accordance
4 with section 12.1-32-05, the defendant forthwith must be committed to the
5 custody of the proper officer, and ((by him)) be detained by him until
6 the judgment is complied with.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE ROYSE,
AND CARRIED that Section 29-27-03 be accepted as drafted.

The Committee considered Section 29-27-04, which reads as follows:

1 29-27-04. JUDGMENT - BY WHAT OFFICER EXECUTED.) When the
2 judgment in a criminal action or proceeding under section 12.1-32-05 is
3 imprisonment in the county jail, ((or a fine and imprisonment until the
4 fine is paid,)) the judgment must be executed by the sheriff of the county.
5 In all other cases when the sentence is imprisonment, the sheriff of the
6 county must deliver the defendant to the proper officer in execution of
7 the judgment.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU,
AND CARRIED that Section 29-27-04 be accepted as drafted.

The Committee then considered the provisions of Section 40-11-12, which
reads as follows:

1 40-11-12. COMMITMENT OF GUILTY PERSON FOR NONPAYMENT OF
2 FINES OR COSTS.) Any person upon whom any fine ((or penalty shall
3 be)) or costs, or both, has been imposed for ((a)) violation of a municipal
4 ordinance may, after hearing, be committed ((,)) upon ((the)) order
5 of the court ((before whom the conviction is had, to the county jail, city
6 prison, workhouse, house of correction,)) to jail or other place provided

7 by the municipality for the incarceration of offenders until the fine (((, penalty,
8 and))) or costs, or both, (((shall be))) are fully paid (((in money))) or
9 discharged by labor as (((is))) provided in section 40-18-12. The court
10 may not commit a person under this section when the sole reason for his
11 nonpayment of a fine or costs, or both, is his indigency. An order of
12 commitment under this section shall not be for a period in excess of thirty
13 days.

The Committee Counsel noted that the section did not deal with nonpayment of ordered restitution, nor is the power of a municipal court to order restitution specifically set forth by statute. He suggested that perhaps the Committee might desire to specifically set forth a municipal court's power to order restitution in a manner paralleling the provisions in Chapter 12.1-32 (S. B. 2045).

Judge Pearce noted that the section did not specifically exclude fees paid for violation of traffic ordinances. He suggested that a sentence similar to the following be inserted at the end of Section 40-11-12: "As used in this section, "fine" does not include a fee established pursuant to subsection 2 of section 40-05-06".

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the sentence suggested by Judge Pearce be added at the end of Section 40-11-12, and that when so amended the section be accepted.

The Committee then considered Section 40-18-12, which reads as follows:

1 40-18-12. COMMITMENT FOR VIOLATION OF CITY ORDINANCE -
2 LIMITATION - LABOR IN LIEU OF FINE - DIAGNOSIS AND TREATMENT OF
3 PERSONS CONVICTED WHILE DRIVING UNDER THE INFLUENCE.) If the
4 defendant is found guilty of the violation of a municipal ordinance and is
5 committed as (((is))) provided in section 40-11-12, the (((term of his
6 imprisonment shall not exceed thirty days for any one offense. The)))
7 governing body may provide by ordinance that (((each person so commit-
8 ted))) he shall be required to work for the municipality at such labor as
9 his strength will permit, not exceeding ten hours in each working day
10 (((, and for such))). For that work, the person so imprisoned shall
11 be allowed for each day, exclusive of his board, five dollars on account
12 of the fines and costs assessed against him. If a person is convicted under
13 an ordinance prohibiting driving while under the influence of an intoxicating
14 liquor or a narcotic drug, the court may, prior to sentencing, refer the
15 person to an approved treatment facility for diagnosis. Upon receipt of
16 the results of this diagnosis, the court may impose a sentence as prescribed
17 by the city's ordinances or it may sentence the person to treatment in a
18 facility approved by the state division of alcoholism and drug abuse.

Judge Pearce noted that it would be well to provide that a person may be required to work not only at such labor as his strength will permit but also as his health will permit. In addition, Judge Pearce thought that the per diem paid to working prisoners should be increased, and that their working day should be reduced to eight hours, since, as a practical matter, they do not work longer than that at any rate.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 40-18-12 be further amended by adding the words "and health" after the word "strength" in line 9, inserting the word "ten" in triple parentheses in that same line, and adding the word "eight" before the word "hours" in that same line; and inserting the word "five" in triple parentheses in line 11, and adding the word "ten" before the word "dollars" in that same line; and that when so amended the section be accepted.

The Committee considered Section 12-44-39, which reads as follows:

1 12-44-39. DISCHARGE OF INDIGENT CONVICT HELD FOR FINE AND
2 COSTS.) When any indigent convict has been confined in a jail for six
3 months for the nonpayment of a fine and costs, or either of them, the
4 sheriff of the county in which such person is imprisoned shall make a
5 report thereof to a district judge of the judicial district of which the county
6 is a part, and he may require the jailer to bring the convict before him.
7 ((It)) If he is satisfied that the convict, since his conviction, has not
8 had any estate, real or personal, with which he could have paid the sum
9 for the nonpayment of which he was committed, he shall make a certificate
10 to that effect to the sheriff of the county and direct him to discharge the
11 convict from jail, and the sheriff shall discharge him forthwith.

The Committee Counsel stated that this section should be repealed as it conflicts with the provisions of Section 12.1-32-05 contained in Senate Bill No. 2045. It also seems to be based on an unconstitutional premise in light of Williams and Tate.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 12-44-39 be repealed.

The Committee considered Section 12-44-33, which reads as follows:

1 12-44-33. CONVICT TO RECEIVE CREDIT FOR LABOR TO APPLY ON
2 JUDGMENT.) For each day of labor performed by a convict under the
3 provisions of this chapter, there shall be credited on any judgment ((for))
4 of a fine ((and costs)) against him the sum of five dollars.

The Committee Counsel noted that, when the Committee has Senate Bill No. 2045 before it again, it may wish to reconsider Section 12.1-32-05 and amend it to include reference to costs.

IT WAS MOVED BY JUDGE GLASER, SECONDED BY JUDGE PEARCE, AND CARRIED that the triple parentheses after the word "for" in line 3 be deleted, that the underscored material in line 4 be deleted, that the triple parentheses before the word "and" be deleted, that the words "for a fine, costs, or both." be inserted after the word "him" in that same line, that the word "five" be inserted in triple parentheses, and that the word "ten" be inserted at the end of that same line; and that when so amended, the section be accepted.

The Committee then considered the criminal provisions in Title 16 of the Century Code, commencing with Section 16-01-08, which reads as follows:

1 16-01-08. PENALTY FOR PUBLIC (((OFFICER))) SERVANT VIOLATING PRO-
2 VISIONS OF TITLE.) Any public ((officer)) servant who shall willfully
3 (((shall))) do (((or perform))) any act ((or thing)) prohibited, or who willfully
4 shall neglect or omit to perform any duty imposed upon him by the provisions of
5 this title, shall be guilty of a class B misdemeanor and shall also be punished by
6 (((a))) forfeiture of his office ((and by a fine of not less than fifty dollars nor
7 more than five hundred dollars, or by imprisonment in the county jail for not less
8 than one month nor more than six months, or by both such fine and imprison-
9 ment))).

The Committee Counsel noted that this section could be replaced by Section 12.1-11-06 which would punish a public servant who refuses to perform his duty. However, if reliance were placed on that section, then the forfeiture provisions of Section 16-01-08 would have to be foregone, because a "loss of office" disqualification only attaches, under Chapter 12.1-33, upon conviction of a felony.

IT WAS MOVED BY JUDGE GLASER, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 16-01-08 be repealed.

The Committee considered Section 16-01-11, which reads as follows:

1 16-01-11. REGULATIONS GOVERNING INITIATIVE, REFERENDUM, OR
2 RECALL PETITIONS - PENALTY.) No person shall sign any initiative,
3 referendum, or recall petition circulated pursuant to the provisions of
4 sections 25 and 202 of the Constitution of this state, and article 33 of the
5 amendments of the Constitution, unless he is a qualified elector. No person
6 shall sign any petition more than once, and each signer shall add, after
7 his signature, his post-office address and the date of signing. Every
8 qualified elector signing a petition pursuant to the Constitution and this
9 section shall do so in the presence of the person circulating the petition.
10 Each copy of any petition provided for in this section, before being filed,
11 shall have attached thereto an affidavit executed by the circulator to the
12 effect that each signature to the paper appended is the genuine signature
13 of the person whose name it purports to be, that it was signed in his
14 presence, and that each such person is a qualified elector. Each affidavit
15 prepared pursuant to this section shall be accompanied by a typed or

16 printed list of the names of the persons who signed the copy of the petition
17 to which the affidavit was attached. Any person not an elector who signs
18 an initiative, referendum, or recall petition, any person signing a name other
19 than his own on such a petition, and any person who executes the affidavit
20 required by this section knowing all or part of the affidavit to be false,
21 shall be guilty of a class A misdemeanor. All signatures on each copy of
22 a petition to which is attached a false affidavit shall be invalid.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 16-01-11 be accepted as drafted.

The Committee then considered Section 16-01-12, which reads as follows:

1 16-01-12. PENALTY FOR REJECTING LEGAL VOTE.) Any election
2 board or any member of any election board who (((willfully and))) knowingly
3 rejects any legal vote shall be subject to a penalty of fifty dollars. Such
4 penalty shall be collected, in a civil action before any county justice, in
5 the name and for the benefit of the person aggrieved))) guilty of an infraction.

The Committee Counsel noted that the section might well be covered under Section 12.1-11-06 which mandates that a public servant perform his statutory duties. He stated that there seems to be a statutory duty to accept a ballot (see Section 16-12-05). He noted that the reason why he had made the section an infraction was because it was most unusual for a statute to establish that a penalty will be recovered in a civil action in the name of the person aggrieved.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE TEIGEN AND REPRESENTATIVE ROYSE, AND CARRIED that Section 16-01-12 be repealed.

The Committee then considered Section 16-12-09, which reads as follows:

1 16-12-09. PENALTY FOR SOLICITING TO BE CHOSEN AS AID IN MARKING
2 BALLOT OR REQUESTING VOTER TO VOTE IN CERTAIN MANNER.) Any
3 person who solicits his choice to assist any voter in marking his (((or her)))
4 ballot, or who, being chosen, shall request the voter he is assisting to
5 vote for or against any person, or any issue, shall be guilty of a class B
6 misdemeanor (((and shall be punished by a fine of not less than twenty-five
7 dollars nor more than one hundred dollars, or by imprisonment in the county
8 jail for not more than sixty days, or by both such fine and imprisonment))).

Mr. Kelsch noted that, Section 16-12-09 limits the offense to those instances in which the person charged has solicited his choice as an assistant to the voter. He wondered whether the offense wouldn't be just as serious or more serious where the persons selected to assist the voter were chosen by the election board without any solicitation on his part. He suggested that solicitation was not the gist of the offense, but rather that, having been chosen to assist a voter, you request the voter to vote for or against a person or issue. The Committee Counsel suggested that the section could be amended so that the gist of the offense was that if one

were chosen to assist a voter cast his vote and requested the voter to vote for or against a person or issue, that person would be guilty of a Class B misdemeanor.

IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with three negative votes, that Section 16-12-09 be amended by inserting triple parentheses before the word "SOLICITING" in line 1; inserting triple parentheses after the word "OR" in line 2; inserting triple parentheses before the word "solicits" in line 3 and deleting the triple parentheses around the words "or her" in that same line; inserting triple parentheses after the word "being" in line 4, inserting the word "is" before the word "chosen" in line 4. inserting triple parentheses before and after the third comma, and inserting the words "to assist a voter and" before the word "shall" in that same line; and that when so amended the section be adopted.

The Committee considered Section 16-12-14 which authorizes challengers at polling places and provides that persons challenged are to step aside unless they make an affidavit that they are legally qualified to vote. A person who swears falsely in the affidavit is guilty of perjury, and the staff amendment is to provide the proper reference to perjury, and to make the last sentence of the section into a new subsection.

IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 16-12-14 be accepted as drafted.

The Committee considered Section 16-12-15, which reads as follows:

1 16-12-15. FAILURE TO STAMP OR INITIAL BALLOT - DEPOSITING
2 UNSTAMPED BALLOT IN BALLOT BOX - PENALTY.) Any inspector or judge
3 of election who fails to stamp or initial any ballot as required by this chapter,
4 or who deposits in a ballot box any ballot upon which the official stamp does
5 not appear, is guilty of a class A misdemeanor.

IT WAS MOVED BY REPRESENTATIVE AUSTIN AND SECONDED BY REPRESENTATIVE LUNDENE that Section 16-12-15 be accepted as drafted. After some discussion, JUDGE TEIGEN MADE A SUBSTITUTE MOTION WHICH WAS SECONDED BY REPRESENTATIVE ROYSE that Section 16-12-15 be repealed as the duty of the judge was defined elsewhere, and a failure to carry out that duty would be covered under Section 12.1-11-06. THE SUBSTITUTE MOTION CARRIED, AND THE MAIN MOTION BECAME MOOT.

The Committee then considered Section 16-13-06, which reads as follows:

1 16-13-06. PENALTY FOR VIOLATION OF CHAPTER.) Any person violating
2 any of the provisions of this chapter is guilty of a class A misdemeanor ((and
3 shall be punished by a fine of not to exceed five hundred dollars, or by
4 imprisonment in the county jail for not more than one year, or by both such
5 fine and imprisonment))).

The Committee Counsel noted that Chapter 16-13 deals with the canvassing of election returns and the custody of election ballots. After discussion, it was determined that the only person who could violate the provisions of the chapter would be a public servant, and therefore, IT WAS MOVED BY JUDGE TEIGEN,

SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 16-13-06 be repealed because its provisions were covered by Section 12.1-11-06.

The Committee considered Section 16-14-10 which provides that a person who has been summoned to testify in a contest of a legislative election and refuses to do so is guilty of a misdemeanor, and is also liable for a civil forfeiture of \$20. The staff amendment deletes reference to the civil forfeiture, and reclassifies the section as a Class A misdemeanor. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 16-14-10 be accepted as drafted.

The Committee considered Section 16-14-12 which authorizes officers to require the production of papers in legislative election contests, and provides that failure to produce such papers will subject the person so failing to the penalty prescribed in Section 16-14-10. The staff amendment is to make reference to a single penalty, rather than both the civil and criminal penalties previously provided in Section 16-14-10. IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 16-14-12 be accepted as drafted.

The Committee considered Section 16-16-25, which reads as follows:

1 16-16-25. PENALTIES.) (((Any person willfully making a false statement
2 of affidavit in qualifying to vote as a new resident in a presidential election
3 shall be guilty of a misdemeanor.))) Any public official who willfully
4 (((refuses or neglects to perform any of the duties prescribed by sections
5 16-16-17 through 16-16-27 or who))) violates any of (((their))) the provisions
6 of sections 16-16-17 through 16-16-27 shall be guilty of a class A misdemeanor.

The Committee Counsel noted that the deleted language in the section was covered by Section 12.1-11-02 which prohibits the making of false statements in governmental matters, and by Section 12.1-11-06 dealing with failure by public servants to perform their duties. He also noted that the sections referred to internally in the section cover the eligibility of new residents to vote in presidential elections, and the method of applying for, and exercising, such right. Judge Teigen suggested that the remainder of the section was also covered by Section 12.1-11-06. Therefore, IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 16-16-25 be repealed because its provisions were covered by Sections 12.1-11-02 and 12.1-11-06.

The Committee considered Section 16-18-09, which reads as follows:

1 16-18-09. DELIVERING BALLOTS - ENVELOPE ACCOMPANYING - STATEMENT
2 ON ENVELOPE - INABILITY OF ELECTOR TO SIGN NAME.) Upon receipt of an
3 application for an official ballot properly filled out and duly signed, or as soon
4 thereafter as the official ballot for the precinct in which the applicant resides
5 has been prepared, the county auditor, auditor of the city, or clerk of the
6 school district, as the case may be, shall send to such absent voter by mail,
7 postage prepaid, one official ballot, or personally deliver said ballot to the
8 applicant or his agent, which agent may not, at that time, be a candidate for

9 any office to be voted upon by the absent voter; provided that the agent deposit
10 with the auditor or clerk, as the case may be, authorization in writing from
11 the applicant to receive such ballot or according to requirements hereinafter
12 set forth for signature by mark. If there is more than one ballot to be voted
13 by an elector of such precinct, one of each kind shall be included and an
14 envelope shall be enclosed with such ballot or ballots. Such envelope shall
15 bear upon the front thereof the name, official title, and post-office address
16 of the officer supplying the voter with the ballot, and upon the other side
17 a printed statement in substantially the following form:

18 State of _____

19 County of _____

20 I, _____, (((under penalty of perjury,))) do solemnly swear
21 that I am a resident of the township of _____, or of the _____
22 precinct of the _____ ward in the city of _____, residing at
23 _____ in said city, county of _____ and state of North Dakota,
24 and entitled to vote in such precinct at the next election; that I expect
25 to be absent from the said county of my residence on the day of holding
26 such election or that by reason of physical disability I am unable to
27 attend at the polling place for such election, and that I will have no
28 opportunity to vote in person on that day.

29 _____
30 If such absent voter is unable to sign his name, he shall make his mark (X)
31 in the presence of a disinterested person. Such disinterested person shall
32 print the name of the person marking his X below the X, and shall sign
33 his own name following the printed name with the notation "witness to his mark".

The Committee Counsel noted that the amendment was made to this section in order to bring it into accord with the penalty statement provided in Section 16-18-18, or in the event that that section is deleted, to allow it to be punished under Subsection 2 of Section 12.1-11-02.

Judge Teigen stated that he felt there should be some reference in the form of the application for an absentee ballot to indicate that the applicant is subject to criminal penalties for falsehoods. He suggested that the words "under penalty of possible criminal prosecution for making a false statement" be inserted in lieu of the current language.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 16-18-09 be amended by deleting the beginning triple parentheses in line 20 and inserting triple parentheses before the word "perjury" in that same line, inserting triple parentheses after the word "perjury" in that same line, deleting the triple parentheses after the third comma in that same line, and inserting the following words prior to the third comma in that same line: "possible criminal prosecution for making a false statement"; and that when so amended the section be accepted.

The Committee considered Section 16-18-18, which reads as follows:

1 16-18-18. VIOLATIONS CONSTITUTING MISDEMEANOR - PENALTY.)
2 Any person who (((shall))) willfully:
3 1. (((Willfully swear))) Swears falsely to the statement provided for
4 in section 16-18-09; or
5 2. (((Willfully make))) Makes a false application provided for in section
6 16-18-06,
7 shall be guilty of a class A misdemeanor (((as provided in section 12-06-14))).

The Committee Counsel noted that this section could be deleted as its provisions are covered by Section 12.1-11-02 which prohibits false statements in governmental matters. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 16-18-18 be repealed as its provisions are covered under Section 12.1-11-02 which prohibits false statements in governmental matters.

The Committee considered Section 16-18-19, which reads as follows:

1 16-18-19. PENALTY FOR VIOLATION OF CHAPTER.) If the secretary of
2 state, county auditor, auditor or clerk of any city, clerk of a school district,
3 or any election officer shall refuse or neglect to perform any of the duties
4 prescribed in this chapter or shall violate any of the provisions thereof,
5 such officer shall be guilty of a class B misdemeanor (((and shall be punished
6 by a fine of not more than one hundred dollars, or by imprisonment in
7 the county jail for not more than thirty days, or by both such fine and
8 imprisonment))).

The Committee Counsel noted that this section could be repealed as it is covered by the provisions of Section 12.1-11-06 which mandates that public servants perform their statutory duties. However, the Committee Counsel noted that this section had a potentially lower penalty attached to it than did Section 12.1-11-06. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 16-18-19 be repealed.

The Committee considered Section 16-20-06 which provides that a person who is a candidate and offers to appoint or procure the appointment of another person as an inducement to vote for him is guilty of a misdemeanor. The staff had reclassified the section as a Class A misdemeanor. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 16-20-06 be accepted as drafted.

The Committee considered Section 16-20-09, which reads as follows:

1 16-20-09. PENALTY FOR CORPORATION OR OFFICER THEREOF CONTRIBUTING
2 FOR POLITICAL PURPOSES.) Any officer, director, stockholder, attorney,
3 agent, or representative of any corporation or association, who violates any
4 of the provisions of section 16-20-08, or who participates in, aids, abets,
5 advises, or consents to any such violation, and any person who solicits

6 or knowingly receives any money or property in violation of the provisions
7 of section 16-20-08, shall be (((punished by a fine of not less than two
8 hundred dollars nor more than five thousand dollars, or by imprisonment
9 in the penitentiary for not more than one year, or by both such fine and
10 imprisonment))) guilty of a class A misdemeanor. Any officer aiding or
11 abetting in any contribution made in violation of section 16-20-08 shall
12 be liable to the company or association for the amount so contributed.

The Committee discussed this section at length and IT WAS MOVED BY REPRESENTATIVE MURPHY that the last sentence of the section be deleted and that appropriate changes be made in the title. THIS MOTION FAILED FOR LACK OF A SECOND. Representative Hilleboe then inquired as to why line 10 just referred to an "officer" rather than including all of the other persons listed in lines 2 and 3.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that the word "officer" in line 10 be inserted in triple parentheses and the words "such person" be inserted before the word "aiding" in that same line, and that when so amended the section be accepted.

Because Mr. Wayne Anderson of the staff of the Social Services Department was present, the Committee commenced consideration of the criminal sections in Title 14. The first section considered was Section 14-03-28 which provides a general penalty for a violation of Chapter 14-03 which is the chapter dealing with the marriage contract. The section is presently classified as a misdemeanor and the staff had reclassified it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY JUDGE TEIGEN, AND CARRIED that the section be reclassified as a Class A misdemeanor, and when so amended, that the section be adopted.

The Committee considered Sections 14-07-15, 14-07-16, and 14-07-18. Mr. Wefald noted that these sections dealt with abandonment and nonsupport of children and abandonment and nonsupport of a wife. The last section, 14-07-18, provided the maximum penalty which could be imposed for a violation of either of the two previously cited sections. Mr. Wefald stated that Section 14-07-16 dealing with abandonment or nonsupport of "wife" should probably be amended so that it related to "spouses" in light of current ideas about statutory materials applying equally to both sexes.

Representative Hilleboe objected to the use of the word "child" in Section 14-07-15, noting that "child" was a very ambiguous term, and was useful only when specifically suggesting a parent-child relationship. For instance, when you refer to another person legally responsible for the care and support of someone under 18, then the correct terminology is "minor" rather than "child". The Chairman stated that clearing up the definition of "child" could amount to a study in itself. Representative Hilleboe stated that that was correct but that it should be studied. He then moved that the study resolution, to be drafted concerning study of administrative regulations enacted under criminal statutes be broadened to include a study of the definitions of the words "child" and "minor". The Chairman directed the staff to so broaden the draft resolution.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 14-07-15 be accepted as drafted, i.e., reclassified as a Class C felony.

The Committee then considered Section 14-07-16 which deals with abandonment or nonsupport of a wife.

Mr. Wayne Anderson, noting the discussion concerning the fact that this section should apply equally to either spouse, noted that Section 14-07-03 dealing with a husband's duty to support, and Section 14-07-10 providing that a husband is liable for his wife's necessaries, should also be amended to coordinate with the discussed amendments to Section 14-07-16.

After further discussion, IT WAS MOVED BY JUDGE TEIGEN, AND SECONDED BY REPRESENTATIVE MURPHY that Section 14-07-16 be accepted as drafted. Representative Hilleboe inquired as to whether the change is going to be made so that the section would apply to either spouse. The Chairman replied that, in light of the need of changes in Sections 14-07-03 and 14-07-10, he would rather that the Social Services Board put in a bill making those changes.

Representative Hilleboe stated that if the Committee were not going to make the change, then the study resolution should include reference to studying those instances where statutory provisions discriminated against one sex or the other. Thereafter, JUDGE TEIGEN'S MOTION CARRIED, with Representatives Hilleboe and Rau voting in the negative.

Mr. Wefald noted that Section 14-07-18 should be deleted as it is no longer necessary in light of the reclassification of Sections 14-07-15 and 14-07-16. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 14-07-18 be repealed.

The Committee considered Section 14-09-22 which deals with abuse or willful neglect of a child. Mr. Anderson inquired as to why the section was classified as a Class A misdemeanor. Mr. Wefald stated that that was because the Class A misdemeanor classification was as close to the current classification as possible. Mr. Anderson stated that it should be a felony as it is a very serious offense.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 14-09-22 be reclassified as a Class C felony and that when so reclassified the section be accepted.

The Committee considered Section 14-10-05, which reads as follows:

1 14-10-05. ASSIGNMENT OF CHILDREN PROHIBITED - PENALTY.) No
2 person, (((partnership, voluntary association, or corporation.))) other
3 than the parents or relatives of a child, may assume the permanent care
4 and custody of a child, unless authorized so to do by an order or decree
5 of a court having jurisdiction. No parent shall assign or otherwise transfer
6 his rights or duties with respect to the care and custody of his child. Any
7 such transfer or assignment, written or otherwise, shall be void. This
8 section shall not affect the right of the parent to consent in writing to the
9 legal adoption of his child, but such written consent shall not operate to

10 transfer any right in the child in the absence of a decree by a court having
11 jurisdiction. Any person who violates the provisions of this section is guilty
12 of a class A misdemeanor. As used in this section, "relatives" shall mean
13 maternal and paternal grandparents and maternal and paternal aunts and
14 uncles who are adults.

Mr. Wefald explained the insertion of the new language in lines 12 through 14, noting that it was designed to ensure that shirttail relatives could not assume the care and custody of a child on a permanent basis unless they had an order or decree of a competent court. Mr. Wefald also stated that he is recommending that this section be classified as a Class C felony because it stated a serious offense.

Representative Hilleboe again noted the references to "child" in Section 14-10-05, and indicated that, to the extent that you are talking about relatives, the word "child" was inappropriate. He stated that the whole of Title 14 should be included in the study resolution which will be drafted by the staff.

The Committee discussed at length the desirability of allowing persons other than the parents to take permanent care and custody of a child without a court order. It was the consensus of the Committee that anyone, other than a parent, should have to seek a court order before taking permanent care and custody of a child.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE RAU, AND CARRIED, with Representative Royse voting in the negative, that triple parentheses be inserted around the words "or relatives of a child" in line 3 of Section 14-10-05; and that the underscored material after the period in lines 12, 13, and 14 be deleted, and that when so amended the section be accepted.

The Committee considered Section 14-10-06, which reads as follows:

1 14-10-06. UNLAWFUL TO ENCOURAGE OR CONTRIBUTE TO DELINQUENCY
2 OF MINOR - PENALTY.) Any person who by any act willfully encourages,
3 causes, or contributes to the delinquency or dependency of any minor is
4 guilty of a class A misdemeanor.

Mr. Wefald stated that he did not think the word "dependency" in line 3 was appropriate. Judge Teigen agreed, and stated that the word should be "deprivation".

IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY JUDGE TEIGEN, AND CARRIED that the word "dependency" in line 3 be inserted in triple parentheses and the word "deprivation" be inserted immediately thereafter, and that when so amended the section be accepted.

The Committee considered Section 14-10-08 which provides a penalty where a person who is given custody of a child substitutes another child in the place of the one over whom the actor was given custody. The offense is presently punished by from one to seven years in the penitentiary, and the staff draft would reclassify it as a Class C felony. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 14-10-08 be accepted as drafted.

The Committee considered Section 14-10-16, which reads as follows:

1 14-10-16. BIRTHDAY CARDS - APPLICATION - MISREPRESENTATION
2 OF AGE - PENALTY.) Every person who attains the age of eighteen years
3 may apply to the clerk of the district court of the county in which the
4 person resides or is temporarily located, on a form provided by the clerk
5 of the district court, for an eighteenth birthday card, which shall be accompanied
6 with a photograph of the applicant. The applicant shall present with the
7 application his birth certificate or other satisfactory evidence that he is
8 eighteen years of age, and shall pay a fee of one dollar and fifty cents,
9 to be deposited in the county general fund. The clerk shall file the applica-
10 tion and issue the card to the applicant in a form prescribed by the clerk.
11 The applicant shall sign the card with his name, and the card shall thereafter
12 be exhibited upon demand of a licensee, employee, or other person selling,
13 giving, or disposing of alcoholic beverages or of any peace officer. Any
14 misrepresentation of age or other deceit practiced in the procurement of
15 a card, or the use or exhibition for the purpose of procuring alcoholic
16 beverages of a card belonging to a person other than the person exhibiting
17 the card, is a class A misdemeanor.

Mr. Wefald noted that this section, because it is primarily applicable to the legality of being served liquor, should probably be amended so as to relate to a 21-year-old person rather than an 18-year-old person. The Committee discussed the desirability of providing legal authorization for a general purpose identification card, and also whether more instances of misuse of the card ought to be provided for other than use in the unlawful procurement of alcoholic beverages.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that the staff be directed to redraft Section 14-10-16 so as to provide for a general identification card for persons over 18 years of age, and to cover generally any misuse of the card for fraudulent purposes.

The Committee discussed Section 14-10-05 further, especially with regard to whether the penalty was appropriate, or whether it should be classified as a felony. However, no conclusion was reached, and the Committee recessed for lunch and reconvened at 1:15 p.m.

The Chairman welcomed Mr. Clair Michels, Executive Secretary of the Stockmen's Association, and Mr. Ken Bergo from the Commissioner of Agriculture's office and explained the penalty classifications contained in Senate Bill No. 2045. He noted, additionally, that the Committee had added the infraction classification.

The Committee then commenced consideration of the criminal provisions in Title 36 of the Century Code, starting with Section 36-01-18, which reads as follows:

1 36-01-18. INSPECTION OF LIVESTOCK IN TRANSIT - EXECUTION OF
2 ORDERS OF BOARD BY PEACE OFFICERS - POWERS OF OFFICERS - PENALTY.)

3 Authorized representatives of the state livestock sanitary board, for purposes
4 of inspecting livestock in transit for health or ownership identification,
5 may stop vehicles, except passenger vehicles, transporting livestock on
6 public highways of this state. When signaled by such representative to
7 stop, the operator of any such vehicle shall stop the same and cause to be
8 shown any health or identification forms which are required to be carried
9 in transportation of livestock, and to permit such inspector to make an
10 inspection of the livestock being transported if deemed by the inspector
11 to be necessary. Failure to stop when so directed constitutes a class B
12 misdemeanor. Any vehicle used for such purposes shall be clearly identified
13 in letters not smaller than three inches and is authorized to use a stop
14 signal.

15 The state livestock sanitary board may call any sheriff, deputy sheriff,
16 or constable to execute its orders, and such officers shall obey the orders
17 of said board. Any peace officer may arrest and take before any county
18 justice of the county any person found violating any of the provisions of
19 this chapter, and such officers shall notify the state's attorney immediately
20 of such arrest, and the state's attorney shall prosecute the person so offending.

Mr. Michels noted that the passenger vehicle exception in line 5 of this section was now inappropriate, as livestock were often transported in passenger vehicles, especially when their acquisition was not legal. Additionally, he felt that perhaps the penalty was classified too low.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that triple parentheses be inserted before the first comma in line 5 and after the second comma in that same line; that the letter "B" in line 11 be deleted and a letter "A" be inserted in lieu thereof; and that when so amended the section be accepted.

The Committee considered Section 36-01-28 which is a general penalty provision for Chapter 36-01 which deals primarily with the powers and duties of the Livestock Sanitary Board. It is presently a misdemeanor and the staff has reclassified it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 36-01-28 be accepted as drafted.

Judge Pearce inquired as to whether the Committee's policy hadn't been to delete references to violations of rules or regulations, where those references result in criminal penalties. He indicated that he was very worried about the fact that criminal penalties could attach to violation of unknown rules or regulations. The Committee Counsel replied that it had not been the Committee's policy to delete references to rules and regulations in the instances to which Judge Pearce referred. The Chairman noted that the staff had been directed to draft a study resolution calling for a Legislative Council study of rules and regulations to which criminal liability could attach.

The Committee considered Section 36-01-30 which provides for feedlot registration, authorizes the Livestock Sanitary Board to make rules and regulations regarding feedlot registration, and authorizes the operation of nonregistered feedlots. Mr. Michels discussed registered feedlots and noted that they were created primarily as brand inspection stations. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 36-01-30 be accepted as drafted.

The Committee considered Section 36-04-09 which provides that all fees collected by the Agriculture Department under Chapter 36-04 be deposited in the general fund. It also goes on to provide that a person who hinders or resists or interferes with an inspector is subject to the general penalty chapter. The staff draft recommends that the last sentence be deleted as it is covered by Sections 12.1-08-01 and 12.1-08-02, and also because it is covered by the general penalty section for Chapter 36-04. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 36-04-09 be accepted as drafted.

The Committee considered Section 36-04-21 which is a general penalty provision for Chapter 36-04 which deals with the licensing of livestock dealers. The section has been reclassified as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 36-04-21 be accepted as drafted.

Mr. Wefald noted that Section 36-04-07 prohibits a person who has been convicted of a felony from being licensed under the chapter, which is an additional disqualification to those provided by Chapter 12.1-33.

The Committee considered Section 36-05-14 which provides a general penalty for violation of the provisions of Chapter 36-05 dealing with the licensing and bonding of livestock auction markets. Mr. Wefald stated that an exception for specific penalty provisions should be provided in this section, since there was another penalty section in the chapter, i.e., Section 36-05-15. Representative Murphy suggested that the last sentence of Section 36-05-15 be deleted, and that Section 36-05-14 be relied upon to provide the penalty for Section 36-05-15. In addition, he questioned the use of the words "net weight" in line 5 of Section 36-05-15.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that the last sentence of Section 36-05-15 be inserted in triple parentheses and that all other triple parentheses and underscored materials in that sentence be deleted, and that the word "net" in line 5 of the same section also be inserted in triple parentheses.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 36-05-14 be accepted as drafted.

The Committee considered Sections 36-06-02 and 36-06-03, which read as follows:

- 1 36-06-02. LIVESTOCK PURCHASED BY WEIGHT TO BE GRADED - PENALTY.)
- 2 No officer or employee of a packing plant within this state shall purchase
- 3 any livestock by weight unless such livestock shall have been graded and
- 4 sorted in the yard and the price per pound for each grade fixed and deter-
- 5 mined before the weighing thereof. Any officer or employee of a packing
- 6 plant who violates this section is guilty of an infraction.

1 36-06-03. PENALTY FOR PURCHASE OF LIVESTOCK BY WEIGHT WITHOUT
2 GRADING THE SAME.) Each purchase of livestock in violation of section
3 36-06-02 shall be a separate offense and shall constitute a misdemeanor
4 upon the part of every owner of a packing plant in which such violation
5 occurs, whether the owner is a natural person or a corporation, and shall
6 be punished by a fine of not more than one hundred dollars for each offense.

Mr. Wefald noted that Section 36-06-03 depended for its meaning on the existence of Section 36-06-02. Representative Murphy stated that he did not see the value in Section 36-06-02 since the section stated a procedure which was not followed. IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY REPRESENTATIVE RAU that Sections 36-06-02 and 36-06-03 be repealed. After further discussion, in which Mr. Michels joined, THIS MOTION WAS WITHDRAWN.

IT WAS THEN MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 36-06-02 be accepted as drafted, and that Section 36-06-03 be amended by inserting triple parentheses before the second word "a" in line 3, inserting triple parentheses after the word "misdemeanor" in that same line; inserting the words "an infraction" before the word "upon" in line 4; inserting triple parentheses before the first comma in line 5; and inserting triple parentheses after the word "offense" in line 6; and that when so amended Section 36-06-03 be accepted.

The Committee considered Section 36-06-04 which provides that a weighmaster is to weigh all livestock purchased or sold at a packing plant in this State and is to deliver a duplicate scale ticket to each person from whom the livestock is purchased or to whom it is sold. If a person permits the weighing to be done by anyone other than a licensed weighmaster, he is guilty of a misdemeanor under current law, punishable by a fine of up to \$100. The staff revision would reclassify the section as an infraction. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 36-06-04 be accepted as drafted.

The Committee considered Section 36-06-08, which reads as follows:

1 36-06-08. PENALTY FOR WRONGFUL WEIGHING OR ISSUING OF A FALSE
2 SCALE TICKET.) The wrongful weighing or the willful issuance of a false
3 scale ticket by a weighmaster shall be a class B misdemeanor (((punishable
4 by imprisonment in the county jail for not more than thirty days or by a
5 fine of not more than one hundred dollars, or by both such fine and
6 imprisonment))).

The Committee Counsel inquired as to how one went about "wrongfully weighing". Judge Pearce noted that the section was very probably covered under the forgery section, 12.1-24-01.

Thereafter, IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 36-06-08 be repealed.

The Committee considered Section 36-07-14 which provides a general penalty for violation of Chapter 36-07 dealing with the licensing of rendering plants. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE

RAU, AND CARRIED that Section 36-07-14 be accepted as drafted.

The Committee considered Section 36-09-15 which provides that a butcher is to keep a record of branded cattle which he has slaughtered, and makes it a misdemeanor to fail to do so. The staff revision has reclassified it as an infraction. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED to accept Section 36-09-15 as drafted.

The Committee considered Section 36-09-16, which reads as follows:

1 36-09-16. BRANDING OF STOCK RUNNING AT LARGE UNLAWFUL -
2 EXCEPTION - PENALTY.) Any person who, at any time between the first
3 day of November and the first day of May following, shall brand or mark
4 any horse, colt, mule, ass, cow, calf, sheep, swine, or other animal that
5 is running at large shall be guilty of a class B misdemeanor. The provisions
6 of this section, however, shall not prevent the owner of any such animal
7 from branding it during the period herein specified if such branding is
8 done on his own premises in the presence of two or more responsible citizens
9 of this state as witnesses of such branding. (((Any person violating the
10 provisions of this section is punishable by imprisonment in the county jail
11 for not more than thirty days, or by a fine of not less than twenty-five
12 dollars nor more than one hundred dollars, or by both such fine and imprison-
13 ment.)))

After discussion, it was the consensus of the Committee that Section 36-09-16 was unnecessary, and IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 36-09-16 be repealed.

The Committee considered Section 36-09-17, which reads as follows:

1 36-09-17. DEFACING BRANDS AND UNLAWFULLY BRANDING - PENALTY.)
2 Any person who shall:
3 1. Alter or deface, or attempt to alter or deface, the mark or brand
4 upon any horse, mule, sheep, or swine, or upon any cow, calf,
5 or other head of neat cattle, the property of another, with intent
6 thereby to steal the same or to prevent identification thereof by the
7 true owner; or
8 2. Willfully and unlawfully mark or brand, or cause to be marked or
9 branded, any horse, mule, sheep, swine, or poultry, or any cow,
10 calf, or other head of neat cattle, the property of another,
11 shall be guilty of a class C felony (((and shall be punished by imprisonment
12 in the penitentiary for not less than one year nor more than five years, or
13 by a fine of not less than five hundred dollars nor more than one thousand
14 dollars, or by both such fine and imprisonment))).

IT WAS MOVED BY REPRESENTATIVE MURPHY that Section 36-09-17 be accepted as drafted. The Committee Counsel noted that Subsection 1 is covered by the theft provisions, and if the value of the livestock exceeds \$100, the offense would be a Class C felony. There was much discussion of the meaning of Subsection 1, and it was noted that it was probably desirable for the subsection to refer simply to the altering or defacing of a mark or brand, regardless of the intent to steal. If that change were made, then it would seem appropriate that the section be reclassified as a Class A misdemeanor.

IT WAS MOVED BY JUDGE TEIGEN AND SECONDED BY REPRESENTATIVE RAU that Section 36-09-17 be amended by putting triple parentheses before the second comma in line 5; placing triple parentheses after the word "owner" in line 7; deleting the underscored material in line 11, inserting triple parentheses before the word "felony" in that same line, and deleting the triple parentheses before the word "and" in that same line; and inserting the words "class A misdemeanor" in line 14 before the period.

The Committee discussed the desirability of listing all of the animals listed in Subsection 1 of this section. JUDGE PEARCE MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE HILLEBOE, to substitute the word "animal" for all of the listed animals in Subsections 1 and 2, and to include the provisions of Judge Teigen's original motion. Mr. Michels questioned whether the word "animal" was broad enough to include livestock, noting that in some cases turkeys were branded. The Committee Counsel suggested that "animal" was as inclusive a word as could be used. Thereafter, JUDGE PEARCE'S SUBSTITUTE MOTION CARRIED.

The Committee considered Section 36-09-20, which reads as follows:

1 36-09-20. BILL OF SALE TO BE GIVEN AND KEPT - COPY WITH
2 SHIPMENT - EFFECT - PENALTY.) Any person who sells any registered
3 branded livestock shall give (((, at the time of sale,))) to the buyer, at
4 the time of sale, a written bill of sale, bearing the signature and residence
5 of the seller and name and address of the buyer, and (((giving))) showing
6 the total number of animals sold, (((and))) describing each animal sold as
7 to sex and kind, and describing all registered brands, except tattoos.
8 (((Such))) The bill of sale shall be kept by the buyer for two years and
9 as long thereafter as he shall own any of the animals described therein.
10 A copy of the bill of sale shall be given to each hauler of such livestock,
11 other than railroads, and shall go with the shipment of such stock while
12 in transit. Such bill or copy shall be shown by the possessor on demand
13 to any peace officer or brand inspector. Such bill of sale shall be prima
14 facie evidence of the sale of the livestock therein described; provided, that no
15 such bill of sale shall be required relative to sales of livestock covered by
16 a legal livestock brand inspection. Any violation of this section shall be
17 (((a misdemeanor))) an infraction.

The Committee discussed the phrase "registered branded livestock" in lines 2 and 3, and desired to know whether the word "registered" described the livestock or the brand. Mr. Michels stated that the word referred to the brand.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that triple parentheses be inserted before the word "registered" in line 2; that triple parentheses be inserted after the word "branded" in line 3, and that in that same line the words "carrying a registered brand" be inserted after the word "livestock"; and that the word "written" in line 4 be inserted in triple parentheses; and that when so amended the section adopted.

The Committee considered Section 36-09-22 which prohibits the sale of an animal under false registration certificates, or the changing of registration certificates or certificates regarding the breeding of an animal. The section is presently classified as a misdemeanor punishable by a fine of from \$25 to \$100, or by a maximum imprisonment of 30 days in jail, or by both such fine and imprisonment. The staff had reclassified the section as a Class B misdemeanor. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 36-09-22 be accepted as drafted.

The Committee considered Section 36-09-23, which reads as follows:

1 36-09-23. REMOVAL OF LIVESTOCK FROM STATE - BRAND INSPECTION
2 - PENALTY.) No person shall remove cattle, horses, or mules from this
3 state or to within a mile of any boundary of the state for the purpose of
4 removal unless such livestock shall have been inspected for marks and
5 brands by an official brand inspector of the North Dakota stockmen's
6 association and a certificate of inspection shall accompany such livestock
7 to destination. In lieu of such inspection, the owner or possessor may
8 make and sign an invoice or waybill covering such stock showing marks
9 and brands, number, sex and kind of the stock and the consignee and
10 market destination where official brand inspection is provided by or for the
11 said stockmen's association and mail a copy of such invoice or waybill to
12 the association before the stock leaves the state.

13 It shall be unlawful for the owner or possessor to remove any (((such)))
14 livestock from any place of (((such))) regular official brand inspection
15 located either in this state or elsewhere unless and until official brand
16 inspection has been made and the brand inspection certificate issued.

17 Any violation of this section shall constitute a class B misdemeanor
18 (((and shall be punishable by a fine of not less than twenty-five dollars
19 nor more than five hundred dollars, or by imprisonment for not less than
20 thirty days nor more than ninety days))).

The Committee discussed this section, and it was noted that there were official brand inspection stations outside of North Dakota.

Mr. Michels stated that the paragraph commencing on line 13 should not be amended, as the references to "such livestock" were to those which traveled to an out-of-state destination under an invoice or waybill mailed to the Stockmen's Association as provided in the first paragraph of the section.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE PEARCE, AND CARRIED that the triple parentheses on lines 13 and 14 be deleted; that the underscored material in line 15 be deleted; and that when so amended the section be accepted.

The Committee considered Section 36-10-09 which provides a general penalty for violation of Chapter 36-10 dealing with county brand inspectors. Mr. Wefald stated that the staff recommendation was that the entire Chapter 36-10 be repealed as antiquated and unenforced. Mr. Michels agreed, noting that there were no county brand inspectors.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Chapter 36-10 be repealed because county brand inspectors no longer are appointed.

The Committee considered Section 36-11-01 which presently makes it a misdemeanor for cattle, horses, and certain other livestock to be permitted to run at large except in a grazing area. The staff reclassified the section as a Class B misdemeanor. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 36-11-01 be accepted as drafted.

The Committee considered Section 36-11-06, which reads as follows:

1 36-11-06. CERTAIN ANIMALS NOT TO BE PERMITTED TO RUN AT LARGE
2 AT ANY TIME - PENALTY.) The owner or person in charge of any stallion,
3 jack, boar, ram, bull, or any animal known to be vicious who permits
4 such animal to run at large shall be liable in a civil action to any person
5 who is injured, either directly or indirectly, by such violation for all damages
6 resulting therefrom and shall be guilty of (((a misdemeanor and shall be
7 punished by a fine of not less than ten dollars nor more than fifty dollars)))
8 an infraction. The provisions of this section, however, shall not prevent
9 the keeping of any stallion, jack, bull, or ram with any herd or flock
10 which is attended by a herder if such stallion, jack, bull, or ram is kept
11 with such herd or flock by the herder.

IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY REPRESENTATIVE AUSTIN that the word "negligently" be inserted before the word "permits" in line 3 of section 36-11-06; and that the word "injured" be inserted in triple parentheses in line 5, and the word "damaged" be inserted before the first comma in that same line; and that when so amended the section be adopted. Judge Teigen suggested that the words "outside a fenced enclosure" be inserted after the words "at large" in line 4, but this suggestion was not adopted by the moving parties. Thereafter, JUDGE PEARCE'S MOTION CARRIED.

The Committee considered Section 36-11-19 which prohibits a person from trying to take, except in the manner provided by law, any animal distrained and held by another for payment of a debt. The section is presently classified as a misdemeanor punishable by a fine of not to exceed \$50, by imprisonment for not to exceed 30 days, or by both. The staff revision has reclassified the section as a Class B misdemeanor. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 36-11-19 be accepted as drafted.

The Committee considered Section 36-12-06 which provides a general penalty for a violation of Chapter 36-12 which deals with the responsibilities of livestock herders or drovers. The section is presently classified as a misdemeanor punishable by a fine of from \$50 to \$200, and the staff has reclassified it as an infraction. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 36-12-06 be accepted as drafted.

The Committee Counsel, in response to a previous question, noted the case of Armann v. Caswell, 30 ND 406, 152 NW 813 (1915). That case provided that because cattle were being moved down a public highway did not mean that they were running at large as a matter of law.

The Committee considered Section 36-13-08 which provides that a person who takes up an estray and fails to comply with the provisions of Chapter 36-13 is guilty of an offense punishable by a fine of up to \$100, imprisonment for up to 30 days, or both. The staff has reclassified the section as a Class B misdemeanor. Chapter 36-13 deals with estrays, i.e., cattle whose owner is unknown, and sets out the methods of claiming the estrays, or otherwise disposing of them.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 36-13-08 be accepted as drafted.

Mr. Wefald then discussed Sections 36-14-09, 36-14-13, and 36-14-16, noting that there were no major changes in these sections, but that they were all simply reclassified from a misdemeanor to a Class B misdemeanor. The sections deal with the purchase, possession, and use of living hog cholera virus and vaccines; the issuance of livestock health certificates by unauthorized persons; and the failure to restrain infected sheep.

The Committee considered Section 36-14-17, which reads as follows:

1 36-14-17. REFUSING TO ALLOW EXAMINATION OF SHEEP ((IS MIS-
2 DEMEANOR))) - PENALTY.) Every person who is in charge of any band
3 of sheep that is being driven or kept within six miles of the headquarters
4 where sheep belonging to any other person are kept or corralled and who
5 fails, neglects, or refuses, upon demand by such other person or anyone
6 in his employ, to stop such band and allow it to be examined, or to aid and
7 assist in catching and examining the sheep therein, is guilty of a class B
8 misdemeanor.

Mr. Wefald noted that this section, if it was still necessary, seemed to be fraught with the potential for being used for harassment purposes. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 36-14-17 be repealed.

The Committee considered Section 36-14-18, which reads as follows:

1 36-14-18. WILLFULLY SPREADING INFECTION OF SHEEP ((IS A
2 FELONY))) - PENALTY.) Every person who willfully ((, either)):
3 1. Carries or drives, or causes to be carried or driven, any sheep
4 infected with scabies or any other infectious or contagious disease
5 among sheep belonging to another; or
6 2. Carries or places, or causes to be carried or placed, the parasite
7 which causes such disease where sheep not his own are being herded
8 or corralled with intent that such sheep shall become infected thereby,
9 is guilty of a class C felony ((and shall be punished by imprisonment in
10 the penitentiary for not less than one year nor more than five years, or
11 by a fine of not less than one hundred dollars, or by both such fine and
12 imprisonment)).

Judge Pearce noted that the provisions of this section were covered by Section 12.1-21-05 dealing with criminal mischief. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Section 36-14-18 be repealed.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that Sections 36-14-09, 36-14-13, and 36-14-16 be accepted as drafted.

The Committee then considered Section 36-14-21, which reads as follows:

1 36-14-21. PENALTY FOR VIOLATING PROVISIONS OF CHAPTER.) Any
2 person (((, firm, or corporation))) who shall bring, convey, carry, or
3 transport livestock into or in this state in violation of any provision of this
4 chapter or knowingly in violation of any rule or regulation of the state
5 livestock sanitary board, or who shall violate any provision of this chapter
6 for which another penalty is not provided, ((or who shall fail to observe
7 any of the provisions of this chapter,))) shall be guilty of a class A
8 misdemeanor ((and shall be punished by a fine of not less than one hundred
9 dollars nor more than one thousand dollars, or by imprisonment in the
10 county jail for not less than thirty days nor more than ninety days))).

The Committee Counsel noted that Chapter 36-14 sets forth guidelines regarding the handling of contagious and infectious diseases in livestock. IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY REPRESENTATIVE MURPHY that Section 36-14-21 be accepted as drafted.

Judge Teigen then noted that the use of the language "bring, convey, carry, or transport livestock into or in this state in violation of any provision of this chapter or" in lines 2 and 3 was unnecessary, as that material was prohibited in other sections, and this section would provide the penalty without that language. JUDGE PEARCE, WITH THE CONSENT OF HIS SECOND, THEN WITHDREW HIS MOTION.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 36-14-21 be amended by inserting triple parentheses before the word "bring" in line 2; inserting triple parentheses after the first word "or" in line 4, inserting triple parentheses before the word "in" in that same line, inserting triple parentheses after the first word "of" in that same line, and inserting the word "violate" before the word "any" in line 4; and that when so amended the section be accepted.

The Committee considered Section 36-15-19, which provides a penalty for a person who refuses to assist the Livestock Sanitary Board or its agents in carrying out the provisions of the chapter dealing with bovine tuberculosis and brucellosis. The section is presently graded as a misdemeanor punishable by a fine of from \$25 to \$500, by imprisonment from 30 to 90 days, or by both. The staff has reclassified it as a Class B misdemeanor. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 36-15-19 be accepted as drafted.

The Committee considered Section 36-15-21 which provides that any person bringing female cattle into the State must have provided that they be vaccinated against brucellosis. The offense is presently classified as a misdemeanor punishable by a fine of from \$100 to \$500 or by imprisonment for 90 days, or both. The staff has reclassified it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 36-15-21 be accepted as drafted.

The Committee considered Section 36-20-08 which provides a general penalty for a violation of Chapter 36-20 regulating the shipment of livestock. IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 36-20-08 be accepted as drafted.

The Committee considered Section 36-21-01, which reads as follows:

1 36-21-01. REGULATIONS GOVERNING FRAUDULENT REGISTRATION OF
2 PUREBRED LIVESTOCK - PENALTY.) Any person who shall:
3 1. Fraudulently represent any animal to be purebred;
4 2. Post or publish, or cause to be posted or published, any false
5 pedigree or certificate;
6 3. Procure by fraud, false pretense, or misrepresentation the registration
7 of any animal which is to be used for service, sale, or exchange
8 in this state for the purpose of deception as to the pedigree thereof;
9 4. Sell or otherwise dispose of any animal as purebred when he knows
10 or has reason to believe that the animal is not the offspring of a
11 regularly registered purebred sire and dam; or
12 5. Sell or otherwise dispose of any animal as a registered purebred
13 by the use of a false pedigree or certificate of registration,
14 shall be guilty of a class A misdemeanor (((and shall be punished by a fine
15 of not less than twenty-five dollars nor more than one thousand dollars,
16 or by imprisonment in the county jail for not less than thirty days nor
17 more than six months, or by both such fine and imprisonment))).

The Committee Counsel noted that several of the subsections may also be covered by theft under Chapter 12.1-23. The consensus of the Committee was that the section should be retained, but that it should have a lower penalty, in order that, where an animal is sold through use of a false pedigree, and the animal's value exceeds \$100, the person can be charged with theft graded as a Class C felony.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 36-21-01 be reclassified as a Class B misdemeanor, and when so reclassified, that the section be accepted.

The Committee considered Section 36-21-04, which reads as follows:

1 36-21-04. UNLAWFUL KILLING OR SELLING OF LIVESTOCK - PENALTY.)
2 Any person who willfully and unlawfully shall kill or sell, or cause to be
3 killed or sold, any horse, mule, sheep, swine, or poultry, or any cow,
4 calf, or other head of neat cattle, the property of another, shall be guilty
5 of a class C felony (((, and shall be punished by imprisonment in the
6 penitentiary for not less than one year nor more than five years, or by a
7 fine of not less than five hundred dollars nor more than one thousand dollars,
8 or by both such fine and imprisonment))).

The Committee Counsel noted that the section could be covered by the theft provisions in Chapter 12.1-23, and in accordance with Section 12.1-23-05 (2)(h), would be a Class C felony if the cattle were removed from the owner's premises. Judge Pearce noted the offense would also be covered under Section 12.1-21-05 dealing with criminal mischief if the offense occurred on the owner's property.

IT WAS MOVED BY REPRESENTATIVE RAU, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 36-21-04 be repealed because it is covered by Section 12.1-21-05 and Chapter 12.1-23.

Mr. Wefald discussed the criminal provisions in Chapter 36-21.1 which is the chapter dealing with cruelty to animals. He noted that he had deleted specific criminal provisions in each section, and was relying on the general penalty contained in Section 36-21.1-11 to provide the criminal liability for a violation of each section in the chapter which the Committee will discuss.

Mr. Wefald noted that Section 36-21.1-02 dealt with the overworking or mistreating of animals, or the improper caging of them. Section 36-21.1-03 dealt with, and prohibited, cruel means of transporting animals. Section 36-21.1-04 prohibits the unjustifiable administration of poison to animals; and Section 36-21.1-05 prohibits an owner from allowing an animal to run at large when he knows that it has an infectious or contagious disease.

Cockfights, dogfights, and other exhibitions involving animals are prohibited by Section 36-21.1-07; while Section 36-21.1-08 prohibits the selling or giving away of dyed rabbits or immature fowl. Section 36-21.1-09 prohibits the use of certain birds as advertising devices, and Section 36-21.1-11 provides a general penalty for violating any of the foregoing sections. The present general penalty is a misdemeanor punishable by a fine of up to \$500, imprisonment for up to one year, or both. The staff redraft has classified the section as Class A misdemeanor.

Representative Hilleboe inquired concerning the use of the word "kill" in line 5 of Section 36-21.1-02 (see Appendix "A"). He noted that this would prohibit, if he reads the section correctly, the killing of any animal at any time. The Chairman noted that these provisions were poorly drawn, but felt that the Committee should not take time to attempt to rework them at this stage. Rather, they should be revised by the groups which were responsible for their introduction in the first instance.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that the staff revision of Sections 36-21.1-02, 36-21.1-03, 36-21.1-04, 36-21.1-05, 36-21.1-07, 36-21.1-08, 36-21.1-09, and 36-21.1-11 be accepted.

The Committee considered the provisions of Section 36-23.1-04 which deals with the inspection of slaughterhouses and meatpacking plants and provides penalties for allowing unsanitary slaughtering of, or falsely marking, meat or carcasses.

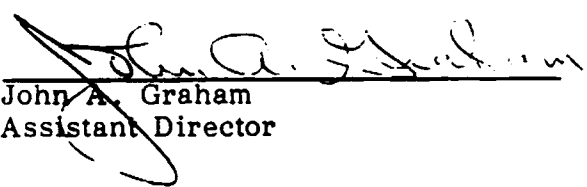
Representative Hilleboe stated that if the last chapter dealing with cruelty to animals was classified as a Class A misdemeanor, then certainly this section should be classified as a Class A misdemeanor, and not as a Class B misdemeanor as proposed by the staff. In addition, he noted that this State was not carrying out inspection because funds had not been appropriated therefor.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 36-23.1-04 be reclassified as a Class A misdemeanor and then adopted.

The Committee considered Section 36-23.1-06 which prohibits the slaughter or sale of meat which has not been inspected under Chapter 36-23.1 or the Federal Meat Inspection Act. The staff redraft classified the section as a Class B misdemeanor, but Representative Hilleboe again suggested that it should be a Class A misdemeanor.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that Section 36-23.1-06 be reclassified as a Class A misdemeanor, and when so reclassified that it be accepted.

The Chairman noted that the Committee had not been able to complete Title 16, and directed the staff to put Title 16 on the agenda as the first item to be considered at the next meeting. Thereafter, without objection, the Chairman declared the meeting adjourned, subject to the call of the Chair.



John A. Graham
Assistant Director

1 54-03-18. PENALTY.) Any person who commits any offense punishable
2 under section 54-03-17 shall be guilty of a class A misdemeanor ((and shall
3 be punished by imprisonment for not more than six months, or by a fine of
4 not more than five hundred dollars, or by both such fine and imprisonment)).

1 54-03.2-15. PENALTIES.) A person guilty of contempt under (((the
2 provision of this code))) section 54-03.2-14 shall be (((fined not more than
3 two hundred fifty dollars or imprisoned not more than one hundred eighty days
4 or both))) guilty of a class B misdemeanor, or (((shall be subject to such other
5 punishment as the legislature or the appropriate house thereof may))) if tried
6 to the legislative assembly, or an appropriate house thereof, the legislature
7 or the appropriate house may impose such punishment as it deems appropriate.
8 in the exercise of its inherent powers (((, impose prior to and in lieu of the
9 imposition of the aforementioned penalty))).

10 If any investigating committee fails in any material respect to comply with
11 the requirements of this code, any person subject to a subpoena or a subpoena
12 duces tecum who is injured by such failure shall be relieved of any requirement
13 to attend the hearing for which the subpoena was issued or, if present, to testify
14 or produce evidence therein; and such failure shall be a complete defense in
15 any proceeding against such person for contempt or other punishment.

16 Any person other than the witness concerned or his counsel who violates
17 subsections 7 or 8 of section 54-03.2-12 of this code shall be (((fined not more
18 than two hundred fifty dollars or imprisoned not more than one hundred eighty
19 days, or both))) guilty of a class B misdemeanor. The attorney general, on
20 his own motion or on the application of any person claiming to have been injured
21 or prejudiced by an unauthorized disclosure, may institute proceedings for trial
22 of the issue and imposition of the penalties provided herein. Nothing in this
23 (((subsection))) section shall limit any power which the legislature or either
24 house thereof may have to discipline a member or employee or to impose a
25 penalty in the absence of action by a prosecuting officer or court.

54-05-01. (to be repealed)

1 54-05-09. PENALTY.) Any person (((, corporation, or association)))
2 violating any provision of this chapter, for which a penalty is not otherwise
3 provided, (((for such offense shall be fined not less than two hundred dollars
4 nor more than five thousand dollars))) is guilty of a class A misdemeanor. Any

5 person employed as legislative counsel or agent who shall fail to comply with
6 any provision of this chapter, or who shall act as legislative counsel or agent
7 contrary to the provisions of this chapter, unless a penalty is otherwise provided,
8 shall be (((fined not less than one hundred dollars nor more than one thousand
9 dollars))) guilty of an infraction, and shall be (((disbarred))) prohibited
10 from acting in the capacity of a legislative counsel or agent for the period of
11 three years from the date of such conviction. The attorney general, upon
12 information, shall bring prosecutions for the violation of (((all))) any of the
13 provisions of this chapter (((except section 54-05-01))).

1 54-05-10. MUNICIPALITIES EXEMPT FROM PROVISIONS OF THIS CHAPTER.)
2 None of the provisions of this chapter shall apply to municipalities or other public
3 corporations.

1 54-06-08. RECORD OF FEES KEPT BY STATE OFFICERS - REPORT TO
2 STATE TREASURER (((- PENALTY))).) Every state officer or deputy state
3 officer required by the Constitution of this state, or by any provision of the
4 laws of this state, to (((cover))) pay into the state treasury all fees and
5 profits arising from such office, shall keep a record of all such fees or profits
6 in a book kept for that purpose. Such book shall be the property of the state.
7 Each officer shall report to the state treasurer monthly the amount of fees or
8 profits received, verified by oath, and at the same time shall pay the amount
9 of such fees or profits to the treasurer, taking duplicate receipts therefor.
10 One of the receipts shall be filed with the department of accounts and purchases
11 forthwith. The department of accounts and purchases shall charge the state
12 treasurer with the amount thereof. (((Any person violating the provisions of
13 this section is guilty of a misdemeanor, and shall be punished by a fine of not
14 less than fifty dollars nor more than one hundred dollars.)))

54-06-09.1. (to be repealed)

54-06-09. (to be repealed and its provisions to be placed in chapter 44-08)

1 54-06-12. PUBLISHING FALSE STATEMENTS - PENALTY.) No state
2 official shall publish willfully any false statement in regard to any state depart-
3 ment, institution, or industry which shall tend to deceive the public and
4 create a distrust of any state official or employee in charge of such department,
5 institution, or industry, or which tends to obstruct, hinder, and delay the

6 various departments, institutions, and industries of the state. Any person vio-
7 lating the provisions of this section is guilty of a class C felony (((and shall
8 be punished by imprisonment in the penitentiary for a term of one year, or
9 by a fine of five hundred dollars, or by both such fine and imprisonment))).

1 54-10-23. OBSTRUCTING OR MISLEADING AUDITOR - PENALTY.) Every
2 person who, when required to do so, shall refuse or neglect to make any
3 return or exhibit, or to make or give any information required by the auditor,
4 or who willfully shall obstruct or mislead the auditor in the execution of his
5 duties, or who in any manner shall hinder a thorough examination by the
6 auditor, shall be guilty of a class C felony (((and shall be liable to a fine
7 of one thousand dollars and imprisonment in the penitentiary for a term of
8 not more than one year))).

1 54-10-25. (((PENALTY FOR STATE AUDITOR OR THOSE UNDER HIS
2 EMPLOY FOR))) DIVULGING OF CERTAIN SECRET INFORMATION PROHIBITED.)
3 The state auditor, and (((every person performing))) any person employed
4 by him to perform the examination of any return, report, or other information
5 filed and in the possession of the tax commissioner which is made confidential
6 by law, shall (((guard the secrecy))) not divulge the contents of any return,
7 report, or other information examined except when otherwise directed by
8 judicial order, or as is otherwise provided by law. (((Any person violating
9 the provisions of this section shall upon conviction be punished by a fine
10 of not more than one thousand dollars, or by imprisonment in the county
11 jail for not more than one year, or by both such fine and imprisonment and,
12 if the offender is an officer or employee of the state, he, in addition, shall
13 be dismissed from office and shall be ineligible to hold any public office or
14 position in this state for a period of five years thereafter.)))

1 54-11-12. UNLAWFUL PURCHASES BY STATE TREASURER.) Every person
2 who while treasurer of this state, or the deputy or clerk of such treasurer,
3 directly or indirectly, buys or traffics in, or (((in anywise))) becomes a
4 party to the purchase of, any state warrant, order, or scrip, or any bill,
5 account, claim, or evidence of indebtedness against the state, for any sum
6 less than the full face value thereof, is guilty of an infraction (((a misdemeanor
7 and shall be punished by a fine of not less than fifty dollars nor more than
8 five hundred dollars))).

54-14-06. (to be repealed)

1 54-16-05. PENALTY FOR EXPENDING MORE THAN APPROPRIATED.)
2 Any state official, or member of any state board, or the head of any state
3 institution (((.))) or state department who violates any of the provisions of
4 section 54-16-03, is guilty of a class B misdemeanor (((and shall be punished
5 by a fine of not less than ten dollars nor more than one hundred dollars, or
6 by imprisonment in the county jail for not less than ten days nor more than
7 thirty days, or by both such fine and imprisonment))).

54-16-07. (to be repealed)

1 54-16-10. DEPARTMENTAL EMERGENCY FUNDS - PENALTY.) No moneys
2 appropriated by the legislative assembly to be used for emergency purposes
3 by any state department, state officer, employee, board, commission, bureau,
4 or institution, including the Bank of North Dakota, mill and elevator association
5 (((, state hail insurance))), fire and tornado, and bonding departments, and
6 the workmen's compensation bureau, shall be expended until such moneys so
7 appropriated, or so much thereof as may be necessary for such appropriation,
8 shall have been transferred to the subdivision of the regular appropriation
9 in which the emergency exists. No such transfer of emergency funds, hereinbe-
10 fore referred to, shall be made until an itemized, verified petition, setting
11 forth the facts by virtue of which such emergency exists and the necessity for
12 such expenditure shall have been presented to the state emergency commission,
13 by the department, state officer, board, commission, bureau, or institution
14 desiring such transfer, and shall have been approved in writing by a majority
15 of such commission. Any person who violates the provisions of this section
16 is guilty of a class A misdemeanor.

1 54-21.1-11. VIOLATION A MISDEMEANOR.) Any person who shall knowingly
2 manufacture or sell a mobile home contrary to section 54-21.1-08 shall be guilty
3 of (((a misdemeanor and shall upon conviction be liable to a fine not to exceed
4 one hundred dollars for each offense))) an infraction.

1 54-23-50. (((MEMBERS OF BOARD AND OFFICERS AND EMPLOYEES OF
2 INSTITUTIONS))) DIRECTOR OF INSTITUTIONS AND EMPLOYEES PROHIBITED
3 FROM ACCEPTING GIFTS - PENALTY. (((No member of the board, nor any
4 officer, agent, or employee thereof))) Neither the director of institutions nor

5 any of his employees, and no superintendent, officer, manager, or employee
6 of any of the institutions under the charge and control of the ((board)) director
7 of institutions, directly or indirectly, for himself or any other person, or for
8 any institution under the charge of the ((board)) director of institutions,
9 shall receive or accept any gift or gratuity from any person ((, firm, or corpora-
10 tion)) dealing in services, goods, merchandise, or supplies which may be
11 used in any of the institutions, or from any employee, servant, or agent of
12 such person ((, firm, or corporation)). Any person violating the provisions
13 of this section is guilty of a class A misdemeanor. Such violations shall be
14 cause for his removal from office.

1 54-23-51. ((EMPLOYEES)) DIRECTOR OF INSTITUTIONS - PENALTY
2 FOR INFLUENCING APPOINTMENT. ((Any member of the board and any officer
3 thereof who exerts)) The director of institutions or any of his employees who
4 exert any improper influence, by solicitation or otherwise, on the managing
5 officer of any institution under the control of the ((board)) director of
6 institutions, in the selection of any employee or assistant, is guilty of a class A
7 misdemeanor.

1 54-27-13. PENALTY FOR EXPENDITURE ((OF)) IN EXCESS OF APPROPRIA-
2 TION FOR STATE INSTITUTIONS. Any person violating the provisions of
3 section 54-27-12 ((,)) is guilty of a class B misdemeanor ((and shall be
4 punished by a fine of not less than five hundred dollars, or by imprisonment
5 in the county jail for not more than sixty days, or by both such fine and
6 imprisonment)), and shall, upon conviction, be subject to summary removal
7 from office by the governor, except elected officials who shall be subject to
8 impeachment.

1 54-27-17. PENALTY FOR INVESTMENT OF PUBLIC FUNDS WITHOUT CON-
2 SENT OF INDUSTRIAL COMMISSION. Any officer, or the head of any board,
3 bureau, commission, department, institution, or industry of the state violating
4 any of the provisions of section 54-27-16, shall be guilty of a class B misdemeanor
5 ((and shall be punished by a fine of not less than one hundred dollars nor
6 more than one thousand dollars, or by imprisonment in the county jail for not
7 less than thirty days nor more than one year, or by both such fine and imprison-
8 ment)).

1 54-41-05. UNAUTHORIZED USE - PENALTY.) No person shall place
2 or cause to be placed upon the coat of arms of this state any advertisement of
3 any nature; or expose such coat of arms to public view when any advertisement
4 has been attached thereto; or ((to)) expose to public view for sale or any
5 other purpose or have in his possession for sale, gift or other purpose, any
6 article of merchandise or receptacle for carrying merchandise upon which the
7 coat of arms of this state shall have been produced or attached for the purpose
8 of advertising or calling attention to such article. Any person violating the
9 provisions of this section shall be ((punished by a fine of not to exceed one
10 hundred dollars))) guilty of an infraction.

35-01-26. (to be repealed)

1 35-05-03. BILLS OF SALE AND TRANSFERS CIRCUMVENTING CROP MORTGAGE
2 LAW PROHIBITED - PRESUMPTION - ((MISDEMEANOR)) PENALTY. ((It
3 shall be unlawful for any))) No person ((, firm, corporation, or association
4 to))) shall solicit or procure bills of sale or transfers of whatever nature for
5 the purpose of obtaining title to or liens upon growing crops in circumvention
6 of section 35-05-01, and any such bill of sale or transfer shall be void. Any
7 such bill of sale or transfer relating to growing crops shall be presumed to be
8 in violation of this section. Any person ((, firm, corporation, or association
9 violating))) who violates the provisions of this section is guilty of ((a misdemeanor
10 and for each offense shall be subject to a fine of three hundred dollars))) an
11 infraction.

1 35-09-04. WRONGFUL USE OF SEED COVERED BY SEED LIEN - ((MISDE-
2 MEANOR)) PENALTY. Every person who procures seed on credit under the
3 provisions of this chapter, to be sown or planted upon any designated tract or
4 piece of land, who:
5 1. Uses the seed or any part thereof for any other purpose; or
6 2. Sows or plants the seed or any part thereof upon any tract or piece
7 of land other than that designated without the written consent of
8 the person who furnished the seed,
9 is guilty of a class A misdemeanor.

35-22-13. (to be repealed)

35-27-08. (to be repealed)

1 35-27-26. PENALTY FOR FILING UNLAWFUL LIEN.) Any person who
2 signs and files a mechanic's lien and who knowingly ((and willfully)) includes.
3 in the statement of lien filed in connection therewith, classes of material not
4 subject to a mechanic's lien under the provisions of this chapter is guilty of
5 a class A misdemeanor.

1 40-01-08. REMOVAL OF BUILDING WHEN TAXES AND SPECIAL ASSESSMENTS
2 OR SHARE OF BONDED INDEBTEDNESS ARE DUE - LIEN - ((MISDEMEANOR))
3 PENALTY.) No person shall remove a building from any lot or tract of land
4 in any municipality ((any building not)), unless it is assessed as personalty
5 ((and not)) or exempt from taxation, until after the taxes and special assess-
6 ments then due have been paid, nor until the owner shall have paid into the
7 sinking fund for the retirement of any bonded indebtedness of the municipality
8 an amount equal to the just share of the tax which would then be required against
9 the property in said municipality to pay the principal outstanding, less amount
10 in sinking funds, of the bonded indebtedness of such municipality. If the build-
11 ing is removed without the payment of the taxes and special assessments and
12 pro rata share of bonded indebtedness, such taxes, special assessments and
13 pro rata share of bonded indebtedness shall be a lien on the building notwith-
14 standing its removal as well as upon the lot, lots, tract, or tracts of land from
15 which the same was removed. This section shall not apply where a building
16 is removed to permit the erection or installation of improvements equal or
17 greater in value than the building removed. Any person violating the provisions
18 of this section is guilty of a class A misdemeanor.

1 SECTION 40-05-02. . . .

2 26. ((PETIT LARCENY)) THEFT. To prohibit by ordinance and
3 prescribe the punishment for the commission of ((petit larceny))
4 theft, as defined by ((section 12-40-03 of the North Dakota Century
5 Code)) chapter 12.1-23, within the jurisdiction of the city.

6 27. PEACE BONDS. To provide by ordinance for the issuance of peace
7 bonds by the ((police magistrate)) municipal judge in accordance
8 with the procedure in chapter 29-02 ((of the North Dakota Century
9 Code)).

40-09-15. (to be repealed)

40-13-06. (to be repealed - see also Section 40-13-05)

40-13-12. (to be repealed)

1 40-48-38. PENALTY FOR VIOLATIONS.) ((A violation of)) A person
2 who violates any of the provisions of this chapter shall be ((punishable as a))
3 guilty of a class A misdemeanor.

1 SECTION 40-49-12. . . .

2 3. Pass all ordinances necessary and requisite to carry into effect the
3 powers granted to a board of park commissioners, with such ((fines.))
4 penalties ((, or forfeitures)) as the board may deem proper. No
5 such ((fine or)) penalty, however, shall exceed ((one)) five
6 hundred dollars ((, and no imprisonment shall exceed thirty days
7 for one offense));

1 40-50-08. ((PENALTY IF)) REGISTER OF DEEDS ((FILES OR RECORDS))
2 NOT TO RECORD A PLAT WITHOUT APPROVAL OF PLANNING COMMISSION.
3 A register of deeds ((who)) shall ((receive for filing, or who shall)) not
4 record a plat of a subdivision ((without)) unless it has the approval of the
5 planning commission, if a planning commission has been appointed in the
6 municipality in which the subdivision is located or to which it is attached
7 ((, shall be guilty of a misdemeanor and shall be fined not less than one
8 hundred dollars nor more than five hundred dollars)).

40-50-10. (to be repealed)

1 29-26-21. JUDGMENT FOR FINE AND COSTS.) A judgment that the
2 defendant pay a fine and costs ((also)) may not direct that he be imprisoned
3 until both the fine and costs are satisfied ((, specifying the extent of the
4 imprisonment, which must not exceed one day for every two dollars of the
5 fine and costs, but such imprisonment does not discharge the judgment for
6 fine and costs, nor either)). Response to nonpayment of a fine shall be as
7 provided for in section 12.1-32-05.

1 29-27-03. JUDGMENT FOR IMPRISONMENT OR FINE AND IMPRISONMENT.)
2 If a judgment is for imprisonment, ((or a fine and imprisonment until such
3 fine is paid)) initially or as response to nonpayment of a fine in accordance

4 with section 12.1-32-05, the defendant forthwith must be committed to the custody
5 of the proper officer, and (((by him))) be detained by him until the judgment
6 is complied with.

1 29-27-04. JUDGMENT - BY WHAT OFFICER EXECUTED.) When the
2 judgment in a criminal action or proceeding under section 12.1-32-05 is imprison-
3 ment in the county jail, (((or a fine and imprisonment until the fine is paid.)))
4 the judgment must be executed by the sheriff of the county. In all other cases
5 when the sentence is imprisonment, the sheriff of the county must deliver the
6 defendant to the proper officer in execution of the judgment.

1 40-11-12. COMMITMENT OF GUILTY PERSON FOR NONPAYMENT OF FINES
2 OR COSTS.) Any person upon whom any fine (((or penalty shall be))) or
3 costs, or both, has been imposed for (((a))) violation of a municipal ordinance may,
4 after hearing, be committed (((,))) upon (((the))) order of the court (((before
5 whom the conviction is had, to the county jail, city prison, workhouse, house
6 of correction,))) to jail or other place provided by the municipality for the
7 incarceration of offenders until the fine (((, penalty, and))) or costs, or both,
8 (((shall be))) are fully paid (((in money))) or discharged by labor as (((is)))
9 provided in section 40-18-12. The court may not commit a person under this
10 section when the sole reason for his nonpayment of fine or costs, or both, is
11 his indigency. An order of commitment under this section shall not be for a
12 period in excess of thirty days. As used in this section, "fine" does not include
13 a fee established pursuant to subsection 2 of section 40-05-06.

1 40-18-12. COMMITMENT FOR VIOLATION OF CITY ORDINANCE - LIMITA-
2 TION - LABOR IN LIEU OF FINE - DIAGNOSIS AND TREATMENT OF PERSONS
3 CONVICTED WHILE DRIVING UNDER THE INFLUENCE.) If the defendant is
4 found guilty of the violation of a municipal ordinance and is committed as
5 (((is))) provided in section 40-11-12, the (((term of his imprisonment shall
6 not exceed thirty days for any one offense. The))) governing body may
7 provide by ordinance that (((each person so committed))) he shall be required
8 to work for the municipality at such labor as his strength and health will
9 permit, not exceeding (((ten))) eight hours in each working day (((, and
10 for such))). For that work, the person so imprisoned shall be allowed for
11 each day, exclusive of his board, (((five))) ten dollars on account of the
12 fines and costs assessed against him. If a person is convicted under an
13 ordinance prohibiting driving while under the influence of an intoxicating

14 liquor or a narcotic drug, the court may, prior to sentencing, refer the person
15 to an approved treatment facility for diagnosis. Upon receipt of the results of
16 this diagnosis, the court may impose a sentence as prescribed by the city's
17 ordinances or it may sentence the person to treatment in a facility approved
18 by the state division of alcoholism and drug abuse.

12-44-39. (to be repealed)

1 12-44-33. CONVICT TO RECEIVE CREDIT FOR LABOR TO APPLY ON
2 JUDGMENT.) For each day of labor performed by a convict under the provisions
3 of this chapter, there shall be credited on any judgment (((for fine and costs)))
4 against him, for a fine, costs, or both, the sum of (((five))) ten dollars.

16-01-08. (to be repealed)

1 16-01-11. REGULATIONS GOVERNING INITIATIVE, REFERENDUM, OR RECALL
2 PETITIONS - PENALTY.) No person shall sign any initiative, referendum, or
3 recall petition circulated pursuant to the provisions of sections 25 and 202 of
4 the Constitution of this state, and article 33 of the amendments to the Constitution,
5 unless he is a qualified elector. No person shall sign any petition more than
6 once, and each signer shall add, after his signature, his post-office address
7 and the date of signing. Every qualified elector signing a petition pursuant to
8 the Consitution and this section shall do so in the presence of the person
9 circulating the petition. Each copy of any petition provided for in this section,
10 before being filed, shall have attached thereto an affidavit executed by the
11 circulator to the effect that each signature to the paper appended is the genuine
12 signature of the person whose name it purports to be, that it was signed in
13 his presence, and that each such person is a qualified elector. Each affidavit
14 prepared pursuant to this section shall be accompanied by a typed or printed
15 list of the names of the persons who signed the copy of the petition to which
16 the affidavit was attached. Any person not an elector who signs an initiative,
17 referendum, or recall petition, any person signing a name other than his own
18 on such a petition, and any person who executes the affidavit required by
19 this section knowing all or part of the affidavit to be false, shall be guilty
20 of a class A misdemeanor. All signatures on each copy of a petition to which
21 is attached a false affidavit shall be invalid.

16-01-12. (to be repealed)

1 16-12-09. PENALTY FOR (((SOLICITING TO BE CHOSEN AS AID IN
2 MARKING BALLOT OR))) REQUESTING VOTER TO VOTE IN CERTAIN MANNER.)
3 Any person who ((solicits his choice to assist any voter in marking his or
4 her ballot, or who, being))) is chosen (((,))) to assist a voter and shall
5 request the voter he is assisting to vote for or against any person, or any
6 issue, shall be guilty of a class B misdemeanor ((and shall be punished by
7 a fine of not less than twenty-five dollars nor more than one hundred dollars,
8 or by imprisonment in the county jail for not more than sixty days, or by both
9 such fine and imprisonment))).

1 16-12-14. CHALLENGING RIGHT OF PERSON TO VOTE - AFFIDAVIT
2 REQUIRED - PENALTY FOR FALSE SWEARING - OPTIONAL POLL CHECKERS.)

- 3 1. One challenger appointed and designated from each of the political
4 party organizations shall be entitled to be in attendance at each polling
5 place. If any person offering to vote shall be challenged by one of
6 such challengers or by any member of the board of elections, such
7 person, unless such challenge is withdrawn, shall stand aside and
8 shall not vote unless he makes an affidavit, acknowledged before
9 the inspector of elections or any notary public, that he is a legally
10 qualified elector of the precinct. Any person who falsely swears in
11 order to cast his vote shall be guilty of perjury and shall be punished
12 as prescribed in section (((12-14-13))) 12.1-11-01.
- 13 2. In addition to the challenger, not more than two poll checkers appointed
14 by the district chairman of each political party may be in attendance
15 at each polling place, provided such poll checkers do not interfere
16 with the election process or with the members of the election board
17 in the performance of their duties.

16-12-15. (to be repealed)

16-13-06. (to be repealed)

1 16-14-10. FAILURE OF WITNESS SUMMONED TO APPEAR AND TESTIFY -
2 PENALTY.) Any person having been summoned in the manner provided in this
3 chapter, who refuses or neglects to attend and testify in obedience to such
4 subpoena, unless prevented by sickness or unavoidable necessity, shall (((forfeit

5 the sum of twenty dollars, which shall be recovered with the costs of suit in a
6 civil action in the name and for the use of the party at whose instance the subpoena
7 was issued, and such person also shall))) be guilty of a class A misdemeanor.

1 16-14-12. PRODUCTION OF PAPERS MAY BE REQUIRED - REFUSAL OR
2 NEGLECT TO PRODUCE (((,))) - PENALTY - TRANSMITTING PAPERS.) The
3 officer before whom any deposition is taken may require the production of papers.
4 Upon the refusal or neglect of any person to produce and deliver up any papers
5 in his possession pertaining to such election, or to produce certified or sworn
6 copies of the same in case they are official papers, such person shall be subject
7 to (((all the penalties))) the penalty prescribed in section 16-14-10. All papers
8 thus produced and all certified or sworn copies of official papers shall be
9 transmitted by the officer, with the testimony of the witnesses, to the secretary
10 of state for the use of the legislative assembly.

16-16-25. (to be repealed)

1 16-18-09. DELIVERING BALLOTS - ENVELOPE ACCOMPANYING - STATEMENT
2 ON ENVELOPE - INABILITY OF ELECTOR TO SIGN NAME.) Upon receipt of an
3 application for an official ballot properly filled out and duly signed, or as soon
4 thereafter as the official ballot for the precinct in which the applicant resides has
5 been prepared, the county auditor, auditor of the city, or clerk of the school
6 district, as the case may be, shall send to such absent voter by mail, postage
7 prepaid, one official ballot, or personally deliver said ballot to the applicant or
8 his agent, which agent may not, at that time, be a candidate for any office to
9 be voted upon by the absent voter; provided that the agent deposit with the
10 auditor or clerk, as the case may be, authorization in writing from the applicant
11 to receive such ballot or according to requirements hereinafter set forth for
12 signature by mark. If there is more than one ballot to be voted by an elector
13 of such precinct, one of each kind shall be included and an envelope shall be
14 enclosed with such ballot or ballots. Such envelope shall bear upon the front
15 thereof the name, official title, and post-office address of the officer supplying the
16 voter with the ballot, and upon the other side a printed statement in substantially
17 the following form:

18 State of _____ }
19 County of _____ } ss.
20 I, _____, under penalty of (((perjury))) possible criminal
21 prosecution for making a false statement, do solemnly swear that I am

22 a resident of the township of _____, or of the _____ precinct
23 of the _____ ward in the city of _____, residing at _____
24 in said city, county of _____ and state of North Dakota, and
25 entitled to vote in such precinct at the next election; that I expect to
26 be absent from the said county of my residence of the day of holding
27 such election or that by reason of physical disability I am unable to
28 attend at the polling place for such election, and that I will have no
29 opportunity to vote in person on that day.

30 _____
31 If such absent voter is unable to sign his name, he shall make his mark (X)
32 in the presence of a disinterested person. Such disinterested person shall
33 print the name of the person marking his X below the X, and shall sign his
34 own name following the printed name with the notation "witness to his mark".

16-18-18. (to be repealed)

16-18-19. (to be repealed)

1 16-20-06. OFFERS TO PROCURE OFFICE FOR ELECTOR - (((MISDEMEANOR)))
2 PENALTY.) Every ((person who, being a)) candidate at any election (((,)))
3 who offers or agrees to appoint or procure the appointment of any particular
4 person or persons to office as an inducement or consideration to any person
5 to vote for, or to procure or aid in procuring the election of, such candidate,
6 and every other person who (((, not being a candidate,))) communicates any
7 offer made in violation of this section to any person, with intent to induce him
8 to vote for or to procure or aid in procuring the election of the candidate making
9 the offer, is guilty of a class A misdemeanor.

1 16-20-09. PENALTY FOR (((CORPORATION OR OFFICER THEREOF)))
2 CONTRIBUTING FOR POLITICAL PURPOSES BY CORPORATE OFFICIALS OR
3 STOCKHOLDERS.) Any officer, director, stockholder, attorney, agent, or
4 representative of any corporation or association, who violates any of the provisions
5 of section 16-20-08, or who participates in, aids, abets, advises, or consents
6 to any such violation, and any person who solicits or knowingly receives any
7 money or property in violation of the provisions of section 16-20-08, shall be
8 (((punished by a fine of not less than two hundred dollars nor more than five
9 thousand dollars, or by imprisonment in the penitentiary for not more than
10 one year, or by both such fine and imprisonment))) guilty of a class A misdemeanor.

11 Any ((officer)) such person aiding or abetting in any contribution made in
12 violation of section 16-20-08 shall be liable to the company or association for
13 the amount so contributed. (see also the minutes of April 25-26, 1974)

1 14-03-28. PENALTY.) Unless otherwise provided, any person violating
2 any of the provisions of this chapter shall be guilty of a class A misdemeanor
3 ((and upon conviction shall be punished by a fine of not less than fifty dollars
4 nor more than five hundred dollars, or by imprisonment in the county jail for
5 not less than thirty days nor more than one year, or by both such fine and
6 imprisonment))).

1 14-07-15. ABANDONMENT OR NONSUPPORT OF CHILD.) Every parent
2 or other person legally responsible for the care or support of a child who is
3 unable to support himself by lawful employment, who wholly abandons such
4 child or willfully fails to furnish food, shelter, clothing, and medical attention
5 reasonably necessary and sufficient to keep the child's life from danger and
6 discomfort and his health from injury is guilty of a class C felony.

7 Any food, shelter, clothing, or medical attentions, furnished by or through
8 a welfare or charitable program of any governmental agency, civic or religious
9 organization, or a combination thereof, or any intervening third party, on the
10 basis of need, shall not avoid, excuse, relieve, or discharge, either parent, or
11 person legally responsible for care and support of a child, from the criminal
12 penalty for the willful failure or neglect to provide such support.

13 Neither shall a parent be relieved, excused, or discharged from such
14 responsibility and criminal penalty provided for herein, for the willful neglect
15 or failure to provide such care and support, if the other parent is providing
16 the child with care and support to the best of his or her ability, but where
17 such care and support is not sufficient to keep the child's life from danger and
18 discomfort, or its health from injury.

19 The fact, if it is a fact, that either parent may have secured a decree
20 of divorce awarding the custody of such child, in no manner shall relieve either
21 parent from the requirements and penalty of this section, except that compliance
22 with the terms of such decree for support of such child shall be deemed a
23 compliance herewith; provided, however, that if the parent or other person
24 legally responsible for the care or support of a child who is under the age
25 of eighteen years and unable to support himself, as hereinbefore provided, while
26. in another state, and while such minor child is in this state, willfully and
27 intentionally fails to furnish food, clothing, shelter, and medical attention

28 as herein provided, such failure shall nevertheless be construed to have been
29 committed in this state, and all of the laws of this state with reference to
30 punishment shall apply with the same force and effect as if such abandonment
31 and failure to support had occurred in this state.

1 14-07-16. ABANDONMENT OR NONSUPPORT OF WIFE.) Every husband
2 who, without lawful excuse, deserts his wife with intent wholly to abandon
3 her or who willfully fails to furnish such food, shelter, clothing, and medical
4 attention as is reasonably necessary and sufficient to keep the life of his wife
5 from danger and discomfort and her health from injury, is guilty of a class C
6 felony;

7 Provided, however, that if a husband while in another state and having
8 left his wife in this state, willfully and intentionally and without lawful excuse
9 deserts his wife and abandons her, or while in such other state, willfully and
10 intentionally fails to furnish such food, shelter, clothing and medical attention
11 as is reasonably necessary, as herein provided, while his wife is in this state,
12 such abandonment and failure to support shall be construed to have been committed
13 in this state and all of the laws of this state with reference to punishment shall
14 apply with the same force and effect as if such abandonment and failure to support
15 had occurred in this state and he shall be subject to the penalty as in this
16 section provided.

14-07-18. (to be repealed)

1 14-09-22. NEGLECT OF CHILD - PENALTY.) A parent, guardian, or
2 other custodian of any child who shall cruelly abuse or willfully neglect or
3 refuse to provide subsistence, education, or other necessary care for the health,
4 morals, or well-being of such child, or who shall (((knowingly and))) willfully
5 permit and allow any such child to be in a disreputable place or associate
6 with vagrants, vicious or immoral persons, or engage in an occupation forbidden
7 by the laws of North Dakota, or to engage in an occupation injurious to his
8 health or morals or to the health or morals of others, or any such parent,
9 guardian, or custodian who, in the supervision and control of such child, shall
10 fail to exercise reasonable diligence in preventing such child from being in
11 a disreputable place or from associating with vagrants, vicious or immoral persons,
12 or from engaging in an occupation forbidden by the laws of North Dakota, or
13 from engaging in any occupation injurious to his health or morals or to the
14 health and morals of others shall be guilty of a (((misdemeanor))) class C

15 felony. (((When it shall appear to the satisfaction of the court that the ends
16 of justice and the best interests of the public, as well as the defendant, will
17 be subserved thereby, the court shall have power after conviction or after plea
18 of guilty for the violation of this section to suspend the imposition or execution
19 of sentence and to place the defendant upon probation for such period and upon
20 such terms and conditions as the court may deem best; or the court may impose
21 a fine and may also place the defendant upon probation in the manner aforesaid.
22 The court may revoke or modify any condition of probation or may change
23 the period of probation. The period of probation, together with any extension,
24 shall not exceed two years.)))

1 14-10-05. ASSIGNMENT OF CHILDREN PROHIBITED - PENALTY.) No
2 person, (((partnership, voluntary association, or corporation,))) other than
3 the parents (((or relatives of a child))), may assume the permanent care and
4 custody of a child, unless authorized so to do by an order or decree of a
5 court having jurisdiction. No parent shall assign or otherwise transfer his
6 rights or duties with respect to the care and custody of his child. Any such
7 transfer or assignment, written or otherwise, shall be void. This section shall
8 not affect the right of the parent to consent in writing to the legal adoption
9 of his child, but such written consent shall not operate to transfer any right
10 in the child in the absence of a decree by a court having jurisdiction. Any
11 person who violates the provisions of this section is guilty of a class A misdemeanor.

1 14-10-06. UNLAWFUL TO ENCOURAGE OR CONTRIBUTE TO DELINQUENCY
2 OF MINOR - PENALTY.) Any person who by any act willfully encourages, causes,
3 or contributes to the delinquency or (((dependency))) deprivation of any minor
4 is guilty of a class A misdemeanor.

1 14-10-08. PERSON TO WHOM CHILD CONFIDED SUBSTITUTING OTHER
2 CHILD - PENALTY.) Every person to whom an infant has been confided for
3 nursing, education, or any other purpose, who, with intent to deceive any
4 parent or guardian of such child, substitutes or produces to such parent or
5 guardian another child in the place of the one so confided, shall be (((punished
6 by imprisonment in the penitentiary for not less than one year nor more than
7 seven years))) guilty of a class C felony.

14-10-16. (to be redrafted)

1 36-01-18. INSPECTION OF LIVESTOCK IN TRANSIT - EXECUTION OF
2 ORDERS OF BOARD BY PEACE OFFICERS - POWERS OF OFFICERS - PENALTY.)
3 Authorized representatives of the state livestock sanitary board, for purposes
4 of inspecting livestock in transit for health or ownership identification, may stop
5 vehicles (((. except passenger vehicles.))) transporting livestock on public
6 highways of this state. When signaled by such representative to stop, the
7 operator of any such vehicle shall stop the same and cause to be shown any
8 health or identification forms which are required to be carried in transportation
9 of livestock, and to permit such inspector to make an inspection of the livestock
10 being transported if deemed by the inspector to be necessary. Failure to stop
11 when so directed constitutes a class A misdemeanor. Any vehicle used for
12 such purposes shall be clearly identified in letters not smaller than three inches
13 and is authorized to use a stop signal.

14 The state livestock sanitary board may call any sheriff, deputy sheriff,
15 or constable to execute its orders, and such officers shall obey the orders of
16 said board. Any peace officer may arrest and take before any county justice
17 of the county any person found violating any of the provisions of this chapter,
18 and such officers shall notify the state's attorney immediately of such arrest,
19 and the state's attorney shall prosecute the person so offending.

1 36-01-28. PENALTY.) Any person who shall violate any of the provisions
2 of this chapter for which a specific penalty is not provided, or who shall knowingly
3 violate any rule or regulation duly established by the livestock sanitary board,
4 shall be guilty of a class B misdemeanor.

1 36-01-30. FEEDLOT REGISTRATION - RULES AND REGULATIONS -
2 PENALTY.) No person shall operate a registered livestock feedlot without
3 obtaining from the livestock sanitary board a registration number. The livestock
4 sanitary board is hereby authorized to set rules with the limitations of this section
5 for the operation of feedlots registered for the enforcement of brand inspection
6 regulations. Applications for registration shall be made upon such forms as
7 may be prescribed by the board and shall be accompanied by a fee equal to
8 the fee charged for brand recording. All fees and any inspection fees established
9 by the board shall be remitted regularly to the North Dakota stockmen's association.
10 The board may promulgate in accordance with chapter 28-32 such rules and
11 regulations consistent with law as may be required for the purpose of assuring
12 that brand laws are complied with and brand inspection certificates are available,

13 and proper records are maintained. Violation of any provision of law or of any
14 rule or regulation of the board promulgated pursuant to this section shall subject
15 the operator to revocation or suspension of registration issued hereunder, and
16 in addition any person violating any provision of this section or rule or regulation
17 of the board promulgated hereunder shall be guilty of a class B misdemeanor.
18 The provisions of this section shall not be construed as prohibiting the operation
19 of nonregistered feedlots.

1 36-04-09. DISPOSITION OF FEES - INSPECTIONS.) All fees collected by
2 the department under the provisions of this chapter shall be credited to the general
3 fund of the state treasury. The provisions of this chapter shall be enforced
4 by the commissioner and the regular inspectors of the department. (((Any person
5 who shall hinder, impede, resist, or otherwise interfere in any way with any
6 such inspector while engaged in the lawful performance of his official duties
7 in the enforcement of the provisions of this chapter shall be subject to the
8 penalty provided for herein.)))

1 36-04-21. PENALTY FOR VIOLATION OF PROVISIONS OF CHAPTER
2 (((- PENALTY FOR A SECOND VIOLATION))).) Any person who shall violate
3 any of the provisions of this chapter shall be guilty of a class B misdemeanor
4 (((and shall be punished by a fine of not more than one hundred dollars or
5 by imprisonment in the county jail for not more than thirty days, or by both
6 such fine and imprisonment. Every person who shall violate any of the provisions
7 of this chapter after having been previously convicted of a violation of any provision
8 thereof shall be guilty of a misdemeanor and shall be punished by a fine of not
9 less than one hundred dollars nor more than five hundred dollars, or by imprison-
10 ment in the county jail for not less than thirty days nor more than one year, or
11 by both such fine and imprisonment))).

1 36-05-14. PENALTY FOR VIOLATION OF PROVISIONS OF CHAPTER
2 (((- PENALTY FOR A SECOND VIOLATION))).) Any person who shall violate
3 any of the provisions of this chapter shall be guilty of a class B misdemeanor
4 (((and shall be punished by a fine of not more than one hundred dollars or
5 by imprisonment in the county jail for not more than thirty days, or by both such
6 fine and imprisonment. Every person who shall violate any of the provisions
7 of this chapter after having been convicted previously of a violation of any provision
8 thereof shall be guilty of a misdemeanor and shall be punished by a fine of
9 not less than one hundred dollars nor more than five hundred dollars, or by

10 imprisonment in the county jail for not less than thirty days nor more than one
11 year, or by both such fine and imprisonment))).

1 36-05-15. PUBLIC LIVESTOCK MARKETS OR COMMISSION FIRMS -
2 DUPLICATE SCALE TICKETS.) All public livestock markets or commission firms
3 doing business in this state shall deliver to each person consigning livestock
4 to such market or purchasing livestock from such market, a duplicate scale
5 ticket showing the ((net)) weight of such livestock. ((Any person violating
6 any of the provisions of this section shall be guilty of a misdemeanor and shall
7 be punished by a fine of not more than one hundred dollars.))

1 36-06-02. LIVESTOCK PURCHASED BY WEIGHT TO BE GRADED - PENALTY.)
2 No officer or employee of a packing plant within this state shall purchase any
3 livestock by weight unless such livestock shall have been graded and sorted
4 in the yard and the price per pound for each grade fixed and determined before
5 the weighing thereof. Any officer or employee of a packing plant who violates
6 this section is guilty of an infraction.

1 36-06-03. PENALTY FOR PURCHASE OF LIVESTOCK BY WEIGHT WITHOUT
2 GRADING THE SAME.) Each purchase of livestock in violation of section
3 36-06-02 shall be a separate offense and shall constitute (((a misdemeanor)))
4 an infraction upon the part of every owner of a packing plant in which such
5 violation occurs ((, whether the owner is a natural person or a corporation,
6 and shall be punished by a fine of not more than one hundred dollars for each
7 offense))).

1 36-06-04. LIVESTOCK SOLD OR PURCHASED AT PACKING PLANT TO BE
2 WEIGHED BY LICENSED WEIGHMASTER - DUPLICATE SCALE TICKET - PENALTY.)
3 All livestock purchased or sold at any packing plant within this state shall
4 be weighed by a licensed and bonded weighmaster. The weighmaster shall
5 deliver to each person from whom livestock is purchased or to whom livestock
6 is sold a duplicate scale ticket showing the gross, tare, and net weights of the
7 livestock. Any person ((or corporation)) who shall permit such weighing
8 to be done by any person other than a licensed weighmaster shall be guilty
9 of (((a misdemeanor and shall be punished by a fine of not more than one
10 hundred dollars for each unlawful weighing))) an infraction.

36-06-08. (to be repealed)

1 36-07-14. PENALTY FOR VIOLATION OF CHAPTER.) Any person (((, firm,
2 or corporation and any employee thereof,))) violating any of the provisions of
3 this chapter is guilty of a class B misdemeanor (((, and shall be punished by
4 a fine of not more than one hundred dollars or by imprisonment in the county
5 jail for not more than ninety days, or by both such fine and imprisonment))).

1 36-09-15. BUTCHER TO KEEP RECORD OF BRANDED CATTLE SLAUGHTERED
2 BY HIM - REPORT TO COMMISSIONER OF AGRICULTURE REQUIRED - PENALTY.)
3 Any person engaged in the business of killing domestic animals and selling
4 the meat thereof, either at retail or wholesale, shall be deemed a butcher for
5 the purposes of this section. Any butcher who shall kill within this state any
6 head of neat cattle shall keep a record thereof showing:

- 7 1. The name and place of residence of the person from whom such animal
- 8 was purchased;
- 9 2. When and where such animal was purchased;
- 10 3. The sex of such animal and its age to the best of his knowledge; and
- 11 4. A description of any and all marks and brands on such animal.

12 The record shall be open to inspection during business hours by the state's
13 attorney of the county in which the butcher shall reside, or to any person
14 authorized by the state's attorney to make such inspection. Each butcher shall
15 make a verified report of all branded cattle killed by him during the preceding
16 month to the commissioner of agriculture on the first day of each month, giving
17 the information specified in this section. Blank forms for such report shall be
18 supplied by the commissioner, without cost, to butchers upon request. Any
19 person who shall violate any of the provisions of this section shall be guilty of
20 (((a misdemeanor))) an infraction.

36-09-16. (to be repealed)

1 36-09-17. DEFACING BRANDS AND UNLAWFULLY BRANDING - PENALTY.)
2 Any person who shall:

- 3 1. Alter or deface, or attempt to alter or deface, the mark or brand
4 upon any (((horse, mule, sheep, or swine, or upon any cow, calf,
5 or other head of neat cattle))) animal, the property of another
6 (((, with intent thereby to steal the same or to prevent identification
7 thereof by the true owner))); or

8 2. Willfully and unlawfully mark or brand, or cause to be marked or
9 branded, any (((horse, mule, sheep, swine, or poultry, or any cow,
10 calf, or other head of neat cattle))) animal, the property of another,
11 shall be guilty of a felony and shall be punished by imprisonment in the peniten-
12 tiary for not less than one year nor more than five years, or by a fine of not
13 less than five hundred dollars nor more than one thousand dollars, or by both
14 such fine and imprisonment))) class A misdemeanor.

1 36-09-20. BILL OF SALE TO BE GIVEN AND KEPT - COPY WITH SHIPMENT -
2 EFFECT - PENALTY.) Any person who sells any (((registered branded)))
3 livestock carrying a registered brand shall give (((, at the time of sale,)))
4 to the buyer, at the time of sale, a (((written))) bill of sale, bearing the signa-
5 ture and residence of the seller and name and address of the buyer, and (((giving)))
6 showing the total number of animals sold, (((and))) describing each animal
7 sold as to sex and kind, and describing all registered brands, except tattoos.
8 (((Such))) The bill of sale shall be kept by the buyer for two years and as
9 long thereafter as he shall own any of the animals described therein. A copy
10 of the bill of sale shall be given to each hauler of such livestock, other than
11 railroads, and shall go with the shipment of such stock while in transit. Such
12 bill or copy shall be shown by the possessor on demand to any peace officer
13 or brand inspector. Such bill of sale shall be prima facie evidence of the sale
14 of the livestock therein described; provided, that no such bill of sale shall
15 be required relative to sales of livestock covered by a legal livestock brand
16 inspection. Any violation of this section shall be (((a misdemeanor))) an infraction.

1 36-09-22. SALE OF ANIMAL UNDER FALSE REGISTRATION CERTIFICATES -
2 CHANGING MARKING - AUCTIONEER - PENALTY.) No person shall:
3 1. Sell any animal with a certificate of registration or breeding
4 that does not belong to said animal;
5 2. Change in any way the certificate of registration or breeding of
6 any animal;
7 3. Falsely represent any production record specified in any registration
8 certificate; or
9 4. Change the markings of any animals with intent to deceive the purchaser
10 or misrepresent the sire to which such animal has been bred.
11 The provisions of this section shall not apply to any auctioneer or agent acting
12 in good faith under the direction of the owner.
13 Any person who shall violate any of the provisions of this section shall

14 be guilty of a class B misdemeanor (((and shall be punished by a fine of
15 not less than twenty-five dollars nor more than one hundred dollars, or by
16 imprisonment in the county jail for not more than thirty days or by both such
17 fine and imprisonment))).

1 36-09-23. REMOVAL OF LIVESTOCK FROM STATE - BRAND INSPECTION -
2 PENALTY.) No person shall remove cattle, horses, or mules from this state
3 or to within a mile of any boundary of the state for the purpose of removal
4 unless such livestock shall have been inspected for marks and brands by an
5 official brand inspector of the North Dakota stockmen's association and a certifi-
6 cate of inspection shall accompany such livestock to destination. In lieu of
7 such inspection, the owner or possessor may make and sign an invoice or waybill
8 covering such stock showing marks and brands, number, sex and kind of the
9 stock and the consignee and market destination where official brand inspection
10 is provided by or for the said stockmen's association and mail a copy of such
11 invoice or waybill to the association before the stock leaves the state.

12 It shall be unlawful for the owner or possessor to remove any such live-
13 stock from any place of such regular official brand inspection unless and until
14 official brand inspection has been made and the brand inspection certificate issued.

15 Any violation of this section shall constitute a class B misdemeanor
16 (((and shall be punishable by a fine of not less than twenty-five dollars
17 nor more than five hundred dollars, or by imprisonment for not less than
18 thirty days nor more than ninety days))).

36-10-09. (to be repealed along with other sections in chapter)

1 36-11-01. STOCK RUNNING AT LARGE PROHIBITED - (((PENALTIES)))
2 PENALTY.) No cattle, horses, mules, swine, goats, or sheep shall be permitted
3 to run at large. Any owner or possessor of any such animal who willfully
4 permits (((any such animal))) it to run at large through failure to maintain
5 a lawful fence as provided in section 47-26-01, except in a grazing (((district)))
6 area as provided in section 36-11-07, shall be guilty of a class B misdemeanor.

1 36-11-06. CERTAIN ANIMALS NOT TO BE PERMITTED TO RUN AT LARGE
2 AT ANY TIME - PENALTY.) The owner or person in charge of any stallion,
3 jack, boar, ram, bull, or any animal known to be vicious who negligently
4 permits such animal to run at large shall be liable in a civil action to any
5 person who is (((injured))) damaged, either directly or indirectly, by such

6 violation for all damages resulting therefrom and shall be guilty of ((a
7 misdemeanor and shall be punished by a fine of not less than ten dollars
8 nor more than fifty dollars))) an infraction. The provisions of this section,
9 however, shall not prevent the keeping of any stallion, jack, bull, or ram with
10 any herd or flock which is attended by a herder if such stallion, jack, bull,
11 or ram is kept with such herd or flock by the herder.

1 36-11-19. TAKING ((OR ATTEMPTING TO TAKE)) ANIMALS DISTRAINED -
2 PENALTY.) Every person who, except by due course of law, takes ((, attempts
3 to take))), or advises or assists in the taking of, any animal distrained and
4 held by virtue of any provision of this chapter, from the possession of the person
5 having the same in his charge, without the consent of the person holding such
6 animal, is guilty of a class B misdemeanor ((and shall be punished by a fine
7 of not more than fifty dollars or by imprisonment in the county jail for not
8 more than thirty days, or by both such fine and imprisonment))).

1 36-12-06. PENALTY.) Any person who shall violate any provision of
2 this chapter shall be guilty of ((a misdemeanor and shall be punished by a
3 fine of not less than fifty dollars nor more than two hundred dollars))) an
4 infraction.

1 36-13-08. ((WRONGFUL TAKING UP OR SALE)) TAKING UP ESTRAY -
2 COMPLIANCE WITH CHAPTER - PENALTY.) Any person taking up an estray
3 who willfully fails to comply with the provisions of this chapter ((,)) shall
4 be ((punished by a fine of not more than one hundred dollars or imprisonment
5 for not more than thirty days or by both))) guilty of a class B misdemeanor.

1 36-14-09. LIVING HOG CHOLERA VIRUS AND VACCINES - PURCHASE,
2 POSSESSION AND USE OF LIVING HOG CHOLERA VIRUS AND VACCINES PRO-
3 HIBITED - ((MISDEMEANOR)) PENALTY.) The purchase, possession, or
4 use of living hog cholera virus and vaccines by any person including all
5 licensed veterinarians, is hereby prohibited and made unlawful except by
6 written permit issued by the executive officer and state veterinarian.

7 Any person violating any of the provisions of this section shall be
8 ((deemed)) guilty of a class B misdemeanor ((and upon conviction thereof
9 shall be punished by a fine of not to exceed two hundred dollars or imprison-
10 ment in the county jail for not to exceed thirty days, or by both such fine
11 and imprisonment))).

1 36-14-13. ISSUANCE OF HEALTH CERTIFICATES BY UNAUTHORIZED
2 PERSONS - PENALTY.) Any person who issues a health certificate for livestock
3 within this state without being authorized so to do by the state livestock sanitary
4 board or by the United States department of agriculture is class B
5 misdemeanor (((and shall be punished by a fine of not less than twenty-five
6 dollars nor more than one hundred dollars, or by imprisonment in the county
7 jail for not less than ten days nor more than thirty days))).

1 36-14-16. FAILURE TO RESTRAIN INFECTED SHEEP (((A MISDEMEANOR)))
2 - PENALTY.) Every person who owns or has in charge any sheep infected
3 with scab or other infectious or contagious disease and who:
4 1. Does not keep such sheep securely within some (((inclosure)))
5 enclosure; or
6 2. Drives or permits any such sheep to be driven upon any public
7 highway, or within the distance of one mile from any such highway,
8 or within the distance of six miles from any farm, corral, shed, or
9 other established headquarters where sheep are kept or herded,
10 is guilty of a class B misdemeanor.

36-14-17. (to be repealed)

36-14-18. (to be repealed)

1 36-14-21. PENALTY FOR VIOLATING PROVISIONS OF CHAPTER.) Any
2 person (((, firm, or corporation))) who shall ((bring, convey, carry, or
3 transport livestock into or in this state in violation of any provision of this chapter
4 or))) knowingly (((in violation of))) violate any rule or regulation of the state
5 livestock sanitary board, or who shall violate any provision of this chapter for
6 which another penalty is not provided, (((or who shall fail to observe any of
7 the provisions of this chapter,))) shall be guilty of a class A misdemeanor (((and
8 shall be punished by a fine of not less than one hundred dollars nor more than
9 one thousand dollars, or by imprisonment in the county jail for not less than
10 thirty days nor more than ninety days))).

1 36-15-19. PENALTY FOR VIOLATION OF PROVISIONS RELATING TO TESTING
2 OF LIVESTOCK.) Any person who shall refuse to assist the board or its agents
3 in, or who endeavors to prevent the board of its agents from, carrying out the
4 provisions of this chapter, or who shall violate any of the provisions of this

5 chapter relating to the testing of cattle, shall be guilty of a class B misdemeanor
6 ((and shall be punished by a fine of not less than twenty-five dollars nor more
7 than five hundred dollars, or by imprisonment in the county jail for not less
8 than thirty days nor more than ninety days, or by both such fine and imprisonment)))

1 36-15-21. CALFHOOD VACCINATION AGAINST BRUCELLOSIS REQUIRED -
2 PENALTY.) No person shall bring into this state any female cattle over ten
3 months of age for dairy or breeding purposes within this state that have not been
4 officially calfhood vaccinated against brucellosis. "Officially calfhood vaccinated"
5 shall mean a bovine female animal vaccinated against brucellosis under the super-
6 vision of a federal or state veterinary official within age limits prescribed by
7 the North Dakota livestock sanitary board in compliance with USDA recommended
8 uniform methods and rules, with a vaccine approved by the North Dakota state
9 veterinarian, and permanently identified as such a vaccinate and reported at the
10 time of vaccination to the appropriate state or federal agency cooperating in the
11 eradication of brucellosis. However, the board in its discretion may grant a
12 hearing to any person under such rules and regulations as the board may prescribe,
13 as to whether or not an exception should be made to the provisions of this section.
14 An appeal may be taken from the decision of the board under the provisions of
15 chapter 28-32. Any person who shall bring into this state or acquire within
16 this state any cattle contrary to the provisions of this section, shall be guilty
17 of a class B misdemeanor ((and shall be punished by a fine of not less than
18 one hundred dollars nor more than five hundred dollars, or by imprisonment
19 in the county jail for not more than ninety days, or by both such fine and impri-
20 sonment))).

1 36-20-08. VIOLATION OF ANY PROVISION OF CHAPTER ((IS MISDEMEANOR)))
2 - PENALTY.) Any person (((, association, company, or corporation))) violating
3 or failing to comply with any provision of this chapter is guilty of a class B
4 misdemeanor.

1 36-21-01. REGULATIONS GOVERNING FRAUDULENT REGISTRATION OF
2 PUREBRED LIVESTOCK - PENALTY.) Any person who shall:
3 1. Fraudulently represent any animal to be purebred;
4 2. Post or publish, or cause to be posted or published, any false pedigree
5 or certificate;

- 6 3. Procure by fraud, false pretense, or misrepresentation the registration
7 of any animal which is to be used for service, sale, or exchange in
8 this state for the purpose of deception as to the pedigree thereof;
- 9 4. Sell or otherwise dispose of any animal as a purebred when he knows
10 or has reason to believe that the animal is not the offspring of a
11 regularly registered purebred sire and dam; or
- 12 5. Sell or otherwise dispose of any animal as a registered purebred by
13 the use of a false pedigree or certificate of registration,
14 shall be guilty of a class B misdemeanor (((and shall be punished by a fine of
15 not less than twenty-five dollars nor more than one thousand dollars, or by
16 imprisonment in the county jail for not less than thirty days nor more than
17 six months, or by both such fine and imprisonment))).

36-21-04. (to be repealed)

- 1 36-21.1-02. OVERWORKING OR MISTREATING ANIMALS ((((- MISDEMEANOR))).)
- 2 1. No person shall overdrive, overload, torture, cruelly beat, neglect,
3 or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly
4 work any animal when unfit for labor.
- 5 2. No person shall deprive any animal over which he has charge or control
6 of necessary food, water, or shelter.
- 7 3. No person shall keep any animal in any (((inclosure))) enclosure without
8 exercise and wholesome change of air.
- 9 4. No person shall abandon any animal.
- 10 5. No person shall allow any maimed, sick, infirm, or disabled animal
11 of which he is the owner, or of which he has custody, to lie in any
12 street, road, or other public place for more than three hours after
13 notice.
- 14 6. No person shall willfully instigate, or in any way further, any act
15 of cruelty to any animal or animals, or any act tending to produce
16 such cruelty.
- 17 7. No person shall cage any animal for public display purposes unless
18 the display cage is constructed of solid material on three sides to
19 protect the caged animal from the elements, and unless the horizontal
20 dimension of each side of the cage is at least four times the length of
21 the caged animal. The provisions of this subsection shall not apply
22 to the North Dakota state fair association, to agricultural fair associa-
23 tions, to any agricultural display of caged animals by any political

24 subdivision, or to district, regional, or national educational livestock
25 or poultry exhibitions. Zoos which have been approved by the health
26 district or the governing body of the political subdivision which has
27 jurisdiction over the zoos shall be exempt from the provisions of
28 this subsection.

29 (((8. Any person who fails to comply with any of the provisions of this
30 section shall be guilty of a misdemeanor.)))

1 36-21.1-03. CRUELTY IN TRANSPORTATION (((- MISDEMEANOR))).)
2 (((Every))) No person (((who))) shall carry, or cause to be carried, any
3 live animals upon any vehicle or otherwise, without providing suitable racks,
4 cars, crates, or cages, or other proper carrying container, (((or who))) nor
5 shall he carry an animal, or cause an animal to be carried, in any other cruel
6 manner (((shall be guilty of a misdemeanor))).

1 36-21.1-04. POISONING ANIMALS (((- MISDEMEANOR))).) (((Any)))
2 No person shall unjustifiably (((administering))) administer or (((exposing)))
3 expose any known poisonous substance or noxious drug, whether mixed with
4 meat or other food or not, which may be eaten (((or is eaten))) by any domestic
5 animal (((, shall be guilty of a misdemeanor))).

1 36-21.1-05. ANIMAL WITH INFECTIOUS DISEASE (((- MISDEMEANOR))).)
2 (((Every owner or person))) No person owning or having charge of any animal,
3 knowing the animal to have any infectious or contagious disease, or to have
4 recently been exposed thereto, (((who knowingly permits))) shall knowingly
5 permit such animal to run at large or come into contact with another animal,
6 or with another person without his knowledge and permission (((, shall be
7 guilty of a misdemeanor))).

1 36-21.1-07. COCKFIGHTS, DOGFIGHTS, AND OTHER EXHIBITIONS
2 PROHIBITED (((- MISDEMEANOR))).) (((Every person who engages in, is
3 employed at, aids, or abets))) No person shall engage in or be employed at
4 cockfighting, dogfighting, bearbaiting, pitting one animal against another, or
5 any other similar cruelty to animals; (((or who receives))) nor shall he receive
6 money for the admission of any person to any place used, or about to be used,
7 for any such purpose, (((or who))) nor shall he willfully permit anyone to
8 enter or use, for any such purpose, premises of which he is the owner, agent,

9 or occupant; (((or who uses, trains, or possesses))) nor shall he use, train, or
10 possess a dog or other animal for the purpose of seizing, detaining, or maltreat-
11 ing any domestic animal, (((or any person who))) nor shall any other person
12 knowingly (((purchases))) purchase a ticket of admission to any such place,
13 (((is))) be present at, or (((witnesses))) witness such spectacle (((shall

14 be guilty of a misdemeanor))).

1 36-21.1-08. ARTIFICIALLY COLORED ANIMALS - SALE (((- MISDEMEANOR))).)
2 (((Every person who sells or offers))) No person shall sell or offer for sale,
3 (((raffles, offers or gives))) raffle, offer, or give as a prize, premium, or
4 advertising device, or (((displays))) display in any store, shop, carnival,
5 or other public place, a chick, duckling, gosling, or rabbit which has been
6 dyed or otherwise artificially colored (((, shall be guilty of a misdemeanor))).

1 36-21.1-09. USE OF CERTAIN BIRDS AS ADVERTISING DEVICES (((- MIS-
2 DEMEANOR))).) (((Every person who sells, offers for sale, raffles, offers,
3 or gives))) No person shall sell, offer for sale, raffle, offer, or give as a
4 prize, premium, or (((uses))) use as an advertising device, chicks, ducklings,
5 or goslings younger than four weeks of age in quantities of less than twelve
6 birds to an individual person (((shall be guilty of a misdemeanor))). Persons
7 (((, firms, partnerships, or corporations))) engaging in the business of selling
8 chicks, ducklings, or goslings for agricultural or wildlife purposes shall be
9 exempt from the provisions of this section, but only when selling for such
10 purposes.

1 36-21.1-11. PENALTIES.) Any person violating any provisions of this
2 chapter for which a specific penalty is not provided (((,))) shall be guilty of
3 a class A misdemeanor (((and shall be punished by a fine of not more than five
4 hundred dollars, or by imprisonment in the county jail for not more than one
5 year, or by both such fine and imprisonment))).

1 36-23.1-04. INSPECTION OF SLAUGHTERHOUSES AND MEATPACKING PLANTS -
2 PENALTY.) The state veterinarian or his duly authorized agent shall have
3 free access at all reasonable hours to any slaughterhouse within this state where
4 animals are slaughtered for human food, or any plant or premises within this
5 state where the carcass or the parts thereof are canned, salted, packed, smoked,
6 cured, rendered, or otherwise prepared or processed for human food, except
7 where such plants or premises are inspected under the provisions of the Federal

8 Meat Inspection Act, 21 U.S.C. sections 71-91, 34 Stat. 1260-65, as amended.
9 Inspections of each such plant or premises within the state shall be made at least
10 once every three months, and shall determine if the facilities of such plant
11 or premises are clean, sanitary, and not contaminated with filth, and that the
12 carcass or the parts thereof, or meat or meat food products processed or
13 prepared by such plant or premises are not unwholesome, unclean, unhealthful,
14 or otherwise unfit for human food, or misbranded as defined by section 19-02.1-10
15 or adulterated as defined by section 19-02.1-09. Any carcass or the parts
16 thereof or meat or meat food products determined to be prepared or processed
17 under conditions whereby they are rendered unsanitary, or contaminated with
18 filth or that are unwholesome, unclean, unhealthful or otherwise unfit for human
19 food, or misbranded as defined by section 19-02.1-10 or adulterated as defined
20 by section 19-02.1-09, may be seized by the state veterinarian or his duly
21 authorized agent in accordance with rules and regulations issued by the board.

22 Any person allowing the slaughter, preparation or processing of animals,
23 carcasses or the parts thereof, or meat or meat food products under such
24 conditions whereby they are rendered unsanitary, or contaminated with filth,
25 or that are unwholesome, unclean, unhealthful, or otherwise unfit for human
26 food, or misbranded as defined by section 19-02.1-10 or adulterated as defined
27 by section 19-02.1-09; any person who forges, counterfeits, simulates, or falsely
28 represents any mark, stamp, tag, label, or other identification device prescribed
29 by the board under this chapter; any person who refuses to permit the taking
30 of a sample of a carcass or the parts thereof, or meat or meat food products
31 from his plant or premises, or refuses to permit the inspection or reinspection
32 authorized by this chapter, shall be guilty of a class A misdemeanor (((, and
33 shall be punished by a fine of not less than twenty-five dollars nor more than
34 one thousand dollars, or by imprisonment in the county jail for not less than
35 ten days nor more than thirty days, or by both such fine and imprisonment))).

1 36-23.1-06. SALE OF UNAPPROVED MEAT PROHIBITED.) Any person
2 who shall slaughter any animal in this state for the purpose of selling the carcass
3 or the parts thereof for human food, or sell, offer for sale, or have in his posses-
4 sion with intent to sell such carcass or the parts thereof for human food in this
5 state, unless the same shall have been first inspected or reinspected and
6 approved as provided by this chapter or the Federal Meat Inspection Act,
7 21 U.S.C. sections 71-91, 34 Stat. 1260-65, as amended, shall be guilty of a
8 class A misdemeanor (((and shall be punished by a fine of not less than twenty-
9 five dollars nor more than one thousand dollars, or by imprisonment in the

10 county jail for not less than ten days nor more than thirty days, or by both such
11 fine and imprisonment)).

TYPED Pat
PROOF READ Pat & Thru
DATE 4-26-74

Tentative Agenda

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, April 25-26, 1974
Room G-2, State Capitol
Bismarck, North Dakota

Thursday:

- 9:30 a.m. Call to order
Roll call
Minutes
- 9:40 a.m. Consideration of criminal provisions in Title 16,
NDCC
- 10:40 a.m. Consideration of criminal provisions in Title 37,
NDCC
- 12:00 noon Luncheon recess
- 1:15 p.m. Reconvene - consideration of criminal provisions
in Title 21, NDCC
- 2:30 p.m. Consideration of criminal provisions in Title 18,
NDCC
- 4:00 p.m. Consideration of criminal provisions in Title 25,
NDCC
- 5:00 p.m. Recess

* * * * *

Friday:

- 9:00 a.m. Reconvene - consideration of criminal sections in
Title 15, NDCC
- 10:45 a.m. Consideration of criminal sections in Title 23,
NDCC
- 12:00 noon Luncheon recess
- 1:15 p.m. Reconvene - consideration of criminal sections in
Title 20.1, NDCC
- 3:15 p.m. Consideration of criminal sections in Title 34,
NDCC
- 5:00 p.m. Adjourn

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, April 25-26, 1974
Room G-2, State Capitol
Bismarck, North Dakota

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:35 a.m. on Thursday, April 25, 1974, in Committee Room G-2 of the State Capitol.

Legislative members

present:

Senators Freed, Jones
Representatives Austin, Hilleboe, Lundene, Murphy,
Royse, Stone

Legislative members

absent:

Representative Rau

Citizen members

present:

Judges Heen, Glaser
Messrs. Webb, Wolf

Citizen members

absent:

Judges Teigen, Pearce
Sheriff Wells
Chief Anderson

Others present:

Mr. Vance Arneson, State Fire Marshal
Mr. Howard Snortland, Assistant Superintendent of Public
Instruction
Mr. Gerald Vandewalle, Assistant Attorney General
Mr. Russell Stuart, Game and Fish Commissioner
Mr. Wilbur Boldt, Assistant Game and Fish Commissioner
Mr. Ed Bashus, N. D. Retail Association
Mr. Robert Wefald, Assistant Committee Counsel

The Chairman welcomed the members, and then noted that the Committee Counsel had received a letter from District Judge Alfred Thompson. He directed the Committee Counsel to read Judge Thompson's letter, and a copy of that letter is attached to these minutes as Appendix "A".

REPRESENTATIVE STONE MOVED that Judge Thompson be invited to appear when the Committee considers Senate Bill No. 2045, to reiterate the points made in the letter and any additional points which he might desire to make. The Chairman directed the Committee Counsel to file the letter, and to notify Judge Thompson that it had been read, and that he would receive a special invitation when the Committee considered Senate Bill No. 2045. With that direction, REPRESENTATIVE STONE'S MOTION BECOME MOOT.

The Chairman noted that the Committee still had a great deal of work to do in order to fulfill its responsibilities, and that there was not much time left within which to do it. He stated that the Committee would have to meet at least once a month between now and October in order to complete revision of all of the criminal sections outside of Title 12.1, and to allow a review of Senate Bill No. 2045.

The Committee continued consideration of the criminal sections in Title 16 which had been commenced at its last meeting. The sections acted on by the Committee during this meeting, with the Committee's action reflected, are attached to these minutes as Appendix "B". The first section considered was Section 16-20-11, which reads as follows:

1 16-20-11. (((AIDING, ABETTING, OR ADVISING))) SOLICITING OR
2 FACILITATING VIOLATION - PENALTY.) Any person ((or persons))
3 who ((shall aid, abet, or advise))) solicits or facilitates a violation of
4 the provisions of section 16-20-08, shall be punished as provided in section
5 16-20-09.

The Committee Counsel noted that this section was necessary if solicitation or facilitation of the misdemeanor defined by Sections 16-20-08 and 16-20-09 is to be punished, because the general solicitation and facilitation sections (12.1-06-02 and 12.1-06-03) apply only to felonies. Judge Glaser questioned whether the word "aids" was coordinate with the concept of facilitation as set out in Section 12.1-06-02. He drew the Committee's attention to Section 12.1-03-01 dealing with accomplice liability, and suggested that perhaps this was the section which more closely related to the language dealing with "aiding and abetting". The Committee Counsel said that he believed the sections on facilitation and solicitation were designed to replace the language relating to aiding and abetting.

After further discussion, the Committee Counsel suggested that he prepare a memorandum on the topic, and the Chairman directed that that be done, and that the memo also contain suggestions for revision of Sections 16-20-09 and 16-20-11.

The Committee then considered Section 16-20-13, which reads as follows:

1 16-20-13. TREATING BY OR IN BEHALF OF CANDIDATE - PROHIBITED.)
2 Any ((person or)) candidate or other person who ((, by himself or by any
3 other person)), either before or after an election or while such ((person or))
4 candidate is seeking nomination or election, (((directly or indirectly,)))
5 shall, directly or indirectly, give, provide, or pay, wholly or in part,
6 the expense of giving or providing, any drink of alcoholic beverage to or
7 for any person:
8 1. For the purpose or with the intent ((or hope)) of influencing that
9 person or any other person to give or refrain from giving his vote
10 at such election to or for any candidate or political party, ticket, or
11 measure before the people;

- 12 2. Because such person or any other person voted or refrained from
13 voting, in accordance with a previous agreement, for any candidate,
14 or the candidates of any political party or organization, or for any
15 measure before the people;
- 16 3. Because such person or any other person is about to vote or refrain
17 from voting at such election,
- 18 shall be guilty of treating, a class A misdemeanor.

The Committee Counsel noted that this section was probably not covered by the provisions of Section 12.1-14-03 as that section prohibits the giving of a "thing of pecuniary value" as consideration for voting or withholding a vote, and a drink would probably not come within the definition of that phrase, since the definition hinges on the economic gain to the recipient.

Judge Glaser inquired as to whether this section wasn't archaic, and his comment was discussed at length. IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY JUDGE HEEN that Section 16-20-13 be accepted as drafted. Representative Murphy objected to the fact that the section was limited to the giving of a drink of alcoholic beverage. Why, he inquired, wasn't the giving of any thing for the purpose of influencing a vote illegal. For instance, why wasn't it illegal to give a 50-cent pencil away if your intent was to influence a vote. Thereafter, THE MOTION FAILED.

The Chairman stated that he thought Section 12.1-14-03 dealing with the safeguarding of elections was sufficient, and that Section 16-20-13 was not necessary. Mr. Wolf suggested that Section 16-20-13 was, in reality, a protection for the candidate in that it allowed him to point to the law as the reason for his nonacquiescence in solicitations to purchase drinks.

The Committee discussed the section further, and Mr. Wolf suggested that alcoholic beverages be listed in Section 12.1-14-03 as one of the items which cannot be given as an inducement to vote a certain way, or not to vote.

IT WAS MOVED BY SENATOR JONES AND SECONDED BY REPRESENTATIVE ROYSE AND REPRESENTATIVE STONE that Sections 16-20-13 and 16-20-14 (which is a corollary to Section 16-20-13) be repealed, and that alcoholic beverages be added to the definition of "thing of pecuniary value" in Section 12.1-14-03.

The Committee considered Section 16-20-17.2 which would punish anyone violating the provisions of Section 16-20-17.1 which requires that political advertisements disclose the name of the sponsor thereof. In addition, the section provides that anyone allowing the publishing or broadcasting of such an unlabeled advertisement is also guilty. The staff has classified the entire section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY SENATOR JONES. AND CARRIED that Section 16-20-17.2 be accepted as drafted.

The Committee considered Section 16-20-19 which provides a penalty for electioneering on election day. The present penalty is from a \$5 to \$100 fine for the first offense, and the staff has reclassified it as an infraction. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 16-20-19 be accepted as drafted.

Mr. Wolf inquired as to whether an arrest can be made without a warrant for commission of an infraction. The Committee Counsel replied that an arrest can be made without a warrant with regard to infractions to the same extent that an arrest could be made without a warrant where a misdemeanor had been committed. He noted that Subsection 2 of proposed Section 12.1-32-03.1, which provides the procedure that is to be incident to the infraction classification, provides as follows: "All provisions of law and rules of criminal procedure relating to misdemeanors shall apply to infractions, including, but not limited to, the powers of law enforcement officers, the jurisdiction of courts, the periods for commencing action and bringing a case to trial, and the burden of proof."

The Committee considered Section 16-20-22, which reads as follows:

1 16-20-22. CANDIDATE GUILTY OF CORRUPT PRACTICE TO VACATE
2 NOMINATION ((OF)) OR OFFICE - FILLING VACANCY.) Upon the trial
3 of an action or proceeding under the provisions of this chapter to contest
4 the right of any person declared to be nominated or elected to any office,
5 or to annul or set aside such election, or to remove any person from his
6 office, if it shall appear that such person was guilty of any corrupt practice,
7 illegal act, or undue influence in or about such nomination or election,
8 he shall be punished by being deprived of the nomination or office, as
9 the case may be. Such vacancy shall be filled in the manner provided
10 by law.

The Committee Counsel noted that this section was included to point out that disqualifications attach even though the "corrupt practices" defined in Chapter 16-20 are all classified as misdemeanors. He stated that the disqualifications contained herein were in addition to those in Chapter 12.1-33, which only provides for loss of office upon conviction of a felony.

The Committee considered Section 16-20-24 which provides a general penalty for violating Chapter 16-20 when another penalty is not specifically provided. The Committee Counsel noted that this section would provide a penalty for such acts as paying another for attendance at the polls; failing to label a political advertisement as paid; paying an editor to editorially endorse or oppose a candidate; or spending in excess of the campaign expense limitations. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 16-20-24 be accepted as drafted.

The Committee considered Section 16-21-05 which provides a penalty for any person who violates any provisions of Chapter 16-21 which deals with voting machines and their use, or who tampers with or injures a voting machine which is used or about to be used in an election. The section would also penalize anyone who makes or has a key to a voting machine in his possession when he is not authorized to have it. Presently, the section is classified as a misdemeanor, and the staff draft would reclassify it as a Class A misdemeanor. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 16-21-05 be accepted as drafted.

The Committee discussed Section 16-01-17, which reads as follows:

- 1 16-01-17. ELECTION OFFENSES - PENALTY.) It shall be unlawful for
2 a person to:
- 3 1. Fraudulently alter another person's ballot or substitute one ballot
4 for another, or to otherwise defraud a voter of his vote.
 - 5 2. Obstruct an elector on the way to a polling place.
 - 6 3. Vote or offer to vote more than once in any election.
 - 7 4. Knowingly vote or offer to vote in the wrong election precinct or
8 district.
 - 9 5. Disobey the lawful command of any election official denominated as
10 such in accordance with chapter 16-10.
 - 11 6. Exclude an authorized, or accept an unauthorized, vote.
 - 12 7. Destroy ballots, ballot boxes, poll lists, or other election supplies.
- 13 A violation of subsections 1 through 6 of this section shall be a class A
14 misdemeanor. A violation of subsection 7 occurring after an election or
15 during an election shall be a class C felony, and in other cases shall be
16 a class A misdemeanor.

The Committee Counsel noted that this section had been drafted to cover those criminal sections contained in Chapter 12-11 which will be repealed when Senate Bill No. 2045 takes effect, and which are not presently covered in Sections 12.1-14-02 and 12.1-14-03, which latter sections deal with interference with, and safeguarding of, elections.

Mr. Wolf inquired as to what kind of cross-referencing will be done when the Criminal Code and the new criminal statutes take effect. The Committee Counsel said that the Code Revisor will see that the Allen Smith Publishing Company makes appropriate cross-references between repealed sections and the sections which are designed to replace them. Judge Heen noted that he would also like to see the Code contain notations as to the effective date of the various rules of procedure that have been adopted, and especially the amendments which have been adopted after the main body of a particular set of rules was adopted.

The Committee discussed Subsection 7 of Section 16-01-17, and it was noted that no exceptions were provided, but should be, as county judges were presently authorized to destroy ballots after a certain length of time.

IT WAS MOVED BY SENATOR JONES AND SECONDED BY REPRESENTATIVE ROYSE that the words ", except as provided by law" be added after the word "supplies" in line 12 of Section 16-01-17; and that when the section was so amended it be accepted.

Mr. Wolf, commenting on the motion, said that he did not have any problems with Subsections 1 through 3, that perhaps he could see problems with Subsection 4, and that he definitely had problems with Subsections 5 and 6. For instance, he felt that "an election board" should be substituted for "any election official" in Subsection 5 so that decisions to issue lawful commands, for violation of which criminal liability could arise, would be made by the election board rather than a single election official.

The Chairman noted that the duties set forth for election officials in Title 16 are often on an individual basis. Representative Murphy said that if one member of the election board is correct, that member should have authority to issue a lawful command which must be obeyed.

The Committee then discussed Subsection 6, and the means by which one could exclude an authorized vote. Mr. Wolf noted that, once a challenge had been made in accordance with Section 16-12-14, the person must be allowed to vote if he fills out the affidavit, even though the board of elections, or a member thereof, knows that the person is not, in fact, qualified to vote. The Committee Counsel pointed out that, when such an affidavit had been made, a particular board, or election official, could then exclude an "authorized vote".

IT WAS MOVED BY MR. WOLF, SECONDED BY JUDGE GLASER, AND CARRIED that the words "any election official denominated" in line 9 be deleted and that the words "an election board" be inserted in lieu thereof, and that the word "defined" be inserted in lieu of the word "such" in line 10; that the words "accordance with" in line 10 be deleted; that the words ", except as provided by law" be added after the word "supplies" in line 12; and that the word "Knowingly" in line 7 be deleted and the word "vote" in that same line be capitalized; and that when so amended the section be accepted. The Chairman announced that, because THIS SUBSTITUTE MOTION WAS SUCCESSFUL, THE MAIN MOTION MADE BY SENATOR JONES WAS MOOT.

The Committee then considered the criminal sections in Title 37 of the Century Code, commencing with Section 37-01-13 which makes it a misdemeanor to attempt to interfere with the right-of-way of a National Guardsman or National Guard vehicle, while the Guard is on active duty. The staff has, with the concurrence of the Staff Judge Advocate General, reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY MR. WEBB, AND CARRIED that Section 37-01-13 be accepted as drafted.

The Committee considered Section 37-01-16 which makes it unlawful to wear uniforms or devices indicating membership in the National Guard unless one is a member of the National Guard; and also prohibits criminal conversion of military property. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY MR. WEBB, AND CARRIED that Section 37-01-16 be accepted as drafted.

The Committee considered Section 37-01-17, which reads as follows:

1 37-01-17. MISUSE OF FUNDS OR PROPERTY BY OFFICER OR SOLDIER
2 OF NATIONAL GUARD - PENALTY.) Any officer or soldier of the national
3 guard who willfully neglects or refuses to apply money in his possession,
4 drawn from the paymaster general, to the purpose for which such money
5 was appropriated, or who fails or refuses to account for or return any state
6 or federal property or funds in his possession, shall be guilty of ((the
7 crime of embezzlement and shall be punished accordingly)) theft.

Mr. Wefald stated that the staff recommendation was that this section be repealed as its provisions were covered by Chapter 12.1-23 on theft. In response to a question, Mr. Wefald stated that Col. Murry concurred in this recommendation for repeal. Mr. Webb questioned whether this section was necessary for jurisdictional

purposes, i.e., could you get jurisdiction over a Guardsman under the general theft statute. The Committee Counsel responded that, to the extent that you could get jurisdiction under this statute, given the existence of the Uniform Code of Military Justice, you ought also to be able to get jurisdiction under the general theft statute.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 37-01-17 be repealed.

The Committee considered Section 37-01-18 which prohibits an officer or soldier of the National Guard from knowingly making a false certificate of muster or a false return regarding federal or state property or funds in his possession. The section is presently classified as a misdemeanor and the staff draft would reclassify it as a Class A misdemeanor. The section is being recommended for repeal by the staff as its provisions are covered by Section 12.1-11-02 prohibiting false statements in governmental matters. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY JUDGE HEEN, AND CARRIED that Section 37-01-18 be repealed.

The Committee considered Section 37-01-20, which reads as follows:

1 37-01-20. PENALTY FOR RESISTING (((OR AIDING))) WHEN COUNTY IN
2 STATE OF INSURRECTION.) In a place declared by proclamation of the
3 governor to be in a state of insurrection, any person who shall:
4 1. Resist ((or aid in resisting)) the execution of process;
5 2. Aid ((or attempt)) the rescue or escape of another from lawful
6 custody or confinement; or
7 3. Resist ((or aid in resisting)) a force ordered out by the governor
8 to quell or suppress an insurrection,
9 is ((punishable by imprisonment in the penitentiary for not less than two
10 years))) guilty of a class C felony.

Mr. Wefald noted that the deleted language in Subsections 1, 2, and 3 was covered by Chapter 12.1-06 on inchoate offenses, and Section 12.1-03-01 on accomplice liability. Mr. Wefald also noted that the National Guard expects to redraft the section (37-01-08) which authorizes the Governor to proclaim a state of insurrection. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that the words "COUNTY IN" in line 1 of Section 37-01-20 be inserted in triple parentheses, and that the word "EXISTS" be inserted after the word "INSURRECTION" in line 2, and that when so amended the section be adopted.

The Committee considered Section 37-01-21, which reads as follows:

1 37-01-21. MILITARY PARADES BY CERTAIN BODIES PROHIBITED -
2 EXCEPTIONS - PENALTY.) No body of men, other than the regularly
3 organized units of the national guard and militia and the troops of the
4 United States, shall associate themselves together as a military company
5 or organization or parade in public with firearms, and no municipality shall

6 raise or appropriate any money toward arming or equipping, uniforming or
7 in any other way supporting, sustaining, or providing drill rooms or
8 armories for, any such body of men. Associations wholly composed of
9 soldiers honorably discharged from the service of the United States and
10 members of the order of sons of veterans may parade in public with firearms
11 on Decoration Day, upon the reception of any regiment or company of
12 soldiers returning from service, or for the purpose of escort duty at the
13 burial of deceased soldiers. Students in educational institutions where
14 military science is a prescribed part of the course of instruction, with
15 the consent of the governor, may drill and parade with firearms in public
16 under the superintendence of their teachers. This section shall not prevent
17 any organization authorized to do so by law from parading with firearms
18 nor prevent parades by the national guard of other states. Any person
19 violating any provision of this section is guilty of a class B misdemeanor.

Judge Glaser inquired as to whether this section wouldn't apply to parading policemen if they were carrying their sidearms. The Chairman indicated that that might be the case, but that the Committee should not get involved in dealing with the substance of this section. The problem of whether the substance was appropriate should be left to the organizations to deal with.

IT WAS MOVED BY MR. WEBB, SECONDED BY SENATOR JONES, AND CARRIED that Section 37-01-21 be accepted as drafted.

The Committee considered Section 37-01-25.1 which provides that veterans who receive a discharge other than dishonorable from noncivilian service are to get their jobs back. Anyone who violates the provisions relating to veterans' reinstatement is presently guilty of a misdemeanor punishable by a fine of not more than \$500, or by imprisonment for not more than 90 days, or by both. The staff redraft has classified it as an infraction. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 37-01-25.1 be accepted as drafted.

The Committee considered Section 37-25-09, which reads as follows:

1 37-25-09. PENALTY FOR FALSE STATEMENT.) Any person who shall
2 willfully make a false statement in the application for benefits under the
3 provisions of this chapter shall be guilty of a class A misdemeanor.

Mr. Wefald noted that this section, in the chapter on the Vietnam Bonus, could be repealed as its provisions are covered by Section 12.1-11-02 prohibiting false statements in governmental matters. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY SENATOR JONES, AND CARRIED that Section 37-25-09 be repealed. Thereafter, the Committee recessed for lunch and reconvened at 1:15 p.m.

The Committee took up consideration of Title 21, with the first criminal section being Section 21-01-03. That section provides a limitation upon the amounts of warrants or other evidences of indebtedness which can be issued by a taxing

district. It provides that an officer who knowingly executes or participates in the execution of a warrant which would incur indebtedness in excess of the limitation is guilty of a misdemeanor. The staff draft would reclassify it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 21-01-03 be accepted as drafted.

The Committee considered Section 21-02-04 which provides that a county auditor who willfully signs a false certificate upon any certificate of indebtedness issued pursuant to Chapter 21-02 is guilty of a misdemeanor. The staff revision has reclassified it as a Class A misdemeanor. The section goes on to provide that the governing body, or any officer, of a taxing district who issues or participates in the issuance of a certificate of indebtedness contrary to, or in excess of, the maximum amount permitted under Chapter 21-02 is personally liable for payment of the instrument to the holder in due course.

The Committee Counsel noted that the criminal portion of the section could be covered by Section 12.1-11-02. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 21-02-04 be accepted as drafted.

The Committee considered Section 21-03-26 which provides that when a call is made for bids on a proposed issue of municipal bonds, the notice calling for bids is to be published in the official newspaper. An auditor or secretary who fails to publish or send such notice is subject to a civil penalty, and if the failure to publish was willful, is guilty of a misdemeanor. The staff has redrafted the section to classify it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY SENATOR JONES that Section 21-03-26 be accepted as drafted.

The Committee Counsel noted that the last sentence of the section was covered by Section 12.1-11-06 dealing with refusal on the part of a public servant to perform his statutory duties. Thereafter, REPRESENTATIVE MURPHY, WITH THE CONSENT OF HIS SECOND, WITHDREW HIS MOTION. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY SENATOR JONES, AND CARRIED that the last sentence of Section 21-03-26 be deleted, as its provisions would be replaced by Section 12.1-11-06.

The Committee considered Section 21-03-33, which reads as follows:

- 1 21-03-33. PENALTY FOR NONCOMPLIANCE.) Any person who knowingly
- 2 participates in the purchase or sale of such bonds without first having complied
- 3 with the provisions of sections 21-03-31 and 21-03-32 is guilty of a class B
- 4 misdemeanor (((, and shall be punished by a fine of not more than five
- 5 hundred dollars, or by imprisonment in the county jail for not more than
- 6 ninety days, or by both such fine and imprisonment))).

The Committee Counsel noted that the sections referred to internally, 21-03-31 and 21-03-32, provide that political subdivisions which are selling bonds must give notice to certain state agencies in order that those agencies might bid on the bonds. These sections also prohibit the named state agencies from purchasing the bonds, within five years of their initial sale, at a price greater

than that first paid for them. The Committee Counsel noted that the section could be covered by Section 12.1-11-06 which deals with the failure by public servants to perform their statutory duties.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY SENATOR JONES, AND CARRIED that Section 21-03-33 be repealed because it is replaced by the provisions of Section 12.1-11-06.

The Committee considered Section 21-03-48, which reads as follows:

1 21-03-48. PENALTY FOR DIVERSION OF SINKING AND INTEREST FUNDS.)
2 Any treasurer who shall pay over moneys raised for the retirement of bonded
3 debt obligations or for the payment of interest on bonded debt obligations
4 for any purpose except for the payment of principal and interest on the
5 bonded debt for which the fund was created shall be guilty of ((embezzle-
6 ment))) theft, and shall be punished as provided for in section 12.1-23-05.
7 Any member of a governing board or a clerk of a municipality who shall
8 be a party to the issuance of a warrant drawn on any sinking fund or
9 interest fund for any purpose except for the purpose for which the fund
10 was created shall be guilty of a class A misdemeanor.

It was noted that the first sentence of the section would be covered under the theft provisions, and would not need to be restated in Section 21-03-48. The second sentence should be covered by Section 12.1-11-06 if there is a primary statutory duty set forth elsewhere. The Committee Counsel noted that the primary duty not to use sinking fund dollars for other than the purposes for which they were established is set forth in Section 21-03-44. Thereafter, IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 21-03-48 be repealed.

The Committee considered Section 21-03-49, which reads as follows:

1 21-03-49. PENALTY FOR DIVERSION OF BORROWED MONEY FUND.)
2 Any treasurer who shall make payment of any amount out of the borrowed
3 money fund for any purpose except for the purposes for which the fund
4 was raised, or except by transfer to the sinking fund established for
5 retirement of the debt obligation, shall be guilty of a class A misdemeanor.
6 Any clerk of a municipality or member of the governing body of the municipality
7 who shall be a party to such diversion (((or attempted diversion))) shall
8 be guilty of a class A misdemeanor.

The Committee Counsel noted that this section too could be replaced by Section 12.1-11-06, as the primary duties are set forth in Sections 21-03-38 and 21-03-44. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 21-03-49 be repealed.

The Committee considered Section 21-04-04, which reads as follows:

1 21-04-04. MONEY DEPOSITED PROMPTLY - WITHDRAWAL - PENALTY.)
2 The treasurer of a public corporation (((and the state treasurer,))) and
3 every other person (((by law))) legally charged with the custody of public
4 funds, which, according to the provisions of this chapter, shall be deposited
5 in the Bank of North Dakota or in a depository duly designated as provided
6 in this chapter, promptly upon receipt of such funds, shall deposit the
7 same in such depository. All such public funds shall be deposited in
8 the name of the state, state institution, or public corporation to which the
9 same belong. Checks or drafts on funds deposited as herein provided shall
10 be drawn by the legal custodian thereof in his official capacity only, and
11 no checks or drafts on such deposits shall be paid or honored by such
12 depository unless so drawn. Any person violating the provisions of this
13 section is guilty of a class A misdemeanor, and (((in addition thereto,)))
14 shall also be liable to the public corporation, the state, and any state
15 institution, in a civil action for all damages caused or suffered thereby.

The Committee Counsel noted that the criminal provisions of the last sentence of the section were covered by Section 12.1-11-06, and that the civil liability provisions were redundant, as civil liability would exist without the statutory statement. IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE HEEN, AND CARRIED that the last sentence of Section 21-04-04 be deleted.

The Committee considered Section 21-04-23 which provides a general penalty for a violation of Chapter 21-04. Presently, the offense is classified as a misdemeanor punishable by a fine of from \$25 to \$1,000, by imprisonment from 10 days to six months, or by both such fine and imprisonment. The staff draft would reclassify it as a Class A misdemeanor. The Committee Counsel noted that Chapter 21-04 denominates institutions which are eligible to serve as public depositories and establishes the procedure for designating such a depository. The chapter also requires the deposit of public funds in an appropriate depository. (See also Section 186 of the Constitution.) IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 21-04-23 be accepted as drafted.

The Committee considered Section 21-05-04, which reads as follows:

1 21-05-04. PENALTY - EFFECT ON COLLECTION.) Any person (((, firm,
2 or company))) falsely certifying, or certifying to any false bill, claim,
3 account, or demand against any county or township is guilty of a class A
4 misdemeanor and, in addition to the punishment otherwise prescribed by
5 law, shall forfeit his right to collect such bill, claim, account, or demand
6 or any part thereof.

The Committee Counsel noted that this section was covered by Section 12.1-11-02 prohibiting false writings in governmental matters. However, if the criminal liability were removed from this section, the Committee would still need to consider

what to do with the forfeiture of the right to collect the lawful debt. Representative Murphy and Senator Jones stated that they felt the creditor should be able to collect that portion of his debt which was lawful, regardless of the fact that there had been a false certification.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED, with Representative Lundene voting in the negative, that Section 21-05-04 be repealed.

The Committee considered Section 21-05-08 which provides that no member of a governing body shall audit or allow any account or claim against the county or township without having it duly itemized and verified, if it is required by law to be itemized and verified. Presently, an officer violating the section is guilty of a misdemeanor punishable by a fine of up to \$500, by imprisonment for up to six months, or by both. The staff draft would reclassify it as a Class B misdemeanor. IT WAS MOVED BY JUDGE HEEN, SECONDED BY SENATOR JONES, AND CARRIED that Section 21-05-08 be accepted as drafted.

The Committee considered Section 21-07-04, which reads as follows:

- 1 21-07-04. PENALTY.) The failure on the part of any county auditor
- 2 or county treasurer to comply with the provisions of this chapter shall
- 3 constitute a class A misdemeanor.

The Committee Counsel noted that Chapter 21-07 deals with the responsibilities of the county auditor and county treasurer in relation to municipal tax levies to fund sinking funds. It was noted that the section was covered by Section 12.1-11-06 and could be repealed. IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE HEEN, AND CARRIED that Section 21-07-04 be repealed because its criminal liability could be provided under Section 12.1-11-06.

The Committee considered Section 21-10-09 which prohibits an officer or employee of the State Investment Board from accepting any gift or other compensation for services performed under the chapter relating to the State Investment Board. Further, the section prohibits any officer or employee from profiting in any manner from transactions on behalf of the funds entrusted to it for investment. A person who violates the section is presently guilty of a misdemeanor punishable by a fine of up to \$1,000, by imprisonment up to one year, or both. The staff redraft classified it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 21-10-09 be accepted as drafted.

The Committee commenced consideration of the criminal sections in Title 18 of the Century Code, and the Committee Counsel noted that Mr. Vance Arneson, State Fire Marshal, was present to aid the Committee in its deliberations.

The Committee first considered Section 18-01-11 which deals with the refusal of a witness, at a Fire Marshal's investigation, to testify, to produce records, or to obey a lawful order of the Fire Marshal. The offense is presently denominated a misdemeanor punishable by a fine of up to \$100, or by confinement in the county jail for not more than 90 days. The staff draft would reclassify it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 18-01-11 be accepted as drafted.

The Committee considered Section 18-01-12, which reads as follows:

1 18-01-12. TESTIFYING FALSELY AT INVESTIGATION OF STATE FIRE
2 MARSHAL IS PERJURY - PENALTY.) Any witness at any investigation
3 conducted by the state fire marshal or a deputy fire marshal under the
4 provisions of this chapter who gives false testimony at such hearing is
5 guilty of perjury and shall be punished (((therefor))) as provided in
6 section 12.1-11-01.

The Committee Counsel noted that he had amended this section simply to key the penalty for giving false testimony at a Fire Marshal's investigation to Section 12.1-11-01 which was the perjury section of the new Criminal Code. IT WAS MOVED BY REPRESENTATIVE STONE AND SECONDED BY SENATOR JONES that Section 18-01-12 be accepted as drafted.

The Committee discussed the question of whether a witness at a Fire Marshal's investigation would be given notice that he was subject to perjury penalties. Judge Heen stated that he felt the Class C felony classification for Section 12.1-11-01 was inappropriate for a violation of Section 18-01-12. He stated that he believed Section 18-01-12 should be repealed, in order that general coverage might be under Section 12.1-11-02, and coverage of serious breaches could be under Section 12.1-11-01 where the person was under oath and made a material false statement in an official proceeding, including a Fire Marshal's investigation. REPRESENTATIVE STONE, WITH THE CONSENT OF HER SECOND, THEN WITHDREW HER MOTION. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY SENATOR JONES, AND CARRIED that Section 18-01-12 be repealed.

The Committee considered Section 18-01-13 which presently makes it a misdemeanor for anyone to interfere with the State Fire Marshal or a Deputy Fire Marshal in the performance of his duties. The staff draft would reclassify it as a Class A misdemeanor. The Committee Counsel noted that, insofar as Section 18-01-13 deals with physical obstruction, it could be replaced by Section 12.1-08-01 in the new Criminal Code. However, he noted that there might be ways of interfering with the Fire Marshal other than by "physical obstruction".

Representative Murphy questioned whether Section 12.1-08-01 shouldn't be broadened so that its provisions would include any type of interference, rather than just providing coverage of "physical obstruction". The Chairman stated that possibly Section 12.1-08-01 should be broadened, but not at this time. He directed the staff to look again at Section 12.1-08-01 in light of Representative Murphy's comments. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 18-01-13 be accepted as drafted. Senator Jones noted that the Committee could reconsider its action later if Section 12.1-08-01 should be recommended for amendment in such a way as to make it applicable to cover Section 18-01-13.

The Committee considered Section 18-01-15, which reads as follows:

1 18-01-15. ABATEMENT OF CONDITIONS DANGEROUS TO PERSONS -
2 ORDER - FAILURE TO COMPLY (((IS A MISDEMEANOR))) - PENALTY.)
3 If the state fire marshal or a deputy fire marshal shall find in any building

4 or upon any premises any condition which is a danger or a menace to the
5 safety of life and limb of the occupants of that building or of any adjacent
6 building, such officer shall issue an order for the immediate removal or
7 correction of the dangerous condition. Any owner, agent, or occupant upon
8 whom an order of abatement issued under this section is served, who shall
9 fail to comply with the order within the time specified therein, shall be
10 (((punished by a fine of not more than one hundred dollars, or by imprison-
11 ment for not more than thirty days, or by both such fine and imprisonment.
12 Upon))) guilty of a class B misdemeanor, and shall be guilty of a class A
13 misdemeanor upon a second or subsequent offense (((such person shall
14 be punished by a fine of not less than five hundred dollars or by imprison-
15 ment for not more than one year, or by both such fine and imprisonment))).

Representative Murphy stated that this section gave a lot of power to the Fire Marshal, and didn't, in itself, contain provision for appeal. The Committee Counsel noted that Section 18-01-17 seemed to provide a method of appeal to the State Fire Marshal from an abatement order under Section 18-01-15. Section 18-01-18 provides for further appeal to the district court and to the Supreme Court under the provisions of the Administrative Procedures Act. Mr. Arneson seemed to indicate that such an appeal would only be appropriate when an abatement under Section 18-01-14 was attempted. Abatements under Section 18-01-15 occur immediately, and there would not be time for an appeal.

After further discussion, IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 18-01-15 be accepted as drafted.

The Committee considered Section 18-01-32, which reads as follows:

1 18-01-32. VIOLATION OF DUTY BY OFFICERS - PENALTY.) Any
2 officer referred to in this chapter who (((neglects))) willfully fails to
3 comply with any of the requirements of this chapter shall be (((punished
4 by a fine of not less than twenty-five dollars nor more than one hundred
5 dollars for each neglect or violation))) guilty of an infraction.

The Committee Counsel noted that this section could be repealed as its provisions are covered by Section 12.1-11-06 which would punish refusal by a public servant to perform his statutory duty. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 18-01-32 be repealed because its provisions were covered by Section 12.1-11-06.

The Committee considered Section 18-01-33 which gives the Fire Marshal authority to promulgate safety rules and regulations regarding the storage, sale, and use of combustibles and explosives. The Committee discussed with Mr. Arneson the types of rules and regulations which could be promulgated under this section. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 18-01-33 be accepted as drafted.

Representative Lundene stated that it would be desirable that "self-service gas stations" be allowed to operate in North Dakota, especially in light of the fact that stations are closing on Sunday, and that there is, in some cases, a shortage of gasoline. Mr. Arneson stated that his office would oppose such an action.

The Committee considered Section 18-08-01 which presently provides a penalty for setting any woods, marsh, prairie, hay, weeds, or any grass or stubble lands on fire. The present penalty is a misdemeanor, and the staff has reclassified it as a Class A misdemeanor. Language in the present section relating to civil liability has been deleted, since it is redundant. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 18-08-01 be accepted as drafted.

The Committee considered Section 18-08-03, which reads as follows:

1 18-08-03. LIABILITY WHEN LAWFULLY SET FIRE IS PERMITTED TO SPREAD
2 - PENALTY.) If a fire which is lawfully set to burn grass or stubble land
3 is (((carelessly,))) negligently (((,))) or intentionally permitted to spread
4 beyond the bounds of the strip of land which must encompass the land where
5 the fire is set, the person setting the fire shall be (((both civilly and crimi-
6 nally liable and shall be punished as provided in section 18-08-01)))
7 guilty of a class A misdemeanor.

The Committee Counsel noted that this section could be replaced by Section 12.1-21-03 which deals with failure to control or report a dangerous fire. He noted that Section 12.1-21-03 is more narrowly drawn than Section 18-08-03. The former section provides that the actor has to know that the fire is endangering human life or a substantial amount of property. However, the fire does not have to spread beyond the particular boundaries set forth in Section 18-08-03. The Committee Counsel noted that the Fire Marshal agreed that Section 18-08-03 could be replaced by Section 12.1-21-03.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 18-08-03 be repealed as it is covered by Section 12.1-21-03.

The Committee considered Section 18-08-07, which reads as follows:

1 18-08-07. PENALTY IF CAMPFIRE BURNS WOOD, MARSH, PRAIRIE,
2 HAY LANDS, RANCH BUILDINGS, OR IMPROVEMENTS.) If a person who
3 makes a camp or other fire, or causes the same to be made, leaves such
4 fire without having thoroughly extinguished the same, and the fire spreads
5 and burns any ranch building, fence, timber, hay, improvement, wood,
6 marsh, or prairie, such person is guilty of a class A misdemeanor (((and
7 shall be punished by a fine of not more than two hundred dollars, or by
8 imprisonment in the county jail for not more than one year, or by both
9 such fine and imprisonment, and is liable in a civil action to any person

10 damaged by such fire to the amount of such damage. If such fire shall
11 damage any ranch building, improvement, fence, timber, marsh, cattle
12 range, hay or grass upon any range, or other property, such person is
13 liable for such damage))).

The Committee discussed whether the types of property covered under Section 18-08-07 was adequate. For instance, what if the fire burned a barn, or a "farmhouse". Mr. Webb stated that he felt Section 12.1-21-03 was an adequate provision, and that a section similar to Section 18-08-07 was not necessary.

Representative Murphy stated that he believed the section should end after the word "same" in line 4, and that the words "is guilty of class A misdemeanor" should be added after that word. In other words, criminal liability should simply be imposed upon a person who leaves a campfire or other fire without thoroughly extinguishing it. Mr. Webb and the Chairman stated that if Representative Murphy's suggestion was taken up by the Committee the offense should then be classified as less than a Class A misdemeanor.

Mr. Webb suggested the following language should replace the current language in Section 18-08-07: "It shall be an infraction to fail to extinguish a fire which the actor set or maintained". Representative Royse noted that the word "lawfully" should be inserted before the word "set" in Mr. Webb's suggested draft of Section 18-08-07.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with Mr. Webb voting in the negative, that triple parentheses be inserted before and after the words "If a" in line 2, and the word "A" be inserted immediately following the ending triple parentheses; that the word "and" be inserted before the word "leaves" in line 3; that triple parentheses be inserted before the word "the" in line 4; that the underscored material in lines 5 and 6 be deleted, and the triple parentheses in line 6 be deleted; and that the words "it, is guilty of a class B misdemeanor" be inserted before the period in line 13; and that when so amended the section be accepted.

The Committee considered Section 18-08-09 which provides that any person who, while in the vicinity of a building fire, disobeys lawful orders from a fireman or other public officer or interferes with the lawful efforts of a fireman to extinguish the fire is guilty of a misdemeanor. The staff has reclassified the section as a Class A misdemeanor, and in addition, has defined the phrase "building fire". IT WAS MOVED BY MR. WEBB, SECONDED BY SENATOR JONES, AND CARRIED that Section 18-08-09 be accepted as drafted.

The Committee considered Section 18-08-11 which provides that any person who violates the provisions of Section 18-08-10 is presently punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or by both. Section 18-08-10 prohibits the sale of fire extinguishers which contain certain toxic liquids. The staff has reclassified the section as a Class B misdemeanor. IT WAS MOVED BY SENATOR JONES, SECONDED BY MR. WEBB, AND CARRIED that Section 18-08-11 be accepted as drafted.

The Committee considered Section 18-09-03 which is a general penalty section for violation of the provisions of Chapter 18-09 which deals with safety regulations relating to storage and transportation of liquefied petroleum gas. The present penalty is a fine of from \$25 to \$100, imprisonment for up to 30 days, or both.

The staff has reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SENATOR JONES, AND CARRIED that Section 18-09-03 be accepted as drafted.

The Committee commenced consideration of the criminal sections in Title 25 of the Century Code. The first section considered was Section 25-01.1-35 which provides that members of the "supervising department" and officers and employees of state institutions are not to accept gifts from persons dealing in goods which may be used by the institution.

The Committee Counsel noted that Section 25-01.1-35 should be retained as its provisions are not covered by Section 12.1-12-01 prohibiting bribery, since the "gift" in a bribery situation would have to be given in consideration for the recipient's official action, where as this section simply prohibits the receipt of a gift given for whatever reason. In addition, the Committee Counsel noted that Section 12.1-13-03 would not cover this section as this section does not deal with a public servant who has an interest in a particular contract with his agency.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 25-01.1-35 be accepted as drafted.

The Committee considered Section 25-01.1-36 which provides that any officer or member of the supervising department who exerts "improper influence" on a superintendent of any of the institutions under the control of the department to cause the superintendent to select a particular employee or assistant is guilty of a misdemeanor. The staff has reclassified the section as a Class A misdemeanor.

The Committee Counsel noted that the "supervising department" referred to in Chapter 25-01.1 is defined in Section 25-01.1-01 as the department which has superintending control over the State Hospital. Thus, the "supervising department" is the State Health Department.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 25-01.1-36 be accepted as drafted.

Mr. Webb stated that he felt the chapter dealing with the "supervising department" should include the Director of Institutions. He noted that Section 25-01.1-01 was in conflict with Chapter 25-09 (see for instance Sections 25-09-02 and 25-09-04) which refer to the "supervising department" as the department with control over both the State Hospital and the State School.

He requested that the staff be directed to write to the Director of Institutions noting the inconsistencies between Section 25-01.1-01 and other sections of law, including those in Chapter 25-09. The Chairman directed the Committee Counsel to write an appropriate letter to Mr. Klecker.

The Committee considered Section 25-03-18, which reads as follows:

- 1 25-03-18. RIGHT TO HUMANE CARE AND TREATMENT - PENALTIES
- 2 AND CIVIL LIABILITY FOR MISTREATMENT.) Every patient shall be
- 3 entitled to humane care and treatment and, to the extent that facilities,
- 4 equipment, and personnel are available, to medical care and treatment in

5 accordance with the highest standards accepted in medical practice. Any
6 person having the care of a mentally ill person, an alcoholic or a drug
7 addict and restraining such person either with or without authority, who
8 shall treat such person with undue severity or with harshness or cruelty,
9 or who shall abuse such person in any way, shall be guilty of a class A
10 misdemeanor, and shall be (((further))) liable in a civil action for damages.
11 Any officer or person required to perform any act under the provisions
12 of this chapter who willfully refuses or neglects to perform his duty as
13 prescribed in this chapter ((shall be guilty of a misdemeanor and)))
14 shall be liable in a civil action for damages.

The Committee Counsel noted that the language deleted from the last sentence was covered by Section 12.1-11-06 dealing with a public servant who refuses to perform his duty. He also noted that the provisions relating to harsh or abusive treatment may be so vague as to be unenforceable.

IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY MR. WEBB that Section 25-03-18 be accepted as drafted. . Mr. Webb, noting that he had seconded for purposes of discussion, questioned whether the language "highest standards accepted in medical practice" (in line 5) was appropriate. Representative Hilleboe inquired as to the necessity for reference to civil liability. He asked whether that wouldn't be implied. The Committee Counsel agreed with Representative Hilleboe that civil liability would be implied at any rate.

Thereafter, REPRESENTATIVE HILLEBOE MADE A SUBSTITUTE MOTION, SECONDED BY MR. WOLF, AND CARRIED to insert triple parentheses before the comma in line 10, delete the other triple parentheses in that line; delete the triple parentheses in line 13; insert triple parentheses after the word "damages" in line 14; and that when so amended the section be accepted.

The Committee considered Section 25-03-22, which reads as follows:

- 1 25-03-22. DISCLOSURE OF INFORMATION - PENALTY.) All certificates,
2 applications, records, and reports made for the purpose of this chapter
3 and directly or indirectly identifying a patient or former patient or an
4 individual whose hospitalization has been sought under this chapter shall be
5 kept confidential and shall not be disclosed by any person except so far as:
6 1. The individual identified or his legal guardian, if any, or if he is
7 a minor his parent or legal guardian, shall consent; or
8 2. Disclosure may be necessary to carry out any of the provisions
9 of this chapter; or
10 3. A court or mental health board may direct upon its determination
11 that disclosure is necessary for the conduct of proceedings before
12 it and that failure to make such disclosure would be contrary to
13 the public interest; or

14 4. Requested by any committee of the legislative assembly or as may
15 otherwise be provided by law.

16 Nothing in this section shall preclude disclosure upon proper inquiry of
17 information as to a patient's current medical condition to any members of
18 the family of a patient or his family physician, relatives or friends. Any
19 person violating any provision of this section shall be guilty of a class A
20 misdemeanor ((and subject to a fine of not more than five hundred dollars
21 or by imprisonment for not more than one year or by both such fine and
22 imprisonment))).

The Committee Counsel noted that the staff recommendation was that the last sentence of the section be deleted, and that reliance be placed on Section 12.1-13-01 for prosecution of unlawful disclosure of confidential information. IT WAS MOVED BY MR. WOLF, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the last sentence of Section 25-03-22 be deleted, and that when so amended the section be accepted.

The Committee considered Section 25-03-28 which provides that a person who willfully causes the unwarranted hospitalization of another, or denies to another any of the rights accorded to him under Chapter 25-03, is guilty of an offense punishable presently by a fine of not more than \$1,000, by imprisonment for not more than one year, or both. The staff draft has reclassified it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY SENATOR JONES, AND CARRIED that Section 25-03-28 be accepted as drafted.

The Committee considered Section 25-05-29, which reads as follows:

1 25-05-29. PENALTY AND LIABILITY FOR CRUELTY.) Any person
2 having the care of any person admitted to a state institution in accordance
3 with the provisions of this chapter and restraining such person, either
4 with or without authority, who shall treat such person with wanton severity,
5 harshness, or cruelty, or who shall abuse such person in any way, shall be
6 guilty of a class A misdemeanor, and shall be liable in an action for damages.

The Committee Counsel noted that Chapter 25-05 deals with the care and custody of persons at the San Haven State Sanatorium, and also noted that this section was very similar to Section 25-03-18. Mr. Webb suggested that this section should be mentioned in the letter to Mr. Klecker, as it is repetitive of the provisions of Section 25-03-18, and there should be a single section in Title 25 which covers harsh or cruel treatment at all state charitable institutions.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE that the wording of Section 25-05-29 be moved to Chapter 25-01, but that the word "chapter" in Section 25-05-29 be changed to "title" before the relocation is accomplished.

REPRESENTATIVE HILLEBOE'S MOTION DIED FOR LACK OF A SECOND, but the Committee continued to discuss the desirability of having a single section prohibiting cruelty to patients at state charitable institutions. It was noted that, in order to create a single section, Section 25-03-18 should be repealed.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the action taken by the Committee in regard to Section 25-03-18 be reconsidered.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY MR. WEBB, AND CARRIED that Sections 25-03-18 and 25-05-29 be repealed; and that a new section be created in Chapter 25-01 to read essentially as does Section 25-05-29, but that the word "title" be substituted for the word "chapter", and the language relating to civil liability be deleted.

The Committee then considered Section 25-13-04 which presently makes it a misdemeanor for anyone to interfere with the enjoyment of certain public facilities by totally or partially blind persons. The staff has reclassified the section as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 25-13-04 be accepted as drafted. Thereafter, the Committee recessed and reconvened at 9:00 a.m. on Friday, April 26, 1974.

The Committee considered Title 15, commencing with Section 15-04-18, which reads as follows:

1 15-04-18. DESTRUCTION OF TIMBER BY LESSEE PROHIBITED -
2 EXCEPTION - PENALTY.) No lessee of any of the lands authorized to be
3 leased under the provisions of this chapter, nor his heirs or assigns,
4 shall cut down, take away, or cause another person to take away from
5 the leased tract any timber, trees, or wood. The lessee may cut down or
6 use such amount of dead or prostrate trees or timber as may be sufficient
7 to supply him with fuel for his family or for the families of his employees
8 actually residing upon the tract. Any person violating the provisions of
9 this section shall forfeit his lease and all rights and interests thereunder,
10 and shall be liable to the state for damages sustained by the state by reason
11 thereof, and he shall be guilty of a class B misdemeanor.

The Committee also discussed Sections 15-04-19 and 15-04-22, which sections read as follows:

1 15-04-19. LESSEE NOT TO BREAK OR PLOW UNCULTIVATED LAND -
2 PENALTY.) No lessee of land leased under the provisions of this chapter,
3 his heirs or assigns, shall break, plow, or cultivate any unbroken land
4 on any tract leased, nor cause nor permit it to be done by any other person.
5 Any person who shall violate the provisions of this section shall incur the
6 (((same))) forfeitures and liabilities (((as are))) provided in section
7 15-04-18, and shall be guilty of a class B misdemeanor.

1 15-04-22. FRAUDULENT BIDDING - PENALTY.) Any person (((,)))
2 who willfully, at any leasing auction held pursuant to section 15-04-10,
3 makes a successful bid and then fails or refuses to make the deposit on

4 the day of the sale as required by section 15-04-11 is guilty of a class B
5 misdemeanor (((, and shall be punished by imprisonment in the county
6 jail for not more than one year or by a fine of not more than five hundred
7 dollars, or by both such fine and imprisonment))).

Mr. Wefald noted that the Land Department is planning to propose a constitu-
tional amendment to repeal Section 161 of the Constitution to allow for better land
management. Section 161 limits the duration of leases of state lands, and also
limits the uses to which the lands can be put.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE
AUSTIN, AND CARRIED that Sections 15-04-18, 15-04-19, and 15-04-22 be accepted
as drafted.

The Committee considered Section 15-05-08 which presently makes it a
misdemeanor for a person to mine coal on lands under the control of the Board
of University and School Lands unless the person has complied with the provisions
of Chapter 15-05. The staff has reclassified it as a Class A misdemeanor. IT
WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY REPRESENTATIVE
AUSTIN that Section 15-05-08 be accepted as drafted.

The Committee discussed the liquidation of damages provision, with some
members noting that such a provision was probably inappropriate, and that damages
should be in the actual amount suffered. However, it was decided not to change
that provision, but to leave that substantive change up to persons who had more
knowledge concerning the appropriate level of damages. Thereafter, REPRESENTATIVE
MURPHY'S MOTION CARRIED.

The Committee considered Section 15-06-23 which presently prohibits a
member of a county board of appraisers from willfully making a false statement
in an appraisal of state lands. The staff draft would delete the language relating
to the making of a false statement, since that language is covered by Section
12.1-11-02 prohibiting false statements in governmental matters. IT WAS MOVED
BY SENATOR JONES, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED
that Section 15-06-23 be accepted as drafted.

The Committee discussed Section 15-08-21, which reads as follows:

1 15-08-21. WILLFUL TRESPASS - PENALTY.) Any person who commits
2 any willful trespass upon any of the lands subject to control of the board
3 of university and school lands, either by cutting down or destroying any
4 timber or wood standing or growing thereon, or by carrying away any
5 timber or wood therefrom, or by mowing or cutting or removing any hay
6 or grass standing or growing or being thereon, or who injures or removes
7 any buildings, fences, improvements, or other property belonging or
8 appertaining to the land, or who unlawfully breaks or cultivates any of
9 the lands, or aids, directs, or countenances a trespass or other injury,
10 is guilty of a class A misdemeanor (((, and shall be punished by imprisonment
11 in the county jail for not more than one year, or by a fine of not more than
12 five hundred dollars, or by both such fine and imprisonment))).

Mr. Wefald noted that he was recommending the section for repeal as its provisions were covered by Chapter 12.1-23 on theft; Section 12.1-21-05 on criminal mischief; and Section 12.1-22-03 on criminal trespass. The Committee discussed at length the question of whether unlawful cultivation of lands was covered by the sections cited by Mr. Wefald. The Committee also discussed the concept of criminal liability for trespass where no damage has occurred. It was questioned whether criminal liability should exist if there is no damage. Finally, IT WAS MOVED BY SENATOR JONES, SECONDED BY MR. WEBB, AND CARRIED that Section 15-08-21 be repealed.

The Committee considered Section 15-34.1-05 which presently makes it a misdemeanor, punishable by a fine of not more than \$100 for the first offense, and not more than \$200 for the second and later offenses, for a parent or guardian to fail to comply with the compulsory school attendance laws. The staff had reclassified it as an infraction.

Mr. Howard Snortland, Deputy Superintendent of Public Instruction, noted that school board members have need for interpretation of the law. He noted that, although they have copies of the school laws, his office is getting continual requests for interpretation, as is the Attorney General's office.

After further discussion, IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY SENATOR JONES, AND CARRIED that Section 15-34.1-05 be accepted as drafted.

The Committee considered Section 15-35-08, which reads as follows:

1 15-35-08. FIREGUARDS - DUTY OF SCHOOL BOARD (((- MISDEMEANOR))).
2 Every school board in the state shall provide reasonable fireguards around the
3 rural schools of the district. If any school board fails or neglects to provide
4 the same, the county superintendent of schools shall notify the school board
5 of its failure (((. After being so notified, it shall be a misdemeanor for
6 any member of the board to draw or receive his compensation until fireguards
7 have been provided))), and the board shall immediately see to the provision
8 of fireguards.

Mr. Wefald noted that the last sentence of the section was recommended for deletion as a failure to comply with the whole section would be covered by Section 12.1-11-06 which prohibits a public servant from refusing to perform his statutory duties. He noted that the last sentence also seems to provide a strange addition to the criminal liability provided by the section. Representative Lundene stated that this section was outdated and Representative Murphy agreed. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED, with Senator Jones voting in the negative, that Section 15-35-08 be repealed.

The Committee considered Section 15-35-13, which reads as follows:

1 15-35-13. SUPERINTENDENT OF PUBLIC INSTRUCTION MAY ORDER
2 CHANGE IN SANITARY OR VENTILATING SYSTEMS - APPEAL (((- PENALTY))).
3 If it shall appear to the superintendent of public instruction that the sanitary

4 or ventilating system of any school building is defective or deficient and that
5 such defect or deficiency can be remedied without unreasonable expense.
6 he may issue a written order to the school board of the district in which
7 the schoolhouse is situated directing that such defect or deficiency shall
8 be remedied. The members of any board or any person having charge of
9 any schoolhouse ((who)) shall ((neglect for)), within four weeks after
10 an order made by the superintendent under the provisions of this section
11 is served upon such board or person ((to)), comply with such order
12 ((shall be punished by a fine of not less than one hundred dollars nor
13 more than one thousand dollars)). Any person feeling aggrieved by any
14 order made by the superintendent of public instruction under this section
15 may apply in writing, within four weeks after the service of the order,
16 to the city board of health, in the case of a school located within a city,
17 or to the county board of health in all other cases, for a review of the
18 order, and may request that such order be amended or set aside. The
19 board of health to which the application is directed shall afford a hearing
20 upon the order upon such reasonable notice as it shall specify and may
21 alter, annul, or affirm such order.

The Committee discussed the question of why the Health Department did not have jurisdiction over the matters related to in this section. The Chairman stated that it was probably because of the date when the section was first passed, i.e., 1911. Mr. Snortland stated that he agreed with the Chairman that the statute read as it did because of its date of first passage.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED, with Mr. Webb voting in the negative, that Section 15-35-13 be repealed.

The Committee considered Section 15-35-14, which reads as follows:

1 15-35-14. USE OF SCHOOL BUILDINGS FOR OTHER THAN SCHOOL PURPOSES
2 (((- PENALTY FOR REMOVAL OF FURNISHINGS))) School boards having charge
3 of school buildings may permit the use thereof under proper restrictions for
4 any appropriate purpose when not in use for school purposes. Equal rights
5 and privileges shall be accorded to all religious denominations and to all
6 political parties. The use of school buildings under this section shall be
7 without cost to the district, and furniture fastened to the buildings shall
8 not be removed or unfastened. Public school and high school auditoriums and
9 gymnasiums may be let for meetings, entertainments, or conventions of any
10 kind, subject to such restrictions as the governing board of the district shall
11 prescribe. Such use of the buildings shall not be permitted to interfere with

12 the operation of the schools or with school activities. A charge shall be made
13 for the use of the buildings in an amount at least sufficient to defray any cost
14 to the district for light, heat, janitor service, or other incidental expenses
15 connected with such use. (((Any person who removes any school furniture
16 for any purpose other than to repair the same or for the purpose of repairing
17 the schoolroom, shall be punished by a fine of not less than five dollars nor
18 more than ten dollars for each offense.)))

Mr. Wefald noted that the last sentence was recommended for deletion as it is covered by Chapter 12.1-23 on theft. However, he noted that the section could be classified as an infraction which would be a lesser classification than any of the theft offense classifications. Mr. VandeWalle noted that the offense listed herein was not necessarily covered under theft, as it also covered a person who removed school furniture for any purpose, regardless of whether he had intent to deprive the owner thereof. Mr. Webb questioned why persons should be subject to criminal liability unless they were guilty of an offense which would be equivalent to theft. That is, if the furniture were removed without intent to deprive the owner of it, should they be guilty of an offense.

IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 15-35-14 be accepted as drafted.

The Committee considered Section 15-35-16 which provides that an architect or any other person who draws plans or specifications for, or who superintends the erection of, a school building in violation of the provisions of Chapter 15-35 is guilty of an offense punishable by a fine of from \$100 to \$1,000 presently. Mr. Wefald noted that the staff had reclassified the section as an infraction. He also stated that Mr. VandeWalle believed that this section is valuable in that it causes architects to read Chapter 15-35 and note the requirements for construction of a school building which are set forth in the statutes.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 15-35-16 be accepted as drafted.

The Committee considered Section 15-35-17, which reads as follows:

1 15-35-17. PENALTY FOR VIOLATING PROVISIONS OF CHAPTER.) Any
2 person who shall violate any of the provisions of this chapter, and each member
3 of any board concurring in any such violation by such board, shall be guilty
4 of (((a misdemeanor and shall be punished by a fine of not less than twenty-
5 five dollars nor more than one hundred dollars, unless another penalty is provided
6 in this chapter for the specific violation))) an infraction.

Mr. Wefald noted that Chapter 15-35 deals with the construction and use of public school buildings, and with fire prevention in schools. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that triple parentheses be inserted before the word "be" in line 3; that triple parentheses be inserted after the word "dollars" in line 5, and that the word "specifically" be inserted before the word "provided" in that same line; and that

triple parentheses be inserted before the word "for" in line 6 and that the material "be guilty of" be inserted before the word "an"; and that when so amended the section be accepted.

The Committee considered Section 15-40.1-20, which reads as follows:

1 15-40.1-20. PENALTY FOR FALSE REPORT.) Any school official who
2 (((shall falsify))) falsifies any report in connection with the administration
3 of the state fund and county equalization funds shall be guilty of a class A
4 misdemeanor.

Mr. Wefald noted that he was recommending the section for repeal as its provisions are covered by Section 12.1-11-02 prohibiting false statements in governmental matters.

Mr. Snortland stated that he realized the position that the Committee was in in terms of retaining statutes which were covered by more general criminal statutes, but he felt that it would be valuable to have a section such as Section 15-40.1-20 in the law, so that all materials which relate to public education could be in one place. The Committee Counsel noted that the school law handbook could easily contain relevant provisions of criminal law. The Chairman noted that, to the extent possible, the Committee did desire to delete specific criminal provisions in favor of general criminal liability provisions contained in Title 12.1.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SENATOR JONES, AND CARRIED that Section 15-40.1-20 be repealed.

Mr. VandeWalle inquired as to whether there would be a cross-referencing provision in the Century Code after the new Criminal Code went into effect, especially with relation to those sections which were deleted because their provisions were covered by a general criminal statute in Title 12.1. The Committee Counsel replied that such a cross-reference would be called for from the Century Code's publisher, the Allen Smith Company.

The Committee discussed Section 15-43-12, which reads as follows:

1 15-43-12. PENALTIES FOR VIOLATING PROVISIONS RELATING TO TEXT-
2 BOOKS.) Any person (((, firm, or corporation))) violating any of the pro-
3 visions of this chapter is guilty of a class B misdemeanor (((and shall be
4 punished by a fine of not more than five hundred dollars, or by imprisonment
5 in the county jail for not more than three months, or by both such fine and
6 imprisonment))).

Mr. Webb stated that he believed the penalty assigned to this section was too high, and that an infraction classification would be sufficient. Mr. Wefald noted that Section 15-43-05 prohibits the giving of inducements to purchase textbooks, and that Section 15-43-12 would provide the penalty for that section.

IT WAS MOVED BY MR. WEBB, SECONDED BY SENATOR JONES, AND CARRIED that Section 15-43-12 be amended by inserting triple parentheses before the word "a" in line 3, deleting the underscored materials in line 3, and deleting the triple

parentheses before the word "and" in that same line; inserting the words "an infraction" before the period in line 6; and that when so amended the section be adopted.

Mr. VandeWalle noted that this section points up a problem with the relationship between teachers and other officials of public schools and textbook salesmen. For instance, he pointed out that on some occasions salesmen have offered premiums which a company can order for a particular textbook. He asked, if a superintendent were to accept a premium, would he be guilty of bribery, or any other offense?

The Committee then considered the provisions of Section 15-47-15, which reads as follows:

1 15-47-15. SCHOOL CONTRACTS - ADVERTISEMENT FOR BIDS - PUBLICA-
2 TION - EXCEPTIONS.) No contract involving the expenditure of an aggregate
3 amount greater than two thousand dollars, except as hereinafter set forth,
4 shall be entered into by any school district of any kind or class except upon
5 sealed proposals and to the lowest responsible bidder after ten days' notice
6 by at least one publication in a legal newspaper published in the county
7 in which the school district, or a portion thereof, is located. If no newspaper
8 is published in such county, the publication shall be made in a newspaper
9 published in an adjacent county. The provisions of this section shall not
10 apply to the following classes of contracts, namely:

- 11 1. For personal services of employees of the district;
- 12 2. For school text or reference books;
- 13 3. For any article which is not for sale on the open market;
- 14 4. For any patented, copyrighted, or exclusively sold device or feature
15 required to match articles already in use;
- 16 5. For any patented, copyrighted, or exclusively sold article of so
17 distinctive a nature that only one make of the article can be purchased;
18 or
- 19 6. Any building contract.

20 Such exceptions shall be strictly construed. Every member of a school
21 board who participates in a violation of this section shall be guilty of a
22 class B misdemeanor.

Mr. Snortland noted that there was a conflict between the provisions of this section, where it referred to the requirements for bids for contracts in excess of \$2,000 expenditure, and Section 48-02-02 which requires competitive bids where the alteration, repair, or construction of a building will exceed \$25,000 estimated costs. The Chairman noted Mr. Snortland's comments, but indicated that the Committee did not want to get into those substantive matters, as its agenda was more than full in dealing with the sections which relate particularly to criminal liability.

IT WAS MOVED BY SENATOR JONES AND SECONDED BY REPRESENTATIVE HILLEBOE that Section 15-47-15 be accepted as drafted.

The Committee discussed the meaning of the sentence on line 20 which reads: "Such exceptions shall be strictly construed." Representative Hilleboe stated that he didn't see the value of this sentence. Mr. VandeWalle said that this sentence was necessary, otherwise there might not be any criminal liability under the section, because, if the exceptions were loosely construed, a potential defendant might be able to fit his action within one of the exceptions. Thereafter, SENATOR JONES' MOTION CARRIED.

The Committee considered Section 15-49-01 which prohibits a judge or clerk of election or other named official from willfully violating the provisions of the title as they relate to school elections. The offense is presently classified as a misdemeanor, and the staff has reclassified it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY MR. WEBB, AND CARRIED that Section 15-49-01 be accepted as drafted.

The Committee considered Section 15-49-02, which reads as follows:

1 15-49-02. PERSONAL INTEREST IN SCHOOL DISTRICT CONTRACTS
2 PROHIBITED - EXCEPTIONS.) No school board member or other school
3 officer shall be interested personally, directly or indirectly, in any contract
4 requiring the expenditure of school funds unless such contract has been
5 unanimously approved by the school board, and a finding made and unanimously
6 adopted by the board and entered into the official minutes that the services
7 or property to be furnished are not otherwise obtainable elsewhere at equal
8 cost. Regardless of this section, any school board, by resolution duly
9 adopted, may provide for the contracting at any time thereafter, for minor
10 supplies or incidental expenses with members of its school board or other
11 school officers, except that the amount thereof shall not exceed that amount
12 required for the acceptance of bids as set forth in section 15-47-15. Any
13 violation of the provisions of this section shall be a class A misdemeanor.

Mr. Wefald noted that this section covers the exception set forth in Subparagraph b of Subsection 2 of Section 12.1-13-03 which relates to public servants' interests in public contracts.

IT WAS MOVED BY REPRESENTATIVE STONE AND SECONDED BY REPRESENTATIVE MURPHY that Section 15-49-02 be accepted as drafted. Mr. VandeWalle noted that Section 12-10-06 presently only prohibits a "public officer" from becoming interested individually in a sale, lease, or contract "contrary to law". Mr. Wefald, noting that Section 12-10-06 would be repealed when the new Criminal Code took effect, stated that the provisos in Section 12.1-13-03 were drawn directly from Section 12-10-06 and Section 15-49-02. Thereafter, REPRESENTATIVE STONE'S MOTION CARRIED.

The Committee considered Section 15-49-03 which prohibits persons who are serving as school district officers from purchasing school warrants or other evidences of indebtedness at less than their face value. The offense is presently

classified as a misdemeanor punishable by a fine of from \$50 to \$500, and the staff has reclassified it as an infraction. Representative Hilleboe suggested that this whole prohibition should be done away with, as it is unrealistic in not taking into account the fact that such securities often are dealt in at less than face value. The Committee discussed Representative Hilleboe's statement at length, and thereafter. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 15-49-03 be accepted as drafted.

The Committee considered Section 15-49-04 which provides that a person who draws school funds from the county treasury and is not at that time a duly qualified treasurer of the school is guilty of a misdemeanor punishable by a fine of not less than \$25. The staff has reclassified the section as an infraction. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY SENATOR JONES, AND CARRIED that Section 15-49-04 be accepted as drafted.

The Committee considered Section 15-49-06 which makes it a misdemeanor punishable by a fine of not more than \$100 for the treasurer of a school district to violate any provision of law relating to the endorsement of warrants or to the payment thereof in order of presentation and endorsement. The staff has reclassified the section as an infraction. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 15-49-06 be accepted as drafted.

The Committee considered Section 15-49-07, which reads as follows:

1 15-49-07. PENALTY FOR MAKING FALSE REPORTS.) Any school officer
2 who willfully signs a false report or transmits a false report to the county
3 superintendent of schools, or who willfully signs, issues, or publishes a
4 false statement of facts purporting or appearing to be based upon the books,
5 accounts, or records, or of the affairs, resources, and credit of the district,
6 shall be (((punished by a fine of not more than fifty dollars, or by imprison-
7 ment in the county jail for not more than fifteen days))) guilty of an infraction.

Mr. Wefald stated that the section was recommended for repeal as it was covered by Section 12.1-11-02 dealing with false statements in governmental matters. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY MR. WEBB, AND CARRIED that Section 15-49-07 be repealed.

The Committee considered Section 15-49-08 which provides that a person, whether or not he is a pupil of the school, who willfully molests or disturbs a school in session or interferes with the proper order or management of a school so as to prevent a teacher or a pupil from performing his duty, or who threatens or insults a teacher in front of school children is to be punished by a fine of not more than \$25, by imprisonment for not more than 10 days, or by both such fine and imprisonment. The staff has reclassified the section as a Class B misdemeanor.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 15-49-08 be accepted as drafted.

The Committee considered Section 15-49-09, which reads as follows:

1 15-49-09. SCHOOL SUPPLIES - PENALTY FOR RECEIVING COMMISSION
2 ON PURCHASE.) Any county superintendent of schools, deputy county
3 superintendent of schools, school board member, clerk, treasurer, or
4 principal of a school, or teacher therein, who receives any commission,
5 fee, or reward for or on account of any school books, furniture, or other
6 supplies purchased during his incumbency, for the use of the school
7 district or school under his supervision, is guilty of a class B misdemeanor
8 ((and shall be punished by a fine of not less than fifty dollars nor more
9 than five hundred dollars))), and may be removed from office.

Mr. Wefald noted that the section established a disqualification for someone convicted under it in addition to those set out in Chapter 12.1-33. He also noted that the section was very similar to Section 15-49-11 except that the latter section covers the giver of the gift whereas this section covers the recipient.

IT WAS MOVED BY REPRESENTATIVE STONE AND SECONDED BY REPRESENTATIVE LUNDENE that the word "or" on line 3 be inserted in triple parentheses and the words "superintendent of schools," be added before the word "principal" on line 4; and that when so amended the section be accepted.

Mr. Webb stated that he did not like the language in line 9 relating to removal from office. He felt that procedures for removal from office should be established in a uniform statute dealing with every situation, and providing for a separate hearing on removal from office. Mr. VandeWalle noted that the Century Code does not cover the question of how you remove a school board member from office.

REPRESENTATIVE HILLEBOE MADE A SUBSTITUTE MOTION, SECONDED BY MR. WEBB, AND CARRIED, with two negative votes, to adopt Representative Stone's motion and to delete the triple parentheses after the word "dollars" in line 9 and insert triple parentheses after the word "office" in that same line; and that when so amended the section be accepted.

The Committee considered Section 15-49-10.1, which reads as follows:

1 15-49-10.1. SOLICITATIONS AND SALES IN SCHOOLS - PERMISSION
2 REQUIRED - ACCOUNTING ((OF)) FOR PROCEEDS - PENALTY.) No
3 person ((, firm, or corporation))) shall sell, solicit for sale, or advertise
4 the sale of any merchandise, product, or service on school premises, or
5 organize students for any such purpose, without first obtaining the permission
6 of the school board or superintendent or principal of such school. The
7 proceeds of any sale, by students or student groups, made for school
8 activities shall be accounted for to the school board not more than thirty
9 days after such sale. Any person who violates any provision of this section
10 shall be guilty of ((a misdemeanor and shall be punished by a fine of not
11 more than one hundred dollars))) an infraction.

Mr. Wefald inquired as to whether the words "superintendent or principal" should be added after the words "school board" in line 8 of the section. Mr. Snortland noted that the Committee on Education "B" is recommending changes in the statutes relating to school "activity funds". He stated that the restriction of the accounting to the school board is probably appropriate, since part of the problem which gave rise to the need for this statute was the fact that some principals were not rendering an accounting.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 15-49-10.1 be accepted as drafted.

The Committee considered Section 15-49-11, which reads as follows:

1 15-49-11. OFFERING OR GIVING COMMISSION, FEE OR REWARD TO SCHOOL
2 PURCHASING AGENT PROHIBITED - PENALTY.) It shall be unlawful for any
3 person to give or offer to any county superintendent of schools, deputy county
4 superintendent of schools, school board member, clerk, treasurer, or principal
5 of any accredited school or to a teacher or employee therein or for such persons
6 to receive, any commission, fee, reward or remuneration for or on account
7 of a purchase of school books, furniture or other supplies for use of the
8 school district, school, their employees, or students. Any person who
9 violates the provisions of this section shall be guilty of a class A misdemeanor
10 ((and shall be punished by a fine of one thousand dollars or by imprisonment
11 in the county jail for one year, or by both such fine and imprisonment)).

Mr. Wefald noted that the section might be able to be replaced by Section 12.1-12-01 on bribery. However, he noted that that section was classified as a Class C felony, whereas this section would be classified as a Class A misdemeanor. There was much discussion concerning whether bribery completely covered this section. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 15-49-11 be accepted as drafted.

The Committee then considered Section 15-50-07 which provides a penalty for the violation of the provisions of Chapter 15-50 which deals with the licensing and regulation of private trade and correspondence schools.

Prior to a determination on Section 15-50-07, Representative Stone noted that some additional language to ensure coverage of superintendents of schools should be added to Section 15-49-11. Mr. Snortland noted that the word "accredited" in line 5 does not add to the ease with which this section can be interpreted. He said that there was no reason why the section should only apply to an "accredited" school.

Thereafter, IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the Committee reconsider its action in accepting Section 15-49-11, and that the section be amended by adding the words "superintendent of schools" before the word "principal" in line 4, inserting triple parentheses around the word "or" in that same line, and inserting triple parentheses around the word "accredited" in line 5; and that when so amended the section be accepted.

The Committee again considered Section 15-50-07, and IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVES LUNDENE AND STONE, AND CARRIED that Section 15-50-07 be accepted as drafted.

The Committee considered Section 15-62.1-14, which reads as follows:

1 15-62.1-14. PENALTY.) Any person who knowingly makes a false
2 statement or misrepresentation in connection with an application under
3 the guarantee loan program shall be ((subject to a fine of not more than
4 one thousand dollars or to imprisonment for not more than one year, or
5 both such fine and imprisonment))) guilty of a class A misdemeanor.

Mr. Wefald stated that the section was recommended for repeal as its provisions were covered by Section 12.1-11-02 prohibiting false statements in governmental matters. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 15-62.1-14 be repealed.

The Committee commenced consideration of the sections in Title 23 of the Century Code which define offenses. Mr. Wefald noted that he had met with Mr. Willis Van Heuvelen, Executive Officer of the State Health Department, concerning the bulk of the criminal provisions in Title 23, and had met with Mr. Claude Streeper, Chief Inspector of the State Laboratories Department, concerning the provisions in Chapters 23-09 and 23-10.

The Committee considered Section 23-01-15, which reads as follows:

1 23-01-15. RESEARCH STUDIES CONFIDENTIAL - PENALTY.)
2 1. All information, records of interviews, written reports, statements,
3 notes, memoranda, or other data procured by the state department of
4 health, in connection with studies conducted by the state department
5 of health, or carried on by the said department jointly with other
6 persons, agencies or organizations, or procured by such other
7 persons, agencies or organizations, for the purpose of reducing the
8 morbidity or mortality from any cause or condition of health shall
9 be confidential and shall be used solely for the purpose of medical
10 or scientific research.
11 2. Such information, records, reports, statements, notes, memoranda,
12 or other data shall not be admissible as evidence in any action of
13 any kind in any court or before any other tribunal, board, agency
14 or person. Such information, records, reports, statements, notes,
15 memoranda, or other data shall not be exhibited nor their contents
16 disclosed in any way, in whole or in part, by any officer or repre-
17 sentative of the state department of health, nor by any other person,
18 except as may be necessary for the purpose of furthering the research
19 project to which they relate. No person participating in such

20 research project shall disclose, in any manner, the information
21 so obtained except in strict conformity with such research project.
22 No officer or employee of said department shall interview any patient
23 named in any such report, nor a relative of any such patient, unless
24 the consent of the attending physician and surgeon is first obtained.

25 3. The furnishing of such information to the state department of health
26 or its authorized representative, or to any other cooperating agency
27 in such research project, shall not subject any person, hospital,
28 sanatorium, rest home, nursing home or other person or agency
29 furnishing such information, to any action for damages or other
30 relief.

31 Any disclosure other than is provided for in subsection 1 of this section,
32 is hereby declared to be a class A misdemeanor (((and punishable as such))).

Mr. Wefald noted that lines 31 and 32 of the section could be deleted, and reliance could be placed on Section 12.1-13-01 which prohibits the disclosure of confidential governmental information.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY SENATOR JONES, AND CARRIED that triple parentheses be inserted around the last sentence of Section 23-01-15, and that any triple parentheses or underscored material internally located in that sentence be deleted; and that when so amended the section be accepted.

The Committee considered Subsection 1 of Section 23-01-17 which authorizes the State Health Council to establish rules and regulations concerning noise pollution, and makes it a misdemeanor punishable by a fine of not to exceed \$1,000 for anyone to violate the rules and regulations established. The staff has reclassified the subsection as a Class A misdemeanor. Mr. Wefald noted that Mr. Van Heuvelen desired an increase in the penalty. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Subsection 1 of Section 23-01-17 be accepted as drafted.

The Committee considered Section 23-02-14, which reads as follows:

1 23-02-14. PENALTY FOR FAILURE TO MAKE REPORT OF BIRTH.)
2 Any person required by any provision of this title to report a birth who
3 neglects or refuses to file a proper certificate of birth within the time
4 required, or who omits to answer the question, "Were precautions taken
5 against ophthalmia neonatorum", is guilty of a class A misdemeanor (((and
6 shall be punished by a fine of not less than ten dollars nor more than
7 fifty dollars))). All bills or charges for professional services rendered
8 at a birth shall be unlawful if the report of birth is not made.

Mr. Wefald noted that the offense classification was in accordance with Mr. Van Heuvelen's wishes. Representative Hilleboe questioned the desirability of the last sentence of the section, noting that the criminal liability ought to be a sufficient deterrent to a failure to take the cautions against ophthalmia neonatorum.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that the last sentence of Section 23-02-14 be inserted in triple parentheses, and that when so amended the section be accepted.

The Committee considered Section 23-02-27, which reads as follows:

- 1 23-02-27. LOCAL REGISTRAR'S RECORDS CONFIDENTIAL - PENALTY.)
- 2 A local registrar shall not permit the inspection of any records made by
- 3 him and shall not disclose any information obtained by him as local registrar
- 4 to any person except the state registrar of vital statistics, or to officers or
- 5 employees of the division of vital statistics. Any local registrar who shall
- 6 violate any provision of this section shall be guilty of a class A misdemeanor.

Mr. Wefald noted that the last sentence of the section could be deleted and coverage would be provided by Section 12.1-13-01. Mr. Webb said that the clerk of court in Walsh County won't give out birth or death certificates, but that clerks of court in other counties do. He stated that this is a problem, as it forces him, as prosecutor, in some instances to get a birth or death certificate from the Vital Statistics Division on a crash basis. The Committee discussed whether it was necessary to retain this section at great length.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that the last sentence of Section 23-02-27 be deleted and that Section 12.1-13-01 be relied on for the criminal penalty for a violation of the provisions of this section.

The Committee considered Section 23-02-33 which dealt with the refusal of a physician to make out or deliver a death certificate to the person in charge of interment of the body. Presently, the section is classified as a misdemeanor punishable by a fine of from \$5 to \$50, and the staff has reclassified it as an infraction. IT WAS MOVED BY SENATOR JONES AND SECONDED BY REPRESENTATIVE AUSTIN that Section 23-02-33 be accepted as drafted.

Representative Hilleboe inquired as to whether this should not be classified as a more serious offense, since, if the physician refused to make out the death certificate, there would be no one who could do it, and no way to force the physician to do it. The Chairman directed Representative Hilleboe to check with the Health Department on the question of whether this should be a more serious offense. Thereafter, SENATOR JONES' MOTION CARRIED.

The Committee considered Section 23-02-34 which presently prohibits a physician from willfully making a false death certificate. The present offense classification is a misdemeanor punishable by a fine of from \$50 to \$200, and the staff has reclassified it as an infraction. Mr. Wefald noted that the section was recommended for repeal as its provisions were covered by Section 12.1-11-02 prohibiting false statements in governmental matters. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SENATOR JONES, AND CARRIED that Section 23-02-34 be repealed.

The Committee considered Section 23-02-41, which reads as follows:

1 23-02-41. NEGLECT OF DUTY BY LOCAL REGISTRAR - PENALTY.)
2 Any local registrar, deputy registrar, or subregistrar who shall neglect
3 or fail to enforce the provisions of this chapter, or who shall neglect or refuse
4 to perform any duty imposed upon him by the provisions of this chapter
5 or by the instructions and directions of the state registrar of vital statistics,
6 shall be guilty of (((a misdemeanor and shall be punished by a fine of not
7 less than ten dollars nor more than one hundred dollars))) an infraction.

Mr. Wefald stated that the section was recommended for repeal as its provisions were covered by Section 12.1-11-06 which provides that a public servant who refuses to perform his duty is guilty of a Class A misdemeanor. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 23-02-41 be repealed.

The Committee considered Section 23-02-42 which prohibits the willful alteration by any person of a birth or death certificate on file in the office of local registrar. The offense is presently classified as a misdemeanor punishable by from a \$10 to \$100 fine, by imprisonment for not more than 60 days, or by both. The staff has reclassified it as a Class B misdemeanor.

Mr. Wefald noted that the section was probably covered by Section 12.1-24-01 prohibiting forgery and Section 12.1-11-02 prohibiting false statements in governmental matters; however, the offense classification for both of those sections would be higher than the one proposed for Section 23-02-42. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 23-02-42 be accepted as drafted.

The Committee considered Section 23-02-43 which provides a general penalty for violating any provision of Chapter 23-02 for which another penalty is not specifically provided. The present offense classification is a misdemeanor punishable by a fine of from \$5 to \$100, and the staff has reclassified it as a Class B misdemeanor. Mr. Wefald noted that Chapter 23-02 deals with the registration of births and deaths. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 23-02-43 be accepted as drafted.

The Committee considered Section 23-05-10, which reads as follows:

1 23-05-10. HEALTH OFFICER - NEGLECT OF DUTY - PENALTY.) Any
2 state, county, township, or city health officer, or any member of any local
3 board of health, who neglects or refuses to perform any of the duties of
4 his office is guilty of a class B misdemeanor (((and shall be punished by
5 a fine of not less than ten dollars nor more than fifty dollars, or by imprison-
6 ment in the county jail for not more than thirty days, or by both such fine
7 and imprisonment))).

Mr. Wefald stated that he was recommending this section for repeal since its provisions were covered by Section 12.1-11-06 which prohibits a public servant from refusing to perform his duty.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY SENATOR JONES, AND CARRIED that Section 23-05-10 be repealed.

The Committee considered Section 23-05-11, which reads as follows:

1 23-05-11. OBSTRUCTING HEALTH OFFICER - PENALTY.) Every
2 person who (((willfully))) opposes or obstructs the performance of his
3 legal duty by any health officer or physician charged with the enforcement
4 of the health laws is guilty of a class B misdemeanor.

Mr. Wefald noted that the section may be covered by Section 12.1-08-01 which prohibits physical obstruction of a governmental function. Representative Murphy stated that he did not think the section was grammatically sound in that it wasn't clear to whom the word "his" in line 2 referred.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that the words "his" in line 2 and the word "by" in line 3 be deleted and the words "the" and "of" be inserted immediately behind the deleted words; and that when so amended, the section be accepted.

The Committee recessed for lunch and reconvened at 1:15 p.m. at which time it considered Section 23-05-12 which provides that a person who violates the orders of a local board of health is guilty of a misdemeanor punishable by up to 30 days' imprisonment, by a fine of not more than \$1,000, or by both. The staff has reclassified the section as a Class B misdemeanor and deleted material relating to obstruction of an inspection by the board of health as that material would be covered by Section 12.1-08-01. IT WAS MOVED BY REPRESENTATIVE AUSTIN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 23-05-12 be accepted as drafted.

Because Mr. Wilbur Boldt was present, the Chairman announced that the Committee would consider the criminal sections in Title 20.1 of the Century Code which deals with game and fish. Mr. Wefald noted that he had talked with Deputy Commissioner Boldt and Chief Game Warden Spitzer. Commissioner Boldt noted that Commissioner Stuart would also be present shortly.

The Committee considered Section 20.1-01-01 which provides a general penalty for violation of the provisions of Chapter 20.1-01 which is the chapter dealing generally with game and fish provisions. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 20.1-01-01 be accepted as drafted.

At this point Commissioner Stuart was present, and the Committee considered Section 20.1-01-08, which reads as follows:

1 20.1-01-08. HUNTING WITH ARTIFICIAL LIGHT PROHIBITED -
2 EXCEPTION.) Any person who shall pursue, shoot, kill, take or attempt
3 to take any wildlife between sunset of one day and sunrise of the next,
4 with the aid of a spotlight or any other artificial light, shall be guilty
5 of a class A misdemeanor. This section does not make it unlawful for any
6 person to use a lantern, spotlight, or other artificial light to assist him
7 in pursuing and shooting on his premises any coyote, fox, skunk, mink.

8 raccoon, weasel, owl, rabbit, or other predatory animal or bird, attacking
9 and attempting to destroy such person's poultry, livestock, or other property.
10 It is permissible to use a flashlight of not more than two cells in the aggregate
11 of three volts while taking raccoon during the open season on such animal.

Representative Hilleboe inquired as to why this section was classified higher than the general penalty provision. Deputy Commissioner Boldt stated that it was because the section was aimed primarily at big game hunters and shining big game was felt by the department to be a serious offense. However, he noted that Section 20.1-05-01, the general penalty for chapter 20.1-05, was classified as a Class A misdemeanor, and that Chapter 20.1-05 specifically prohibited the shining of big game (See Section 20.1-05-04). The Committee Counsel suggested that the desirability of a greater potential penalty for shining big game should be debated when the Committee reaches Section 20.1-05-01.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 20.1-01-08 be amended as follows: That triple parentheses be inserted around the words "Any person who shall" in line 2, and that the words "It shall be unlawful for any person to" be inserted before the word "pursue" in that same line; that triple parentheses be inserted before the comma in line 4 and after the word "misdemeanor" in line 5, and that the underscored material in line 5 be deleted; and that when so amended the section be accepted. Representative Hilleboe noted that this motion was intended to cause reliance on Section 20.1-01-01 for the penalty for a violation of Section 20.1-01-08.

The Committee considered Section 20.1-01-09 which sets out the type of gun which may be used to take raccoon at night through use of a flashlight. Presently, anyone violating the section is guilty of a misdemeanor. The staff recommendation is to delete the language relating to the criminal penalty in this section so that reliance can be placed on the general penalty section (20.1-01-01) for punishment of violations of this section. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY SENATOR JONES, AND CARRIED that Section 20.1-01-09 be accepted as drafted.

The Committee considered Section 20.1-01-23, which reads as follows:

1 20.1-01-23. FENCE GATES TO BE CLOSED - PENALTY - VIOLATOR'S
2 HUNTING LICENSE FORFEITED.) A person who opens a gate or bars in
3 a fence enclosing farm premises shall not leave such gate or bars open
4 unless he is in lawful possession of the premises. If a person violates
5 this section while hunting, he is ((subject to the penalty contained in
6 section 47-27-03))) guilty of a class B misdemeanor, and his hunting license
7 shall be forfeited for the remainder of the then current hunting season.
8 A summary of the provisions of this section shall be printed on each general
9 game and fur-bearer license.

Mr. Wefald pointed out the similarity between this section and Section 47-27-03, and the Committee Counsel noted that probably one of the sections should be deleted as they are substantially identical in what they prohibit. Commissioner Stuart noted the instances in which his agents would enforce the trespass laws and noted that Section 20.1-01-23 was limited, insofar as the forfeiture of a hunting

license was concerned, to violations occurring while the violator was hunting. No such limitation, as far as criminal liability goes, attached to Section 47-27-03. After further discussion, it was decided that both Section 47-27-03 and Section 20.1-01-23 could stand on their own merits. Thereafter, IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 20.1-01-23 be accepted as drafted.

The Committee considered Section 20.1-03-01 which provides a general penalty for violations of Chapter 20.1-03 which deals with game and fish licenses and permits, including taxidermy licenses. Presently, the section is classified as a misdemeanor punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or both. The staff has reclassified it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 20.1-03-01 be accepted as drafted.

The Committee considered Section 20.1-03-16, which reads as follows:

1 20.1-03-16. RECORDS REQUIRED OF LICENSED TAXIDERMISTS -
2 CONTENTS - INSPECTION OF RECORDS AND UNMOUNTED SPECIMENS BY
3 GAME OFFICIALS - PENALTY.) Each person having a license to practice
4 taxidermy shall keep a record showing the name of every person who
5 furnished him with a green or unmounted specimen, and the species of each
6 such specimen. The licensee, upon request, shall exhibit such record and
7 all unmounted specimens in his possession to the commissioner, the deputy
8 commissioner, or any bonded game ((wardens)) warden. Anyone violating
9 this section shall forfeit his taxidermist's license for the remainder of the
10 year in which the violation occurred and shall be ((punished by a fine
11 of not less than ten dollars nor more than twenty-five dollars)) guilty
12 of an infraction.

IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY REPRESENTATIVE STONE that Section 20.1-03-16 be accepted as drafted. Mr. Webb stated that he did not like the loss of license provision contained in the last sentence of the section. He thought that the question of the forfeiture of a license should be a question decided in a separate proceeding, and should not flow automatically from a finding of criminal liability.

Representative Murphy inquired as to why there was a necessity to license taxidermists at all. Deputy Commissioner Boldt stated that the principal reason for licensing taxidermists was because they often were responsible for a lot of property, much of it irreplaceable, belonging to other persons, and the Legislature probably felt there should be some means of controlling and regulating that bailment situation.

REPRESENTATIVE MURPHY MADE A SUBSTITUTE MOTION, SECONDED BY SENATOR JONES, AND CARRIED, with two dissenting votes, that triple parentheses be inserted before the word "shall" in line 9; that the triple parentheses in line 10 be deleted; and, in line 11, that the words "shall be" be inserted before the word "guilty"; and that when so amended the section be accepted. Because the SUBSTITUTE MOTION PASSED, THE MAIN MOTION BECAME MOOT.

The Committee considered Section 20.1-03-21, which reads as follows:

1 20.1-03-21. FAILURE TO TURN OVER MONEY COLLECTED UNDER
2 PROVISIONS OF THIS TITLE UNLAWFUL - PENALTY.) Any person who
3 fails, refuses, or neglects to turn over any moneys collected or authorized
4 to be collected under this title, or who fails, neglects, or refuses to turn
5 over and deliver to the commissioner all applications, stubs, and mutilated
6 and unused licenses and permits, shall be (((punished by a fine of not
7 less than one hundred dollars nor more than five hundred dollars and costs
8 of prosecution))) guilty of a class B misdemeanor. The commissioner may
9 take appropriate action to recover, on the bond of the person so defaulting,
10 any money not turned over.

Mr. Wefald noted the possibility that the chapter on theft, 12.1-23, would cover this section, but stated that he personally would like to see the Committee rely on the general penalties provided in Section 20.1-03-01 for coverage of this section. IT WAS MOVED BY SENATOR JONES that the section be redrafted so as to rely on the general penalty section in Chapter 20.1-03 for punishment of offenses under this section.

The Committee noted the last line which would authorize the commissioner to take action to recover on the bond of a person defaulting with respect to accounting for game and fish license fees. The Committee Counsel suggested that perhaps this line could be construed as a limitation upon the power of the commissioner, forcing him to recover only on the bond and prohibiting recovery against the person at fault.

SENATOR JONES' MOTION DIED FOR LACK OF A SECOND, AND REPRESENTATIVE HILLEBOE MADE A MOTION, SECONDED BY REPRESENTATIVE ROYSE, to redraft the section so as to rely on the general penalty provided in Section 20.1-03-01, and to delete reference to the power of the commissioner to recover on the bond of the person defaulting.

Commissioner Stuart noted that the county auditors, who have been designated as the agents of the commissioner, are authorized to get the fees charged for sale of the license personally, and that in Cass County, for instance, this could amount to as much as \$8,000 per year. After further discussion, it was decided that the last sentence should be amended so as to ensure that the commissioner could recover either directly from the defaulting person, on his bond, or both. Thereafter, REPRESENTATIVE HILLEBOE, WITH THE CONSENT OF HIS SECOND, WITHDREW HIS MOTION.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that the section be amended so as to provide that the general criminal penalty contained in Section 20.1-03-01 apply, and that the last sentence be amended to read: "The commissioner may take appropriate action to recover from the person so defaulting, or on his bond." Commissioner Stuart noted that at the present time, his department would go directly against the state bonding fund where there had been a default in turning in license fees.

The Committee considered Section 20.1-03-27 which provides that any person who is engaged in hunting, trapping, or fishing and is required to carry a license shall, upon the demand of any appropriate employee of the Game and Fish Department, or any police officer, show his license immediately. Presently, a person violating the section is guilty of a misdemeanor. The staff has reclassified the section as an infraction. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 20.1-03-27 be accepted as drafted.

The Committee considered Section 20.1-04-01 which provides a general penalty for violations of Chapter 20.1-04 dealing with the regulation of birds. The section is presently a misdemeanor punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or by both. The staff has reclassified it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 20.1-04-01 be accepted as drafted.

The Committee considered Section 20.1-05-01 which provides a general penalty for violation of the chapter dealing with big game. The present penalty is a fine of not more than \$100, imprisonment for not more than 30 days, or both. The staff, at the request of the Game and Fish Department, has reclassified the section as a Class A misdemeanor.

Mr. Boldt noted that not only does the department recommend stricter penalties, but the North Dakota Wildlife Federation and the Game and Fish Advisory Board also recommend stiffer penalties.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY MR. WEBB, AND CARRIED that Section 20.1-05-01 be accepted as drafted.

The Committee considered Section 20.1-06-01 which provides a general penalty for violation of the chapter dealing with the regulation of fish, frogs, and turtles. The present penalty for violation of that chapter is a fine of not more than \$100, imprisonment for not more than 30 days, or both. The staff has reclassified it as a Class A misdemeanor. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 20.1-06-01 be accepted as drafted.

The Committee considered Section 20.1-07-01 which provides a general penalty for violation of the provisions of the chapter relating to fur-bearer regulations. Presently, the offenses are classified as misdemeanors punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or by both. The staff has reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 20.1-07-01 be accepted as drafted.

The Committee considered Section 20.1-08-01 which makes it a misdemeanor punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or both to violate a provision of any order or proclamation issued by the Governor under Chapter 20.1-08. The staff has reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 20.1-08-01 be accepted as drafted.

The Committee considered Section 20.1-09-01 which provides a general penalty for violation of the chapter dealing with the propagation of protected birds and animals. The section presently is classified as a misdemeanor punishable by a fine of up to \$100, imprisonment for up to 30 days, or both. The staff has reclassified it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 20.1-09-01 be accepted as drafted.

The Committee considered Section 20.1-11-01 which provides a general penalty for violation of the provisions of Chapter 20.1-11 which deals with game refuges and game management areas. Presently, the section is classified as a misdemeanor punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or by both such fine and imprisonment. The staff has reclassified it as a Class B misdemeanor. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 20.1-11-01 be accepted as drafted.

The Committee considered Section 20.1-12-01 which makes it a misdemeanor punishable by a fine of \$100, imprisonment up to 30 days, or both, for a person to violate the provisions of the chapter which deals with the establishment and operation of private shooting preserves. The staff has reclassified the section as a Class B misdemeanor. IT WAS MOVED BY SENATOR JONES, SECONDED BY MR. WEBB, AND CARRIED that Section 20.1-12-01 be accepted as drafted.

The Committee considered Section 20.1-13-01 which provides a general penalty for violation of the provisions of the chapter dealing with boating regulations. Presently, the offense is classified as a misdemeanor punishable by a fine of up to \$100, by imprisonment for up to 30 days, or by both such fine and imprisonment. The staff has reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with Senator Jones voting in the negative, that Section 20.1-13-01 be accepted as drafted.

Representative Austin raised the question of the desirability and means of controlling the use of "walkie-talkies" to take game. Commissioner Stuart stated that it was a problem, but he didn't know how to handle it as there were too many reasons for allowing legitimate use of communicating devices between hunters.

The Committee returned to consideration of the criminal provisions in Title 23, commencing with Section 23-06-05 which makes it an offense, classified by the staff as a Class B misdemeanor, to fail to bury a body within the time limitations set out in Section 23-06-04. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 23-06-05 be accepted as drafted.

The Committee considered Section 23-06-06, which reads as follows:

- 1 23-06-06. NEGLECT OF BURIAL - (((MISDEMEANOR))) PENALTY..)
- 2 Every person upon whom the duty of making burial of the remains of a
- 3 deceased person is imposed by law who omits to perform that duty as required
- 4 in the chapter, is guilty of a class B misdemeanor, and in addition to the
- 5 punishment prescribed therefor, is liable to pay to the person performing

6 the duty in his stead treble the expenses incurred by the latter in making
7 the burial. Such amount shall be recovered in a civil action.

SENATOR JONES stated that he could not see the necessity for this section, and MADE A MOTION that it be repealed. That MOTION DIED FOR LACK OF A SECOND.

Representative Murphy inquired as to the lawfulness of burying on his own property. The Committee Counsel noted that Section 23-06-20 sets forth where a body must be buried, and notes that generally speaking it must be buried in a properly registered cemetery, unless the Department of Health has given its approval to some other burial place requested by relatives or friends. REPRESENTATIVE LUNDENE MADE A MOTION that Section 23-06-06 be accepted as drafted, but that MOTION DIED FOR LACK OF A SECOND. Thereafter, IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY MR. WEBB, AND CARRIED that triple parentheses be inserted before the second comma in line 4; that triple parentheses be inserted after the word "action" in line 7; and that when so amended the section be accepted.

The Committee considered Section 23-06-11, which reads as follows:

1 23-06-11. BURIAL WITHOUT BURIAL-TRANSIT PERMIT - PENALTY.)
2 Any undertaker, sexton, or other person acting as undertaker, who inters,
3 removes, or otherwise disposes of the body of any deceased person without
4 having received a burial-transit permit, is guilty of ((a misdemeanor
5 and shall be punished by a fine of not less than twenty dollars nor more
6 than one hundred dollars))) an infraction.

IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY REPRESENTATIVE AUSTIN that Section 23-06-11 be accepted as drafted. Representative Hilleboe noted that the section should be amended so as to simply make the actions described therein unlawful, and to rely on the general penalty provided by Section 23-06-29

REPRESENTATIVE ROYSE MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE STONE, AND CARRIED to insert triple parentheses around the entire section, and insert the following language at the end of it: "It shall be unlawful for a person, acting as an undertaker, to inter, remove, or otherwise dispose of the body of any deceased person without having received a burial-transit permit."

The Committee considered Section 23-06-12, which reads as follows:

1 23-06-12. PENALTY FOR TRANSPORTING BODY WITHOUT BURIAL-
2 TRANSIT PERMIT.) Any transportation company or common carrier which
3 transports, carries, or accepts, through its agents or employees, for
4 transportation or carriage, the body of any deceased person without
5 an accompanying burial-transit permit issued in accordance with the
6 provisions of this chapter is guilty of ((a misdemeanor and shall be
7 punished by a fine of not less than fifty dollars nor more than two hundred
8 dollars))) an infraction.

Representative Hilleboe suggested that this section should also be made "unlawful" so that reliance could be placed on the general penalty section, which is Section 23-06-29. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the entire text of Section 23-06-12 be inserted in triple parentheses and the following material be inserted immediately thereafter: "It shall be unlawful for a transportation company or common carrier to transport, or accept for transportation, the body of any deceased person unless that body is accompanied by a burial-transit permit issued in accordance with the provisions of this chapter."

The Committee considered Section 23-06-17, which reads as follows:

1 23-06-17. BODIES REQUIRED TO BE BURIED OR CREMATED AFTER
2 (((HAVING SERVED THE PURPOSE))) BEING DISSECTED - PENALTY (((FOR
3 NEGLECT))).) Any person who shall receive for dissection any dead body,
4 in pursuance of the provisions of this chapter, shall decently bury the body
5 in some public cemetery or shall cremate the same in a furnace properly
6 constructed for that purpose after the dissection has been made. Any
7 person who (((neglects or))) violates the provisions of this section is guilty
8 of (((a misdemeanor and shall be punished by a fine of one hundred dollars)))
9 an infraction.

Representative Murphy inquired as to who had control over whether a body could be cremated in the State of North Dakota. The Committee Counsel noted that the statutes were unclear, but that Section 23-06-04 required that the dead body of a human being must be buried within eight days unless a right to dissect the body has been conferred, the body is being carried through North Dakota, the body is being removed from this State for the purpose of "burial in some other state", or a permit is obtained from the local health officer or the State Health Department allowing a longer time during which the body can remain unburied.

It was suggested that Section 23-06-17 could also rely on the general penalty. Therefore, IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the last sentence of Section 23-06-17 be inserted in triple parentheses, and that all internal triple parentheses and underscored language in that sentence be deleted.

The Committee considered Section 23-06-18, which reads as follows:

1 23-06-18. DISSECTION - REMOVAL OF BODY - SALE - PENALTY.)
2 Any person who shall receive a body for use under the provisions of
3 section 23-06-14 and shall use the same for any other purpose, or who
4 shall remove the same beyond the limits of this state, or who shall buy
5 or sell any such body, or traffic in the same, shall be guilty of a class B
6 misdemeanor (((, and shall be punished by a fine of one hundred dollars))).
7 Any officer refusing to deliver the remains or body of any deceased person,
8 when demanded under the provisions of (((this))) section 23-06-14, is

9 guilty of (((a misdemeanor and shall be punished by a fine of not less
10 than fifty dollars))) an infraction.

The Committee Counsel noted that Section 23-06-14, which is referred to internally in Section 23-06-18, provides that the bodies of persons who are executed, who die in confinement, or who are to be buried at public expense, when unclaimed by relatives, shall be given to medical schools and doctors for dissection.

IT WAS MOVED BY REPRESENTATIVE AUSTIN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED, with three negative votes, that Section 23-06-18 be amended by providing that the ending triple parentheses after "dollars" in line 6 be deleted, that triple parentheses be inserted after the word "Any" in line 7 and that the material: ". It shall be unlawful for an" be inserted before the word "officer" in that same line, and that the word "refusing" in that same line be inserted in triple parentheses; that the words "to refuse" be inserted before the word "to" in line 7; that triple parentheses be inserted before the comma in line 8; that the triple parentheses before the word "a" in line 9 be deleted; that the material "an infraction" in line 10 be deleted; and that when so amended the section be accepted.

The Committee considered Section 23-06-24, which reads as follows:

1 23-06-24. UNLAWFUL REMOVAL OF DEAD BODY - PENALTY.) Every
2 person who removes any part of the dead body of a human being from any
3 grave or other place where the same has been buried, or from any place
4 where the same is deposited while awaiting burial, through malice or wanton-
5 ness, or with intent to sell the same or to dissect it without the authority
6 of law, is (((punishable by imprisonment in the penitentiary for not less
7 than one year nor more than five years, or in the county jail for not more
8 than one year, or by a fine of not more than five hundred dollars, or
9 by both such fine and imprisonment))) guilty of a class C felony.

The Committee discussed the desirability of retaining the language relating to "malice or wantonness" in lines 4 and 5. Representative Hilleboe pointed out that Section 23-06-24 relates to the taking of any "part of the body" with intent to sell or dissect it without authority of law, while Section 23-06-27 relates to the removal of the "whole" body for purpose of selling or for purpose of dissection.

The Committee Counsel suggested that triple parentheses be inserted before the word "through" in line 4; and that triple parentheses be inserted after the word "of" in line 6, and the words "except as provided by" be inserted before the word "law" in that same line. After discussion, IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 23-06-24 be amended as suggested by the Committee Counsel, and that when so amended the section be accepted.

The Committee considered Section 23-06-26 which presently provides that it is punishable by imprisonment for from one to five years in the penitentiary, or up to one year in jail, or by a fine of not more than \$500, or by both such

fine and imprisonment to purchase or receive a dead body, knowing that the same has been removed contrary to the provisions of Chapter 23-06, except for the purpose of burial. The staff has reclassified the section as a Class C felony. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 23-06-26 be accepted as drafted.

The Committee considered Section 23-06-27, which reads as follows:

1 23-06-27. UNLAWFULLY OPENING PLACE OF BURIAL - PENALTY.)
2 Every person who opens any grave or any place of burial, temporary or
3 otherwise, or who breaks open any building wherein any dead body of
4 a human being is deposited while awaiting burial, with intent, either:
5 1. To remove any dead body of a human being for the purpose of
6 selling the same or for the purpose of dissection; or
7 2. To steal the coffin, or any part thereof, or anything attached
8 thereto or connected therewith, or the vestments or other articles
9 buried with the same,
10 is (((punishable by imprisonment in the penitentiary for not less than one
11 year nor more than two years, or in a county jail for not more than six
12 months, or by a fine of not more than two hundred and fifty dollars, or
13 by both such fine and imprisonment))) guilty of a class C felony.

The Committee discussed the meaning of Subsection 1, and it was noted that it would not be unlawful, under this section, to break open a grave and remove the dead body, unless the removal was for the purpose of selling the body or for the purpose of dissecting it. The Committee discussed this section at length, and Representative Hilleboe noted that Section 23-06-24 should be amended so that it includes reference to a human body, or any part thereof.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 23-06-27 be amended by inserting the words "without authority of law," after the word "who" in line 2; that triple parentheses be inserted around the word "any" in line 5 and that word "the" be inserted immediately thereafter, that triple parentheses be inserted before the word "for" in the same line; that triple parentheses be inserted after the word "dissection" in line 6 and that the following material be inserted immediately after those triple parentheses: ", or any part thereof"; and that when so amended the section be accepted.

The Committee considered Section 23-06-28 which would make it a Class B misdemeanor for any person to arrest or attach the dead body of a human being for a debt or claim. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 23-06-28 be accepted as drafted.

The Committee considered Section 23-06-29 which provides a penalty for violation of any provisions of the chapter relating to dissection, and also provides a general penalty for violation of any provision of the chapter for which another penalty is not specifically provided. The former penalty has been set by the

staff as a Class B misdemeanor, and the latter as an infraction. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 23-06-29 be accepted as drafted.

The Committee considered Section 23-07-07.4 which presently makes it a misdemeanor, punishable by a fine of not more than \$25, for a physician or other person attending a pregnant woman to violate the provisions of Sections 23-07-07.1 through 23-07-07.3. Those sections require blood tests of pregnant women to check for venereal disease. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 23-07-07.4 be accepted as drafted.

The Committee considered Section 23-07-21, which reads as follows:

1 23-07-21. PENALTIES.) (((Each of the following persons shall be
2 guilty of a misdemeanor:
3 1. Any person afflicted with a contagious or infectious disease who
4 exposes himself in any public place or thoroughfare;
5 2. Any person who exposes, in a public place or thoroughfare, any
6 person afflicted with a contagious or infectious disease;
7 3.)) Any person: (((who)))
8 1. Who violates or fails to obey any of the provisions of this chapter,
9 any lawful rule or regulation made by the state department of
10 health, or any order issued by any state, county, or municipal
11 health officer;
12 (((4. Any person who)))
13 2. Who willfully violates any quarantine law or regulation, or who
14 leaves a quarantined area without being discharged; or
15 (((5. Any person)))
16 3. Who is infected with a venereal disease who exposes another person
17 to infection (((.)))
18 (((The provisions of subsections 1 and 2 shall not apply when it is necessary
19 to remove a person afflicted with a contagious or infectious disease and the
20 removal is made in a manner not dangerous to the public health))) is
21 guilty of an infraction.

The Committee Counsel noted that the underscored material on line 13 should be inserted before the word "violates" and the triple parentheses at the end of line 12 should be deleted and should be inserted after the word "willfully" in line 13. The Chairman ruled that the draft would be accepted that way.

The Committee considered lines 16 and 17 which would make it an offense to expose another person to a venereal infection. Representative Hilleboe stated that the action should be taken willfully after the person charged knew that he was infected with VD.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that the material: " , knowing that he" be inserted before the word "is" in line 16, that triple parentheses be inserted around the word "who" in that same line and that the material: " , willfully" be inserted before the word "exposes" in that same line; and that when so amended the section be accepted.

The Committee considered Section 23-12-02, which reads as follows:

1 23-12-02. PENALTY FOR NOT DISINFECTING SECONDHAND GOODS.)
2 Any person violating any of the provisions of section 23-12-01 is guilty
3 of a class B misdemeanor ((and shall be punished by a fine of not less
4 than twenty-five dollars nor more than one hundred dollars, or by imprison-
5 ment in the county jail for not less than thirty days nor more than ninety
6 days))).

The Committee Counsel stated that the staff recommendation was that this section be repealed as unenforceable. He noted that Section 23-12-01, internally referred to, provides that any person dealing in secondhand goods must disinfect them prior to sale. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 23-12-02 be repealed.

The Committee considered Section 23-12-03 which would make it an infraction for a person in charge of a public conveyance, passenger terminal building, public or private school or other educational institution, or public building to furnish or permit the common use of public drinking cups. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 23-12-03 be accepted as drafted.

The Committee considered Section 23-12-05, which reads as follows:

1 23-12-05. ADVERTISING CERTAIN CURES AND DRUGS AND SPECIALIZATION
2 PROHIBITED - PENALTY.) Any person who shall:
3 1. Advertise in his own name or in the name of another person, firm
4 or pretended firm, association, or corporation or pretended corporation,
5 in any newspaper, pamphlet, circular, or other written or printed
6 paper, a claim or advertisement with regard to the treatment or
7 curing of venereal diseases or the restoration of "lost manhood"
8 or "lost vitality";
9 2. Permit any advertisement of the kind specified in subsection 1 to
10 be printed, inserted, or published in any newspaper or periodical
11 of which he is the owner, publisher, or manager;
12 3. Advertise in any manner that he is a specialist in diseases of the
13 sexual organs, or in diseases caused by sexual weakness or self-
14 abuse, or in any disease with like or similar causes;
15 4. Advertise in any manner any medicine, drug compound, appliance,
16 or any means whatever, whereby it is claimed that sexual diseases

17 of men and women may be cured or relieved, or miscarriage or
18 abortion produced;

19 5. Advertise in any manner any medicine or means whereby the monthly
20 periods of women can be regulated or the menses reestablished if
21 suppressed; or

22 6. Publish, distribute, or cause to be published or distributed or
23 circulated, any of the advertising matter mentioned in the preceding
24 subsections of this section,
25 (((shall be guilty of a misdemeanor and shall be punished by a fine of
26 not less than fifty dollars nor more than five hundred dollars, or by
27 imprisonment in the county jail for not more than six months))) is guilty
28 of an infraction.

The Committee Counsel noted that the staff recommendation was that this section be repealed as antiquated. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 23-12-05 be repealed.

The Committee considered Section 23-12-06, which reads as follows:

1 23-12-06. INJURY TO PUBLIC HEALTH - PENALTY.) Every person
2 who willfully ((and wrongfully))) commits any act which grossly imperils
3 the public health, although no punishment is expressly prescribed therefor,
4 is guilty of a class A misdemeanor.

The Committee Counsel noted that the staff was recommending this section for repeal as it is too broad, thus subject to attack as void because it is unconstitutionally vague. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 23-12-06 be repealed.

The Committee considered Section 23-12-07 which would make it an infraction to violate any of the provisions of Chapter 23-12 for which another penalty was not specifically provided. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 23-12-07 be accepted as drafted.

The Committee considered Section 23-13-03 which would make it an infraction for any person to violate the provisions of Section 23-13-02 which authorizes regulations regarding the handling and dispensing of gasoline. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 23-13-03 be accepted as drafted.

The Committee considered Section 23-13-05 which would make it a Class B misdemeanor for a person who owns or has charge of a school, church, or other public building to fail to see that the building has doors which swing outward. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 23-13-05 be accepted as drafted.

The Committee considered Section 23-13-06 which provides that the owner of land is to fill abandoned or disused wells, shafts, or other excavations. If the owner violates the provisions of the section he is guilty of a Class B misdemeanor. Senator Jones questioned whether an infraction wouldn't be an adequate classification for this section, especially since the present maximum penalty is not more than \$10 for each day the violation is continued. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with three dissenting votes, that Section 23-13-06 be accepted as drafted.

The Committee considered Section 23-15-06 which provides a general penalty for violation of Chapter 23-15 which deals with fireworks. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 23-15-06 be accepted as drafted.

The Committee considered Section 23-16-11 which provides a penalty for establishing or operating a hospital without first obtaining a license to do so; or for violating any of the provisions of Chapter 23-16 which deals with the licensure of medical hospitals. Presently, the offense is classified as a misdemeanor punishable by a fine of from \$100 to \$500. The staff has reclassified the section as an infraction. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 23-16-11 be accepted as drafted.

The Committee considered Section 23-17-10 which declares it a misdemeanor punishable by a fine of not to exceed \$100, for a person to establish or operate a chiropractic hospital or sanatorium without first obtaining a license, or to violate any other provisions of Chapter 23-17 which deal with the licensing and inspection of chiropractic hospitals. The staff has reclassified the section as an infraction. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 23-17-10 be accepted as drafted.

The Committee considered Section 23-19-09 which provides a general penalty for violation of the provisions of Chapter 23-19, or any regulations promulgated thereunder. Presently, the offense is denominated a misdemeanor punishable by a fine of up to \$100, by up to 30 days in jail, or by both such fine and imprisonment. The staff has reclassified the section as a Class B misdemeanor. Chapter 23-19 deals with the licensing of persons engaged in the cleaning, pumping, or servicing of cesspools, septic tanks, or privies. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 23-19-09 be accepted as drafted.

The Committee considered Section 23-20-06 which provides a general penalty for violation of Chapter 23-20 which requires the licensing and registration of sources of ionizing radiation. The section is presently classified as a misdemeanor, and the staff would reclassify it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 23-20-06 be accepted as drafted.

The Committee considered Section 23-20.1-10 which provides a general penalty for violation of Chapter 23-20.1 which deals with development of ionizing radiation, and the licensing and registration of sources of ionizing radiation. The offense is presently classified as a misdemeanor, and the staff draft would reclassify it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 23-20.1-10 be accepted as drafted.

The Committee considered Section 23-21.1-09 which provides a general penalty for violations of Chapter 23-21.1 which deals with regulation of cemetery organizations and the maintenance and safekeeping of perpetual care funds. Presently, the offense is punishable by a fine of from \$100 to \$1,000, by imprisonment for not to exceed 30 days, or by both such fine and imprisonment. The staff has reclassified the section as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 23-21.1-09 be accepted as drafted.

The Committee considered Section 23-23-04 which provides a general penalty for violations of Chapter 23-23 dealing with the prescription or sale of a cancer cure by someone other than a licensed physician or dentist. The offense is presently punishable by a fine of from \$1,000 to \$5,000, by confinement in a jail from 30 days to one year, or by both such fine and imprisonment. The staff has reclassified the offense as a Class A misdemeanor. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 23-23-04 be accepted as drafted.

The Committee considered Section 23-25-10 which provides a general penalty for violation of Chapter 23-25 dealing with air pollution control. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY SENATOR JONES, AND CARRIED that Section 23-25-10 be accepted as drafted.

The Committee considered Section 23-26-09, which reads as follows:

1 23-26-09. VIOLATIONS - PENALTY.) Any person (((, including any
2 firm, corporation, municipality or other governmental subdivision or agency,)))
3 violating any provisions of this chapter or the rules and regulations adopted
4 thereunder after written notice thereof by the department, is guilty of
5 (((a misdemeanor. Each day of operation in such violation of this chapter
6 or any rules and regulations adopted thereunder shall constitute a separate
7 offense))) an infraction.

Representative Hilleboe noted that a violation of this section was classified by the staff as an infraction, while a violation of the "cancer cure" chapter or the chapter dealing with air pollution control was a Class A misdemeanor. He felt that the dangers inherent in operating a faulty waste water treatment plant were also significant, and the section (23-26-09) should be classified higher than an infraction. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY MR. WEBB, AND CARRIED that Section 23-26-09 be reclassified as a Class A misdemeanor, and when so amended that the section be accepted.

The Committee considered Section 23-27-05 which provides that anyone violating the provisions of Chapter 23-27 dealing with the licensing of ambulance services would be guilty of an infraction. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with Representative Murphy voting in the negative, that Section 23-27-05 be accepted as drafted.

The Committee considered Section 23-28-06 which provides that a person, intending to deceive another, who wears or uses a false identifying device or identification card as described in Subsection 2 of Section 23-28-02, is guilty of an offense presently classified as a misdemeanor punishable by a fine of not more than \$300, imprisonment for not more than 90 days, or both. The staff

has reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 23-28-06 be accepted as drafted.

The Committee considered Section 23-09-08 which provides that all rooms in hotels or other lodginghouses are to be equipped with bolts or locks which will permit the occupants of those rooms to lock or bolt the door securely from inside. The proprietor of a hotel or other lodginghouse who fails to comply with the provisions of the section is presently guilty of a misdemeanor, and the staff would reclassify it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED, with Representative Royse voting in the negative, that Section 23-09-08 be accepted as drafted.

The Committee considered Section 23-09-13, which reads as follows:

1 23-09-13. FALSE CERTIFICATE - PENALTY.) Any inspector who
2 willfully shall certify falsely regarding any building inspected by him, or
3 who shall issue a certificate to any person operating a hotel or lodginghouse
4 when such person has not complied with the provisions of this chapter, shall
5 be (((punished by a fine of not less than fifty dollars nor more than five
6 hundred dollars, or by imprisonment in the county jail for not more than
7 one year, or by both such fine and imprisonment, and shall be disqualified
8 forever from holding said office))) guilty of a class A misdemeanor.

The staff comment was that this section could be repealed as its provisions are covered by Section 12.1-11-02 which prohibits falsification in governmental matters. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 23-09-13 be repealed.

The Committee considered Section 23-09-15, which reads as follows:

1 23-09-15. OBSTRUCTING INSPECTION - PENALTY.) Any proprietor
2 of a hotel, restaurant, lodginghouse, or boardinghouse who obstructs or
3 hinders an inspector in the proper discharge of his duties under any
4 provision of this chapter, is guilty of a class B misdemeanor (((and shall
5 be punished by a fine of not less than ten dollars nor more than fifty dollars,
6 or by imprisonment in the county jail for not less than ten days nor more
7 than thirty days, or by both such fine and imprisonment))).

The Committee Counsel noted that this section could be repealed as its provisions were covered by Section 12.1-08-01 which prohibits the physical obstruction of a governmental function. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY SENATOR JONES, AND CARRIED that Section 23-09-15 be repealed.

The Committee considered Section 23-09-20 which would presently make it an offense to advertise a hotel as fireproof unless it was constructed in a certain manner. Presently, the offense is punishable by a fine of up to \$500, or by imprisonment for not more than one year. The staff has reclassified the section

as a Class A misdemeanor. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 23-09-20 be accepted as drafted.

The Committee considered Section 23-09-21 which provides that it is a misdemeanor to operate a hotel, restaurant, or other lodginghouse without first complying with the provisions of Chapter 23-09. If another penalty is not specifically provided the offense is classified as a misdemeanor punishable by a fine of from \$25 to \$100, or by imprisonment for not more than 90 days. The staff has reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY MR. WEBB, AND CARRIED that Section 23-09-21 be accepted as drafted.

The Committee considered Section 23-10-08, which reads as follows:

1 23-10-08. SICKNESS IN MOTOR OR TRAILER COURTS - PENALTY
2 FOR FAILURE TO REPORT.) Every guest of a court immediately shall report
3 to the person in charge of the court, or to the local or state health authorities,
4 every case of sickness in his or her guest unit. Any person who shall fail
5 to make such report shall be guilty of ((a misdemeanor and shall be punished
6 by a fine of not more than twenty-five dollars)) an infraction.

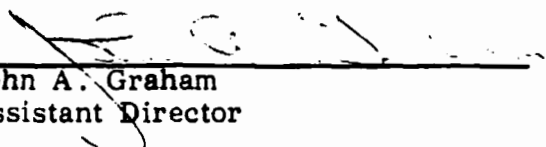
The Committee Counsel noted that the staff was recommending this section for repeal as unenforceable. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY SENATOR JONES, AND CARRIED that Section 23-10-08 be repealed.

The Committee considered Section 23-10-12 which provides that the State Laboratories Department may revoke a license issued under the provisions of Chapter 23-10 for failure to comply with the rules and regulations promulgated thereunder. In addition, any person who maintains or operates a motor or trailer court without first obtaining a license, or who operates the court after revocation of his license, will be guilty of an infraction in accordance with the staff reclassification. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 23-10-12 be accepted as drafted.

The Committee again discussed Section 23-02-33. Representative Hilleboe noted that it should be a more serious offense than an infraction for a doctor to neglect or refuse to make out and deliver the death certificate. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that the Committee reconsider the action by which it accepted Section 23-02-33. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 23-02-33 be reclassified as a Class B misdemeanor, and that when so reclassified the section be accepted.

Mr. Webb pointed out that Section 23-02-14 should not be a more serious offense than a refusal to make out a death certificate. Therefore, IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that the Committee reconsider the action by which it accepted Section 23-02-14. IT WAS MOVED BY MR. WEBB, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 23-02-14 be reclassified as a Class B misdemeanor; that previous amendments made by this Committee be reinstated; and when so reclassified and amended that the section be accepted.

The Committee discussed its next meeting date, and it was noted that the Committee would probably meet towards the end of May. Thereafter, hearing no objection, the Chairman declared the meeting adjourned, subject to the call of the Chair.



John A. Graham
Assistant Director

State of North Dakota

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
BURLEIGH COUNTY COURTHOUSE
514 EAST THAYER AVENUE
BISMARCK, NORTH DAKOTA 58501

ALFRED A. THOMPSON
JUDGE

701-255-1353 Ex. 58
701-255-3099

P. O. Box 1013
April 23, 1974

North Dakota Legislative Council
State Capitol
Bismarck, N. D. 58501

APR 27 1974

Attention: Mr. John A. Graham, Assistant Director

Gentlemen:

Re: Senate Bill 2045, Forty-third Legislative Assembly

You will recall that I spoke with you at the Burleigh County Bar Association meeting about my concern for what I feel to be shortcomings in the above-entitled measure as it relates to sentencing. I requested a copy of the Act and have since received it from you. These comments will be directed only toward those provisions of the Act dealing with punishments and sentencing as those provisions are set out beginning at page 72 of the bill. Prefatory to my discussion about terms of the Act itself, I wish to state that sentencing is, without question, the most difficult task faced by this court, and I am sure the same is true of courts throughout the nation. Those judges attending the National College of State Judiciary, which I had the good fortune to attend last summer, were almost unanimously agreed that this is so. Principal efforts of the Legislature are far too often directed toward the definition of offenses and offenders, with little attention paid to the treatment of those who have either been found guilty or who have pled guilty to a criminal charge. Uniformity is sadly lacking not only between the states but also amongst the courts within a given jurisdiction. The result is a hodge podge of disagreements in the interpretations of laws relating to criminal punishments and penalties. Of far greater importance, moreover, is the concern amongst judges and amongst persons affected by criminal convictions that disparity in sentencing as between offenders of like statutes and of equivalent gravity displays unfair leniency or harshness and a resultant often testified complaint that evenhanded justice has not been done. Some quite honestly and rightfully contend that unfair favoritism toward some and prejudicial bias against others is far too often evinced in sentencing, not only amongst courts in general, but within a specific court.

All this leads to a general distrust of courts, not only by the offender but also by the public in general. If this erosion of confidence in the criminal judicial system is to be halted, a system of uniform laws for sentencing or punishment must be enacted. The American Bar Association and the National College of the State Judiciary have cooperated in the creation of a model sentencing act. I enclose a copy thereof together with comments annexed

thereto as originally drafted. I deem it impractical to try to set out in a single letter all of the disparities between the model act and S.B. 2045. To do so would be burdensome both to you and to me. Various disagreements between the two documents are clearly obvious. Only an extended conference or conferences could possibly resolve differences between the two or serve to work toward compatibility.

Aside from the foregoing, I wish to call your attention to what may be shortcomings in S.B. 2045 which may require attention:

Sec. 12.1-32-02 sets forth elements or alternatives in sentencing. I note that "costs" as an element has not been considered. Courts quite commonly in this state have imposed costs as an element of a sentence in order that agencies of government might properly be reimbursed for willful violations of law. Costs, as such, are often assessed as distinguished from and in addition to restitution. You will find that small mention has been made of costs in the existing criminal code, although they are treated with particularity in the civil code.

I further note that no provision has been made for disposition of fines, forfeitures, pecuniary penalties, and bail as set out in our existing Sec. 12-01-13. This should be considered.

Sec. 12.1-32-02(6) poses a peculiar problem in that it would prohibit the court from sentencing a convicted person for a term to commence at a future time. Courts often find it necessary or prudent to give the convicted individual an opportunity to set his business or family affairs in order prior to the commencement of his sentence. Our existing statute has a similar shortcoming. I anticipate this provision's being used against a lenient court at some time in the future by an unscrupulous convicted person who may have requested deferred execution of the sentence for his own convenience. He would likely contend that the court had no authority to defer execution of the sentence, therefore, the sentence began on the date of sentencing.

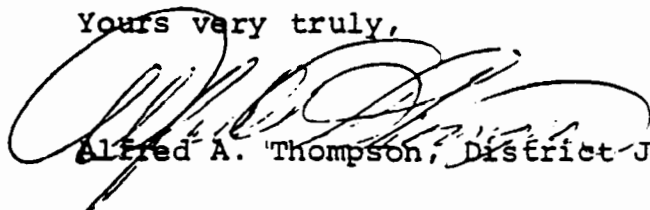
Secs. 12.1-32-06, -07, and -08 speak of incidence of probation, conditions of probation, and hearings on probation. I believe it imperative that the statute be eminently clear that the sections also apply to deferred imposition of sentence. You will note that the language speaks of "sentence to probation." Technically speaking, a person placed under deferred imposition of sentence has not, in fact, been sentenced. Addition of a small amount of explanatory language will remove this uncertainty.

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Finally, speaking of deferred imposition of sentence, I believe the statute should explicitly provide that a person under deferred imposition of sentence loses none of his civil rights during the deferment.

I commend these observations to your review. If I can be of any further assistance to you, I shall appreciate your calling on me.

Yours very truly,



Alfred A. Thompson, District Judge

AAT:rq

copy: Chief Justice and Members of the Supreme Court
Mr. Calvin Rolfson, Court Administrator
Hon. Gene Rone, Judge, Court of Common Pleas, Wapakoneta,
Ohio 45895

16-20-09. (to be redrafted)

16-20-11. (to be redrafted)

16-20-13. (to be repealed - see Section 12.1-14-03)

16-20-14. (to be repealed)

1 16-20-17.2. PENALTY.) Any person (((, association, partnership or
2 corporation))) who shall violate the provisions of section 16-20-17.1 and who
3 shall fail or neglect to disclose the name or names of the sponsors of such
4 political advertisement, or the name or names of the persons (((, associations,
5 partnerships or corporations))) paying for such advertisement, or who shall
6 print, distribute, or cause to be printed or distributed, any matter described
7 in section 16-20-17.1 ((hereof)) which does not comply with the provisions
8 of that section (((16-20-17.1))), shall ((upon conviction thereof be punished
9 by imprisonment in the county jail for not less than thirty days or more than
10 six months, or by a fine of not less than one hundred dollars or more than
11 five hundred dollars, or by both such fine and imprisonment))) be guilty of
12 a class B misdemeanor. Any editor of a newspaper, managing officer of any
13 printing establishment, radio station, novelty concern, or poster or billboard
14 advertising company printing or furnishing such political advertisement without
15 disclosing the information as provided in section 16-20-17.1, shall also be
16 (((liable to the penalties prescribed herein))) guilty of a class B misdemeanor.

1 16-20-19. ELECTIONEERING ON ELECTION DAY - PENALTY.) Any person
2 asking, soliciting, or in any manner trying to induce or persuade, any voter
3 on an election day to vote or refrain from voting for any candidate or the
4 candidates or ticket of any political party or organization, or any measure submit-
5 ted to the people, shall be ((punished by a fine of not less than five dollars
6 nor more than one hundred dollars for the first offense. For the second and
7 each subsequent offense occurring on the same or different election days, he
8 shall be punished by a fine as provided in this section, or by imprisonment
9 in the county jail for not less than five days nor more than thirty days, or by
10 both such fine and imprisonment))) guilty of an infraction. The display upon
11 motor vehicles of adhesive signs which are not readily removable and which pro-
12 mote the candidacy of any individual, any political party, or a vote upon any

13 measure, and political advertisements promoting the candidacy of any individual,
14 political party, or a vote upon any measure, which are displayed on fixed
15 permanent billboards, shall not, however, be deemed a violation of this section.

1 16-20-24. PENALTY FOR VIOLATION OF CHAPTER.) Any person violating
2 any of the provisions of this chapter, for which another penalty is not specifically
3 provided, shall be (((punished by a fine of not more than one thousand dollars,
4 or by imprisonment in the county jail for not more than six months, or by both
5 such fine and imprisonment))) guilty of a class A misdemeanor.

1 16-21-05. VOTING MACHINES - VIOLATIONS (((A MISDEMEANOR)))
2 - PENALTY.) Any (((election officer or other))) person who (((shall violate)))
3 violates any of the provisions of this chapter or who (((shall tamper))) tampers
4 with (((, or injure, or attempt to injure))) or injures any voting machine to
5 be used or being used in any election, or who (((shall prevent or attempt to
6 prevent))) prevents the correct operation of any such machine, or any unauthorized
7 person who (((shall make or have))) makes or has in his possession a key to
8 a voting machine to be used or being used in an election shall be guilty of a
9 class A misdemeanor.

1 16-01-17. ELECTION OFFENSES - PENALTY.) It shall be unlawful for a
2 person to:

- 3 1. Fraudulently alter another person's ballot or substitute one ballot for
4 another, or to otherwise defraud a voter of his vote.
- 5 2. Obstruct an elector on the way to a polling place.
- 6 3. Vote or offer to vote more than once in any election.
- 7 4. Vote or offer to vote in the wrong election precinct or district.
- 8 5. Disobey the lawful command of an election board as defined in chapter
9 16-10.
- 10 6. Exclude an authorized, or accept an unauthorized, vote.
- 11 7. Destroy ballots, ballot boxes, poll lists, or other election supplies,
12 except as provided by law.

13 A violation of subsections 1 through 6 of this section shall be a class A misdemeanor.
14 A violation of subsection 7 occurring after an election or during an election shall
15 be a class C felony, and in other cases shall be a class A misdemeanor.

1 37-01-13. RIGHT-OF-WAY OF NATIONAL GUARD WHILE ON DUTY -
2 EXCEPTIONS - INTERFERENCE WITH (((, A MISDEMEANOR))) - PENALTY.)
3 Commanding officers of any portion of the national guard parading or performing
4 any military duty in any street or highway may require any or all persons in
5 such street or highway to yield the right-of-way, except that the carriage of the
6 United States mail, the legitimate functions of the police, and the progress and
7 operations of hospital ambulances and fire departments shall not be interfered
8 with thereby. The adjutant general may provide for the issuance of special
9 identification plates to be placed upon the privately owned vehicles of members
10 of the national guard in order to properly identify vehicles operated by such
11 members. All persons who hinder, delay, or obstruct any portion of the national
12 guard wherever parading or performing any military duty (((, or who shall
13 attempt to do so,))) shall be guilty of a class B misdemeanor.

1 37-01-16. UNLAWFUL CONVERSION OF MILITARY PROPERTY - UNLAWFUL
2 WEARING OF UNIFORMS AND DEVICES INDICATING RANK - (((MISDEMEANOR)))
3 PENALTY.) Any person who shall:
4 1. Secretly sell, dispose of, offer for sale, purchase, retain after a
5 demand made by a commissioned officer of the national guard, or in
6 any manner pawn or pledge any arms, uniforms, equipment, or other
7 military property issued under the provisions of this title; or
8 2. Wear any uniform or any device, strap, knot, or insignia of any design
9 or character used as a designation of grade, rank, or office, prescribed
10 by law, or by general regulation duly promulgated, for the use of
11 the national guard, or any device, strap, knot, or insignia similar
12 thereto, unless he is a member of the army or navy of the United
13 States or of the national guard of this or any other state, a member
14 of an association wholly composed of soldiers who have been honorably
15 discharged from the service of the United States, or a member of the
16 order of sons of veterans,
17 shall be guilty of a class B misdemeanor (((, and, in addition to the punishment
18 prescribed therefor, shall forfeit to the people of this state one hundred dollars
19 for each offense, to be recovered in the name of this state by a judge advocate.
20 All moneys recovered in an action or proceeding under this section shall be paid
21 to the adjutant general who shall apply the same to the use of the national
22 guard))).

37-01-17. (to be repealed)

37-01-18. (to be repealed)

1 37-01-20. PENALTY FOR RESISTING ((OR AIDING)) WHEN ((COUNTY
2 IN)) STATE OF INSURRECTION EXISTS.) In a place declared by proclamation
3 of the governor to be in a state of insurrection, any person who shall:
4 1. Resist ((or aid in resisting)) the execution of process;
5 2. Aid ((or attempt)) the rescue or escape of another from lawful
6 custody or confinement; or
7 3. Resist ((or aid in resisting)) a force ordered out by the governor
8 to quell or suppress an insurrection,
9 is ((punishable by imprisonment in the penitentiary for not less than two years))
10 guilty of a class C felony.

1 37-01-21. MILITARY PARADES BY CERTAIN BODIES PROHIBITED -
2 EXCEPTIONS - PENALTY.) No body of men, other than the regularly organized
3 units of the national guard and militia and the troops of the United States, shall
4 associate themselves together as a military company or organization or parade
5 in public with firearms, and no municipality shall raise or appropriate any
6 money toward arming or equipping, uniforming or in any other way supporting,
7 sustaining, or providing drill rooms or armories for, any such body of men.
8 Associations wholly composed of soldiers honorably discharged from the service
9 of the United States and members of the order of sons of veterans may parade
10 in public with firearms on Decoration Day, upon the reception of any regiment
11 or company of soldiers returning from service, or for the purpose of escort
12 duty at the burial of deceased soldiers. Students in educational institutions
13 where military science is a prescribed part of the course of instruction, with
14 the consent of the governor, may drill and parade with firearms in public under
15 the superintendence of their teachers. This section shall not prevent any
16 organization authorized to do so by law from parading with firearms nor prevent
17 parades by the national guard of other states. Any person violating any provision
18 of this section is guilty of a class B misdemeanor.

1 37-01-25.1. REINSTATEMENT TO FORMER POSITION - APPEALS - PENALTY.)
2 Any person referred to in section 37-01-25, who within ninety days after receiv-
3 ing a discharge other than dishonorable from such active noncivilian service, and

4 who is not physically or otherwise incapacitated to perform the duties of the
5 position formerly held by him, applies for such position held by him at the time
6 of entering such active service, shall be given such position or one of like
7 seniority, status, and pay, and shall be immune to discharge from said position
8 except for cause, as defined by the department of veterans' affairs, for a period
9 of one year after entering upon the duties of his civilian position. Any such
10 person not so reemployed or who is discharged within a period of one year with-
11 out cause, shall have the right of appeal to the department of veterans' affairs
12 under such rules and regulations as the administrative committee on veterans'
13 affairs may promulgate. If the department of veterans' affairs shall find that
14 such person was not reemployed or was discharged within one year without
15 cause, it may order any officer or other appointing power to comply with the
16 provisions of this chapter. If such person at the time of entering noncivilian
17 service shall have been an officer or employee of the state of North Dakota
18 or any political subdivision or city thereof, having a merit or civil service
19 system with an appeal board, such appeal board shall have the same powers as
20 are granted to the department of veterans' affairs in this section. In order to
21 carry out the provisions of this chapter, the department of veterans' affairs
22 is hereby authorized to contract and pay for technical or other services with
23 any board, council, or commission established by such state agencies, departments,
24 or divisions to administer such systems. Any person violating any of the provisions
25 of this section shall be guilty of ((a misdemeanor and shall be punished by a
26 fine of not more than five hundred dollars, or by imprisonment in the county
27 jail for not more than ninety days, or by both such fine and imprisonment)))
28 an infraction.

37-25-09. (to be repealed)

1 21-01-03. MAXIMUM AMOUNT OF WARRANTS OR INDEBTEDNESS -
2 VIOLATION OF PROVISIONS - LIABILITY - PENALTY.) Except as otherwise
3 provided in this chapter, no warrant purporting to be drawn upon the funds in
4 the hands of the treasurer of any taxing district shall be issued in excess of
5 the amount of cash in the hands of the treasurer exclusive of sinking funds and
6 funds for the payment of interest upon bond issues. No indebtedness shall
7 be incurred, and no undertakings or expenditures authorized, in excess of
8 unencumbered uncollected taxes which have been levied during the current
9 year plus the unencumbered uncollected taxes of the four preceding years.

10 Any warrant issued, contract entered into, or purported indebtedness incurred,
11 in contravention of this section shall be null and void, but this provision is
12 not intended to detract from the provisions of section 21-02-03 with reference
13 to the incontestability of certificates of indebtedness. Any officer knowingly
14 (((and willfully))) executing or participating in the execution of any warrant
15 or contract or attempting to incur any indebtedness of any such taxing district
16 in contravention of this section is guilty of a class A misdemeanor. Any officer
17 executing or participating in the execution of any warrant in contravention of
18 this section shall be personally liable for the payment thereof to the holder in
19 due course.

1 21-02-04. SIGNING FALSE CERTIFICATES - PENALTY.) Any county
2 auditor willfully signing a false certificate upon any certificate of indebtedness,
3 issued pursuant to the provisions of this chapter, is guilty of a class A misdemeanor.
4 Any member of a governing board, or any other officer of any such taxing district,
5 who shall willfully issue or participate in the issuance or purported authorization
6 of any certificate of indebtedness contrary to, or in excess of, the maximum
7 amount permitted under this chapter, shall be liable personally for the payment
8 thereof to the holder in due course.

1 21-03-26. BONDS - CALL FOR BIDS - HOW ADVERTISED - COPY TO
2 TAX COMMISSIONER - PENALTY.) A notice calling for bids for each proposed
3 issue of municipal bonds shall be published at least once in the official newspaper
4 of the county in which the municipality is situated not less than fifteen days
5 nor more than thirty days before the date specified therein for the receiving
6 of such bids. Such notice may be in any form but shall specify the amount of
7 bonds offered for sale and the date of the maturity thereof. A copy of such
8 notice shall be mailed to the state tax commissioner at Bismarck not less than
9 fifteen days before the date specified for the opening bids, and the tax commis-
10 sioner shall keep such notice on file for public inspection. The county auditor,
11 or the auditor or secretary of the municipality advertising such sale, at the
12 same time, shall file with the tax commissioner a statement giving the assessed
13 valuation, the area, the population, and the indebtedness thereof. Failure to
14 publish such notice or to send a copy thereof to the tax commissioner shall
15 not impair the validity of such bonds but shall render unenforceable any
16 executory contract entered into for the sale thereof. An auditor or secretary

17 failing to publish or to send such notice shall be subject to a penalty of not
18 more than five hundred dollars, at the discretion of the district court, to be
19 recovered in an action brought by the state's attorney in the name of the state.
20 The penalty, when collected, shall be paid into the general fund of the county.
21 (((If such failure to publish or send such notice is willfull, the auditor or
22 secretary is guilty of a misdemeanor and shall be punished accordingly.)))

21-03-33. (to be repealed)

21-03-48. (to be repealed)

21-03-49. (to be repealed)

1 21-04-04. MONEY DEPOSITED PROMPTLY - WITHDRAWAL - PENALTY.)
2 The treasurer of a public corporation (((and the state treasurer,))) and every
3 other person ((by law))) legally charged with the custody of public funds,
4 which, according to the provisions of this chapter, shall be deposited in the
5 Bank of North Dakota or in a depository duly designated as provided in this
6 chapter, promptly upon receipt of such funds, shall deposit the same in such
7 depository. All such public funds shall be deposited in the name of the state,
8 state institution, or public corporation to which the same belong. Checks or
9 drafts on funds deposited as herein provided shall be drawn by the legal custodian
10 thereof in his official capacity only, and no checks or drafts on such deposits
11 shall be paid or honored by such depository unless so drawn. (((Any person
12 violating the provisions of this section is guilty of a misdemeanor, and in addition
13 thereto, shall be liable to the public corporation, the state, and any state institution,
14 in a civil action for all damages caused or suffered thereby.)))

1 21-04-23. PENALTY.) Any person violating any of the provisions of
2 this chapter is guilty of a class A misdemeanor (((, and for each offense shall
3 be punished by a fine of not less than twenty-five dollars nor more than one
4 thousand dollars, or by imprisonment in the county jail for not less than ten
5 days nor more than six months, or by both such fine and imprisonment))).

21-05-04. (to be repealed)

1 21-05-08. PENALTY FOR AUDITING ACCOUNT NOT VERIFIED.) Any
2 person, whether or not acting as a member of any board, who (((shall audit

3 and allow))) audits and allows any account, claim, or demand against any
4 county or township required to be itemized and verified, without having the
5 same first duly itemized and verified, shall be guilty of a class B misdemeanor
6 (((and shall be punished by a fine of not more than five hundred dollars, or
7 by imprisonment in the county jail for not more than six months, or by both
8 such fine and imprisonment))).

21-07-04. (to be repealed)

1 21-10-09. PERSONAL PROFIT PROHIBITED - PENALTY.) No member,
2 officer, or employee of the state investment board shall accept any gift, commis-
3 sion, or compensation, other than that authorized by this chapter, for services
4 performed under the provisions of this chapter nor profit in any manner from
5 transactions on behalf of the funds. Any person violating any of the provisions
6 of this section shall be guilty of a class A misdemeanor (((and upon conviction
7 shall be punished by a fine of not more than one thousand dollars, or by impri-
8 sonment for a term of not more than one year, or by both such fine and imprison-
9 ment))).

1 18-01-11. REFUSAL OF WITNESS AT FIRE MARSHAL'S INVESTIGATION
2 TO TESTIFY, PRODUCE RECORDS, OR OBEY ORDER - PENALTY.) Any person
3 summoned to be a witness at any investigation conducted by the state fire
4 marshal or by a deputy fire marshal under the provisions of this chapter who:
5 1. Refuses to be sworn;
6 2. Refuses to testify;
7 3. Disobeys any lawful order of the state fire marshal or of any deputy
8 fire marshal relating to an investigation;
9 4. Fails or refuses to produce any paper, book or document touching
10 any matter under investigation upon the order of the officer conducting
11 the investigation; or
12 5. Otherwise conducts himself contemptuously toward such officer,
13 is guilty of a class B misdemeanor (((and shall be punished by a fine of not
14 more than one hundred dollars, or by confinement in the county jail for not
15 more than ninety days))).

18-01-12. (to be repealed)

1 18-01-13. INTERFERING WITH STATE FIRE MARSHAL OR HIS DEPUTIES
2 (((IS MISDEMEANOR))) - PENALTY.) Any person who (((shall interfere)))
3 interferes in any way with the state fire marshal or a deputy fire marshal
4 in the performance of his duties shall be guilty of a class A misdemeanor.

1 18-01-15. ABATEMENT OF CONDITIONS DANGEROUS TO PERSONS -
2 ORDER - FAILURE TO COMPLY (((IS A MISDEMEANOR))) - PENALTY.) If the
3 state fire marshal or a deputy fire marshal shall find in any building or upon
4 any premises any condition which is a danger or a menace to the safety of life
5 and limb of the occupants of that building or of any adjacent building, such
6 officer shall issue an order for the immediate removal or correction of the
7 dangerous condition. Any owner, agent, or occupant upon whom an order
8 of abatement issued under this section is served, who shall fail to comply
9 with the order within the time specified therein, shall be (((punished by a
10 fine of not more than one hundred dollars, or by imprisonment for not more
11 than thirty days, or by both such fine and imprisonment. Upon))) guilty
12 of a class B misdemeanor, and shall be guilty of a class A misdemeanor upon
13 a second or subsequent offense (((such person shall be punished by a fine
14 of not less than five hundred dollars or by imprisonment for not more than
15 one year, or by both such fine and imprisonment))).

18-01-32. (to be repealed)

1 18-01-33. STATE FIRE MARSHAL HAS AUTHORITY TO PROMULGATE
2 RULES AND REGULATIONS FOR EXPLOSIVES - PENALTY.) The state fire marshal
3 shall have the authority to promulgate safety rules and regulations for the
4 storage, sale, and use of combustibles and explosives, not otherwise provided
5 by law. Any person who willfully (((shall fail, neglect, or refuse))) refuses
6 to comply with the safety rules and regulations as promulgated by the state
7 fire marshal shall be (((punished by a fine of not more than one hundred dollars
8 or by imprisonment in the county jail for not more than thirty days, or by both
9 such fine and imprisonment))) guilty of a class B misdemeanor, provided, that
10 in no event shall the rules and regulations adopted by the state fire marshal
11 be more restrictive than those promulgated by the national fire codes of the
12 national fire protection association and shall not apply to the transportation of
13 explosives and dangerous articles regulated by the interstate commerce commission.
14 Provided (((, however,))) further that the state fire marshal may make reasonable

15 provision for the application or nonapplication (((thereof))) of all or any portion
16 of the national fire codes.

1 18-08-01. PENALTY FOR SETTING PRAIRIE FIRE.) Any person who
2 shall set or cause to be set on fire any woods, marsh, prairie, hay, weeds,
3 or any grass or stubble lands, except as hereinafter provided, shall be guilty
4 of a class A misdemeanor (((, and in addition to being subject to the penalty
5 therefor shall be liable in a civil action to any person damaged by such fire
6 to the extent of such damage))).

18-08-03. (to be repealed)

1 18-08-07. PENALTY IF CAMPFIRE BURNS WOOD, MARSH, PRAIRIE,
2 HAY LANDS, RANCH BUILDINGS, OR IMPROVEMENTS.) (((If a))) A person
3 who makes a camp or other fire, or causes the same to be made, and leaves
4 such fire without having thoroughly extinguished (((the same, and the fire
5 spreads and burns any wood, marsh, or prairie, such person is guilty of a
6 misdemeanor and shall be punished by a fine of not more than two hundred
7 dollars, or by imprisonment in the county jail for not more than one year,
8 or by both such fine and imprisonment, and is liable in a civil action to any
9 person damaged by such fire to the amount of such damage. If such fire shall
10 damage any ranch building, improvement, fence, timber, marsh, cattle range,
11 hay or grass upon any range, or other property, such person is liable for
12 such damage))) it, is guilty of a class B misdemeanor.

1 18-08-09. MISCONDUCT AT FIRES - PENALTY.)

- 2 1. Every person who, at any (((burning of a))) building fire, disobeys
3 the lawful orders of a public officer or fireman, or resists or interferes
4 with the lawful efforts of any fireman or company of firemen to
5 extinguish the fire, or conducts himself in a manner calculated to
6 prevent the fire from being extinguished, or forbids, prevents, or
7 dissuades others from assisting to extinguish the fire, is guilty of
8 a class A misdemeanor.
- 9 2. As used in this section, "building fire" means a fire in a dwelling,
10 commercial building, or other building or structure used by humans
11 as a residence or place of business, or as a storage or holding place
12 for animals or goods.

1 18-08-11. PENALTY.) Any person (((, firm, association, partnership
2 or corporation))) violating the provisions of section 18-08-10 (((, as amended.)))
3 shall be ((punishable by a fine not to exceed one hundred dollars, or not
4 to exceed thirty days in jail, or by both such fine and imprisonment)) guilty
5 of a class B misdemeanor.

1 18-09-03. PENALTY.) (((It shall be unlawful for any))) Any person
2 (((, firm, association, or corporation, on or after the effective date of this
3 chapter to violate))) violating any of the provisions (((hereof))) of this chapter
4 or of the regulations of the state fire marshal made pursuant (((hereto. Any
5 person, firm, association, or corporation violating any of the provisions of this
6 chapter, or said regulations made hereunder shall be deemed))) to it shall be
7 guilty of a class B misdemeanor (((and, upon conviction thereof, shall be
8 punished by a fine of not less than twenty-five dollars, or more than one
9 hundred dollars, or by imprisonment in the county jail not to exceed thirty
10 days, or by both such fine and imprisonment))).

1 25-01.1-35. MEMBERS OF SUPERVISING DEPARTMENT AND OFFICERS
2 AND EMPLOYEES OF INSTITUTIONS PROHIBITED FROM ACCEPTING GIFTS -
3 PENALTY.) No member of the supervising department, nor any officer, agent,
4 or employee thereof, and no superintendent, officer, manager, or employee
5 of any of the institutions under the charge and control of the supervising
6 department, directly or indirectly; for himself or any other person, shall
7 receive or accept any gift or gratuity from any person (((, firm, or corporation)))
8 dealing in goods, merchandise, or supplies which may be used in any of the
9 institutions, or from any employee, servant, or agent of such person (((, firm,
10 or corporation))). Any person violating the provisions of this section is
11 guilty of a class A misdemeanor. Such violation shall be cause for his removal
12 from office.

1 25-01.1-36. EMPLOYEES - PENALTY FOR INFLUENCING APPOINTMENT.)
2 Any member of the supervising department and any officer thereof who exerts
3 any improper influence, by solicitation or otherwise, on the superintendent
4 of any institution under the control of the supervising department, in the selection
5 of any employee or assistant, is guilty of a class A misdemeanor.

25-03-18. (to be repealed - its provisions moved to Chapter 25-01)

1 25-03-22. DISCLOSURE OF INFORMATION - PENALTY.) All certificates,
2 applications, records, and reports made for the purpose of this chapter and
3 directly or indirectly identifying a patient or former patient or an individual
4 whose hospitalization has been sought under this chapter shall be kept confidential
5 and shall not be disclosed by any person except so far as:

- 6 1. The individual identified or his legal guardian, if any, or if he is
7 a minor his parent or legal guardian, shall consent; or
- 8 2. Disclosure may be necessary to carry out any of the provisions
9 of this chapter; or
- 10 3. A court or mental health board may direct upon its determination
11 that disclosure is necessary for the conduct of proceedings before
12 it and that failure to make such disclosure would be contrary to
13 the public interest; or
- 14 4. Requested by any committee of the legislative assembly or as may
15 otherwise be provided by law.

16 Nothing in this section shall preclude disclosure upon proper inquiry of informa-
17 tion as to a patient's current medical condition to any members of the family of
18 a patient or his family physician, relatives or friends. (((Any person violating
19 any provision of this section shall be guilty of a misdemeanor and subject to a
20 fine of not more than five hundred dollars or by imprisonment for not more than
21 one year or by both such fine and imprisonment.)))

1 25-03-28. UNWARRANTED HOSPITALIZATION OR DENIAL OF RIGHTS -
2 PENALTIES.) Any person who willfully (((and maliciously))) causes (((or
3 conspires with or assists another to cause))) the unwarranted hospitalization of
4 any individual under the provisions of this chapter, or the denial to any individual
5 of any of the rights accorded to him under the provisions of this chapter, shall
6 be (((punished by a fine of not exceeding one thousand dollars or by imprisonment
7 of not more than one year, or by both such fine and imprisonment))) guilty of
8 a class A misdemeanor.

25-05-29. (to be repealed - its provisions to be moved to Chapter 25-01)

1 25-13-04. (((MISDEMEANOR TO INTERFERE OR DENY))) PENALTY FOR
2 INTERFERING OR DENYING USE OF FACILITIES.) Any person (((, firm, or
3 corporation,))) or the agent of any person (((, firm, or corporation))) who
4 denies or interferes with admittance to or enjoyment of the public facilities

5 enumerated in section 25-13-02 or otherwise interferes with the rights of a
6 totally or partially blind person shall be guilty of a class A misdemeanor.

1 15-04-18. DESTRUCTION OF TIMBER BY LESSEE PROHIBITED - EXCEPTION
2 - PENALTY.) No lessee of any of the lands authorized to be leased under the
3 provisions of this chapter, nor his heirs or assigns, shall cut down, take away,
4 or cause another person to take away from the leased tract any timber, trees,
5 or wood. The lessee may cut down or use such amount of dead or prostrate
6 trees or timber as may be sufficient to supply him with fuel for his family or
7 for the families of his employees actually residing upon the tract. Any person
8 violating the provisions of this section shall forfeit his lease and all rights and
9 interests thereunder, and shall be liable to the state for damages sustained by
10 the state by reason thereof, and he shall be guilty of a class B misdemeanor.

1 15-04-19. LESSEE NOT TO BREAK OR PLOW UNCULTIVATED LAND -
2 PENALTY.) No lessee of land leased under the provisions of this chapter, his
3 heirs or assigns, shall break, plow, or cultivate any unbroken land on any
4 tract leased, nor cause nor permit it to be done by any other person. Any
5 person who shall violate the provisions of this section shall incur the (((same)))
6 forfeitures and liabilities (((as are))) provided in section 15-04-18, and shall
7 be guilty of a class B misdemeanor.

1 15-04-22. FRAUDULENT BIDDING - PENALTY.) Any person (((,))) who
2 willfully, at any leasing auction held pursuant to section 15-04-10, makes a
3 successful bid and then fails or refuses to make the deposit on the day of the
4 sale as required by section 15-04-11 is guilty of a class B misdemeanor (((, and
5 shall be punished by imprisonment in the county jail for not more than one year
6 or by a fine of not more than five hundred dollars, or by both such fine and
7 imprisonment))).

1 15-05-08. PENALTY FOR MINING COAL IN VIOLATION OF RULES GOVERN-
2 ING.) Any person who mines, removes, or causes to be mined or removed,
3 from any lands subject to the control of the board of university and school
4 lands, any coal, unless mined or removed pursuant to the provisions of this
5 chapter, is liable to the state of North Dakota in damages in the sum of one dollar
6 for each ton of coal mined or removed, and is guilty of a class A misdemeanor
7 (((, and shall be punished by a fine of not less than two hundred and fifty
8 dollars nor more than one thousand dollars, or by imprisonment in the county

9 jail for not less than thirty days nor more than one year, or by both such fine
10 and imprisonment. Each day or fraction of a day occupied in mining or removing
11 coal from any such land is a separate offense under the provisions of this
12 chapter))).

1 15-06-23. CERTIFICATION AND VERIFICATION OF APPRAISAL (((- PENALTY
2 FOR FALSE STATEMENT))).) The county board of appraisers shall certify to
3 the correctness of the appraisal, and file the same with the county auditor who
4 shall immediately transmit the same to the commissioner of university and school
5 lands. The appraisal shall be verified by each of the appraisers, and shall
6 disclose any real or contingent interest that any of the appraisers has in the
7 tract appraised. (((Any member of the county board of appraisers who willfully
8 makes any false statement in the appraisal relating to such interest is guilty of
9 a misdemeanor.)))

15-08-21. (to be repealed)

1 15-34.1-05. VIOLATION OF COMPULSORY SCHOOL ATTENDANCE PROVISIONS
2 - PENALTY.) Any parent, guardian, or other person failing to comply with the
3 requirements of this chapter is guilty of (((a misdemeanor and shall be punished
4 by a fine of not more than one hundred dollars for the first offense, and by a
5 fine of not more than two hundred dollars for the second and each subsequent
6 offense))) an infraction.

15-35-08. (to be repealed)

15-35-13. (to be repealed)

1 15-35-14. USE OF SCHOOL BUILDINGS FOR OTHER THAN SCHOOL PURPOSES
2 (((- PENALTY FOR REMOVAL OF FURNISHINGS))).) School boards having charge
3 of school buildings may permit the use thereof under proper restrictions for any
4 appropriate purpose when not in use for school purposes. Equal rights and
5 privileges shall be accorded to all religious denominations and to all political
6 parties. The use of school buildings under this section shall be without cost
7 to the district, and furniture fastened to the buildings shall not be removed or
8 unfastened. Public school and high school auditoriums and gymnasiums may be
9 let for meetings, entertainments, or conventions of any kind, subject to such
10 restrictions as the governing board of the district shall prescribe. Such use

11 of the buildings shall not be permitted to interfere with the operation of the
12 schools or with school activities. A charge shall be made for the use of the
13 buildings in an amount at least sufficient to defray any cost to the district for
14 light, heat, janitor service, or other incidental expenses connected with such
15 use. (((Any person who removes any school furniture for any purpose other
16 than to repair the same or for the purpose of repairing the schoolroom, shall
17 be punished by a fine of not less than five dollars nor more than ten dollars
18 for each offense.)))

1 15-35-16. PENALTY FOR IMPROPER ERECTION OF SCHOOL BUILDING.)
2 Any architect or other person who draws plans or specifications for, or who
3 superintends the erection of, a public school building, or who erects or constructs
4 a public school building in violation of the provisions of this chapter, shall be
5 (((punished by a fine of not less than one hundred dollars nor more than one
6 thousand dollars))) guilty of an infraction.

1 15-35-17. PENALTY FOR VIOLATING PROVISIONS OF CHAPTER.) Any
2 person who shall violate any of the provisions of this chapter, and each member
3 of any board concurring in any such violation by such board, shall (((be guilty
4 of a misdemeanor and shall be punished by a fine of not less than twenty-five
5 dollars nor more than one hundred dollars))), unless another penalty is specifically
6 provided in this chapter (((for the specific violation))), be guilty of an infraction.

15-40.1-20. (to be repealed)

1 15-43-12. PENALTIES FOR VIOLATING PROVISIONS RELATING TO TEXT-
2 BOOKS.) Any person (((, firm, or corporation))) violating any of the provisions
3 of this chapter is guilty of (((a misdemeanor and shall be punished by a fine
4 of not more than five hundred dollars, or by imprisonment in the county jail
5 for not more than three months, or by both such fine and imprisonment)))
6 an infraction.

1 15-47-15. SCHOOL CONTRACTS - ADVERTISEMENT FOR BIDS - PUBLICATION
2 - EXCEPTIONS.) No contract involving the expenditure of an aggregate amount
3 greater than two thousand dollars, except as hereinafter set forth, shall be
4 entered into by any school district of any kind or class except upon sealed
5 proposals and to the lowest responsible bidder after ten days' notice by at

6 least one publication in a legal newspaper published in the county in which
7 the school district, or a portion thereof, is located. If no newspaper is published
8 in such county, the publication shall be made in a newspaper published in an
9 adjacent county. The provisions of this section shall not apply to the following
10 classes of contracts, namely:

- 11 1. For personal services of employees of the district;
- 12 2. For school text or reference books;
- 13 3. For any article which is not for sale on the open market;
- 14 4. For any patented, copyrighted, or exclusively sold device or feature
15 required to match articles already in use;
- 16 5. For any patented, copyrighted, or exclusively sold article of so
17 distinctive a nature that only one make of the article can be purchased;
18 or
- 19 6. Any building contract.

20 Such exceptions shall be strictly construed. Every member of a school board
21 who participates in a violation of this section shall be guilty of a class B
22 misdemeanor.

1 15-49-01. FALSE ELECTION RETURNS - PENALTY.) Any judge or clerk
2 of election, or school district clerk, or county auditor who willfully violates the
3 provisions of this title in relation to elections (((, or who willfully makes a
4 false election return,))) shall be guilty of a class A misdemeanor.

1 15-49-02. PERSONAL INTEREST IN SCHOOL DISTRICT CONTRACTS PRO-
2 HIBITED - EXCEPTIONS.) No school board member or other school officer shall
3 be interested personally, directly or indirectly, in any contract requiring the
4 expenditure of school funds unless such contract has been unanimously approved
5 by the school board, and a finding made and unanimously adopted by the board
6 and entered into the official minutes that the services or property to be furnished
7 are not otherwise obtainable elsewhere at equal cost. Regardless of this section,
8 any school board, by resolution duly adopted, may provide for the contracting at
9 any time thereafter, for minor supplies or incidental expenses with members of
10 its school board or other school officers, except that the amount thereof shall
11 not exceed that amount required for the acceptance of bids as set forth in section
12 15-47-15. Any violation of the provisions of this section shall be a class A
13 misdemeanor.

1 15-49-03. PURCHASES OF DISTRICT WARRANTS AND CLAIMS AGAINST
2 DISTRICT BY OFFICERS AT LESS THAN PAR PROHIBITED - PENALTY.) Every
3 person who, while an officer of any school district or a deputy or clerk of any
4 such officer, directly or indirectly, buys or traffics in, or in anywise becomes
5 a party to, the purchase of any school warrant, order, or scrip, or of any bill,
6 account, claim, or evidence of indebtedness against his school district for any
7 sum less than the full face value thereof, is guilty of (((a misdemeanor and shall
8 be punished by a fine of not less than fifty dollars nor more than five hundred
9 dollars))) an infraction.

1 15-49-04. UNLAWFUL WITHDRAWAL OF SCHOOL MONEY - PENALTY.) Any
2 person who draws school funds from the county treasury, and who is not at the
3 time a duly qualified treasurer of the school for which he draws the money and
4 authorized to act as such, is guilty of (((a misdemeanor and shall be punished
5 by a fine of not less than twenty-five dollars))) an infraction.

1 15-49-06. UNPAID WARRANTS - FAILURE TO ENDORSE AND PAY IN ORDER
2 - PENALTY.) Any violation by the treasurer of a school district of the provisions
3 of law relating to the endorsement of warrants not paid for want of funds, and
4 to the payment thereof in the order of presentation and endorsement, is (((a
5 misdemeanor and shall be punished by a fine of not more than one hundred
6 dollars))) an infraction.

15-49-07. (to be repealed)

1 15-49-08. PENALTY FOR WILLFUL DISTURBANCE OF SCHOOL.) Any
2 person, whether pupil or not, who willfully molests or disturbs a public school
3 when in session, or who willfully interferes with or interrupts the proper
4 order (((of))) or management of a public school, by act of violence, boisterous
5 conduct, or threatening language, so as to prevent the teacher or any pupil
6 from performing his duty, or who, in the presence of the school children,
7 upbraids, insults, or threatens the teacher, shall be (((punished by a fine of
8 not more than twenty-five dollars, or by imprisonment in the county jail for a
9 period of not more than ten days, or by both such fine and imprisonment)))
10 guilty of a class B misdemeanor.

1 15-49-09. SCHOOL SUPPLIES - PENALTY FOR RECEIVING COMMISSION
2 ON PURCHASE.) Any county superintendent of schools, deputy county superinten-
3 dent of schools, school board member, clerk, treasurer, (((or))) superintendent
4 of schools, principal of a school, or teacher therein, who receives any commission,
5 fee, or reward for or on account of any school books, furniture, or other supplies
6 purchased during his incumbency, for the use of the school district or school
7 under his supervision, is guilty of a class B misdemeanor ((and shall be
8 punished by a fine of not less than fifty dollars nor more than five hundred
9 dollars, and may be removed from office))).

1 15-49-10.1. SOLICITATIONS AND SALES IN SCHOOLS - PERMISSION
2 REQUIRED - ACCOUNTING (((OF))) FOR PROCEEDS - PENALTY.) No person
3 (((, firm, or corporation))) shall sell, solicit for sale, or advertise the sale
4 of any merchandise, product, or service on school premises, or organize students
5 for any such purpose, without first obtaining the permission of the school board
6 or superintendent or principal of such school. The proceeds of any sale, by
7 students or student groups, made for school activities shall be accounted for to
8 the school board not more than thirty days after such sale. Any person who
9 violates any provision of this section shall be guilty of ((a misdemeanor and
10 shall be punished by a fine of not more than one hundred dollars))) an infraction.

1 15-49-11. OFFERING OR GIVING COMMISSION, FEE OR REWARD TO SCHOOL
2 PURCHASING AGENT PROHIBITED - PENALTY.) It shall be unlawful for any
3 person to give or offer to any county superintendent of schools, deputy county
4 superintendent of schools, school board member, clerk, treasurer, (((or)))
5 superintendent of schools, principal of any ((accredited))) school, or to a
6 teacher or employee therein or for such persons to receive, any commission,
7 fee, reward or remuneration for or on account of a purchase of school books,
8 furniture or other supplies for use of the school district, school, their employees,
9 or students. Any person who violates the provisions of this section shall be
10 guilty of a class A misdemeanor ((and shall be punished by a fine of one
11 thousand dollars or by imprisonment in the county jail for one year, or by
12 both such fine and imprisonment))).

1 15-50-07. PENALTY.) Any person (((, firm, association, or corporation)))
2 violating any of the provisions of this chapter (((,))) shall be ((punished by a
3 fine of not more than one hundred dollars or by imprisonment in the county jail

4 for not more than ninety days, or by both such fine and imprisonment))) guilty
5 of a class B misdemeanor.

15-62.1-14. (to be repealed)

1 20.1-01-01. GENERAL PENALTY.) Any person violating a provision of
2 this chapter for which a penalty is not specifically provided is guilty of a
3 class B misdemeanor (((and shall be punished by a fine of not more than one
4 hundred dollars and costs of prosecution, or by imprisonment in the county
5 jail for not more than thirty days, or by both such fine and imprisonment))).

1 20.1-01-08. HUNTING WITH ARTIFICIAL LIGHT PROHIBITED - EXCEPTION.)
2 (((Any person who shall))) It shall be unlawful for any person to pursue,
3 shoot, kill, take or attempt to take any wildlife between sunset of one day and
4 sunrise of the next, with the aid of a spotlight or any other artificial light
5 (((, shall be guilty of a misdemeanor))). This section does not make it unlawful
6 for any person to use a lantern, spotlight, or other artificial light to assist him
7 in pursuing and shooting on his premises any coyote, fox, skunk, mink, raccoon,
8 weasel, owl, rabbit, or other predatory animal or bird, attacking and attempting
9 to destroy such person's poultry, livestock, or other property. It is permissible
10 to use a flashlight of not more than two cells in the aggregate of three volts
11 while taking raccoon during the open season on such animal.

1 20.1-01-09. TYPES OF GUNS LAWFULLY USABLE IN TAKING RACCOON
2 WITH FLASHLIGHT.) In the killing, shooting, pursuit, taking or in attempting
3 to take raccoon with the use of a flashlight of not over two cells in the aggregate
4 of three volts, it is illegal to use a rifle capable of firing a shell larger than a
5 twenty-two long rifle shell, or a shotgun larger than four-ten gauge. (((Violations
6 of this section are misdemeanors.)))

1 20.1-01-23. FENCE GATES TO BE CLOSED - PENALTY - VIOLATOR'S
2 HUNTING LICENSE FORFEITED.) A person who opens a gate or bars in a fence
3 enclosing farm premises shall not leave such gate or bars open unless he is in
4 lawful possession of the premises. If a person violates this section while hunting,
5 he is (((subject to the penalty contained in section 47-27-03))) guilty of a
6 class B misdemeanor, and his hunting license shall be forfeited for the remainder
7 of the then current hunting season. A summary of the provisions of this section
8 shall be printed on each general game and fur-bearer license.

1 20.1-03-01. GENERAL PENALTY.) Any person violating a provision
2 of this chapter for which a penalty is not specifically provided is guilty of
3 a class B misdemeanor (((and shall be punished by a fine of not more than
4 one hundred dollars and costs of prosecution, or by imprisonment in the
5 county jail for not more than thirty days, or by both such fine and imprison-
6 ment))).

1 20.1-03-16. RECORDS REQUIRED OF LICENSED TAXIDERMISTS - CONTENTS
2 - INSPECTION OF RECORDS AND UNMOUNTED SPECIMENS BY GAME OFFICIALS
3 - PENALTY.) Each person having a license to practice taxidermy shall keep
4 a record showing the name of every person who furnished him with a green
5 or unmounted specimen, and the species of each such specimen. The licensee,
6 upon request, shall exhibit such record and all unmounted specimens in his posses-
7 sion to the commissioner, the deputy commissioner, or any bonded game ((war-
8 dens))) warden. Anyone violating this section (((shall forfeit his taxidermist's
9 license for the remainder of the year in which the violation occurred and shall
10 be punished by a fine of not less than ten dollars nor more than twenty-five
11 dollars))) shall be guilty of an infraction.

1 20.1-03-21. FAILURE TO TURN OVER MONEY COLLECTED UNDER PROVISIONS
2 OF THIS TITLE UNLAWFUL - PENALTY.) (((Any))) It shall be unlawful for a
3 person (((who fails, refuses, or neglects))) to fail or refuse to turn over any
4 moneys collected or authorized to be collected under this title, or (((who fails,
5 neglects, or refuses))) to fail or refuse to turn over and deliver to the commissioner
6 all applications, stubs, and mutilated and unused licenses and permits (((, shall
7 be punished by a fine of not less than one hundred dollars nor more than five
8 hundred dollars and costs of prosecution))). The commissioner may take appro-
9 priate action to recover (((on the bond of the person so defaulting any money not
10 turned over))) from the person so defaulting, or on his bond.

1 20.1-03-27. LICENSES TO BE CARRIED ON PERSON - LICENSES TO BE
2 SHOWN OFFICERS UPON DEMAND - PENALTY.) Any person holding a hunting,
3 trapping, or fishing license required under this title shall carry such license
4 on his person when hunting, trapping, or fishing. Upon the request or demand
5 of the commissioner, the deputy commissioner, any game warden, or any police
6 officer, he shall show such license immediately to the officer making the request

7 or demand. Any person violating this section shall be guilty of (((a misdemeanor)))
8 an infraction.

1 20.1-04-01. GENERAL PENALTY.) Any person violating a provision of
2 this chapter for which a penalty is not specifically provided is guilty of a class B
3 misdemeanor (((and shall be punished by a fine of not more than one hundred
4 dollars and costs of prosecution, or by imprisonment in the county jail for not
5 more than thirty days, or by both such fine and imprisonment))).

1 20.1-05-01. GENERAL PENALTY.) Any person violating a provision of
2 this chapter for which a penalty is not specifically provided is guilty of a
3 class A misdemeanor (((and shall be punished by a fine of not more than
4 one hundred dollars and costs of prosecution, or by imprisonment in the
5 county jail for not more than thirty days, or by both such fine and imprison-
6 ment))).

1 20.1-06-01. GENERAL PENALTY.) Any person violating a provision of
2 this chapter for which a penalty is not specifically provided is guilty of a
3 class B misdemeanor (((and shall be punished by a fine of not more than one
4 hundred dollars and costs of prosecution, or by imprisonment in the county
5 jail for not more than thirty days, or by both such fine and imprisonment))).

1 20.1-07-01. GENERAL PENALTY.) Any person violating a provision of
2 this chapter for which a penalty is not specifically provided is guilty of a
3 class B misdemeanor (((and shall be punished by a fine of not more than one
4 hundred dollars and costs of prosecution, or by imprisonment in the county
5 jail for not more than thirty days, or by both such fine and imprisonment))).

1 20.1-08-01. ORDERS AND PROCLAMATIONS HAVE FORCE OF LAW -
2 PENALTY.) Any order or proclamation issued by the governor pursuant to
3 this chapter shall have the force of law. Any person violating a provision of
4 such order or proclamation is guilty of a class B misdemeanor (((and shall be
5 punished by a fine of not more than one hundred dollars and costs of prosecution,
6 or by imprisonment in the county jail for not more than thirty days, or by both
7 such fine and imprisonment))).

1 20.1-09-01. GENERAL PENALTY.) Any person violating a provision of
2 this chapter for which a penalty is not specifically provided is guilty of a
3 class B misdemeanor ((and shall be punished by a fine of not more than
4 one hundred dollars and costs of prosecution, or by imprisonment in the county
5 jail for not more than thirty days, or by both such fine and imprisonment))).

1 20.1-11-01. GENERAL PENALTY.) Any person violating a provision of
2 this chapter for which a penalty is not specifically provided is guilty of a
3 class B misdemeanor ((and shall be punished by a fine of not more than one
4 hundred dollars and costs of prosecution, or by imprisonment in the county
5 jail for not more than thirty days, or by both such fine and imprisonment))).

1 20.1-12-01. GENERAL PENALTY.) Any person violating a provision
2 of this chapter for which a penalty is not specifically provided is guilty of
3 a class B misdemeanor ((and shall be punished by a fine of not more than
4 one hundred dollars and costs of prosecution, or by imprisonment in the
5 county jail for not more than thirty days, or by both such fine and imprisonment))).

1 20.1-13-01. GENERAL PENALTY.) Any person violating a provision of
2 this chapter for which a penalty is not specifically provided is guilty of a
3 class B misdemeanor ((and shall be punished by a fine of not more than one
4 hundred dollars and costs of prosecution, or by imprisonment in the county
5 jail for not more than thirty days, or by both such fine and imprisonment))).

1 23-01-15. RESEARCH STUDIES CONFIDENTIAL - PENALTY.)

- 2 1. All information, records of interviews, written reports, statements,
3 notes, memoranda, or other data procured by the state department of
4 health, in connection with studies conducted by the state department
5 of health, or carried on by the said department jointly with other persons,
6 agencies or organizations, or procured by such other persons, agencies
7 or organizations, for the purpose of reducing the morbidity or mortality
8 from any cause or condition of health shall be confidential and shall
9 be used solely for the purposes of medical or scientific research.
- 10 2. Such information, records, reports, statements, notes, memoranda, or
11 other data shall not be admissible as evidence in any action of any kind
12 in any court or before any other tribunal, board, agency or person.
13 Such information, records, reports, statements, notes, memoranda,

14 or other data shall not be exhibited nor their contents disclosed in
15 any way, in whole or in part, by any officer or representative of
16 the state department of health, nor by any other person, except as
17 may be necessary for the purpose of furthering the research project
18 to which they relate. No person participating in such research project
19 shall disclose, in any manner, the information so obtained except in
20 strict conformity with such research project. No officer or employee
21 of said department shall interview any patient named in any such report,
22 nor a relative of any such patient, unless the consent of the attending
23 physician and surgeon is first obtained.

24 3. The furnishing of such information to the state department of health
25 or its authorized representative, or to any other cooperating agency
26 in such research project, shall not subject any person, hospital,
27 sanatorium, rest home, nursing home or other person or agency
28 furnishing such information, to any action for damages or other relief.
29 (((Any disclosure other than is provided for in subsection 1 of this section, is
30 hereby declared to be a misdemeanor and punishable as such.)))

1 23-01-17. NOISE HARMFUL TO HEALTH AND SAFETY - POWER TO
2 REGULATE - HEARINGS - APPEAL - PENALTY - INJUNCTION.)

3 1. The state health council shall establish reasonable standards, rules,
4 and regulations necessary to prevent and minimize hazards to health
5 and safety caused by the excessive noise or other similar disturbances
6 of farm machinery, tools, construction equipment, motor-powered
7 vehicles, musical instruments or groups, and other devices, operations,
8 objects or activities producing noise levels determined by the health
9 council as hazardous to health and safety. Before establishing any
10 standards, rules, or regulations as herein provided, the council shall
11 hold public hearings thereon with appropriate notice to interested
12 parties. An appeal from any established standard, rule, or regulation
13 may be taken to the courts by any affected person pursuant to chapter
14 28-32. Any person (((, firm, corporation, partnership, association,
15 or other legal entity willfully))) violating these established standards,
16 rules, or regulations shall be guilty of a class A misdemeanor (((and
17 punishable by a fine of not more than one thousand dollars))). The
18 state health council shall have the power to apply to the state's courts
19 to enjoin repeated violations of the standards, rules, and regulations

established hereby.

2. . . .

3. . . .

1 23-02-14. PENALTY FOR FAILURE TO MAKE REPORT OF BIRTH.) Any
2 person required by any provision of this title to report a birth who neglects
3 or refuses to file a proper certificate of birth within the time required, or who
4 omits to answer the question, "Were precautions taken against ophthalmia neona-
5 torum", is guilty of a class B misdemeanor (((and shall be punished by a fine
6 of not less than ten dollars nor more than fifty dollars. All bills or charges
7 for professional services rendered at a birth shall be unlawful if the report of
8 birth is not made))).

1 23-02-27. LOCAL REGISTRAR'S RECORDS CONFIDENTIAL - PENALTY.)
2 A local registrar shall not permit the inspection of any records made by him
3 and shall not disclose any information obtained by him as local registrar to
4 any person except the state registrar of vital statistics, or to officers or employees
5 of the division of vital statistics. (((Any local registrar who shall violate any
6 provision of this section shall be guilty of a misdemeanor.)))

1 23-02-33. NEGLECT OR REFUSAL OF PHYSICIAN TO DELIVER MEDICAL
2 CERTIFICATE TO UNDERTAKER - PENALTY.) Any physician in medical attendance
3 upon a deceased person at the time of death who neglects or refuses to make
4 out and deliver the medical certificate of cause of death to the undertaker,
5 sexton, or other person in charge of the interment, removal, or other disposition
6 of the body, upon request, is guilty of a class B misdemeanor (((and shall
7 be punished by a fine of not less than five dollars nor more than fifty dollars))).

23-02-34. (to be repealed)

23-02-41. (to be repealed)

1 23-02-42. ALTERATION OF LOCAL RECORD OF CERTIFICATE OF BIRTH
2 OR OF DEATH - PENALTY.) Any person who shall willfully alter any certificate
3 of birth or of death, or the copy of any certificate of birth or of death, on file
4 in the office of a local registrar, shall be guilty of a class B misdemeanor (((and
5 shall be punished by a fine of not less than ten dollars nor more than one hundred

6 dollars, or by imprisonment in the county jail for not more than sixty days, or
7 by both such fine and imprisonment))).

1 23-02-43. GENERAL PENALTY.) Any person who shall violate any provision
2 of this chapter for which a penalty is not specifically provided shall be guilty of
3 a class B misdemeanor (((and shall be punished by a fine of not less than five
4 dollars nor more than one hundred dollars))).

23-05-10. (to be repealed)

1 23-05-11. OBSTRUCTING HEALTH OFFICER - PENALTY.) Every person
2 who (((willfully))) opposes or obstructs the performance of (((his))) the legal
3 duty (((by))) of any health officer or physician charged with the enforcement of
4 the health laws is guilty of a class B misdemeanor.

1 23-05-12. VIOLATION OF ORDERS OF BOARDS OF HEALTH - OBSTRUCTING
2 INSPECTION - PENALTY.) Every person who (((willfully))) violates, or refuses
3 (((or omits))) to comply with, any lawful order, direction, prohibition, or regulation
4 prescribed by any board of health or health officer, or any regulation lawfully
5 made or established by any public officer under authority of the health laws
6 (((, or who obstructs any inspection by such board or officer at reasonable
7 hours))), is guilty of a class B misdemeanor (((and shall be punished by
8 imprisonment in the county jail for not more than thirty days, or by a fine
9 of not more than one thousand dollars, or by both such fine and imprisonment))).

1 23-06-05. FAILURE TO BURY WITHIN REQUIRED TIME - PENALTY.) Any
2 person who fails to comply with or who violates any of the provisions of section
3 23-06-04, or who refuses or neglects promptly to obey any order or instruction
4 of the local board of health, is guilty of a class B misdemeanor (((and shall be
5 punished by a fine of not less than ten dollars nor more than fifty dollars, or
6 by imprisonment in the county jail for not more than thirty days, or by both
7 such fine and imprisonment))).

1 23-06-06. NEGLECT OF BURIAL - (((MISDEMEANOR))) PENALTY.)
2 Every person upon whom the duty of making burial of the remains of a deceased
3 person is imposed by law who omits to perform that duty as required in this
4 chapter, is guilty of a class B misdemeanor (((, and in addition to the punishment

5 prescribed therefor, is liable to pay to the person performing the duty in his
6 stead treble the expenses incurred by the latter in making the burial. Such
7 amount shall be recovered in a civil action))).

1 23-06-11. BURIAL WITHOUT BURIAL-TRANSIT PERMIT - PENALTY.)
2 (((Any undertaker, sexton, or other person acting as undertaker, who inters,
3 removes, or otherwise disposes of the body of any deceased person without
4 having received a burial-transit permit, is guilty of a misdemeanor and shall
5 be punished by a fine of not less than twenty dollars nor more than one hundred
6 dollars))) It shall be unlawful for a person, acting as an undertaker, to inter,
7 remove, or otherwise dispose of the body of any deceased person without having
8 received a burial-transit permit.

1 23-06-12. PENALTY FOR TRANSPORTING BODY WITHOUT BURIAL-TRANSIT
2 PERMIT.) (((Any transportation company or common carrier which transports,
3 carries, or accepts, through its agents or employees, for transportation or
4 carriage, the body of any deceased person without an accompanying burial-
5 transit permit issued in accordance with the provisions of this chapter is
6 guilty of a misdemeanor and shall be punished by a fine of not less than fifty
7 dollars nor more than two hundred dollars))) It shall be unlawful for a transpor-
8 tation company or common carrier to transport, or accept for transportation,
9 the body of any deceased person unless that body is accompanied by a burial-
10 transit permit issued in accordance with the provisions of this chapter.

1 23-06-17. BODIES REQUIRED TO BE BURIED OR CREMATED AFTER
2 (((HAVING SERVED THE PURPOSE))) BEING DISSECTED - PENALTY (((FOR
3 NEGLECT))).) Any person who shall receive for dissection any dead body,
4 in pursuance of the provisions of this chapter, shall decently bury the
5 body in some public cemetery or shall cremate the same in a furnace properly
6 constructed for that purpose after the dissection has been made. (((Any person
7 who neglects or violates the provisions of this section is guilty of a misdemeanor
8 and shall be punished by a fine of one hundred dollars.)))

1 23-06-18. DISSECTION - REMOVAL OF BODY - SALE - PENALTY.)
2 Any person who shall receive a body for use under the provisions of section
3 23-06-14 and shall use the same for any other purpose, or who shall remove
4 the same beyond the limits of this state, or who shall buy or sell any such body,

5 or traffic in the same, shall be guilty of a class B misdemeanor (((, and shall
6 be punished by a fine of one hundred dollars. Any))). It shall be unlawful
7 for an officer (((refusing))) to refuse to deliver the remains or body of any
8 deceased person, when demanded under the provisions of (((this))) section
9 23-06-14 (((, is guilty of a misdemeanor and shall be punished by a fine of
10 not less than fifty dollars))).

1 23-06-24. UNLAWFUL REMOVAL OF DEAD BODY - PENALTY.) Every
2 person who removes any part of the dead body of a human being from any
3 grave or other place where the same has been buried, or from any place where
4 the same is deposited while awaiting burial, (((through malice or wantonness,
5 or with intent to sell the same or to dissect it without the authority of))) except
6 as provided by law, is (((punishable by imprisonment in the penitentiary for
7 not less than one year nor more than five years, or in the county jail for not
8 more than one year, or by a fine of not more than five hundred dollars, or
9 by both such fine and imprisonment))) guilty of a class C felony.

1 23-06-26. PURCHASING BODY FORBIDDEN - PENALTY.) Every person
2 who purchases or who receives, except for the purpose of burial, any dead
3 body of a human being, knowing that the same has been removed contrary
4 to the provisions of this chapter, is (((punishable by imprisonment in the
5 penitentiary for not less than one year nor more than five years, or in a county
6 jail for not more than one year, or by a fine of not more than five hundred
7 dollars, or by both such fine and imprisonment))) guilty of a class C felony.

1 23-06-27. UNLAWFULLY OPENING PLACE OF BURIAL - PENALTY.)
2 Every person who, without authority of law, opens any grave or any place
3 of burial, temporary or otherwise, or who breaks open any building wherein
4 any dead body of a human being is deposited while awaiting burial, with intent,
5 either:
6 1. To remove (((any))) the dead body of a human being (((for the
7 purpose of selling the same or for the purpose of dissection)))
8 , or any part thereof; or
9 2. To steal the coffin, or any part thereof, or anything attached thereto
10 or connected therewith, or the vestments or other articles buried with
11 the same,
12 is (((punishable by imprisonment in the penitentiary for not less than one year

13 nor more than two years, or in a county jail for not more than six months, or
14 by a fine of not more than two hundred and fifty dollars, or by both such fine
15 and imprisonment))) guilty of a class C felony.

1 23-06-28. ARRESTING OR ATTACHING DEAD BODY - PENALTY.) Every
2 person who arrests or attaches any dead body of a human being upon any
3 debt or demand whatever, or who detains or claims to detain it for any debt
4 or demand or upon any pretended lien or charge, is guilty of a class B
5 misdemeanor.

1 23-06-29. PENALTY FOR VIOLATING PROVISIONS RELATING TO DISSECTIONS
2 AND GENERAL PENALTY.) Every person who violates any provision of this chapter
3 relative to the dissection of dead bodies of human beings, or who makes or
4 procures to be made any dissection of the body of a human being except by
5 authority of law or in pursuance of (((a))) permission given in accordance
6 with the provision of this chapter, is guilty of a class B misdemeanor. Every
7 person who violates any provision of this chapter (((which is not specifically
8 designated as misdemeanor or))) for the violation of which another penalty is
9 not specifically provided is (((punishable by a fine of not less than five dollars
10 nor more than one hundred dollars))) guilty of an infraction.

1 23-07-07.4. PENALTY.) Any physician or other person engaged in
2 attendance upon a pregnant woman during the period of gestation or at delivery
3 or any representative of a laboratory who violates the provisions of sections
4 23-07-07.1 (((to))) through 23-07-07.3 shall be guilty of (((a misdemeanor and
5 upon conviction shall be punished by a fine of not more than twenty-five dollars)))
6 an infraction, provided that any physician or other person, engaged in attendance
7 upon a pregnant woman, who requests a sample of blood in accordance with the
8 provisions of section 23-07-07.1, whose request is refused, shall not be guilty
9 of violation of the provisions of sections 23-07-07.1 (((to))) through 23-07-07.3.

1 23-07-21. PENALTIES.) (((Each of the following persons shall be guilty
2 of a misdemeanor:

- 3 1. Any person afflicted with a contagious or infectious disease who exposes
4 himself in any public place or thoroughfare;
- 5 2. Any person who exposes, in a public place or thoroughfare, any person
6 afflicted with a contagious or infectious disease;

7 3.))) Any person: ((who)))
8 1. Who violates or fails to obey any of the provisions of this chapter,
9 any lawful rule or regulation made by the state department of health,
10 or any order issued by any state, county, or municipal health officer;
11 ((4. Any person who willfully)))
12 2. Who violates any quarantine law or regulation, or who leaves a
13 quarantined area without being discharged; or
14 ((5. Any person)))
15 3. Who, knowing that he is infected with a venereal disease ((who)),
16 willfully exposes another person to infection ((.)),
17 ((The provisions of subsections 1 and 2 shall not apply when it is necessary
18 to remove a person afflicted with a contagious or infectious disease and the
19 removal is made in a manner not dangerous to the public health))) is guilty of
20 an infraction.

23-12-02. (to be repealed)

1 23-12-03. USE OF PUBLIC DRINKING CUP PROHIBITED - PENALTY.)

2 Any person in charge of any:

- 3 1. ((Railroad train)) Public conveyance;
- 4 2. ((Railroad station)) Passenger terminal building;
- 5 3. Public, parochial, or private school, or other educational institution; or
- 6 4. Public building

7 who furnishes or permits the common use of public drinking cups in such place
8 is guilty of ((a misdemeanor and shall be punished by a fine of not more than
9 twenty-five dollars for each offense))) an infraction.

23-12-05. (to be repealed)

23-12-06. (to be repealed)

1 23-12-07. VIOLATION OF HEALTH LAWS - GENERAL PENALTY.) Any
2 person who willfully violates any provision of this title, if another penalty is
3 not specifically provided for such violation ((or if the violation is not specifically
4 designated as a misdemeanor))), shall be ((punished by imprisonment in the
5 county jail for not more than thirty days, or by a fine of not less than ten
6 dollars nor more than fifty dollars, or by both such fine and imprisonment)))
7 guilty of an infraction.

1 23-13-03. PENALTY.) Any person who violates any provision of section
2 23-13-02, or who, if an owner or operator of a filling station, permits such
3 violation, shall be (((fined not less than ten dollars nor more than two hundred
4 dollars. Each day or part thereof during which any person operates a filling
5 station in violation of the provisions of this chapter shall constitute a separate
6 offense))) guilty of an infraction.

1 23-13-05. PENALTY FOR FAILURE TO CONSTRUCT DOORS OF PUBLIC
2 BUILDINGS AS REQUIRED.) All persons owning or having charge of any building
3 described in section 23-13-04, including trustees and members of boards of
4 directors and boards of education, shall see that the provisions of such section
5 are complied with. Any (((such))) person who shall fail to comply with the
6 provisions of such section, or who shall build, maintain, or permit to be used
7 any (((such))) building contrary to the provisions thereof, shall be guilty of
8 a class B misdemeanor.

1 23-13-06. OWNER OF LAND TO FILL ABANDONED OR DISUSED WELLS,
2 SHAFTS AND OTHER EXCAVATIONS.) Any person (((, firm, or corporation)))
3 owning or occupying lands in this state upon which is located any abandoned
4 or disused well or shaft, shall cause such well or shaft to be filled with earth
5 or stones so as to obviate any possible menace to the safety of persons or property.
6 Any (((violation))) person violating the provisions of this section shall be
7 (((punished by a fine of not to exceed ten dollars for each day such violation
8 is continued))) guilty of a class B misdemeanor.

1 23-15-06. (((VIOLATION A MISDEMEANOR))) GENERAL PENALTY.)
2 Any person violating the provisions of this chapter shall be guilty of a class B
3 misdemeanor (((, and shall be punished by a fine of one hundred dollars or
4 by imprisonment in the county jail for not more than thirty days or by both
5 such fine and imprisonment))).

1 23-16-11. PENALTIES.) Any person (((, partnership, association,
2 or corporation))) establishing, conducting, managing, or operating any institution
3 within the meaning of this chapter, without first obtaining a license therefor
4 as herein provided, or who shall violate any of the provisions of this chapter
5 shall be guilty of (((a misdemeanor, and upon conviction thereof shall be liable
6 to a fine of not more than one hundred dollars for the first offense and not more

7 than five hundred dollars for each subsequent offense, and each day such medical
8 hospital shall operate after a first conviction shall be considered a subsequent
9 offense))) an infraction.

1 23-17-10. VIOLATIONS - PENALTIES.) Any person (((, partnership,
2 association or corporation,))) establishing, conducting, managing or operating
3 any chiropractic hospital or sanatorium within the meaning of this chapter, with-
4 out first obtaining a license therefor as herein provided, or who shall violate
5 any provision of this chapter or regulation thereunder, shall be guilty of (((a
6 misdemeanor, and upon conviction thereof be punished by a fine of not to
7 exceed one hundred dollars and a like amount for any subsequent offense)))
8 an infraction.

1 23-19-09. PENALTIES.) ((Violation of)) Any person violating any
2 of the provisions of this chapter or (((duly promulgated))) health and sanitary
3 regulations (((pursuant thereto))) promulgated hereunder shall (((constitute
4 a misdemeanor and shall be punishable by a fine of not more than one hundred
5 dollars for each offense or by imprisonment in the county jail for not more
6 than thirty days or by both such fine and imprisonment))) be guilty of a
7 class B misdemeanor.

1 23-20-06. PENALTY.) Any person (((, firm, establishment, or institution)))
2 as set forth in section 23-20-04 who (((shall fail))) fails to register and obtain
3 a certificate of registration as required by this chapter shall be (((deemed)))
4 guilty of a class A misdemeanor.

1 23-20.1-10. PENALTIES.) Any person who violates any of the provisions
2 of this chapter, or rules, regulations or orders of the department in effect
3 pursuant thereto (((of the department))) shall be guilty of a class A misdemeanor
4 (((and, upon conviction thereof, shall be punished as provided by law))).

1 23-21.1-09. PENALTIES.) Any person (((, firm, or corporation)))
2 violating any of the provisions of this chapter shall (((, upon conviction, be
3 punishable by a fine of not less than one hundred dollars nor more than one
4 thousand dollars, or by imprisonment in the county jail for not more than thirty
5 days, or by both such fine and imprisonment))) be guilty of a class A misdemeanor.

6 23-23-04. PENALTY.) Any person who violates any provision of this
7 chapter shall (((, upon first offense, be fined not less than one thousand dollars
8 nor more than five thousand dollars, or confined in the county jail for not less
9 than thirty days nor more than twelve months, or both. Each subsequent
10 violation of any provision of this chapter shall constitute a felony and be punish-
11 able by a fine of not less than three thousand dollars nor more than ten thousand
12 dollars, or by imprisonment in the penitentiary for not less than one nor more
13 than three years, or both))) be guilty of a class A misdemeanor.

1 23-25-10. PENALTIES.) Any person violating any provision of this
2 chapter, or any rule, regulation, or order issued thereunder, shall be guilty
3 of a class A misdemeanor (((and upon conviction shall be punished as provided
4 by law))).

1 23-26-09. VIOLATIONS - PENALTY.) Any person (((, including
2 any firm, corporation, municipality or other governmental subdivision or agency,)))
3 violating any provisions of this chapter or the rules and regulations adopted
4 thereunder after written notice thereof by the department, is guilty of a class A
5 misdemeanor. (((Each day of operation in such violation of this chapter or any
6 rules and regulations adopted thereunder shall constitute a separate offense.)))

1 23-27-05. PENALTY.) (((It shall be a misdemeanor to violate the provisions
2 of this chapter and the))) Any person violating the provisions of this chapter
3 shall be guilty of an infraction. The license of an ambulance service operator
4 shall be suspended by the state health council after a hearing, upon proof
5 that the operator does not provide services that meet the standards required by
6 this chapter or does not meet the equipment specifications adopted by the state
7 health council pursuant to this chapter. A suspension order by the state
8 health council may be reviewed by appeal to the district court pursuant to
9 (((the Administrative Agencies Practice Act))) chapter 28-32. A suspended
10 license shall be restored upon a showing that the basis for the suspension
11 no longer exists.

1 23-28-06. FALSIFYING IDENTIFICATION OR MISREPRESENTING CONDITION
2 - PENALTY.) A person who, with intent to deceive, provides, wears, uses,
3 or possesses a false identifying device or identification card of the type described
4 in subsection 2 of section 23-28-02 is guilty of a class B misdemeanor (((and

5 upon conviction may be fined not more than three hundred dollars or imprisoned
6 for not more than ninety days, or both))).

1 23-09-08. BOLTS OR LOCKS TO BE SUPPLIED ON DOORS OF SLEEPING
2 ROOMS.) The doors of all rooms used for sleeping purposes in any hotel,
3 roominghouse, or lodginghouse within this state shall be equipped with proper
4 bolts or locks to permit the occupants of such rooms to lock or bolt such doors
5 securely from within the rooms. Such locks or bolts shall be constructed in
6 a manner which shall render it impossible to unbolt or unlock the door from the
7 outside with a skeleton key or otherwise, or to remove the key therefrom from
8 the outside, while such room is bolted or locked from within. Any hotel, rooming-
9 house, or lodginghouse proprietor who shall fail to comply with the provisions
10 of this section shall be guilty of a class B misdemeanor.

23-09-13. (to be repealed)

23-09-15. (to be repealed)

1 23-09-20. REQUIREMENTS OF FIREPROOF HOTEL - PENALTY FOR FALSE
2 ADVERTISING.) No person (((, firm, or corporation))) shall advertise as
3 fireproof a building or hotel unless all foundations, floors, roofs, walls, stairways,
4 stairs, elevator shafts, and dumbwaiter shafts are constructed of concrete,
5 brick, terra cotta blocks, steel or other fireproof material. ((A violation
6 of this section shall be punished by a fine of not more than five hundred dollars,
7 or by imprisonment in the county jail for not more than one year))) Any person
8 violating the provisions of this section is guilty of a class A misdemeanor.

1 23-09-21. PENALTY - GENERAL.) Any person (((, firm, or corporation)))
2 operating a hotel, restaurant, lodginghouse, or boardinghouse in this state, or
3 letting a building used for such business, without first having complied with
4 the provisions of this chapter, is guilty of a class B misdemeanor (((, and, if
5 another penalty is not specifically provided, shall be punished by a fine of not
6 less than twenty-five dollars nor more than one hundred dollars, or by imprison-
7 ment in the county jail for not more than ninety days))).

23-10-08. (to be repealed)

1 23-10-12. REVOCATION OF LICENSE - PENALTY FOR OPERATING WITHOUT
2 LICENSE.) The state laboratories department may revoke any license issued
3 under the provisions of this chapter upon the failure of the holder thereof to
4 comply with the provisions of this chapter or with any of the rules and regulations
5 made and promulgated by the department. Any person (((, the members of
6 any firm, and the officers of any corporation, private or municipal,))) who
7 shall maintain or operate a motor or trailer court without first obtaining a license,
8 or who shall operate the same after the revocation of the license, shall be guilty
9 of (((a misdemeanor and shall be punished by a fine of not more than three
10 hundred dollars, or by imprisonment in the county jail for not more than ninety
11 days, or by both such fine and imprisonment))) an infraction.

TYPED Pat Scheuf
 PROOF READ Karen + Pat
 DATE 5/22/74

Tentative Agenda

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, May 23-24, 1974
 Room G-2, State Capitol
 Bismarck, North Dakota

Thursday, May 23

9:30 a.m. Call to order
 Roll call
 Minutes

9:45 a.m. Consideration of criminal sections in Title 34, NDCC

11:00 a.m. Consideration of criminal sections in Title 24, NDCC

12:00 noon Luncheon recess

1:15 p.m. Reconvene - consideration of criminal sections in
 Title 39, NDCC

5:00 p.m. Recess

* * * * *

Friday, May 24

9:00 a.m. Reconvene - consideration of criminal sections in
 Title 19, NDCC

11:00 a.m. Consideration of criminal sections in Title 26, NDCC

12:00 noon Luncheon recess

1:15 p.m. Reconvene - continue consideration of criminal sec-
 tions in Title 26

2:00 p.m. Consideration of staff memorandum on accomplice
 liability and related items

2:30 p.m. Consideration of criminal sections in Title 32, NDCC

3:45 p.m. Consideration of criminal sections in Title 33, NDCC

5:00 p.m. Adjourn

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, May 23-24, 1974
Room G-2, State Capitol
Bismarck, North Dakota

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:35 a.m. on Thursday, May 23, 1974, in Committee Room G-2 of the State Capitol in Bismarck, North Dakota.

Legislative members

present:

Senator Freed
Representatives Austin, Hilleboe, Lundene, Murphy

Legislative members

absent:

Senator Jones
Representatives Rau, Royse, Stone

Citizen members

present:

Judges Teigen, Heen, Glaser

Citizen members

absent:

Judge Pearce
Sheriff Wells
Chief Anderson
Messrs. Webb, Wolf

Others present:

Mr. William Daner, ND Bankers Association
Mr. Aaron Rash, State Chemist
Mr. William Johnson, State Laboratories Department
Mr. Richard Hilde, Bureau of Criminal Investigation
Mr. Thomas Woodmansee, ND Beverage Dealers
Association
Mr. Vern Pederson, State Highway Department
Major Orlin Benson, State Highway Patrol
Mr. Jim DuBois, Northwestern Bell Telephone Company
Mr. Clare Aubol, Motor Vehicle Registrar
Mr. Carl Schulz, Fargo Police Department
Mr. Robert Wefald, Assistant Committee Counsel

The Chairman noted that Committee minutes would be available later during the meeting, and the Committee commenced consideration of the criminal sections in Title 34 of the Century Code. (The sections considered by the Committee are assembled and appended to these minutes as Appendix "A". The appendix reflects Committee action to the extent possible.)

The first section considered was Section 34-01-04 which prohibits force, threats, or intimidation against employees designed to prevent the employees from continuing

their work or from accepting new work, or to induce employees to relinquish their work. The offenses defined are presently classified as misdemeanors, and the staff, in accordance with a recommendation of the Commissioner of Labor, reclassified all as Class B misdemeanors.

Representative Hilleboe suggested that the word "LABORERS" in the title should be changed to "EMPLOYEES" as the word "LABORERS" was no longer in common usage. Representative Murphy inquired whether the offenses defined in this section were not covered elsewhere. The Committee Counsel replied that he did not think so, unless the person being interfered with or intimidated was a public servant.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that the word "LABORERS" in the section heading be inserted in triple parentheses, that "EMPLOYEES" be inserted immediately thereafter in the section heading, and that when so amended the section be accepted.

The Committee commenced consideration of Section 34-01-05 which is essentially similar to Section 34-01-04 except that it prohibits the intimidation, force, or threats against employers.

The Committee Counsel apologized to Representative Murphy, noting that there was a possibility that the provisions of Sections 34-01-04 and 34-01-05 could be covered by Sections 12.1-17-05 prohibiting "menacing" and 12.1-17-06 dealing with criminal coercion. The Committee discussed the applicability of these sections at length. Mr. Wefald noted that Subsection 2 of Section 12.1-17-06, which provides an affirmative offense when the purpose of the threat was to cause another to conduct himself in his own best interest, might prohibit some prosecutions for the type of offenses listed in Section 34-01-04. Representative Hilleboe noted that the intimidation involved might not have anything to do with a threat to commit a crime or accuse anyone of a crime, or to expose a secret or publicize an asserted fact. It might simply be intimidation by refusing to do business with a particular employer if he hires a particular employee.

After further discussion, IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 34-01-05 be accepted as drafted.

The Committee considered Section 34-01-06, which reads as follows:

1 34-01-06. HINDERING CITIZEN FROM OBTAINING OR ENJOYING
2 EMPLOYMENT - PENALTY.) Every person (((, corporation, or agent
3 thereof,))) who (((maliciously))) intentionally interferes or hinders, in
4 any way, any citizen of this state from obtaining employment or from
5 enjoying employment already obtained from any other person (((or cor-
6 poration))), is guilty of a class A misdemeanor.

The Committee Counsel noted that Section 34-01-06 was essentially a restatement of the provisions of Section 23 of the State Constitution which specifically provides that the offense defined therein is a "misdemeanor". Thus, Section 34-01-06 could be repealed and reliance could be placed on Section 23. However, Section

12.1-32-12 would then have to be revised so that the word "misdemeanor". which, when used outside of Title 12.1 is defined as a Class A misdemeanor, would also have to provide the same when the word "misdemeanor" is used standing alone in a constitutional provision.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE AND SECONDED BY REPRESENTATIVE AUSTIN that Section 34-01-06 be repealed, and reliance for prosecution of the offense defined therein be placed on Section 23 of the Constitution. The Committee discussed this motion, and the language of the section which referred to "citizens".

THEREAFTER, JUDGE TEIGEN MADE A SUBSTITUTE MOTION WHICH WAS SECONDED BY REPRESENTATIVE LUNDENE that Section 34-01-06 be approved, except that it be reclassified as a Class B misdemeanor and the word "CITIZEN" in the section heading be changed to "PERSON" and the words "citizen of this state" be deleted and the word "person" be substituted therefor.

The Committee then discussed the desirability of deleting the word "maliciously" in line 3 of Section 34-01-06, especially in light of the fact that that word was contained in Section 23. The Chairman suggested that the question of prosecution for hindering the obtaining or enjoying of employment should be under the constitutional provision providing criminal liability. JUDGE TEIGEN, WITH THE CONSENT OF HIS SECOND, WITHDREW HIS SUBSTITUTE MOTION AND THEREAFTER REPRESENTATIVE HILLEBOE'S MOTION TO REPEAL SECTION 34-01-06 CARRIED, with Judge Heen voting in the negative.

The Committee considered Section 34-01-07, which reads as follows:

1 34-01-07. BLACK LIST PROHIBITED - (((PUNISHMENT))) PENALTY.)
2 Every corporation (((, and every officer, agent, or employee thereof, and
3 every person acting on behalf of any corporation, who))) which exchanges
4 with or furnishes or delivers to any other corporation (((or to any officer,
5 agent, employee, or person thereof))) any "black list", is guilty of a
6 class A misdemeanor.

The Committee Counsel noted that this section was a statutory statement of the prohibition against black lists contained in Section 212 of the Constitution.

Representative Hilleboe stated he believed that this section was a gross class discrimination and should be repealed. He said that he felt this way because there was no prohibition against partnerships, sole proprietorships, or anyone else maintaining black lists, only corporations. Representative Murphy inquired as to how one defined a "black list". The Committee Counsel noted that the term was not defined in the Constitution, and that he had deliberately avoided defining it so that it could have whatever judicial definition has been or will be given to the term "black list" as contained in Section 212.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY JUDGE GLASER, AND CARRIED, with the Chairman voting in the negative, to repeal Section 34-01-07.

The Committee then gave further consideration to Section 34-01-06, and IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED, with Representative Murphy voting in the negative, that the action by which Section 34-01-06 was repealed be reconsidered.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY JUDGE HEEN, AND CARRIED, with Representative Murphy voting in the negative, that the word "CITIZEN" in line 1 of Section 34-01-06 be inserted in triple parentheses and the underscored word "PERSON" be inserted before the word "FROM" in that same line; that the triple parentheses around the word "maliciously" in line 3 be deleted and that the underscored material in that same line also be deleted; and that in line 4 the words "citizen of this state" be inserted in triple parentheses and the underscored word "person" be inserted immediately before the word "from"; and that when so amended the section be accepted.

The Committee considered Section 34-01-09, which reads as follows:

1 34-01-09. VIOLATION OF HOURS OF EMPLOYMENT FOR CITY EMPLOY-
2 EES - PENALTY.) Any employee who shall willfully violate section
3 34-01-08, and any city officer and any member of any board, bureau, or
4 commission having charge of or supervision over the employment of any
5 such employee who shall require (((such employee))) him to violate (((such)))
6 that section, is guilty of a class B misdemeanor (((and shall be punished
7 by a fine of not less than ten dollars nor more than one hundred dollars,
8 or by imprisonment in the county jail for not more than thirty days, or by
9 both such fine and imprisonment))).

After discussion, it was decided that Section 34-01-09 was not necessary, and IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 34-01-09 be recommended for repeal.

The Committee considered Section 34-01-09.1, which reads as follows:

1 34-01-09.1. MAXIMUM HOURS OF LABOR - PENALTY.) No employ-
2 ee, other than the chief of a fire department in any city of North Dakota
3 with a population of twenty thousand or more inhabitants, shall be re-
4 quired to work more than one hundred and forty-four hours in any two-
5 week period but shall be subject to call while off duty in case of emergency
6 not to exceed more than one hundred and forty-four hours in this two-week
7 period. Any person who shall violate any provision of this section shall be
8 guilty of (((a misdemeanor and shall be punished by a fine of not less than
9 twenty-five dollars nor more than one hundred dollars))) an infraction.

After discussion, including notation of the fact that these hours would now be governed by the Federal Fair Labor Standards Act, IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 34-01-09.1 be recommended for repeal.

The Committee considered Section 34-01-10, which reads as follows:

1 34-01-10. FRAUD BY EMPLOYEE IN SECURING TRANSPORTATION OR
2 ADVANCEMENT - (((MISDEMEANOR))) PENALTY.) Every employee who,
3 with intent to defraud, shall accept or receive transportation from any
4 point in this state to or in the direction of the place where he has con-
5 tracted to perform labor, or shall accept or receive the benefit of any
6 other pecuniary advancements, provided by his employer under an agree-
7 ment on the part of such employee to perform labor or render services in
8 repayment of the cost of such transportation or of such other benefits,
9 shall be guilty of a class B misdemeanor if he shall neglect or refuse to
10 render services or perform labor or pay money of a value equal to the full
11 amount paid for such transportation or other benefits. The breach of such
12 agreement by any such employee shall be prima facie evidence of his in-
13 tent to defraud. (((Any person guilty of such offense shall be punished
14 by a fine of not more than twenty-five dollars, and by imprisonment in
15 the county jail for not more than sixty days nor less than ten days.)))

The Committee Counsel noted that the staff was recommending that this section be repealed. He stated that the actions prohibited therein are adequately covered by the opportunity for civil recovery, and that additional criminal liability is not necessary. In addition, the Committee Counsel noted that the Committee on Industry and Business "B", which is studying labor laws, is also recommending the section for repeal.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 34-01-10 be repealed.

The Committee considered Section 34-01-15 which requires any employer who requires an employee or prospective employee to have a medical examination, to bear the cost of that examination. Presently, an employer who refuses or fails to do so is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars. The staff reclassification is as an infraction.

Representative Hilleboe inquired concerning who would pay the medical examination fee if the employer refused. After discussion, it was decided it was unclear where primary civil liability for the examination costs would fall.

Representative Hilleboe suggested that we should also have statutes which provide that an employer, who requires his employees to have a uniform while on the job, should furnish that uniform, and should be criminally liable for failure to do so.

IT WAS MOVED BY JUDGE GLASER, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED, with three negative votes, that Section 34-01-15 be accepted as drafted.

The Committee considered Section 34-01-16 which sets forth qualifications to hold office in a labor union, and provides that anyone who has been convicted of a crime involving moral turpitude or a felony is not to serve as an officer in a labor union. The Committee Counsel noted that this section was brought to the Committee's attention to point out that it provided a disqualification in addition to those provided for in Chapter 12.1-33. The Committee discussed the constitutionality of the section but took no further action with regard to it.

The Committee then considered Section 34-01-17, which reads as follows:

1 34-01-17. UNLAWFUL TO DISCRIMINATE BECAUSE OF AGE - PENALTY.)
2 No person (((, persons, firm, association or corporation,))) carrying on
3 or conducting within this state(((,))) any business requiring the employ-
4 ment of labor(((,))) shall refuse to hire, employ, or license, or shall bar
5 or discharge from employment, any individual between the ages of forty
6 and sixty-five years, solely and only upon the ground of age; when the
7 reasonable demands of the position do not require such an age distinction;
8 and, provided that such individual is well versed in the line of business
9 carried on by such person (((, persons, firm, association or corporation))),
10 and is qualified physically, mentally and by training and experience to
11 satisfactorily perform the labor assigned to him or for which he applies.
12 Nothing herein shall affect the retirement policy or system of any employer
13 where such policy or system is not merely a subterfuge to evade the pur-
14 poses of that section. Any person ((or corporation)) who violates any
15 of the provisions of this section shall be guilty of a class B misdemeanor
16 (((, and shall be punished by a fine of not to exceed twenty-five dollars
17 or by imprisonment in the county jail for not to exceed one day or by both
18 such fine and imprisonment))).

The Committee discussed this section at length, and particularly whether it was appropriate to limit its provisions to people between the ages of 40 and 65 years. It was noted that, if the section were appropriate, it should cover any age group so that there would be no employment discrimination based solely upon the ground of the age of the individual involved.

IT WAS MOVED BY JUDGE HEEN AND SECONDED BY REPRESENTATIVE LUNDENE that Section 34-01-17 be accepted as drafted. During discussion of this motion, REPRESENTATIVE MURPHY MADE A SUBSTITUTE MOTION WHICH WAS SECONDED BY JUDGE TEIGEN, AND CARRIED, to insert triple parentheses before the word "the" in line 3; to delete the beginning triple parentheses before the comma in line 4, and to insert the underscored word "employees" before the first word "shall" in that same line; to insert triple parentheses before the word "between" in line 5; to insert triple parentheses after the comma in line 6; to insert triple parentheses around the words "and only" in line 6; to insert triple parentheses around the word "such" in line 7; to insert triple parentheses around the word "labor" in line 11 and insert the underscored word "duties" before the word "assigned" in that same line; and when so amended, that the section be accepted.

The Committee considered Section 34-01-18, which reads as follows:

1 34-01-18. DISCRIMINATION AGAINST WOMEN JOCKEYS PROHIBITED -
2 PENALTY FOR VIOLATION.) No person shall discriminate between horse
3 jockeys on the basis of the sex of the jockey and all women jockeys shall
4 be permitted to ride a horse in any horse race conducted in accordance
5 with the laws of this state. Any person violating the provisions of this
6 section shall be guilty of a class B misdemeanor.

It was noted that this section was superfluous as horse racing was not allowed in North Dakota, and, at any rate, if job discrimination on the basis of sex were to be outlawed, it should be outlawed generally and not on a job-by-job basis. IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY REPRESENTATIVE HILLEBOE that Section 34-01-18 be repealed. REPRESENTATIVE LUNDENE MADE A SUBSTITUTE MOTION TO ADOPT, WHICH MOTION FAILED FOR LACK OF A SECOND. THEREAFTER, REPRESENTATIVE MURPHY'S MOTION CARRIED, with Representative Lundene voting in the negative.

The Committee considered Section 34-05-03, which reads as follows:

1 34-05-03. OFFICIALS AND EMPLOYERS TO FURNISH CERTAIN INFOR-
2 MATION - PENALTY.) All public officers and all employers of labor shall
3 furnish to the commissioner of labor such information as he may request
4 relating to their respective offices or businesses. The information obtained
5 shall be preserved, systematized, and tabulated by the commissioner. In-
6 formation concerning the business or affairs of any (((individual, firm, com-
7 pany, or corporation))) person shall not be divulged or made public by the

8 commissioner or anyone in the employ of his office (((, and a violation of
9 this provision shall be punished by a fine of not more than five hundred
10 dollars, or by imprisonment for not more than one year, or by both such
11 fine and imprisonment))). Any officer, any employer of labor, and any
12 operator or manager of any establishment wherein labor is employed, who
13 shall fail or refuse to furnish the commissioner with the information asked
14 for by him under the provisions of this section, shall be guilty of a class B
15 misdemeanor (((and shall be punished by a fine of not less than ten dollars
16 nor more than fifty dollars, or by imprisonment in the county jail for not
17 less than seven days nor more than thirty days, or by both such fine and
18 imprisonment))). No prosecution shall be commenced for a violation of the
19 provisions of this section relating to the furnishing of information until
20 a second blank has been mailed to the defaulting officer or employer and
21 he has been given twenty days to complete and return the same.

The Committee Counsel noted that Section 12.1-13-01 could be relied upon to provide a penalty for divulging information made confidential by this section, and therefore the language on lines 9, 10, 11, and 12, relating to a punishment for release of confidential information, is recommended for deletion.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY JUDGE TEIGEN, AND CARRIED that the words "of labor" in line 2 be inserted in triple parentheses; that the words "of labor" on line 11 be inserted in triple parentheses; that the words "labor is" on line 12 be inserted in triple parentheses and the underscored words "persons are" be inserted before the word "employed" in that same line; and that when so amended the section be accepted.

The Committee considered Section 34-06-19 which provides a general penalty for violation of the rules and regulations issued under Chapter 34-06, or for violating any of the provisions of that chapter. Chapter 34-06 deals with minimum wages and hours for North Dakota workers. Presently, the section is classified as a misdemeanor punishable by from \$25 to \$100, by imprisonment from 10 days to three months, or by both such fine and imprisonment. The staff has reclassified the section as a Class B misdemeanor. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 34-06-19 be accepted as drafted.

The Committee considered Section 34-06.1-09, which reads as follows:

1 34-06.1-09. PENALTIES.) Any person who violates any provision of
2 this chapter, or who discharges or in any other manner discriminates

3 against any employee because such employee has made any complaint to
4 his employer, the commissioner, or any other person, or has instituted, or
5 caused to be instituted any proceeding under or related to this chapter,
6 or has testified or is about to testify in any such proceedings, shall (((,
7 upon conviction thereof be subject to a fine of not more than one hundred
8 dollars, or by imprisonment for not more than thirty days, or by both such
9 fine and imprisonment))) be guilty of a class B misdemeanor. Any employer
10 who violates this chapter by failing to keep the records required hereunder,
11 or to furnish such records to the commissioner upon request, or who falsi-
12 fies such records, or who hinders, delays, or otherwise interferes with the
13 commissioner or his authorized representative in the performance of his duties
14 in the enforcement of this chapter, shall ((upon conviction be subject to a
15 fine of not more than one hundred dollars))) be guilty of an infraction.

The Committee Counsel said that the provisions of the last sentence probably are adequately covered by Sections 12.1-11-02 and 12.1-08-01 dealing respectively with false statements in governmental matters and physical obstruction of a governmental function. He noted that Chapter 34-06.1 deals with equal pay for men and women.

Representative Hilleboe noted that the complaint language on lines 2 through 6 does not tie into a violation of the chapter, but could be a complaint based on any grievance, even one unrelated to the employment situation. The Committee Counsel suggested that the words "relating to a violation of any provision of this chapter" be substituted for the words, on line 3 and line 4, reading: "to his employer, the commissioner, or any other person".

IT WAS MOVED BY JUDGE TEIGEN AND SECONDED BY REPRESENTATIVE HILLEBOE that Section 34-06.1-09 be amended by inserting triple parentheses before the word "to" on line 3 and inserting triple parentheses after the word "person" on line 4, and inserting the underscored words "relating to a violation of any provision of this chapter" immediately thereafter; and that when so amended this section be accepted.

It was noted that the motion relating to Section 34-06.1-09 should include deletion of the sentence commencing on line 9, and THEREFORE THE MOTION WAS AMENDED WITH THE CONSENT OF THE MOVANT AND HIS SECOND to include insertion of triple parentheses before the capitalized word "Any" in line 9; the deletion of the triple parentheses in line 14; the insertion of a period after the word "dollars" in line 15 and deletion of the underscored material and period at the end of that same line.

Representative Hilleboe suggested that the word "any" in line 3 be changed to "a". Judge Teigen noted that that might suggest that the complaint had to be in

writing, whereas "any complaint" would be construed to include complaints made in any manner. THEREAFTER, JUDGE TEIGEN'S MOTION CARRIED.

The Committee considered Section 34-07-21, which reads as follows:

1 34-07-21. PENALTY - VIOLATION OF CHAPTER - CERTIFYING
2 LABOR STATEMENT.) Any person who shall employ any minor con-
3 trary to the provisions of this chapter or to any order or regulation
4 issued by the commissioner of labor as provided in this chapter shall
5 be guilty of (((a misdemeanor and shall be punished by a fine of not
6 less than twenty dollars nor more than fifty dollars for each separate
7 offense))) an infraction. Any person authorized to sign a certificate as
8 prescribed in this chapter who certifies to any material false statement
9 therein shall be guilty of (((a misdemeanor and shall be punished by
10 a fine of not less than twenty dollars nor more than fifty dollars))) an
11 infraction.

The Committee Counsel noted that Chapter 34-07 dealt with the employment of minors. He said that the last sentence of Section 34-07-21 could be repealed as its subject matter is covered by the provisions of Section 12.1-11-02 prohibiting false statements in governmental matters. However, he noted that the penalty under Section 12.1-11-02 was greater than the penalty proposed in Section 34-07-21.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 34-07-21 be amended by inserting triple parentheses before the second dash in line 1; inserting triple parentheses after the word "STATEMENT" in line 2; inserting the second word "to" on line 3 in triple parentheses, and inserting the underscored word "of" before the word "any" in that same line; inserting the word "issued" in triple parentheses in line 4 and inserting the underscored word "promulgated" before the word "by" in that same line, inserting triple parentheses before the word "in" and after the word "chapter" in that same line, and inserting the underscored words "by law" before the word "shall" at the end of that same line; inserting triple parentheses before the capitalized word "Any" in line 7; deleting the triple parentheses on line 9; inserting a period after the word "dollars" in line 10, and deleting the underscored words "an infraction" and the period at the end of the same line; and that when so amended, the section be accepted.

The Committee recessed for lunch and reconvened at 1:15 p.m., at which time it commenced consideration of Title 39, and the criminal sections therein.

The first section considered was Section 39-01-02 which provides that state-owned motor vehicles are to have the agency name painted on their side, sets forth exceptions to that requirement, and provides that any state official or employee who uses a motor vehicle which is not marked as required by the section is guilty of a

misdemeanor punishable by a fine from \$50 to \$100, by imprisonment for not more than 30 days, or by both fine and imprisonment. The staff reclassified the section as a Class B misdemeanor.

IT WAS MOVED BY JUDGE HEEN AND SECONDED BY REPRESENTATIVE LUNDENE that Section 39-01-02 be accepted as drafted. Representative Hilleboe noted that there was an inconsistency in the statute in that it required, in the first sentence, that all vehicles owned by institutions should have the lettering; while in the penultimate sentence it stated that the lettering requirements should not apply to "institutional" vehicles. REPRESENTATIVE HILLEBOE MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the word and comma "institutional." in the second to the last sentence of the section be inserted in triple parentheses, and that when so amended the section be accepted.

The Committee next considered Section 39-01-07 which provides a general penalty for violation of Chapter 39-01. The current penalty is a misdemeanor, which the staff has reclassified as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 39-01-07 be accepted as drafted.

The Committee considered Subsection 4 of Section 39-01-15 which provides that any person who uses a physically handicapped parking privilege unlawfully or wrongfully is guilty of a misdemeanor, and the staff has reclassified it as an infraction. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Subsection 4 of Section 39-01-15 be accepted as drafted.

The Committee considered Section 39-02-07, which reads as follows:

1 39-02-07. PENALTY FOR VIOLATION OF CHAPTER.) Any officer or
2 employee who shall refuse or fail to perform the duties prescribed by
3 this chapter shall be (((punished by a fine of not more than five hun-
4 dred dollars, or by imprisonment in the county jail for not more than
5 six months, or by both such fine and imprisonment))) guilty of a class B
6 misdemeanor.

The Committee Counsel noted that this section could be repealed as its provisions are covered by Section 12.1-11-06 which mandates that a public servant perform his statutory duties. He stated that Chapter 39-02 dealt with powers and duties of the Motor Vehicle Registrar. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Section 39-02-07 be repealed as its provisions were essentially covered by Section 12.1-11-06.

The Committee considered Section 39-03-11, which reads as follows:

1 39-03-11. (((MISDEMEANOR TO IMPERSONATE))) PENALTY FOR
2 IMPERSONATING PATROLMAN (((AND DECEIVE PERSONS))) Any
3 person shall be guilty of a class A misdemeanor if:

- 4 1. Without authority, he wears the badge of a member of the
5 highway patrol, or a badge of similar design (((which
6 would tend))) . with intent to deceive anyone:
- 7 2. He impersonates a member of the highway patrol or other
8 officer or employee of the highway patrol with intent to
9 deceive anyone: or
- 10 3. Without authority, he wears a uniform likely to be con-
11 fused with the official uniform of the highway patrol.

The Committee Counsel suggested that this section could be repealed, and reliance could be placed on Section 12.1-13-04 which provides for punishment of those who would impersonate highway patrolmen. He stated that if the section would be retained by the Committee, questions could be raised concerning the enforceability of Subsection 3; e.g., "without authority" from whom, or "likely to be confused" by whom.

Major Benson of the Highway Patrol stated that he felt the language in Subsection 1 should be retained, and there was a general discussion regarding whether Section 12.1-13-04 would adequately cover the several provisions in Section 39-03-11.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the triple parentheses on line 5 of Section 39-03-11 be deleted; that the triple parentheses and underscored material in line 6 of that same section be deleted; and that when so amended the section be accepted.

The Committee considered Section 39-03-12 which provides a general penalty for a violation of Chapter 39-03 for which a specific penalty is not provided. Presently, the section is classified as a misdemeanor punishable by a fine of not more than \$100 or by imprisonment for not more than 30 days, with increased punishment for second or subsequent offenses committed within one year. The staff had reclassified this section as a Class B misdemeanor. **IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY JUDGE HEEN, AND CARRIED** that Section 39-03-12 be accepted as drafted.

The Committee considered Section 39-03A-25 which prohibits the making of a false statement or the falsification of any records relating to the highway patrolmen's retirement system. The Committee Counsel noted that the criminal provisions which are contained in the last sentence could be deleted, as the section was adequately covered by Section 12.1-11-02 which also prohibits falsifications in governmental matters. **IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED** that the last sentence of Section 39-03A-25 be inserted in triple parentheses; that all underscored material and triple parentheses internally located in that sentence be deleted; and that when so amended the section be accepted.

The Committee considered Subsection 3 of Section 39-04-18 which provides a penalty for any person who would violate the provisions of Section 39-04-18, setting forth exemptions to motor vehicle registration requirements. Presently, the penalty is a fine of not to exceed \$100 or imprisonment for not to exceed 30 days or both. The staff had reclassified this section as a Class B misdemeanor.

IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY REPRESENTATIVE HILLEBOE that Section 39-04-18, Subsection 3. be accepted as drafted.

Mr. Aubol inquired as to what the status would be of Section 39-04-16 if the language "In addition to any other penalties provided by law, any" were deleted from the beginning of Subsection 3 of Section 39-04-18. The Committee Counsel noted that Section 39-04-16 provided a civil penalty, and the language that was previously appended to the beginning of Subsection 3 of Section 39-04-18 was certainly not necessary to allow a civil penalty to operate. THEREAFTER, REPRESENTATIVE MURPHY'S MOTION CARRIED.

The Committee considered Section 39-04-41 which provides a general penalty for violations of the chapter dealing with motor vehicle registration. The section is presently classified as a misdemeanor punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or by both such fine and imprisonment. The staff had reclassified it as a Class B misdemeanor. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 39-04-41 be accepted as drafted.

The Committee considered Section 39-04-42, which reads as follows:

1 39-04-42. CONSTRUCTION CONTRACT TRUCK REGISTRATION -
2 PENALTY.) Every person (((, firm or corporation))) holding a construc-
3 tion contract with the state of North Dakota or any of its political subdivi-
4 sions, who hires, uses, or procures the use of trucks which are not
5 registered in this state, shall file a statement with the motor vehicle
6 registrar, identifying each such truck by description and motor number
7 and disclosing the date such truck was first used in this state and the
8 purpose and extent of such use. Any person (((, firm or corporation)))
9 violating any provision of this section shall be guilty of a class B misde-
10 meanor (((and subject to a fine of not more than one hundred dollars, or
11 to imprisonment in the county jail for not more than thirty days, or to
12 both such fine and imprisonment))).

Representative Hilleboe asked what the point of this section was. Mr. Pederson suggested that it was to ensure that trucks involved in carrying out contracts with the State be appropriately registered. Representative Hilleboe suggested that the same type of provision should apply to contractors dealing with private parties. Mr. Aubol noted that he hadn't received any complaints relating to this section during his time in office.

IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY REPRESENTATIVE HILLEBOE that Section 39-04-42 be repealed. The Chairman suggested that the word "with" on line 3 be deleted and the underscored words "to be performed"

within" be inserted in lieu thereof. After further discussion, REPRESENTATIVE MURPHY'S MOTION CARRIED.

The Committee considered Section 39-04A-08 which provides a general penalty for violation of Chapter 39-04A setting out additional registration fees for motor vehicles engaged in the transportation of property. The section is presently classified as a misdemeanor punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or by both fine and imprisonment. The staff reclassified it as a Class B misdemeanor. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 39-04A-08 be accepted as drafted.

The Committee considered Section 39-05-07, which reads as follows:

1 39-05-07. FALSE STATEMENT IN APPLICATION OR OTHER DOCUMENT
2 - PENALTY.) Any person who knowingly shall make any false statement
3 in any application or other document provided for in this chapter shall be
4 (((punished by a fine of not more than one thousand dollars, or by impris-
5 onment for not more than one year, or by both such fine and imprison-
6 ment))) guilty of a class A misdemeanor.

The Committee Counsel noted that the section could be repealed and reliance could be placed on Section 12.1-11-02 to provide criminal liability for persons who falsify title registration applications, etc. He noted that Section 12.1-11-02 prohibits falsifications in governmental matters, and that that section is classified as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Section 39-05-07 be repealed.

The Committee considered Section 39-05-11 which provides a penalty for a person who alters any certificate of title or forges a certificate of title; alters or falsifies an assignment of a certificate of title or a registration card; or uses a certificate of title, registration card, or assignment knowing it to have been altered or forged. The offense is classified in the draft revision as a Class C felony.

The Committee Counsel stated that it was his belief that the section could be repealed as its provisions were covered by Section 12.1-24-01 prohibiting forgery or counterfeiting. He noted that under Subsection 2 (b) (4) of Section 12.1-24-01, the offense would be classified as a Class C felony also.

After discussion, it was noted that Subsection 4 of Section 39-05-11 which prohibits the use of altered or forged documents of title to an automobile would not be covered by Section 12.1-24-01. After further discussion, IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 39-05-11 be accepted as drafted.

The Committee considered Section 39-05-16, which reads as follows:

1 39-05-16. LEGAL OWNER OF A MOTOR VEHICLE NOT TO TRANSFER
2 TITLE UNLESS HE HAS CERTIFICATE - PENALTY.) The owner of a motor
3 vehicle for which a certificate of title is required shall not sell or transfer

4 his title to such vehicle unless he shall have obtained a certificate of title,
5 nor unless, after having procured such certificate, he shall comply in
6 every respect with the provisions of this chapter. Any person violating
7 the provisions of this section is guilty of a class A misdemeanor.

Representative Hilleboe inquired as to the necessity for this section. He suggested that delivery of the certificate of title should be tied to the sale. Representative Murphy noted that the subject matter was covered in a more comprehensive way under Section 39-05-17 which required the owner who was selling or transferring title to a motor vehicle to endorse an assignment upon the certificate and transfer it to the purchaser if the purchaser was to receive title. If not, the owner was to endorse a statement of lien on the certificate and send it to the Motor Vehicle Registrar.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Section 39-05-16 be repealed.

The Committee discussed Section 39-05-17 which had previously been noted by Representative Murphy. The section was presently classified as a misdemeanor, and the staff, with the concurrence of the Motor Vehicle Registrar, had reclassified it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 39-05-17 be accepted as drafted.

The Committee considered Section 39-05-25, which reads as follows:

1 39-05-25. RECEIVING, TRANSFERRING, OR HAVING POSSESSION OF
2 STOLEN VEHICLES - FELONY.) Any person, other than an officer of the
3 law engaged at the time in the performance of his duty as such officer,
4 who, with intent to procure or pass title to a motor vehicle which he knows
5 or has reason to believe has been stolen, shall:
6 1. Receive or transfer possession of the same from or to another; or
7 2. Have in his possession any such motor vehicle,
8 shall be guilty of a class C felony.

The Committee Counsel noted that this section could be repealed as it is covered by the theft provisions contained in Chapter 12.1-23, and, under Subsection 1 (d) of Section 12.1-23-05, the offense would be classified as a Class C felony. The Committee Counsel noted, however, that under Subsection 3 of Section 12.1-23-02, the actor has to knowingly receive stolen property. Thus, the language in Section 39-05-25 relating to the actor's "reason to believe" that property was stolen seems not to be covered under Section 12.1-23-02. The language is partially covered by Subsection 2 (b) of Section 12.1-23-09 which provides a presumption if a "dealer" has acquired a motor vehicle (or any other property) for substantially less than its reasonable value. The presumption is that the motor vehicle was stolen.

After discussion, IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that Section 39-05-25 be repealed.

The Committee considered Section 39-05-28, which reads as follows:

1 39-05-28. PENALTY FOR DEFACING, DESTROYING, OR ALTERING
2 ENGINE, SERIAL, OR IDENTIFICATION NUMBERS.) Any person who with
3 fraudulent intent shall:
4 1. Deface, destroy, or alter the engine, serial, or identification num-
5 ber of a motor vehicle;
6 2. Place or stamp other than the original engine, serial, or identifica-
7 tion number, or a number assigned, upon a motor vehicle; or
8 3. Sell or offer for sale any motor vehicle bearing an altered or de-
9 faced engine, serial, or identification number, other than the
10 original or a number assigned,
11 shall be guilty of a class C felony ((and shall be punished as provided
12 in this chapter))).

During discussion of this section, it was noted that the Committee considered a similar section, 51-07-04.1, which related to the defacing, altering, or destroying of serial numbers on farm machinery. The Committee Counsel noted that that section had been classified as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY REPRESENTATIVE LUNDENE that Section 39-05-28 be reclassified as a Class A misdemeanor, and when so reclassified that the section be accepted. After discussion, it was decided that it would be more appropriate to leave Section 39-05-28 as a Class C felony, and increase the penalty attached to Section 51-07-04.1 so that it too would be a Class C felony. REPRESENTATIVE MURPHY, WITH THE CONSENT OF HIS SECOND, WITHDREW HIS MOTION.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that the Committee reconsider the action by which it accepted Section 51-07-04.1. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 51-07-04.1 be reclassified as a Class C felony, and that when so reclassified the section be adopted.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 39-05-28 be accepted as drafted.

The Committee considered Section 39-05-33 which provides a general penalty for violations of Chapter 39-05. Presently, the penalty is classified as a misdemeanor punishable by a fine of up to \$500, by imprisonment for up to six months, or by both. The staff had reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 39-05-33 be accepted as drafted.

The Committee considered Section 39-05-34, which reads as follows:

1 39-05-34. PENALTY FOR FELONY.) Any person who violates any of
2 the provisions of this chapter constituting a felony, unless a different
3 penalty specifically is provided therefor, shall be punished by a fine of
4 not less than five hundred dollars nor more than five thousand dollars, or
5 by imprisonment for not less than one year nor more than five years, or
6 by both such fine and imprisonment.

The Committee Counsel noted that this section must be repealed as its provisions conflict with the penalty classification format of Senate Bill No. 2045. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 39-05-34 be repealed.

The Committee considered Subsection 5 of Section 39-06-17 which provides a penalty for violation of that section which relates to the issuance of restricted drivers' licenses. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Subsection 5 of Section 39-06-17 be accepted as drafted.

The Committee considered Section 39-06-40 which would make it a Class B misdemeanor to display a canceled, revoked, suspended, or fraudulently altered license; to lend a license to anyone else; to display a license which does not belong to the actor; to refuse to surrender the license to the Highway Commissioner upon lawful demand; to permit any unlawful use of the license; or to do any other act forbidden, or to fail to perform any act required, by Title 39.

The Committee Counsel noted that Subsection 5 relating to the falsification of an application for an operator's or chauffeur's license was recommended for deletion because its provisions were covered by Section 12.1-11-02. He also stated that the last subsection providing generally for failure to perform an act required by Title 39 was also recommended for deletion because it conflicted with Section 39-07-06 which provides a general title penalty. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 39-06-40 be accepted as drafted.

The Committee considered Section 39-06-40.1, which reads as follows:

1 39-06-40.1. REPRODUCING OPERATOR'S OR DRIVER'S LICENSE OR
2 PERMIT - PENALTY.)
3 1. It shall be unlawful for any person to print, photograph, photo-
4 stat, duplicate or in any way reproduce any operator's or
5 driver's license or permit or facsimile thereof in such a manner
6 that it would be mistaken for a valid license, or to display or
7 have in his possession any such printed, photograph, photostat.

- 8 duplicate, reproduction or facsimile unless authorized by the
9 provisions of the North Dakota law.
- 10 2. It shall also be unlawful for any person to alter in any manner
11 any operator's or driver's license or permit, or to display or
12 have in his possession any altered operator's or driver's license
13 or permit.
- 14 3. Every person violating the provisions of this section shall be
15 guilty of a class B misdemeanor (((and upon conviction thereof
16 shall be punished by imprisonment for not less than ten days
17 nor more than six months and there shall be imposed in addition
18 thereto a fine of not less than one hundred dollars nor more than
19 five hundred dollars. The minimum penalty provided in this
20 section shall be mandatory notwithstanding any other provisions
21 of law))).
- 22 4. The commissioner upon receiving a record of the conviction or
23 other satisfactory evidence of the violation of this section shall
24 revoke forthwith the operator's or driver's license or driving
25 privileges of such person. The period of revocation shall be
26 determined at the discretion of the commissioner.

Representative Hilleboe inquired as to the meaning of the phrase "chauffeur's license". He pointed out that that phrase was used in Section 39-06-40 but was not used in Section 39-06-40.1. Mr. Pederson noted that there was no such license in North Dakota, but that other states do have such licenses.

Representative Hilleboe noted that both Sections 39-06-40 and 39-06-40.1 refer to the possession of an altered license, and, to that extent, were duplicitous. Additionally, he noted that one of the sections (39-06-40.1) referred to a driver's permit, while the other section did not. Representative Hilleboe said that he thought the two sections should be drafted in such a way as to make them coordinate in every respect. The Chairman directed the staff to redraft Sections 39-06-40 and 39-06-40.1 to make their provisions coordinate, and to take into account Judge Heen's comments concerning the desirability of including unlawful display of expired licenses.

The Committee considered Section 39-06-42 which provides a penalty for anyone who drives on the public highway when his driver's license or driving privilege is suspended or revoked. Presently, the offense is punishable by imprisonment

from two days to six months, and an additional fine of not more than \$500. The staff had reclassified this section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Section 39-06-42 be accepted as drafted.

Mr. Pederson, noting that Section 39-06-42 made internal reference to Section 39-06.1-11, stated that the district court (Judge Hager) in Grand Forks had recently held Section 39-06.1-11 unconstitutional. That section provides that temporary work permits may be issued to drivers whose licenses have been suspended under the "point system". He stated that Judge Hager's decision was based primarily on the fact that the section did not apply to persons whose licenses had been revoked under other statutes.

The Committee considered Section 39-06.1-04, which reads as follows:

1 39-06.1-04. FAILURE TO APPEAR, PAY STATUTORY FEE, POST BOND
2 - PROCEDURE - PENALTY.) If a person fails to choose one of the methods
3 of proceeding set forth in sections 39-06.1-02 or 39-06.1-03, he shall be
4 deemed to have admitted to commission of the violation charged, and the
5 official having jurisdiction shall report such fact to the licensing authority
6 within ten days after the date set for the hearing. Failure to appear at
7 the time designated, after signing a promise to appear, without paying the
8 statutory fee or posting and forfeiting bond shall be a class A misdemeanor.
9 Failure to appear at the hearing shall also be deemed an admission of commis-
10 sion of the violation charged.

The Committee Counsel noted that the last sentence had been added as a result of a suggestion from Judge Glaser, and that similar language would be proposed to the Committee on Judiciary "B" when it considers amendments to the "point system" statutes as a whole. Representative Hilleboe stated that Section 39-06.1-04 should be classified to coordinate with Section 39-07-08 which provides a penalty for failure to show up at a hearing in other instances. He stated that they should both be either Class A misdemeanors or Class B misdemeanors.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Section 39-06.1-04 be reclassified as a Class B misdemeanor and when so reclassified that the section be accepted.

The Committee considered Section 39-07-06 which provides a general penalty for violations of Title 39. Presently, the section provides for penalties for a first conviction (a fine of not more than \$100, or imprisonment for not more than 10 days), a second conviction (\$200 and 20 days), and third and subsequent convictions (\$500 or six months, or both). The staff reclassified it as a Class B misdemeanor.

The Committee Counsel questioned whether there should be a general penalty section for the entire Title. If so, should all other sections which are classified as

Class B misdemeanors be amended so as to rely on the general Title penalty. In the alternative, should the general Title penalty be classified as an infraction.

After further discussion, IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Section 39-07-06 be reclassified as an infraction, and that when so reclassified the section be accepted.

The Committee considered Section 39-07-08 which relates to the signing of promises to appear by persons halted for traffic offenses, and sets out a penalty for someone who willfully violates his written promise to appear. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 39-07-08 be accepted as drafted.

The Committee considered Section 39-08-01 which was set forth in two alternatives, as follows:

Alternative No. 1

1 39-08-01. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR
2 OR (((NARCOTIC DRUGS))) CONTROLLED SUBSTANCES NOT TO OPERATE
3 VEHICLE - PENALTY (((- DIAGNOSIS AND TREATMENT))).)

4 1. No person shall drive or be in actual physical control of any vehi-
5 cle upon a highway in this state if:

6 a. He is (((an habitual user of narcotic drugs or is))) under
7 the influence of a (((narcotic drug))) controlled substance,
8 or;

9 b. He is under the influence of intoxicating liquor.

10 2. (((Upon conviction, any))) A person violating any provision of
11 this section shall be (((punished by a fine of not less than one
12 hundred dollars nor more than two hundred dollars, or by im-
13 prisonment in the county jail for not more than thirty days, or
14 by both such fine and imprisonment. Upon a second conviction
15 for a violation occurring within eighteen months of a previous
16 violation resulting in a prior conviction, such person shall be
17 punished by imprisonment in the county jail for not less than
18 three days nor more than ninety days, and in the discretion of
19 the court, a fine of not less than one hundred fifty dollars nor

20 more than five hundred dollars. In the event the complaint
21 does not include the allegation that if convicted, such conviction
22 would be the second such conviction as provided in this section,
23 the court may take judicial notice of such fact if indicated by the
24 records of the state highway department or make such finding
25 based on other evidence))) guilty of a class B misdemeanor.

26 (((3. The court may, upon conviction of a person under this section,
27 but prior to sentencing, refer him to an approved treatment
28 facility for diagnosis. Upon receipt of the results of this diag-
29 nosis, the court may impose a sentence as prescribed in this
30 section or it may sentence the person to treatment in a facility
31 approved by the state division of alcoholism and drug abuse.)))

Alternative No. 2

1 39-08-01. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR
2 OR (((NARCOTIC DRUGS))) CONTROLLED SUBSTANCES NOT TO OPERATE
3 VEHICLE - PENALTY (((- DIAGNOSIS AND TREATMENT))).)

4 1. No person shall drive or be in actual physical control of any vehi-
5 cle upon a highway in this state if:

6 a. He is an habitual user of narcotic drugs or is under the influ-
7 ence of a (((narcotic drug))) controlled substance, or;

8 b. He is under the influence of intoxicating liquor.

9 2. (((Upon conviction, any))) A person violating any provision of
10 this section shall (((be punished by a fine of not less than one
11 hundred dollars nor more than two hundred dollars, or by im-
12 prisonment in the county jail for not more than thirty days, or by
13 both such fine and imprisonment))) guilty of a class B misdemeanor.

14 Upon a second conviction for a violation occurring within eighteen
15 months of a previous violation resulting in a prior conviction.

13 such person shall be punished by imprisonment in the county jail
17 for not less than three days nor more than ~~((ninety))~~ thirty
18 days, and in the discretion of the court, a fine of not less than
19 one hundred fifty dollars nor more than five hundred dollars. In
20 the event the complaint does not include the allegation that, if con-
21 victed, such conviction would be the second such conviction as
22 provided in this section, the court may take judicial notice of such
23 fact if indicated by the records of the state highway department or
24 make such finding based on other evidence.

25 ~~((3. The court may, upon conviction of a person under this section,~~
26 ~~but prior to sentencing, refer him to an approved treatment facility~~
27 ~~for diagnosis. Upon receipt of the results of this diagnosis, the~~
28 ~~court may impose a sentence as prescribed in this section or it~~
29 ~~may sentence the person to treatment in a facility approved by the~~
30 ~~state division of alcoholism and drug abuse.))~~

The Committee Counsel explained the alternative sections, noting that the first alternative was basically designed to delete the reference to increased punishments for second and subsequent offenses, as that reference was violative of the premises on which the new criminal code was based. The second alternative left the special sentencing provisions for second convictions within eighteen months, but reduced the potential jail time to make it accord with the maximum jail time available under a Class B misdemeanor classification. Additionally, the Committee Counsel noted that the language relating to "habitual user of narcotic drugs" was deleted in Alternative No. 1 but was left in Alternative No. 2. He stated that the reason for the deletion in Alternative No. 1 was to point out that it would be nearly impossible to get a conviction for driving while "an habitual user of narcotic drugs". Finally, the Committee Counsel noted that the phrase "narcotic drug" had been deleted in both alternatives, and the phrase "controlled substance" had been substituted therefor.

Representative Murphy inquired as to the meaning of the phrase "actual physical control", and the Committee discussed this topic, noting that it was utilized in instances in which the offender could be tied to the automobile, but it could not be proven that he drove the automobile.

IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY REPRESENTATIVE MURPHY that Alternative No. 1 be accepted as drafted. After discussion, it was decided that the subsections of Section 39-08-01 which contained changes should be considered separately. REPRESENTATIVE LUNDENE, WITH THE CONSENT OF HIS SECOND, WITHDREW HIS MOTION.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that the Committee give tentative approval to Subdivision a of Subsection 1 of Section 39-08-01 as contained in Alternative No. 1.

The Committee then considered Subsection 2 of Section 39-08-01, and Judge Heen noted the fact that some courts felt that they were able to suspend sentences under the "second conviction" language at the present time. Representative Lundene stated that he liked the Alternative No. 2 language for Subsection 2. Representative Murphy stated that he favored the Subsection 2 language contained in Alternative No. 1.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY JUDGE HEEN, AND CARRIED, with the Chairman and Representative Murphy voting in the negative, that tentative approval be given to Subsection 2 of Section 39-08-01 as contained in Alternative No. 2.

The Chairman stated that his opposition to the motion was based primarily on the fact that he did not want to establish exceptions to the general rule that the Committee had developed to the effect that specific punishments would not be set out, and all punishments would be in accordance with the offense classification format as established in Senate Bill No. 2045.

The Committee considered Subsection 3 of Section 39-08-01 which was recommended for deletion in both alternatives. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Subsection 3 of Section 39-08-01 be deleted as its provisions were covered by Subsection 4 of Section 12.1-32-02.

THEREAFTER, IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY JUDGE HEEN, AND CARRIED, with Representative Murphy voting in the negative, that Section 39-08-01 be accepted as amended, that is that Alternative No. 1 be accepted, except that Subsection 2 of the section be in the form presented in Alternative No. 2.

The Committee considered Section 39-08-02 which presently provides that a person is to be punished by a fine of from \$10 to \$50 for employing a person as a driver of a passenger vehicle when he knows that that person is an alcoholic. The staff has extended the section to include coverage of persons addicted to controlled substances, or given to excessive use of controlled substances, and has reclassified the section as an infraction. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 39-08-02 be accepted as drafted.

The Committee considered Section 39-08-03 which deals with reckless driving and aggravated reckless driving. The staff draft would reclassify reckless driving as a Class B misdemeanor and aggravated reckless driving as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 39-08-03 be accepted as drafted.

The Committee considered Section 39-08-04 which dealt with "hit and run" drivers where the accident involves death or personal injury to another. The present punishment is imprisonment for not less than 30 days nor more than one year, a fine of not less than \$100 and no more than \$5,000, or by both such fine and imprisonment. The staff reclassified the section as a Class A misdemeanor.

The Committee discussed the status of a person who would be involved in such an accident and then would leave the scene in an attempt to get help for the injured person. Judge Heen noted that Section 39-06-08 provides authorization for the person to make arrangements for the carrying of the injured person to a physician, surgeon, or hospital. Judge Heen stated that when such cases are in his court he takes into account a good faith attempt to get help.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 39-08-04 be accepted as drafted.

The Committee considered Section 39-08-05 which prohibits "hit and runs" where there is only damage to another vehicle which is attended by its own driver. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 39-08-05 be accepted as drafted.

The Committee considered Section 39-08-12, which reads as follows:

- 1 39-08-12. FALSE REPORTS - PENALTY.) Any person who gives
- 2 information reports as required in sections 39-08-09, 39-08-10, and
- 3 39-08-11 knowing or having reason to believe that such information is
- 4 false shall be (((fined not more than two hundred dollars, or imprisoned
- 5 for not more than thirty days, or both))) guilty of a class B misdemeanor.

The Committee Counsel stated that this section could be repealed as the provisions are covered by Section 12.1-11-02 prohibiting falsifications in governmental matters. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Section 39-08-12 be repealed.

The Committee considered Section 39-08-19 which provides a penalty for the harassment of domestic animals through operation of motorcycles, snowmobiles, or other motor vehicles. Presently, such willful harassment is punishable by a fine of not more than \$500, by imprisonment for not more than 30 days, or both. The staff reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 39-08-19 be accepted as drafted.

The Committee considered Section 39-10-65 which prohibits the operation of motor vehicles on flood protective works. Presently, a person guilty of such operation may be punished by a fine of not to exceed \$200, imprisonment for not more than 30 days, or both. The staff reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with Representative Murphy voting in the negative, that Section 39-10-65 be accepted as drafted.

The Committee considered Section 39-12-21 which provides that if a person refuses to stop and submit the vehicle and load which he is driving to a weighing when directed to do so by a police officer or other "agent of this state having police powers relating to motor vehicles", he is guilty of a misdemeanor punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or by both. The staff reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 39-12-21 be accepted as drafted.

The Committee considered Section 39-16-30 which provides a penalty for any person who operates a motor vehicle while his license or operating privilege has been suspended or revoked pursuant to the chapter dealing with financial responsibility (39-16). In addition, this section provides a penalty for a violation of any provision of Chapter 39-16 for which a specific penalty is not provided, and makes it a crime to forge or sign any notice provided for under Section 39-16-05 to the effect that a policy or bond is in effect, or to forge any proof of financial responsibility, or to offer for filing any notice or evidence of proof of financial responsibility which has been forged. The language relating to forged notices of financial responsibility has been deleted as it is covered by Sections 12.1-24-01 and 12.1-24-03 relating to forgery and deceptive writings. The remaining subsections of Section 39-16-30 have been classified as Class B misdemeanors. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 39-16-30 be accepted as drafted.

The Committee considered Section 39-16.1-21 which presently provides that it is a misdemeanor for a person whose license or operating privilege has been suspended under the provisions of Chapter 39-16.1, relating to proof of financial responsibility, to continue driving. Additionally, it presently provides that it is a misdemeanor to violate any provision of the chapter for which a specific penalty is not otherwise provided. The staff reclassified both offense definitions as Class B misdemeanors. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 39-16.1-21 be accepted as drafted.

The Committee considered Section 39-18-07 which provides a general penalty for violation of the chapter dealing with the regulation of mobile home dealers. Presently, such a violation is punishable by a fine of from \$25 to \$100. The staff reclassified the section as an infraction. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 39-18-07 be accepted as drafted.

The Committee considered Subsection 4 of Section 39-21-47, which reads as follows:

- 1 39-21-47. . . .
- 2 4. Any person who is not physically handicapped who uses the
- 3 above-mentioned flag as a distress signal or for any other
- 4 purpose shall be guilty of (((a misdemeanor and upon convic-
- 5 tion thereof shall be punished by a fine of not exceeding one
- 6 hundred dollars))) an infraction.

The Committee Counsel noted that this section could be repealed according to statements made by Highway Department representatives. Mr. Pederson pointed out that the whole section was not working, as the Highway Department did not have any of the distress signals available for the physically handicapped. He indicated that when the bill was passed the signals were relatively cheap, but that the cost has gone up greatly in the interim. Additionally, he stated that the people responsible for safety felt that it would not be conducive to the security of a handicapped person to hang out a flag indicating that he was handicapped.

Mr. Pederson suggested that, since it was not working, the whole section could be repealed. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 39-21-47 be repealed.

The Committee considered Section 39-21-51 which prohibits anyone from altering odometers or other mileage recorders on motor vehicles for the purpose of deceiving anyone. The Committee Counsel noted that the section was submitted with the words and punctuation: ". firm, corporation, or association" in line 3 inserted in triple parentheses. Presently, a person who alters an odometer is guilty of a misdemeanor punishable by a fine of not more than \$500. The staff reclassified the section as an infraction. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 39-21-51 be accepted as drafted.

The Committee considered Section 39-22-07 which prohibits a motor vehicle dealer from allowing his license to be used by another dealer. If that course of action takes place, the offending dealer's license is to be revoked, and he is to be fined not less than \$50 nor more than \$200. The staff reclassified this section as an infraction. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY JUDGE HEEN, AND CARRIED that Section 39-22-07 be accepted as drafted.

The Committee considered Section 39-22-13 which provides a general penalty for violation of Chapter 39-22 dealing with motor vehicle dealers' licensing. Presently, a violation of that chapter, for which another penalty is not specifically provided, is classified as a misdemeanor punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or by both. The staff reclassified this section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 39-22-13 be accepted as drafted.

The Committee considered Section 39-23-10 which provides that anyone found guilty of a "conflict of interest" in connection with administration of the Vehicle Equipment Safety Compact is guilty of an offense, classified by the staff as a Class A misdemeanor. The Committee Counsel noted that Article VII of the Compact authorizes the commission itself to establish rules and regulations as to what a conflict of interest consists of. Thus, criminal liability would be dependent upon the definition of a conflict of interest contained in rules and regulations made up by the commission composed, in part, of residents of other states.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with the Chairman and Representative Murphy voting in the negative, that Section 39-23-10 be accepted as drafted.

The Committee considered Section 39-24-11, which reads as follows:

1 39-24-11. PENALTIES.) Any person who shall violate subdivision b
2 or subdivision c of subsection 5 of section 39-24-09 shall be guilty of a
3 class B misdemeanor (((and be punished by a fine of not more than one
4 hundred dollars, or by imprisonment for not more than ninety days, or
5 by both such fine and imprisonment))). Any person who violates any
6 other provision of section 39-24-09 shall be assessed a fee of twenty
7 dollars. Any person who violates any other provision of this chapter

8 for which a specific penalty is not provided shall be assessed a fee of
9 ten dollars.

The Chairman inquired why the word "fee" was used in lines 6 and 8 of the section. The Committee Counsel replied that that fee was the one assessed pursuant to the "point system" statutes for a non-criminal violation. Judge Heen noted that Section 39-24-09 (5) (b) made reference to "narcotics or habit-forming drugs". He stated that the phrase "controlled substance" should be substituted therefor.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Subdivision b of Subsection 5 of Section 39-24-09 be amended to delete the words "narcotics or habit-forming drugs" and to substitute the phrase "a controlled substance" therefor.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 39-24-11 be accepted as drafted.

The Committee considered Section 39-25-08 which provides that any person who violates other sections of law requiring that a driving school or a commercial driving instructor be licensed is guilty of a misdemeanor. Presently, a violation of this section is punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or by both. The staff reclassified this section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 39-25-08 be accepted as drafted.

The Committee considered Section 39-26-03 which is in the chapter dealing with the disposition of abandoned motor vehicles. Section 39-26-03 provides that anyone who abandons a motor vehicle on public or private property without the consent of the person in control thereof is guilty of a misdemeanor. The staff reclassified this section as a Class A misdemeanor. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 39-26-03 be accepted as drafted.

The Committee recessed at 5:04 p.m. and reconvened at 9:00 a.m., at which time it continued consideration of the criminal sections in Title 34 of the Century Code. Consideration was first given to Section 34-13-02 which provides that no one is to carry on an employment agency business in North Dakota unless they have a license from the Commissioner of Labor. Conducting such a business without a license is presently classified as a misdemeanor punishable by a fine of not less than \$25 nor more than \$100, by imprisonment for not more than 90 days, or by both. The staff reclassified this section as a Class B misdemeanor. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 34-13-02 be accepted as drafted.

The Committee considered Subsections 8 and 11 of Section 34-13-15, which subsections read as follows:

- 1 34-13-15. RULES GOVERNING AGENCIES.) . . .
- 2 8. Any employment agent who knowingly procures(((,))) or entices
- 3 (((, aids, or abets in procuring, enticing, or sending))) a

4 woman or girl to practice prostitution or to enter as an inmate
5 or a servant in a house of ill fame, or other place resorted to
6 for prostitution, the character of which, upon reasonable inquiry,
7 could have been ascertained by the employment agent, shall be
8 deemed guilty of a class A misdemeanor (((and punishable by a
9 fine of not less than one hundred dollars, and not more than one
10 thousand dollars, or by imprisonment for a period not to exceed
11 one year, or both, at the discretion of the court))). . . .

12 11. Any person (((, firm, or corporation))) who shall split, divide,
13 or share, directly or indirectly, any fee, charge, or compensa-
14 tion received from any employee with any employer, or person
15 in any way connected with the business thereof, shall be guilty
16 of a class A misdemeanor (((and punished by a fine of not less
17 than one hundred dollars, and not more than one thousand dollars,
18 or by imprisonment for a period not to exceed one year, or both,
19 at the discretion of the court))).

The Committee Counsel noted that Subsection 8 could be repealed as its provisions are covered by Section 12.1-29-01 which prohibits the promotion of prostitution or the procuring of prostitutes.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Subsection 8 of Section 34-13-15 be repealed (deleted), and that Subsection 11 of that same section be accepted as drafted.

The Committee considered Section 34-13-16 which provides a general penalty for violation of the chapter dealing with licensing and regulation of employment agencies. Presently, a person who violates the provisions of that chapter is guilty of a misdemeanor punishable by a fine of from \$100 to \$1,000, or by imprisonment for not to exceed one year, or by both. The staff reclassified this section as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 34-13-16 be accepted as drafted.

The Committee considered Section 34-14-07 which provides a penalty for an employer who willfully refuses to pay wages due, or falsely denies the amount due to a particular employee with intent to harass or defraud him. Presently, the section is classified as a misdemeanor and punishable by a fine of from \$25 to \$50. Additionally, the section provides that any employee who falsifies the amount due to him from an employer or otherwise willfully attempts to defraud the employer shall be punished by a fine of from \$25 to \$50. The staff has reclassified the entire section as an infraction.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 34-14-07 be accepted as drafted. Representative Murphy stated that he thought the penalty for violation of this section was too small. Judge Heen disagreed. Mr. Wefald stated that the section could probably be covered by theft, and in grosser instances would be charged as theft. THEREAFTER, REPRESENTATIVE LUNDENE'S MOTION CARRIED.

The Committee commenced consideration of the criminal provisions in Title 19. The first section considered was 19-01-09 and Mr. Wefald noted that this section pointed out the need for a redraft of Section 12.1-08-01 so as to make it include more than physical obstruction of a governmental function. The Chairman reiterated his direction to the staff to redraft Section 12.1-08-01 to ensure that its coverage was broader than just pure "physical" obstruction of a governmental function.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 19-01-09 be accepted as drafted.

The Committee considered Section 19-01-15, which reads as follows:

1 19-01-15. AGENT IS PUNISHABLE FOR VIOLATION OF ANY PROVISION
2 OF TITLE.) No person who shall commit or assist in committing any of-
3 fense defined in this title shall be exempt from conviction and punishment
4 therefor because he acted as an agent, employee, or representative of
5 another. The act, omission, or violation of any officer, agent, or other
6 person acting for or employed by any person as defined in this chapter,
7 within the scope of his employment or office, in every case shall be deem-
8 ed to be the act, omission, or failure of the employer or principal as well
9 as that of the person committing the offense.

The Committee Counsel noted that this section was recommended for repeal as its provisions were covered by Section 12.1-03-03 dealing with individual accountability for actions of organizations, and by Section 12.1-03-02. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-01-15 be repealed.

The Committee considered Section 19-02-17 which prohibits the importation into this state of infected fruit. Presently, the section is classified as a misdemeanor and the staff had reclassified it as a Class B misdemeanor. Representative Lundene inquired as to whether the section was ever used. Mr. William Johnson of the State Laboratories Department staff stated that it had not been used to his knowledge.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with Representative Lundene voting in the negative, that Section 19-02-17 be accepted as drafted.

The Committee considered Section 19-02-20 which provides that persons who are affected with contagious or infectious diseases are not to be employed in any "food establishment". If a Laboratories Department inspector suspects that an employee

is affected with such a disease, he may require that employee to have a certificate of health. The examination for certificate of health is to be made by a physician approved by the department, and the employer is to bear the cost of the examination. If the employer fails to bear the cost of the examination, he presently is guilty of a misdemeanor, and the staff reclassified the section as a Class B misdemeanor. Judge Heen suggested that the section should be classified as an infraction, as is Section 34-01-15 which states that employers are required to pay for medical examinations which they require their employees to get. IT WAS MOVED BY REPRESENTATIVE LUNDENE. SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-02-20 be accepted as drafted.

The Committee considered Section 19-02.1-04 which sets forth prohibited acts, including proscribing the violation of the provisions of Subsections 1 through 14 of Section 19-02.1-02, which also sets forth prohibited acts with regard to foods, drugs, and cosmetics. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-02.1-04 be accepted as drafted.

Representative Lundene inquired as to why people who are handling food in a commercial food outlet do not have to wear a net on their hair anymore. Mr. Johnson stated that there was no statutory requirement that such a net be worn, and that it may have been a regulation at one time but no longer was.

The Committee considered Section 19-03.1-23, which reads as follows:

- 1 19-03.1-23. PROHIBITED ACTS A - PENALTIES.)
- 2 1. Except as authorized by this chapter, it is unlawful for any per-
- 3 son to manufacture, deliver, or possess with intent to manufacture
- 4 or deliver, a controlled substance. Any person who violates this
- 5 subsection with respect to:
- 6 a. a controlled substance classified in schedules I or II which is
- 7 a narcotic drug, is guilty of a (((crime and upon conviction
- 8 shall be imprisoned for not less than ten days and not more
- 9 than ten years for the first offense. For a second or subse-
- 10 quent offense under this subdivision, the person, upon con-
- 11 viction, shall be imprisoned for not less than twenty years.
- 12 Sentences under this subdivision shall not be suspended, and
- 13 the trial court shall not defer imposition of sentence on a
- 14 person convicted hereunder. A corporation, upon conviction
- 15 hereunder, shall be sentenced to a fine of not less than ten
- 16 thousand dollars))) class B felony;

- 17 b. any other controlled substance classified in schedule I, II,
18 or III, is guilty of a (((crime and upon conviction may be
19 imprisoned for not more than ten years, or fined not more
20 than five thousand dollars, or both))) class B felony;
- 21 c. a substance classified in schedule IV, is guilty of a
22 (((crime and upon conviction may be imprisoned for not
23 more than five years, or fined not more than two thousand
24 five hundred dollars, or both))) class C felony;
- 25 d. a substance classified in schedule V, is guilty of a
26 (((crime and upon conviction may be imprisoned for not
27 more than one year, fined not more than one thousand
28 dollars, or both))) class A misdemeanor.
- 29 2. Except as authorized by this chapter, it is unlawful for any
30 person to create, deliver, or possess with intent to deliver,
31 a counterfeit substance. Any person who violates this sub-
32 section with respect to:
- 33 a. a counterfeit substance classified in schedule I or II which
34 is a narcotic drug, is guilty of a (((crime and upon con-
35 viction shall be imprisoned for not less than ten days and
36 not more than ten years for the first offense. For a second
37 or subsequent offense under this subdivision, the person,
38 upon conviction, shall be imprisoned for not less than
39 twenty years. Sentences under this subdivision shall not
40 be suspended, and the trial court shall not defer imposition
41 of sentence on a person convicted hereunder. A corpora-
42 tion, upon conviction hereunder, shall be sentenced to a
43 fine of not less than ten thousand dollars))) class B felony;
- 44 b. any other counterfeit substance classified in schedules I, II,

45 or III, is guilty of a (((crime and upon conviction may be
46 imprisoned for not more than ten years, fined not more than
47 five thousand dollars, or both))) class B felony;

48 c. a counterfeit substance classified in schedule IV, is guilty
49 of a (((crime and upon conviction may be imprisoned for
50 not more than five years, fined not more than two thousand
51 five hundred dollars, or both))) class C felony;

52 d. a counterfeit substance classified in schedule V, is guilty
53 of a (((crime and upon conviction may be imprisoned for
54 not more than one year, fined not more than five hundred
55 dollars, or both))) class A misdemeanor.

56 3. It is unlawful for any person (((knowingly or intentionally))) to
57 possess a controlled substance unless the substance was obtained
58 directly from, or pursuant to, a valid prescription or order of a
59 practitioner while acting in the course of his professional prac-
60 tice, or except as otherwise authorized by this chapter. Any
61 person who violates this subsection is guilty of a (((crime and
62 upon conviction may be imprisoned for not more than five years,
63 fined not more than two thousand five hundred dollars, or both)))
64 class C felony; except that any person who violates this subsec-
65 tion regarding possession of marijuana, shall be guilty of a
66 (((crime and upon conviction may be fined not more than five
67 hundred dollars or imprisoned in the county jail or in the state
68 penitentiary for not more than one year or both))) class A mis-
69 demeanor.

The Committee decided to consider the section in rational portions, and first considered Subdivision a of Subsection 1 of the section. Judge Heen stated that he did not believe that the Committee should delete the provisions relating to increased penalty for second offenses, but thought that the question should be left to the Legislature. Mr. Aaron Rash, State Chemist, noted that during the 1973 Session there

was strong feeling regarding the subject of penalties for possession of narcotics, especially where the possession was with intent to deliver. He noted, however, that regardless of the increased penalties for second and subsequent offenses, he sees the same faces in court when he testifies as an expert.

Judge Glaser stated that he felt the Committee should classify each part of Section 19-03.1-23 in the same manner as it has classified other criminal sections outside of Title 12.1. The Chairman suggested that the subdivision could be classified as a Class A felony, thus including the second offense penalties in the initial offense classification.

IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY JUDGE GLASER that Section 19-03.1-23 (1) (a) be accepted as drafted. REPRESENTATIVE LUNDENE MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED, with Judge Heen voting in the negative, to reclassify Subdivision a of Subsection 1 of Section 19-03.1-23 as a Class A felony.

The Committee then considered Subdivision b of Subsection 1 of Section 19-03.1-23, and it was agreed that a Class B felony designation for that subdivision was adequate. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Subdivision b of Subsection 1 of Section 19-03.1-23 be accepted as drafted.

The Committee considered Subdivision c of Subsection 1 of that section and IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Subdivision c of Subsection 1 of Section 19-03.1-23 be accepted as drafted.

The Committee considered Subdivision d of Subsection 1 of Section 19-03.1-23, and agreed that it was appropriately classified. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Subdivision d of Subsection 1 of Section 19-03.1-23 be accepted as drafted.

The Chairman noted that perhaps the arguments which could be made on both sides of the issue had been made with respect to Subsection 1 and that Subsection 2 could be accepted if Subdivision a thereof were reclassified as a Class A felony. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with Judge Heen voting in the negative, that Subdivision a of Subsection 2 of Section 19-03.1-23 be reclassified as a Class A felony, and that when so reclassified, Subsection 2 of Section 19-03.1-23 be accepted in its entirety.

The Committee then considered Subsection 3 of Section 19-03.1-23. Mr. William Daner indicated that he desired to make a presentation at this point, as his presentation related to Subsection 3. Mr. Daner stated that he was appearing as a citizen and member of the State Bar Association's Uniform Laws Committee, and not as the Executive Secretary of the North Dakota Bankers Association. Mr. Daner presented a proposed amendment to the Uniform Controlled Substances Act as drafted by the National Conference of Commissioners on Uniform State Laws. (A copy of the amendment, as presented, is attached as Appendix "B".) The amendment was to Subsections 1 and 3 of Section 19-03.1-23, and would also create a new section dealing with the possession and distribution of marijuana.

The new section would not make it unlawful to possess marijuana for personal use, nor to distribute small amounts of marijuana where the distribution did not involve a profit. The section would create a presumption that possession of one ounce

or less of marijuana was for personal use. The section went on to provide, however, that possessing, distributing, or smoking marijuana in public was an offense.

The Committee discussed Mr. Daner's proposed amendment, and Judge Heen noted that problems are arising all over North Dakota with controlled substance usage, pointing out that several young persons' lives have been ruined through a progression from marijuana to narcotics. Mr. Richard Hilde, Bureau of Criminal Investigation, said that he thought the proposed amendment would create a great deal of enforcement problems.

The Chairman stated that, as indicated by Mr. Daner, an amendment similar to the one proposed by the National Conference of Commissioners on Uniform State Laws would probably be introduced during the 1975 Session at any rate. Therefore, he felt that this Committee should not become involved in it, as it could be so controversial as to destroy the remainder of the Committee's work.

Judge Glaser indicated that whatever is done about marijuana, a change in law should be made to allow it to be handled by municipal courts. The Chairman noted that many small town judges did not have the legal background necessary to handle marijuana cases wherein questions of search and seizure, etc., might be raised.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Subsection 3 of Section 19-03.1-23 be accepted as drafted.

The Committee considered Section 19-03.1-24 which sets forth penalties for persons who fail to register to allow them to lawfully manufacture or dispense controlled substance or who fail to keep the appropriate records, or who store controlled substances in an unlawful manner. The staff had classified this section as a Class C felony. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 19-03.1-24 be accepted as drafted.

The Committee considered Section 19-03.1-25 which the Committee Counsel asked to be submitted with the words "knowingly or intentionally" deleted from the opening clause. The section prohibits: distribution of a controlled substance except pursuant to the order form required by law, the use of a fictitious substance registration number, the furnishing of false and fraudulent material information in an application report or other documentary required to be filed under Chapter 19-03.1, or the making, distributing, or possessing of any punch, dye, plate, stone, or other implement designed to print, imprint, or otherwise reproduce the trademark or identifying mark of a controlled substance so that the use of that tool would render the controlled substance a counterfeit substance. The section is classified as a Class C felony. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-03.1-25 be accepted as drafted.

The Committee considered Section 19-03.1-26 which requires persons who have registered under the chapter and who use syringes or similar paraphernalia to administer or dispense any controlled substance to destroy and dispose of the syringe or other paraphernalia in a manner that will prevent its reuse by anyone else. A registrant who violates Section 19-03.1-26 is presently guilty of a misdemeanor and the staff reclassified the section as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 19-03.1-26 be accepted as drafted.

The Committee considered Section 19-03.1-29, which reads as follows:

1 19-03.1-29. DISTRIBUTION TO PERSONS UNDER AGE EIGHTEEN.)
2 Any person eighteen years of age or over who violates subsection 1 of
3 section 19-03.1-23 by distributing a controlled substance listed in sched-
4 ules I or II which is a narcotic drug to a person under eighteen years of
5 age who is at least three years his junior is guilty of a class A felony.
6 Any person eighteen years of age or over who violates subsection 1 of
7 section 19-03.1-23 by distributing any other controlled substance listed
8 in schedules I, II, III, IV, and V, to a person under eighteen years of
9 age who is at least three years his junior is (((punishable by the fine
10 authorized by subdivisions b, c, and d of subsection 1 of section 19-03.1-23,
11 by a term of imprisonment up to twice that authorized by subdivisions b,
12 c, and d of subsection 1 of section 19-03.1-23, or both))) guilty of a
13 class B felony.

The Committee Counsel noted that the first sentence was added to the section to replace a substantially identical sentence which was inadvertently deleted during the 1973 Session. However, the Committee Counsel noted that, with the amendments to Subsection 1 of Section 19-03.1-23, this section was no longer necessary, as it provided a redundant penalty classification. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-03.1-29 be repealed because the Committee's revision of Section 19-03.1-23 covers Section 19-03.1-29.

The Committee considered Section 19-03.1-30, which reads as follows:

1 19-03.1-30. CONDITIONAL DISCHARGE FOR POSSESSION AS FIRST
2 OFFENSE.) Whenever any person who has not previously been convicted
3 of any offense under this chapter or under any statute of the United
4 States or of any state relating to narcotic drugs, marijuana, or stimulant,
5 depressant, or hallucinogenic drugs, pleads guilty to or is found guilty
6 of possession of a controlled substance under subsection 3 of section
7 19-03.1-23, the court, without entering a judgment of guilt and with the
8 consent of the accused, may defer further proceedings and place him on
9 probation upon terms and conditions. Upon violation of a term or condi-

10 tion, the court may enter an adjudication of guilty and proceed as other-
11 wise provided. Upon fulfillment of the terms and conditions, the court
12 shall discharge the person and dismiss the proceedings against him.
13 Discharge and dismissal under this section shall be without adjudication
14 of guilt and is not a conviction for purposes of this section or for pur-
15 poses of disqualifications or disabilities imposed by law upon conviction
16 of a crime, including the ((additional penalties)) extended sentence
17 which may be imposed ((for second or subsequent convictions)) under
18 section (((19-03.1-31))) 12.1-32-09. There may be only one discharge
19 and dismissal under this section with respect to any person.

The Committee Counsel noted that the amendments to this section were to make it correspond to the proposed repeal of Section 19-03.1-31. He stated that the internal reference to Section 12.1-32-09 was to the section which provides for the sentencing of dangerous, special offenders (the extended sentence). He questioned whether it was desirable to have a section such as this one which creates a separate and special procedure. Judge Heen stated that he liked the procedure set forth in Section 19-03.1-30, especially for use with military personnel stationed in the state.

A lengthy discussion then occurred concerning the desirability of retaining the procedures set forth in Section 19-03.1-30, and whether it was an exclusive procedure to be utilized only under Chapter 19-03.1.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED, with the Chairman voting in the negative, that Section 19-03.1-30 be accepted as drafted.

The Committee considered Section 19-03.1-31, which reads as follows:

- 1 19-03.1-31. SECOND OR SUBSEQUENT OFFENSES.)
- 2 1. Any person convicted of a second or subsequent offense under
- 3 this chapter may be imprisoned for a term up to twice the term
- 4 otherwise authorized, fined an amount up to twice that other-
- 5 wise authorized, or both.
- 6 2. For the purposes of this section, an offense is considered a
- 7 second or subsequent offense, if, prior to his conviction of the
- 8 offense, the offender has at any time been convicted under this
- 9 chapter or under any statute of the United States or of any

10 state relating to narcotic drugs, marijuana, depressant, stimu-
11 lant, or hallucinogenic drugs.
12 3. This section does not apply to offenses under subdivision a of
13 subsection 1 or subsection 3 of section 19-03.1-23.

Mr. Wefald stated that he was recommending this section for repeal as the procedures for handling repeat offenders were contained in Chapter 12.1-32 of the new Criminal Code. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE GLASER, AND CARRIED that Section 19-03.1-31 be repealed.

The Committee considered Section 19-04-01 which regulates the selling of certain enumerated poisons, requiring that they be sold on a physician's prescription, and that the container have affixed to it the word "poison". A person who sells such poison at retail without complying with this section is presently guilty of a misdemeanor, and the staff reclassified it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-04-01 be accepted as drafted.

The Committee considered Section 19-04-02, which reads as follows:

1 19-04-02. CHLORAL HYDRATE NOT TO BE SOLD WITHOUT PRESCRIP-
2 TION.) No person shall sell chloral hydrate, or any preparation contain-
3 ing chloral hydrate, at retail except upon the original written order or
4 prescription of a recognized and reputable practitioner of medicine duly
5 licensed to practice in this state, which order or prescription shall be
6 dated and shall contain the name of the person for whom prescribed and
7 shall be signed by the person giving the order or prescription. Such
8 prescription shall not be refilled except upon the written order of the
9 physician giving the original prescription.

Mr. Wefald noted that this section was recommended for repeal as its provisions were covered by Section 19-03.1-11 (2) (c), Schedule IV of the Controlled Substances Act (Chapter 19-03.1). IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-04-02 be repealed.

The Committee considered Section 19-04-03 which provides that retailers of poisons are to keep records of the selling or giving away of all such poisons. Additionally, they are to exhibit their records to any physician, coroner, peace officer, or magistrate during business hours. Failure to do either of these things is presently punished as a misdemeanor. The staff reclassified the section as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-04-03 be accepted as drafted.

The Committee considered Section 19-04-04 which presently prohibits the distributing or depositing, on the premises of another, of samples of patent or proprietary medicines, or any preparation which contains poison. The section presently does not have a statement of offense classification, and Mr. Wefald noted that a sentence had been added at the end making a violation of the section a Class B misdemeanor. He stated that the new sentence added to Section 19-04-04 could replace Section 19-04-07 which provides a general penalty for Chapter 19-04. Mr. Wefald stated that the only section to which the general penalty would apply is Section 19-04-04. Thereafter, IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-04-04 be accepted as drafted and that Section 19-04-07 be repealed.

The Committee considered Section 19-05-13, which reads as follows:

1 19-05-13. UNLAWFUL FOR CONSUMER TO USE OLEOMARGARINE NOT
2 STAMPED - UNLAWFUL TO TRANSPORT UNSTAMPED OLEOMARGARINE -
3 PENALTY.)

- 4 1. No person shall use or consume within this state any oleomargarine
5 unless the same has been taken from a package or container having
6 attached thereto the stamp or stamps affixed under this chapter to
7 denote the payment of the tax thereon.
- 8 2. Prior to July 1, 1975, it shall be unlawful for any person to trans-
9 port into, receive, carry, or move from place to place in this
10 state, by automobile, truck, boat, airplane, conveyance, vehicle,
11 or other means of transportation, except in the course of interstate
12 commerce, any unstamped oleomargarine, and any such automobile,
13 truck, boat, airplane, conveyance, vehicle, or other means of
14 transportation in which any oleomargarine is transported or carried
15 in violation of this chapter, and any oleomargarine and other equip-
16 ment or personal property used as an incident to such transporta-
17 tion and found in such means of transportation, shall be subject to
18 seizure by the tax commissioner, or by any sheriff or other police
19 officer, with or without process, and shall be subject to forfeiture
20 in the manner provided in section 19-05-14. Violation of this sub-
21 section shall constitute a felony.

Mr. Wefald noted that the section was being recommended for repeal as the section would no longer be law when Title 12.1 goes into effect on July 1, 1975. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-05-13 be repealed.

The Committee considered Section 19-05-15. which reads as follows:

1 19-05-15. FORGING OR COUNTERFEITING STAMPS - PUNISHMENT.)
2 Any person who, with intent to defraud the state, makes, alters, forges,
3 or counterfeits any stamps provided for in this chapter or assists therein
4 or who has in his possession any forged, counterfeited, spurious, or
5 altered stamp, knowing the same to be forged, counterfeited, spurious, or
6 altered, shall be (((punished by a fine of not more than one thousand
7 dollars, or by imprisonment in the penitentiary for not more than three
8 years, or by both such fine and imprisonment))) guilty of a class C
9 felony.

Mr. Wefald stated that this section was being recommended for repeal as it was covered by Section 12.1-24-01 prohibiting forgery or counterfeiting. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE GLASER, AND CARRIED that Section 19-05-15 be repealed.

The Committee considered Section 19-05-16 which provides a general penalty for any person who violates any of the provisions of Chapter 19-05 for which another penalty is not provided. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-05-16 be accepted as drafted.

The Committee considered Section 19-06-08 which provides that a violation of Chapter 19-06 which sets forth regulations relating to imitation ice cream is to be punished as an infraction. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-06-08 be accepted as drafted.

The Committee considered Section 19-07-06 which provides a general penalty for violations of Chapter 19-07 which deals with the grading of eggs and the issuance of egg dealers' licenses. The staff reclassified the section as an infraction. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-07-06 be accepted as drafted.

The Committee considered Section 19-08-06 which provides a penalty for violation of Chapter 19-08 which relates to the licensing of certain beverages for sale. Presently, the offense is denominated a misdemeanor punishable by a fine of from \$25 to \$100 and the staff had reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-08-06 be accepted as drafted.

The Committee considered Section 19-10-18 which prohibits a violation of the provisions of Section 19-10-16 which authorizes the State Laboratories Department to prohibit the sale of certain gasoline compounds or "gasoline improvers". Presently, the offense is denominated a misdemeanor punishable by a fine from \$10 to \$500, and the staff had reclassified it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE AUSTIN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 19-10-18 be accepted as drafted.

The Committee considered Section 19-10-22 which authorizes the State Laboratories Department to designate ports of entry for all transportation companies which carry petroleum products into North Dakota. The section also authorizes the Department to hold or delay any transportation vehicle until samples have been obtained for inspection, and provides that a transportation company which fails to hold such a vehicle is presently guilty of a misdemeanor. The staff reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-10-22 be accepted as drafted.

The Committee considered Section 19-10-23 which provides a general penalty for violations of Chapter 19-10, or rules or regulations issued thereunder, unless another penalty is specifically provided. Presently, the section is classified as a misdemeanor and the staff reclassified it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 19-10-23 be accepted as drafted.

The Committee next considered Section 19-11-06 which provides a general penalty for violation of Chapter 19-11 regulating the labeling of paints, varnishes, and linseed oil. Presently, anyone violating the provisions of that chapter is guilty of a misdemeanor punishable by a fine of from \$25 to \$100, or by imprisonment for not more than 60 days. The staff reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 19-11-06 be accepted as drafted.

The Committee considered Section 19-13.1-12 which provides a general penalty for violation of the chapter regulating the labeling and distribution of commercial feed. Questions arose as to why the section was classified as a Class A misdemeanor when the preceding sections relating to labeling, etc., had mostly been classified as Class B misdemeanors. It was decided that, because of the volume of feed sales, the Class A misdemeanor designation might be appropriate. IT WAS MOVED BY REPRESENTATIVE AUSTIN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 19-13.1-12 be accepted as drafted.

The Committee considered Section 19-14-08 which prohibits a person from selling or offering for sale any livestock medicine which is not registered in accordance with Chapter 19-14, and also prohibits anyone from willfully representing falsely that a livestock medicine is registered. Presently, the offense is punishable by a fine of \$200 for the first offense, and a fine of \$300 or imprisonment for one year, or both, for the second offense. The staff reclassified this section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-14-08 be accepted as drafted.

The Committee considered Section 19-16.1-10 which provides that the State Laboratories Department may require the applicant for registration of antifreeze to submit a statement of the formula of the antifreeze. The statement of formula and other trade secrets furnished pursuant to Section 19-16.1-10 are made confidential.

and disclosure of any such information, except in the manner provided by law, is presently a misdemeanor. The staff reclassified the section as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 19-16.1-10 be accepted as drafted.

The Committee considered Section 19-16.1-11 which provides a general penalty for violation of the provisions of Chapter 19-16.1 for which another specific penalty has not been provided. Presently, a violation is punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or by both such fine and imprisonment. The staff reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 19-16.1-11 be accepted as drafted.

The Committee considered Section 19-17-05 which provides a general penalty for violation of Chapter 19-17 which establishes flour and bread standards. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-17-05 be accepted as drafted.

The Committee considered Section 19-17-06 which provides that it is unlawful to sell flour, corn meal, and hominy grits in containers unless they are of a certain weight. REPRESENTATIVE MURPHY STATED THAT HE DID NOT BELIEVE THIS SECTION WAS NECESSARY, AND MOVED THAT IT BE REPEALED. The Committee Counsel pointed out that it had some value as a consumer protection section, by ensuring that these items were in containers which were uniform between stores, and within the same store. REPRESENTATIVE LUNDENE MADE A SUBSTITUTE MOTION, SECONDED BY JUDGE HEEN, AND CARRIED, with Representative Murphy voting in the negative, to accept Section 19-17-06 as drafted.

The Committee recessed for lunch and reconvened at 1:15 p.m., at which time it considered Section 19-18-08, which reads as follows:

1 19-18-08. PENALTIES.)

2 1. Any person violating subsection 1 of section 19-18-03 shall be
3 guilty of (((a misdemeanor and upon conviction shall be fined
4 not more than one hundred dollars))) an infraction;

5 2. Any person violating any provision of this chapter other than
6 subsection 1 of section 19-18-03 shall be guilty of (((a misde-
7 meanor and upon conviction shall be fined not more than two
8 hundred dollars for the first offense and upon conviction of a
9 subsequent offense shall be fined not more than three hundred
10 dollars. Any offense committed more than five years after a
11 previous conviction shall be considered a first offense))) an
12 infraction. In any case where a registrant was issued a warn-
13 ing by the commissioner pursuant to the provisions of this

14 chapter, such registrant shall upon (((conviction of a violation
15 of))) violating any provision of this chapter other than subsec-
16 tion 1 of section 19-18-03 be (((fined not more than two hundred
17 dollars, or imprisoned for not more than one year, or be sub-
18 ject to both such fine and imprisonment))) guilty of a class A
19 misdemeanor, and the registration of the article with reference
20 to which the violation occurred shall terminate automatically.
21 An article the registration of which has been terminated may
22 not again be registered unless the article, its labeling, and
23 other material required to be submitted appear to the commis-
24 sioner to comply with all the requirements of this chapter.

It was pointed out that Subsection 1 was no longer necessary, since the whole section was classified as an infraction, and a violation of the section internally referred to in Subsection 1 would be an infraction. Therefore, IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that triple parentheses be inserted before the "1" on line 2; that the triple parentheses on line 3 be deleted; that the triple parentheses on line 4 be deleted; that the underscored material on line 4 be deleted; that triple parentheses be inserted after the period on line 5, and that triple parentheses be inserted before the word "other" on that same line; that triple parentheses be inserted after the numerals "19-18-03" on line 6; and that when so amended the section be accepted.

The Committee considered Chapter 19-19 dealing with barbiturates, and Mr. Wefald noted that the entire chapter is being recommended for repeal since its provisions were encompassed by Chapter 19-03.1, the Uniform Controlled Substances Act. Mr. Rash concurred in Mr. Wefald's recommendation that the chapter be repealed. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Chapter 19-19 of the Century Code be recommended for repeal.

The Committee considered Section 19-20.1-17 which provides a penalty for any person who would violate the provisions of Chapter 19-20.1 which deals with the labeling and regulation of fertilizers and soil conditioners; or who would impede, obstruct, hinder, or otherwise prevent a representative of the State Laboratories Department from performing his duty. Presently, the offense is classified as a Class A misdemeanor punishable by a fine of not less than \$500 for the first offense and not less than \$1,000 for each subsequent offense. The staff reclassified the section as a Class A misdemeanor. The Chairman noted that the reclassification resulted in an increased penalty because there is no potential jail sentence presently available. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 19-20.1-17 be accepted as drafted.

The Committee considered Section 19-21-09 which provides a general penalty for violation of Chapter 19-21 which relates to the labeling of hazardous substances

and prohibits the misbranding of those substances. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Section 19-21-09 be accepted as drafted.

The Committee considered Section 19-22-05 which provides a general penalty for a violation of Chapter 19-22 dealing with the labeling of potatoes as to grade. The section is currently denominated a misdemeanor, and the staff reclassified it as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 19-22-05 be accepted as drafted.

The Committee considered Section 19-22.1-03 which provides a general penalty for a violation of the chapter prohibiting the retail sale of artificially colored potatoes. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 19-22.1-03 be accepted as drafted.

The Committee considered next the criminal sections in Title 24 of the Century Code which deals with Highways, Bridges, and Ferries. The first section considered was Section 24-02-14 which reads as follows:

- 1 24-02-14. ACTS PROHIBITED.) Any person who willfully ((or know-
- 2 ingly))) makes a false or erroneous certificate or claim is guilty of a
- 3 class A misdemeanor, and, in addition thereto, he shall be liable personal-
- 4 ly for such claim, estimate, or allowance falsely certified.

Mr. Wefald stated that this section was being recommended for repeal as its provisions were covered by Section 12.1-11-02 prohibiting false statements in governmental matters. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 24-02-14 be repealed.

The Committee considered Section 24-03-05 which authorizes the temporary closing of roads during construction periods by use of barricades. The section provides a penalty for the driver or owner of any vehicle which drives through, over, or around any such barricade. Presently, the offense is classified as a misdemeanor, and the staff has reclassified it as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 24-03-05 be accepted as drafted.

The Committee considered Section 24-03-11 which provides a penalty for a contractor who fails to erect warning signs when construction work is being done on a highway. Presently, the offense is punishable by a fine of from \$10 to \$50, by imprisonment for not more than 60 days, or by both such fine and imprisonment. The staff reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 24-03-11 be accepted as drafted.

Representative Murphy inquired as to the status of this section where the contractor was in fact a governmental entity. Judge Heen explained that the civil liability of a governmental entity would depend on the extent to which the entity was successfully able to plead, if it desired to do so, that it had sovereign immunity from suit.

The Committee considered Section 24-06-27, which reads as follows:

1 24-06-27. PENALTY FOR INJURING DITCH.) Any person who shall
2 dam up, obstruct, or in any way injure any ditch opened as provided in
3 section 24-06-26, shall be liable to pay to the overseer of highways of
4 such road district double the damages caused by such injury, which shall
5 be assessed by the jury or court, and also shall be guilty of a class B
6 misdemeanor (((, and upon conviction shall be punished by imprisonment
7 for not more than three months, or by a fine of not more than one hun-
8 dred dollars))), and such damages, when collected by such overseer,
9 shall be expended on the roads in his district.

The Committee discussed the desirability of having this section at great length. In addition, it was noted that the provision for double damages authorized the collection of the same by the overseer of highways, and mandated that he expend them on the roads in his district. During the course of the discussion, it was brought out that the usual statutory language relating to such recoveries was that it be deposited in the appropriate fund. Representative Murphy stated that he felt this section was unnecessary, and that anyone committing the type of offense contemplated by this section would probably be able to be prosecuted under the criminal mischief section, 12.1-21-05. IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY REPRESENTATIVE AUSTIN that Section 24-06-27 be repealed. THIS MOTION LOST. The Chairman then directed the staff to redraft Section 24-06-27 to ensure that the moneys collected were paid into the appropriate fund by the appropriate persons.

The Committee considered Section 24-09-13, which reads as follows:

1 24-09-13. INJURING CROSSING SIGNS - PENALTY.) It shall be a
2 class B misdemeanor for any person (((maliciously))) to injure, remove,
3 displace, deface, or destroy any of the signs or signals provided for in
4 this chapter.

The Committee Counsel noted that this section could be repealed as it is covered by Section 12.1-21-05 defining criminal mischief. He stated that, in conversations with Mr. Vern Pederson, the General Counsel for the Highway Department, Mr. Pederson had indicated that he would like the Committee to consider amending the definition of "property" contained in Sections 12.1-01-04 and 12.1-21-08 to ensure that it includes property owned by the government where an offense definition is phrased in terms of harm to property.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 24-09-13 be repealed.

The Committee considered Section 24-09-14, which reads as follows:

1 24-09-14. FAILURE TO STOP AT CROSSING DOES NOT AFFECT
2 RIGHT TO RECOVER FOR INJURIES - PENALTY.) The violation of the
3 duties imposed under section 24-09-06 shall not affect the right of any
4 person to recover damages for an injury, if such person was exercis-
5 ing due care at the time of such injury, but such person shall be lia-
6 ble to a fine of not to exceed ten dollars for each such violation.

Mr. Wefald noted that Section 24-09-06 provides that vehicles carrying school children, passengers for hire, or explosives must stop at railroad crossings. He noted that Section 24-09-06 could also be covered by Section 24-12-05 which provides a general penalty for violations of the provisions of the entire Title. It was noted that Section 24-09-06 could be amended by adding a penalty provision to its language, and then Section 24-09-14 could be repealed.

IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 24-09-06 be amended by adding the following sentence at the end of the section: "Any person violating the provisions of this section is guilty of an infraction." IT WAS THEN MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 24-09-14 be repealed.

The Committee considered Section 24-10-03 which presently makes it a misdemeanor, punishable by a fine of not more than \$100, by imprisonment for not more than 30 days, or by both, to fail to promptly close any farm or ranch gate. The staff reclassified the section as an infraction. Representative Murphy noted that the language "OF CATTLE GUARDS" in the section heading was not only grammatically incorrect but nonsensical. He stated that you cannot leave a cattle guard open since it is always open. The Committee Counsel requested that the Committee consider the section submitted with the words "OF CATTLE GUARDS" in the section heading inserted in triple parentheses. The Chairman stated that the Committee would accept the section that way. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 24-10-03 be accepted as drafted.

The Committee considered Section 24-11-06 which provides a penalty for maintaining an unlicensed ferry. Mr. Wefald noted that he had discussed the entirety of Chapter 24-11 with Mr. Ray Walton, Commerce Counsel, Public Service Commission, and Mr. Walton suggested that the chapter be retained due to the possibility of barge and ferry traffic in the future.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Section 24-11-06 be accepted as drafted.

The Committee considered Section 24-11-08 which deals with safety measures to be taken by ferryboat operators. The penalty for the section had been increased from a fine of \$10 to a Class B misdemeanor. Mr. Wefald noted that the penalty was increased due to a need, as stated by the Public Service Commission representative, to put "teeth" in the safety aspect of this section. The Committee then commenced a general discussion of the desirability of retaining Chapter 24-11. It was noted that, should ferryboat and barge operation become important in the future, the laws

would have to be extensively revised at any rate. That being the case, it was just as well that they be revised from scratch at the time they are needed.

Therefore, IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Chapter 24-11 of the Century Code be recommended to the Legislative Council for repeal. The Chairman noted that the effect of this motion would be to negate the previous motion accepting the draft of Section 24-11-06.

The Committee considered Section 24-12-05 which sets forth a general penalty for violation of any of the provisions of Title 24 for which another penalty is not specifically provided. The staff reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 24-12-05 be accepted as drafted.

The Committee considered Section 24-12-06, which reads as follows:

1 24-12-06. PENALTY FOR RUNNING TOLLGATE.) Where any bridge
2 or ferry company or individual is authorized by law to collect toll for
3 the crossing of any bridge or ferry belonging to such company or in-
4 dividual, any person who willfully runs the tollgate of such company or
5 individual and passes over such bridge or ferry with the intention of
6 avoiding the payment of the toll prescribed by law, or who refuses to
7 pay such toll when lawfully requested so to do, is guilty of ((a misde-
8 meanor and shall be punished by a fine of five dollars))) an infraction.

Mr. Wefald stated that this section was being recommended for repeal as being antiquated and of no particular application since there were no tollgates in operation in North Dakota. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 24-12-06 be repealed.

The Committee considered Section 24-15-05 which provides that a person who drives through a roadblock without subjecting himself to the traffic control is guilty of a misdemeanor punishable by a fine of up to \$100, by imprisonment for not more than 30 days, or by both such fine and imprisonment. The staff reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Section 24-15-05 be accepted as drafted.

The Committee considered Section 24-16-12 which prohibits the operation of a junkyard except as otherwise provided by law. The offense is presently classified as a misdemeanor and the staff reclassified the section as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 24-16-12 be accepted as drafted.

The Committee considered the criminal sections contained in Title 32 of the Century Code, commencing with Section 32-13-08 which provides that a defendant in an action for delivery of a public office who refuses or neglects to deliver any

of the books or papers demanded of him is guilty of a misdemeanor. The staff reclassified the section as a Class B misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE HEEN, AND CARRIED that Section 32-13-08 be accepted as drafted.

The Committee considered Section 32-13-11, which reads as follows:

1 32-13-11. JUDGMENT AGAINST INTRUDER.) When a defendant against
2 whom an action shall have been commenced shall be adjudged guilty of
3 usurping, intruding into, or unlawfully holding or exercising any office,
4 franchise, or privilege, judgment shall be rendered that he be excluded
5 from such office, franchise, or privilege and also that the plaintiff recover
6 costs against him. (((The court also, in its discretion, may impose upon
7 such defendant a fine not exceeding five thousand dollars, which, when
8 collected, shall be paid into the treasury of the state to the credit of the
9 school fund.)))

Mr. Wefald noted that the last sentence of the section was recommended for deletion because it was not clear from the context of the section or the chapter whether civil or criminal liability was intended. If criminal liability was intended, it is not clear what the offense consists of, and, in either case, the language is inappropriate. IT WAS MOVED BY JUDGE HEEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Section 32-13-11 be accepted as drafted.

The Committee considered Section 32-14-01 solely for information purposes as the section indicates which forfeitures were recoverable by civil action.

The Committee considered Section 32-22-10 which was amended to provide that the forfeiture already provided therein shall be recovered in a civil action. Mr. Wefald noted that the last sentence establishes a disqualification not contained in Chapter 12.1-33. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 32-22-10 be accepted as drafted.

The Committee considered Section 32-22-38 which provides a penalty for anyone who would remove or conceal a prisoner to avoid the running of a writ of habeas corpus. The Committee Counsel noted that he desired to submit the section with the language on line 11 "for the penalty incurred" inserted in triple parentheses and the Chairman accepted the section with that staff inclusion. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY JUDGE HEEN, AND CARRIED that Section 32-22-38 be accepted as drafted.

The Committee considered Section 32-36-28, which reads as follows:

1 32-36-28. FAILURE TO SUPPORT - PENALTY.) If the father of a
2 child born out of wedlock, without lawful excuse, fails to support the

3 child where the same is not in his custody, and where paternity has
4 been judicially established, or has been acknowledged by him in writ-
5 ing, he is guilty of a class A misdemeanor ((and shall be punished by
6 a fine of not more than one thousand dollars, or by imprisonment in the
7 county jail for not more than one year, or by both such fine and impri-
8 sonment))).

It was noted that a similar section, in Title 14, had been classified as a Class C felony, and it was felt that the offense classification should be consistent. In addition, Representative Murphy suggested that either parent ought to be liable for the support of a child, and the section ought to be amended to delete the word "father" and substitute the word "parent" therefor. The Committee Counsel pointed out that the section would not be grammatically correct if it applied to both parents, since a female could not, by definition, be the subject of a paternity suit. Thereafter, IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 32-36-28 be reclassified as a Class C felony, and when so reclassified that the section be accepted.

The Committee considered Section 32-36-29 which provides that a father of a child born out of wedlock who, without lawful excuse, refuses to carry out a judgment for his support is guilty of a misdemeanor. The staff reclassified the section as a Class A misdemeanor. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 32-36-29 be reclassified as a Class C felony, and when so reclassified that the section be accepted.

The Committee considered the minutes of the meetings of February 14-15, 1974, and March 28-29, 1974. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that the minutes of the February and March meetings be accepted as delivered.

The Committee Counsel indicated that problems had arisen concerning whether it was necessary to revise statutes dealing with civil and criminal contempt. He stated that it was his belief that this should be a portion of an entire study during the next legislative interim, and that the study resolution, already called for by Committee action, should also contain provision for revisions of those sections referring to contempt in order to make it clear whether they dealt with civil or criminal contempt.

The Committee then considered the provisions related to the Criminal Code revision contained in Title 33 of the Century Code, commencing with Section 33-01-08. That section sets forth the jurisdiction of county justices in criminal matters, and was amended to reflect the new penalty classification format, and to include the infraction classification as well as the two levels of misdemeanors. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 33-01-08 be accepted as drafted.

The Committee considered Section 33-01-25 which provides that any county justice or magistrate who issues a summons or other process in a case in which he has a personal or pecuniary interest is guilty of a misdemeanor punishable by a fine of not more than \$200, by imprisonment for not more than six months, or by both such fine and imprisonment. The staff reclassified the section as a Class B misdemeanor.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 33-01-25 be accepted as drafted.

The Committee considered the provisions of Section 33-12-28, which reads as follows:

1 33-12-28. CONVICTION OF DEFENDANT - JUDGMENT.) When the
2 defendant in a criminal action in a justice court is convicted by the court
3 or by a verdict of "guilty" or by a verdict "for the state" which does not
4 also find the defendant not guilty, the court shall render judgment ((that
5 he be punished by a fine or by imprisonment in the county jail, or by
6 both such fine and imprisonment, specifying the amount of the fine or time
7 of imprisonment. A judgment of fine only may direct also that the defend-
8 ant be imprisoned until the same is satisfied. In a case in which the court
9 has a discretion as to the extent of the punishment, it, upon the sugges-
10 tion of either party and before rendering judgment, may hear testimony as
11 to circumstances proper to be considered in aggravation or mitigation of
12 punishment))) in accordance with chapter 12.1-32.

It was noted that this section referred to a very unusual verdict, but that that unusual verdict was provided for in Section 33-12-24. The Committee Counsel stated that he believed the new Rules of Criminal Procedure abolished any possible plea but "guilty" or "not guilty".

While this matter was being looked into, the Committee considered Sections 33-12-29; 33-12-30; 33-12-31; and 33-12-32. Mr. Wefald noted that all four of these sections were recommended for repeal as their provisions were adequately covered by Chapter 12.1-32 which sets forth sentencing procedures. Additionally, he noted that provisions for confinement for nonpayment of fines are unconstitutional in many instances, and that Section 33-12-29 had been superseded by Rule 32 (a) (2) of the Rules of Criminal Procedure. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Sections 33-12-29; 33-12-30; 33-12-31; and 33-12-32 be repealed.

The Committee Counsel noted that, under Rule 11 of the North Dakota Rules of Criminal Procedure, the defendant had only two alternatives when pleading in a criminal action. He could either plead "guilty" or "not guilty". That being the case, the language in Sections 33-12-24 and 33-12-28 was no longer appropriate.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Section 33-12-28 be amended by inserting triple parentheses before the word "verdict" in line 3; inserting triple parentheses after the word "guilty" in line 4, inserting the underscored word "jury" before the comma in that same line; and that when so amended the section be accepted.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the last sentence in Section 33-12-24 be inserted in triple parentheses.

The Chairman noted that the hour was late, and that the next title to be considered was lengthy. Therefore, without objection, the Chairman declared the meeting adjourned, subject to the call of the Chair, at 5:05 p.m., on Friday, May 24, 1974.

John A. Graham
Assistant Director

1 34-01-04. INTIMIDATION, FORCE, AND THREATS AGAINST (((LABOR-
2 ERS))) EMPLOYEES PROHIBITED - PENALTY.) Every person who, by any
3 use of force, threats, or intimidation, prevents (((or endeavors to pre-
4 vent))) any (((hired foreman, journeyman, apprentice, workman, laborer,
5 servant, or other))) person employed by another from continuing or per-
6 forming his work or from accepting any new work or employment, and
7 every person who uses any force, threats, or intimidation to induce such
8 hired person to relinquish his work or employment or to return any work
9 he has in hand before it is finished, is guilty of a class B misdemeanor.

1 34-01-05. INTIMIDATION, FORCE, AND THREATS AGAINST EMPLOY-
2 ERS PROHIBITED - PENALTY.) Every person who, by any use of force,
3 threats, or intimidation, prevents (((or endeavors to prevent))) another
4 from employing any person, and every person who uses force, threats,
5 or intimidation to compel another to employ any person, or to force or
6 induce another to alter his mode of carrying on business, or to limit or
7 increase the number of (((his hired foremen, journeymen, apprentices,
8 workmen, laborers, servants, or other))) persons employed by him, or
9 their rate of wages or time of service, is guilty of a class B misdemean-
10 or.

1 34-01-06. HINDERING (((CITIZEN))) PERSON FROM OBTAINING OR
2 ENJOYING EMPLOYMENT - PENALTY.) Every person (((, corporation,
3 or agent thereof,))) who maliciously interferes or hinders, in any way,
4 any (((citizen of this state))) person from obtaining employment or from
5 enjoying employment already obtained from any other person (((or cor-
6 poration))), is guilty of a class A misdemeanor.

34-01-07. (to be repealed)

34-01-09. (to be repealed)

34-01-09.1. (to be repealed)

34-01-10. (to be repealed)

1 34-01-15. EMPLOYER TO PAY FOR MEDICAL EXAMINATION - PEN-
2 ALTY FOR VIOLATION.) Whenever any employer requires an employee,
3 or prospective employee, to take a medical examination, or furnish any
4 medical records, as a condition of employment such employer shall bear
5 the cost of such examination or the furnishing of such medical records.

6 Any employer violating any of the provisions of this section shall
7 be guilty of (((a misdemeanor and shall be punished by a fine not ex-
8 ceeding one hundred dollars))) an infraction.

1 34-01-17. UNLAWFUL TO DISCRIMINATE BECAUSE OF AGE - PEN-
2 ALTY.) No person (((, persons, firm, association or corporation,)))
3 carrying on or conducting within this state(((,))) any business requir-
4 ing (((the employment of labor,))) employees shall refuse to hire, em-
5 ploy, or license, or shall bar or discharge from employment, any indi-
6 vidual (((between the ages of forty and sixty-five years,))) solely
7 (((and only))) upon the ground of age; when the reasonable demands
8 of the position do not require (((such))) an age distinction; and, pro-
9 vided that such individual is well versed in the line of business carried
10 on by such person (((, persons, firm, association or corporation))),
11 and is qualified physically, mentally and by training and experience to
12 satisfactorily perform the (((labor))) duties assigned to him or for
13 which he applies. Nothing herein shall affect the retirement policy or
14 system of any employer where such policy or system is not merely a
15 subterfuge to evade the purposes of that section. Any person (((or
16 corporation))) who violates any of the provisions of this section shall
17 be guilty of a class B misdemeanor (((, and shall be punished by a
18 fine of not to exceed twenty-five dollars or by imprisonment in the
19 county jail for not to exceed one day or by both such fine and impris-
20 onment))).

34-01-18. (to be repealed)

1 34-05-03. OFFICIALS AND EMPLOYERS TO FURNISH CERTAIN IN-
2 FORMATION - PENALTY.) All public officers and all employers (((of
3 labor))) shall furnish to the commissioner of labor such information as
4 he may request relating to their respective offices or businesses. The
5 information obtained shall be preserved, systemized, and tabulated by

6 the commissioner. Information concerning the business or affairs of
7 any (((individual, firm, company, or corporation))) person shall not
8 be divulged or made public by the commissioner or anyone in the em-
9 ploy of his office (((. and a violation of this provision shall be pun-
10 ished by a fine of not more than five hundred dollars, or by impris-
11 onment for not more than one year, or by both such fine and imprison-
12 ment))). Any officer, any employer (((of labor))), and any operator
13 or manager of any establishment wherein (((labor is))) persons are
14 employed, who shall fail or refuse to furnish the commissioner with the
15 information asked for by him under the provisions of this section, shall
16 be guilty of a class B misdemeanor (((and shall be punished by a fine
17 of not less than ten dollars nor more than fifty dollars, or by imprison-
18 ment in the county jail for not less than seven days nor more than
19 thirty days, or by both such fine and imprisonment))). No prosecution
20 shall be commenced for a violation of the provisions of this section re-
21 lating to the furnishing of information until a second blank has been
22 mailed to the defaulting officer or employer and he has been given twen-
23 ty days to complete and return the same.

1 34-06-19. PENALTY FOR VIOLATION OF CHAPTER.) Any person
2 who shall violate any of the provisions of this chapter, or any order,
3 rule, or regulation issued pursuant thereto, shall be guilty of a class B
4 misdemeanor (((and shall be punished by a fine of not less than twenty-
5 five dollars nor more than one hundred dollars, or by imprisonment in
6 the county jail for not less than ten days nor more than three months,
7 or by both such fine and imprisonment))).

1 34-06.1-09. PENALTIES.) Any person who violates any provision
2 of this chapter, or who discharges or in any other manner discriminates
3 against any employee because such employee has made any complaint
4 (((to his employer, the commissioner, or any other person))) relating
5 to a violation of any provision of this chapter, or has instituted, or
6 caused to be instituted any proceeding under or related to this chapter,
7 or has testified or is about to testify in any such proceedings, shall
8 (((. upon conviction thereof be subject to a fine of not more than one
9 hundred dollars, or by imprisonment for not more than thirty days, or
10 by both such fine and imprisonment))) be guilty of a class B misde-
11 meanor. (((Any employer who violates this chapter by failing to keep

12 the records required hereunder, or to furnish such records to the com-
13 missioner upon request, or who falsifies such records, or who hinders,
14 delays, or otherwise interferes with the commissioner or his authorized
15 representative in the performance of his duties in the enforcement of
16 this chapter, shall upon conviction be subject to a fine of not more than
17 one hundred dollars.)))

1 34-07-21. PENALTY - VIOLATION OF CHAPTER (((- CERTIFYING
2 LABOR STATEMENT))).) Any person who shall employ any minor con-
3 trary to the provisions of this chapter or (((to))) of any order or regu-
4 lation (((issued))) promulgated by the commissioner of labor as provided
5 (((in this chapter))) by law shall be guilty of ((a misdemeanor and
6 shall be punished by a fine of not less than twenty dollars nor more than
7 fifty dollars for each separate offense))) an infraction. (((Any person
8 authorized to sign a certificate as prescribed in this chapter who certifies
9 to any material false statement therein shall be guilty of a misdemeanor
10 and shall be punished by a fine of not less than twenty dollars nor more
11 than fifty dollars.)))

1 34-13-02. LICENSES REQUIRED - PENALTY.) No person (((, firm,
2 corporation, or association))) shall open or carry on an employment
3 agency in the state, unless such person (((, firm, corporation, or asso-
4 ciation))) shall first procure a license from the commissioner. Any per-
5 son (((, firm, corporation, or association who shall open or conduct)))
6 opening or conducting any such agency without first procuring a license,
7 shall be guilty of a class B misdemeanor ((and punished by a fine of
8 not less than twenty-five dollars, and not more than one hundred dollars,
9 or by imprisonment for a period not to exceed ninety days, or both, at
10 the discretion of the court))).

1 34-13-15. RULES GOVERNING AGENCIES.) . . .

2 8. (to be repealed) . . .

3 11. Any person (((, firm, or corporation))) who shall split,
4 divide, or share, directly or indirectly, any fee, charge,
5 or compensation received from any employee with any em-
6 ployer, or person in any way connected with the business
7 thereof, shall be guilty of a class A misdemeanor (((and

8 punished by a fine of not less than one hundred dollars,
9 and not more than one thousand dollars, or by imprison-
10 ment for a period not to exceed one year, or both, at the
11 discretion of the court))).

1 34-13-16. PENALTY.) Any person who violates the provisions of
2 this chapter for which another penalty is not specifically provided shall
3 be guilty of a class A misdemeanor (((and shall be punished by a fine
4 of not less than one hundred dollars nor more than one thousand dollars,
5 or by imprisonment for not to exceed one year, or by both such fine and
6 imprisonment))).

1 34-14-07. PENALTIES.) Any employer who shall willfully refuse to
2 pay the wages due and payable when demanded as in this chapter, or
3 who shall falsely deny the amount thereof, or that the same is due with
4 intent to secure for himself or any other person any discount upon such
5 indebtedness, or with intent to annoy, harass, or oppress, or hinder,
6 or delay, or defraud the person to whom such indebtedness is due,
7 shall be guilty of (((a misdemeanor and upon conviction thereof, be
8 punished by a fine of not less than twenty-five dollars nor more than
9 fifty dollars for each such offense))) an infraction. Any employee who
10 shall falsify the amount due himself or who willfully attempts to defraud
11 the employer shall be (((subject to a misdemeanor, and upon conviction
12 thereof shall be punished by a fine of not less than twenty-five dollars
13 nor more than fifty dollars for each such separate offense))) guilty of
14 an infraction.

1 39-01-02. STATE-OWNED MOTOR VEHICLES TO HAVE NAME PAINTED
2 ON SIDE OF VEHICLES - PENALTY FOR FAILURE.) All motor vehicles
3 owned by any state department, institution, or industry and operated by
4 such department, institution, or industry, except the official vehicle for
5 use by the governor, shall have painted on each front door the following
6 words: NORTH DAKOTA, in letters four inches in height. Two and
7 one-half inches directly below such words shall be printed in letters one
8 and one-half inches in height the name of the department, institution, or
9 industry of the state owning or operating such motor vehicle. The width
10 of the lettering required by this section shall be proportionate to the

11 required height and the color of such lettering shall be in clear and
12 sharp contrast to the background. The state highway patrol and all peace
13 officers of this state shall enforce the provisions of this section. The
14 state auditor, in the course of spot checking or verifying the inventory
15 of any department, institution, or industry, shall include in his report to
16 the governor and the legislative assembly any instance of noncompliance
17 with this section that shall come to his attention. The above requirements
18 shall not apply to cars owned and operated by the state highway patrol or
19 cars used principally in ((institutional,)) juvenile, parole and placement
20 service; or to any truck owned by any state department, institution, or
21 industry. Any state official, or any employee of any state department,
22 institution, or industry, who uses a motor vehicle which shall not be
23 marked as is required by this section is guilty of a class B misdemeanor
24 ((and shall be punished by a fine of not less than fifty dollars nor more
25 than one hundred dollars, or by imprisonment in the county jail for not
26 more than thirty days, or by both such fine and imprisonment)).

1 39-01-07. PENALTY FOR VIOLATION OF CHAPTER.) Any person
2 violating any provision of this chapter for which another penalty is not
3 specifically provided is guilty of a class A misdemeanor.

1 39-01-15. PARKING PRIVILEGES FOR PHYSICALLY HANDICAPPED -
2 CERTIFICATE - REVOCATION.)

- 3 1. . . .
- 4 2. . . .
- 5 3. . . .
- 6 4. If the police of any municipality or any other political subdivi-
7 sion shall find that such certificate or insignia is being improv-
8 erly used, they may report to the motor vehicle registrar any
9 such violation and the motor vehicle registrar may, in his dis-
10 cretion, remove the privilege. Any person who is not physical-
11 ly handicapped and who exercises the privileges granted a
12 physically handicapped person under subsection 1 shall be
13 guilty of (((a misdemeanor))) an infraction.

39-02-07. (to be repealed)

1 39-03-11. (((MISDEMEANOR TO IMPERSONATE))) PENALTY FOR IM-
2 PERSONATING PATROLMAN (((AND DECEIVE PERSONS))) Any person
3 shall be guilty of a class A misdemeanor if:

- 4 1. Without authority, he wears the badge of a member of the high-
5 way patrol, or a badge of similar design which would tend to
6 deceive anyone;
- 7 2. He impersonates a member of the highway patrol or other officer
8 or employee of the highway patrol with intent to deceive anyone;
9 or
- 10 3. Without authority, he wears a uniform likely to be confused with
11 the official uniform of the highway patrol.

1 39-03-12. PENALTY IN VIOLATION OF CHAPTER.) Any person who
2 violates any of the provisions of this chapter, for which another penalty
3 is not specifically provided, is guilty of a class B misdemeanor (((and
4 for the first offense shall be punished by a fine of not more than one
5 hundred dollars or by imprisonment in the county jail for not more than
6 thirty days. For a second or subsequent offense committed within one
7 year after the first offense, such person shall be punished by a fine of
8 not more than two hundred dollars, or by imprisonment in the county
9 jail for not more than ninety days, or by both such fine and imprison-
10 ment))).

1 39-03A-25. FRAUD - CORRECTION OF ERRORS.) No person shall
2 knowingly make any false statement, or shall falsify or permit to be
3 falsified any record or records of the retirement system herein estab-
4 lished in any attempt to defraud such system. Should any such change
5 in records fraudulently made or any mistake in records inadvertently
6 made result in any contributor or other beneficiary receiving more or
7 less than he would have been entitled to had the records been correct,
8 then, on the discovery of such error, the board shall correct such error
9 and shall adjust the payments which shall be made to the contributor in
10 such manner that the benefit to which he was correctly entitled shall be
11 paid. (((Any person violating any of the provisions of this section shall
12 be guilty of a misdemeanor, and, upon conviction, shall be sentenced to
13 pay a fine not exceeding one thousand dollars or suffer imprisonment not
14 exceeding one year, or both, in the discretion of the court.)))

1 . 39-04-18. . . .

2 3. (((In addition to any other penalties provided by law, any)))
3 Any person violating any of the provisions of this section shall
4 be guilty of a class B misdemeanor (((and shall be punished by
5 a fine of not to exceed one hundred dollars, or by imprisonment
6 in the county jail for not to exceed thirty days, or by both such
7 fine and imprisonment))).

1 39-04-41. PENALTY FOR VIOLATION OF PROVISIONS OF CHAPTER.)

2 Any person violating any of the provisions of this chapter for which
3 another penalty is not specifically provided is guilty of a class B misde-
4 meanor (((and for the first offense shall be punished by a fine of not
5 more than one hundred dollars, or by imprisonment for not more than
6 thirty days, or by both such fine and imprisonment. For a second and
7 subsequent offense, such person shall be punished by a fine of not more
8 than five hundred dollars or by imprisonment for not more than six
9 months, or by both such fine and imprisonment))).

39-04-42. (to be repealed)

1 39-04A-08. PENALTY FOR VIOLATION OF PROVISIONS OF CHAPTER.)

2 Any person violating any of the provisions of this chapter, for which
3 another penalty is not specifically provided, is guilty of a class B misde-
4 meanor (((and shall be punishable by a fine of not more than one hundred
5 dollars, or by imprisonment for not more than thirty days, or by both
6 such fine and imprisonment))).

39-05-07. (to be repealed)

1 39-05-11. ALTERING OR FORGING CERTIFICATE OF TITLE OR REGIS-
2 TRATION CARD - PENALTY.) Any person who shall:

- 3 1. Alter with fraudulent intent any certificate of title or registration
4 card issued by the department;
- 5 2. Forge or counterfeit any certificate of title or registration card
6 purporting to have been issued by the department under the
7 provisions of this chapter;

- 8 3. Alter or falsify with fraudulent intent or forge any assignment
9 of a certificate of title or registration card; or
10 4. Use any certificate, registration card, or assignment, knowing
11 the same to have been altered, forged, or falsified,
12 shall be guilty of a class C felony (((and shall be punished as is pro-
13 vided in this chapter))).

39-05-16. (to be repealed)

1 39-05-17. TRANSFER OF TITLE OF VEHICLE - ENDORSEMENT RE-
2 QUIRED - CERTIFICATE OF TITLE DELIVERED - NEW CERTIFICATE OB-
3 TAINED - PENALTY.) The owner of a motor vehicle who sells or trans-
4 fers his title to such vehicle shall endorse an assignment and warranty
5 of title upon the certificate of title for such vehicle, with a statement as
6 to whether there are liens or encumbrances thereon, which statement
7 shall be verified under oath by the owner. The owner shall deliver the
8 certificate of title to the purchaser if title passes to the purchaser. If
9 the legal title does not pass to the purchaser under the terms of the con-
10 tract for sale of the vehicle, the legal title owner shall endorse thereon
11 a statement that he holds the lien, the date thereof and the name of the
12 purchaser, and shall send the certificate of title to the motor vehicle
13 registrar with an application of the purchaser for a new certificate of
14 title showing the name of the legal owner, the registered owner, the
15 date of the lien of the legal owner, which certificate of title when issued
16 shall be returned by the motor vehicle registrar to the legal title owner,
17 who shall retain the same in his possession until the terms of the con-
18 tract are complied with by the purchaser, and thereupon, after showing
19 that the lien has been paid and satisfied he shall deliver the certificate
20 of title properly assigned to the purchaser. The purchaser or trans-
21 feree shall present the endorsed and assigned certificate to the depart-
22 ment, accompanied by a transfer fee of one dollar, and shall make an
23 application for and obtain a new certificate of title for such vehicle. A
24 violation of the provisions of this section shall constitute a class B mis-
25 demeanor.

39-05-25. (to be repealed)

51-07-04.1. (to be reclassified as a class C felony)

1 39-05-28. PENALTY FOR DEFACING, DESTROYING, OR ALTERING
2 ENGINE, SERIAL, OR IDENTIFICATION NUMBERS.) Any person who
3 with fraudulent intent shall:

4 1. Deface, destroy, or alter the engine, serial, or identification
5 number of a motor vehicle;

6 2. Place or stamp other than the original engine, serial, or
7 identification number, or a number assigned, upon a motor
8 vehicle; or

9 3. Sell or offer for sale any motor vehicle bearing an altered or
10 defaced engine, serial, or identification number, other than
11 the original or a number assigned,

12 shall be guilty of a class C felony ((and shall be punished as provided
13 in this chapter))).

1 39-05-33. GENERAL PENALTY ((FOR MISDEMEANOR)).) Any per-
2 son violating any of the provisions of this chapter for which another pen-
3 alty is not provided specifically is guilty of a class B misdemeanor ((and
4 shall be punished by a fine of not more than five hundred dollars, or by
5 imprisonment for not more than six months, or by both such fine and im-
6 prisonment))).

39-05-34. (to be repealed)

1 39-06-17. . . .

2 5. It is a class B misdemeanor (((, punishable by a fine of not more
3 than one hundred dollars and by imprisonment for not more than
4 thirty days or by both such fine and imprisonment,))) for any
5 person to operate a motor vehicle in any manner in violation of
6 the restrictions imposed in a restricted license issued to him.

39-06-40. (to be redrafted)

39-06-40.1. (to be redrafted)

1 39-06-42. PENALTY FOR DRIVING WHILE LICENSE SUSPENDED OR
2 REVOKED.) ((Any)) Except as provided in chapters 39-16 and

3 39-16.1. and in section 39-06.1-11, any person who drives a motor
4 vehicle on any public highway of this state at a time when his license
5 or privilege so to do is suspended or revoked shall be (((punished by
6 imprisonment for not less than two days nor more than six months and
7 there may be imposed in addition thereto a fine of not more than five
8 hundred dollars))) guilty of a class B misdemeanor.

1 39-06.1-04. FAILURE TO APPEAR, PAY STATUTORY FEE, POST
2 BOND - PROCEDURE - PENALTY.) If a person fails to choose one of the
3 methods of proceeding set forth in sections 39-06.1-02 or 39-06.1-03, he
4 shall be deemed to have admitted to commission of the violation charged,
5 and the official having jurisdiction shall report such fact to the licensing
6 authority within ten days after the date set for the hearing. Failure to
7 appear at the time designated, after signing a promise to appear, with-
8 out paying the statutory fee or posting and forfeiting bond shall be a
9 class B misdemeanor. Failure to appear at the hearing shall also be
10 deemed an admission of commission of the violation charged.

1 39-07-06. GENERAL PENALTY FOR VIOLATION OF TITLE.) Any
2 person violating any of the provisions of this title for which another
3 criminal penalty is not provided specifically (((, upon conviction,)))
4 shall be (((punished by a fine of not more than one hundred dollars, or
5 by imprisonment in the county jail for not more than ten days. For a
6 second conviction within one year after the first conviction, such person
7 shall be punished by a fine of not more than two hundred dollars, or by
8 imprisonment in the county jail for not more than twenty days, or by
9 both such fine and imprisonment. For a third or subsequent conviction
10 within one year after the first conviction, such person shall be punished
11 by a fine of not more than five hundred dollars, or by imprisonment in
12 the county jail for not more than six months, or by both such fine and
13 imprisonment))) guilty of an infraction. As used in this section, the

14 phrase "another criminal penalty" includes provision for payment of a
15 fixed fee for violating another section in this title, but does not include
16 any other administrative sanction which may be imposed.

1 39-07-08. HEARING - TIME OF - PROMISE OF DEFENDANT TO
2 APPEAR - FAILURE TO APPEAR.) The time to be specified in the sum-
3 mons or notice provided for in section 39-07-07 shall be at least five

4 days after the issuance of such summons or notice unless the person
5 halted shall demand an earlier hearing, and, if the person halted de-
6 sires, he may have the right, at a convenient hour, to an immediate
7 hearing or to a hearing within twenty-four hours. Such hearing shall
8 be before a magistrate of the ((township,)) municipality((())) or
9 county in which the offense was committed. Upon the receipt from the
10 person halted of a written promise to appear at the time and place
11 mentioned in the summons or notice, such officer shall release him from
12 custody. Any person refusing to give such written promise to appear
13 shall be taken immediately by the halting officer before the nearest or
14 most accessible magistrate. Any person willfully violating his written
15 promise to appear shall be ((subject to the penalty prescribed by sec-
16 tion 39-07-06 regardless of the disposition of the charge upon which he
17 originally was halted))) guilty of a class B misdemeanor.

Alternative No. 1

1 39-08-01. PERSONS UNDER THE INFLUENCE OF INTOXICATING
2 LIQUOR OR ((NARCOTIC DRUGS)) CONTROLLED SUBSTANCES NOT TO
3 OPERATE VEHICLE - PENALTY (((- DIAGNOSIS AND TREATMENT))).)

- 4 1. No person shall drive or be in actual physical control of any
5 vehicle upon a highway in this state if:
 - 6 a. He is ((an habitual user of narcotic drugs or is))) under
7 the influence of a ((narcotic drug)) controlled substance,
8 or;
 - 9 b. He is under the influence of intoxicating liquor.
- 10 2. ((Upon conviction, any)) A person violating any provision of
11 this section shall ((be punished by a fine of not less than one
12 hundred dollars nor more than two hundred dollars, or by im-
13 prisonment in the county jail for not more than thirty days, or
14 by both such fine and imprisonment))) guilty of a class B mis-
15 demeanor. Upon a second conviction for a violation occurring
16 within eighteen months of a previous violation resulting in a
17 prior conviction, such person shall be punished by imprison-
18 ment in the county jail for not less than three days nor more
19 than ((ninety)) thirty days, and in the discretion of the court,
20 a fine of not less than one hundred fifty dollars nor more than

21 five hundred dollars. In the event the complaint does not in-
22 clude the allegation that, if convicted, such conviction would be
23 the second such conviction as provided in this section, the
24 court may take judicial notice of such fact if indicated by the
25 records of the state highway department or make such finding
26 based on other evidence.

27 (((3. The court may, upon conviction of a person under this section,
28 but prior to sentencing, refer him to an approved treatment
29 facility for diagnosis. Upon receipt of the results of this diag-
30 nosis, the court may impose a sentence as prescribed in this
31 section or it may sentence the person to treatment in a facility
32 approved by the state division of alcoholism and drug abuse.)))

1 39-08-02. PERSON CONVEYING PASSENGERS NOT TO ENGAGE DRIVERS
2 ADDICTED TO INTOXICANTS - PENALTY.) No person owning or having
3 the direction or control of any vehicle for the conveyance of passengers
4 in this state shall employ or continue in his employment as a driver of
5 such vehicle any person who is known to the actor to be addicted to
6 (((drunkenness or))) a controlled substance or given to the excessive
7 use of controlled substances or intoxicating liquors. Any person violat-
8 ing the provisions of this section shall be (((punished by a fine of not
9 less than ten dollars nor more than fifty dollars))) guilty of an infraction.
10 and shall be liable for all damages sustained by reason of such violation.

1 39-08-03. RECKLESS DRIVING - AGGRAVATED RECKLESS DRIVING
2 - PENALTY.) Any person shall be guilty of reckless driving if he drives
3 a vehicle upon a highway:

- 4 1. (((Carelessly and heedlessly in willful or wanton))) Recklessly
5 in disregard of the rights or safety of others; or
- 6 2. Without due caution and circumspection and at a speed or in a
7 manner so as to endanger or be likely to endanger any person
8 or the property of another.

9 Except as otherwise herein provided, any person violating the provisions
10 of this section shall be (((punished by a fine of not more than one
11 hundred dollars, or by imprisonment in the county jail for not more than
12 thirty days, or by both such fine and imprisonment. Upon a second or
13 a subsequent conviction, such person shall be punished by a fine of not
14 less than fifty dollars nor more than five hundred dollars, or by impris-

15 onment in the county jail for not less than thirty days nor more than
16 ninety days, or by both such fine and imprisonment))) guilty of a class B
17 misdemeanor. Any person (((violating the provisions of this section.)))
18 who, by reason of reckless driving as herein defined, causes and inflicts
19 injury upon the person of another, shall be guilty of aggravated reckless
20 driving. (((and shall be punished by a fine of not less than one hundred
21 dollars nor more than one thousand dollars, or by imprisonment in the
22 county jail for not more than one year, or by both such fine and imprison-
23 ment in the discretion of the court))) a class A misdemeanor.

1 39-08-04. ACCIDENTS INVOLVING DEATH OR PERSONAL INJURIES
2 - PENALTY.)

- 3 1. The driver of any vehicle involved in an accident resulting in
4 injury to or death of any person shall immediately stop such
5 vehicle at the scene of such accident or as close thereto as pos-
6 sible but shall then forthwith return to and in every event shall
7 remain at the scene of the accident until he has fulfilled the re-
8 quirements of section 39-08-06. Every such stop shall be made
9 without obstructing traffic more than is necessary.
- 10 2. Any person failing to stop or to comply with said requirements
11 under such circumstances shall (((, upon conviction, be punished
12 by imprisonment for not less than thirty days nor more than one
13 year or by fine of not less than one hundred dollars nor more
14 than five thousand dollars, or by both such fine and imprison-
15 ment))) be guilty of a class A misdemeanor.
- 16 3. The commissioner shall revoke the license or permit to drive
17 (((and any))) or nonresident operating privilege of (((the)))
18 a person (((so))) convicted under this section.

1 39-08-05. ACCIDENTS INVOLVING DAMAGE TO VEHICLE - PENALTY.)
2 The driver of any vehicle involved in an accident resulting only in damage
3 to a vehicle which is driven or attended by any person shall immediately
4 stop such vehicle at the scene of such accident or as close thereto as pos-
5 sible but shall forthwith return to and in every event shall remain at the
6 scene of such accident until he has fulfilled the requirements of section
7 39-08-06. Every such stop shall be made without obstructing traffic more
8 than is necessary. Any person failing to stop or comply with said re-
9 quirements under such circumstances shall be guilty of a class B misde-

10 meanor (((punishable by a fine of not more than one hundred dollars or
11 imprisonment for not more than thirty days, or by both such fine and
12 imprisonment))).

39-08-12. (to be repealed)

1 39-08-19. PENALTY FOR HARASSMENT OF DOMESTIC ANIMALS.)

2 Any person operating a motorcycle, snowmobile, or other motor vehicle
3 as defined in subsection 32 of section 39-01-01 who willfully harasses
4 or (((willfully))) frightens any domestic animal, shall, upon conviction,
5 be guilty of a class B misdemeanor (((and fined not more than five
6 hundred dollars or thirty days in jail, or both such fine and imprison-
7 ment))). If injury or death results to the animal due to such action,
8 such person shall be liable for the value of the animal and exemplary
9 damages as provided in section 36-21-13.

1 39-10-65. OPERATION OF MOTOR VEHICLE, TRACTOR OR OTHER
2 VEHICLE PROHIBITED ON FLOOD PROTECTIVE WORKS - EXCEPTION -
3 PENALTY.)

- 4 1. Unless authorized by the authority in charge thereof, no per-
5 son shall operate a motor vehicle, tractor, or other vehicle
6 upon or across any flood protective works, including but not
7 limited to, any dike or flood protective works constructed by
8 a state or federal agency, or by any municipality or local sub-
9 division of the state.
- 10 2. Any person (((, firm or corporation))) violating the provisions
11 of this section shall be liable to any person (((, firm, corpora-
12 tion, municipality or political subdivision of this state))) suffer-
13 ing injury (((, for the full amount sustained thereby))); and in
14 addition thereto shall be guilty of a class B misdemeanor (((and
15 shall be punished by a fine of not more than two hundred dollars
16 or imprisoned in the county jail for not more than thirty days, or
17 by both such fine and imprisonment))).

1 39-12-21. (((PENALTIES))) PENALTY.) Any driver of a vehicle who
2 refuses to stop and submit the vehicle and load to a weighing when
3 directed to do so by any police officer or any agent of this state having

4 police powers relating to motor vehicles, shall be guilty of a class B mis-
5 demenor (((and upon conviction thereof shall be punished by a fine of
6 not exceeding one hundred dollars or imprisonment of not more than
7 thirty days, or by both such fine and imprisonment))).

1 39-16-30. (((MISDEMEANOR))) OPERATING WHILE UNDER SUSPEN-
2 SION OR REVOCATION - PENALTIES.)

- 3 1. It is a class B misdemeanor for any person whose license or
4 nonresident's operating privilege has been suspended or revoked
5 under this chapter to drive any motor vehicle upon any highway
6 except as permitted under this chapter during such suspension
7 or revocation.
- 8 2. (((It is a misdemeanor for any person to forge, or, without
9 authority, sign any notice provided for under section 39-16-05
10 that a policy or bond is in effect or any evidence of proof of
11 financial responsibility, or to file or offer for filing any such
12 notice or evidence of proof of financial responsibility, or to file
13 or offer for filing any such notice or evidence of proof knowing
14 or having reason to believe that it is forged or signed without
15 authority.
- 16 3.))) It is a class B misdemeanor for any person to violate any of
17 the provisions of this chapter for which a specific penalty is
18 not provided.

1 39-16.1-21. (((MISDEMEANOR))) OPERATING UNDER SUSPENSION
2 OR REVOCATION - PENALTIES.)

- 3 1. It is a class B misdemeanor for any person whose license or
4 nonresident's operating privilege has been suspended or revoked
5 under this chapter to drive any motor vehicle upon any highway
6 except as permitted under this chapter during such suspension
7 or revocation.
- 8 2. It is a class B misdemeanor for any person to violate any of the
9 provisions of this chapter for which a specific penalty is not
10 provided.

1 39-18-07. (((PENALTIES))) PENALTY.) Any person who (((shall
2 violate))) violates the provisions of this chapter shall be (((fined not

3 less than twenty-five dollars, or more than one hundred dollars, for
4 each offense))) guilty of an infraction.

39-21-47. (to be repealed)

1 39-21-51. ALTERATION OF ODOMETERS OR OTHER MILEAGE RECORD-
2 ERS, HOUR METERS ON TACHOMETERS OR OTHER HOUR RECORDERS (((A
3 MISDEMEANOR))) - PENALTY.) Any person (((, firm, corporation, or
4 association))) altering a motor vehicle odometer or other mileage recorder,
5 hour meter on tachometer or other hour recorder for the purpose of de-
6 ceiving another, shall be guilty of (((a misdemeanor and shall be punish-
7 ed by a fine of not exceeding five hundred dollars))) an infraction.

1 39-22-07. DEALER PERMITTING LICENSE TO BE USED BY ANOTHER
2 DEALER - LICENSE REVOKED - PENALTY.) Any dealer who permits any
3 other dealer to use his dealer's license, or permits the use of such
4 license for the benefit of any other dealer, shall have his dealer's license
5 revoked and shall be (((subject to a fine of not less than fifty dollars nor
6 more than two hundred dollars))) guilty of an infraction.

1 39-22-13. PENALTY FOR VIOLATION OF PROVISIONS OF CHAPTER.)
2 Any person violating any of the provisions of this chapter for which
3 another penalty is not specifically provided is guilty of a class B misde-
4 meanor (((and for the first offense shall be punished by a fine of not
5 more than one hundred dollars, or by imprisonment for not more than
6 thirty days, or by both such fine and imprisonment. For a second and
7 subsequent offense, such person shall be punished by a fine of not more
8 than five hundred dollars or by imprisonment for not more than six
9 months, or by both such fine and imprisonment))).

1 39-23-10. CONFLICT OF INTEREST - (((PENALTIES))) PENALTY.)
2 Any person found guilty of a conflict of interest in connection with the
3 administration of this chapter, or rule or regulation promulgated here-
4 under, shall (((, upon conviction, be punished by a fine of not more
5 than five hundred dollars or imprisonment for not more than one year,
6 or by both such fine and imprisonment, and in addition shall forfeit
7 his status as a public official or employee))) be guilty of a class A
8 misdemeanor.

1 39-24-09. RULES FOR OPERATION OF SNOWMOBILES. . . .

2 5. . . .

3 c. While under the influence of intoxicating liquor or (((nar-
4 cotics or habit-forming drugs))) a controlled substance.

1 39-24-11. PENALTIES.) Any person who shall violate subdivision b
2 or subdivision c of subsection 5 of section 39-24-09 shall be guilty of a
3 class B misdemeanor (((and be punished by a fine of not more than one
4 hundred dollars, or by imprisonment for not more than ninety days, or
5 by both such fine and imprisonment))). Any person who violates any
6 other provision of section 39-24-09 shall be assessed a fee of twenty
7 dollars. Any person who violates any other provision of this chapter
8 for which a specific penalty is not provided shall be assessed a fee of
9 ten dollars.

1 39-25-08. VIOLATIONS AND PENALTIES.) Any person who shall
2 violate sections 39-25-03 or 39-25-04 shall be guilty of a class B mis-
3 demeanor (((and shall be punished by a fine of not more than one
4 hundred dollars, or by imprisonment for not more than thirty days, or
5 by both such fine and imprisonment))).

1 39-26-03. PENALTY FOR ABANDONING A MOTOR VEHICLE.) Any
2 person who abandons a motor vehicle on any public or private property,
3 without the consent of the person in control of such property, is guilty
4 of a class A misdemeanor.

1 19-01-09. RIGHT OF INSPECTION.) For obtaining information regard-
2 ing suspected violations of any provision contained in this title, the depart-
3 ment, its inspectors and agents, shall have free access to all places, except
4 private homes, and all vehicles of transportation where and in which any of
5 the products, articles, compositions, or things designated in any chapter in
6 this title are manufactured, stored, sold, exposed for sale, prepared for
7 sale, held, or transported. Such inspectors and other agents of the depart-
8 ment may open any car, vehicle, package, can, jar, tub, tank, or other
9 receptacle containing any such product, articles, composition, or thing for
10 the purpose of inspection, and may take therefrom such sample as may be
11 required to permit such contents to be inspected and analyzed, upon paying

12 or offering to pay to the person entitled thereto the full value of the sample
13 so taken. Agents, bookkeepers, transportation officers, and other employ-
14 ees connected with or having control over any place or vehicle in which any
15 such products, articles, compositions, or things, are manufactured, stored,
16 sold, exposed for sale, prepared for sale, held, or transported, shall render
17 all assistance and aid within their power to inspectors and agents of the de-
18 partment in carrying out the provisions of any chapter contained in this title.
19 Any person obstructing any such agent or inspector of the department in
20 making the entry or inspection or in taking the samples authorized under the
21 provisions of this section or failing upon request to assist therein is guilty of
22 a class A misdemeanor.

19-01-15. (to be repealed)

1 19-02-17. IMPORTATION AND SALE OF INFECTED FRUIT A MISDEMEAN-
2 OR.) Any person who shall import into this state, sell, offer for sale, or have
3 in his possession for sale or barter, any fruit which has been infected or in-
4 fested with peach blight, peach mildew, peach twig borer, San Jose scale or
5 other scale insects, apple scab, codling moth larva or larvae, shall be guilty
6 of a class B misdemeanor. If fruit bears the mark of any of the infections or
7 infestations mentioned in this section, the mark shall be conclusive evidence
8 that the fruit is infected or infested within the meaning of this section.

1 19-02-20. PERSON AFFECTED WITH CONTAGIOUS DISEASE NOT TO
2 BE EMPLOYED IN FOOD ESTABLISHMENT - EXAMINATIONS.) No person
3 who is affected with any contagious or infectious disease in a communica-
4 ble form shall be employed, or permitted to remain as an employee, in
5 any food establishment. If an inspector or agent of the department has
6 reason to suspect that an employee in any such establishment is affected
7 with any such disease, he may require a medical examination of such em-
8 ployee and a certificate of health with reference to him from the employer
9 of such employee. The examination shall be made by a physician approved
10 by the department, and the cost thereof shall be borne by the employer.
11 If an employer fails to provide such a health certificate for himself or for
12 an employee within a reasonable time after being notified to do so, he
13 shall be deemed guilty of a class B misdemeanor.

1 19-02.1-04. PENALTIES AND GUARANTEE.)

- 2 1. Any person who violates any of the provisions of subsections 1
3 through 14 of section 19-02.1-02 shall be guilty of a class B mis-
4 demeanor (((and shall on conviction thereof be subject to a fine
5 of not less than twenty-five dollars nor more than one hundred
6 dollars, or by imprisonment in the county jail for not less than
7 ten days nor more than thirty days, or by both such fine and
8 imprisonment; but if the violation is committed after a conviction
9 of such person under this section has become final, such person
10 shall be subject to a fine of not less than one hundred dollars
11 nor more than five hundred dollars, or by imprisonment in the
12 county jail for not less than thirty days nor more than ninety
13 days, or by both such fine and imprisonment))).
- 14 2. No person shall be subject to the penalties of subsection 1 of
15 this section, for having violated subsections 1 or 3 of section
16 19-02.1-02 if he established a guaranty or undertaking signed by,
17 and containing the name and address of, the person residing in
18 the state of North Dakota from whom he received in good faith the
19 article, to the effect that such article is not adulterated or mis-
20 branded within the meaning of this chapter, designating this
21 chapter.
- 22 3. No publisher, radio-broadcast licensee, or agency or medium for
23 the dissemination of an advertisement, except the manufacturer,
24 packer, distributor, or seller of the article to which a false ad-
25 vertisement relates, shall be liable under this section by reason
26 of the dissemination by him of such false advertisement, unless
27 he has refused, on the request of the department to furnish the
28 department the name and post-office address of the manufacturer,
29 packer, distributor, seller, or advertising agency, residing in
30 the state of North Dakota who caused him to disseminate such
31 advertisement.
- 32 4. Repealed by S.L. 1971, ch. 235, §49.

1 19-03.1-23. PROHIBITED ACTS A - PENALTIES.)

- 2 1. Except as authorized by this chapter, it is unlawful for any per-
3 son to manufacture, deliver, or possess with intent to manufac-
4 ture or deliver, a controlled substance. Any person who vio-
5 lates this subsection with respect to:

- 6 a. a controlled substance classified in schedules I or II which
7 is a narcotic drug, is guilty of a (((crime and upon convic-
8 tion shall be imprisoned for not less than ten days and not
9 more than ten years for the first offense. For a second or
10 subsequent offense under this subdivision, the person, upon
11 conviction, shall be imprisoned for not less than twenty
12 years. Sentences under this subdivision shall not be sus-
13 pended, and the trial court shall not defer imposition of sen-
14 tence on a person convicted hereunder. A corporation, upon
15 conviction hereunder, shall be sentenced to a fine of not less
16 than ten thousand dollars))) class A felony;
- 17 b. any other controlled substance classified in schedule I, II, or
18 III, is guilty of a (((crime and upon conviction may be im-
19 prisoned for not more than ten years, or fined not more than
20 five thousand dollars, or both))) class B felony;
- 21 c. a substance classified in schedule IV, is guilty of a (((crime
22 and upon conviction may be imprisoned for not more than
23 five years, or fined not more than two thousand five hundred
24 dollars, or both))) class C felony;
- 25 d. a substance classified in schedule V, is guilty of a (((crime
26 and upon conviction may be imprisoned for not more than one
27 year, fined not more than one thousand dollars, or both)))
28 class A misdemeanor.
- 29 2. Except as authorized by this chapter, it is unlawful for any per-
30 son to create, deliver, or possess with intent to deliver, a coun-
31 terfeit substance. Any person who violates this subsection with
32 respect to:
- 33 a. a counterfeit substance classified in schedule I or II which is
34 a narcotic drug, is guilty of a (((crime and upon conviction
35 shall be imprisoned for not less than ten days nor more than
36 ten years for the first offense. For a second or subsequent
37 offense under this subdivision, the person, upon conviction,
38 shall be imprisoned for not less than twenty years. Sentences
39 under this subdivision shall not be suspended, and the trial
40 court shall not defer imposition of sentence on a person con-
41 victed hereunder. A corporation, upon conviction hereunder,
42 shall be sentenced to a fine of not less than ten thousand
43 dollars))) class A felony;

- 44 b. any other counterfeit substance classified in schedules I, II,
45 or III, is guilty of a (((crime and upon conviction may be
46 imprisoned for not more than ten years, fined not more than
47 five thousand dollars, or both))) class B felony;
- 48 c. a counterfeit substance classified in schedule IV, is guilty of
49 a (((crime and upon conviction may be imprisoned for not
50 more than five years, fined not more than two thousand five
51 hundred dollars, or both))) class C felony;
- 52 d. a counterfeit substance classified in schedule V, is guilty of
53 a (((crime and upon conviction may be imprisoned for not
54 more than one year, fined not more than five hundred dollars,
55 or both))) class A misdemeanor.
- 56 3. It is unlawful for any person (((knowingly or intentionally))) to
57 possess a controlled substance unless the substance was obtained
58 directly from, or pursuant to, a valid prescription or order of a
59 practitioner while acting in the course of his professional prac-
60 tice, or except as otherwise authorized by this chapter. Any
61 person who violates this subsection is guilty of a (((crime and
62 upon conviction may be imprisoned for not more than five years,
63 fined not more than two thousand five hundred dollars, or both)))
64 class C felony; except that any person who violates this subsection
65 regarding possession of marijuana, shall be guilty of a (((crime
66 and upon conviction may be fined not more than five hundred
67 dollars or imprisoned in the county jail or in the state peniten-
68 tiary for not more than one year or both))) class A misdemeanor.

1 19-03.1-24. PROHIBITED ACTS B - PENALTIES.)

- 2 1. It is unlawful for any person:
- 3 a. who is subject to the provisions of sections 19-03.1-15 through
4 19-03.1-22 to distribute or dispense a controlled substance in
5 violation of section 19-03.1-22;
- 6 b. who is a registrant, to manufacture a controlled substance
7 not authorized by his registration, or to distribute or dispense
8 a controlled substance not authorized by his registration to
9 another registrant or other authorized person;
- 10 c. to refuse or fail to make, keep or furnish any record, notifi-
11 cation, order form, statement, invoice or information required
12 under this chapter;

- 13 d. to refuse an entry into any premises for any inspection autho-
14 rized by this chapter; or
- 15 e. knowingly to keep or maintain any store, shop, warehouse,
16 dwelling, building, vehicle, boat, aircraft, or other structure
17 or place, which is resorted to by persons using controlled
18 substances in violation of this chapter for the purpose of
19 using these substances, or which is used for keeping or
20 selling them in violation of this chapter.
- 21 2. Any person who violates this section is guilty of a class C felony
22 ((and upon conviction may be imprisoned for not more than one
23 year, fined not more than five thousand dollars, or both)).

1 19-03.1-25. PROHIBITED ACTS C - PENALTIES.)

- 2 1. It is unlawful for any person (((knowingly or intentionally))):
- 3 a. to distribute as a registrant a controlled substance classified
4 in schedules I or II, except pursuant to an order form as
5 required by section 19-03.1-21;
- 6 b. to use in the course of the manufacture or distribution of a
7 controlled substance a registration number which is fictitious,
8 revoked, suspended, or issued to another person;
- 9 c. to acquire or obtain possession of a controlled substance by
10 misrepresentation, fraud, forgery, deception or subterfuge;
- 11 d. to furnish false or fraudulent material information in, or omit
12 any material information from, any application, report, or
13 other document required to be kept or filed under this chap-
14 ter, or any record required to be kept by this chapter; or
- 15 e. to make, distribute, or possess any punch, die, plate, stone,
16 or other thing designed to print, imprint, or reproduce the
17 trademark, trade name, or other identifying mark, imprint,
18 or device of another or any likeness of any of the foregoing
19 upon any drug or container or labeling thereof so as to ren-
20 der the drug a counterfeit substance.
- 21 2. Any person who violates this section is guilty of a class C felony
22 (((and upon conviction may be imprisoned for not more than one
23 year, or fined not more than five hundred dollars, or both))).

1 19-03.1-26. DISPOSING OF NEEDLES AND PARAPHERNALIA.) Any
2 registrant who shall use, administer, dispense or cause to be used, ad-
3 ministered, or dispensed any drug or controlled substance in a manner
4 requiring the use of any type of syringe, needle, eyedropper or other
5 similar paraphernalia shall destroy and dispose of said syringe, needle,
6 eyedropper, or other similar paraphernalia in a manner that will prevent
7 its reuse by any person other than the registrant. The state laboratories
8 department may promulgate rules and regulations setting out the specific
9 manner in which the provisions of this section shall be carried out. Any
10 registrant who shall violate the provisions of this section shall be guilty
11 of a class A misdemeanor.

19-03.1-29. (to be repealed)

1 19-03.1-30. CONDITIONAL DISCHARGE FOR POSSESSION AS FIRST
2 OFFENSE.) Whenever any person who has not previously been convict-
3 ed of any offense under this chapter or under any statute of the United
4 States or of any state relating to narcotic drugs, marijuana, or stimu-
5 lant, depressant, or hallucinogenic drugs, pleads guilty to or is found
6 guilty of possession of a controlled substance under subsection 3 of sec-
7 tion 19-03.1-23, the court, without entering a judgment of guilt and with
8 the consent of the accused, may defer further proceedings and place him
9 on probation upon terms and conditions. Upon violation of a term or
10 condition, the court may enter an adjudication of guilt and proceed as
11 otherwise provided. Upon fulfillment of the terms and conditions, the
12 court shall discharge the person and dismiss the proceedings against
13 him. Discharge and dismissal under this section shall be without ad-
14 judication of guilt and is not a conviction for purposes of this section or
15 for purposes of disqualifications or disabilities imposed by law upon con-
16 viction of a crime, including the (((additional penalties))) extended sen-
17 tence which may be imposed (((for second or subsequent convictions)))
18 under section (((19-03.1-31))) 12.1-32-09. There may be only one dis-
19 charge and dismissal under this section with respect to any person.

19-03.1-31. (to be repealed)

1 19-04-01. SELLING CERTAIN ENUMERATED POISONS REGULATED -
2 PENALTY.) Every person who, at retail, without receiving a physi-
3 cian's prescription specifying that such prescription shall contain a poi-
4 son and giving the name thereof, sells, furnishes, gives away, or
5 delivers to another:

6 1. Arsenic or any preparation thereof, corrosive sublimate, white
7 precipitate, red precipitate, biniodide of mercury, cyanide of
8 potassium, hydrocyanic acid, strychnia, or any other poison or
9 vegetable alkaloid, or the salts thereof, or essential oil of bitter
10 almonds; or

11 2. Aconite, belladonna, colchicum, conium, formaldehyde, nux
12 vomica, henbane, savin, ergot, cotton root, cantharides, creosote,
13 digitalis, or the pharmaceutical preparations of any of them,
14 croton oil, chloroform, sulphate of zinc, mineral acids, carbolic
15 acid, or oxalic acid,

16 without affixing to the bottle, box, vessel, or package containing the same,
17 the name of the contents, the word "poison", and his name and place of
18 business, is guilty of a class A misdemeanor. Any storekeeper, however,
19 may sell in original, unbroken packages, fungicides and insecticides, in-
20 cluding formaldehyde and Paris green, generally used for agricultural
21 purposes which have been designated as such by the state board of
22 pharmacy.

19-04-02. (to be repealed)

1 19-04-03. RECORDS TO BE KEPT OF POISONS DISPENSED - EXAM-
2 INATION OF RECORDS - PENALTY.) Every person who (((, at retail,)))
3 sells at retail, furnishes, gives away, or delivers to another any of the
4 articles or preparations mentioned in section 19-04-01 or any drug, chem-
5 ical, or preparation which, according to the standard works on medicine
6 or materia medica, is liable, in quantities of sixty grains or less, to
7 destroy adult human life, and who:

8 1. Fails or neglects, before delivering the same, to enter or cause
9 to be entered in a book kept for that purpose, the date of sale,
10 the name and address of the person to whom the article or prep-
11 aration is delivered or sold, the name, quantity, and quality of
12 the article or preparation delivered or sold, and the name of the
13 dispenser; or

14 2. Fails, neglects, or refuses, during business hours, to exhibit
15 such book, and every part thereof, for inspection, and to permit
16 the same to be inspected, upon demand, by any physician,
17 coroner, (((sheriff, constable))) peace officer, or magistrate of
18 the county,
19 is guilty of a class A misdemeanor.

1 19-04-04. DISTRIBUTION OF CERTAIN DRUGS AND PREPARATIONS
2 PROHIBITED.) No person, for the purpose of advertising or inviting or
3 suggesting the use of any such article, shall leave, throw, or deposit
4 upon the doorstep or premises of another, or within the dwelling, barn,
5 or other building owned or occupied by another, without a special per-
6 sonal request, samples or any quantities of any of the following prepara-
7 tions:

- 8 1. Patent or proprietary medicines; or
- 9 2. Any preparation, pill, tablet, powder, capsule, cosmetic, disin-
10 fectant, antiseptic, drug, medicine, or condiment that contains
11 poison or any ingredient that is deleterious to health, or that
12 contains an ingredient the name of which has to be printed upon
13 the label or to be disclosed otherwise under any law of this
14 state or of the United States.

15 Any person who shall violate any provision of this section shall be
16 guilty of a class B misdemeanor.

19-04-07. (to be repealed)

19-05-13. (to be repealed)

19-05-15. (to be repealed)

1 19-05-16. PENALTY.) Unless it is otherwise provided in this chap-
2 ter, any person violating any of the provisions of this chapter is guilty
3 of a class B misdemeanor (((, and for the first offense shall be punished
4 by a fine of not less than fifty dollars nor more than five hundred dollars,
5 or by imprisonment in the county jail for not more than thirty days, or by
6 both such fine and imprisonment. For the second and each subsequent
7 offense, he shall be punished by a fine of not less than one hundred

8 dollars nor more than one thousand dollars, or by imprisonment in the
9 county jail for not less than thirty days nor more than ninety days, or by
10 both such fine and imprisonment))).

1 19-06-08. PENALTY.) Any person violating any provision of this
2 chapter is guilty of (((a misdemeanor, and for a first offense shall be
3 punished by a fine of not less than twenty-five dollars nor more than
4 one hundred dollars, and for the second and each subsequent offense, he
5 shall be punished by a fine of not less than one hundred dollars nor more
6 than five hundred dollars, or by imprisonment in the county jail for not
7 less than ten days nor more than ninety days, or by both such fine and
8 imprisonment))) an infraction.

1 19-07-06. PENALTY.) Anyone violating the provisions of this chap-
2 ter is guilty of (((a misdemeanor and for the first offense shall be pun-
3 ished by a fine of not less than fifty dollars nor more than one hundred
4 dollars. For each subsequent offense he shall be punished by a fine of
5 not less than one hundred dollars and in addition the))) an infraction.
6 The court may authorize the department to suspend or revoke his
7 license. Any person who engages in the business of buying, selling, or
8 trading in eggs while his license is suspended or revoked shall be
9 (((fined not less than one hundred dollars))) guilty of an infraction, his
10 license shall be revoked, and no license (((thereafter))) may thereafter
11 be issued to him (((hereunder))) under this chapter.

1 19-08-06. PENALTIES.) Any person violating any of the provisions
2 of this chapter or any rule or regulation issued pursuant thereto is
3 guilty of a class B misdemeanor (((and, if another penalty is not pre-
4 scribed, shall be punished by a fine of not less than twenty-five dollars
5 nor more than one hundred dollars))).

1 19-10-18. SALE OF PROHIBITED OR MISCOLORED GASOLINES -
2 PENALTY.) Any person violating any of the provisions of section 19-10-16
3 is guilty of a class B misdemeanor (((and shall be fined not less than ten
4 dollars nor more than five hundred dollars))).

1 19-10-22. DEPARTMENT MAY DESIGNATE PORTS OF ENTRY AND
2 HOLD CARS FOR INSPECTION - PENALTY.) The department may desig-
3 nate ports of entry of all transportation companies carrying petroleum
4 products into this state for sale or consignment and may hold or delay
5 any car or other vehicle of transportation entering this state carrying such
6 products for sale or consignment until samples thereof have been obtained
7 for inspection and analysis and until such other information as may be re-
8 quired regarding the products contained in the shipment has been secured.
9 The department, however, shall not hold or delay any shipment or consign-
10 ment of petroleum products at the port of entry if the transportation company
11 carrying such products will permit proper inspection and sampling of ship-
12 ments or consignments at convenient designated points without the state,
13 and will permit the inspection of transportation records and provide ade-
14 quate information regarding the records of cars or other vehicles carrying
15 such products at division points or at other places within or without the
16 state where such cars or other vehicles, in normal practice, are stopped
17 and held for switching and rearrangement or where ample opportunity is
18 provided for proper inspection and sampling. The failure on the part of
19 a transportation company or of any of its officers or employees to hold
20 any such car or other vehicle of transportation for inspection shall be a
21 class B misdemeanor.

1 19-10-23. PENALTIES.) Any person violating or failing to comply
2 with any of the provisions of this chapter, or with any rule or regula-
3 tion issued pursuant thereto, is, unless another penalty is specifically
4 provided, guilty of a class B misdemeanor ((and shall be punished by
5 a fine of not less than twenty-five dollars nor more than one hundred
6 dollars, or by imprisonment in the county jail for not less than ten
7 days nor more than thirty days, or by both such fine and imprison-
8 ment))).

1 19-11-06. PENALTY.) Any person who shall violate any provision
2 of this chapter (((, or who shall knowingly permit any such violation.)))
3 shall be guilty of a class B misdemeanor ((and shall be punished by a
4 fine of not less than twenty-five dollars nor more than one hundred
5 dollars, or by imprisonment in the county jail for not more than sixty
6 days))).

1 19-13.1-12. PENALTIES.) Any person convicted of violating any
2 of the provisions of this chapter or the rules and regulations issued
3 thereunder or who shall impede, obstruct, hinder, or otherwise prevent
4 (((or attempt to prevent said))) the state laboratories director or his
5 duly authorized agent in performance of his duty in connection with the
6 provisions of this chapter, shall be (((deemed))) guilty of a class A
7 misdemeanor (((and on conviction thereof shall be fined in the sum of
8 fifty dollars for the first offense and in the sum of one hundred dollars
9 for each subsequent offense))). In all prosecutions under this chapter
10 involving the composition of a lot of commercial feed, a certified copy of
11 the official analysis signed by the state laboratories director shall be
12 accepted as prima facie evidence of the composition.

13 Nothing in this chapter shall be construed as requiring the state
14 laboratories director or his representative to (((report for))) seek
15 prosecution or (((for))) the institution of seizure proceedings (((as a
16 result of))) based on minor violations of the chapter when he believes
17 that the public interest will be best served by a suitable notice of warn-
18 ing in writing.

19 It shall be the duty of each state's attorney to whom any violation
20 is reported to cause appropriate proceedings to be instituted and prose-
21 cuted in a court of competent jurisdiction without delay. Before the
22 department reports a violation for (((such))) prosecution, an opportunity
23 shall be given the distributor to present his view to the department.

24 The department is hereby authorized to apply for and the court to
25 grant a temporary or permanent injunction restraining any person from
26 violating or continuing to violate any of the provisions of this chapter or
27 any rule or regulation promulgated under the chapter notwithstanding the
28 existence of other remedies at law. Said injunction to be issued without
29 bond.

30 Any person adversely affected by an act, order, or ruling made pur-
31 suant to the provisions of this chapter may within forty-five days there-
32 after bring action in the district court for Burleigh County for new trial
33 of the issues bearing upon such act, order, or ruling, and upon such
34 trial the court may issue and enforce such orders, judgments, or decrees
35 as the court may deem proper, just, and equitable.

1 19-14-08. PENALTY.) Any person who shall sell, offer, or expose
2 for sale, or have in his possession with intent to sell, any livestock
3 medicine in violation of any of the provisions of this chapter, or who
4 shall willfully and falsely represent that any livestock medicine is regis-
5 tered for sale in this state when in fact it is not so registered, shall be
6 ((punished by a fine of not more than two hundred dollars for the first
7 offense, and for any subsequent offense, by a fine of not more than
8 three hundred dollars, or by imprisonment in the county jail for not
9 more than one year, or by both such fine and imprisonment))) guilty of
10 a class B misdemeanor.

1 19-16.1-10. SUBMISSION OF FORMULA.) The department may, for
2 the purpose of registration, require the applicant to furnish a statement
3 of the formula of such antifreeze, unless the applicant can furnish other
4 satisfactory evidence that such antifreeze is not adulterated or misbrand-
5 ed. Such statement need not include inhibitor or other ingredients which
6 total less than five percent by weight of the antifreeze. All statements of
7 formula and other trade secrets furnished under this section shall be
8 privileged and confidential and shall not be made public or open to the
9 inspection of any persons, firms, associations, or corporations other than
10 the commissioner. No such statement shall be subject to subpoena nor
11 shall the same be exhibited or disclosed before any administrative or
12 judicial tribunal by virtue of any order or subpoena of such tribunal
13 without the consent of the applicant furnishing such statement to the
14 department. The disclosure of any such information, except as provided
15 in this section, shall be a class A misdemeanor.

1 19-16.1-11. PENALTY.) Any person who shall violate or fail to
2 comply with any of the provisions of this chapter, for which another
3 penalty has not been specifically provided, shall be guilty of a class B
4 misdemeanor (((and shall be punished by a fine of not more than one
5 hundred dollars, or by imprisonment for not more than thirty days, or
6 by both such fine and imprisonment))).

1 19-17-05. PENALTY.) Any person who violates any of the provi-
2 sions of this chapter or the orders, rules or regulations promulgated
3 by the commissioner under authority thereof, shall ((upon conviction
4 thereof be subjected to a fine for each and every offense, in a sum not

5 exceeding one hundred dollars or to imprisonment, not to exceed thirty
6 days))) , unless a specific penalty has been provided, be guilty of a
7 class B misdemeanor.

1 19-17-06. WEIGHTS OF CONTAINERS FOR FLOUR, CORN MEAL, AND
2 GRITS.) It shall be unlawful for any person (((, partnership, corpora-
3 tion, company, cooperative society, or organization))) to pack for sale,
4 sell, offer or expose for sale in this state any of the following commodi-
5 ties except in containers of not avoirdupois weights of two, five, ten,
6 twenty-five, fifty, and one hundred pounds, and multiples of one hundred
7 pounds: Wheat flour, self-rising wheat flour, phosphated wheat flour,
8 bromated flour, enriched flour, enriched self-rising flour, enriched
9 bromated flour, corn flour, corn meals, hominy and hominy grits; pro-
10 vided however, that the provisions of this section shall not apply to
11 (a) the retailing of flours, meals, hominy and hominy grits direct to the
12 consumer from bulk stock, or (b) the sale of flours and meals to commer-
13 cial bakers or blenders or for export in containers of more than one
14 hundred pounds, (c) flours, meal, hominy and hominy grits packed in
15 cartons the net contents of which are less than five pounds, or (d) the
16 exchange of wheat for flour by mills grinding for toll. Any ((violation
17 of this section shall constitute a misdemeanor and upon conviction, the
18 offender shall be fined not less than twenty-five dollars nor more than
19 five hundred dollars for each offense))) person violating the provisions
20 of this section is guilty of an infraction.

1 19-18-08. PENALTIES.)
2 (((1. Any person violating subsection 1 of section 19-18-03 shall be
3 guilty of a misdemeanor and upon conviction shall be fined not
4 more than one hundred dollars
5 2.))) Any person violating any provision of this chapter (((other than
6 subsection 1 of section 19-18-03))) shall be guilty of (((a misde-
7 meanor and upon conviction shall be fined not more than two
8 hundred dollars for the first offense and upon conviction of a
9 subsequent offense shall be fined not more than three hundred
10 dollars. Any offense committed more than five years after a
11 previous conviction shall be considered a first offense))) an
12 infraction. In any case where a registrant was issued a warning

13 by the commissioner pursuant to the provisions of this chapter,
14 such registrant shall upon (((conviction of a violation of)))
15 violating any provision of this chapter other than subsection 1
16 of section 19-18-03 be (((fined not more than two hundred
17 dollars, or imprisoned for not more than one year, or be sub-
18 ject to both such fine and imprisonment))) guilty of a class A
19 misdemeanor, and the registration of the article with reference
20 to which the violation occurred shall terminate automatically.
21 An article the registration of which has been terminated may not
22 again be registered unless the article, its labeling, and other
23 material required to be submitted appear to the commissioner to
24 comply with all the requirements of this chapter.

Chapter 19-19, NDCC . (to be repealed)

1 19-20.1-17. VIOLATIONS.)

- 2 1. If it shall appear from the examination of any commercial fertilizer
3 or soil conditioner that any of the provisions of this chapter or
4 the rules and regulations issued thereunder have been violated,
5 the department shall cause notice of the violations to be given to
6 the registrant, manufacturer, distributor, or possessor from whom
7 said sample was taken; any person so notified shall be given op-
8 portunity to be heard under such rules and regulations as may be
9 prescribed by the department. If it appears after such hearing,
10 either in the presence or absence of the person so notified, that
11 any of the provisions of this chapter or rules and regulations
12 issued thereunder have been violated, the state laboratories direc-
13 tor may certify the facts to the proper prosecuting attorney.
- 14 2. Any person convicted of violating any of the provisions of this
15 chapter or the rules and regulations issued thereunder or who
16 shall impede, obstruct, hinder, or otherwise prevent or attempt
17 to prevent said state laboratories director or his duly authorized
18 agent in the performance of his duty in connection with the pro-
19 visions of this chapter, shall be (((deemed))) guilty of a class A
20 misdemeanor (((and on conviction thereof shall be fined not less
21 than five hundred dollars for the first offense and not less than
22 one thousand dollars for each subsequent offense))). In all

23 prosecutions under this chapter involving the composition of a
24 lot of commercial fertilizers or soil conditioners, a certified copy
25 of the official analysis signed by the state laboratories director
26 shall be accepted as prima facie evidence of the composition.

27 3. Nothing in this chapter shall be construed as requiring the state
28 laboratories director or his representative to report for prosecu-
29 tion or for the institution of seizure proceedings as a result of
30 minor violations of the chapter when he believes that the public
31 interests will be best served by a suitable notice of warning in
32 writing.

33 4. It shall be the duty of each state's attorney to whom any viola-
34 tion is reported to cause appropriate proceedings to be instituted
35 and prosecuted in a court of competent jurisdiction without delay.

36 5. The department is hereby authorized to apply for and the court
37 to grant a temporary or permanent injunction restraining any
38 person from violating or continuing to violate any of the provi-
39 sions of this chapter or any rule or regulation promulgated under
40 the chapter notwithstanding the existence of other remedies at
41 law. Said injunction to be issued without bond.

1 19-21-09. PENALTIES.) Any person who violates any of the provi-
2 sions of this chapter shall be guilty of a class A misdemeanor. No per-
3 son shall be subject to the penalties of this section. for having violated
4 subsection 1 of section 19-21-02 in respect of any hazardous substance
5 shipped or delivered for shipment for export to any foreign country, in
6 a package marked for export and branded in accordance with the speci-
7 fications of the foreign purchaser and in accordance with the laws of
8 the foreign country.

1 19-22-05. PENALTY.) Any person who violates any of the provi-
2 sions of this chapter is guilty of a class B misdemeanor.

1 19-22.1-03. PENALTY.) Any person who violates any of the pro-
2 visions of this chapter is guilty of a class B misdemeanor.

24-02-14. (to be repealed)

1 24-03-05. CLOSING OF ROADS - PENALTY FOR PASSING OVER ROAD
2 OR REMOVING BARRICADE.) Whenever, during the construction work on
3 any state highway or at any other time, it may be necessary to prevent
4 traffic from passing over any portion of such highway, the department
5 may close such portion of the highway to all traffic by causing to be
6 posted in a conspicuous manner, at the ends of the portion of the high-
7 way so closed, suitable signs warning the public that such road is
8 closed under authority of law, and by the erection of suitable barricades,
9 fences, or other obstructions. The driver, or owner, or both, of any
10 vehicle, self-propelling or otherwise, passing through, over, or around
11 any such barricade, fence, or other obstruction so placed, or any person
12 or persons opening, removing, or defacing any such barricade, fence,
13 or other obstruction, or any such warning sign, without written permis-
14 sion from the engineer in charge of the work, or in charge of such high-
15 way, or any person or persons willfully (((, knowingly, or maliciously)))
16 causing any damage to the work under construction, is guilty of a class A
17 misdemeanor.

1 24-03-11. PENALTY FOR FAILURE TO ERECT WARNING SIGNS.) Any
2 (((contractor, foreman, or other))) person in charge of any work or re-
3 pairs on any public road, culvert, or bridge who shall fail or neglect to
4 erect and maintain suitable warning signs as provided in sections 24-03-09
5 and 24-03-10 shall be (((punished by a fine of not less than ten dollars
6 nor more than fifty dollars, or by imprisonment in the county jail for not
7 more than sixty days, or by both such fine and imprisonment))) guilty of
8 a class B misdemeanor.

24-06-27. (to be redrafted)

24-09-13. (to be repealed)

1 24-09-06. VEHICLES CARRYING SCHOOL CHILDREN, PASSENGERS FOR
2 HIRE, OR EXPLOSIVES MUST STOP AT RAILROAD CROSSING.) Whenever
3 any vehicle carrying school children, explosives, or inflammable liquids,
4 or passengers for hire, or any truck or any other vehicle having in tow
5 any other vehicle or equipment, or any vehicle of the tractor or cater-
6 pillar type, approaches any grade crossing, the driver thereof shall bring

7 the same to a complete stop before reaching the railroad track and before
8 crossing such track to ascertain if such crossing may be made in safety.
9 Any person violating the provisions of this section is guilty of an infrac-
10 tion.

24-09-14. (to be repealed)

1 24-10-03. LEAVING GATES (((OF CATTLE GUARDS))) OPEN - PEN-
2 ALTY.) Any person who shall open and fail to close promptly any gate
3 provided for in this chapter shall be guilty of (((a misdemeanor and
4 shall be punished by a fine of not more than one hundred dollars, or by
5 imprisonment in the county jail for not more than thirty days, or by both
6 such fine and imprisonment))) an infraction.

Chapter 24-11, NDCC . (to be repealed)

1 24-12-05. PENALTIES.) Any person who violates any provision of
2 this title for which another penalty is not specifically prescribed is guilty
3 of a class B misdemeanor (((and if convicted shall be punished by a
4 fine of not less than ten dollars nor more than one hundred dollars, or
5 by imprisonment in the county jail for not to exceed thirty days, or by
6 both such fine and imprisonment))).

24-12-06. (to be repealed)

1 24-15-05. PENALTY.) Any person who shall proceed or travel
2 through a roadblock without subjecting himself to the traffic control so
3 established shall be guilty of a class B misdemeanor (((and shall be
4 punished by a fine of not more than one hundred dollars or by imprison-
5 ment in the county jail for not more than thirty days, or by both fine and
6 imprisonment))).

1 24-16-12. PENALTY.) Any person who shall permit a junkyard, as
2 defined in section 24-16-02, to be established on his property in violation
3 of this chapter, shall be guilty of a class A misdemeanor.

1 32-13-08. REFUSAL TO DELIVER - PUNISHMENT.) If the defendant
2 refuses or neglects to deliver any of the books or papers demanded, as
3 prescribed in section 32-13-07, he is guilty of a class B misdemeanor,
4 and the court, or a judge thereof, by order, may put the person entitled
5 to the office in possession thereof and of all the books and papers belong-
6 ing thereto, and any party refusing to deliver the same, when ordered as
7 aforesaid, shall be punished as for a contempt.

1 32-13-11. JUDGMENT AGAINST INTRUDER.) When a defendant
2 against whom an action shall have been commenced shall be adjudged
3 guilty of usurping, intruding into, or unlawfully holding or exercising
4 any office, franchise, or privilege, judgment shall be rendered that he
5 be excluded from such office, franchise, or privilege and also that the
6 plaintiff recover costs against him. (((The court also, in its discretion,
7 may impose upon such defendant a fine not exceeding five thousand
8 dollars, which, when collected, shall be paid into the treasury of the
9 state to the credit of the school fund.)))

1 32-22-10. PENALTY IF OFFICER REFUSES TO EXECUTE AND RETURN
2 WRIT.) If the person to whom the writ is directed refuses, after service,
3 to obey the same, the court, upon affidavit stating such facts, must issue
4 an attachment against such person, directed to the sheriff or coroner,
5 commanding him forthwith to arrest such person and bring him immediately
6 before such court, and upon being so brought he must be committed to the
7 jail of the county until he makes due return to such writ or is otherwise
8 legally discharged. The person disobeying such writ also shall forfeit to
9 the person imprisoned or restrained a sum not exceeding five hundred
10 dollars (((, and, if))) to be recovered in a civil action by the person
11 restrained. If the person disobeying the writ is an officer, he shall be
12 incapable of holding or executing his office.

1 32-22-38. REMOVING OR CONCEALING PRISONER TO AVOID WRIT.)
2 Anyone having a person in his custody or under his restraint, power, or
3 control, for whose relief a writ of habeas corpus is issued, who, with
4 intent to avoid the effect of such writ, shall transfer such person to the
5 custody, or place him under control of another, or shall conceal him or
6 change the place of his confinement with intent to avoid the operation of

7 such writ, or with intent to remove him out of this state, shall (((forfeit
8 for every such offense one thousand dollars, and shall be imprisoned in
9 the penitentiary not less than one year nor more than five years))) be
10 guilty of a class C felony. In any prosecution (((for the penalty in-
11 curred))) under this section, it shall not be necessary to show that the
12 writ of habeas corpus had issued at the time of the removal, transfer, or
13 concealment therein mentioned, if it is proven that the acts therein for-
14 bidden were done with the intent to avoid the operation of such writ.

1 32-36-28. FAILURE TO SUPPORT - PENALTY.) If the father of a
2 child born out of wedlock, without lawful excuse, fails to support the
3 child where the same is not in his custody, and where paternity has
4 been judicially established, or has been acknowledged by him in writ-
5 ing, he is guilty of a (((misdemeanor and shall be punished by a fine
6 of not more than one thousand dollars, or by imprisonment in the coun-
7 ty jail for not more than one year, or by both such fine and imprison-
8 ment))) class C felony.

1 32-36-29. FAILURE TO CARRY OUT JUDGMENT FOR SUPPORT -
2 PENALTY.) If the father of a child born out of wedlock, without law-
3 ful excuse, fails to comply with and carry out a judgment for the sup-
4 port of the child, whether the child is a resident in the jurisdiction
5 where the judgment was rendered or not, he is guilty of a (((misd-
6 meanor and shall be punished by a fine of not more than one thousand
7 dollars, or by imprisonment in the county jail for not more than one
8 year, or by both such fine and imprisonment))) class C felony.

1 33-01-08. CRIMINAL JURISDICTION OF COUNTY JUSTICE.) The
2 jurisdiction and authority of county justices to prevent the commission
3 of public offenses, to institute searches and seizures, to require the
4 arrest and detention of persons charged with crime, to require and ac-
5 cept bail, and otherwise to act as magistrates in matters of crime, is
6 prescribed by title 29, Judicial Procedure, Criminal. Each county
7 justice has jurisdiction and authority coextensive with his county to
8 hear, try, and determine all cases of class A misdemeanor, class B
9 misdemeanor, and infraction arising from crimes committed in the county
10 for which he is elected or appointed and every other criminal action in
11 which jurisdiction is conferred specially by law.

1 33-01-25. PENALTY FOR ISSUING PROCESS WHEN JUSTICE INTER-
2 ESTED.) If any county justice or magistrate shall issue any summons
3 or other process in violation of section 33-01-24, and the same shall be
4 served upon any person, either by personal or by substituted service,
5 such county justice or magistrate shall be guilty of a class B misdemeanor
6 ((and shall be punished by a fine of not more than two hundred dollars,
7 or by imprisonment in the county jail for not more than six months, or
8 by both such fine and imprisonment))), and the judgment of conviction,
9 in every case, shall adjudge the removal of the defendant from his office.

1 33-12-24. VERDICT OF JURY.) In a criminal action in a justice
2 court, the verdict of the jury on a plea of not guilty must be to the ef-
3 fect that the jury finds the defendant "guilty" or "not guilty," as the
4 case may be. (((On any other plea, the verdict must be "for the state"
5 or "for the defendant.")))

1 33-12-28. CONVICTION OF DEFENDANT - JUDGMENT.) When the
2 defendant in a criminal action in a justice court is convicted by the
3 court or by a (((verdict of "guilty" or by a verdict "for the state"
4 which does not also find the defendant not guilty))) jury, the court
5 shall render judgment (((that he be punished by a fine or by imprison-
6 ment in the county jail, or by both such fine and imprisonment, speci-
7 fying the amount of the fine or time of imprisonment. A judgment of
8 fine only may direct also that the defendant be imprisoned until the
9 same is satisfied. In a case in which the court has a discretion as to
10 the extent of the punishment, it, upon the suggestion of either party
11 and before rendering judgment, may hear testimony as to circumstances
12 proper to be considered in aggravation or mitigation of punishment)))
13 in accordance with chapter 12.1-32.

33-12-29. (to be repealed)

33-12-30. (to be repealed)

33-12-31. (to be repealed)

33-12-32. (to be repealed)

Chapter 19-03.1 NRCC

AMENDMENTS TO THE UNIFORM CONTROLLED
SUBSTANCES ACT

Section 401(a) is amended to read as follows:

1 SECTION 401. [*Prohibited Acts A—Penalties.*]
2 (a) Except as authorized by this Act and except as provid-
3 ed in Section 409, it is unlawful for any person to manufacture,
4 deliver, or possess with intent to manufacture or deliver, a con-
5 trolled substance.

19-03.1-23(3) Section 401(c) is amended to read as follows:

→ 6 (c) Except as provided in Section 409, it is unlawful for any
7 person knowingly or intentionally to possess a controlled sub-
8 stance unless the substance was obtained directly from, or
9 pursuant to, a valid prescription or order of a practitioner while
10 acting in the course of his professional practice, or except as
11 otherwise authorized by this Act. Any person who violates this
12 subsection is guilty of a misdemeanor.

19-03.1-23
three 31

Article IV is amended by adding Section 409.

1 SECTION 409. [*Possession and Distribution of Marihuana.*]
2 (a) Section 401(a) and (c) do not apply to the following
3 acts which, except as provided in subsection (c), are not un-
4 lawful:

- 5 (1) possession of marihuana by an individual for personal use; and
- 6 (2) distribution of small amounts of marihuana by an individual for no remuneration or insignificant remuneration not involving a profit.

7 (b) Possession by an individual of not more than one ounce
8 of marihuana is presumed to be for personal use under sub-
9 section (a).

10 (c) Notwithstanding subsection (a), it is unlawful for any
11 individual knowingly or intentionally to:

- 12 (1) possess in public more than one ounce of marihuana;
- 13 (2) distribute marihuana in public; or
- 14 (3) smoke or otherwise ingest marihuana in public.

15 A person who violates this subsection is guilty of a misde-
16 meanor and upon conviction may be fined not more than
17 [].
18
19
20

- 21 (d) Any amount of marihuana possessed or distributed in 19-03-1-36
22 public is subject to summary seizure under Section 505(f). ← ~~2044~~(6)
23 (e) The use of a conveyance to facilitate the acts described
24 in subsection (a) does not subject the conveyance to forfeiture
25 under Section 505(a) (4).

↑ 19-03-1-36 (i)(d)
COMMENT

These amendments implement the recommendations of the National Commission on Marihuana and Drug Abuse by withdrawing the criminal sanction from certain marihuana-related activities. For a full discussion of the Commission's rationale, see *Marihuana: A Signal of Misunderstanding*, and *Drug Use in America: Problem in Perspective*, the first and final Reports of the National Commission on Marihuana and Drug Abuse.

The purpose of the amendment to Section 401 (a) is to exclude small-scale, not-for-profit distributional activities from the penalty provision covering commercial activities.

The amendment to Section 401(c) excludes certain possessory activities incident to personal use from the general "simple" possession penalty provision.

New Section 409 establishes the special rules governing the activities excluded from the generally applicable sections.

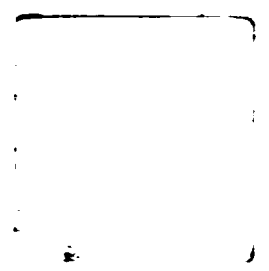
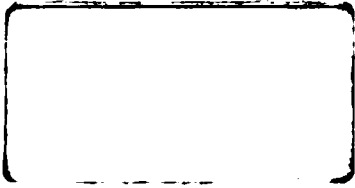
Subsection (a) of new Section 409 establishes two general classes of activity from which existing criminal sanctions are withdrawn: 1) possession for personal use; and 2) small-scale casual distribution for no remuneration or no profit.

Subsection (b) creates a presumption that possession of not more than one ounce is for personal use under subsection (a).

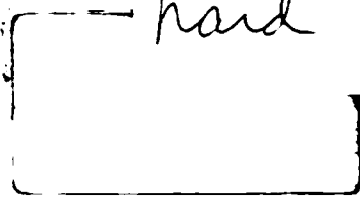
However, with regard to certain public activities of the kind described in subsection (a), subsection (c) reasserts the criminal sanction. Under subsection (c), it is unlawful to possess more than one ounce of marihuana in public or to distribute, smoke or otherwise ingest marihuana in public. The public acts described in subsection (c) are misdemeanors punishable by fine. Because subsection (c) covers only certain activities originally described in subsection (a), the limits of subsection (a) establish the limits of subsection (c) as well. For example, the distribution in public which is a misdemeanor under subsection (c) (2) is the "distribution of small amounts . . . for no remuneration or insignificant remuneration . . ." referred to in subsection (a) (2). Thus, all other distribution remains subject to the penalty established under Section 401(a) of the Act.

Subsection (d) provides that *any* amount of marihuana possessed or distributed in public is subject to forfeiture as contraband, regardless of whether or not the possessory or distributional activity itself is subject to criminal sanction.

Subsection (e) specifies that violations of subsection (c) involving a conveyance — for example, an automobile — do not subject that conveyance to forfeiture under the Uniform Act. Again, only those activities within the limits of subsection (a) receive the benefit of this exclusion; conveyance used in connection with marihuana-related activities not covered in subsection (a) remain subject to forfeiture.



The minutes for the
June 27-28, 1974, meeting
are not available either
on microfiche or in
hard copy.



Typed by Pat
Read by V. & Eileen

Tentative Agenda

COMMITTEE ON JUDICIARY "A"

6-26-74

Meeting of Thursday and Friday, June 27-28, 1974
Blue Room, State Capitol
Bismarck, North Dakota

Thursday, June 27

- 9: 30 a.m. Call to order
Roll call
Minutes of previous meeting
- 9: 45 a.m. Consideration of criminal sections in Title 29, NDCC, Judicial Procedure, Criminal
- 11: 00 a.m. Consideration of remaining criminal sections in Title 51, NDCC, Sales and Exchange
- 11: 30 a.m. Consideration of staff memorandum on accomplice liability
- 12: 00 noon Luncheon recess
- 1: 15 p.m. Reconvene - Consideration of criminal sections in Title 26, NDCC, Insurance
- 5: 00 p.m. Recess

* * * * *

Friday, June 28

- 9: 00 a.m. Reconvene - Consideration of criminal sections in Title 43, NDCC, Occupations and Professions
- 11: 00 a.m. Consideration of criminal sections in Title 31, NDCC, Judicial Proof
- 11: 30 a.m. Consideration of criminal sections in Title 28, NDCC, Judicial Procedure, Civil
- 12: 00 noon Luncheon recess
- 1: 15 p.m. Reconvene - Consideration of draft concurrent resolution for Legislative Council study of administrative regulations which lead to criminal liability, etc.
- 1: 45 p.m. Consideration of criminal sections in Title 27, NDCC, Judicial Branch of Government
- 4: 00 p.m. Adjourn

Tentative Agenda

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, July 25-26, 1974
Blue Room, State Capitol
Bismarck, North Dakota

Lawrence
Allen
7-23-74

Thursday, July 25:

- 9:30 a.m. Call to order
Roll call
Minutes
- 9:45 a.m. Consideration of study resolution redraft
- 10:00 a.m. Presentation by Mr. Vance Hill concerning suggested amendments or improvements to the new Criminal Code
- 10:30 a.m. Presentation by District Judge Alfred Thompson concerning suggested amendments or improvements to the new Criminal Code
- 11:00 a.m. Consideration of staff memorandum on accomplice liability
- 11:30 a.m. Consideration of redraft of certain sections in the new Criminal Code, Senate Bill No. 2045
- 12:00 noon Luncheon recess
- 1:15 p.m. Continue consideration of Senate Bill No. 2045 revisions
- 3:00 p.m. Consideration of redrafted sections resulting from directions received at the meeting of December 10-11, 1973
- 4:00 p.m. Consideration of staff memorandum on the latest United States Supreme Court decisions on obscenity
- 5:00 p.m. Recess

* * * * *

Friday, July 26: (Note: Meeting may be transferred to the Large Hearing Room in the Legislative Wing.)

- 9:00 a.m. Consideration of draft proposal relating to the control of abortions - receipt of public viewpoint
- 12:00 noon Luncheon recess
- 1:15 p.m. Consideration of draft proposals relating to dissemination of obscene materials - receipt of public viewpoint
- 5:00 p.m. Adjourn

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, July 25-26, 1974
Blue Room, State Capitol
Bismarck, North Dakota

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:33 a.m. on Thursday, July 25, 1974, in the Blue Room of the State Capitol in Bismarck, North Dakota.

Legislative members

present:

Senators Freed, Jones
Representatives Austin, Hilleboe, Lundene, Murphy,
Rau, Royse, Stone

Citizen members

present:

Judges Teigen, Glaser
Professor Lockney
Messrs. Webb, Wolf

Citizen members

absent:

Judges Heen, Pearce
Sheriff Wells
Chief Anderson

Also present:

Dr. Albert H. Fortman, North Dakota Right to Life Association
Mr. Edwin C. Becker, North Dakota Catholic Conference
Father Robert Branconnier, North Dakota Citizens' Lobby
Mr. Arvo Josephson, American Civil Liberties Union
Mr. Vance Hill
Mr. James Willis, Associated Press
Mrs. Paul Bourgois, Jr., Baldwin
Mrs. Frank Keller, Bismarck
Mrs. Janice Graham, Bismarck
Mrs. Dora Jaeger, Bismarck
Mr. Leonard H. Bucklin, representing the Motion Picture Association of America
Mr. James Dertien, representing the North Dakota Library Association
Mr. Harold L. Anderson, representing Saks News Agency
Mr. Robert Sakariassen, Saks News Agency
Mr. Allen I. Olson, Attorney General
Mr. James DuBois, Mr. Mel Quinlan, Northwestern Bell Telephone Company
Mr. Thomas Kelsch, Burleigh County State's Attorney

Representative Earl Rundle
Mr. Lyle Limond, North Dakota Medical Association
Representative Vernon Wagner

The Committee Counsel noted that the concurrent resolution for a Legislative Council study of administrative regulations which can result in criminal liability had been amended in accordance with motions made at the last meeting, and was being presented for reconsideration again at this meeting. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that the Committee reconsider its action by which it adopted a concurrent resolution calling for a study of administrative regulations under which criminal liability could arise, and other matters.

The Committee then discussed the second draft of the study resolution which is appended to these minutes as Appendix "A". Judge Glaser, noting that he had been absent when the resolution had been considered previously, inquired as to whether it contemplated a study of the substance of the rules which could create criminal liability. The consensus of the Committee was that that was what was contemplated by the resolution.

Professor Lockney noted that he, personally, favored the portion of the study resolution which would call for a thorough study of the desirability of providing for appellate review of criminal sentences, including the length of a given sentence. He stated that the Committee should also recommend a study of mental health commitment statutes, and in-hospital procedures which may violate a patient's constitutional rights. He stated that the reason he was interested in having the Legislature study this topic was because it would be more orderly for the Legislature to make any necessary changes in the statutes than to have the courts do it.

The Chairman suggested that maybe a separate study resolution wouldn't be the best "tactic" for the Committee to use, as it might tend to confuse the issues.

IT WAS MOVED BY PROFESSOR LOCKNEY AND SECONDED BY REPRESENTATIVE LUNDENE that the study resolution (second draft) presently before the Committee be amended to include a study of mental health and retardation commitment procedures. Judge Glaser stated that he supported the concept of the amendment, as there is definitely a need for such a study.

MR. WEBB MADE A SUBSTITUTE MOTION, WHICH WAS SECONDED BY REPRESENTATIVE MURPHY, to draft a separate resolution calling for a Legislative Council study of mental illness and retardation commitment procedures, and in-hospital procedures which relate to the rights of patients. Professor Lockney stated that he had no preference, and that the substitute motion was all right. THEREAFTER, THE MOTION CARRIED unanimously.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the second draft of the concurrent resolution directing a Legislative Council study of administrative regulations which could give rise to criminal liability, and other topics, be accepted as presented (see Appendix "A").

The Chairman then called on Mr. Vance Hill who made a presentation concerning some suggested changes in the new Criminal Code (Senate Bill No. 2045). Mr. Hill noted that he had been in attendance at numerous meetings with law enforcement officers, and had heard their desire for certain changes in the new Criminal Code.

First, Mr. Hill noted that Subdivision d of Subsection 2 of Section 12.1-05-07 should be amended to strike the reference to felonies involving violence, thus leaving the section applicable to a person who has committed a felony, regardless of what type of felony is involved.

Second, he noted that the law enforcement officers desired that the phrase ", but excessive force may be resisted" be deleted from Subsection 1 of Section 12.1-05-03.

Mr. Hill then set forth several items which he personally would like to see changed in the new Criminal Code. First, he believes that the "insanity defense" should be repealed, and that the mental condition of the defendant should be considered at the time of disposition. He noted that the National Council on Crime and Delinquency supported that position.

Second, he pointed out that Subsection 1 of Section 12.1-05-05, which authorizes the use of force on children by persons having responsibility for their care and supervision. He noted that the National Council on Crime and Delinquency also disapproved of those types of statutes, and, he further noted, there was a trend away from the use of force on children. Representative Lundene inquired as to the current efficacy of the scripture "Spare the rod and spoil the child" Mr. Hill replied that he would not want to challenge a Scripture quotation.

Third, Mr. Hill felt that there should be a provision specifically prohibiting minimum terms of imprisonment. He noted that the Parole Board presently has jurisdiction, and can parole an offender, commencing on the first day of his incarceration, though that jurisdiction is rarely utilized. That being the case, the Committee should follow through on the intent of the previous interim Committee and specifically prohibit minimum terms of imprisonment.

Fourth, Mr. Hill said that the statutes on where prisoners are incarcerated should be tightened up to ensure that felons are not incarcerated in county jails. He said he was not sure that the proposed revision of Subsection 9 of Section 12.1-01-04, to be presented to the Committee during this meeting, would do the trick. Further, he was not sure whether misdemeanants should not be able to be sentenced to the Penitentiary.

Mr. Hill next suggested that the Model Sentencing Act, promulgated by the National Council on Crime and Delinquency, should be utilized in place of the sentencing provisions in Chapter 12.1-32.

Mr. Hill noted a California study that arrived at the conclusion that rehabilitation does not occur in an institutional setting, and that therefore, except for offenders who are a distinct danger to society, institutional incarceration should be phased out. Next, Mr. Hill referred to Section 12.1-32-10, which provides a mandatory parole component for those offenders (felons and Class A misdemeanants) who serve their total terms. He stated that he disagreed with the philosophy of that section, and questioned its constitutionality. Instead, Mr. Hill said he would like to see a provision that anyone released from the Penitentiary should be subject to at least a one-year parole term.

Mr. Hill also suggested that the Committee could consider reducing the maximum term for a Class A misdemeanor from one year to six months, and further suggested that the Committee give more consideration to the possibility of providing for appellate review of criminal sentences.

The Chairman noted that the Committee had just approved an amendment to a concurrent resolution calling for a Legislative Council study of numerous issues, and the amendment would add the topic of appellate review of sentences to that study directive. The Chairman asked the Committee if they had any comments on Mr. Hill's suggestions, in the order in which they were given.

Judge Glaser inquired of Mr. Hill whether repeal of the insanity defense would put the question of the defendant's mental condition on the same plane as the question of whether he was intoxicated. Mr. Hill replied that it would for purposes of determining his ability to form the necessary criminal intent. Professor Lockney noted that the question of repeal of the "insanity defense" had been given adequate consideration during the last interim, and the Committee probably could not spare the time to go into it again during this interim. If it was to be looked at, it should be the result of a complete study in itself.

Representative Murphy inquired as to why some judges presently sentence to minimum sentences of imprisonment. It was noted that there was a legal basis for doing so, and in some cases a minimum sentence was required by the statute defining the offense. Judge Glaser inquired as to whether a prohibition on minimum sentences might not result in greater maximum sentences. Mr. Hill stated that he did not think that would be the case.

Judge Glaser inquired as to whether Mr. Hill was suggesting a maximum parole term of one year in every case. Mr. Hill replied that that was his suggestion, noting that supervision on parole was minimal at any rate, and that if a parolee were going to get into trouble, it would probably be during the first year. Judge Teigen noted that the present version of Section 12.1-32-10 gives flexibility because the Parole Board can terminate a mandatory parole component.

The Chairman then called on District Judge Alfred Thompson for his comments. Judge Thompson noted that sentencing is the toughest job that judges are given, and he wondered why the courts were given that responsibility. He noted that in some states, the juries were responsible. He stated that judges were not, by training, any better suited to sentence persons than other laymen. He suggested that perhaps sentencing could be handled by a board trained in the field. Judge Thompson noted that he doesn't use the indeterminant sentence, and doesn't like mandatory sentences.

He suggested that perhaps a "fourth branch" of government could be created with control over detention, corrections, and rehabilitation, and with more power than the separate state agencies responsible for those items presently have. He noted that recidivism in North Dakota is low, and that those repeat offenders who do appear before him again are primarily nonresidents.

Judge Thompson discussed the need for revision of North Dakota's jail laws, and stated that he has made some effort along these lines on behalf of the Judicial Council. He stated that three types of people are put in jail: first, persons convicted of crimes; second, persons accused of crime; and third, certain witnesses.

Judge Thompson stated that most jails are in bad condition, and the jail registers are not appropriately kept with respect to notations concerning sickness, disease, inmate educational attainment, and the use of inmate labor. He said since he has been in office, there have been four deaths in jails. He questioned the advisability of having jails in each small locality, because they could not be properly manned. He wondered whether regional jails are not the answer.

Judge Thompson noted that there was no provision in the new Criminal Code's sentencing provisions for assessment of costs against the convicted offender. He noted, for instance, the cost of indigent counsel for State Penitentiary inmates ran between \$8,000 and \$9,000 per year. He stated that there should be a provision for repayment of the cost of providing legal counsel which could be stated as part of a criminal sentence.

Judge Thompson also noted that there was no provision for disposition of contraband (utensils used in the commission of a crime) which are practically useful, and he felt that the new Criminal Code should make some statement with respect to contraband.

Judge Thompson noted that there was no provision for sentences to commence in the future, and that perhaps an amendment should be made to Subsection 6 of Section 12.1-32-02 to authorize the delay of a sentence of imprisonment, for instance, during harvest time.

Representative Austin inquired as to what type of jails Judge Thompson was referring to. Judge Thompson replied that he was referring to all jails, both city and county. Representative Austin noted that his county sheriff thinks that no one should serve more than three days in their county's jail.

Senator Jones inquired as to who enforces the jail rules. Judge Thompson noted that the District Court has the duty, but that it is almost impossible to carry it out. Representative Murphy inquired as to whether there was a chance that the jail standards were too high. Judge Thompson replied that they were not, and were, in fact, minimal standards.

Judge Teigen inquired whether, if the sentencing procedure were to be changed, it should only be changed with regard to felony cases. Judge Thompson replied, yes, and that there should be a mandatory pre-sentence report given to the sentencing judge.

Representative Murphy inquired whether we weren't approaching the point where only the criminally insane would be in prison. Judge Thompson replied that he didn't think so. Representative Murphy stated that there must exist the ability to "punish", because some criminals don't need rehabilitation, and are not dangerous to society. However, it is not feasible to simply do nothing about the man who murders his wife but would never murder again, and thus is not in need of "rehabilitation".

Mr. Webb stated that, in contrast to Judge Thompson's concern, it seemed that the thrust of the Committee's effort was to grant even more discretion to judges in the sentencing area.

The Committee recessed for lunch at 12:02 p.m. and reconvened at 1:30 p.m.

The Committee continued discussion of the morning's suggestions, and IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY JUDGE TEIGEN, AND CARRIED that the staff draft a section prohibiting minimum sentences, and draft a memo regarding the reasons for the previous action taken by the Committee on Sections 39-08-01 and 19-03.1-23, wherein increased sentences for second offenses were authorized. (Note, the Committee did not authorize increased sentences for second offenses in Section 19-03.1-23, but rather increased the classification to a Class A felony which would cover the potential increased sentence under the statute as it currently exists.)

The items considered by the Committee, as acted upon, are attached to these minutes as Appendix "B".

The Committee considered a proposed revision of certain sections in Senate Bill No. 2045, commencing with a consideration of Subsections 9 and 27 of Section 12.1-01-04, which read as follows:

- 1 9. "Felony" means an offense for which a term of imprisonment in the
2 state penitentiary, or regional detention facility approved by the
3 director of institutions, of one year or more is authorized by section
4 12.1-32-01 or by statute outside this title ((, or a felony as defined
5 in section 12.1-32-01)))
- 6 27. "Public servant" as used in this title and in any statute outside
7 this title which defines an offense means any officer or employee
8 of government, including law enforcement officers, whether elected
9 or appointed, and any person participating in the performance of a
10 governmental function, but the term does not include witnesses;

The question arose as to why the terms "felony" and "misdemeanor" should be defined in Section 12.1-01-04, and why that definition should not be contained in Section 12.1-32-02.

IT WAS MOVED BY PROFESSOR LOCKNEY AND SECONDED BY REPRESENTATIVE STONE that Subsections 9 (defining "felony") and 20 (defining "misdemeanor") of Section 12.1-01-04 be deleted, and provision made, by amendment to Subdivision c of Subsection 1, Section 12.1-32-02, that felons can be sent to the Penitentiary or approved regional facilities, but that misdemeanants cannot be sent to the Penitentiary.

Representative Stone noted that there is a national trend towards regionalization of detention facilities. Professor Lockney noted that under Senate Bill No. 2045, as it now stands, a felon could conceivably be sentenced to a county jail.

Judge Teigen suggested some language to amend Subdivision b of Subsection 1 of Section 12.1-32-02 (note: the reference is to the subsection as proposed for amendment at this meeting), which would authorize imprisonment of a felon in the Penitentiary or a regional detention facility approved by the Director of Institutions, or to the State Farm in accordance with Section 12-51-07; and would authorize detention in a county jail or the State Farm, or a regional detention facility approved by the Director of Institutions if convicted of a misdemeanor. PROFESSOR LOCKNEY THEN WITHDREW HIS MOTION, WITH THE CONSENT OF HIS SECOND.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY MR. WEBB, AND CARRIED, with Professor Lockney voting in the negative, that Subsections 9 and 20 of Section 12.1-01-04 be repealed and that Subdivision b of Subsection 1 of Section 12.1-32-02 be amended to read as follows: "A term of imprisonment, including intermittent imprisonment:

- (1) In the penitentiary or a regional detention facility approved by the director of institutions, or in the state farm in accordance with Section 12-51-07.

- (2) In a county jail, in the state farm, or in a regional detention facility approved by the director of institutions, if convicted of a misdemeanor.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE RAU, AND CARRIED that Subsection 27 of Section 12.1-01-04, defining "public servant", be accepted as drafted.

The Committee then considered the proposed creation of a new subsection to Section 12.1-01-04 to define "political subdivision", which definition would read as follows:

- 1 "Political subdivision", as used in this title and in any statute outside this title
- 2 which defines an offense, means a county, city, school district, township, and
- 3 any other local governmental entity created by law;

The Committee Counsel noted that this definition would be useful, as the phrase "political subdivision" was used in several sections which define offenses, and the question could arise, as it had in the past, whether the phrase "political subdivision" includes a city. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that the definition of "political subdivision", to be added as a new subsection of Section 12.1-01-04, be accepted as drafted.

The Committee considered a proposed amendment to Section 12.1-01-05, which reads as follows:

- 1 12.1-01-05. CRIMES DEFINED BY STATE LAW SHALL NOT BE SUPER-
- 2 SEDED BY CITY ORDINANCE OR BY HOME RULE CITY'S CHARTER OR ORDI-
- 3 NANCE.) No offense defined in this title or elsewhere by law shall be super-
- 4 seded by any city ordinance, or city home rule charter, or by an ordinance
- 5 adopted pursuant to such a charter, and all such ((offenses)) offense defini-
- 6 tions shall have full force and effect within the territorial limits and other juris-
- 7 diction of home rule cities. This section shall not preclude any city from
- 8 enacting any ordinance containing penal language when otherwise authorized
- 9 to do so by law.

The Committee Counsel noted that this section was designed to ensure that home rule cities could not supersede state offense definitions, and also to ensure that any city, including a home rule city, could enact an ordinance containing penal language when otherwise authorized to do so by law. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY PROFESSOR LOCKNEY AND JUDGE TEIGEN, AND CARRIED that Section 12.1-01-05 be accepted as drafted.

Representative Hilleboe noted that the section arose as a result of concern over the "Sunday closing" statutes, presently Chapter 12.1-30 of the new Criminal Code (Senate Bill No. 2045). He stated that Chapter 12.1-30 should not be in Title 12.1,

but should be somewhere else in the Century Code. The Committee Counsel noted that changing the location of Chapter 12.1-30 would not negate the effect of Section 12.1-01-05, to the extent that the "Sunday closing" statutes would still define a criminal act. Representative Hilleboe suggested that if the chapter were moved out of Title 12.1, perhaps some sanctions other than criminal liability could be attached for violation.

The Committee considered a proposed amendment to Subsection 1 of Section 12.1-08-01, which reads as follows:

- 1 1. A person is guilty of a class A misdemeanor if (((, by physical inter-
- 2 ference or obstacle,))) he intentionally obstructs, impairs, impedes,
- 3 hinders, prevents, or perverts the administration of law or other
- 4 (((government))) governmental function.

The Committee Counsel noted that this amendment was in response to the Chair's direction at several meetings that Section 12.1-08-01 be expanded so that there would be no question about it covering any intentional obstruction or impedance of a governmental function. He also noted that the word "governmental" was substituted for the word "government" because "governmental function" was defined in Section 12.1-01-04, while "government function" was not so defined.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY SENATOR JONES, AND CARRIED that the proposed amendment to Subsection 1 of Section 12.1-08-01 be accepted as presented.

The Committee considered a proposed amendment to Subdivision d of Subsection 2 of Section 12.1-11-02 designed to correct a typographical error in the original bill by changing the word "objection" to "object". IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that the proposed amendment to Subdivision d of Subsection 2 of Section 12.1-11-02 be accepted as presented.

The Committee considered a proposed amendment to Subdivision b of Subsection 1 of Section 12.1-11-05 which was designed to eliminate another typographical error where in a semicolon and the word "or" was left at the end of a final subdivision. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the proposed amendment to Subdivision b of Subsection 1 of Section 12.1-11-05 be accepted as drafted.

The Committee considered proposed amendments to Section 12.1-11-06 which reads as follows:

- 1 12.1-11-06. PUBLIC SERVANT REFUSING TO PERFORM DUTY.) Any
- 2 public servant who knowingly refuses (((or neglects))) to perform any duty
- 3 imposed upon him by law is guilty of a class A misdemeanor.

The Committee Counsel noted that this amendment was again to delete language which was no longer appropriate in light of further Committee action. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 12.1-11-06 be accepted as drafted.

The Committee considered Section 12.1-13-01, and the Committee Counsel noted that the minutes of March 28-29, 1974, at page 7, indicated a desire on the part of the Committee to have this offense classified as a Class C felony in order that public servants who violate it may be removed from office under Section 12.1-33-01. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE HILLEBOE, AND CARRIED that the proposed amendment to Section 12.1-13-01 be accepted.

The Committee considered a proposed amendment to Section 12.1-17-07, which reads as follows:

1 12.1-17-07. HARASSMENT.)

2 1. A person is guilty of an offense if, with intent to frighten or harass
3 another, he:

4 a. Communicates in writing or by telephone a threat to (((commit
5 any violent felony))) inflict injury on any person to any
6 person's reputation, or to any property;

7 b. Makes a telephone call anonymously or in offensively coarse
8 language; (((or)))

9 c. Makes repeated telephone calls, whether or not a conversation
10 ensues, with no purpose of legitimate communication; or

11 d. Communicates in writing or by telephone and causes mental
12 anguish.

13 2. The offense is a class A misdemeanor if it is under subdivision a of
14 subsection 1. Otherwise it is a class B misdemeanor.

15 3. Any offense defined herein and committed by use of a telephone may
16 be deemed to have been committed at either the place at which the
17 telephone call or calls were made, or at the place where the telephone
18 call or calls were received.

The Committee Counsel noted that the amendments, with the exception of the language relating to injury to reputation and Subdivision b of Subsection 1, were required by motion during the October 25-26, 1973, meeting of the Committee (see page 21 of those minutes). He noted that the amendments were designed to incorporate the desirable provisions of Section 8-10-07.1 which was repealed during the October 1973 meeting.

The Committee discussed the fact that an obscene or harassing phone call could come interstate, noting the extreme likelihood of that possibility where you

have sister cities such as Fargo-Moorhead. Representative Hilleboe suggested that perhaps the section should be classified as a felony so that the offender could be extradited.

The Committee discussed the probability that the offense was also covered by Minnesota law, or by federal law. Representative Hilleboe stated that this section, and the section dealing with false identification cards, should be felonies, so that the offenders involved could be extradited at state expense.

IT WAS MOVED BY SENATOR JONES AND SECONDED BY REPRESENTATIVE STONE that Section 12.1-17-07 be accepted as drafted.

Judge Teigen suggested that Subdivision d be amended to ensure that it referred to a falsehood, as it would be possible to telephone or write a person telling them the truth, and still cause mental anguish. THEREFORE, JUDGE TEIGEN MADE A SUBSTITUTE MOTION, WHICH WAS SECONDED BY REPRESENTATIVE ROYSE, to insert the words "a falsehood" on line 11 after the underscored word "telephone", and that when so amended Section 12.1-17-07 be accepted.

Mr. Wefald called the Committee's attention to Title 47 of the United States Code Annotated, Section 223, which provides that it is a criminal offense to utilize the telephone in the District of Columbia, or in interstate or foreign communications, to make a lewd or obscene proposal; to call without disclosing identity and with intent to annoy or harass; to repeatedly ring the phone with intent to harass; or make repeated telephone calls during which conversation does ensue with a design solely to harass the person called.

JUDGE TEIGEN'S MOTION TO ACCEPT SECTION 12.1-17-07 THEN CARRIED.

The Committee considered a proposed amendment to Subsection 2 of Section 12.1-21-08, which reads as follows:

- 1 2. Property is that "of another" if anyone, including a government,
- 2 other than the actor has a possessory or proprietary interest therein.

The Committee Counsel noted that, upon further consideration, he felt that the provisions of Subsection 2 should be redrafted, and that any other necessary redrafting to accomplish the purpose should be done also. The Chairman directed that that redrafting be done.

The Committee considered an amendment to Subdivision b of Subsection 2 of Section 12.1-23-05 designed to clarify the language in that subdivision. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the proposed amendment to Subdivision b of Subsection 2 of Section 12.1-23-05 be accepted as drafted.

The Committee considered an amendment to Subsection 1 of Section 12.1-32-02, which reads as follows:

- 1 1. Every person convicted of an offense shall be sentenced by the court
- 2 to one or a combination of the following alternatives, unless the sen-
- 3 tencing alternatives are otherwise specifically provided in the statute

4 defining the offense or unless imposition of sentence is suspended
5 under section 12-53-13:

6 a. (((Deferred imposition of sentence.

7 b.))) Probation.

8 (((c.))) b. A term of imprisonment, including intermittent imprisonment.

9 (((d.))) c. A fine.

10 (((e.))) d. Restitution for damages resulting from the commission of the
11 offense.

12 (((f.))) e. Restoration of damaged property, or other appropriate work
13 detail.

14 (((g.))) f. Commitment to an appropriate licensed public or private institu-
15 tion for treatment of alcoholism, drug addiction, or mental disease
16 or defect.

17 Sentences imposed under this subsection shall not exceed in duration the maxi-
18 mum sentences to imprisonment provided by section 12.1-32-01, section

19 (((12.1-32-08))) 12.1-32-09, or as provided specifically in a statute defining

20 an offense. This subsection shall not be construed as not permitting the uncon-
21 ditional discharge of an offender following conviction. Sentences under sub-

22 divisions (((e))) d or (((f))) e shall be imposed in the manner provided in sec-
23 tion (((12.1-32-07))) 12.1-32-08.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY SENATOR JONES AND JUDGE TEIGEN, AND CARRIED that Subsection 1 of Section 12.1-32-02 be accepted as drafted, and as amended previously in the meeting.

The Committee considered a proposed amendment to Subsection 1 of Section 12.1-32-08, and the Committee Counsel noted that it was simply to make the latter portions of that subsection coordinate with the other sections which refer to the possibility of making restitution as a condition of probation, or to being "sentenced" to make restitution. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY JUDGE TEIGEN, AND CARRIED that the proposed amendment to Subsection 1 of Section 12.1-32-08 be accepted as drafted.

The Committee considered a proposed amendment to Subdivision c of Subsection 1 of Section 12.1-32-09, which reads as follows:

1 c. The convicted offender is a persistent offender. The court shall
2 not make such a finding unless the offender is an adult and has
3 previously been convicted in any state or states or by the
4 United States of two felonies of class B or above, or of one class B
5 felony or above plus two offenses potentially punishable by im-
6 prisonment classified below class B felony, committed at different
7 times when the offender was an adult. For the purposes of this
8 subdivision, a felony conviction in another state or under the
9 laws of the United States shall be considered a felony of class B
10 or above if it is punishable by a maximum term of imprisonment
11 of ten years or more.

The Committee Counsel noted that these amendments were being proposed as a result of previous comments by Judge Pearce to the effect that it shouldn't be possible to find that a person is a persistent offender based on previous convictions of infractions. In addition, the Committee Counsel noted that the language on lines 3 through 7 was designed to ensure that only felony convictions punishable by a maximum term of imprisonment of 10 years or more, whether occurring in North Dakota or elsewhere in the United States, would be counted for the purpose of determining whether an offender is a persistent offender.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Subdivision c of Subsection 1 of Section 12.1-32-09 be accepted as drafted.

The Committee then discussed the introductory language of Section 12.1-32-12 which the Committee Counsel was proposing for amendment in order to include reference to offenses defined by the Constitution. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the proposed amendment to the introductory language of Section 12.1-32-12 be accepted as drafted.

The Chairman called for further discussion on the suggestions made by the morning's speakers, Mr. Hill and Judge Thompson. The Committee discussed Mr. Hill's suggestion that the defense of "mental disease or defect" be abolished. After much discussion, IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that the Committee not consider changing the text of Section 12.1-04-03 and related sections, and that the "mental disease and defect" defense remain as passed during the 1973 Session. The Chairman noted that, if the Committee desired to take no actions on the suggestions made, no motion would be necessary.

The Committee discussed Mr. Hill's suggestion that the "use of force" provisions be amended to ensure that force could not be used on minors simply because of their status. After discussion, no action was taken.

The Committee considered Mr. Hill's suggestions regarding Section 12.1-32-10 which presently provides a mandatory parole component for only those persons who complete their full term of imprisonment. The Committee took no action with respect to this suggestion.

The Committee considered Judge Thompson's suggestions with relation to sentencing, but took no action with respect to them. The Committee considered his suggestions with relation to the sentence including provision for reimbursement of costs, and further discussion on this topic was held in abeyance until a later date.

The Chairman noted Judge Thompson's suggestion that action be taken to replace Section 12-01-13, which provides for disposition of fines and costs. The Committee Counsel noted that, during the last legislative interim, the Committee on Judiciary "A" had taken care of that problem in the "point system" bill when it created Section 29-27-02.1, which would directly replace Section 12-01-13.

Representative Rau raised the question of Judge Thompson's point with respect to procedures for disposing of instruments of crime and other contraband seized by law enforcement officers at the time of arrest, or during investigation of a particular offense. The Committee Counsel noted that the statutory provisions which relate to this topic were vague and scattered. For instance, he noted that there was a provision in Title 62 which provides that if a firearm is used in the commission of a crime, it is "forfeited". He stated that this did not, however, answer Judge Thompson's problem.

Representative Murphy stated that he believed that confiscation of hunting and fishing equipment, as presently being carried out under the Game and Fish Title of the Century Code, was wrong, especially in those instances where enforcement was carried out in a discriminatory manner. He stated that the deterrent ought to rest on the criminal penalties imposed.

Judge Teigen noted that the game and fish laws, in providing criminal sanctions and procedures, went further than most other statutes providing criminal liability. He stated that the powers conferred upon game wardens, within their field, were greater than the powers conferred upon any other peace officers.

The Committee discussed Judge Thompson's comments relating to public provision of defense counsel for certain indigent defendants. The Committee Counsel noted that Section 29-07-01.1 provides the methodology for payment of expenses for indigent criminal defendants, and goes on to provide that the State's Attorney is to seek recovery of any sums paid on behalf of a criminal defendant at any time, within six years, that he might determine that that person would have funds to repay the county. Judge Teigen said that he felt that Judge Thompson's suggestion was that the sentencing judge be given authority to include assessment of costs against the convicted defendant which would include repayment of any cost of providing defense counsel.

The Chairman noted that Judge Thompson had suggested that there be specific statutory provision made to ensure that a person under deferred imposition of sentence not lose any of his civil rights. He asked the Committee Counsel whether that topic was covered in the basic Criminal Code (Title 12.1). The Committee Counsel noted that, to the extent that the Committee was able to unify disqualifications attendant upon criminal liability, the topic was covered by Section 12.1-33-01, because that section only applied (and disqualifications only attached) when a person was sentenced to a term of imprisonment for commission of a felony.

The Committee discussed Judge Thompson's suggestion regarding Subsection 6 of Section 12.1-32-02. He had suggested that the section be reworded so that a court could delay the commencement of the term of imprisonment where it was to the benefit of the offender, for instance, where the offender remains out of jail so that he can harvest his crops.

IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED, with the Chairman voting in the negative, that the staff be directed to redraft Subsection 6 of Section 12.1-32-02 so as to allow it to be waived upon motion of the defendant.

The Committee then considered the sections which necessarily had to be re-drafted as a result of Committee directions during the meeting of December 10-11, 1973, commencing with Section 11-19A-07. The Committee Counsel noted that Section 11-19A-07 was redrafted as a result of direction at that meeting, and was split into two sections, the second section, being Section 11-19A-07.1, was to be considered later. IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED, with Representative Lundene voting in the negative, that Section 11-19A-07 be accepted as drafted.

The Committee considered Section 11-19A-07.1, which reads as follows:

- 1 11-19A-07.1. WILLFUL DISTURBANCE OF DEAD BODY - PENALTY.)
2 Any person who:
3 1. Willfully touches, removes, or otherwise disturbs a body which
4 the actor knows died in a suspicious or unusual manner; or
5 2. Willfully touches, rearranges, removes, or otherwise disturbs
6 the clothing or other articles on or near a body which the actor
7 knows died in a suspicious or unusual manner, without author-
8 ization of the coroner or law enforcement officer, is guilty of a
9 class A misdemeanor.

Judge Teigen noted that the section seemed overbroad in that it aimed at a simple touching (albeit that the touching was done "willfully"), when the real gist of the offense was removing, rearranging, or otherwise disturbing a body which the alleged offender knew died in a suspicious or unusual manner.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY JUDGE TEIGEN, AND CARRIED that the underscored word "touches" in lines 3 and 5 of Section 11-19A-07.1 be deleted, and that when so amended the section be accepted. Professor Lockney commented that, in his view, there should be some intention to deceive law enforcement personnel or others before a crime is committed under Section 11-19A-07.1.

The Committee considered Section 49-13-20, which reads as follows:

1 49-13-20. INTOXICATED ENGINEER OR CONDUCTOR - PENALTY.)
2 ((Every person who is intoxicated while in charge as engineer of a loco-
3 motive engine or while acting as conductor or driver upon a railroad train
4 or car is guilty of a misdemeanor)))

5 1. It shall be a class A misdemeanor for an engineer to drive or
6 control the driving of a railroad train while under the influence
7 of intoxicating liquor or a controlled substance.

8 2. It shall be a class B misdemeanor for a conductor on a railroad
9 train to act in such capacity while under the influence of intox-
10 icating liquor or a controlled substance.

11 3. The presumptions and other evidentiary matters set forth in
12 section 39-20-07 may be utilized in prosecutions under this sec-
13 tion involving the use of intoxicating liquor.

Representative Hilleboe inquired as to the status of a drunken brakeman, and noted that it was probably important to prohibit that kind of conduct also. Judge Teigen believed that the "conductor" is usually thought of as running the train, and maybe it is more important to increase the penalty with relation to the conductor.

Professor Lockney suggested that there was some confusion on the part of the Committee with respect as to who should be covered by Section 49-13-20, and felt that it would be appropriate to talk to persons knowledgeable concerning railroad, and get some input for potential redrafting of the section. Representative Rau suggested that, in reality, the operation of a railroad train was a "crew operation", and some criminal liability might be appropriate for all members of the crew. The Chairman directed the Committee Counsel to ask a representative of the railroad industry to appear briefly before the Committee and explain the operation of a railway train, and the most appropriate persons to whom criminal liability ought to attach regarding same.

The Committee considered proposed amendments to Section 49-13-27, which read as follows:

1 49-13-27. LIGHTS AND OTHER EQUIPMENT REQUIRED ON TRACK
2 MOTOR CARS - PENALTY.) Any person operating or controlling any rail-
3 road shall equip each of its track motor cars ((used during the period
4 from thirty minutes before sunset to thirty minutes after sunrise,))) with:

5 1. An electric headlight of such construction and of sufficient can-
6 dle power to render plainly visible, from thirty minutes before

7 sunset to thirty minutes after sunrise, at a distance of not less
8 than three hundred feet in advance of such track motor car, any
9 track obstruction, landmark, warning sign or grade crossing;

10 ((and)))

11 2. A rear electric red light of such construction and of sufficient
12 candle power as to be plainly visible, from thirty minutes be-
13 fore sunset to thirty minutes after sunrise, at a distance of
14 three hundred feet;

15 3. A windshield and windshield wiper for cleaning rain, snow, and
16 other moisture from said windshield. Such windshield wiper
17 shall be maintained in good order and so constructed as to be
18 controlled or operated by the operator of the track motor car;

19 and

20 4. A canopy or top, if requested by the foreman, of such construc-
21 tion as to adequately protect the occupants of said track motor
22 car from the rays of the sun, rain, or inclement weather.

23 Any person ((violating the provisions of this section shall be guilty
24 of a misdemeanor and shall be punished by a fine of one hundred dollars
25 for each violation))) who fails to equip track motor cars as provided in
26 this section is guilty of a class B misdemeanor. Any person who operates
27 a track motor car during the period from thirty minutes before sunset to
28 thirty minutes after sunrise without using the lights required by subsec-
29 tions 1 and 2, or during a period when it is actually raining without using
30 the windshield wiper provided for in subsection 3, is guilty of an infrac-
31 tion.

Representative Hilleboe stated that, in his opinion, the section should not be classified as a Class B misdemeanor, but should rather be an infraction. Professor Lockney agreed, noting that it would be easier to enforce if it were an infraction.

IT WAS MOVED BY PROFESSOR LOCKNEY AND SECONDED BY REPRESENTATIVE AUSTIN that the classification of Section 49-13-27 be changed from a Class B misdemeanor to an infraction.

JUDGE TEIGEN, noting that the requirement of use of a canopy to protect occupants of the "track motor car" from the sun or inclement weather should not be dependent upon the request of a foreman, MADE A SUBSTITUTE MOTION to strike everything after the word "top" in line 20; to strike the partial word "tion" and the word "as" in line 21; and to change the classification of the section to an infraction, and when so amended that the section be accepted.

Professor Lockney suggested that maybe the canopy should be requested by the foreman, because the person controlling the car should not be held liable unless there has been a request. The Chairman noted that perhaps the substance of the section should not be dealt with by the Committee unless it was fully understood. THEREAFTER, THE MOTION CARRIED with the Chairman and Representatives Lundene and Stone voting in the negative.

Representative Hilleboe stated he would like to take a little bit of time to discuss an item which bothered him. He noted that there was no prohibition against printing or otherwise creating false identification cards. He wondered whether that was a topic which could be taken up by the Committee, or whether it should be handled by a separate bill. The Chairman indicated that that topic could be covered by the Committee if time allowed.

The Committee recessed at 5:01 p.m. and reconvened at 9:20 a.m. in the Large Hearing Room.

The Committee Counsel noted that the reason why the Committee was being presented with alternative drafts relating to abortion control was because of the United States Supreme Court decisions in Roe v. Wade and Doe v. Bolton, which determined that in certain instances a woman had the right, in conjunction with her physician, to decide to have an abortion. The Committee Counsel noted that the sections relating to abortions, contained in the new Criminal Code, were based on current North Dakota statutes, and would seem to be unconstitutional under the above-mentioned decisions.

The Committee Counsel noted that the abortion control draft presented two alternatives. The first alternative would amend the "Medical Practice Act" (Chapter 43-17); while the second alternative would amend the existing criminal statutes, as "reclassified" by Senate Bill No. 2045.

The Chairman then called on persons present for their comments, and Mr. Arvo Josephson, President of the local chapter of the American Civil Liberties Union, noted that it was his personal belief that the State's abortion law should be amended to correspond to the recent United States Supreme Court decisions.

Mrs. Paul Bourgois, Baldwin, North Dakota, noted that she was a pro-life mother, and was opposed to the United States Supreme Court decision. She stated that Committee members, and all citizens, should support HJR 261, introduced by Representative Hogan of Maryland, which would submit a constitutional amendment to the people to amend the United States Constitution to prohibit the taking of life. She stated that all North Dakota citizens should press Representative Mark Andrews to sign a release to get the Hogan Amendment to the floor of the House.

The Chairman called on Dr. Albert Fortman for a presentation on his position, and the position of the North Dakota Right to Life Association, regarding state legislative activity with respect to abortion control. A copy of Dr. Fortman's statement is attached to these minutes as Appendix "C".

On completion of the reading of his prepared statement, Dr. Fortman noted that he was a Lutheran.

The Chairman inquired as to the percentage of the population of North Dakota which, calculated on the basis of the recent vote on the initiated measure to authorize abortions in certain instances, did not favor extending the categories of legal abortions. Dr. Fortman noted that 78 percent of those who voted during the General Election in 1972 were opposed (204,852 opposed to 62,604 in favor).

Representative Murphy questioned whether delivery of a dead fetus was considered an abortion, and Dr. Fortman replied in the negative.

Professor Lockney noted that one of the problems which arises in considering the whole area of abortion is that when an abortion is performed after the "viability" stage, the abortion can result in a live fetus. The question then is what do you do with that fetus with respect to parental rights, etc.

In response to a question, Dr. Fortman noted that his organization, i.e., the Right to Life Association, will be heard on the issue of statutory limitations on abortions during the next Session. He noted the opening statement contained in the recently enacted Montana Act dealing with abortion, and stated that any bill which the Committee might propose should contain the same opening statement.

Dr. Fortman also noted that not only is the question of when an abortion should be allowed a difficult one, and one on which his Association would take a position, but also the question of how the abortion, if allowed, should be performed was difficult. He noted that numerous Right to Life groups have pushed for prohibitions on the performance of "saline abortions".

Dr. Fortman stated that he felt that one of the principal rationales behind the Supreme Court's decisions in Roe and Doe was to get the states out of the area of legislating with respect to abortion procedures.

In response to a question from Committee Counsel, Dr. Fortman noted that his statement included recommendations to provide controls or protection in every area in which the United States Supreme Court had not ruled similar state action to be unconstitutional. He stated that one of the areas of difficulty was with respect to the rights of the biological father of a fetus which may be the subject of an abortion.

Judge Teigen, noting that the bill draft would put numerous restrictions on physicians, asked Dr. Fortman if his profession did not have its own well-established standards of conduct. Dr. Fortman replied that once it was determined that only a physician could perform an abortion, he immediately became governed by all of the inter-professional standards, but that there was a need to go farther than this when the subject was abortion.

Judge Teigen asked if these standards don't govern the doctor in respect to his practice regardless of statutory provisions. Dr. Fortman replied that was so, but only in a very general way.

After listing several possible standards, Judge Teigen asked whether we were not here trying to write standards into the law which already govern the medical profession. Dr. Fortman suggested that one had to go further than the standards listed by Judge Teigen, and asked, for instance, what does the doctor do with a fetus which was intended to be aborted, but was in fact delivered alive.

Judge Teigen raised questions concerning Dr. Fortman's Recommendation No. 1, which relates to medical procedures to be utilized, the fact that abortions are to be performed only by licensed physicians, and the selection of an environment for the performance of an abortion which has all of the equipment and services available to meet all reasonable emergencies. Judge Teigen's question was with respect to the last sentence which states that failure to do so places full responsibility on the doctor who so fails, and exposes him to the "usual remedies, judicial and inter-professional". Judge Teigen questioned whether this was intended to impose strict liability upon a doctor who would fail to perform as outlined in Recommendation No. 1.

Dr. Fortman replied that he was not necessarily delving into the possible legal liabilities, or methods of imposing them which might result from his recommendation. He stated that doctors would understand the gist of his recommendations. With respect to the selection of an environment for the performance of abortion, he stated that he favored leaving it up to the doctor, noting that if a doctor believed that a first trimester abortion should be done in the hospital, then he should have the prerogative of making that choice.

Judge Teigen again asked whether, if a doctor failed to do the things listed in Recommendation No. 1, would he be "strictly liable". Dr. Fortman replied that he was anyway, noting that he was liable for unsound medical decisions. After further discussion, it was determined that it was not Dr. Fortman's intent to change the rule of liability, i.e., that one was only responsible, according to the standard of his professional skill, for negligent actions.

The Committee discussed further the necessity to regulate the disposal of fetuses. Mr. Wolf noted that regulation of the disposal of a fetus, following an abortion, may be necessary in order to allow some means of controlling the times at which an abortion is performed.

Dr. Fortman noted that another problem with the recent United States Supreme Court decisions was that they struck at one of the bases of the Hippocratic Oath, and left doctors without a code of ethics in many areas. He asked what the standards will be which will govern how abortion activity is to be handled.

Judge Glaser noted that he would like to take Dr. Fortman up on his offer to help the Committee, and made specific reference to Subsection 2 of Section 43-17-34 as contained in Alternative No. 1. He stated that that subsection defines "abortion" to mean the termination of the pregnancy of another. Dr. Fortman stated that he was unalterably opposed to that definition as it would also include the termination of a pregnancy by a live birth after a full gestation period. Judge Glaser stated that that was what he was intending to ask about. The Committee Counsel noted that the definition in Subsection 2 applied only to Subsection 2, and referred to abortions performed by persons who were not licensed physicians, and therefore would include any termination of a pregnancy. Dr. Fortman stated that, in all fairness, he had difficulty reading the draft prepared by the Committee Counsel.

The Committee Counsel inquired whether Dr. Fortman was still unalterably opposed to the definition if it applied only to persons who were not licensed physicians. He stated that he was not.

Dr. Fortman noted that the Committee should go as far as it can possibly go within the Supreme Court guidelines in the areas of protecting the health of the mother, and the health and life of the unborn person.

Representative Lundene inquired whether the United States Supreme Court's decision would leave it in the judgment of the person performing the abortion whether the fetus should go into the "ashcan or the incubator". Dr. Fortman replied that one of the arguments advanced by legalized abortion proponents was that it would cut down on the number of illegal abortions. He stated that this has not proved to be the case. He noted that any hospital which was accredited had a uniform method for disposing of tissue, which would include a fetus resulting from an abortion, but he asked what about the abortion which was performed in a clinic, where no particular methods of disposing of tissue may have developed. He stated that how aborted fetuses are to be handled, whether they are alive or dead, is a legitimate question for this Committee to decide.

The Chairman thanked Dr. Fortman for coming and spending as much time as he had with the Committee and answering the numerous questions which arose. Dr. Fortman stated that he again had to repeat that his organization and he were morally committed to do whatever they could as responsible citizens to remedy a bad situation, and that they were morally opposed to abortions, but that he recognized the responsibility to do all that could be done within the limits of the law, and he thought that all Americans recognized that responsibility.

The Chairman called on Mr. Tom Kelsch, Burleigh County State's Attorney, who noted that he was speaking as an individual, and wanted to make one point. His point was that, since it was clear to the staff and the Committee that the present statute was unconstitutional, the Committee has a duty to rewrite the statute so that it would meet constitutional requirements, and not leave the question open. He stated that he personally would not prosecute at the present time under the existing statute, although he noted that perhaps technically speaking he could, until it was specifically declared unconstitutional.

In response to further questions from Professor Lockney, Mr. Kelsch stated that he would not prosecute once he had made a personal determination that a statute was unconstitutional. Representative Murphy asked whether, if he came with a criminal complaint, and Mr. Kelsch determined the statute on the which the complaint could be based was unconstitutional, he would not prosecute. Mr. Kelsch replied that that was correct, although the complainant could then seek to have the prosecution commenced in other ways, i.e., by directive from the district judge, etc. Mr. Webb noted that this was the dilemma which prosecutors would face if the 1975 Legislature did not pass a constitutional law.

Representative Vernon Wagner noted that he had not had an opportunity to study the draft in depth. However, he stated that there were two repealer sections in the draft, and wondered whether either of them applied to the "conscience clause". The Committee Counsel replied that they did not.

Dr. Fortman noted that there was a problem with "conscience clause" provisions, with respect to public hospitals, and it may soon be determined that no public hospital can refuse to allow its facilities to be used for abortions. He stated the question now is whether private hospitals, even though they were receiving public moneys, could so refuse.

Representative Lundene inquired whether a legislator who is going to serve during the next Session would be compelled to "choose between the lesser of two evils". The Chairman replied that the choices seemed to be to do nothing, i.e., leave the law as it is, or to enact a draft which might well come from this Committee. He noted that if the Legislature refuses to act on this topic, then we would continue with the present law which just about everybody agrees is unconstitutional. He noted that a case challenging the constitutionality of our present law was now pending before a three-judge Federal District Court, and if a decision should be reached declaring our law unconstitutional, we would have no prohibition against abortions except those with respect to practice of medicine by unlicensed persons. The Chairman noted that serious questions of criminal liability could arise if a private, non-medically trained, citizen decided to perform an abortion on another after the current law had been declared unconstitutional.

Dr. Fortman pointed out that the State Supreme Court will never have an opportunity to rule on the question, because if the Federal District Court finds our statutes unconstitutional, the appeal would be to federal appellate courts, including the United States Supreme Court. The Chairman noted that that was true, unless a prosecution for violation of the current law should be commenced prior to a determination by the Federal District Court that the statutes were unconstitutional.

Professor Lockney inquired as to what statistics were available concerning legal or illegal abortions being performed in the State of North Dakota. Dr. Fortman stated that he could say that there were no prosecutions for illegal abortions in North Dakota. In response to another question from Professor Lockney, Dr. Fortman noted that records of abortions were not kept in a collated manner.

The Committee recessed for lunch at 12:02 p.m. and reconvened at 1:20 p.m. at which time they commenced consideration of a draft relating to dissemination of obscene materials. The Chairman called on Mr. Wefald, who summarized a memorandum on the recent Supreme Court decisions on obscenity, noting that five of the recent Supreme Court decisions appear to give the states moral latitude with respect to controlling obscene materials.

The memorandum quoted from the case of Miller v. California as follows:

"We acknowledge, however, the inherent dangers of undertaking to regulate any form of expression. State statutes designed to regulate obscene materials must be carefully limited. . . . As a result we now confine the permissible scope of such regulation to works which depict or describe sexual conduct. That conduct must be specifically defined by the applicable state law, as written or authoritatively construed. A state offense must also be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value."

Mr. Wefald noted that the Court, in Paris Adult Theater v. Slaton had stated that it categorically disapproved the theory that "obscene, pornographic films acquire constitutional immunity from state regulations simply because they are exhibited for consenting adults only".

The Chairman then called on Mr. Edwin Becker, representing the North Dakota Catholic Conference, for his comments. Mr. Becker noted that, following the McCright decision, there was no law in North Dakota controlling the dissemination of obscene

materials. He stated that it was his belief that there should be such a law, and that this Committee had a responsibility to recommend one.

He referred to Section 4 of the draft revision of statutes relating to dissemination of obscene materials as prepared by the staff and appended to these minutes as Appendix "D". He stated he felt that that section, which would provide exceptions to criminal liability for libraries and other educational organizations, and for persons possessing the prohibited material in the course of law enforcement, judicial, or legislative activities was too broad, but that otherwise he could generally accept the draft as prepared. He stated that he, representing his organization, would not accept a bill which only prohibited dissemination to minors. However, he stated that a bill which provided for a prior civil determination before any criminal liability could be imposed would be acceptable.

The Chairman then called on Mr. Leonard Bucklin representing the Motion Picture Association of America. Mr. Bucklin suggested that Mr. Wefald's memorandum should also include a reference to the McCright case, which held the North Dakota obscenity statutes to be unconstitutional.

With reference to the staff obscenity draft before the Committee (Appendix "D"), he stated that the definition of "obscenity" was all right, but wondered whether a statute should apply to activities by consenting adults. He left copies of the recently enacted Montana and South Dakota statutes which apply criminal sanctions only for disseminating obscene materials to minors.

Mr. Bucklin noted that the draft, on page 1, presents a choice as to whether to use local community standards or statewide standards in defining the terms "obscene material" and "obscene performance". He stated that he hoped that the Committee would use a state standard rather than a local standard. With respect to Section 4 of Appendix "D", Mr. Bucklin stated that he favored the exceptions set forth in this section. Mr. Bucklin then described a proposal, copies of which he distributed to the Committee, wherein criminal liability would be limited to knowingly selling or distributing obscene material to a minor, knowingly exhibiting an obscene performance to a minor, or knowingly to exhibit a motion picture in such a manner that it can be viewed by minors from public or private property not under the control of the person in charge of the exhibition.

Mr. Bucklin noted that this draft also made it illegal for a minor to falsely represent his age with intent to procure any material which it is unlawful to sell him under his proposal. He noted that under Section 5 of his proposal, a person would not be guilty of violating the Act if he had reasonable cause to believe that the minor was not a minor, or if the minor were accompanied by his parent or guardian and the parent or guardian waived the application of the Act in writing, or in instances where the party distributing materials was a bona fide library or educational institution.

The Chairman inquired as to when the Montana and South Dakota Acts, referred to by Mr. Bucklin, were passed. Mr. Bucklin stated that both bills were passed at the last Session of the Legislature of each state.

The Chairman then inquired as to whether the booksellers' liability ought not to be strict liability similar to that which exists under the Dram Shop Act; that is, if the bookseller sells to a minor he is liable even though the minor misled him as to his age. He asked whether Mr. Bucklin's exemption section (Section V) would not give a great deal of leeway which would be detrimental to the interests of society in prohibiting the dissemination of these materials to minors. Mr. Bucklin replied that he didn't think

that would be the case. He felt that as between the bookseller who had made a good faith effort to find out the person's age and the minor who deceived the bookseller concerning his age, the bookseller should not be made to pay the penalty.

The Committee Counsel suggested that perhaps Mr. Bucklin's provision relating to prohibitions on showing pornographic films in places where they can be viewed from property other than that of the person showing them should be excepted out of the "exemptions" section also contained in the bill. He then asked what Mr. Bucklin thought about the provision in the staff draft (Appendix "D") which would provide for state preemption of the field of statutory regulation of obscenity. Mr. Bucklin stated that he favored state preemption.

Representative Murphy inquired as to how many movie theaters there were in Bismarck, and Mr. Bucklin replied that there were three, counting the "Plaza Twin Theaters" as one. Representative Murphy asked whether Mr. Bucklin represented those theaters and he stated that he did not, and that in fact the interests of his client were often opposed to the interests of the theater owners and managers.

Judge Teigen inquired as to whether Mr. Bucklin's draft covered showing or exhibition of obscene materials gratis. Mr. Bucklin said that it was the intent of his draft to include that type of situation, although the drafting may have resulted in it being left out.

Judge Glaser, noting that the definition of "minor" in Mr. Bucklin's draft referred to a person under age 17 who was unmarried, asked if this definition could not give rise to constitutional problems. That is, where the definition hinged, as did criminal liability, on the fact that the person was married or unmarried. Mr. Bucklin stated that he did not see a constitutional problem, as the State was in effect giving more freedom to the married minor, and was not attempting to regulate the dissemination of obscenity to married minors.

Mr. Webb inquired whether, if the State's interest was in limiting materials which were available to the public to those which had serious literary, artistic, political, or scientific value, we needed an exemption for schools, museums, and public libraries. Mr. Bucklin replied that he supposed it was necessary because we were dealing in an area of judgment, and that contemporary standards may change, and that libraries should be able to maintain materials throughout different contemporary settings. Mr. Webb noted that, in light of Mr. Bucklin's explanation, and in light of his draft, hard core material could be kept in a library. Mr. Bucklin stated that the net result of the exemption provided in his draft, or in the draft provided by Committee Counsel (Appendix "D"), that would be the case.

Mr. Bucklin went on to note that librarians should not be criminally liable for what is in their library. Mr. Webb agreed that it might be appropriate to protect librarians from criminal liability, but libraries should not be able to maintain collections of hard core pornography. Mr. Bucklin suggested that that might be a little different question.

Mr. Webb, indicating no intent to be facetious, asked whether there should be a place in North Dakota wherein all of those materials which we now consider to be hard core pornography could be maintained under lock and key for our posterity. Mr. Bucklin stated that that was the question which did not arise as a result of the drafts before the Committee, and was one which was up to legislative decision. However, he noted that such collections of erotic or pornographic materials do exist in the United States.

The Chairman then called on Mr. Harold Anderson, who stated that he represented Saks News Agency, and who introduced Mr. Robert Sakariassen. Mr. Sakariassen explained the role of his company in the distribution of paperback books and magazines. He stated that they handle a tremendous number of assorted magazines and books, and simply could not act as censors, although they also had no desire to be purveyors of obscene materials.

Mr. Sakariassen then turned the floor back to Mr. Anderson who presented a proposal which would provide for a civil determination of obscenity before any criminal liability could be imposed.

Judge Teigen expressed concern that Mr. Anderson's proposal would not adequately allow protection against the fly-by-night seller who came into the State, disseminated obscene materials for a short period of time and then moved on. Such a seller could not be got at through a prior civil determination proceeding as there would not be time to act with respect to him.

Professor Lockney, noting the Smith v. California decision, asked whether, if hard core pornography is adequately defined, there is any need for a prior civil determination. That is, won't a bookseller know, if he makes any good faith effort at all to look into the materials he is selling, that he is dealing with hard core pornography. Mr. Sakariassen noted that there was a New York statute, which he thought would be tested, which provided in essence that the mere fact that a bookseller put an obscene book on sale imputed constructive knowledge of its contents to that bookseller. However, he said that he believed that "scienter" must be present for there to be criminal liability, and the prior civil determination would give actual notice to the bookseller that the book in which he was dealing was, in the judgment of a court of law obscene material.

Professor Lockney stated that, unless the booksellers were having trouble with the standard laid down by the Court, he still didn't see the problem in keeping hard core materials off the shelves. Mr. Sakariassen replied that the problem was not always in relation to the fact that the material was "obscene", but with regard to the fact that the question of its obscenity was continually being challenged, especially with relation to "mass market" books and periodicals. There is the area in which the bookseller needed protection from harassing criminal suits, and a prior civil determination as to their obscenity or non-obscenity would provide that protection.

Mr. Wolf asked whether there shouldn't be an alternative criminal prosecution always available, regardless of the availability of a prior civil determination. Mr. Anderson replied in the negative, noting that that would negate the effect of a prior civil determination proceeding.

Judge Teigen inquired as to what standard of proof would be used in the prior civil proceeding, and Mr. Anderson replied that it would probably be proof by a clear preponderance of the evidence.

The Chairman called on Attorney General Olson who stated that he was in the Committee Room simply as an observer, but that he was interested in the concept of a prior civil determination of obscenity, and thought that the concept should be seriously considered. He stated that he definitely believed that any draft coming from the Committee should use a state standard for defining obscenity. He also stated that he hoped that the Committee would take action to recommend an obscenity bill, as the vacuum left by the McCright decision must be filled.

The Chairman called on Mr. James Dertien, Director of the Veterans Memorial Public Library in Bismarck. Mr. Dertien had the following comments on the staff draft (Appendix "D"). He stated that he didn't see the need to apply the criminal sanctions to consenting adults. Secondly, he thought that the exemption provision presently contained in the Minnesota statutes should be used, and cited Minnesota Statutes Annotated Section 617.295.

Thirdly, Mr. Dertien stated that he favored a state preemption clause which would keep cities out of the field of legislating against obscenity. Finally, he stated support for a prior civil procedure for determining obscenity.

The Chairman recognized Mrs. Paul Bourgois who quoted Mayor Hoyt of Tulsa, Oklahoma, as saying that "Pornography affects you externally, internally, and eternally." She noted that pornography was like a pusher in that it had a victim.

The Chairman called on Mr. Kent Higgins who stated that he was speaking for himself alone. Mr. Higgins stated that he supported the concept of regulating the sale or delivery of obscene materials to minors only. He stated that he did not believe the State should be involved in regulating what materials are available to adults.

Thereafter, the Committee turned again to consideration of appropriate abortion legislation, and the Chairman directed the Committee Counsel to draft an alternative abortion control draft based on Dr. Fortman's suggestions, and to mail copies of it to the members of the Committee prior to the next meeting.

The Chairman then called on the Committee Counsel to explain the staff draft relating to obscenity control (Appendix "D"). After the explanation, the Chairman inquired as to how the Committee should proceed with respect to obscenity legislation. Professor Lockney suggested that the civil determination-type procedure needs more study, and that perhaps the staff could draft three alternatives based on the three premises placed before it today. The Chairman noted that he could direct the staff to draft three alternatives, but wondered whether it was necessary.

Judge Glaser suggested that there were some things, such as the definition of obscenity, which should be able to be agreed upon at this meeting. Judge Teigen suggested that one of the alternative drafts provide that the civil determination proceeding be able to be tried to a three-district judge court.

Mr. Wolf thought that it would be desirable if there would be a way to get at Playboy magazine as a whole, rather than only at a specific issue of that magazine. The Chairman then directed the staff to draft another alternative bill or bills relating to the control of obscenity, and include the various philosophies represented here today.

The Committee then dealt with a staff memorandum explaining the differentiation between accomplice liability as set forth in Section 12.1-03-01, and "facilitation" as set forth in Section 12.1-06-02. The Committee Counsel read the memorandum which is attached to these minutes as Appendix "E".

The Committee Counsel then recommended that Section 16-20-09, which he had been requested to redraft as the result of a previous meeting, be amended as follows:

- 1 16-20-09. PENALTY (((FOR CORPORATION OR OFFICER THEREOF CON-
- 2 TRIBUTING FOR POLITICAL PURPOSES))) WHEN CORPORATE OFFICIAL MAKES

3 POLITICAL CONTRIBUTION.) (((Any)))

- 4 1. It shall be a class A misdemeanor for an officer, director, stockholder,
5 attorney, agent, or representative of any corporation or association
6 ((, who violates))) to violate any of the provisions of section 16-20-08,
7 or ((who participates in, aids, abets, advises, or consents))) to
8 counsel or consent to any such violation ((, and any))). Any per-
9 son who solicits or knowingly receives any money or property in
10 violation of the provisions of section 16-20-08 ((,)) shall be
11 ((punished by a fine of not less than two hundred dollars nor more
12 than five thousand dollars, or by imprisonment in the penitentiary
13 for not more than one year, or by both such fine and imprisonment)))
14 guilty of a class A misdemeanor.
- 15 2. Any officer ((aiding or abetting in any))), director, stockholder,
16 attorney, agent, or representative who makes, counsels, or con-
17 sents to, the making of, a contribution ((made))) in violation of
18 section 16-20-08 shall be liable to the ((company))) corporation or
19 association for the amount so contributed.

IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY REPRESENTATIVE ROYSE that Section 16-20-09 be accepted as drafted. Representative Rau inquired as to how the word "association" used in lines 5 and 19 was defined. The Committee Counsel noted that it was probably intended to include any unincorporated association, but that the word was not defined in Chapter 16-20. THEREAFTER, REPRESENTATIVE MURPHY'S MOTION CARRIED.

The Committee Counsel then recommended that Section 16-20-11 be accepted as it was presented at the meeting of April 25-26, 1974, at which time it read as follows:

- 1 16-20-11. ((AIDING, ABETTING, OR ADVISING))) SOLICITING OR
2 FACILITATING VIOLATION - PENALTY.) Any person ((or persons))) who
3 ((shall aid, abet, or advise))) solicits or facilitates a violation of the provi-
4 sions of section 16-20-08, shall be punished as provided in section 16-20-09.

IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED, with the Chairman and Professor Lockney voting in the negative, that Section 16-20-11 be repealed.

The Committee discussed when it should meet next, and August 26-27 was talked about and rejected. The Committee determined that it should meet next on September 5-6, 1974, and thereafter, without objection, the Chairman declared the meeting adjourned at 5:00 p.m. on Friday, July 26, 1974.



John A. Graham
Assistant Director

SECOND DRAFT:
Prepared by the staff of the Legislative
Council for consideration by the
Committee on Judiciary "A" July 1974

APPENDIX "A"

_____ Concurrent Resolution No. _____

Introduced by

1 A concurrent resolution directing the Legislative Council to
2 carry out a study of the types and appropriateness of criminal
3 liability which arises as a result of violation of administrative
4 regulations; to study the case law and status relating to civil
5 and criminal contempt; and to study the use of certain terminology
6 in the domestic relations statutes.

7
8 WHEREAS, the Forty-third Legislative Assembly passed Senate
9 Bill No. 2045 which contained a revised, basic, criminal code;
10 and

11 WHEREAS, the Legislative Council's interim Committee on
12 Judiciary "A" has, during the 1973-75 legislative interim, re-
13 vised all of the criminal statutes of the State which were not
14 encompassed by Senate Bill No. 2045; and

15 WHEREAS, that interim Committee did not have time to
16 adequately consider those instances where existing statutes
17 authorize the creation of criminal liability by administrative
18 action in adopting rules and regulations, violation of which
19 can be punished as a criminal offense; and

20 WHEREAS, that interim Committee was faced with many
21 instances where the differentiation between criminal and civil
22 contempt proceedings and punishments were not clearly delineated
23 by existing statutes, and a comprehensive contempt procedure
24 was not set forth; and

25 WHEREAS, the use of the words "child", "children", and
26 "minor" or "minors" in Title 14 of the Century Code often seemed
27 to cause confusion, or was otherwise inappropriate; and

28 WHEREAS, the interim Committee believes it desirable that
29 the Legislative Assembly have a thorough study available relating
30 to appellate review of criminal sentences and to possible changes
31 in sentencing procedures; and

1 WHEREAS, the new criminal code contains provisions dealing
2 with loss of civil rights and other disqualifications resulting
3 from conviction of a felony which provisions are, or may be, in
4 conflict with numerous other statutory disqualifications
5 throughout the Century Code; and

6 WHEREAS, all statutory statements of disqualification
7 resulting from criminal conviction should be reviewed and
8 harmonized; and

9 WHEREAS, the Committee on Judiciary "A" did not have time
10 to consider any of the foregoing problems in depth and believe
11 that such consideration should be given to them;

12 NOW, THEREFORE, BE IT RESOLVED BY THE OF THE
13 STATE OF NORTH DAKOTA, THE CONCURRING THEREIN:

14 That the Legislative Council is hereby directed to study the
15 statutory basis for all administrative rules, orders, and regu-
16 lations to which criminal liability may attach to determine the
17 necessity for those statutes and whether they are in need of
18 revision; to study all administrative rules, orders, and
19 regulations, in effect or which become effective during the
20 course of the study, to which criminal liability may attach,
21 to determine their constitutionality, desirability, whether
22 criminal sanctions are necessary, and the procedures used in
23 adopting and enforcing those rules, orders, and regulations;
24 to study the constitutional, statutory, and case law bases
25 for criminal and civil contempt proceedings and punishments,
26 to determine if a comprehensive statutory procedure can be
27 established for both criminal and civil contempt; to study and
28 determine the appropriate usage of the words "child", "children",
29 "minor", "minors" and related words in Title 14 of the Century
30 Code; to study sentencing procedures and the appropriateness of
31 of appellate review of sentences; and to study and revise, if
32 necessary, the substance and form of all statutory statements
33 of loss of civil rights or other disqualifications resulting
34 from conviction of a crime; and

35 BE IT FURTHER RESOLVED, that all state governmental
36 entities are hereby directed, and local governmental entities
37 are requested, to give such aid and assistance, including delivery

1 of copies of relevant rules, orders, and regulations, as the
2 Council may reasonably request. The Legislative Council shall
3 seek federal funds to aid in defraying the cost of this study,
4 and so much of the appropriation to the Legislative Council
5 as may be necessary may be used as matching funding for the
6 study. The Council may seek the aid and assistance of the
7 Judicial Council, of members of the bench and bar, and of
8 interested citizens. The Legislative Council shall prepare
9 necessary revision legislation and shall make its report and
10 submit the accompanying legislation to the Forty-fifth Legis-
11 lative Assembly.

1 12.1-01-04 . . .

2 9. (To be repealed)

3 20. (To be repealed)

4 27. "Public servant" as used in this title and in any statute outside this
5 title which defines an offense means any officer or employee of
6 government, including law enforcement officers, whether elected
7 or appointed, and any person participating in the performance of a
8 governmental function, but the term does not include witnesses;

9 32. "Political subdivision" as used in this title and in any statute outside
10 this title which defines an offense means a county, city, school dis-
11 trict, township, and any other local governmental entity created by
12 law;

1 12.1-01-05. CRIMES DEFINED BY STATE LAW SHALL NOT BE SUPER-
2 SEDED BY CITY ORDINANCE OR BY HOME RULE CITY'S CHARTER OR ORDI-
3 NANCE.) No offense defined in this title or elsewhere by law shall be super-
4 seded by any city ordinance, or city home rule charter, or by an ordinance
5 adopted pursuant to such a charter, and all such ((~~offenses~~)) offense defini-
6 tions shall have full force and effect within the territorial limits and other juris-
7 dition of home rule cities. This section shall not preclude any city from enact-
8 ing any ordinance containing penal language when otherwise authorized to do so
9 by law.

1 12.1-08-01 . . .

2 1. A person is guilty of a class A misdemeanor if (((, by physical
3 interference or obstacle,))) he intentionally obstructs, impairs,

4 impedes, hinders, prevents, or perverts the administration of
5 law or other (((government))) governmental function.

1 12.1-11-02 (2) . . .

2 d. Submits or invites reliance on any sample, specimen, map,
3 boundarymark, or other (((objection))) object which he
4 knows to be false in a material respect; or

1 12.1-11-05 (1) . . .

2 b. Knowingly, without lawful authority, destroys, conceals,
3 removes, or otherwise impairs the verity or availability of
4 a governmental record (((; or)))_

1 12.1-11-06. PUBLIC SERVANT REFUSING TO PERFORM DUTY.) Any
2 public servant who knowingly refuses (((or neglects))) to perform any duty
3 imposed upon him by law is guilty of a class A misdemeanor.

1 12.1-13-01. DISCLOSURE OF CONFIDENTIAL INFORMATION PROVIDED
2 TO GOVERNMENT.) A person is guilty of a class (((A misdemeanor))) C felony
3 if, in knowing violation of a statutory duty imposed on him as a public servant,
4 he discloses ~~any~~ confidential information which he has acquired as a public
5 servant. "Confidential information" means information made available to the
6 government under a governmental assurance of confidence as provided by statute.

1 12.1-17-07. HARASSMENT.)

2 1. A person is guilty of an offense if, with intent to frighten or harass
3 another, he:

- 4 a. Communicates in writing or by telephone a threat to (((commit
- 5 any violent felony))) inflict injury on any person to any person's
- 6 reputation, or to any property ;
- 7 b. Makes a telephone call anonymously or in offensively coarse
- 8 language; (((or)))
- 9 c. Makes repeated telephone calls, whether or not a conversation
- 10 ensues, with no purpose of legitimate communication; or
- 11 d. Communicates in writing or by telephone a falsehood and causes
- 12 mental anguish.
- 13 2. The offense is a class A misdemeanor if it is under subdivision a of
- 14 subsection 1. Otherwise it is a class B misdemeanor.
- 15 3. Any offense defined herein and committed by use of a telephone may
- 16 be deemed to have been committed at either the place at which the
- 17 telephone call or calls were made, or at the place where the telephone
- 18 call or calls were received.

1 12.1-21-08 . . .

2 2. (To be redrafted)

1 12.1-23-05 (2) . . .

- 2 b. The property or services stolen are acquired or retained by
- 3 ~~threat~~ and (1) are acquired or retained by a public servant by a
- 4 ~~threat to take~~ or withhold official action, or (2) exceed fifty
- 5 dollars in value;

1 12.1-32-02 . . .

- 2 1. Every person convicted of an offense shall be sentenced by the court
- 3 to one or a combination of the following alternatives, unless the sen-

4 tencing alternatives are otherwise specifically provided in the statute
5 defining the offense or unless imposition of sentence is suspended
6 under section 12-53-13:

7 a. (((Deferred imposition of sentence.

8 b.))) Probation.

9 (((c.))) b. A term of imprisonment, including intermittent imprisonment:

10 (1) In the penitentiary or a regional detention facility approved
11 by the director of institutions, or in the state farm in accord-
12 ance with section 12-51-07, if convicted of a felony .

13 (2) In a county jail, in the state farm, or in a regional detention
14 facility approved by the director of institutions, if convicted
15 of a misdemeanor .

16 (((d.))) c. A fine.

17 (((e.))) d. Restitution for damages resulting from the commission of the
18 offense.

19 (((f.))) e. Restoration of damaged property, or other appropriate work
20 detail.

21 (((g.))) f. Commitment to an appropriate licensed public or private institu-
22 tion for treatment of alcoholism, drug addiction, or mental disease
23 or defect.

24 Sentences imposed under this subsection shall not exceed in duration the maxi-
25 mum sentences to imprisonment provided by section 12.1-32-01, section

26 (((12.1-32-08))) 12.1-32-09, or as provided specifically in a statute defining

27 an offense. This subsection shall not be construed as not permitting the uncon-

28 ditional discharge of an offender following conviction. Sentences under subdivi-

29 sions (((e))) d or (((f))) e shall be imposed in the manner provided in section

30 (((12.1-32-07))) 12.1-32-08.

1 12.1-32-08.)

2 1. Prior to imposing restitution or reparation as a sentence or condition
3 of probation, the court shall hold a hearing on the matter with notice
4 to the prosecuting attorney and to the defendant as to the nature and
5 amount thereof. At or following the hearing, the court shall make
6 determinations as to:

7 a. The reasonable damages sustained by the victim or victims of
8 the criminal offense, which damages shall be limited to fruits of
9 the criminal offense and expenses actually incurred as a direct
10 result of the defendant's criminal action;

11 b. The ability of the defendant to restore the fruits of the criminal
12 action or to pay monetary reparations, or to otherwise take ac-
13 tion to restore the victim's property; and

14 c. The likelihood that attaching a condition relating to restitution
15 or reparation will serve a valid rehabilitational purpose in the
16 case of the particular offender considered.

17 The court shall fix the amount of restitution or reparation, which shall not ex-
18 ceed an amount the defendant can or will be able to pay, and shall fix the man-
19 ner of performance of any condition or conditions of probation established pur-
20 suant to this subsection. Any payments made pursuant to such order shall be
21 deducted from damages awarded in a civil action arising from the same incident.
22 An order that a defendant make restitution or reparation as a sentence or condi-
23 tion of probation may, if the court so directs, be filed, transcribed, and enforc-
24 ed by the person entitled to the restitution or reparation in the same manner as
25 civil judgments rendered by the courts of this state may be enforced.

1 12.1-32-09 (1) . . .

2 c. The convicted offender is a persistent offender. The court shall

3 not make such a finding unless the offender is an adult and has
4 previously been convicted in any state or states or by the
5 United States of two felonies of class B or above, or of one
6 class B felony or above plus two offenses potentially punishable
7 by imprisonment classified below class B felony, committed at
8 different times when the offender was an adult. For the purposes
9 of this subdivision, a felony conviction in another state or under
10 the laws of the United States shall be considered a felony of
11 class B or above if it is punishable by a maximum term of impri-
12 sonment of ten years or more.

1 12.1-32-12.) Where an offense is defined by a statute (((outside of this
2 title))) or by the Constitution without specification of its classification pursuant
3 to section 12.1-32-01, the offense shall be punishable as provided in the statute
4 or constitutional provision defining it, or:

1 11-19A-07. DEATH TO BE REPORTED TO CORONER BY PHYSICIAN OR
2 PERSONS DISCOVERING BODY - PENALTY. (((It shall be the duty of any)))
3 Any person who discovers the dead body, or acquires the first knowledge of
4 the death of ~~a~~ person, and (((by))) any physician (((called or in attendance
5 to such))) with knowledge that a person (((who shall have))) died as a result
6 of (((abortions criminally or self-induced, or other))) criminal or violent
7 means, (((or by))) casualty, suicide, accidental (((deaths))) death, or died
8 suddenly when in apparent good health in a suspicious or unusual manner,
9 (((to))) shall immediately notify the office of coroner or any law enforcement
10 officer of the known facts concerning the time, place, manner, and circum-
11 stances of such death, and any other information which may be required pur-
12 suant to this chapter. Any person who (((shall willfully touch, remove, or

13 otherwise disturb the body of any such deceased person, or the clothing or any
14 articles upon or near such body without authorization of the coroner or law en-
15 forcement officer present))) violates the provisions of this section shall be
16 guilty of a class B misdemeanor.

1 11-19A-07.1. WILLFUL DISTURBANCE OF DEAD BODY - PENALTY.)

2 Any person who:

3 1. Willfully removes or otherwise disturbs a body which the actor knows
4 died in a suspicious or unusual manner; or

5 2. Willfully rearranges, removes, or otherwise disturbs the clothing or
6 other articles on or near a body which the actor knows died in a
7 suspicious or unusual manner,

8 without authorization of the coroner or law enforcement officer is guilty of a
9 class A misdemeanor.

49-13-20. (To be reconsidered or redrafted)

1 49-13-27. LIGHTS AND OTHER EQUIPMENT REQUIRED ON TRACK MOTOR
2 CARS - PENALTY.) Any person operating or controlling any railroad shall
3 equip each of its track motor cars (((used during the period from thirty minutes
4 before sunset to thirty minutes after sunrise,))) with:

5 1. ~~Electric~~ electric headlight of such construction and of sufficient candle
6 ~~power~~ to render plainly visible, from thirty minutes before sunset
7 to thirty minutes after sunrise, at a distance of not less than three
8 hundred feet in advance of such track motor car, any track obstruc-
9 tion, landmark, warning sign or grade crossing; (((and)))

10 2. A rear electric red light of such construction and of sufficient candle
11 power as to be plainly visible, from thirty minutes before sunset

12 to thirty minutes after sunrise, at a distance of three hundred
13 feet(((.)));

14 3. A windshield and windshield wiper for cleaning rain, snow, and
15 other moisture from said windshield. Such windshield wiper shall
16 be maintained in good order and so constructed as to be controlled
17 or operated by the operator of the track motor car; and

18 4. A canopy or top to adequately protect the occupants of said track
19 motor car from the rays of the sun, rain, or inclement weather.

20 Any person (((violating the provisions of this section shall be guilty of
21 a misdemeanor and shall be punished by a fine of one hundred dollars for each
22 violation))) who fails to equip track motor cars as provided in this section is
23 guilty of an infraction. Any person who operates a track motor car during the
24 period from thirty minutes before sunset to thirty minutes after sunrise without
25 using the light required by subsections 1 and 2, or during a period when it is
26 actually raining without using the windshield wiper provided for in subsection 3,
27 is guilty of an infraction.

A Statement of Position by the North Dakota Right to Life Association made before the Committee on Judiciary "A" of the North Dakota Legislative Council. July 26, 1974.

Distinguished Members of the Committee on Judiciary "A", North Dakota Legislative Council:

I am Dr. Al Fortman, a resident of the State of North Dakota and of the City of Bismarck. I am a practicing physician. I am a member of the American Medical Association, the North Dakota State Medical Association, a Diplomat of the American Board of Surgery and a Fellow of the American College of Surgeons.

Today I appear before you as a private citizen, as a physician, and as the voluntary head of an organization incorporated under the laws of this state, namely: The North Dakota Right to Life Association.

In the beginning let me express my gratitude as a citizen to be able to appear here and exercise my constitutional right and fulfill my personal responsibility to participate in government. I have appeared before the North Dakota Legislature on a number of occasions in the past and have always been treated with the greatest courtesy and have always found the members to be reasonable, understanding and totally responsive.

It is my understanding that you are considering draft revisions of sections of the ~~criminal~~ code relating to criminal liability for the performance of abortions. My understanding of the term abortion is that it means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.

The present law regulating abortion in North Dakota is found in North Dakota Century Code 12-25-01 and 12-25-02.

The essential thrust of this regulation is to make illegal all abortions except those done to preserve the life of the mother.

Attempts to make conservative modifications in this regulatory law failed by large margins in the 1968-69 and 1970-71 legislative sessions. Further, the people of this state voting in a free democratic election overwhelmingly rejected any change in November, 1972.

In January of 1973 the Supreme Court of the United States in issuing their opinions in two cases, namely Doe vs Bolton and Roe vs Wade, saw fit to legislate a radically new policy concerning the regulation of abortion by states based on a newly found right of privacy residing in their opinion either in the 14th Amendment's concept of personal liberty or in the 9th Amendment's reservation of rights to the people.

To logically prepare my concluding remarks I wish to quote certain sections of the majority opinion as written by Justice Blackman. The court said: "This right of privacy is broad enough to encompass a woman's decision whether or not to terminate her pregnancy."

The court said: " Some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at any time in whatever way for whatever reason she alone chooses. With this we do not agree. A state may properly assert important interests in safeguarding health, in maintaining medical standards and in protecting potential life."

The court said that the state does have an important and legitimate interest in preserving and protecting the health and life of the pregnant woman. And it has still another important and legitimate interest in protecting the potentiality of human life. These interests, the court said, are separate and distinct. Each grows in substantiality as the woman approaches term, at a point during pregnancy each becomes compelling. With respect to

the states important and legitimate interest in the health of the mother, the compelling point is approximately at the end of the first trimester. It follows, that from and after this point a state may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health. This means on the other hand, that for the period of pregnancy prior to this compelling point, the attending physician, in consultation with his patient, is free to determine, without state regulation, that in his medical judgement the patients pregnancy should be terminated.

With respect to the states important and legitimate interest in potential life the compelling point is at viability. This is so because the fetus then presumably has a capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justification. If the state is interested in protecting fetal life after viability it may go so far as to proscribe abortion during that period except when it is necessary to preserve the life or health of the mother.

The court said that the word person as used in the 14th Amendment does not include the unborn.

The court said that a state may define the term physician to mean only a physician currently licensed by the state and may proscribe any abortion by a person who is not a physician as so defined. The court said that the word health ~~must~~ be used broad enough to encompass physical, emotional, physiological, ~~and~~ and age of the woman factors.

Finally it should be noted that the 1972-73 Legislative Session reacting to the implications of the Roe vs Wade and Doe vs Bolton decision of the Supreme Court memorialized the United States Congress to enact an Amendment to the Constitution that would extend personhood to the unborn and would extend to them the full protection of the Constitution of the United States through-

out their entire biological development. Three such Amendments had been introduced into the Congress of the United States, one, namely the Buckley Amendment, is presently in the process of hearings before the Judiciary Subcommittee on Constitution Amendments of the United States Senate.

North Dakota Senior Senator Milton R. Young co-sponsored the Buckley Amendment, North Dakota Representative Mark Andrews has publicly supported the concept of the mandatory human life amendment and has reinforced this by specific votes in the United States House of Representatives.

It should also be noted that the North Dakota Statute as residing in the Criminal Code previously quoted has been challenged by a physician of this state and this challenge will be heard before a three judge Federal Court Panel sometime in the months ahead. I believe that it should be obvious from the thrust of Roe vs Wade and Doe vs Bolton that our statute will be declared unconstitutional.

In concluding my remarks let me make a few personal observations and then conclude with what I feel you must see as compelling interests of the state in this serious matter.

I represent the leadership role of the North Dakota Right to Life Association. This is an organization that believes that human life is created by God and is therefore sacred. We believe that this life begins at the moment of conception and repeat that to this date there is no scientific evidence to suggest otherwise. We are therefore, opposed to any intentional destruction of human life at any point in its biological development except in those rare and serious instances in which the physical life of the mother is threatened. I have not come here today to announce a change in our position because we have not changed and we shall not change. We view Roe vs Wade and Doe vs Bolton as a tragic judicial error unparalleled in American History. We

view this decision as immoral, we view this decision as bad medicine, and as neglectful of scientific fact. A large segment of the legal profession also views it as bad law. I do not feel competent to pass my personal judgement in this area. Our goal and my appearance here today is not designed to bring any sort of respectability to this immoral and unjust decision. Our goal remains to restore rightful personhood to the unborn at every stage of their biological development, a concept which we firmly believe well within the intentions of the framers of our Constitution.

We deeply appreciate the support which we have received from the people of North Dakota and from the Legislature of this State. We view this as one of the most serious moral decisions facing the Legislature of this state, the Congress of the United States and the People of the United States. We view this as an encounter of highest priority between the will of the people and the judicial branch of government.

What then do I see as the compelling interests of the state in this critical area of legislative action? The things that I say at this point are not to be interpreted to the slightest degree as representing any approval on my part of the abortion procedure for I totally reject abortion both as an individual and as a physician, except to save the life of the mother. I see it as unnecessary, as immoral and as insulting to the physician who is being called upon to carry out eliminative procedures to achieve so called goals of a technological society. However, I do feel that Christian people do have a responsibility to act to protect legitimate interests to the fullest extent possible even when confronted with what they consider to be an immoral and unjust rule.

I. With respect to the states interest in preserving and protecting the health of the pregnant woman:

1. The state has a compelling interest in my opinion to see that any surgical or medical procedure reflects the highest medical standards with

the fullest possible protection being extended to the individual on which the procedure is being done. All medical procedures including the abortion procedure should be done only by a physician duly licensed by the state while exercising his best medical judgement, seeking consultation in unusual and dangerous situations and taking every safeguard necessary to protect his patient. This includes the selection of an environment with such equipment and services available so as to meet all reasonable emergencies. Failure to do so places full responsibility on him and exposes him to the usual remedies, judicial and inter professional.

*where and during
what time period*

2. The state has a compelling interest to see that all medical procedures including the abortion procedure is done only after the patient has given complete informed consent. Such consent as it pertains to the abortion procedure must mean voluntary consent after full disclosure of the following information. This provision would not apply in situations of emergency requiring action to save life.

a. The stage of development of the fetus.

b. The method of abortion to be utilized and the effects of such procedure on both the mother and the fetus.

c. The physical and mental complications and dangers involved and their approximate relative frequency.

d. Available alternatives to abortion including child birth and adoption. Such informed consent should be present in writing in the doctor's records. Failure to follow this procedure places unrealized danger on the patient and represents a serious crime against her.

3. The state has compelling interest to see that the abortion procedure is not done without notification of her husband, if they are living voluntarily together in a legal marriage, or in the case of an unliberated

minor the notification of her living parents or legal guardian.

4. The state has a compelling interest to insure that the woman is free to exercise her voluntary right of privacy without any coercion by any individual, institution or agency including an executive officer, an administering agency or employees of the state or of any local governmental body. The woman should be free to exercise her right of privacy without inducement or attraction by solicitation, advertising or other form of communication having as its purpose such inviting, inducing or attracting. This should apply to physicians, facilities, persons and agencies, private or public.

1st Amendment

5. The state has a compelling interest to see that proper reporting is done consistent with sound medical practices, especially in the case of maternal death or complications. In all reporting the names and identities of persons involved should remain confidential. This compelling interest is essential for proper medical evaluation of the safety of procedures used.

II. With respect to the state's important and legitimate interest in potential life where the compelling point is viability:

1. The state has a compelling interest to insure that no premature infant born alive if viable by medical standards, including one who has survived an abortion procedure is purposely, knowingly or negligently disregarded without all reasonable medical effort being extended to preserve his or her life and or health. Failure to do so is a serious crime.

2. The state has a compelling interest to insure that no experimentation be done by anyone on a dead fetus outside of routine pathological examination without the written and informed consent of the mother.

3. The state has a compelling interest to see that no experimentation

is done by anyone on any live human fetus whether before or after expulsion from its mothers womb. This provision should not prohibit procedures incident to the study of a human fetus while it is in the mother's womb provided that in the best medical judgement of the physician -- such procedure does not jeopardize the life or health of the fetus, and provided said fetus is not the subject of a planned abortion. In addition this provision should not prohibit or regulate diagnostic or remedial procedures.

4. The state has a compelling interest to insure that no person should perform or offer to perform an abortion where part or all of the consideration for said performance is that the fetus may be used for experimentation or other kind of research or study. Also to be forbidden is the selling or transfer of a fetus, embryo for experimental purposes unless such action supports the life and or health of the subject involved.

5. The state has a compelling interest to provide regulations for humane disposal of dead infants and fetuses.

III. Finally the state has a compelling interest to insure the right of conscience, based on religion or moral tenets to all individuals, private hospitals or health care facilities, to refuse to participate, advise, perform, assist or allow their facilities to be used for the abortion procedure. Such refusal should not give rise to liability either individual or collective nor serve as a basis for discriminatory, disciplinary, or recriminatory action by anyone. It should be illegal to interfere or attempt to interfere with their right of refusal based on conscience. Any person or institution thus injured should be entitled to monetary damages for injuries suffered.

What about discrimination against those who would perform abortions

APPENDIX "D"

PROPOSED REVISION OF CRIMINAL
SECTIONS RELATING TO DISSEMINATION OF
OBSCENE MATERIALS

1 SECTION 1. AMENDMENT.) Section 12.1-27-01 of the North Dakota
2 Century Code as contained in section 26 of chapter 116 of the 1973 Session
3 Laws of the state of North Dakota is hereby amended and reenacted to read
4 as follows:

5 12.1-27-01. OBSCENITY - DEFINITIONS - DISSEMINATION - CLASS-
6 IFICATION OF OFFENSES.)

7 1. A person is guilty of a class A misdemeanor if, knowing of its
8 character, he disseminates obscene material, or if he produces,
9 transports, or sends obscene material with intent that it be
10 disseminated.

11 2. A person is guilty of a class A misdemeanor if he presents or
12 directs an obscene performance for pecuniary gain, or partici-
13 pates in any portion of a performance which contributes to the
14 obscenity of the performance as a whole.

15 As used in this section, the terms "obscene material" and "ob-
16 scene performance" mean material or a performance which
17 (~~is~~ considered as a whole))):

18 a. (((Predominantly appeal to a prurient or morbid interest in
19 nudity, sex, excretion, sadism, or masochism))) Taken as
20 a whole, the average person, applying contemporary [com-
21 munity] [North Dakota] standards, would find predominantly
22 appeals to a prurient interest ;

- 23 b. (((Goes substantially beyond customary limits of candor in
24 describing or representing such matters))) Depicts or
25 describes in a patently offensive manner sexual conduct as
26 described in subsection 7 of this section; and
- 27 c. (((Is utterly without redeeming social value))) Taken as a
28 whole, lacks serious literary, artistic, political, or scien-
29 tific value .

30 That material or a performance (((predominantly appeals to a
31 prurient or morbid interest))) is obscene shall be judged with
32 reference to ordinary adults, unless it appears from the charac-
33 ter of the material or the circumstances of its dissemination to
34 be designed for minors or other specially susceptible audience,
35 in which case, the material or performance shall be judged with
36 reference to that type of audience.

- 37 4. As used in this section, the term "disseminate" means to sell,
38 lease, advertise, broadcast, exhibit, or distribute for pecuniary
39 gain.
- 40 5. As used in this (((section))) chapter, the term "material" means
41 any physical object used as a means of presenting or communicat-
42 ing information, knowledge, sensation, image, or emotion to or
43 through a human being's receptive senses.
- 44 6. As used in this (((section))) chapter, the term "performance"
45 means any play, motion picture, television program, dance, or
46 other exhibition presented before an audience.
- 47 7. As used in this chapter, the term "sexual conduct" means actual
48 or simulated:
- 49 a. Sexual intercourse,
- 50 b. Sodomy,

51 c. Sexual bestiality,
52 d. Masturbation,
53 e. Sado-masochistic abuse,
54 f. Excretion,
55 or a lewd exhibition of the male or female genitals. As used in
56 this subsection, the term "sodomy" means contact between the
57 penis and the anus, the mouth and the penis, the mouth and the
58 vulva, and the mouth and the anus. As used in this subsection,
59 the term "sado-masochistic abuse" means a depiction or descrip-
60 tion of flagellation or torture by or upon a person who is nude or
61 clad in undergarments or in a bizarre or revealing costume; or
62 the condition of being fettered, bound, or otherwise physically
63 restrained on the part of one so clothed.

1 SECTION 2. AMENDMENT.) Section 12.1-27-02 of the North Dakota
2 Century Code as contained in section 26 of chapter 116 of the 1973 Session
3 Laws of the state of North Dakota is hereby amended and reenacted to read
4 as follows:

5 12.1-27-02. PROMOTING OBSCENITY TO MINORS - DEFINITIONS.)
6 As used in this section and in section 12.1-27-03:

- 7 1. "Promote" means to produce, direct, manufacture, issue, sell,
8 lend, mail, publish, distribute, exhibit, or advertise.
9 2. "Harmful to minors" means that quality of any description or
10 representation, in whatever form, of nudity, sexual conduct.
11 or sexual excitement (((, or sadomasochistic abuse))), when
12 such description or representation:
13 a. (((Predominantly appeals to the prurient, shameful, or

- 14 morbid interest of minors))) Considered as a whole, ap-
15 peals to the prurient sexual interest of minors;
16 b. Is patently offensive to prevailing standards in the adult
17 community [in North Dakota] as a whole with respect to what
18 is suitable material for minors; and
19 c. (((Is utterly without redeeming social importance for minors)))
20 Considered as a whole, lacks serious literary, artistic, polit-
21 ical, or scientific value for minors.
22 3. (((("Material" and "performance" shall be defined as in section
23 12.1-27-01, subsections 5 and 6, respectively))) "Nudity" means
24 the showing of the human male or female genitals, pubic area, or
25 buttocks with less than full opaque covering, or the showing of
26 the female breast with less than full opaque covering, or the show-
27 ing of any portion of the female breast below the top of the nipple,
28 or the depiction of covered male genitals in a discernibly turgid
29 state.
30 4. "Sexual excitement" means the condition of human male or female
31 genitals when in a state of sexual stimulation or arousal.

1 SECTION 3. AMENDMENT.) Section 12.1-27-03 of the North Dakota
2 Century Code as contained in section 26 of chapter 116 of the 1973 Session
3 Laws of the state of North Dakota is hereby amended and reenacted to read
4 as follows:

5 12.1-27-03. PROMOTING OBSCENITY TO MINORS - MINOR PERFORM-
6 ING IN OBSCENE PERFORMANCE - CLASSIFICATION OF OFFENSES.)

- 7 1. It shall be a class C felony for a person to knowingly promote to
8 a minor any material or performance which (((, taken as a
9 whole,))) is harmful to minors, or to admit a minor to premises

10 where a performance harmful to minors is exhibited or takes
11 place.

12 2. It shall be a class C felony to permit a minor to participate in a
13 performance which (((, taken as a whole,))) is harmful to
14 minors.

1 SECTION 4.) A new section to chapter 12.1-27 of the North Dakota
2 Century Code is hereby created and enacted to read as follows:

3 EXCEPTIONS TO CRIMINAL LIABILITY.) Sections 12.1-27-01 through
4 12.1-27-03 shall not apply to the possession or distribution of material:

5 1. In the course of law enforcement, judicial, or legislative activi-
6 ties.

7 2. In the course of bona fide school, college, university, museum,
8 or public library activities, or in the course of employment ⁱⁿ of such
9 an organization or retail outlet affiliated with and serving the edu-
10 cational purposes of such an organization.

1 SECTION 5.) A new section to chapter 12.1-27 of the North Dakota
2 Century Code is hereby created and enacted to read as follows:

3 STATE PRE-EMPTION OF LOCAL LAWS REGULATING OBSCENITY.)

4 Chapter 12.1-27 shall be applicable and uniform throughout the state, and
5 no governmental division shall enact new, or enforce existing, ordinances
6 or regulations regulating or prohibiting the sale, distribution, or posses-
7 sion of obscene materials.

1 SECTION 6. REPEAL.) Subsection 62 of section 40-05-01 of the
2 North Dakota Century Code is hereby repealed.

NOTE: Subsection 62 is in the section which sets forth municipal powers to enact ordinances, and authorizes cities to prohibit the "sale or exhibition of any obscene or immoral publication, print, film, picture, or illustration".

MEMORANDUM RE: Interpretation of the sections on accomplice liability and facilitation in S.B. No. 2045 and suggested revision of Sections 16-20-09 and 16-20-11

The section dealing with "accomplice liability" (12.1-03-01) is based upon Section 401 of the proposed Federal Criminal Code, and is essentially identical to the latter section. The comment accompanying the federal draft contains the following statement:

"Accomplice liability is limited to a person who aids another with intent that the other commit an offense; aiding with knowledge that the person aided intends to commit a crime is punishable, if at all, as the lesser offense of facilitation." (Final Report of the National Commission on Reform of the Federal Criminal Laws, p. 33.)

At the time Section 12.1-03-01 was considered by the previous interim Committee, it was noted that it would replace Sections 12-02-03, 12-02-04, and 12-02-06 of the Century Code. Those sections define the potential parties to a crime as either a principal or an accessory; define a principal to include one who aids or abets in the commission of a crime (either a felony or a misdemeanor); and define an accessory before the fact to be the same as a principal. (See p. 23 of the minutes of the Committee on Judiciary "B", March 2-3, 1972.) Therefore, the previous Committee was aware that Section 12.1-03-01 was the section that basically dealt with the question of how a person who aids a direct offender is to be handled with regard to criminal liability.

Volume I of the Working Papers states at p. 155: "In order to implement the draft's (referring to Section 12.1-03-01) approach to this issue, Subparagraph b of Subsection 1 makes it clear that the accomplice must intend that the offense be committed. The separate - and lesser - offense of criminal facilitation deals with the person who merely knows that what he does substantially facilitates its commission. This approach is also a reason for deleting "abets" from the accomplice formulation."

Thus, the ~~section~~ ~~on~~ ~~accomplice~~ ~~liability~~ (12.1-03-01) is intended as the section which would replace the word "aids" in the phrase "aids and abets". The ~~facilitation~~ ~~section~~ (12.1-06-02) would replace the "abets" language.

In direct answer to Judge Glaser's question at the last meeting, the language "aids or abets" when replaced in a section being revised by this Committee, is covered by Section 12.1-03-01 to the extent that the person to be charged aids another to commit an offense with intent that it be committed. To the extent that the requisite "intent" is not present, the person who "abets" a felony (only) may be convicted of facilitation. The Committee Counsel was in error when he stated that the facilitation and solicitation sections were designed to replace the "aids or abets" language wherever it appears in sections outside Title 12.1. In fact, the accomplice liability section and the facilitation section were designed to accomplish that purpose.

With this background in mind, I would suggest that Section 16-20-09 be reconsidered, then amended to read as follows:

16-20-09. PENALTY ((FOR CORPORATION OR OFFICER THEREOF CONTRIBUTING FOR POLITICAL PURPOSES)) WHEN CORPORATE OFFICIAL MAKES POLITICAL CONTRIBUTION. ((Any)) 1. It shall be a class A misdemeanor for an officer, director, stockholder, attorney, agent, or representative of any corporation or association ((, who violates)) to violate any of the provisions of section 16-20-08, or ((who participates in, aids, abets, advises, or consents)) to counsel or consent to any such violation ((, and any)) . Any person who solicits or knowingly receives any money or property in violation of the provisions of section 16-20-08 ((,)) shall be ((punished by a fine of not less than two hundred dollars nor more than five thousand dollars, or by imprisonment in the penitentiary for not more than one year, or by both such fine and imprisonment)) guilty of a class A misdemeanor.

2. Any officer ((aiding or abetting in any)), director, stockholder, attorney, agent, or representative who makes, counsels, or consents to, the making of, a contribution ((made)) in violation of section 16-20-08 shall be liable to the ((company)) corporation or association for the amount so contributed.

I would also recommend that the draft of Section 16-20-11 be accepted as it was presented at the last meeting. This recommendation is made primarily to ensure that persons who are not related to the corporation or association would still be subject to criminal liability for facilitating or soliciting a violation of Section 16-20-08. Since an outright violation of that section is only a misdemeanor, Section 16-20-11 is necessary because the general facilitation and solicitation sections only apply to felonies.

Tentative Agenda

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, September 5-6, 1974
Committee Room G-2, State Capitol
Bismarck, North Dakota

Allen
F. ...
DATE 9-4-74

Thursday:

- 9:30 a.m. Call to order
Roll call
Minutes
- 9:45 a.m. Consideration of bill drafts relating to abortion control
- 11:00 a.m. Consideration of redrafted sections resulting from the
Committee meeting of October 25-26, 1973
- 12:00 noon Luncheon recess
- 1:15 p.m. Consideration of alternative bill drafts relating to control
of obscene materials and performances
- 5:00 p.m. Recess

Friday:

- 9:00 a.m. Reconvene - consideration of further revisions of sections
in Senate Bill No. 2045
- 11:00 a.m. Consideration of redrafted sections resulting from the
Committee meeting of February 14-15, 1974
- 12:00 noon Luncheon recess
- 1:15 p.m. Consideration of concurrent resolution for study of
mental illness commitment statutes
- 1:45 p.m. Consideration of redrafted sections resulting from meeting
of June 25-26, 1973
- 3:00 p.m. Consideration of redrafted sections resulting from meeting
of August 30-31, 1973
- 4:30 p.m. Adjourn

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

Meeting of Thursday and Friday, September 5-6, 1974
Room G-2, State Capitol
Bismarck, North Dakota

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:35 a.m. on Thursday, September 5, 1974, in Committee Room G-2 of the State Capitol.

Legislative members
present:

Senator Freed
Representatives Austin, Lundene, Murphy, Royse,
Stone

Legislative members
absent:

Senator Jones
Representatives Hilleboe, Rau

Citizen members
present:

Judges Teigen, Heen, Glaser, Pearce
Mr. Rodney Webb
Professor Thomas Lockney
Chief Ed Anderson

Citizen members
absent:

Mr. Albert Wolf
Sheriff Glen Wells

Also present:

Representative Bryce Streibel, Chairman, Legislative
Council
Representative Vernon Wagner, Bismarck
Senator Lawrence Naaden, Braddock
Mrs. Elvira Rogstad, Mrs. Paul Bourgois, Jr.,
Mrs. Frank Keller, Bismarck
Mr. James L. Dertien, representing the North Dakota
Library Association
Mr. Leonard Bucklin, Mr. Orell Schmitz, representing
the Motion Picture Association of America
Mr. John R. Sakariassen, Saks News Inc., Bismarck
Mr. Allen I. Olson, Attorney General
Mr. Al Hausauer, State Tax Department
Mr. Thomas Kelsch, Burleigh County State's Attorney
Mr. Lyle Limond, North Dakota Medical Association
Mr. Bill Tillottson, Bismarck Tribune
Mr. Dewey Heggen, KFJR-TV

The Chairman noted that the minutes of previous meetings would be distributed in the near future. He then called on the Committee Counsel for an overview of the three draft alternatives relating to abortion control. The Committee Counsel noted that Alternative No. 3 was drafted by Mr. Wefald, and called on Mr. Wefald for discussion concerning that alternative. (A copy of Alternative No. 3 draft on abortion control is attached to these minutes as Appendix "A".)

Mr. Wefald stated that Alternative No. 3 was based on the remarks of Dr. Albert Fortman, the head of the North Dakota Right to Life Association, as presented to the Committee at its last meeting on July 26, 1974. The draft was also based, he noted, on the Montana "Abortion Control Act", which was in accordance with a suggestion from Dr. Fortman. He noted that the placement of this Act within the Century Code was open to question, and that he had chosen to place it in Title 14 immediately after the chapter on personal rights.

Mr. Wefald called the Committee's attention to the definition of "informed consent" in Subsection 5 of Section 14-02.1-02, and noted that this could be a controversial portion of the bill draft. Professor Lockney stated that "informed consent" is the current trend with respect to all medical actions taken on a particular patient, and wondered whether the definition and requirement for informed consent in this bill would provide an exception to the emerging rule. He wondered whether this wasn't especially the case with respect to Subsection 3 of Section 14-02.1-03 which requires that informed consent is not required if a licensed physician certifies that the abortion is necessary to preserve the life of the mother. Mr. Wefald suggested that perhaps Subsection 3 could be limited to emergency situations.

Mr. Wefald then noted that Dr. Fortman had indicated that Massachusetts had recently passed a bill dealing with fetal experimentation, but that a copy of that material was not available to the staff in drafting Alternative No. 3. However, a fetal experimentation provision had been put in Section 14-02.1-06 subject to change when the Massachusetts statute was available. Mr. Wefald noted that Dr. Fortman said he would make the statute available to the staff.

The Committee discussed Section 10 of the bill draft which provided for humane disposal of a non-viable fetus, and Mr. Wefald noted that if the disposal occurred outside of a licensed hospital or medical facility, the physician performing the abortion was to see to it that the fetus was disposed of in a humane fashion under regulations established by the Health Department. Hospitals and other medical facilities were to dispose of fetuses in a humane fashion in compliance with regulations promulgated by the Health Department.

Representative Murphy stated that he had a problem with the definition of "abortion", and asked whether it included removal of a dead fetus. Mr. Wefald replied that it did not, and that the definition specifically excluded removal of a dead fetus.

Judge Heen inquired as to what the "infraction" offense classification in Section 11 applied to. The Committee Counsel noted that it applied to a violation of a rule or regulation promulgated by the Health Department under the bill draft as presented. Mr. Wefald noted that these would be regulations relating to disposition of fetuses, etc. The Committee Counsel noted that the Committee had often, during the course of this study, utilized the infraction classification as the potential penalty for a violation of administrative regulations.

Representative Wagner questioned the desirability of Subsection 3 of Section 14-02.1-03 which states that informed consent is not required if the physician certifies that the abortion is necessary to preserve the mother's life. He stated that he

agreed with Professor Lockney that the trend is towards physicians having informed consent prior to undertaking any medical procedure on a given patient. He also questioned the use of the word "psychological" in line 8, noting that it would be very difficult for a physician to develop uniform notification forms with respect to the psychological effects of having an abortion. Finally, Representative Wagner cautioned that the fetal experimentation section should be carefully studied, and re-drafted if necessary, so that it did not prohibit the type of "experimentation" which was designed to save the life of the fetus.

The Committee continued its discussion of Subsection 3 of Section 14-02.1-03 relating to the statutory waiver of the "informed consent" requirement where the abortion is necessary to preserve the mother's life. Mr. Wefald suggested that the words "in the event of a medical emergency" be added after the word "mother" in line 32 of page 2. Representative Murphy inquired whether "informed consent" wasn't always necessary prior to proceeding with an operation on a patient. Judge Heen inquired as to how one would define a "medical emergency" if that language were to be added to Subsection 3. He noted that that phrase was almost as ambiguous as the definition of informed consent. The Committee discussed the informed consent provisions further.

Judge Pearce then inquired as to what the word "health" on line 15 of page 3 referred to, and whether it included mental health. The Committee Counsel noted that it definitely did include mental health, as the Supreme Court of the United States had indicated that "health" was to be defined as including both the physical and mental health of the mother. Professor Lockney inquired as to what the word "certifies" as used in Sections 14-02.1-03 and 14-02.1-04 means. Mr. Wefald stated that it wasn't clear from the context of the Montana Act, but that he believed that writing signed by the physician would suffice.

Mr. Webb stated that he had questions concerning the so-called "conscience clause" contained in Section 9 of the draft. He questioned whether access to public facilities could be denied.

The Committee then discussed the feasibility of requiring the consent of the husband of a married woman who desires an abortion. Professor Lockney stated that the Committee could recommend a bill requiring the husband's consent until the United States Supreme Court says that such a procedure is unconstitutional. The Committee Counsel noted that a provision for the husband's consent prior to authorization of an abortion was of questionable constitutionality even under current decisions.

The Committee discussed the necessity for the Health Department to devise a form to evidence the giving of the information necessary for "informed consent" by the Health Department. Representative Wagner suggested that the form of a written statement indicating the information given to a prospective abortion patient should be developed by legal counsel for the institutions involved, since the question of their liability is most at stake.

Judge Heen noted that there was an analogy in the case of blood alcohol tests, and a lack of standard forms in his judicial district for consent to such testing. He noted that the hospitals in his district develop their own forms. Judge Pearce suggested that perhaps the forms could be developed by anyone, but should be approved by the Attorney General.

The Committee discussed further the question of how "informed consent" should be handled, and Professor Lockney suggested that a standard form be developed,

but that its use be limited to the "purposes of this Act", and that the informed consent given is to apply only for purposes of this Act.

The Chairman explained the legislative viewpoint with regard to abortion legislation, and the possibility that action on an abortion bill while the suits challenging the State's abortion laws were still in the federal court might have the effect of cutting off the federal court decision. The Committee discussed several methods of making a bill conditional on future events.

Mr. Wefald explained Alternatives No. 1 and 2 as they relate to abortion, and noted the differences between them. He indicated that Section 4 of Alternative No. 2 provides a penalty for the deliberate concealing of the stillbirth of a fetus, and said that he believed such a provision would be valuable in any abortion alternative which was finally adopted. The Chairman inquired as to what action the Committee should take with respect to abortion legislation. Representative Murphy inquired whether, if no bill is passed during the next Legislative Session, the medical profession would take steps on its own to govern the performance of abortions. Representative Wagner stated that he could not speak for the Medical Association on that point, as a decision had not been reached on it.

Judge Pearce, noting the very recent decision by the people of North Dakota rejecting legalized abortion, stated that the bill draft should provide for the consent of the father or husband if the pregnant woman seeking an abortion is a minor. Judge Heen noted that a question of privacy was involved here, and that it might be extremely difficult to include the consent of third parties not involved in the patient-physician privilege.

The Chairman directed the staff to develop provisions providing for consent of a husband or father in cases in which the pregnant woman seeking an abortion is a minor.

The Committee again returned to a discussion of Subsection 3 of Section 14-02.1-03, and Judge Teigen made a suggestion that those sections be rewritten to provide that informed consent would not be required if the county mental health board would certify that the person seeking the abortion is mentally incompetent to give the consent.

Judge Teigen's suggestion generated a great amount of discussion concerning what should be done about the mentally incompetent pregnant woman.

Thereafter, the Chairman directed the staff to redraft Alternative No. 3 to comport with the Committee's discussion concerning "informed consent", fetal experimentation, consent of husband or father, sale of fetuses, and failure to report stillbirth. Thereafter, the Committee recessed for lunch at 12:05 p.m. and reconvened at 1:15 p.m. at which time the Chairman called on the Committee Counsel for a discussion of three alternative drafts designed to control the dissemination of obscene materials.

The Committee Counsel noted that the first alternative provided criminal liability for the dissemination of obscene material to minors or to adults, and had a definition of obscene materials and sexual conduct which was designed to conform to the decision in Miller v. California, and that those definitions follow through the second and third alternatives. He noted that Alternative No. 2 provided for a prior civil determination of obscenity before criminal liability for dissemination to either adults or minors could arise. The third alternative, the Committee Counsel noted, would provide criminal liability only for dissemination to minors (persons under 18 years of age).

The Chairman called on persons present for their comments, and Mr. John Sakariassen indicated that he favored Alternative No. 2 which provided for a prior civil determination. However, he suggested that the word "educational" could be added on line 25 of page 2 (Alternative No. 2) as the question of whether a document is "educational" should also be part of the test of obscenity. (Note: Alternative obscenity drafts No. 2 and No. 3 are attached to the minutes as Appendices "B" and "C".)

Mr. Sakariassen also expressed concern about Subsection 7 of Section 1 of Alternative No. 2, noting that the definition of "nudity" should be re-thought, and that perhaps it was not even constitutionally appropriate in light of the most recent Supreme Court cases. He also suggested that on line 21, page 4, Alternative No. 2, the words "serve a copy of the petition on" be inserted in lieu of the words "actual prior written notice that he is about to institute a civil proceeding to".

Mr. Sakariassen stated that his principal concern is to ensure the acceptance of the prior civil determination portion of the bill. He suggested alternatives to the method of handling the civil proceeding as presented in the bill draft. He stated the reason that he is so interested in the prior civil proceeding is based on the rationale that if the Supreme Court of the United States cannot define obscenity in such a way that it is clear to everyone, why should a book retailer be required to make the judgment as to whether a particular document is obscene prior to sale.

Judge Glaser asked whether the provision for a prior civil proceeding before a three-judge district court didn't in fact constitute a censorship board, and asked whether censorship boards haven't been held unconstitutional previously. Professor Lockney read from United States Supreme Court opinion which seemed to indicate that a prior civil determination by a court would be an acceptable method of proceeding with relation to obscenity control.

Representative Lundene inquired as to why the burden could not be put on the bookseller to know what he was selling. He stated that, in fact, booksellers do categorize their materials, and you can always find the various types of books grouped together. Mr. Sakariassen stated that that was true, but the bookseller still didn't have to make the final determination as to what was or was not obscene.

The Committee Counsel stated that he had discussed Alternative No. 2 (Appendix "B") with Chief Justice Erickstad, and that Justice Erickstad had several objections to Section 4 of the draft. First, he felt that it would be unfortunate to tie up three district judges for these types of proceedings, as it is difficult enough to get one district judge to sit with the Supreme Court, and would be exceedingly difficult to get three district judges together. Second, he noted that the provision for an accelerated appeal could cause the Supreme Court to become simply an organization which ordered priorities. Last, Judge Erickstad said that he believed it would be most unfortunate if the Legislature were to pass specialized appeal procedures just after the Supreme Court has adopted comprehensive appellate rules. He said if a bill such as this is to be passed, the rules of appellate procedure should be followed, and a specialized appeals procedure should not be created. Mr. Sakariassen stated that he thought probably it was presumptive to force a fast appellate procedure on the Supreme Court.

Chief Anderson stated that he believed a differentiation should be made between the types of pornography being forbidden, and noted that different methodologies should be used to handle each situation, particularly with reference to live performances. He stated that Alternative No. 2, with its prior civil determination for every type of pornography, would not work with respect to pornographic live entertainment.

The Chairman called on Mr. Leonard Bucklin, who discussed Alternative Obscenity Control Bill No. 3 (Appendix "C"). Mr. Bucklin stated that the draft of Alternative No. 3 had only been shown to him recently, but that it was essentially all right. He stated that the case of Jenkins v. Georgia had raised questions concerning the constitutionality of placing a prohibition on nudity per se.

Mr. Bucklin stated that one of the reasons why legislatures have such great problems in dealing with obscenity is because the United States, as a country, has had very little experience, relatively speaking, in handling obscenity.

Mr. Bucklin discussed numerous documents which he had distributed to the Committee discussing the obscenity issue, and supporting the position that prohibitions on dissemination of obscene materials should be limited to dissemination to minors. For instance, Mr. Bucklin noted that there was a statement on obscenity by the General Assembly of the Presbyterian Church, and a statement of position by the Committee on Communication of the United Methodist Church, and that both of those documents tended to support his position.

He stated that the report of this Committee should not take it upon itself to be hard and fast in making moral judgments, and noted that there was a fourth choice available to the Committee, which was no censorship. He stated that he prefers Alternative No. 3, but hopes that either Alternatives No. 2 or 3 would be selected. If the Committee could not make a selection of one of those two, then it should present all of the alternatives to the Legislature.

The Chairman questioned the exemptions set forth in Section 5 of Alternative No. 3, and asked whether they were not too broad. Mr. Bucklin stated that, if a parent did not wish to forbid a minor child from seeing or reading pornography, than, as between the State and that parent, the decision should be with the parent. Further, he felt that where a bookseller, or other person who might be in the position of disseminating alleged obscenity, had made a good faith effort to determine that the person purchasing was not a minor, that seller should not be subject to criminal liability because the minor had perpetrated a fraud on him.

Representative Murphy asked whether a determination as to what was obscene wouldn't still have to be made if Alternative No. 3 was adopted. Mr. Bucklin replied that that would be the case, and that a determination of obscenity would have to be made under any of the three alternatives presented to the Committee today.

Mr. Webb stated that the Committee has to determine what the public wants with relation to hard core pornography, and noted that that was the problem, i.e., hard core pornography. Representative Stone read from an article in the "Ladies Home Journal", by Gene Shalit, which indicated that excessive violence was also obscene and should be controlled. Mr. Bucklin noted that he did not want to be misunderstood, and that he did desire North Dakota to have an obscenity statute as they didn't presently have one.

Judge Teigen inquired as to whether there couldn't be one method of approach to the handling of distribution or exhibition regarding visual displays, and another approach (similar to Alternative No. 2) with regard to written material. Mr. Bucklin replied that he thought that that could be done.

The Chairman stated that the Committee should pick an alternative and then modify that. Judge Glaser asked about Judge Teigen's suggested alternative. Mr. Francis Larson, representing the North Dakota Retail Association, asked that the Committee give serious consideration to Alternative No. 2.

Chief Anderson suggested that the Committee should start with Alternative No. 1. IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY JUDGE GLASER that the Committee start with Alternative No. 3 as its base, and then build in a prior civil determination procedure.

Judge Pearce stated that his rationale for the motion was that no indication had been made concerning the necessity, in terms of a definite state interest, for controlling the dissemination of any types of materials to adults.

Representative Murphy inquired as to whether he would have the same rationale concerning the use of narcotics. Judge Pearce stated that he had no problem differentiating narcotics from written materials, as there was definite objective proof concerning the physiological harm related to narcotics, while there was no such proof with relation to "obscenity".

The Chairman stated that he felt the Legislature has an obligation to set a moral tone for the people, and that that is what the people elect their legislators for.

CHIEF ANDERSON MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE LUNDENE, that the Committee focus its considerations on Alternative No. 1.

Judge Glaser noted that the problem with starting with a criminal arrest was that subjective determinations as to whether particular material is obscene have to be made all along the line, and they are going to become more and more difficult. For instance, the arresting officer has to make an initial decision that he is dealing with obscene material, then the committing magistrate has to make that determination, and neither one of them is trained to do so. Judge Pearce noted that his motion (i.e., the motion to start with Alternative No. 3) included a prior civil determination possibility.

Mrs. Frank Keller, a member of the audience, read a quotation from a psychologist by the name of Dr. Anchell concerning the dangers of viewing pornography. THEREAFTER, CHIEF ANDERSON'S MOTION CARRIED, and the Committee determined that it would start its considerations with Alternative No. 1.

The Chairman inquired whether it wouldn't be wise to have the bills which the Committee might submit dealing with obscenity and abortion control as measures separate from the main revision bill. After discussion, IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that the staff be directed that any bills which the Committee might approve relating to abortion control or obscenity control be drafted as bills separate and apart from the main revision effort.

Judge Pearce, commenting on the substitute motion just passed, noted that that motion included criminal liability for dissemination to adults, but that it did not exclude a prior civil determination of obscenity before criminal liability attaches.

Mr. Webb inquired of Chief Anderson as to the meaning of the phrase prior adversary hearing procedure. Chief Anderson explained that it had to do with the ability to seize obscene materials. He noted that a magistrate was brought right to the scene (i.e., the bookstore), and the preliminary determination of obscenity was made on the spot.

Chief Anderson suggested that the Committee staff should also draft a separate bill dealing with performances in liquor establishments, noting a California statute which rested on the fact that the state licensed liquor establishments.

Mr. Webb questioned whether enough guidance was being given to the staff to allow them to adequately draft for the next meeting. The Committee Counsel suggested that perhaps more guidance would be appropriate, as he would like to present a draft which was as nearly complete as possible.

Judge Pearce suggested that there should be provision for a prior civil proceeding to determine obscenity with respect to "books". Judge Pearce and Mr. Webb then had a discussion concerning the difference between the seizure of evidence with relation to other offenses, and the seizure of evidence where the charge was likely to be illegal dissemination of obscene materials.

The Committee discussed the procedures which should be utilized in handling a prior civil proceeding to determine obscenity. JUDGE PEARCE MOVED that the civil proceeding be initially before a single district judge, and that on appeal to the Supreme Court, the issues would be considered in a trial de novo. After further discussion, JUDGE PEARCE WITHDREW HIS MOTION.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY JUDGE TEIGEN, AND CARRIED that the civil proceeding be before a single judge of the district court or, if requested, before a three-judge district court, and that any appeal to the Supreme Court be according to the existing rules of appellate procedure.

(The sections considered from this point till the end of the meeting are included, as acted upon by the Committee, as Appendix "D".)

The Committee discussed the redraft of materials required by the minutes of October 25-26, 1973. Mr. Wefald first discussed Section 6-08-05 which reads as follows:

- 1 6-08-05. BANK OFFICER OR EMPLOYEE OVERDRAWING OWN ACCOUNT
- 2 GUILTY OF MISDEMEANOR.) Every director, officer, agent, (((teller, clerk,
- 3 or servant))) or employee of any bank, banking association, or savings bank,
- 4 who knowingly overdraws his account with such bank, and thereby wrongfully
- 5 obtains money, notes, or funds of such bank, is guilty of a class A misdemeanor.

He noted that the previous discussion of the section had resulted in a direction from the Chairman to redraft the section to make it more general concerning the misuse of powers granted to bank officers and directors. Mr. Wefald noted that there was adequate provision made elsewhere covering misuse of powers, and specifically noted Section 6-03-10, as recommended for amendment by the Committee, and Sections 6-03-56, 6-03-60, 6-03-61, 6-03-63, 6-03-72, 6-05-16, 6-07-06, 6-07-08, 6-08-09, 6-08-11, and 6-08-14. Therefore, Mr. Wefald felt that the provisions of Section 6-08-05 would be adequate if the words "or savings bank", were deleted from line 3 and the word "wrongfully" were deleted from line 4.

Professor Lockney suggested that the bank officer or employee who overdraws his own account should be subject to no greater penalty than anyone else who writes a "NSF" check. The Committee Counsel noted that the only difference now seems to be that Section 6-08-16, prohibiting the issuance of NSF checks, sets the penalty at a Class B misdemeanor, while Section 6-08-05, as proposed, sets the penalty as a Class A misdemeanor.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY PROFESSOR LOCKNEY, AND CARRIED that Section 6-08-05 be recommended for repeal.

The Committee considered Section 7-05-04, which reads as follows:

1 7-05-04. REPORTS CONFIDENTIAL - FALSE REPORTS - PENALTY
2 - EXCEPTIONS.) (((In the event the state examiner, his deputy, assistant,
3 or clerk fails to keep secret the facts and information))) Information obtained
4 in the course of an examination (((, or if such state examiner, his deputy,
5 assistant, or clerk willfully makes a false report as to the condition of such
6 association, such person shall be guilty of a felony and shall be removed from
7 office))) by the state examiner shall be confidential information. It shall
8 be a class C felony for the state examiner, his deputy, or any of his em-
9 ployees, to willfully make a false report as to the condition of any associa-
10 tion. However, the above (((provisions))) provision shall not apply when the
11 public duty of such officer requires him to report upon or take official action
12 regarding the condition of an association that he has examined. This section
13 shall not be construed to prevent the said officer (((or officers))) from fully
14 disclosing to any federal agency any information which such examiner may
15 have in his office pertaining to such associations. Nothing in this section
16 shall prevent the proper exchange of information relating to building and loan
17 associations and the business thereof with the representatives of building and
18 loan departments of other states, but in no case shall the private business or
19 affairs of any individual association or company be disclosed. This section
20 shall not be construed to prevent the said officer (((or officers))) from fully
21 disclosing to the federal home loan bank board at Washington, D. C., or to the
22 federal home loan bank of this district, or to any other federal agency, any
23 information which such examiner may have in his office pertaining to such
24 associations.

Mr. Wefald noted that the Committee, during the October meeting, had suggested that the section (7-05-04) be redrafted so that the breach of confidentiality provisions would be punished in accordance with Section 12.1-13-01, which is the general section making it a violation to disclose confidential information provided to government under a governmental assurance of confidence.

The Committee considered the sentence beginning on line 7 and ending on line 9, and it was noted that this sentence would be more appropriately placed at the end of the section, so that it was certain that the provisions commencing on line 9 would refer to the breach of confidentiality provisions. IT WAS MOVED BY CHIEF ANDERSON, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Section 7-05-04 be amended by moving the sentence which commences on line 7 and ends on line 10 to the end of the section, and, when the section is so amended, that it be adopted.

The Committee next considered a concurrent resolution which would direct the Legislative Council to carry out a study of mental health and retardation commitment procedures, and in-hospital procedures relating to the custody and treatment of persons hospitalized because of mental disability. The Committee Counsel noted that this resolution resulted from the motion passed at the last meeting, and suggested by Professor Lockney.

Professor Lockney suggested that the word "disability" be substituted for the words "health or mental retardation" in lines 4 and 5 of the title of the resolution, and that the word "nearly" be stricken from line 16, so that the "whereas" clause would provide that involuntary commitment to a treatment facility was as serious a deprivation of personal liberty as incarceration following conviction of a crime.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY JUDGE PEARCE, AND CARRIED that the word "and" be added at the end of line 3; that the words "health or" be deleted from line 4 of the study resolution and the word "disability" be inserted in lieu thereof; that line 5 be deleted; and that the word "nearly" be deleted from line 16, and that when so amended, the resolution be approved.

The Committee considered the redraft of sections as required by the minutes of June 1973, commencing with consideration of Sections 64-03-01 through 64-03-09. Mr. Wefald noted that the motion at the previous meeting had been made by Mr. Wolf, and that since that time he had discussed the redrafting of all of those sections into a single section with Mr. Wolf, and Mr. Wolf had concurred that it would be best to retain the individual sections with one general penalty section. Mr. Wefald also noted that the Committee had previously moved to repeal Section 64-03-04, and he was now recommending that Section 64-03-08 be repealed, since the prohibited conduct covered by that section (hindering an inspector) will now be covered by the redrafted provisions of Section 12.1-08-01.

Representative Murphy inquired as to the meaning of Section 64-03-07, which reads as follows:

1 64-03-07. (((PENALTY FOR VIOLATING))) VIOLATION OF PROVISIONS
2 RELATING TO STANDARD MEASUREMENTS AND WEIGHTS UNLAWFUL.) (((Any
3 person who))) It shall be unlawful for any person to, in buying, (((shall)))
4 take any greater number of pounds or cubic feet to the bushel, barrel, ton, cord,
5 gallon, or fractional part, as the case may be, than is provided by the standards
6 established in this title, or (((who))) to, in selling (((shall))), give any less
7 number (((, shall be guilty of a misdemeanor and shall be punished by a fine of

8 not less than ten dollars nor more than one hundred dollars, or by imprisonment
9 in the county jail for not less than ten days nor more than ninety days))).

Representative Murphy noted that it did not require any particular knowledge that there was a variation from the weight and measurement standards, only that the alleged offender give a weight other than that proposed.

The Committee Counsel suggested that the words "unless the buyer or seller, as the case may be, has knowledge of the variation from the standards as established in this title" could be added after the triple parentheses in line 9. IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the language suggested by the Committee Counsel be added after the triple parentheses in line 9 of Section 64-03-07, and before the period in that same line.

Mr. Wefald noted his recommendation that Section 64-03-08 be repealed, and IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY CHIEF ANDERSON, AND CARRIED that Section 64-03-08 be repealed.

The Committee Counsel noted that the new language in Section 64-03-02 was awkward. Section 64-03-02 reads as follows:

1 64-03-02. FALSE WEIGHTS - (((PENALTY))) UNLAWFUL FOR PUBLIC USE.)
2 (((Any person who knowingly uses))) It shall be unlawful for any person to
3 knowingly use and fraudulently make use of a weight, measure, scale, balance,
4 or beam for the purpose of purchase or sale, or (((who keeps))) to keep such
5 device for public use, which does not conform to the legal standard of weights and
6 measures of the state, or (((who alters))) to alter a weight, measure, scale,
7 balance, or beam after it has been adjusted and sealed so that it does not con-
8 form to such standard (((, and fraudulently makes use thereof, shall be
9 punished by a fine of fifty dollars for each offense))).

Judge Teigen noted that the language in line 3 relating to "fraudulently make use of" was taken from the deleted language in lines 8 and 9. He noted that striking the first word used could probably solve the problem.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY CHIEF ANDERSON, AND CARRIED that the first underscored word "use" in line 3 of Section 64-03-02 be deleted. IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Sections 64-03-01, 64-03-02 as amended, 64-03-03, 64-03-05, 64-03-06, 64-03-07 as amended, and 64-03-09 be approved.

The Committee discussed briefly Subsection 2 of Section 63-01.1-15 which provides that persons who fail to comply with weed control rules and regulations shall be subject to a civil penalty. The consensus of the Committee was that a civil penalty was appropriate, and the Committee then considered Section 4-01-18, which reads as follows:

1 4-01-18. OBSTRUCTING COMMISSIONER - PENALTY.) Any person who
2 willfully impedes or obstructs the commissioner in the performance of his
3 duties or refuses to supply him with information requested under the pro-
4 visions of this chapter, is guilty of a class B misdemeanor (((and shall be
5 punished by a fine of not less than ten dollars nor more than fifty dollars, or
6 by imprisonment in the county jail for not less than seven days nor more than
7 thirty days, or by both such fine and imprisonment))).

Mr. Wefald noted that the section could be repealed as its provisions were now covered by Section 12.1-08-01 and Section 12.1-10-02 of the new Criminal Code. IT WAS MOVED BY JUDGE TEIGEN, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that Section 4-01-18 be repealed.

Thereafter, the Committee recessed at 5:02 p.m. and reconvened at 9:00 a.m. on Friday, September 6, 1974. At that time, the Committee considered Sections 5-01-03 and 5-03-01 which provide a penalty for distribution of alcoholic beverages without compliance with the provisions of Title 5 and require a wholesale liquor distributor to be licensed. Mr. Wefald noted that the previous motions of the Committee had indicated that the provisions of Section 5-01-03 should be included in the provisions of Section 5-03-01, and thus a redraft of Section 5-03-01 was being presented, which reads as follows:

1 5-03-01. STATE WHOLESALE LICENSE REQUIRED - QUALIFICATIONS
2 - PENALTY.) Before any person shall engage in the sale at wholesale of beer or
3 liquor in this state he shall first procure a license from only the state treasurer.
4 Such license shall only allow sale to licensed retailers, licensed wholesalers and
5 regular retail outlets on federal military reservations. No such license shall be
6 issued unless the applicant shall file a sworn application, accompanied by the
7 required fee, showing the following qualifications:

- 8 1. Applicant, other than corporate, must be a citizen of the United States
9 and a resident of the state of North Dakota and a person of good moral
10 character. If applicant is a corporation the manager of the licensed
11 premises and the officers, directors, and stockholders must be citizens
12 of the United States and persons of good moral character. Corporate
13 applicants must first be properly registered with the secretary of state.
- 14 2. The state treasurer may require applicant to set forth such other informa-

15 tion as is necessary to enable him to determine if a license should be
16 granted.

17 3. No person shall be eligible for such a license unless he has a warehouse
18 and office in this state in which is kept a complete set of records relative
19 to his alcoholic beverage transactions in North Dakota.

20 Any person distributing alcoholic beverages in this state without compliance
21 with the provisions of this title is guilty of an infraction.

Representative Murphy inquired as to why Section 5-03-01 provided a discrimination against nonresidents. This triggered a discussion of the State's power to classify on the basis of residency under the police power. It was noted that the Snyder Drug cases have indicated that North Dakota did have the power to require North Dakota ownership of sensitive businesses.

Chief Anderson stated that the manager of a corporate liquor wholesaling establishment should also be required to be a North Dakota resident, as it was difficult to determine who should receive service of process. It was noted that a corporation doing business in North Dakota would have to denominate someone as a resident agent for service of process. Chief Anderson replied that it would still be easier to handle if one knew that the corporate manager had to be a North Dakota resident. Judge Teigen suggested that the following language be inserted after the word "premises" on line 11: "shall be a resident of the state of North Dakota, a citizen of the United States, and a person of good moral character,".

IT WAS MOVED BY CHIEF ANDERSON, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that following the word "premises" in line 11 the underscored words: "shall be a resident of the state of North Dakota, a citizen of the United States, and a person of good moral character," are to be inserted, and that when so amended the section (5-03-01) be adopted.

The Committee next considered the redraft of sections as mandated by the minutes of August 1973, commencing with Section 57-38-45, Subsections 2 and 3. Mr. Wefald noted that the particular interest of the Committee during the August 1973 meeting was in Subsection 2, and that that section has been redrafted to read as follows:

1 2. If any taxpayer does not voluntarily file a return of income within
2 sixty days after the time required by or under the provisions of
3 this chapter, and after notice by the tax commissioner, he shall
4 be subject to a (((fine))) civil penalty of not less than ten
5 (((dollars and not))) nor more than five hundred dollars assessed
6 by the tax commissioner, and shall pay interest on the tax due
7 at the rate of one percent for each month or fraction of a month
8 from the time the tax originally was due until the date of payment;

Representative Murphy stated that he did not care for the idea that the tax commissioner had discretion to levy the penalty on amounts from \$10 to \$500, and Judge Teigen suggested that it could be, perhaps, a percentage of the tax due. The Chairman requested that Mr. Wefald call the Tax Department and see if someone could come down and discuss this subsection with the Committee.

In the meanwhile, the Committee considered Sections 2-03-10, 2-05-09, and 2-05-17, and the Committee Counsel noted that if Subsection 2 of Section 2-03-10 were amended in accordance with the proposals set before the Committee at this meeting and reading as follows:

1 2. Whoever operates (((, or attempts to operate,))) any aircraft in
2 this state on (((any airport, landing field, or landing strip, or
3 whoever operates or attempts to operate, any aircraft))) land,
4 water, or in the air (((in this state))) while in an intoxicated con-
5 dition or while under the influence of alcoholic beverages or any
6 (((depressant, stimulant, or hallucinogenic))) controlled substance,
7 shall be guilty of a class A misdemeanor.

then, Section 2-05-09 would be completely covered and could be repealed, and Section 2-05-17 could be retained.

IT WAS MOVED BY MR. WEBB AND SECONDED BY CHIEF ANDERSON that Sections 2-03-10 and 2-05-17 be accepted as drafted; and that Section 2-05-09 be repealed.

Representative Murphy brought up the question of the legality of airplanes landing on county highways and other roads. The Committee discussed the fact that Title 2 does not seem to specifically cover landing on highways, and that it was probably covered under Subsection 1 of Section 2-03-10, and presently covered under Section 2-05-09 also. It was suggested that perhaps landing on highways was covered by regulations of the Federal Aeronautics Administration. THEREAFTER, MR. WEBB'S MOTION CARRIED.

The Chairman called on Mr. Al Hausauer, Attorney for the Tax Department, for his comments on a proposed change to Subsection 2 of Section 57-38-45 so that that subsection would refer to a percentage of the tax due as being the amount of civil penalty which could be assessed.

Mr. Hausauer noted that Subsection 2 is a valuable sanction, and that it is used fairly often by the Department. He stated that the amount of the civil penalty was usually set at \$100. Judge Teigen then inquired as to whether the subsection could be amended so that the amount of the civil penalty was set at \$100 or a percentage of the tax due, whichever was greater. Mr. Hausauer replied that that would probably be appropriate.

IT WAS MOVED BY JUDGE TEIGEN AND SECONDED BY REPRESENTATIVE MURPHY that the word "voluntarily" in line 1 be deleted; that triple parentheses be inserted before the word "not" in line 4; that the triple parentheses before the word

"dollars" and after the word "not" in line 5 be deleted; that the underscored word "nor" in line 5 be deleted; that triple parentheses be inserted after the word "dollars" in that same line, and the underscored words "one hundred dollars or ten percent of the tax due, whichever is greater," be inserted before the underscored word "assessed" in that same line, and that when so amended the subsection be accepted.

Mr. Hausauer counseled against the striking of the word "voluntarily", since it related back to the use of the word "voluntarily" in Subsection 1 of Section 57-38-45, and, after discussion, JUDGE TEIGEN, WITH THE CONSENT OF HIS SECOND, deleted the striking of the word "voluntarily" from the motion. THEREAFTER, THE MOTION CARRIED.

Mr. Wefald, noting that he had called and talked to Mr. Harold Vavra, stated that there was no North Dakota statute, other than Section 2-05-09 and Subsection 1 of Section 2-03-10, which prohibited landing on highways, and he also noted that federal law does not specifically prohibit such landing. Mr. Vavra had said that, in fact, some spray planes specifically get permission to block off areas of county highways and do land and take off from them.

The Committee next discussed Sections 57-15-18 and 57-15-40 which were previously discussed by the Committee and cover unlawful withdrawal from school district or city building funds. Mr. Wefald noted that during the August 1973 meeting, the Chairman had directed the staff to confer with the State Bonding Fund representatives, and to redraft those two sections into one section covering all unlawful withdrawals. Further, the Chairman directed the staff to look into the situation with respect to the language, presently in each of the sections, relating to liability on an official bond.

Mr. Wefald proposed a new Section 57-15-58, which would read as follows:

- 1 57-15-58. PENALTY FOR UNLAWFUL WITHDRAWAL FROM FUND.) Every
- 2 officer participating in the unlawful withdrawal from any fund established by
- 3 this chapter shall be guilty of a class A misdemeanor.

There was much discussion concerning the desirability of leaving the language relating to liability on an official bond. Mr. Wefald noted that there was a right to proceed against a bond, not issued by the bonding fund, regardless of that fact being stated in a statute, and the bonding fund statutes (Chapter 26-23) specifically set forth the right to proceed against the Fund.

The Committee Counsel raised the question of whether the word "withdrawal" in line 2 of proposed Section 57-15-58 was not inappropriate, and whether it might not better be the word "expenditure". The Committee discussed this proposition, but did not conclude that a change was necessary.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY CHIEF ANDERSON, AND CARRIED that Section 57-15-58 be accepted as drafted, and that Sections 57-15-18 and 57-15-40 be repealed.

In response to a question from Judge Teigen, the Committee Counsel noted that these sections refer to funds which are raised by taxation, and not by the floating of a municipal or school district bond issue.

The Committee then considered a proposed criminal record expungment statute, which reads as follows:

1 . EXPUNGMENT OF CLASS A MISDEMEANOR, CLASS B
2 MISDEMEANOR, AND INFRACTION CONVICTIONS.)

- 3 1. A person convicted of a class A misdemeanor, a class B misdemeanor,
4 or an infraction may petition to have that conviction removed from his
5 records on file with courts and law enforcement agencies of this state.
6 2. No petition shall be filed unless from the date the offender was sen-
7 tenced or had sentence deferred:
8 a. Seven years have passed in the case of a person convicted of a
9 class A misdemeanor;
10 b. Five years have passed in the case of a person convicted of a
11 class B misdemeanor; and
12 c. Two years have passed in the case of a person convicted of an
13 infraction.
14 3. The petition shall be directed to the district court and after hearing,
15 with notice to the state's attorney of the petitioner's county of resi-
16 dence, the court may order that the infraction conviction be expunged
17 from the petitioner's records. A petition under this subsection shall
18 be filed with the clerk of court and shall be accompanied by a twenty-
19 five dollar filing fee. All or a portion of the costs incurred as a result
20 of a hearing pursuant to this subsection may, in the court's discretion,
21 be assessed against the petitioner. A hearing under this section shall
22 be deemed to be a civil proceeding.

Mr. Wefald noted that the redrafted provision was a result of previous Committee discussion on Subsection 5 of Section 12.1-32-03.1, which had provided that the record of conviction of an infraction could be expunged two years from the date on which the offender was sentenced upon petition of the offender.

When the Committee had previously discussed that topic, Mr. Webb had indicated that perhaps, if the procedure were to be allowed, it should not be limited to infractions. Mr. Wefald noted that there was a motion during that meeting to accept Subsection 5 of Section 12.1-32-02 in principle, but to authorize the staff to make necessary verbiage changes.

The Committee discussed the expungment statute, and Professor Lockney noted that it should not apply to infractions, as infractions were designed to cover primarily the so-called "regulatory offenses", and that type of offense should be continued on the record, as it is usually committed by a business organization. Additionally, Professor Lockney stated that there should be more study as to how these types of statutes work in other jurisdictions, if they exist in other jurisdictions, and as to the methodology to be used in carrying out the physical expungment.

Chief Anderson stated that he was opposed to the expungment statute because it would create a physical impossibility with respect to the expunging of police records in police stations. He stated that if something were going to be done in this area, it ought to be in the nature of sealing the files. Judge Teigen noted that the statute as drafted could create a situation in which a repeat offender was in court every year seeking expungment of a given misdemeanor.

Mr. Webb stated that he did not favor this concept, and noted that deferred imposition, which already is working well in North Dakota, does apply to misdemeanors. He said that if the concept is to be utilized in North Dakota it should apply only to civil matters. Mr. Webb stated that one of the risks which a potential offender takes when he commits an offense is that the record of that offense will remain available for the rest of his life.

The Chairman discussed the story of a Dickinson youth who had had trouble in Dickinson, but was told by local police officials that his record would be "erased" if he left the state. The same youth was apprehended in Denver, and the Denver officials made reference to his Dickinson record, thus disillusioning him concerning the verity of the police officials in Dickinson.

Representative Murphy stated that he would like to limit the concept of expungment to civil proceedings. Judge Teigen suggested language to limit the expungment to the records of the court in which the initial conviction occurred. Judge Heen noted that convictions of misdemeanors occurring over five years previously were not of much use anyway, and that he did not take them into account in making sentencing decisions. Mr. Webb stated that the concept should be limited to civil cases, as it may be necessary to use the record for impeachment purposes in a criminal case. Professor Lockney noted that the foregoing discussion indicated a definite need for study of this topic.

Professor Lockney said that he would like to take this opportunity to offer the aid of the Law School to the Legislative Council staff to carry out studies of this type which the Council staff may not have time to carry out on their own.

Thereafter, IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED, with the Chairman voting in the negative, that the Committee reconsider the action by which it adopted Subsection 5 of Section 12.1-32-03.1. IT WAS THEN MOVED BY PROFESSOR LOCKNEY AND SECONDED BY CHIEF ANDERSON that Subsection 5 of Section 12.1-32-03.1 be deleted. Judge Teigen stated that he felt there might be some value in limiting the expungment concept to the records of the court in which the conviction was had. Professor Lockney stated that he would second Judge Teigen's motion if one was forthcoming, but no motion was made. THEREAFTER, PROFESSOR LOCKNEY'S MOTION CARRIED, with the Chairman voting in the negative.

IT WAS MOVED BY JUDGE HEEN AND SECONDED BY REPRESENTATIVE STONE that some appropriate agency carry out a study of the desirability of criminal record expungment. The Chairman directed the staff to communicate with the Criminal Justice

Commission, and find out what that Commission plans to do with respect to expungment of criminal records, if anything. THEREAFTER, JUDGE HEEN, WITH THE CONSENT OF HIS SECOND, WITHDREW HIS MOTION.

The Committee then considered the redrafts resulting from the meeting of February 14-15, 1974. Mr. Wefald noted that Attorney General Olson was present, and that he had an interest in the discussion of Section 44-08-05.1.

Mr. Wefald noted that at the February 1974 meeting, the Committee had considered Section 44-08-05.1, which reads as follows:

1 44-08-05.1. VOUCHERS - REQUIREMENTS FOR APPROVAL - PENALTY -
2 ACTION FOR VIOLATIONS.) Any public officer or employee who has the power
3 to approve a voucher for a department, agency, or institution for travel expenses
4 or any other state expenditure of public funds shall determine before approving
5 such voucher the following:

6 1. That the expenditure for travel or other expenditures were for lawful
7 and official purposes;

8 2. If for travel expense, that the travel actually occurred, and that the
9 sums claimed for travel expenses are actually due the individual who
10 is seeking reimbursement, allowance, or payment;

11 3. If the voucher is for expenditure other than travel expense, that the
12 expenditure is lawful and that the voucher contains no false claims.

13 Any public officer or employee who willfully approves a voucher with knowledge
14 it contains false or unlawful claims or that it does not otherwise meet the require-
15 ments of this section for approval, shall be guilty of (((a misappropriation of
16 public funds and shall be subject to the penalty prescribed by section 12-10-02)))
17 theft and punishable under the provisions of chapter 12.1-23. Any public
18 officer or employee who shall without the use of ordinary care and diligence
19 negligently approve a voucher for a department, agency, or institution contain-
20 ing false or unlawful claims or which does not otherwise meet the requirements
21 of this section for approval, shall be personally liable for any funds improperly
22 expended. The director of the department of accounts and purchases, members
23 of the state auditing board, state auditor, or any other person who has knowledge

24 of an actual or possible violation of this section shall make such information known
25 to the attorney general. The attorney general shall investigate any alleged viola-
26 tions and if a violation appears to exist he shall criminally prosecute under
27 (((section 12-10-02))) chapter 12.1-23 or bring a civil suit for the recovery of
28 such funds as may actually have been improperly paid against the payee and offi-
29 cer or employee who approved such voucher in violation of any of the above
30 requirements or shall bring both such criminal action (((or))) and civil suit.
31 The officer or employee who approves any voucher negligently shall have the
32 right of subrogation against the payee of such voucher in the event public funds
33 have been improperly paid to the payee.

He stated that Representative Hilleboe had indicated concern at that time with the language on lines 25 through 30, especially in light of the situation involving Mr. Norman Behlmer. Following the discussion of this problem, the Chairman had directed the staff to redraft the section, after discussing with the Attorney General his feelings and desires concerning the language on lines 25 through 30. Mr. Wefald stated that he had discussed this matter with the Attorney General, and that as a result the determination had been made not to redraft Section 44-08-05.1.

The Chairman called on the Attorney General who noted that the Behlmer case was unfortunate, but that his office had commenced a civil action against Behlmer and had secured a judgment in the amount of \$17,000. He noted that the Cass County State's Attorney had first indicated that he would prosecute Mr. Behlmer, but thereafter had stated in a lengthy letter his rationale for not prosecuting Mr. Behlmer, which the Attorney General had honored.

The Attorney General stated that, had his power been put to the test, it would have been found adequate to allow him to prosecute in the Behlmer case. However, he noted that it would have been administratively difficult for him to do so because of lack of staff personnel available to carry out the prosecution.

The Attorney General noted that Mr. Tom Kelsch would come on his staff on October 1, and that the two of them would work on a bill providing for full-time prosecutors for the State, and that that bill would be introduced during the 1975 Session.

In response to a question from Representative Murphy, the Attorney General noted that one of the reasons for not prosecuting was that the evidence which would have been available in a prosecution might have been constitutionally tainted, and that Mr. Garaas had pointed that out in his letter setting forth his reasons for not prosecuting in Cass County.

The Committee discussed the powers of the Attorney General, and Mr. Olson noted that some State's Attorneys do not do a good job, and that, in some counties, felonies have not been prosecuted because of budgetary problems. However, he noted that his office was not desirous of taking over general criminal prosecution duties.

Thereafter, IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 44-08-05.1 be accepted as previously drafted. The Committee recessed for lunch at 12:02 p.m. and reconvened at 1:15 p.m.

The Committee then commenced consideration of further proposed amendments to Senate Bill No. 2045, and particularly Section 12.1-02-04, which reads as follows:

1 12.1-02-04. IGNORANCE OR MISTAKE (((NEGATING CULPABILITY))) OF
2 FACT OR LAW - DEFENSE.) (((A person does not commit an offense if, when
3 he engages in conduct,))) It is a defense that when a defendant engages in
4 conduct which would otherwise constitute an offense he is ignorant or mis-
5 taken in good faith about a matter of fact or law, and the ignorance or mistake
6 negates the kind of culpability required for commission of the offense.

The Committee Counsel noted that the amendment was based on changes in the proposed Federal Criminal Code reflected in S. 1, which was the bill introduced in January 1973 to create an essentially new Federal Criminal Code.

He noted that some law enforcement officers in North Dakota had expressed concern over the present wording of Section 12.1-02-04, especially as it might be misconstrued to abolish the maxim "ignorance of the law is no excuse". Chief Anderson stated that, since the section stated a truism, it should be deleted, as it was confusing. The Committee Counsel inquired whether Chief Anderson's comments referred to the section prior to proposed amendment, or including the proposed amendment. Chief Anderson stated that he would like to see the section, including the version presented to the Committee at this meeting, deleted.

IT WAS MOVED BY CHIEF ANDERSON AND SECONDED BY REPRESENTATIVE STONE that Section 12.1-02-04 be repealed. The motion engendered much discussion concerning the effect of deleting this section, and the Committee Counsel noted that there would be essentially no effect, as the State would still have to prove criminal intent where an offense definition required intent, and that could not be proved if ignorance or mistake negated the state of mind necessary for criminal intent. THEREAFTER, THE MOTION CARRIED, with Representative Murphy and Judge Teigen voting in the negative.

The Committee then considered Subsection 1 of Section 12.1-05-03, which reads as follows:

1 1. A person is not justified in using force for the purpose of resisting
2 arrest, execution of process, or other performance of duty by a public
3 servant under color of law (((, but excessive force may be resisted)));
4 and

The Committee Counsel noted that this amendment had been requested by numerous law enforcement officers at meetings attended by himself or by Mr. Vance Hill. Chief Anderson noted that the principal reason for the police objection to this subsection as passed during the 1973 Session was that it seemed to issue a clear invitation for

citizens to make up their minds as to whether they would resist an arrest which involved any force at all. The Committee Counsel said that the policy alternatives presented by this amendment were essentially as follows:

1. That citizens were to submit to arrests, and were not to resist any force used, but were rather to rely on their right of civil recovery for any damages occurring.
2. That citizens would have the right to make a judgment that excessive force was being used on them in effecting the arrest, and could resist that force.

IT WAS MOVED BY MR. WEBB AND SECONDED BY CHIEF ANDERSON that Subsection 1 of Section 12.1-05-03 be accepted as presented to the Committee.

Professor Lockney proposed alternative language which would again try to limit the police officer to utilizing only that force necessary, and would authorize a citizen to resist force in excess of that necessary. Chief Anderson stated that this was simply a restatement of the section as it presently exists. THEREAFTER, MR. WEBB'S MOTION CARRIED, with three members voting in the negative and Representative Murphy passing.

Professor Lockney stated that the minutes should reflect the fact that the Committee believes that use of excessive force by a police officer in making an arrest will continue to be a defense for the person charged with resisting arrest or assault on a peace officer. Representative Murphy explained the fact that he passed on the vote, as he would like to see the defense limited to instances in which the police officer involved used "brutality".

The Committee then discussed Subdivision d of Subsection 2 of Section 12.1-05-07, which reads as follows:

- 1 d. When used by a public servant authorized to effect arrests or
- 2 prevent escapes, if such force is necessary to effect an arrest
- 3 or to prevent the escape from custody of a person who has com-
- 4 mitted or attempted to commit a felony (((involving violence))),
- 5 or is attempting to escape by the use of a deadly weapon, or
- 6 has otherwise indicated that he is likely to endanger human life
- 7 or to inflict serious bodily injury unless apprehended without
- 8 delay;

The Committee Counsel noted that many, but not all, of the law enforcement officers who voiced an opinion concerning the subdivision thought that the public servant should be authorized to use deadly force regardless of whether the felon had committed a felony involving violence or some other type of felony. The Committee discussed the question at length, and then IT WAS MOVED BY CHIEF ANDERSON, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED with four negative votes, that Subdivision d of Subsection 2 of Section 12.1-05-07, be accepted as drafted.

guage of Subdivision o, a search under that subdivision would have to be limited to seizure of items of the type which were relevant in the conviction of the probationer resulting in his being put on probation.

CHIEF ANDERSON MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE STONE, that the underscored words "law enforcement officer or a" in line 2 of Subdivision o be deleted, and that the following words be inserted after the words "probation officer" on that same line: ", sheriff, deputy sheriff, police officer, or employee of the bureau of criminal investigation".

Professor Lockney again stated his objection to the original motion and the substitute motion, noting that his initial objections to this subdivision, voiced during the previous interim, had been based on a pre-waiver of Fourth Amendment rights, but that his fears had been somewhat allayed by the fact that the only person who would have the right to carry out such a search would be a "probation officer". THEREAFTER, CHIEF ANDERSON'S SUBSTITUTE MOTION CARRIED, with Professor Lockney voting in the negative.

The Committee then considered proposed amendments to Section 12.1-32-10, which read as follows:

- 1 12.1-32-10.) If an offender is sentenced to a term of imprisonment for a
2 class A, class B, or class C felony, or a class A misdemeanor, he shall be sub-
3 ject to (((the following mandatory parole components:
4 1. For a sentence to a term of years in a range from fifteen years to life
5 imprisonment, the parole component shall be five years.
6 2. For a sentence to a term of years in a range from three years to fifteen
7 years less one day, the parole component shall be three years.
8 3. For a sentence to a term in a range from one year to one day less than
9 three years, the parole component shall be one year.

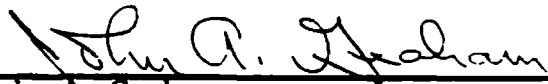
10 The mandatory parole components set forth in this section shall not be served
11 unless the convicted offender shall serve the whole of the term of imprisonment
12 to which he was sentenced. A mandatory))) a minimum parole component
13 (((may be terminated by the state parole board or by the board of pardons)))
14 of not less than one year, which shall be served by the offender regardless of
15 completion of the term or terms of imprisonment to which he was sentenced.
16 Nothing in this section shall prohibit the parole of the offender for a longer
17 term in accordance with other provisions of law.

The Committee Counsel noted that the section was amended to reflect Mr. Vance Hill's comments at the last meeting, and would provide for a minimum mandatory parole component of not less than one year to be served by any offender if under parole at any time, and to an offender who completes his sentence of imprisonment. The Committee launched into a lengthy discussion of the philosophy concerning mandatory parole components, and IT WAS MOVED BY JUDGE HEEN AND SECONDED BY REPRESENTATIVE AUSTIN that Section 12.1-32-10 be accepted as presented.

Professor Lockney noted that Mr. Hill's desires concerning this section had been adequately heard during the previous interim, and the section, providing only for a mandatory parole component for those who complete their initial sentence of imprisonment, was adopted, nevertheless. He noted that Mr. Paul Kalin, National Counsel on Crime and Delinquency, had expressed objection to the mandatory parole component provisions, but that there was a clear rationale in favor of them which had been expressed by the previous interim Committee. THEREAFTER, JUDGE HEEN'S MOTION FAILED.

PROFESSOR LOCKNEY, again noting Mr. Kalin's objections, then MADE A MOTION TO REPEAL SECTION 12.1-32-10 on the basis that it simply was not necessary. THAT MOTION FAILED on a tie vote, and Section 12.1-32-10 will remain in the new Criminal Code as passed in 1973.

Professor Lockney noted that he had had a discussion with Sergeant Ron McCarthy of the Grand Forks Police Department, and had prepared a memo, which was distributed by the Committee Counsel, based on this discussion and indicating several points which Sergeant McCarthy felt should be considered with respect to Senate Bill No. 2045. The Committee Counsel suggested that perhaps the Committee should invite Sergeant McCarthy to appear before it and discuss these points, and the Chairman directed that the invitation be extended. Thereafter, without objection, the Chairman declared the meeting adjourned at 4:48 p.m. on Friday, September 6, 1974.



John A. Graham
Assistant Director

FIRST DRAFT:
Prepared by the staff of the Legislative
Council for consideration by the
Committee on Judiciary "A"
August 1974

APPENDIX "A"

ABORTION

Alternative No. 3

STAFF COMMENT: This alternative is based on the remarks of
Dr. Fortman, the head of the North Dakota Right to Life Association,
presented to the Committee on Judiciary "A" on July 26, 1974, and
on the "Montana Abortion Control Act."

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Chapter 14-02.1

NORTH DAKOTA ABORTION CONTROL ACT

14-02.1-01. PURPOSE.) The purpose of this chapter is to protect,
according to the highest standards, unborn human life and those persons
conceiving unborn human life.

14-02.1-02. DEFINITIONS.) As used in this chapter:

1. "Abortion" means the termination of human pregnancy with an
intention other than to produce a live birth or to remove a dead
embryo or fetus.
2. "Hospital" means an institution licensed by the state department
of health under chapter 23-16, and any hospital operated by the
United States or this state.
3. "Licensed physician" means a person who is licensed to prac-
tice medicine or osteopathy under this chapter, or a physician
practicing medicine or osteopathy in the armed services of the
United States, or in the employ of the United States.
4. "Medical facility" means a facility, other than a hospital, such
as a medical clinic, that has adequate staff and services neces-
sary to perform an abortion safely, to provide aftercare, and
to cope with any complication or emergency that might reason-
ably be expected to arise therefrom; or that has arrangements
with a nearby hospital to provide those services.
5. "Informed consent" means voluntary consent to abortion by the
woman upon whom the abortion is to be performed only after

1 full disclosure to her by the physician who is to perform the
2 abortion of such of the following information as is reasonably
3 chargeable to the knowledge of such physician in his profes-
4 sional capacity:

- 5 a. The state of development of the fetus, the method of abor-
6 tion to be utilized, and the effects of such abortion method
7 upon the fetus.
8 b. The physical and psychological effects of abortion.
9 c. Available alternatives to abortion, including childbirth and
10 adoption.

11 Such informed consent may be evidenced by a written statement in
12 the form prescribed by the state department of health signed by the
13 physician and the woman upon whom the abortion is to be performed,
14 in which statement the physician certifies that he has made the full
15 disclosure provided above; and in which statement the woman upon
16 whom the abortion is to be performed acknowledges that the above
17 disclosures have been made to her and that she voluntarily consents.
18 to the abortion.

19 6. "Viable" means the ability of a fetus to live outside the mother's
20 womb, albeit with artificial aid.

21 14-02.1-03. CONSENT TO ABORTION.)

- 22 1. No abortion may be performed upon any woman in the absence
23 of informed consent.
24 2. No abortion may be performed upon any woman in the absence
25 of:
26 a. Written notice to her husband, unless her husband is volun-
27 tarily separated from her; and
28 b. If the woman is unmarried and under eighteen years of age,
29 written notice to a parent, if living, or the custodian or
30 legal guardian of such woman.
31 3. Informed consent is not required if a licensed physician certi-
32 fies the abortion is necessary to preserve the life of the mother.
33 4. No executive officer, administrative agency, or public employee
34 of the state of North Dakota or of any local governmental body
35 has power to issue any order requiring an abortion or shall co-

1 erce any woman to have an abortion, nor shall any person co-
2 erce any woman to have an abortion.

3 14-02.1-04. LIMITATIONS ON THE PERFORMANCE OF ABORTIONS
4 - PENALTY.)

5 1. During the first twelve weeks of pregnancy, an abortion may be
6 performed by a licensed physician in an environment with such
7 equipment and services available as to meet all reasonable likely
8 emergencies.

9 2. After the first twelve weeks of pregnancy, but prior to the time
10 at which the fetus is viable, an abortion may be performed in a
11 licensed hospital or medical facility by a licensed physician.

12 3. After the fetus is viable, an abortion may be performed by a
13 licensed physician in a hospital, if, in the medical judgment of
14 the physician, the abortion is necessary to preserve the life or
15 health of the mother. An abortion under this subsection may
16 only be performed if:

17 a. The above-mentioned medical judgment of the physician who
18 is to perform the abortion is first certified to by him in
19 writing, setting forth in detail the facts upon which he re-
20 lies in making such judgment; and

21 b. Two other licensed physicians have first examined the
22 patient and concurred in writing with such judgment.

23 The foregoing certification and concurrence is not required if
24 a licensed physician certifies the abortion is necessary to pre-
25 serve the life of the mother.

26 The timing and procedure used in performing an abortion under this
27 subsection must be such that the viability of the fetus is not intention-
28 ally or negligently endangered. The fetus may be intentionally en-
29 dangered or destroyed only if necessary to preserve the life or health
30 of the mother.

31 4. Any licensed physician who performs an abortion without comply-
32 ing with the provisions of this section is guilty of a class A misde-
33 meanor.

34 5. It shall be a class B felony for any person, other than a physician
35 licensed under chapter 43-17, to perform an abortion in this state.

1 14-02.1-05. PRESERVING THE LIFE OF A VIABLE FETUS - PENALTY.)

2 The licensed physician performing an abortion must extend all reasonable
3 medical efforts to preserve the life and health of a fetus which has survived
4 the abortion and has been born alive as a premature infant viable by medical
5 standards. Failure to do so is a [class C felony] [class A misdemeanor].

6 14-02.1-06. FETAL EXPERIMENTATION - PENALTY.) No person
7 may use any premature infant born alive for any type of scientific research,
8 or other kind of experimentation except as necessary to protect or preserve
9 the life and health of such premature infant born alive. Any person violating
10 the provisions of this section is guilty of a [class C felony] [class A misde-
11 meanor].

12 14-02.1-07. SOLICITING ABORTIONS.) No licensed physician, medi-
13 cal facility, or licensed hospital, or any person employed by the licensed
14 physician, licensed hospital, or medical facility, nor any other person shall
15 advertise or participate in any form of communication having as its purpose
16 the inviting, inducing, or attracting of a pregnant woman to undergo an
17 abortion.

18 Alternative No. I

19 14-02.1-08. REPORTING ABORTION COMPLICATIONS.) Any abor-
20 tion involving maternal death or complications must be reported in writing
21 to the state department of health, setting forth the particulars involved in
22 said maternal death or complications. This report shall be confidential and
23 shall not be divulged as to names and identity without an order of the dis-
24 trict court, although it may be used by the state department of health for
25 statistical purposes or for issuing appropriate medical reports to licensed
26 physicians, licensed hospitals, or medical facilities for their use and instruc-
27 tion.

28 Alternative No. II

29 14-02.1-08. REPORTING OF PRACTICE OF ABORTION.)

30 1. Every medical facility or hospital in which an abortion is per-
31 formed shall keep on file, in the form prescribed by the state
32 department of health, a statement dated and certified by the
33 licensed physician who performed the abortion setting forth
34 such information with respect to the abortion as the state de-
35 partment of health by regulation shall require; including, but

- 1 not limited to, information on prior pregnancies; the medical
2 procedure employed to administer the abortion; the gestational
3 age of the fetus; the vital signs of the fetus after abortion, if
4 any; and, if performed after viability, the medical procedures
5 employed to protect and preserve the life and health of the fetus.
- 6 2. The licensed physician performing an abortion shall cause such
7 pathology studies to be made in connection therewith as the state
8 department of health shall require by regulation, and the medi-
9 cal facility or hospital shall keep the reports thereof on file.
- 10 3. In connection with an abortion, the medical facility or hospital
11 shall keep on file the original of each of the documents required
12 by this Act relating to informed consent.
- 13 4. Such medical facility or hospital shall, within thirty days after
14 the abortion, file with the state department of health a report,
15 upon a form prescribed by the state department of health and
16 certified by the custodian of the records or licensed physician
17 in charge of such medical facility or hospital, setting forth all
18 of the information required in subsections 1, 2 and 3 of this sec-
19 tion, except such information as would identify any individual
20 involved with the abortion. The report shall exclude copies of
21 any documents required to be filed by subsection 3 of this sec-
22 tion, but shall certify that such documents were duly executed
23 and are on file.
- 24 5. All reports and documents required by this Act shall be confi-
25 dential, subject to such disclosure as is permitted by law; ex-
26 cept that statistical data not identifying any individual involved
27 in an abortion shall be made public by the state department of
28 health annually, and the report required by subsection 4 of this
29 section to be filed with the state department of health shall be
30 available for public inspection except insofar as it identifies any
31 individual involved in an abortion. Names and identities of per-
32 sons submitting to abortion shall remain confidential among medi-
33 cal and medical support personnel directly involved in the abor-
34 tion, and among persons working in the facility where the abor-
35 tion was performed whose duties include billing the patient or

1 submitting claims to an insurance company, keeping facility
2 records, or processing abortion data required by state law.

3 6. The department shall report to the attorney general any appar-
4 ent violation of this Act.

5 14-02.1-08. REFUSAL TO PARTICIPATE IN ABORTION.) No licensed
6 physician shall be required to perform an abortion when he refuses to do so
7 as a matter of conscience, nor shall any licensed hospital or medical facility
8 be required to allow its facilities to be used for the performance of an abor-
9 tion if that licensed hospital or medical facility chooses not to allow its facili-
10 ties to be used for abortions other than an abortion necessary to preserve
11 the life or health of the mother. No person employed by a licensed physician
12 or a licensed hospital or a medical facility shall be required to participate or
13 assist in the performance of an abortion other than an abortion to preserve
14 the life or health of the mother. No licensed physician, licensed hospital,
15 medical facility, or other person refusing to participate in an abortion under
16 the terms of this section, shall be subject to civil or criminal liability nor
17 shall said refusal serve as the basis for discriminatory, disciplinary, or
18 recriminatory action by any person. Any person required to assist in the
19 performance of an abortion after they have so expressed their refusal to
20 participate under the terms of this section shall be entitled to bring an ac-
21 tion for damages for any injury suffered thereby.

22 14-02.1-09. HUMANE DISPOSAL OF NON-VIABLE FETUS.) The li-
23 censed physician performing the abortion, if performed outside of a licensed
24 hospital or medical facility, must see to it that the fetus is disposed of in a
25 humane fashion under regulations established by the state department of
26 health. A licensed hospital or medical facility in which an abortion is per-
27 formed must dispose of a dead fetus in a humane fashion in compliance with
28 regulations promulgated by the state department of health.

29 14-02.1-09. GENERAL PENALTY.) A person violating any provision
30 of this chapter for which another penalty is not specifically prescribed shall
31 be guilty of a class A misdemeanor. Any person willfully violating a rule or
32 regulation promulgated under this chapter is guilty of an infraction.

33 14-02.1-10. SHORT TITLE.) This chapter may be cited as the North
34 Dakota Abortion Control Act.

STAFF COMMENT: Section 23-16-14 (medical personnel not required to participate in abortion), and Chapter 12.1-19 (the abortion statutes contained in the new Criminal Code) would be repealed if this version were adopted.

FIRST DRAFT:
Prepared by the staff of the Legislative
Council for consideration by the
Committee on Judiciary "A"
September 1974

APPENDIX "B"

ALTERNATIVE NO. 2 - Proposed statutes to
deal with the problem of dissemination of
pornographic materials or the presentation
of pornographic performances

NOTE: This proposal would replace Chapter 12.1-27 of the new Criminal Code, and would be assigned appropriate Century Code section numbers. Chapter 12.1-27 would be repealed.

1 SECTION 1. DEFINITIONS.) As used in this chapter, unless the context
2 otherwise requires:

- 3 1. "Actual defendant" means any party or intervenor in civil proceedings
4 commenced under this Act whose interest was in showing that material
5 or a performance was not obscene.
- 6 2. "Constructive defendant" means any person, other than an actual de-
7 fendant, who is given actual prior notice in writing of the initiation of
8 a civil proceeding under this Act, and who is also given actual notice
9 in writing of the final judgment resulting from that civil proceeding,
10 where that judgment is that certain material or a performance is obscene
11 and the commercial interests of the person receiving notice will be
12 adversely affected by the judgment.
- 13 3. "Disseminate" means to publish, produce, manufacture, distribute,
14 sell, lease, or exhibit for pecuniary gain within this state.
- 15 4. "Harmful to minors" means that quality of any description or repre-
16 sentation, in whatever form, of nudity, sexual conduct, or sexual ex-
17 citement, when such description or representation:
18 a. Considered as a whole, appeals to the prurient sexual interest of
19

1 b. Is patently offensive to prevailing standards in the adult community
2 in North Dakota as a whole with respect to what is suitable material
3 for minors; and

4 c. Considered as a whole, lacks serious literary, artistic, political,
5 or scientific value for minors.

6 5. "Law enforcement officer" means the attorney general, a state's attor-
7 ney, or a sheriff, or any deputy or assistant of any of the named offi-
8 cers.

9 6. "Material" means any physical object used as a means of presenting or
10 communicating information, knowledge, sensation, image, or emotion
11 to or through a human being's receptive senses.

12 7. "Nudity" means the showing of the human male or female genitals,
13 pubic area, or buttocks with less than full opaque covering, or the
14 showing of the female breast with less than full opaque covering, or
15 the showing of any portion of the female breast below the top of the
16 nipple, or the depiction of covered male genitals in a discernibly
17 turgid state.

18 8. "Obscene material" and "obscene performance" mean material or a
19 performance which:

20 a. Taken as a whole, the average person, applying contemporary
21 North Dakota standards, would find predominantly appeals to a
22 prurient interest;

23 b. Depicts or describes in a patently offensive manner sexual con-
24 duct as described in subsection 11 of this section; and

25 c. Taken as a whole, lacks serious literary, artistic, political, or
26 scientific value.

27 That material or a performance is obscene shall be judged with refer-
28 ence to ordinary adults, unless it appears from the character of the

1 material or the circumstances of its dissemination to be designed for
2 minors or other specially susceptible audience, in which case, the
3 material or performance shall be judged with reference to that type
4 of audience.

5 9. "Performance" means any play, motion picture, television program,
6 dance, or other exhibition presented before an audience.

7 10. "Promote" means to produce, direct, manufacture, issue, sell, lend,
8 mail, publish, distribute, exhibit, or advertise.

9 11. "Sexual conduct" means actual or simulated:

10 a. Sexual intercourse,

11 b. Sodomy,

12 c. Sexual bestiality,

13 d. Masturbation,

14 e. Sado-masochistic abuse,

15 f. Excretion,

16 or a lewd exhibition of the male or female genitals. As used in this
17 subsection, the term "sodomy" means contact between the penis and
18 the anus, the mouth and the penis, the mouth and the vulva, and
19 the mouth and the anus. As used in this subsection, the term "sado-
20 masochistic abuse" means a depiction or description of flagellation
21 or torture by or upon a person who is nude or clad in undergarments
22 or in a bizarre or revealing costume; or the condition of being fetter-
23 ed, bound, or otherwise physically restrained on the part of one so
24 clothed.

25 12. "Sexual excitement" means the condition of human male or female
26 genitals when in a state of sexual stimulation or arousal.

27 SECTION 2. CIVIL PROCEEDING A PREREQUISITE TO CRIMINAL LIABILITY.)

28 A criminal prosecution for violation of section 8 or section 9 of this Act shall not

1 be commenced against a person until the material or performance which the per-
2 son may be charged with disseminating or promoting has been adjudged obscene
3 in a civil proceeding in accordance with sections 3 through 5 of this Act.

4 SECTION 3. COMMENCEMENT OF CIVIL PROCEEDING - INTERVENTION -
5 SEIZURE OF MATERIALS.)

- 6 1. Whenever any law enforcement officer has cause to believe that a per-
7 son is disseminating or promoting, or will disseminate or promote,
8 obscene material or an obscene performance, the officer may institute
9 a civil proceeding in the district court for the county wherein the
10 alleged dissemination or promotion is taking place, or is about to take
11 place. The civil proceeding will be for the purpose of determining
12 whether a particular piece of material or a performance is or is not
13 obscene material or an obscene performance, and the district court,
14 at the close of the proceeding, shall enter its declaratory judgment
15 determining that question.
- 16 2. Any person about to disseminate or promote material or a performance
17 challenged in a civil proceeding under this chapter may intervene in
18 that civil proceeding as a matter of right, and thereupon shall have
19 all the rights of an original party to the proceeding, and will be bound
20 by any judgment entered in the proceeding.
- 21 3. The appropriate law enforcement officer must give actual prior written
22 notice that he is about to institute a civil proceeding to any person
23 about to disseminate said materials if said person is to be a construc-
24 tive defendant.
- 25 4. Upon issuance of a search warrant by a district judge, the appropriate
26 legal officer may seize a single copy of the allegedly obscene material
27 to secure and preserve evidence for the civil, and any possible crimi-
28 nal, proceedings under this Act, subject to the following provisions:

1 a. If only a single copy of the material is available within the juris-
2 diction, the defendant shall either provide a duplicate or make
3 the original available for duplication, at the county's expense, by
4 the court during time periods when the material is not on sale or
5 exhibition.

6 b. If only a single copy of such materials is available within the
7 jurisdiction and circumstances make duplication either impossible
8 or impractical, the defendant shall immediately make the single
9 copy available for viewing by the court and subsequently avail-
10 able for viewing at trial.

11 SECTION 4. PROCEDURES - EXPANDED DISTRICT COURT - APPEAL.)

12 1. Any party shall have the right to a trial by the court, or by an ex-
13 panded district court consisting of three district judges, chosen as
14 provided in this subsection. When an expanded district court is de-
15 manded by a party, the district judge shall notify the chief justice of
16 the supreme court of that fact, and the chief justice, within five days
17 after receiving the notice, shall appoint two other district judges to
18 sit with the district judge before whom the proceeding was originally
19 brought. The decision of an expanded district court may be rendered
20 by any two of the three judges sitting. A court, including an expand-
21 ed district court, shall give priority to proceedings brought under
22 section 3 of this Act.

23 2. Either party, or an intervenor, may, if aggrieved by the court's de-
24 cision, appeal to the supreme court as provided in this subsection
25 and in the rules of appellate procedure. Notice of appeal shall be
26 filed within two days after entry of judgment by the district court,
27 and the appeal shall be heard within five days thereafter, Saturdays
28 and holidays excluded. A final decision on appeal shall be rendered

1 as soon as practicable, and in no event later than ten days after the
2 hearing. Unless the hearing on appeal is held, and a decision is
3 rendered within the time limits specified in this subsection, any in-
4 junction entered in accordance with section 5 shall be dissolved, un-
5 less the defendant-respondent has caused or acquiesced in the delay.
6 No judgment by the district court in a civil proceeding under this Act
7 shall be final for any purpose, other than appeal, until the decision
8 of the supreme court on appeal has been rendered, or until the requi-
9 site time for appeal under this subsection has expired with no notice
10 of appeal having been filed. An appeal, during its pendency, shall
11 not operate to stay any permanent injunction entered by the district
12 court.

13 SECTION 5. JUDGMENT - EFFECT - NOTICE TO CONSTRUCTIVE DEFEND-
14 ANTS - USE IN CRIMINAL PROSECUTIONS.)

- 15 1. If the court finds the material or performance not to be obscene, the
16 court shall enter said declaration in the judgment and dismiss the
17 suit.
- 18 2. If the court finds the material or performance to be obscene, the court
19 may in the judgment or subsequent order of enforcement enter a per-
20 manent injunction against any party or intervenor in the civil proceed-
21 ings prohibiting said party or intervenor from disseminating or pro-
22 moting the materials or performance declared to be obscene.
- 23 3. The declaration obtained pursuant to this section may be used to es-
24 tablish scienter in a subsequent criminal prosecution.
- 25 4. The declaration obtained pursuant to this section may be used for the
26 purposes stated in subsections 2 and 3 and for no other purposes.
- 27 5. The appropriate law enforcement officer must give actual written
28 notice of the final judgment to any person who is, or is about to, dis-

1 seminate or promote material or a performance declared obscene in
2 order to perfect his status as a constructive defendant.

3 SECTION 6. PRELIMINARY INJUNCTION - LIMITATIONS.)

- 4 1. The appropriate law enforcement officer may seek a preliminary in-
5 junction on notice to all the parties and intervenors. The district
6 court may grant the application for a preliminary injunction, if, in
7 the discretion of the court, the material or performance itself or the
8 manner in which it is being disseminated or promoted poses an imme-
9 diate danger to the community.
- 10 2. Except as provided in subsection 1, no temporary or preliminary in-
11 junction, ex parte or otherwise, shall be issued in proceedings
12 brought under this Act.

13 SECTION 7. CONFLICTING DECISIONS - RESOLUTION.) In the event the
14 same material or performance is declared to be obscene in one jurisdiction in the
15 state and not obscene in another jurisdiction, there shall be no criminal prosecu-
16 tion based on the declaration of obscenity until the matter shall have been finally
17 resolved by application to the supreme court of this state. Any party, including
18 constructive defendants, shall have the right, at any time such a conflict exists,
19 to petition the supreme court to review such conflicting decisions and to finally
20 determine the question.

21 SECTION 8. OBSCENITY - DISSEMINATION - CLASSIFICATION OF
22 OFFENSES.)

- 23 1. A person is guilty of a class A misdemeanor if, knowing of its charac-
24 ter, he disseminates obscene material, or if he produces, transports,
25 or sends obscene material with intent that it be disseminated.
- 26 2. A person is guilty of a class A misdemeanor if he presents or directs
27 an obscene performance for pecuniary gain, or participates in any
28 portion of a performance which contributes to the obscenity of the
29 performance as a whole.

1 SECTION 9. PROMOTING OBSCENITY TO MINORS - MINOR PERFORMING
2 IN OBSCENE PERFORMANCE - CLASSIFICATION OF OFFENSES.)

3 1. It shall be a class C felony for a person to knowingly promote to a
4 minor any material or performance which is harmful to minors, or to
5 admit a minor to premises where a performance harmful to minors is
6 exhibited or takes place.

7 2. It shall be a class C felony to permit a minor to participate in a per-
8 formance which is harmful to minors.

9 SECTION 10. STATE PRE-EMPTION OF LOCAL LAWS REGULATING OB-
10 SCENITY.) This Act shall be applicable and uniform throughout the state, and
11 no political subdivision shall enact new, or enforce existing, ordinances or
12 resolutions regulating or prohibiting the sale, distribution, or possession of
13 obscene materials.

14 SECTION 11. REPEAL.) Subsection 62 of section 40-05-01 of the North
15 Dakota Century Code is hereby repealed.

OBSCENITY ALTERNATIVE NO. 3

APPENDIX "C"

This alternative would limit criminal liability to dissemination of obscene materials to minors, and is based on Mr. Bucklin's written proposal presented at the last meeting of the Committee.

1 SECTION 1. DEFINITIONS.) As used in this Act, unless the context
2 otherwise requires:

3 1. "Knowledge" means knowing or having reason to know, or having
4 belief or a reasonable ground for belief which warrants
5 further inspection or inquiry, of:

6 a. The character and content of any material or performance
7 described by this Act, which is reasonably accessible for
8 examination by the defendant; and

9 b. The age of a minor.

10 2. "Material" means any physical object used as a means of pre-
11 senting or communicating information, knowledge, sensation,
12 image, or emotion to or through a human being's receptive
13 senses.

14 3. "Minor" means an unmarried person under eighteen years of age.

15 4. "Nudity" means the showing of the human male or female genitals,
16 pubic area, or buttocks with less than full opaque covering,
17 or the showing of the female breast with less than full opaque
18 covering, or the showing of any portion of the female breast
19 below the top of the nipple, or the depiction of covered
20 male genitals in a discernibly turgid state.

21 5. "Obscene material" and "obscene performance" mean material
22 or a performance which:

23 a. Taken as a whole, the average adult, applying contemp-

1 orary North Dakota standards, would find predominantly
2 appeals to minor's prurient interest;

3 b. Depicts or describes in a patently offensive manner
4 sexual conduct, sexual excitement, or nudity; and

5 c. Taken as a whole, lacks serious literary, artistic, polit-
6 ical, or scientific value.

7 That material or a performance is obscene shall be judged
8 with reference to ordinary minors, unless it appears from
9 the character of the material or the circumstances of its
10 dissemination to be designed for a specially susceptible
11 audience, in which case, the material or performance shall
12 be judged with reference to that type of audience.

13 6. "Performance" means any play, motion picture, television
14 program, dance, or other exhibition presented before
15 an audience.

16 7. "Sexual conduct" means actual or simulated:

17 a. Sexual intercourse,

18 b. Sodomy,

19 c. Sexual bestiality,

20 d. Masturbation,

21 e. Sado-masochistic abuse,

22 f. Excretion,

23 or a lewd exhibition of the male or female genitals. As used
24 in this subsection, the term "sodomy" means contact between
25 the penis and the anus, the mouth and the penis, the mouth
26 and the vulva, and the mouth and the anus. As used in this

1 subsection, the term "sado-masochistic abuse" means a
2 depiction or description of flagellation or torture by or
3 upon a person who is nude or clad in undergarments or in a
4 bizarre or revealing costume; or the condition of being
5 fettered, bound, or otherwise physically restrained on the
6 part of one so clothed.

7 8. "Sexual excitement" means the condition of human male or
8 female genitals when in a state of sexual stimulation or
9 arousal.

10 SECTION 2. PROVIDING OBSCENE MATERIAL TO MINORS - PENALTY.) It
11 shall be a class C felony for any person, with knowledge of its char-
12 acter, to willfully sell, deliver, distribute, or provide to, or for,
13 a minor, or, with knowledge of its character, to possess with intent
14 to sell, deliver, distribute, or provide to, or for, a minor, any:

15 1. Picture, photograph, drawing, sculpture, motion picture film,
16 or similar visual representation or image of a person or
17 portion of the human body, which is obscene material; or

18 2. Book, pamphlet, magazine, printed matter however reproduced,
19 or sound recording which contains any material enumerated in
20 subsection 1, or explicit and detailed verbal descriptions or
21 narrative accounts of sexual conduct.

22 SECTION 3. ADMITTING MINOR TO OBSCENE PERFORMANCE - PENALTY.)
23 It shall be a class C felony for any person, with knowledge of its
24 character to willfully: exhibit an obscene performance to a minor
25 for monetary consideration, or sell an admission ticket or pass to
26 an obscene performance to a minor or admit a minor for monetary con-
27 sideration to premises whereon there is exhibited an obscene per-

1 formance.

2 SECTION 4. EXHIBITION WHICH MAY BE VIEWED BY MINORS PROHIBITED -
3 PENALTY.) It shall be a class A misdemeanor for any person to willfully
4 exhibit an obscene performance in such a manner that it may be viewed
5 by minors from public or private property not under the control of the
6 person exhibiting the obscene performance. As used in this section,
7 the "person exhibiting the obscene performance" means the theater-owner
8 or manager, or other person who has the power to cause the exhibition
9 to occur.

10 SECTION 5. EXEMPTIONS.) No person shall be guilty of violating the
11 provisions of this Act:

- 12 1. Where such person had reasonable cause to believe that the
13 minor involved was over eighteen years old, and the minor
14 exhibited to such person a draft card, driver's license, birt..
15 certificate or other official or apparently official document
16 to the person which purported to establish that the minor
17 was over eighteen years old.
- 18 2. If the minor was accompanied by his parent or guardian, or the
19 parent or guardian has, in writing, waived the application
20 of this Act either generally or with reference to the particular
21 transaction.
- 22 3. Where the person had reasonable cause to believe that another
23 person was the parent or guardian of the minor, and that other
24 person accompanied the minor or executed the waiver mentioned
25 in subsection 2.
- 26 4. Where the person is a bona fide school, museum or public
27 library, or is acting in his capacity as an employee of such
28 organization, or as a retail outlet affiliated with and serving

1 the educational purposes of such organization.

2 SECTION 6. MISREPRESENTATION BY MINOR - POSING AS PARENT -
3 PENALTY.)

4 1. It is a class B misdemeanor for a minor to falsely represent
5 that he is over eighteen years of age, or is married, when
6 such representation is made for the purpose of deceiving a
7 person subject to criminal liability under sections 2, 3, or
8 4, or his agent, and thereby causing that person, or his agent,
9 to perform an act which would be prohibited if the person
10 deceived, or his agent, had knowledge of the true age of the
11 minor.

12 2. It is a class A misdemeanor for any person to willfully make
13 a false representation that he is the parent or guardian of
14 any minor with intent to deceive any person subject to
15 criminal liability under sections 2 and 3, or his agent, and
16 thereby to take advantage of the exemption established by
17 subsection 2 of section 5 of this Act.

18 SECTION 7. EVIDENCE AT TRIAL.) At a trial for violation of
19 sections 2, 3, or 4 of this Act, the court may consider the material,
20 and receive into evidence, in addition to other competent evidence,
21 the offered testimony of experts pertaining to:

22 1. The artistic, literary, political, or scientific value, if
23 any, of the challenged material.

24 2. The degree of public acceptance within the state of the
25 material or material of similar character.

26 3. The intent of the author, artist, producer, publisher, or
27 manufacturer in creating the material.

28 4. The reputation of the artist, producer, publisher, author,
29 or manufacturer

1 SECTION 8. PRE-EMPTION BY STATE LAW.) In order to provide for
2 the uniform application of this Act within this state, it is intended
3 that the sole and only regulation of obscene materials or obscene
4 performances shall be under this Act, and no city or county shall make
5 any ordinance or regulation relating to obscene materials or obscene
6 performances. All such ordinances or regulations, whether enacted
7 before or after this Act, shall be or become void, unenforceable, and
8 of no effect upon the effective date of this Act.

6-08-05. BANK OFFICER OR EMPLOYEE OVERDRAWING OWN ACCOUNT
GUILTY OF MISDEMEANOR.) (To be repealed)

1 7-05-04. REPORTS CONFIDENTIAL - EXCEPTIONS.) (((In the event the
2 state examiner, his deputy, assistant, or clerk fails to keep secret the facts
3 and information))) Information obtained in the course of an examination (((, or
4 if such state examiner, his deputy, assistant, or clerk willfully makes a false
5 report as to the condition of such association, such person shall be guilty of a
6 felony and shall be removed from office))) by the state examiner shall be con-
7 fidential information. However, the above (((provisions))) provision shall not
8 apply when the public duty of such officer requires him to report upon or take
9 official action regarding the condition of an association that he has examined.
10 This section shall not be construed to prevent the said officer (((or officers)))
11 from fully disclosing to any federal agency any information which such examiner
12 may have in his office pertaining to such associations. Nothing in this section
13 shall prevent the proper exchange of information relating to building and loan
14 associations and the business thereof with the representatives of building and
15 loan departments of other states, but in no case shall the private business or
16 affairs of any individual association or company be disclosed. This section
17 shall not be construed to prevent the said officer (((or officers))) from fully
18 disclosing to the federal home loan bank board at Washington, D. C., or to the
19 federal home loan bank of this district, or to any other federal agency, any
20 information which such examiner may have in his office pertaining to such
21 associations. It shall be a class C felony for the state examiner, his deputy,
22 or any of his employees to willfully make a false report as to the condition of
23 any association.

1 64-03-01. FALSE WEIGHTS AND MEASURES (((- PENALTY))).) (((Any

- 3 1. Offer or expose for sale, sell, use, or have in his possession a false
4 scale, weight, measure, or weighing or measuring device, for use in
5 buying or selling any commodity or thing, or any weight, measure,
6 or weighing or measuring device which has not been sealed (((within
7 one year))) as provided by section 64-02-13(((;))).
- 8 2. Dispose of any condemned weight, measure, or weighing or measur-
9 ing device, or remove any tag placed thereon by any authorized em-
10 ployee of the department(((;))).
- 11 3. Sell, offer, or expose for sale less than the quantity represented(((;))).
- 12 4. Sell, offer for sale, or have in his possession for the purpose of
13 selling, any device or instrument to be used or calculated to falsify
14 any weight or measure(((;))).
- 15 5. Refuse to pay any fee charged for testing and sealing or condemning
16 any scale, weight, measure, or weighing or measuring device
17 (((, shall be guilty of a misdemeanor and shall be punished by a fine of
18 not less than twenty dollars nor more than one hundred dollars, or by im-
19 prisonment in the county jail for not less than ten days nor more than thirty
20 days, and the costs of such proceedings))).

1 64-03-02. FALSE WEIGHTS - (((PENALTY))) UNLAWFUL FOR PUBLIC USE.)
2 (((Any person who knowingly uses))) It shall be unlawful for any person to
3 knowingly and fraudulently make use of a weight, measure, scale, balance, or
4 beam for the purpose of purchase or sale, or (((who keeps))) to keep such
5 device for public use, which does not conform to the legal standard of weights
6 and measures of the state, or (((who alters))) to alter a weight, measure,
7 scale, balance, or beam after it has been adjusted and sealed so that it does
8 not conform to such standard (((, and fraudulently makes use thereof, shall
9 be punished by a fine of fifty dollars for each offense))).

1 64-03-03. FRAUDULENTLY INCREASING WEIGHT (((- PENALTY)))
2 (((Any person who puts or conceals))) It shall be unlawful for any person to
3 place or conceal in any bag, bale, box, barrel, or other package containing
4 goods usually sold by weight any foreign substance for the purpose of increas-
5 ing the weight of such container or package (((, is punishable by a fine of
6 twenty-five dollars for each offense))).

64-03-04. BALED HAY - CORRECT WEIGHT - VIOLATION.) (To be repealed)

1 64-03-05. FUEL REQUIRED TO BE WEIGHED - CORRECT SCALE WEIGHT -
2 SLIP DELIVERED (((- VIOLATION - PENALTY)))
3 (((Any person selling or
4 delivering))) It shall be unlawful for any person to sell or deliver any coal,
5 lignite, or briquette fuel within any city (((or village))) in this state, where
6 adequate weighing facilities exist, without first having the same weighed or
7 without delivering to the purchaser a duplicate scale weight slip showing the
8 true weight thereof (((, is guilty of a misdemeanor and shall be punished by a
9 fine of not less than ten dollars nor more than one hundred dollars, or by im-
 prisonment in the county jail for not more than thirty days))).

1 64-03-06. STAMPING FALSE WEIGHT OR TARE (((- PENALTY)))
2 (((Every
3 person who))) It shall be unlawful for any person to knowingly (((marks)))
4 mark or (((stamps))) stamp false or short weight or false tare on any cask or
5 package, or to knowingly (((sells))) sell or (((offers))) offer for sale any
 cask or package so marked (((, is guilty of a misdemeanor))).

1 64-03-07. (((PENALTY FOR VIOLATING))) VIOLATION OF PROVISIONS
2 RELATING TO STANDARD MEASUREMENTS AND WEIGHTS UNLAWFUL. (((Any
3 person who))) It shall be unlawful for any person to, in buying, (((shall)))

4 take any greater number of pounds or cubic feet to the bushel, barrel, ton, cord,
5 gallon, or fractional part, as the case may be, than is provided by the standards
6 established in this title, or ~~((who))~~ to, in selling ~~((shall))~~, give any less
7 number ~~((, shall be guilty of a misdemeanor and shall be punished by a fine of~~
8 ~~not less than ten dollars nor more than one hundred dollars, or by imprisonment~~
9 ~~in the county jail for not less than ten days nor more than ninety days))~~, unless
10 the buyer or seller, as the case may be, has knowledge of the variation from the
11 standards as established in this title.

64-03-08. PENALTY FOR HINDERING AN INSPECTOR IN HIS OFFICIAL
DUTIES.) (To be repealed)

1 64-03-09. GENERAL PENALTY.) Any person who shall violate any of the
2 provisions of this title wherein a ~~((special))~~ specific penalty has not been
3 provided shall be guilty of a class B misdemeanor ~~((and shall be punished by~~
4 ~~a fine of not more than one hundred dollars, or by imprisonment in the county~~
5 ~~jail for not more than thirty days, or by both such fine and imprisonment))~~.

4-01-18. OBSTRUCTING COMMISSIONER - PENALTY.) (To be repealed)

1 5-03-01. STATE WHOLESALE LICENSE REQUIRED - QUALIFICATIONS
2 - PENALTY.) Before any person shall engage in the sale at wholesale of beer or
3 liquor in this state he shall first procure a license from only the state treasurer.
4 Such license shall only allow sale to licensed retailers, licensed wholesalers and
5 regular retail outlets on federal military reservations. No such license shall be
6 issued unless the applicant shall file a sworn application, accompanied by the
7 required fee, showing the following qualifications:

8 1. Applicant, other than corporate, must be a citizen of the United States

9 and a resident of the state of North Dakota and a person of good moral
10 character. If applicant is a corporation, the manager of the licensed
11 premises shall be a resident of the state of North Dakota, a citizen of
12 the United States, and a person of good moral character, and the offi-
13 cers, directors, and stockholders must be citizens of the United States
14 and persons of good moral character. Corporate applicants must first
15 be properly registered with the secretary of state.

16 2. The state treasurer may require applicant to set forth such other informa-
17 tion as is necessary to enable him to determine if a license should be
18 granted.

19 3. No person shall be eligible for such a license unless he has a warehouse
20 and office in this state in which is kept a complete set of records relative
21 to his alcoholic beverage transactions in North Dakota.

22 Any person distributing alcoholic beverages in this state without compliance
23 with the provisions of this title is guilty of an infraction.

57-38-45 . . .

1 2. If any taxpayer does not voluntarily file a return of income within
2 sixty days after the time required by or under the provisions of this
3 chapter, and after notice by the tax commissioner, he shall be subject
4 to ~~((a fine))~~ a civil penalty of ~~((not less than ten dollars and not~~
5 ~~more than five hundred dollars))~~ one hundred dollars or ten percent
6 of the tax due, whichever is greater, assessed by the tax commissioner,
7 and shall pay interest on the tax due at the rate of one percent for each
8 month or fraction of a month from the time the tax originally was due
9 until the date of payment;

1 2-03-10. RECKLESS OPERATION - OPERATION WHILE INTOXICATED -
2 TAMPERING WITH AIRCRAFT - MISDEMEANORS - PENALTIES.)

3 1. Any person who shall operate any aircraft within the airspace over,
4 above, and upon the lands and waters of this state, carelessly and
5 heedlessly in willful (((or wanton))) disregard of the rights or
6 safety of others, or without due caution and circumspection in a man-
7 ner so as to endanger or be likely to endanger any person or property,
8 shall be guilty of a class A misdemeanor.

9 2. Whoever operates (((, or attempts to operate,))) any aircraft in this
10 state on (((any airport, landing field, or landing strip, or whoever
11 operates or attempts to operate, any aircraft))) land, water, or in
12 the air (((in this state))) while in an intoxicated condition or while
13 under the influence of alcoholic beverages or any (((depressant,
14 stimulant, or hallucinogenic))) controlled substance, shall be guilty
15 of a class A misdemeanor.

16 3. No person may act (((or attempt to act))) as a crew member of any
17 aircraft or start an engine (((or attempt to start))) of any aircraft
18 within eight hours after the consumption of any alcoholic beverage or
19 while using any (((drug))) controlled substance that affects his
20 faculties in any way contrary to safety. Anyone violating the provi-
21 sions of this subsection shall be (((punishable by a fine of not less
22 than one hundred dollars nor more than five hundred dollars, or by
23 imprisonment not exceeding one year, or by both such fine and im-
24 prisonment))) guilty of a class A misdemeanor.

25 (((3.)))

26 4. No person shall, without express or implied authority of the owner,
27 operate, climb upon, enter, manipulate the controls or accessories
28 of, set in motion, remove parts or contents therefrom, or otherwise

29 tamper with any civil aircraft within this state with intent to injure
30 the same or cause inconvenience to the owner or operator thereof, or
31 knowingly cause or permit the same to be done. Any person who
32 violates any of the provisions of this subsection shall be guilty of a
33 class B misdemeanor (((, and upon the conviction thereof shall be
34 punishable by a fine of not to exceed one hundred dollars or by im-
35 prisonment for not to exceed three months))).

1 2-05-17. PENALTY.) Any person violating any of the provisions of this
2 chapter shall be guilty of a class A misdemeanor.

57-15-18. PENALTY FOR UNLAWFUL WITHDRAWAL OF BUILDING FUNDS.)
(To be repealed)

57-15-40. PENALTY FOR UNLAWFUL WITHDRAWAL OF CONSTRUCTION
FUND.) (To be repealed)

1 57-15-58. PENALTY FOR UNLAWFUL WITHDRAWAL FROM FUND.) Every
2 officer participating in the unlawful withdrawal from any fund established by
3 this chapter shall be guilty of a class A misdemeanor.

1 44-08-05.1. VOUCHERS - REQUIREMENTS FOR APPROVAL - PENALTY -
2 ACTION FOR VIOLATIONS.) Any public officer or employee who has the power
3 to approve a voucher for a department, agency, or institution for travel expenses
4 or any other state expenditure of public funds shall determine before approving
5 such voucher the following:

6 1. That the expenditure for travel or other expenditures were for lawful
7 and official purposes;

8 2. If for travel expense, that the travel actually occurred, and that the
9 sums claimed for travel expenses are actually due the individual who
10 is seeking reimbursement, allowance, or payment;

11 3. If the voucher is for expenditure other than travel expense, that the
12 expenditure is lawful and that the voucher contains no false claims .

13 Any public officer or employee who willfully approves a voucher with knowledge
14 it contains false or unlawful claims or that it does not otherwise meet the require-
15 ments of this section for approval, shall be guilty of (((a misappropriation of
16 public funds and shall be subject to the penalty prescribed by section 12-10-02)))
17 theft and punishable under the provisions of chapter 12.1-23 . Any public
18 officer or employee who shall without the use of ordinary care and diligence
19 negligently approve a voucher for a department, agency, or institution contain-
20 ing false or unlawful claims or which does not otherwise meet the requirements
21 of this section for approval, shall be personally liable for any funds improperly
22 expended. The director of the department of accounts and purchases, members
23 of the state auditing board, state auditor, or any other person who has knowledge
24 of an actual or possible violation of this section shall make such information known
25 to the attorney general. The attorney general shall investigate any alleged viola-
26 tions and if a violation appears to exist he shall criminally prosecute under
27 (((section 12-10-02))) chapter 12.1-23 or bring a civil suit for the recovery of
28 such funds as may actually have been improperly paid against the payee and offi-
29 cer or employee who approved such voucher in violation of any of the above
30 requirements or shall bring both such criminal action (((or))) and civil suit.
31 The officer or employee who approves any voucher negligently shall have the
32 right of subrogation against the payee of such voucher in the event public funds
33 have been improperly paid to the payee.

12.1-02-04. IGNORANCE OR MISTAKE NEGATING CULPABILITY.) (To be repealed)

1 12.1-05-03 . . .

2 1. A person is not justified in using force for the purpose of resisting
3 arrest, execution of process, or other performance of duty by a
4 public servant under color of law (((, but excessive force may be
5 resisted))); and

1 12.1-05-07(2) . . .

2 d. When used by a public servant authorized to effect arrests or
3 prevent escapes, if such force is necessary to effect an arrest
4 or to prevent the escape from custody of a person who has com-
5 mitted or attempted to commit a felony ((involving violence)),
6 or is attempting to escape by the use of a deadly weapon, or
7 has otherwise indicated that he is likely to endanger human life
8 or to inflict serious bodily injury unless apprehended without
9 delay;

1 12.1-29-05 . . .

2 1. "Sexual activity" means sexual ((intercourse, deviate sexual inter-
3 course,))) act or sexual contact as those terms are defined in section
4 12.1-20-02.

1 12.1-32-02 . . .

2 7. Unless otherwise specifically authorized in the statute defining the of-
3 fense, no court shall include a minimum term of imprisonment as part
4 of its sentence.

1 12.1-32-07(2) . . .

- 2 o. Submit his person, place of residence, or vehicle to search and
3 seizure by a probation officer, sheriff, deputy sheriff, police
4 officer, or employee of the bureau of criminal investigation
5 at any time of the day or night, with or without a search warrant.

1 12.1-32-10.) If an offender is sentenced to a term of imprisonment for a
2 class A, class B, or class C felony, or a class A misdemeanor, he shall be sub-
3 ject to the following mandatory parole components:

- 4 1. For a sentence to a term of years in a range from fifteen years to life
5 imprisonment, the parole component shall be five years.
6 2. For a sentence to a term of years in a range from three years to fifteen
7 years less one day, the parole component shall be three years.
8 3. For a sentence to a term in a range from one year to one day less than
9 three years, the parole component shall be one year.

10 The mandatory parole components set forth in this section shall not be served
11 unless the convicted offender shall serve the whole of the term of imprisonment
12 to which he was sentenced. A mandatory parole component may be terminated
13 by the state parole board or by the board of pardons. Nothing in this section
14 shall prohibit the parole of the offender in accordance with other provisions of
15 law.

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Tentative Agenda
COMMITTEE ON JUDICIARY "A"

Meeting of Monday and Tuesday, September 30 and October 1, 1974
Room G-2, State Capitol
Bismarck, North Dakota

Monday:

- 9:30 a.m. Call to order
Roll call
Minutes of previous meeting
- 9:45 a.m. Consideration of bill draft dealing with abortion control
- 12:00 noon Luncheon recess
- 1:15 p.m. Consideration of bill draft to control dissemination of obscene materials
- 5:00 p.m. Recess

* * * * *

Tuesday:

- 9:00 a.m. Reconvene - Consideration of redrafted material resulting from meeting of February 1974
- 9:45 a.m. Consideration of redrafted materials resulting from meeting of March 1974
- 10:05 a.m. Consideration of redrafted materials resulting from meeting of April 1974
- 11:00 a.m. Consideration of amendments to certain sections in Senate Bill No. 2045, and presentation by Sgt. Ron McCarthy, Grand Forks Police Department, regarding certain changes in the new Criminal Code
- 12:00 noon Luncheon recess
- 1:15 p.m. Reconvene - Consideration of amendments to certain sections in Senate Bill No. 2045, Part II
- 2:30 p.m. Consideration of redraft of Section 49-13-20
- 3:00 p.m. Miscellaneous matters
- 5:00 p.m. Adjourn

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes

of the

COMMITTEE ON JUDICIARY "A"

Meeting of Monday and Tuesday, September 30-October 1, 1974
Room G-2, State Capitol
Bismarck, North Dakota

The Chairman, Senator Howard Freed, called the meeting of the Committee on Judiciary "A" to order at 9:35 a.m. on Monday, September 30, 1974, in Committee Room G-2, State Capitol, Bismarck.

Legislative
members present: Senators Freed, Jones
Representatives Austin, Hilleboe, Lundene, Murphy,
Royse, Stone

Legislative
member absent: Representative Rau

Citizen
members present: Judges Heen, Pearce
Mr. Wolf
Professor Lockney

Citizen
members absent: Judges Teigen, Glaser
Chief Anderson
Sheriff Wells
Mr. Webb

Also present: Dr. Albert Fortman, representing the Right to Life
Association
Mr. Edwin Becker, representing the North Dakota Catholic
Conference
Mr. Tom Kelsch, Burleigh County State's Attorney
Mr. Harold Anderson, representing Saks News Agency
Mr. Orell D. Schmitz, representing the Motion Picture
Association of America
Mr. Vance Hill, Mrs. Elvira Rogstad, Mrs. Frank Keller,
Mrs. Paul Bourgois, Jr., Mrs. Helen Fischer,
Mrs. Luella Rath, Master Kevin Rath
Mr. Ronald F. MacCarthy, Mr. James O. Clague, Grand
Forks Police Department
Mr. Charles Feland, Bismarck Police Department
Mr. Stan Lyson, Williston Police Department
Mr. Chuck Enders, N.D. State Penitentiary
Mr. Dick Hilde, State Crime Bureau
Mr. Allen Olson, Attorney General

The Chairman called on the Committee for some action regarding the minutes of the meeting of September 5-6, 1974. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY SENATOR JONES AND REPRESENTATIVE AUSTIN, AND CARRIED that the minutes of September 5-6, 1974, be accepted as mailed.

The Chairman called on the Committee Counsel for a background statement regarding the second draft of the Alternative No. 3, Abortion Control Act. The Committee Counsel noted that this was the third meeting at which the question of statutory control over the performance of abortions was discussed, and that the draft which had been mailed to Committee members prior to the meeting, and would be under consideration this morning, was based essentially on the comments of Dr. Fortman at the meeting of the Committee on July 26, 1974, and on the recently enacted Montana Abortion Control Act. (A copy of the Abortion Control Act as proposed to the Committee at this meeting is attached to these minutes as Appendix "A".)

The Committee Counsel noted that an alternative Section 14-02.1-03 of Appendix "A" was also being distributed this morning, and a copy of that proposed alternative section relating to necessary consents prior to the performance of abortions is attached to these minutes as Appendix "B".

The Chairman then called on Mr. Wefald who discussed the bill in more detail, noting that since its consideration at the previous meeting, provisions for the husband's consent in cases involving proposed abortions on married women was provided in Subsection 2 of Section 14-02.1-03. Additionally, he noted that there was a second alternative means of waiving informed consent provided, so that informed consent could be waived where the pregnant woman was declared by the county board of mental health to be mentally incapable of giving informed consent and a licensed physician certifies that an abortion is necessary to preserve her life.

Mrs. Paul Bourgois asked about the situation with respect to residency requirements prior to being able to successfully obtain an abortion in a given state. The Committee Counsel read an excerpt from Doe v. Bolton in which the United States Supreme Court stated that the Georgia residency requirement provision was unconstitutional.

The Committee discussed the provisions of Alternative No. 2 of Subsection 3 of Section 14-02.1-03, and thereafter Mr. Wefald continued his overview of the bill, noting that on page 4, Section 14-02.1-05, there was provision that a physician must extend all reasonable "medical efforts" to preserve the life and health of a fetus which has survived an abortion. He noted that the next section dealt with fetal experimentation, and that Dr. Fortman would probably be bringing up another proposal with respect to that subject during the morning.

Mr. Wefald noted that Section 14-02.1-14, which prohibits the concealing of a stillbirth or the death of an infant under two years of age, had been added to the bill. He noted that this was a provision of current law and seemed to fit at this point.

The Chairman recognized that Dr. Albert Fortman was in the room and noted that Dr. Fortman's position, and the position of the North Dakota Right to Life Association, was in opposition to abortion, but that he, Dr. Fortman, would attempt to help the Committee in its struggle with a solution.

Thereafter, the Chairman called on Dr. Fortman who suggested that the "purpose" section of the Act (§14-02.1-01 of Appendix "A") be amended to substitute the language "protect, according to present constitutional limits, unborn children and maternal health" for the language "protect, according to the highest standards, unborn human life and those persons conceiving unborn human life".

Dr. Fortman noted that he would also like to see the definition of "abortion" contained in Subsection 1 of Section 14-02.1-02 changed so that it conformed exactly to the definition of abortion contained in Section 12H of Chapter 706 of the Massachusetts Laws which reads as follows: "ABORTION: the knowing destruction of the life of an unborn child or the intentional expulsion or removal of an unborn child from the womb other than for the principal purpose of producing a live birth or removing a dead fetus."

Dr. Fortman stated he had problems with the definition of "medical facility" contained in Subsection 4 of Section 14-02.1-02, and especially in lines 21 and 22 of page 1 of Appendix "A". He stated that that language should be strengthened to ensure that emergency facilities are available near enough to protect against any likely emergency.

Dr. Fortman stated that he was not happy with either informed consent provision (the two alternative sections numbered §14-02.1-03). He stated that the husband's consent should be necessary before an abortion can be performed on a married women of any age, regardless of the stage of viability of the fetus, and with respect to waiver of the informed consent provision, that should only be possible if the physician deems it a medical emergency.

Dr. Fortman raised a question with regard to the language on lines 12 through 16, page 3, which would prohibit an executive officer, administrative agency, or public employee of the State or of a political subdivision from requiring or coercing any woman to have an abortion, and goes on to provide that no person may coerce any woman to have an abortion. His question was whether the listing of persons who were so prohibited included "judges". Mr. Wolf replied that it did, because there would be no order which a judge could enforce, as no other person would have authority to issue such an order. Dr. Fortman had previously noted that the judges in California were ordering females to permit an abortion to be performed upon them.

Dr. Fortman then discussed Section 14-02.1-11, the so-called "conscience clause", and stated that he was unhappy with the language in lines 27 and 28 which would prohibit a hospital or medical facility from refusing to allow its facilities to be used for abortions when the abortions were necessary to preserve the "life or health of the mother". He stated that it was quite clear that the recent cases now hold that private hospitals have the right to refuse to permit abortions on their premises, and that that right should not be hemmed in by language similar to the "other than" provisions on lines 27 and 28 of page 6 of Appendix "A".

Dr. Fortman also inquired whether the conscience clause provision would protect an employee who was terminated because of his refusal to participate in an abortion, and allow him to commence a civil action. Mr. Wolf stated the section (14-02.1-11) was adequate to cover an employee in that situation, even if it didn't have the language of the last sentence, and it was certainly adequate with the language of the last sentence.

Dr. Fortman then referred back to Subdivision b of Subsection 3 of Section 14-02.1-04 which would require the concurrence of two other licensed physicians before an abortion could be performed when the fetus was viable. He stated that this provision was clearly unconstitutional, and although he favored it, he did not think that it could stand.

With respect to Subsection 3 of Section 14-02.1-04, Dr. Fortman went on to recommend that the word "health" in line 29 be deleted, and language similar to Section 12J of the Massachusetts Statutes (Chapter 706) be utilized. That language reads essentially as follows: "If a continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health."

Dr. Fortman called the Committee's attention to the "fetal experimentation" statute passed by Massachusetts recently (Chapter 421, 1974 Massachusetts Laws), and recommended that the Committee utilize that language rather than the current language of Section 14-02.1-06. Section 12J of Chapter 421 reads as follows:

Section 12J. No person shall use any live human fetus, whether before or after expulsion from its mother's womb, for scientific, laboratory, research or other kind of experimentation. This section shall not prohibit procedures incident to the study of a human fetus while it is in its mother's womb, provided that in the best medical judgement of the physician, made at the time of the study, said procedures do not substantially jeopardize the life or health of the fetus, and provided said fetus is not the subject of a planned abortion. In any criminal proceeding the fetus shall be conclusively presumed not to be the subject of a planned abortion if the mother signed a written statement at the time of the study, that she was not planning an abortion.

This section shall not prohibit or regulate diagnostic or remedial procedures the purpose of which is to determine the life or health of the fetus involved or to preserve the life or health of the fetus involved or the mother involved.

A fetus is a live fetus for purposes of this section when, in the best medical judgement of a physician, it shows evidence of life as determined by the same medical standards as are used in determining evidence of life in a spontaneously aborted fetus at approximately the same stage of gestational development.

No experimentation may knowingly be performed upon a dead fetus unless the consent of the mother has first been obtained, provided however that such consent shall not be required in the case of a routine pathological study. In any criminal proceeding, consent shall be conclusively presumed to have been granted for the purposes of this section by a written statement, signed by the mother who is at least eighteen years of age, to the effect that she consents to the use of her fetus for scientific, laboratory, research or other kind of experimentation or study; such written consent shall constitute lawful authorization for the transfer of the dead fetus.

No person shall perform or offer to perform an abortion where part or all of the consideration for said performance is that the fetal remains may be used for experimentation or other kind of research or study.

No person shall knowingly sell, transfer, distribute, or give away any fetus for a use which is in violation of the provisions of this section. For purposes of this section, the word "fetus" shall include also an embryo or neonate.

Whoever violates the provisions of this section shall be punished by imprisonment in a jail or house of correction for not less than one year nor more than two and one half years or by imprisonment in the state prison for not more than five years.

Dr. Fortman referred to Sections 14-02.1-09 and 14-02.1-10 which were alternative statements relating to the reporting requirements of doctors who performed abortions. He stated that he was in favor of the provisions of Section 14-02.1-10, so that as much data concerning abortions would be reported as possible. He stated that if there were any type of abortion procedures which gave rise to problems, the Health Department should have that information available to it.

Representative Murphy inquired as to whether the "conscience clause" provision as set forth in Section 14-02.1-11 was necessary, asking further whether it wasn't covered in some other statute. Dr. Fortman noted that there currently was a weak "conscience clause" statute, but that a provision similar to Section 14-02.1-11 was absolutely necessary.

Judge Pearce asked for clarification of Dr. Fortman's wishes with respect to the necessary consent of a husband prior to a married woman's abortion. Dr. Fortman reiterated that he thought that a husband, other than one who is separated from the wife, should have to give his consent before an abortion could be performed in any case. He then discussed the desirability of limiting the situations in which a husband didn't have to consent to those wherein he was "legally separated" from the wife.

Dr. Fortman then noted the need for judicial reform, questioning why federal judges could remain on the bench long past the age at which they should retire.

The Committee then further discussed the difference between legal separation and physical separation of a husband and wife, and it was noted that perhaps the consent requirement should be extended to a husband who is only physically separated, and not legally separated, from his wife.

Representative Lundene noted that legislators were in a difficult position with respect to the abortion question, and in effect, would have to vote for the lesser of two evils. He noted that he had constituents who didn't understand how this problem arose and were surprised when he told them that it arose because of decisions of the United States Supreme Court. He wondered whether copies of those decisions were available, and the Committee Counsel replied that they were.

Judge Pearce inquired as to whether a presentation had been made by persons representing the other side of the abortion argument. The Chairman noted that several people had made appearances, one representing the ACLU, and had simply urged the Committee to pass a constitutional measure.

Judge Pearce inquired as to the necessity for Section 14-02.1-05, noting that, if a fetus had survived an abortion, the activities which were prohibited by Section 14-02.1-05 were also prohibited by Section 12.1-17-03 which proscribes "reckless endangerment".

Thereafter, IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY MR. WOLF that Section 14-02.1-05 be deleted. The Committee Counsel noted that there was similar language in Subsection 1 of Section 14-02.1-12, which would prohibit any person from knowingly or negligently causing the death of a viable fetus born alive.

Judge Pearce, in support of his motion, noted that the minutes of this meeting, and the report of the Committee, should indicate that the provisions of Section 14-02.1-05 were being deleted because they were covered by Section 12.1-17-03.

Representative Stone suggested that maybe it might be well to have a reference in the abortion bill of the necessity not to destroy a viable fetus born alive. Judge Pearce noted that reference in this Act would be running counter to the Committee's actions in numerous other instances wherein they placed reliance on the basic Criminal Code rather than maintaining references throughout the Century Code to particular types of activities which could be covered by the general statute.

Mr. Wolf suggested that the Committee really could not consider Judge Pearce's motion until it had gotten the definition of "abortion" straight and considered Dr. Fortman's suggestion. He suggested that the definition of abortion was misplaced, since clearly the definition should be aimed at the fact that destruction of the fetus was desired. The Committee Counsel took issue with Mr. Wolf, noting that the thrust of the definition of abortion was towards termination of the pregnancy. The Committee Counsel discussed the Massachusetts definition of abortion, and noted that the opening language "the knowing destruction of the life of an unborn child" was most likely gratuitous, since the remainder of the definition would more appropriately fit the language of Section 12M of that same Chapter 706 which provides that a physician is to take all reasonable steps to preserve the life and health of the aborted child, which language would be totally inconsistent with the opening language of the Massachusetts definition of "abortion".

Thereafter, Mr. Wolf and the Committee Counsel engaged in a lengthy discussion concerning the meaning of "abortion", and the Committee Counsel noted that if the thrust of abortion were to emphasize the destruction of the fetus, then the language on lines 5 through 7 of page 4 of the bill draft should be deleted, as it did not make any sense.

Thereafter, JUDGE PEARCE'S MOTION, to delete Section 14-02.1-05, LOST.

The Chairman then discussed Dr. Fortman's suggestion regarding a proposed change in the language of Section 14-02.1-01 which sets forth the purpose of the "Abortion Control Act".

Mr. Wolf suggested that perhaps the Committee could utilize Dr. Fortman's suggested language, but leave the language relating to "highest standards". Professor Lockney inquired as to what kind of standards were referred to, legal, medical, or moral.

Thereafter, the Committee recessed for lunch at 12:05 p.m. and reconvened at 1:15 p.m., at which time it commenced consideration of a bill draft to provide control of dissemination of obscene materials and promotion of obscene performances.

The Committee Counsel gave an overview of the bill draft, noting that it was a combination of Alternatives No. 1 and No. 2 from the previous (September 5-6, 1974) meeting of the Committee. (A copy of the obscenity control bill draft is attached to these minutes as Appendix "C".)

The Committee Counsel noted that the first and third sections of the bill draft set forth the offenses of disseminating obscene materials to adults and minors, and permitting an obscene performance in a licensed liquor establishment, as well as presenting obscene performances, or participating in the same. He noted that the definition of obscene materials in Section 2 of the bill draft was essentially the same as had previously been considered.

The Committee Counsel stated that Sections 4 through 10 of the bill draft set forth the civil procedures which would apply to allegedly obscene "written materials", and would have to be utilized before someone could be criminally liable for dissemination of obscene "written materials".

He noted that Section 11 set forth a method of seizing obscene materials, other than written materials, and that this section was in response to suggestions from Chief Anderson made at the last meeting of the Committee. The Committee Counsel stated that Section 12 set forth exceptions to criminal liability, and would provide that, with the exception of "written material", possession of obscene material by schools, museums, or public libraries, or by law enforcement, judicial, or legislative branch officials in the course of their duties, would not be covered by the criminal definitions in the Act. Finally, he noted that Section 13 of the Act would provide for a state preemption of local statutes regulating obscenity.

The Chairman then called on Mr. Edwin Becker representing the North Dakota Catholic Conference. Mr. Becker stated that he was not an expert on obscenity control legislation, but he felt that the United States Supreme Court had set the stage for non-experts to do something with respect to controlling obscene materials. He stated that with respect to the bill draft before the Committee he had several comments, but was not unhappy with the draft as a whole.

Mr. Becker suggested that lines 10 and 11 on page 2 (Subdivision c of Subsection 4 of Section 1) be deleted, and that the following new material be substituted in lieu of the deleted material: "Nothing herein contained is intended to include or proscribe any material which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, scientific, or other value."

Mr. Becker then suggested that on page 3 following the last definition in Section 1, a new definition (and Subsection 10) be inserted to read as follows:

"10. As used in this Act, "knowingly" means knowledge or notice of the character of the material. An actor's subjective belief as to obscenity or nonobscenity of the material is irrelevant."

Mr. Becker then raised questions concerning the efficacy of the prior civil determinations procedures, and hoped that they would not result in a slowing down of the ability to prosecute disseminators of obscene materials.

Mr. Becker also questioned the meaning of Section 13 which provides a state preemption of local ordinances regulating obscenity. He asked where a jury would be chosen from to carry out the statewide standard referred to in that section and in Sections 1 and 2. The Committee Counsel noted that the jury would not be statewide, and would probably be chosen from the county in which the seller of the material was to be prosecuted.

Mr. Becker noted that the North Dakota Catholic Conference will definitely be involved in the passage of a bill dealing with control of obscene materials and obscene performances during the next Session.

At the request of a Committee member, Mr. Becker repeated his proposed Subsection 10 of Section 1 of the bill as follows: "10. As used in this Act, "knowingly" means knowledge or notice of the character or content of the material. An actor's subjective belief as to the obscenity or nonobscenity of the material is irrelevant." Professor Lockney inquired as to whether the word "character" referred to the content of the material, or to whether or not it was "obscene". Mr. Becker stated that the word referred to the content, but was perhaps more inclusive than the word "content". Judge Pearce stated that he had great difficulty with that distinction. He stated that it would be absolutely a subjective determination to determine the character of the material, and to determine that character the disseminator would have to make a determination as to whether or not the material was obscene. Mr. Becker referred to the Hamling case decided by the United States Supreme Court, and noted that it utilized that definition. Judge Pearce stated that that is not to say that the United States Supreme Court would make the distinction that Mr. Becker was making in his definition of "knowingly". Mr. Becker replied that that may be so, but the court utilized the definition of "knowingly" in its decisionmaking process which was very similar to the definition that he was calling for.

Judge Pearce inquired as to how the definition would work, since it was obviously the question of the actor's subjective beliefs which was at the very heart of the issue in a prosecution. Mr. Becker replied that oftentimes the actor's subjective belief would be that, in disseminating pornographic materials, he was not acting illegally, and that that subjective belief would not be relevant in determining his guilt or innocence. Judge Pearce stated that he, at any rate, did not like the definition, as it contradicted itself.

The Chairman then called on Mr. Harold Anderson who noted that he would like to see the definition of "written material" in Subsection 9 of Section 1 of the bill expanded so that it would include "sound recordings". Mr. Anderson noted that the reason for this request was based on comments that he had heard from several druggists who had had problems in this area, and had received records which could be deemed pornographic, although they didn't realize it at the time. Mr. Wefald asked if Alternative No. 4 (Appendix "C") satisfied him, and Mr. Anderson replied that it did.

The Chairman then called on Mr. Orell Schmitz, a Bismarck attorney representing the Motion Picture Association of America. Mr. Schmitz stated that his only point would be to urge the Committee to consider including motion pictures under the definition of "written material". He stated that the limitation of the prior civil determination procedure to strictly written materials is inequitable to local theater operators who are not "fly-by-night" operators, and would be available during the entire time of a prior civil determination proceeding.

Mr. Wefald inquired as to whether the problem was not in the speed with which a movie could be shown and withdrawn from the community. Representative Stone inquired as to whether a local manager has any choice in withdrawing a movie, and not allowing it to be shown even though the theater owners desired it to be shown. Representative Stone's question could not be answered. Representative Stone pointed out that something had to be done about violence, which was also obscene, as well as about sexual obscenity.

Mr. Wolf reviewed the history of prior civil determination proceedings in North Dakota. He stated that it probably started with him in 1965, when he drafted legislation to that effect. He stated that it had always been clearly an alternative to a "pure" criminal proceeding, and was never intended to be a prerequisite to criminal liability.

The Committee Counsel noted that the same determination, i.e., whether materials were obscene, had to be made in a "pure" criminal proceeding, and it would be easier on all concerned if it could be made in a prior civil proceeding. Mr. Wolf stated that the point of the civil determination proceeding was to allow a prosecutor to get at a disseminator, when he, or the relevant civilian, was not willing to sign a criminal complaint. There was much discussion of Mr. Wolf's comments, and Mr. Thomas Kelsch noted that the prosecutor should not be able to threaten criminal prosecution, and the standards, concerning what is or is not obscene, should be known to all parties involved.

During a continuing discussion of Mr. Wolf's points, Judge Pearce noted that perhaps some of Mr. Wolf's suggestions would not comport with needed constitutional protections. Judge Heen noted that the original concept of a prior civil determination was that it would be very speedy, and that any appellate procedure would also be speedy. Representative Murphy said there should be a way of allowing a peace officer to arrest for a straight criminal prosecution, without the prior civil determination.

The Chairman then called on members of the audience for their comments, and Mrs. Elvira Rogstad made a presentation. She stated that she represented the Citizens for Decent Literature Organization, and mentioned a recent incident wherein a local student had been arrested with a bomb on his person at Hughes Field. She also mentioned the book "Steal This Book", and introduced Mrs. Luella Rath whose son, Kevin, had been hurt in a bomb accident. Mrs. Rath asked her son to show his hand which had been injured in the accident, and he did so. She stated that they had come to town and her son had bought the book "Steal This Book", and had learned from the book how to make the bomb which had injured his hand. She asked that the Committee view the book, and passed it to Committee members.

Representative Lundene suggested that the dealer should be responsible for what he sells. Judge Pearce noted that books like "Steal This Book" present a totally different question than the question of "sexual obscenity", and the question should be looked into, but this Committee did not have time to do so.

The Chairman then called on Mrs. Frank Keller who raised questions concerning material used in the schools in Bismarck and passed out some of those materials. She stated that when she had attended a school board meeting she had been told that she was on "a witch hunt". She noted that one parent had a child who was ridiculed in school because, Mrs. Keller alleged, he (the parent) spoke out at a school board meeting against the materials being used to teach the school children at this particular high school. She noted that one of the books she was passing around was very degrading to women.

Judge Pearce inquired as to whether she thought the book was obscene because it was degrading to women. Mrs. Keller replied in the affirmative. Judge Pearce noted that that was a question of her judgment.

He stated that she certainly was entitled to know what the schools were utilizing to teach her children, and entitled to have an interest in the material, both as a taxpayer and a parent. However, he wanted to know whether she could impose her judgment as to whether material was obscene on his children if he had read the book and determined that it was appropriate for his children to be taught from. Mrs. Keller replied "not necessarily". Judge Pearce stated that that's exactly what is being done when legislation is passed which would take that type of book out of the school system. He said that he recognized the very strong interest which a parent has in the moral upbringing of his children, but he also recognized the necessity to continue to guarantee First Amendment freedoms and was concerned at any point at which the State became involved in the determination of what should or should not be read.

Judge Pearce said that he was more frightened of the State imposing a single standard of what should be read than of the fact that one parent could be concerned about what was being read in the schools. He stated that the parental response to materials utilized in the schools which they felt were inappropriate should be to educate their children as to why the children should not be affected by that material.

Mrs. Keller inquired as to how many parents do investigate the types of materials which are, in fact, being utilized to instruct their children. Judge Pearce agreed that most parents don't, but suggested that those parents had abandoned their parental responsibilities. However, he stated that that fact was not justification for legislation which impairs other persons' constitutional rights.

Representative Stone complimented Mrs. Keller on her presentation, and Judge Pearce on his, and asked whether the schools have any responsibility in this area. That is, does the school board control the types of books which are put in the hands of school children by an individual faculty member? Professor Lockney stated that he was interested in Representative Stone's question, but pointed out that he had looked at two of the three volumes circulated by Mrs. Keller, and was impressed that they were being offered to high school seniors. He noted an example from his own experience concerning the schooling that he had had in a private Catholic high school, where he was not allowed to be exposed to a very wide range of materials.

The Chairman requested that the Committee get back to the "sexual" aspect of obscenity, as that was the topic with which it would have to deal. Judge Pearce suggested that, with respect to the bill before the Committee (Appendix "C"), he could not distinguish between motion pictures, pictures, and books, and suggested that an attempt at making that distinction would run into constitutional problems. He stated that he would favor a prior civil determination for everything but live performances.

IT WAS MOVED BY MR. WOLF AND SECONDED BY REPRESENTATIVE MURPHY that Section 5 of Appendix "C" be deleted, thus leaving the availability of the civil determination, but not making it a prerequisite to criminal prosecution.

Judge Pearce noted that the United States Supreme Court has recognized that the prior civil determination is the way to go, contrary to Mr. Wolf's statement. Mr. Anderson urged the retention of Section 5, as it was, in his opinion, the heart of the bill.

Judge Heen inquired as to what the words "immediate danger" in lines 18 and 19 of page 7 of Appendix "C" meant. Mr. Anderson replied that the "immediate danger" would be to the community's morals. Thereafter, MR. WOLF'S MOTION FAILED, with four members voting in the affirmative and six members voting negative.

IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY REPRESENTATIVE ROYSE that the bill draft be amended to include provisions for coverage of pictures, motion picture films, and sound recordings under the prior civil determination procedures set out in Sections 5 through 10 of the bill draft.

Representative Murphy inquired concerning the person who is showing or selling dirty playing cards, or similar items, in the schoolyard. The Chairman pointed out that there would be protection against that type of person under the preliminary injunction procedures set forth in Section 9 of the bill draft. Thereafter, JUDGE PEARCE'S MOTION CARRIED.

Representative Hilleboe inquired whether the definition of "material" included "sex devices". He also noted that there should be a definition of "prurient interest", as no one knew what that meant. He stated that the definition of "obscene material" should not be tripartite as it is in Subsection 4 of Section 1, but should simply be stated in terms of the types of depictions which are proscribed. The Committee Counsel noted that that presented terrific practical problems, as the Legislature could not possibly describe all of the types of depictions which would be obscene, and that if it did so, the statute itself would probably be obscene.

The Committee then discussed Mr. Becker's first suggestion which was to delete Subdivision c of Subsection 4 and to insert in lieu thereof the following language: "Nothing herein contained is intended to include or proscribe any material which, when considered as a whole, and in the context in which it is used possesses serious literary, artistic, political, scientific, or other value." The Committee did not take any action with respect to that suggestion.

The Committee then discussed the second suggestion by Mr. Becker which was that a new Subsection 10 be added at the end of Section 1 of the Act (Appendix "C"). IT WAS MOVED BY MR. WOLF AND SECONDED BY JUDGE HEEN that the definition of "knowingly" as proposed by Mr. Becker be accepted.

The Committee Counsel suggested that it be amended to read: "As used in this Act, "knowing" or "knowingly" means . . ." The Committee Counsel suggested that he was recommending that amendment as the word "knowing" was used in the Act as well as "knowingly". Mr. Wolf, with the consent of his second, included the Committee Counsel's suggestion in his motion. Thereafter, the Committee discussed the redundancy of the motion, noting that it essentially stated a truism. Mr. Wolf stated that he would vote against his own motion, and the MOTION THEREAFTER FAILED.

The Committee then discussed Mr. Becker's third point which was with relation to the exemptions provided by Section 12 of the Act (page 8 of Appendix "C"). The Committee Counsel noted that there would be a need for a change in this section at any rate as a result of Judge Pearce's motion to include other types of materials or depictions within the prior civil determination procedures.

Mr. Wolf suggested an amendment to that section which would be to strike everything after the word "organization" on line 16; strike line 17; and substitute the words "for limited access for educational research purposes at such an institution"; and strike the words ", other than written material," in line 13. MR. WOLF MADE A MOTION in accordance with his suggested amendment which was SECONDED BY JUDGE PEARCE AND CARRIED.

Mr. Harold Anderson noted that there should be provision made allowing bookstores and other organizations which would retail the suspect materials to return the materials to the publisher for credit. After discussion, IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 12 of Appendix "C" be amended to authorize the return to the publisher of materials which had been determined obscene.

The Committee considered Section 11 of the Act which provided a procedure for seizure of obscene materials. Professor Lockney noted that he did not understand the section, and thought that it was relatively meaningless, but that if it were going to be accepted, at least it should have a provision allowing the bookseller's attorney to be present during the hearing on seizure.

After further discussion, IT WAS MOVED BY JUDGE PEARCE, SECONDED BY MR. WOLF, AND CARRIED that Section 11 be deleted from the bill.

The Committee discussed Subsection 1 of Section 6 of the Act, and Professor Lockney asked the Committee Counsel what the language "has cause to believe" referred to, and did it refer to "probable cause". The Committee Counsel replied in the negative, and stated that it was any belief on the part of the law enforcement officer which could lead to the institution of a civil proceeding.

IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY REPRESENTATIVE STONE, AND CARRIED, with Representative Royse voting in the negative, that the words "has cause to believe" on line 5 of page 5 of Appendix "C" be deleted, and that the word "believes" be inserted in lieu thereof.

Judge Pearce stated that he would like to move acceptance of the entire bill as amended, except that he had questions with respect to Section 9, and was not sure that he understood it. After discussion of Section 9, Judge Pearce suggested that it be limited to "clear and present danger of dissemination to minors".

After further discussion, IT WAS MOVED BY PROFESSOR LOCKNEY AND SECONDED BY JUDGE PEARCE that the words "a clear and present danger to minors" be substituted for the words "an immediate danger to the community" in lines 18 and 19 of page 7 of Appendix "C".

Mr. Wolf suggested that the motion be amended by adding a new Subsection 3 to Section 9 which would provide for the issuance of permanent injunctions. The Committee Counsel noted that Subsection 2 of Section 8 authorized the issuance of a permanent injunction by the the court. Thereafter, PROFESSOR LOCKNEY'S MOTION CARRIED.

IT WAS MOVED BY MR. WOLF AND SECONDED BY SENATOR JONES that Subsection 2 of Section 8 be amended to provide that the permanent injunctions referred to therein were to be issued under Chapter 32-06 of the Century Code, and were to be punishable under Chapter 27-10 of the Century Code. THAT MOTION CARRIED.

Representative Stone inquired as to whether Section 13 of the Act, which would preempt local laws regulating obscenity, was necessary. The Committee Counsel noted that the section was not necessary, but explained that it was desirable in the context of the Act in order to ensure that the prior civil determination procedures would apply statewide, and also to ensure that the definition of obscenity utilized in the Act would apply statewide.

Professor Lockney inquired as to what the civil contempt provisions of Mr. Wolf's motion with respect to Section 8 meant. The Committee discussed this question at some length, and it was noted that criminal contempt had been specially dealt with in the new Criminal Code.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that the bill draft providing for control of obscene materials and performances (Appendix "C") be adopted as amended.

The Committee briefly discussed the Abortion Control Act, and Representative Murphy inquired as to whether we needed such an Act at all. The Committee recessed at 5:02 p.m. and reconvened at 9:00 a.m. on Tuesday, October 1, 1974.

The Chairman called on Judge Heen who noted that he was commenting in answer to Mr. Wolf's comment of the previous day that one had to wait for months for an administrative hearing appeal in Bismarck. He stated that a delay of months prior to having an appeal on an administrative hearing heard could be handled by a call to the Chief Justice who would expedite the matter under his power to administer the court system.

Judge Heen noted that the Judiciary does not make judicial appointments and that they are made by the Executive Branch, and therefore, when a bad appointment is made, the entire body of the Judiciary cannot be held responsible. He stated that electing judges does not result in much better quality judges. He noted that there would be a judicial removal bill introduced during the next Session of the Legislature, and he hoped that this would solve some of the problems.

The Committee then commenced discussion of the sections which were required to be redrafted as a result of the meeting of February 1974. The Committee Counsel noted that one of the sections contained in the redraft (§44-08-05.1) had previously been considered.

The text of all sections considered by the Committee and acted upon from this point in the meeting onward are attached to these minutes as Appendix "D".

The Committee discussed Sections 45-11-08 and 45-11-09. The first section would prohibit (make unlawful) the use of a fictitious partnership name unless it had been registered in accordance with Chapter 45-11. Section 45-11-09 would provide a general penalty, Class A misdemeanor, for violations of Chapter 45-11.

Representative Murphy inquired as to the legality of the use of the words "Murphy Brothers" when he and his brother were not in fact a partnership. The Committee Counsel noted that Section 45-11-08 would prohibit the transaction of business as a partnership when the alleged partner had no interest in the firm, and that would not be the case with the use of the title "Murphy Brothers", since it did not necessarily denominate a partnership, and even if a court decided that it did, it did not represent a fictitious partnership.

IT WAS MOVED BY REPRESENTATIVE MURPHY, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that Sections 45-11-08 and 45-11-09 be accepted as drafted.

The Committee considered Section 51-10-05, which reads as follows:

1 51-10-05. ADVERTISING, OFFERING OR SELLING ARTICLE AT LESS
2 THAN COST - PENALTY.) Any retailer or wholesaler who shall advertise,
3 offer to sell, or sell any article of merchandise at less than cost to such
4 retailer or wholesaler as defined in this chapter, or who gives, offers
5 to give, or advertises the intent to give away any article of merchandise,
6 with the intent, or with the effect of injuring competitors and destroying
7 competition, shall be guilty of a class A misdemeanor. (((Proof of any such
8 advertising, offer to sell or to give away, or sale or gift, or any article
9 of merchandise by any retailer or wholesaler at less than cost, as defined
10 in this chapter, shall be prima facie evidence of a sale below cost.)))

The Committee discussed the trade suppression of loss leader practices. Mr. Kelsch inquired as to how Section 51-10-05 would be enforced, and the Chairman noted that was the question which had arisen when the section had been considered previously. However, the Chairman noted that Mr. Bashus had indicated concern that if the section were repealed in the main revision bill, it could become the subject of controversy.

After further discussion, IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 51-10-05 be accepted as presented.

Mr. Wefald then presented proposed amendments to Sections 42-02-01; 42-02-02; 42-02-04; 42-02-07; and 42-02-10. Mr. Wefald noted that the principal reason for redrafting these sections was to delete the phrase "common nuisance" since that phrase, unlike "private nuisance", "public nuisance", and "nuisance", was not defined in Title 42.

Mr. Wefald noted that in Section 42-02-01 only the word "common" had been deleted, and that the same was true in Section 42-02-02. In Section 42-02-04, he noted that reference to particular types of law enforcement officers had been deleted and the words "a law enforcement officer of the county or city" had been substituted in lieu thereof, and reference to "common nuisance" had been changed to refer simply to "nuisance".

In Section 42-02-07, the reference to "common" had been deleted, and finally, Section 42-02-10 had been revised to ensure that it referred to criminal contempt, and to cause it to refer to Section 12.1-10-01 which sets out the penalty for criminal contempt.

IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE MURPHY, AND CARRIED that Sections 42-02-01; 42-02-02; 42-02-04; 42-02-07; and 42-02-10 be accepted as drafted.

The Committee then considered Sections 44-06-13 and 44-06-13.1. Those sections read as follows:

1 44-06-13. ACTING AS NOTARY WHEN DISQUALIFIED - PENALTY.) Any
2 notary public who exercises the duties of his office with knowledge that his
3 commission has expired or has been cancelled or that he is disqualified other-
4 wise (((, or who appends his official signature to any document when the
5 parties thereto have not appeared before him.))) is guilty of (((a misdemeanor
6 and shall be punished by a fine of one hundred dollars for each offense)))
7 an infraction, and (((also shall be removed from office))), if appropriate,
8 his commission shall be cancelled by the secretary of state.

1 44-06-13.1. WRONGFULLY NOTARIZING DOCUMENT - PENALTY.) Any
2 notary public who appends his official signature to any document when the
3 parties thereto have not appeared before him is guilty of an infraction and his
4 commission shall be cancelled by the secretary of state, who shall give written
5 notice of such cancellation to the notary public.

It was noted that the language in Section 44-06-13.1 relating to appearances before the notary public was probably not appropriate since the gist of the offense was in notarizing a document which was not executed by the parties in his presence.

IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that in line 3 of Section 44-06-13.1 the words "appeared before him" be deleted and the words "executed the document in his presence" be substituted in lieu thereof, and when so amended Section 44-06-13.1 be accepted, and that Section 44-06-13 be accepted as drafted.

The Committee discussed Sections 12-07-07 through 12-07-09 which were enacted as an initiated measure in 1920, and which prohibit the carrying of certain flags, or the display of red or black ensigns, banners, or signs. Mr. Wefald noted that, at the February 1974 meeting, the sections had been recommended for repeal, but that in addition, the staff was directed to prepare an alternative draft reclassifying the sections. Mr. Wefald noted that the following three sections were designed to accomplish that purpose:

- 1 SECTION 1. CARRYING IN PARADE OR THE DISPLAY OF CERTAIN FLAGS.
2 ENSIGNS, BANNERS, AND STANDARDS PROHIBITED.) No flag (((of any nation,
3 state, country, or territory))) other than the flag of the United States or a
4 state flag, or the flag of a friendly foreign nation, or the dependencies of
5 such nations, shall be:
- 6 1. Carried in parade on any public street or highway within this state;
 - 7 2. Exhibited in any hall or public place; or
 - 8 3. Displayed or exhibited:
 - 9 a. On any vehicle;
 - 10 b. On any building or premises; or
 - 11 c. In any other manner in public within the state.

1 SECTION 2. RED OR BLACK FLAGS PROHIBITED.) No red or black
2 flag, ((and no)) or any banner, ensign, or sign having upon it any inscrip-
3 tion opposed or antagonistic to the existing government of the United States,
4 or of the state of North Dakota, or any flag, banner, ensign, or sign, the use
5 or display of which would tend to occasion a breach of the public peace,
6 shall be:

- 7 1. Carried or displayed in any parade on any public street or highway
8 in the state of North Dakota; or
- 9 2. Exhibited in any hall or public place or upon any vehicle or any
10 building or premises or exhibited in public in any other manner
11 ((in public)) within the state.

1 SECTION 3. PENALTY.) Any person who violates any of the provisions
2 of sections 1 or 2 is guilty of a class B misdemeanor ((and shall be punished
3 by imprisonment in the county jail for not more than thirty days, or by a
4 fine of not more than one hundred dollars, or by both such fine and imprison-
5 ment)).

IT WAS MOVED BY REPRESENTATIVE MURPHY AND SECONDED BY REPRESENTATIVE AUSTIN that Sections 1, 2, and 3 be accepted as drafted. Senator Jones inquired as to whether this answered Chief Anderson's comments regarding the desirability of prohibiting the display of offense banners. Mr. Wefald replied that it did not, and that that type of behavior would probably be covered under the disorderly conduct statutes. Thereafter, REPRESENTATIVE MURPHY'S MOTION CARRIED.

The Committee then considered Sections 12-44-25 through 12-44-28, and Mr. Wefald noted that the Committee had directed that these sections be redrafted and consolidated if possible. He then presented Section 12-44-25.1 which would replace Sections 12-44-25 through 12-44-27, and Section 12-44-28 which had been redrafted.

Representative Murphy noted that the sheriffs in his area may not be able to get a doctor's prescription allowing the giving of alcoholic beverages to certain prisoners, but that it may be the humane thing to do in the case of certain alcoholic prisoners.

IT WAS MOVED BY REPRESENTATIVE STONE, SECONDED BY SENATOR JONES, AND CARRIED that Sections 12-44-25; 12-44-26; and 12-44-27 be repealed; and that Section 12-44-25.1 and 12-44-28 be accepted as drafted.

The Committee Counsel noted that, at the last meeting, the Chairman had directed him to issue an invitation to Sgt. Ronald MacCarthy of the Grand Forks Police Department, asking that Sgt. MacCarthy appear before the Committee and explain his suggestions and criticisms of the new Criminal Code. The Committee Counsel noted that Sgt. MacCarthy, and his chief, James Clague, were both present.

Professor Lockney asked Sgt. MacCarthy whether the memo which had been presented to the Committee members (based on Sgt. MacCarthy's suggestions and criticisms) was a correct summary of Sgt. MacCarthy's thoughts. Sgt. MacCarthy stated that it was but that it was probably a little more inclusive than it needed to be.

Sgt. MacCarthy introduced Chief Clague, Officer Stan Lyson, Sgt. Charles Feland, and Mr. Thomas Kelsch. He noted that these gentlemen and he had been meeting prior to this meeting to discuss the "Third Proposed Revision".

Sgt. MacCarthy noted that the North Dakota Peace Officers Association had passed a resolution at its last meeting in Devils Lake supporting all of the changes which were contained in the "Third Proposed Revision of Certain Sections in S.B. 2045". He noted that in addition to those changes, he had several more to suggest which were not contained in the draft.

The first suggestion which Sgt. MacCarthy had was for a change in the definition of "dangerous weapon" as contained in Section 12.1-01-04 (6) and in Section 1 of the "Third Proposed Revision". He noted that several of the offense definitions in the new Criminal Code made reference to the use of dangerous weapons, and he felt that bows and arrows, crossbows, spears, CO₂ guns, etc., should be included when the offense definition referred to a "dangerous weapon".

Mr. Wefald inquired as to whether the definition, as proposed to be amended, would include so-called "zip guns" which were powered by rubber bands. Sgt. MacCarthy stated that, in terms of the physics involved, a "spring" could be construed to include a rubber band. Thereafter, the Committee discussed the desirability of a broadening, stated in general language, of the definition of "dangerous weapon".

The Committee then went on to the proposed amendment to Subsection 1 of Section 12.1-08-02 which deals with the offense of preventing arrest. Sgt. MacCarthy noted that his proposal was to amend that subsection (12.1-08-02 [1]) so as to provide that a person is guilty of a Class A misdemeanor if he prevents an arrest for a misdemeanor or an infraction, and is guilty of a Class C felony if he prevents an arrest for any class of felony, and in either case, if the prevention is attended by creation of a substantial risk of bodily injury to the public servant making the arrest.

The Committee considered Sgt. MacCarthy's third suggestion which was to amend Section 12.1-08-03 (1) to provide that it is an offense to give false information to a law enforcement officer when you know that the information is false. Sgt. MacCarthy noted that citizens have a duty to help police officers, and when they deliberately give false information which increases the necessary investigative effort by police officers they should be criminally liable.

The Committee Counsel noted that the National Commission on Reform of Federal Criminal Laws had considered a provision which would have made the giving of false information to a law enforcement officer a criminal offense and rejected it because of the danger of abuse on the part of law enforcement officials.

Sgt. MacCarthy presented his fourth request which was to amend Section 12.1-08-07 to strike any reference to a public servant "negligently" permitting an escape, and limit the section to defining the offense of "reckless" permission

of an escape. Sgt. MacCarthy stated that he feared that the section as drafted could result in abusive treatment of prisoners by jailers to assure that they (the jailers) weren't acting "negligently". The Committee Counsel noted that the definition of "negligently" as a standard of culpability was contained in Section 12.1-02-02, and it involved a "gross deviation from acceptable standards of conduct", which was much closer to the civil standard of "gross" negligence. That being the case, the Committee Counsel wondered whether Section 12.1-08-07 shouldn't be left as is.

The Committee then considered Sgt. MacCarthy's fifth suggestion which was that Section 12.1-13-04 be amended to ensure that someone who impersonates a law enforcement officer will be liable for a greater punishment than someone who impersonates another type of public servant. He noted that the general public places great confidence in law enforcement officers in many situations, and has a right to expect that the person they believe to be a law enforcement officer is in fact a law enforcement officer.

Professor Lockney, noting that Sgt. MacCarthy was adequately explaining each of his points, suggested that perhaps the points could be considered at the time they were presented by Sgt. MacCarthy. The Chairman stated that he would prefer to hear Sgt. MacCarthy out before any Committee action.

The Committee considered Sgt. MacCarthy's sixth proposal which was to amend Subsection 3 of Section 12.1-16-01 to delete the possibility that a participant in one of the listed felonies could not be guilty of a "felony-murder" if one of his co-participants in the offense were killed. Sgt. MacCarthy stated that the Committee should return to the common law rule which would hold it to be a "felony-murder" if any person were killed, including another participant, in the course of commission of a listed felony offense.

Sgt. MacCarthy presented his seventh point, which was that the section on simple assault should be amended so that the reference to a peace officer "on duty" be changed to refer to a peace officer "acting in an official capacity". He stated that the phrase "on duty" is confusing, and may not always be appropriate. He stated that a police officer is, in fact, capable of acting in an official capacity 24 hours a day, and that when he is so acting, regardless of whether he is presently "working a shift", he should be protected from assault.

The Committee considered his eighth proposal, which was to amend the kidnapping penalty gradation provision (Subsection 2 of Section 12.1-18-01) to provide that kidnapping would be a lesser grade felony if the victim was released alive and in a safe place prior to arrest rather than prior to trial. He noted that trials sometimes occur a long time after the initial arrest, and the prisoner, who may be one of a group of kidnappers, would have no incentive to tell the law enforcement officers anything until trial. Thus, he could be held under arrest for a long period of time with no incentive to free the victim.

Mr. Wefald stated that the rationale behind Subsection 2 of Section 12.1-18-01 was to assure, to the extent possible, that the victim is released alive, and that the kidnappers should be given as long a period of time as is feasible to make up their minds to release the victim in order to secure the lesser potential penalty

The Committee considered Sgt. MacCarthy's ninth recommendation, which was that Subsection 2 of Section 12.1-21-02 be amended to change the classification for placing another person in danger of death from a Class B felony to a Class A felony. Subsection 2 of Section 12.1-21-02 is the second subsection of a section which defines the offense of "endangering by fire or explosion". Sgt. MacCarthy stated that this offense, which involves a danger of death and an extreme indifference to the value of human life, should be classified as the highest class of felony. For instance, if someone burns down a house he should be liable if someone inside is killed. The Committee Counsel noted that if someone burns down a house with intent to kill a person or persons inside that act would be murder, a Class A felony, and could be prosecuted as such.

The Committee considered Sgt. MacCarthy's tenth recommendation which was to amend Section 12.1-22-05 to include the word "vehicle" as a means of transportation which could be "stowed away" upon. Mr. Lyson from Williston noted that perhaps the section should be further amended to add the word "train". The Committee Counsel suggested that stowing away on a train is probably covered by federal law, and there was some discussion concerning this suggestion.

The Committee considered Sgt. MacCarthy's eleventh suggestion which is that Subsection 2 of Section 12.1-23-06, dealing with the unauthorized use of a vehicle be deleted as it will be used as a defense in every case. Mr. Lyson suggested that the word "train" should also be included in Section 12.1-23-06.

Sgt. MacCarthy presented his twelfth recommendation, which was to amend Subdivision a of Subsection 1 of Section 12.1-23-09 to delete reference to the "honest belief" of the actor. He noted that the Committee Counsel had not quite achieved his desires in Section 12 of the "Third Proposed Revision", and suggested that instead of putting the triple parentheses after the word "honestly" that they be put after the word "he" in that same first line so that the subdivision would read "The actor had a claim to the property or services involved . . . ". The Committee Counsel noted that if the subdivision were amended in the manner which Sgt. MacCarthy proposed, then it could just as well be deleted entirely, as it would only be stating a truism, i.e., if the actor has, in fact, a claim to alleged stolen property, that is a perfect defense to a charge of theft.

Sgt. MacCarthy's thirteenth suggestion was that Subsection 1 of Section 12.1-25-02 should be amended to add "dangerous weapon" to the list of things which cannot be supplied to persons who are about to engage in a riot.

Sgt. MacCarthy's fourteenth suggestion was that Section 12.1-27-04 defining the offense of "indecent exposure" be amended to delete reference to an intent to arouse or gratify the sexual desire of anyone. He noted that the amendments as proposed by the Committee Counsel did not exactly match his intention in proposing a change in the section. He suggested that everything after the word "if" in the second line of the section be stricken; that the third line of the section be stricken; and that the words "any person" be stricken.

Sgt. MacCarthy presented his fifteenth suggestion, which was that Subsection 4 of Section 12.1-28-01 (the definition of "gambling house") be amended to delete the provision that would preclude private residences from being within the presumption that a place is a "gambling house" if gambling apparatus can be found there, where the only gambling apparatus found in a private house are cards, dice, or other games. Judge Pearce noted that the effect of the presumption was to preclude searches and seizures where dice or cards could be found in a private household, and questioned the constitutionality of applying the presumption provided in Subsection 4 to private residences.

After further discussion of Sgt. MacCarthy's suggestion regarding Subsection 4 of Section 12.1-28-01, Judge Pearce suggested that rather than amend it as suggested by Sgt. MacCarthy, the whole presumption should be deleted. Sgt. MacCarthy stated that that action would meet with his approval.

Sgt. MacCarthy then commenced discussing his suggestions which were not reflected in the "Third Proposed Revision". The first problem that he had was with Subsection 18 of Section 12.1-01-04 which defines a "law enforcement officer" or "peace officer". He stated that the definition as it presently stands seems to be too broad, and suggested that the definition of "peace officer" contained in Title 12 of the Century Code be utilized instead.

His next suggestion was with respect to Subdivision b of Subsection 1 of Section 12.1-03-01. He suggested that everything in that subsection after the words "commit it" be deleted. He stated that his fear was embodied in the words "proper effort" with relation to a person who has a legal duty to prevent the commission of a crime. He wondered how "proper effort" would be construed, and whether persons like the Attorney General could be subject to liability for not making a "proper effort" to prevent an offense.

Sgt. MacCarthy's next suggestion was with respect to Section 12.1-08-06 which defines the offense of "escape" from lawful detention. He stated there should be a way in which a serious crime of violence committed by an escapee could be classified as a Class A felony, so as to ensure that the escapee will receive a sentence at least as large as the one which he was serving at the time of his escape.

Sgt. MacCarthy's next suggestion was with respect to Section 12.1-08-09 which presently prohibits the introduction of contraband into a detention facility where that contraband is useful in making an escape. He stated that the section should be broadened to include the introduction or possession of narcotics or alcohol in detention facilities. The Committee Counsel noted that the Committee on Judiciary "B" had approved a bill draft which would increase the penalties for such possession or introduction into penitentiaries, the State Farm, the Industrial School, and county jails.

Sgt. MacCarthy's next comment was in regard to Section 12.1-32-11 which seems to recognize the basic legislative philosophy that sentences ought to be concurrent. He stated that he was opposed to a basic "concurrent sentencing philosophy", and although he didn't have a draft suggestion, he hoped that the Committee Counsel could do something to change the philosophy around.

Finally, Sgt. MacCarthy stated that he would like to see some changes in Chapter 12.1-33 dealing with disqualifications attendant upon criminal conviction. He stated that it was his belief that a person should not be allowed to hold public office if he has ever been convicted of a felony. The Committee discussed this proposition at great length. Judge Heen stated that he would favor extending the provisions of Section 12.1-33-01 to probationers.

The Committee recessed for lunch at 12:15 p.m. and reconvened at 1:30 p.m. at which time it took up the "Third Proposed Revision" which contained 15 of Sgt. MacCarthy's suggestions for modification of the basic Criminal Code, and one suggestion from the Committee Counsel. The Committee considered the proposed amendment to Subsection 6 of Section 12.1-01-04, which reads as follows:

1 6. "Dangerous weapon" means any switch blade or gravity knife,
2 machete, scimitar, stiletto, sword, or dagger; any billy, blackjack,
3 sap, bludgeon, cudgel, metal knuckles or sand club; any slungshot;
4 any bow and arrow, crossbow, or spear; any weapon which will expel,
5 or is readily capable of expelling, a projectile by the action of a spring,
6 compressed air, or compressed gas including any such weapon, loaded
7 or unloaded, commonly referred to as a b.b. gun, air rifle, or CO2 gun;
8 and any projector of a bomb or any object containing or capable of produc-
9 ing and emitting any noxious liquid, gas, or substance;

The Committee again discussed broadening the "dangerous weapon" definition so it would include all of the things listed, but also other items which could be considered dangerous weapons. Thereafter, IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that the words "but is not limited to," be inserted after the word "means" in line 1 of Subsection 6 of Section 12.1-01-04.

The Committee considered the proposed amendment to Subsection 1 of Section 12.1-08-02 which deals with preventing arrest by creating a substantial risk of bodily injury to the person attempting to make the arrest. IT WAS MOVED BY REPRESENTATIVE LUNDENE, SECONDED BY REPRESENTATIVE AUSTIN, AND CARRIED that the proposed amendment to Subsection 1 of Section 12.1-08-02 be accepted as drafted. (See Appendix "D".)

The Committee considered the proposed amendment to Subsection 1 of Section 12.1-08-03 which would make it an offense to give false information to a law enforcement officer knowing the information to be false. The Committee Counsel noted Section 12.1-11-03 which provides that it is a Class A misdemeanor to give false information to a law enforcement officer when you intend to falsely implicate another. (See also Section 12-42-09 which will be repealed by the new Criminal Code.)

He noted that this section had been originally drafted to cover any giving of false information, and the drafters of the proposed Federal Code had rejected that proposition. Judge Pearce noted that the Bismarck city ordinances had a provision similar to the one being proposed by Sgt. MacCarthy, and he thought that it was a valuable provision and should be included in the new Criminal Code.

IT WAS MOVED BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that the proposed amendment to Subsection 1 of Section 12.1-08-03 be accepted as drafted. (See Appendix "D".)

The Committee then considered the proposed amendment to Section 12.1-08-07 which would have deleted any criminal liability on the part of a public servant for "negligently" permitting an escape. The Committee Counsel noted again the definition of "negligently" as a standard of culpability. The Chairman called for a motion with respect to Section 12.1-08-07 but none was forthcoming, and Section 12.1-08-07 will not be amended.

The Committee discussed the proposed amendment to Section 12.1-13-04, which reads as follows:

- 1 12.1-13-04. IMPERSONATING OFFICIALS.)
2 1. A person is guilty of an offense if he falsely pretends to be:
3 a. A public servant, other than a law enforcement officer,
4 and acts as if to exercise the authority of such public servant;
5 (((or)))
6 b. A public servant or a former public servant and thereby
7 obtains a thing of value; or
8 c. A law enforcement officer.
9 2. It is no defense to prosecution under this section that the pretended
10 capacity did not exist or the pretended authority could not legally
11 or otherwise have been exercised or conferred.
12 3. An offense under subdivision c of subsection 1 is a class C felony.
13 An offense under subdivision b of subsection 1 is a class A mis-
14 demeanor. An offense under subdivision a of subsection 1 is a
15 class B misdemeanor.

It was noted that perhaps a Class C felony classification for impersonating a law enforcement officer, and doing no other harm, was too high. Judge Pearce suggested that perhaps it should be classified as a Class A misdemeanor. IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY REPRESENTATIVE STONE that in line 12 of Section 5 the reference to a Class C felony should be changed to a Class A misdemeanor, and the other references in that subsection (3) should be classified as Class B misdemeanors.

The Committee Counsel noted that an offense under Subdivision b of Subsection 1 of Section 12.1-13-04 should be a more serious proposition than an offense under Subdivision a, since, under Subdivision b, the impersonator has obtained a thing of value as a result of his impersonation. JUDGE PEARCE, with the consent of his second, then WITHDREW HIS MOTION. Chief Clague then suggested that the impersonation of a law enforcement officer should be tied to the commission of another offense, and prosecuted as a Class C felony.

IT WAS MOVED BY SENATOR JONES AND SECONDED BY JUDGE PEARCE that Subdivisions b and c of Subsection 1 of Section 12.1-13-04 be classified as Class A misdemeanors, and Subdivision a be classed as a Class B misdemeanor.

Judge Pearce noted that Chief Clague's proposal would be dangerous in that it would prohibit prosecution for simple impersonation, and require that a criminal offense be tied to the impersonation. Thereafter, SENATOR JONES' MOTION CARRIED.

The Committee discussed the proposed amendment to Subsection 3 of Section 12.1-16-01 which subsection deals with the "felony-murder" rule. The Committee Counsel stated that the issue was simply whether a person engaged in a felony should be liable for any death that occurs, even though the death is of a fellow participant who is shot by the police. Judge Pearce stated that the section should be amended in accordance with Sgt. MacCarthy's suggestion. IT WAS MOVED

BY JUDGE PEARCE, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED, with the Chairman voting in the negative, that the proposed amendment to Subsection 3 of Section 12.1-16-01 be accepted as drafted.

The Committee considered a proposed amendment to Subsection 2 of Section 12.1-17-01 which would provide that simple assault was a Class C felony when committed upon a peace officer "acting in an official capacity" rather than "on duty". IT WAS MOVED BY JUDGE PEARCE, SECONDED BY SENATOR JONES, AND CARRIED that the proposed amendment to Subsection 2 of Section 12.1-17-01 be accepted as drafted.

The Committee considered the proposed amendment to Subsection 2 of Section 12.1-18-01 which reads as follows:

- 1 2. Kidnapping is a class A felony unless the actor voluntarily releases
- 2 the victim alive and in a safe place prior to (((trial))) arrest, in which
- 3 case it is a class B felony.

The Committee discussed this section at great length, and IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE HEEN, AND LOST that Section 8 be accepted as drafted. No further motion being forthcoming, Section 12.1-18-01 will not be amended.

The Committee considered a proposed amendment to Subsection 2 of Section 12.1-21-02, which reads as follows:

- 1 2. The offense is a class (((B))) A felony if the actor places another
- 2 person in danger of death under circumstances manifesting an extreme
- 3 indifference to the value of human life. Otherwise it is a class C felony.

IT WAS MOVED BY REPRESENTATIVE LUNDENE AND SECONDED BY JUDGE HEEN that the proposed amendment to Subsection 2 of Section 12.1-21-02 be accepted as drafted. Judge Pearce stated that he opposed the motion because the situation which worried Sgt. MacCarthy and which caused him to propose the amendment could be covered by first-degree murder. Thereafter, REPRESENTATIVE LUNDENE'S MOTION LOST.

The Committee considered the proposed amendment to Section 12.1-22-05, which reads as follows:

- 1 12.1-22-05. STOWING AWAY.) A person is guilty of a class A mis-
- 2 demeanor if, knowing that he is not licensed or privileged to do so, he
- 3 surreptitiously remains aboard a vehicle, vessel, or aircraft with intent to
- 4 obtain transportation.

Senator Jones noted that Mr. Lyson had suggested that the word "train" be included in this section. IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE PEARCE, AND CARRIED that Section 12.1-22-05 be amended by inserting the word and punctuation "train," after the word and punctuation "vehicle," on line 3, and that when so amended the section be accepted.

The Committee considered the proposed amendments to Section 12.1-23-06 which deals with unauthorized use of a vehicle and reads as follows:

- 1 12.1-23-06. UNAUTHORIZED USE OF A VEHICLE.)
2 1. A person is guilty of an offense if, knowing that he does not have
3 the consent of the owner, he takes, operates, or exercises control
4 over an automobile, aircraft, motorcycle, motorboat, or other motor-
5 propelled vehicle of another.
6 2. (((It is a defense to a prosecution under this section that the actor
7 reasonably believed that the owner would have consented had he known
8 of the conduct on which the prosecution was based.
9 3.))) The offense is a class C felony if the vehicle is an aircraft or if
10 the value of the use of the vehicle and the cost of retrieval and
11 restoration exceeds five hundred dollars. Otherwise the offense is
12 a class A misdemeanor.

IT WAS MOVED BY JUDGE PEARCE AND SECONDED BY REPRESENTATIVE ROYSE that the word "train," be inserted before the word "automobile," in line 4 of Section 12.1-23-06, and that when so amended the section be accepted.

The Chairman noted that the defense provided by Subsection 2 was designed by the federal drafters to exempt a person from criminal liability where he was a member of the family, for instance. The Chairman read from the comment to Section 1736 of the proposed Federal Criminal Code as follows: "Subsection (2) sets forth a defense to keep family disputes and arguments between friends out of the federal courts. The difficulty of disproving defendants alleged reasonable belief may warrant converting this defense to an 'affirmative defense', which would put the burden of proof on the accused." Thereafter, JUDGE PEARCE'S MOTION CARRIED, with the Chairman and Senator Jones voting in the negative.

The Committee then considered the proposed amendment to Subdivision a of Subsection 1 of Section 12.1-23-09, and the Committee Counsel noted that he was recommending repeal of that subdivision if Sgt. MacCarthy's suggestion were adopted. Sgt. MacCarthy stated that he agreed with the repeal of the subsection. IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE STONE, AND CARRIED that Subdivision a of Subsection 1 of Section 12.1-23-09 be repealed, and that appropriate additional amendments to that section to accommodate the repeal be made.

The Committee considered the proposed amendments to Subsection 1 of Section 12.1-25-02 which would prohibit the supplying of a dangerous weapon to persons who are about to be engaged in a riot. IT WAS MOVED BY SENATOR JONES, SECONDED BY JUDGE HEEN, AND CARRIED that the proposed amendment to Subsection 1 of Section 12.1-25-02 be accepted as drafted.

The Committee considered the proposed amendment to Section 12.1-27-04, which reads as follows:

1 12.1-27-04. INDECENT EXPOSURE.) A person is guilty of a class A
2 misdemeanor if, with intent to arouse or gratify the sexual desire of any
3 person, including the actor, or with intent to alarm, offend, or disturb
4 any person he exposes his genitals or performs any other lewd act under
5 circumstances in which, in fact, his conduct is likely to be observed by a
6 person who would be offended or alarmed.

Sgt. MacCarthy noted that it was his suggestion to delete everything after the word "if" on line 2, delete all of line 3, and delete the words "any person" on line 4. The Chairman wondered whether it should be a crime to simply expose one's genitals without any malicious intent. The Committee Counsel suggested an alternative classification as an infraction where there was no malicious intent. Judge Heen objected to that suggestion on the basis that it was a serious matter to expose oneself, regardless of intent, and that exposure without malicious intent ought to be at least a misdemeanor.

The Committee Counsel then suggested that the underscored language in the proposed amendment to Section 12.1-27-04 be deleted and that another sentence be added at the end of that section to read as follows: "A person is guilty of a class B misdemeanor if he exposes his genitals under circumstances in which, in fact, his conduct is likely to be observed by a person who would be offended or alarmed."

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that Section 12.1-27-04 be amended by deleting all of the underscored material on lines 3 and 4 and by adding the following sentence at the end of the section: "A person is guilty of a class B misdemeanor if he exposes his genitals under the circumstances in which, in fact, his conduct is likely to be observed by a person who would be offended or alarmed."; and that when so amended the section be accepted.

The Committee considered Subsection 4 of Section 12.1-28-01, which reads as follows:

1 4. "Gambling house" means any location or structure, stationary or
2 movable, wherein gambling is permitted or promoted, or where a
3 lottery is conducted or managed. In the application of this definition,
4 any place where gambling apparatus is found is presumed to be a
5 gambling house (((, provided that this presumption shall not apply
6 where cards, dice, or other games are found in a private residence))).

IT WAS MOVED BY SENATOR JONES AND SECONDED BY REPRESENTATIVE ROYSE that triple parentheses be inserted before the word "In" in line 3; that the triple parentheses in line 5 be deleted, and that when so amended the subsection be accepted.

The Committee Counsel suggested that prosecutors would be unhappy with this change, as the presumption may be of value to a prosecutor and allow a prosecution where no "gambling" is in fact occurring, but where he finds slot machines and roulette wheels, etc. Thereafter, THE MOTION CARRIED, with three dissenting votes.

The Committee considered a proposed amendment to Subsection 6 of Section 12.1-32-02, which reads as follows:

- 1 6. If an offender is sentenced to a term of imprisonment, that term
- 2 of imprisonment commences at the time of sentencing, unless,
- 3 upon motion of the defendant, the court orders the term to commence
- 4 at some other time.

The Committee Counsel noted that this amendment was made in response to Judge Thompson's suggestion made at the July meeting of the Committee wherein he asked that some provision be made to allow a court, upon motion of the defendant, to direct that a sentence of imprisonment commence at sometime other than at the time of sentencing. IT WAS MOVED BY REPRESENTATIVE ROYSE, SECONDED BY SENATOR JONES, AND CARRIED that the proposed amendment to Subsection 6 of Section 12.1-32-02 be accepted as drafted.

The Committee considered the first of Sgt. MacCarthy's suggestions which were not in draft form, and specifically the proposed amendment to Subsection 18 of Section 12.1-01-04 which defines "law enforcement officer" or "peace officer". Sgt. MacCarthy was suggesting that the definition contained in Title 12 be utilized. The Committee Counsel requested that the Committee not make this amendment as it would require a great deal of study to see what the effect of such an amendment would be internally in the new Criminal Code. After further discussion, no amendment was forthcoming with respect to the definition of "law enforcement officer".

The Committee next considered Sgt. MacCarthy's proposed amendment to Subdivision b of Subsection 1 of Section 12.1-03-01, which proposed amendment would read as follows:

- 1 "b. With intent that an offense be committed, he commands, induces, procures,
- 2 or aids the other to commit it (((, or, having a legal duty to prevent
- 3 its commission, he fails to make proper effort to do so))); or"

The Committee Counsel suggested that prosecutors would be unhappy with having the language deleted which Sgt. MacCarthy proposed for deletion. He stated that perhaps part of the problem with the subdivision was with the word "legal", and that maybe the situation could be clarified if the word "statutory" was substituted for "legal", thus clarifying the point that the person had to have a specific statutory duty to prevent the commission of a specific type of an offense, and then failed to make a proper effort to do so.

IT WAS MOVED BY SENATOR JONES, SECONDED BY REPRESENTATIVE LUNDENE, AND CARRIED that triple parentheses be inserted around the word "legal" in Subdivision b of Subsection 1 of Section 12.1-03-01, and that the word "statutory" be inserted immediately thereafter; and that when so amended Subdivision b of Subsection 1 of Section 12.1-03-01 be accepted.

The Committee next considered Sgt. MacCarthy's suggestions with respect to Section 12.1-08-06 which relates to escape. Sgt. MacCarthy said he would like to see some provision made to assure that crimes of violence committed during an escape would make the crime of escape a Class A felony. He said he desired this in order to assure the public that the escapee would receive at least as great a sentence as he was serving at the time of the escape.

The Committee Counsel noted that the gist of Sgt. MacCarthy's concern was with the fact that the Code provides (in Section 12.1-32-11) for a legislative philosophy favoring concurrent sentences. Mr. Kelsch suggested that perhaps a provision could be put in Section 12.1-32-11 providing that sentences for crimes committed while involved in an escape should be consecutive. The Committee Counsel stated that that could be done.

The Committee then discussed Section 12.1-32-11, and it was suggested that the word "consecutively" be substituted for the word "concurrently" wherever it appeared in Subsection 1 of Section 12.1-32-11. The Committee Counsel suggested that it would be probably more appropriate to delete Subsection 1 altogether.

IT WAS MOVED BY JUDGE HEEN AND SECONDED BY REPRESENTATIVE STONE that Subsection 1 of Section 12.1-32-11 be deleted and that the remaining subsections of that section be renumbered accordingly. Professor Lockney spoke against the motion noting that Subsection 1 represented the modern trend in penological thought. Thereafter, THE MOTION CARRIED, with the Chairman and Professor Lockney voting in the negative.

The Committee then discussed Sgt. MacCarthy's suggestion that provision be made to ensure that a person who has been convicted of a felony could not hold public office. The Committee Counsel noted that the Committee had passed a study resolution calling for a Legislative Council study of disqualifications which are attendant upon criminal conviction.

Judge Heen suggested that the words "or to a term of probation" be added after the word "imprisonment" in the opening language of Subsection 1 of Section 12.1-33-01. Mr. Kelsch suggested that the whole statutory structure of the Parole Board, as well as the Board itself, should be studied during the next interim. The Chairman inquired of Sgt. MacCarthy whether the study resolution was sufficient and Sgt. MacCarthy replied that it was.

Mr. Kelsch noted that the North Dakota Peace Officers Association had passed a resolution in support of the Criminal Code conditioned upon the changes being suggested by the executive committee (and Sgt. MacCarthy) being made.

Thereafter, the Committee commenced consideration of proposed statutory revisions required as a result of the meeting of the Committee during March 1974. The Committee considered Section 14-10-16, which reads as follows:

1 14-10-16. (((BIRTHDAY))) IDENTIFICATION CARDS - APPLICATION -
2 MISREPRESENTATION OF AGE - FALSIFYING CARDS - PENALTY.) (((Every)))
3 1. A person (((who attains the age of eighteen years))) may apply
4 to the clerk of the district court of the county in which the person resides
5 or is temporarily located, on a form provided by the clerk of the district
6 court, for an (((eighteenth birthday))) identification card, which shall
7 be accompanied with a photograph of the applicant. The applicant
8 shall present with the application his birth certificate or other satisfactory
9 evidence (((that he is eighteen years))) of his age, and shall pay a
10 fee of (((one dollar and fifty cents))) two dollars, to be deposited in the
11 county general fund. The clerk shall file the application and issue

12 the card to the applicant in a form prescribed by the clerk. The
13 applicant shall sign the card with his name, and the card ((shall))
14 may thereafter be exhibited ((upon demand of a licensee, employee,
15 or other person selling, giving, or disposing of alcoholic beverages
16 or of any peace officer)) as evidence of the cardholder's age. Any
17 misrepresentation of age or other deceit practice in the procurement
18 of a card, or ((the)) use or exhibition for the purpose of ((procur-
19 ing alcoholic beverages of a card belonging to a person other than the
20 person exhibiting the card)) misleading any other person as to the
21 age or identity of the user, or use of the card of another, is a class A
22 misdemeanor.

23 2. It shall be a class C felony for any person, except that person or
24 persons authorized by the clerk of district court under this section,
25 to print or otherwise produce or reproduce cards which are intended
26 to be utilized as identification cards issued pursuant to this section.
27 It shall be a class A misdemeanor to display a card issued under this
28 section which has been altered in any manner so as to not truly indicate
29 the bearer's identity or age.

The Committee Counsel noted that this section had been amended to provide for a general purpose "I. D. card", rather than an "18th birthday" card as it presently provides for. Representative Hilleboe noted that the police are issuing I. D. cards in Fargo. The Committee Counsel stated that was probably being done under a Fargo ordinance, rather than under state law. Judge Heen noted that the clerks of district court were probably too busy to handle the situation, and there should be provision for the clerks to designate some other person to handle the issuance of these identification cards.

IT WAS MOVED BY REPRESENTATIVE HILLEBOE AND SECONDED BY JUDGE HEEN that the words ", or a person designated by the clerk," be inserted after the word "county" in line 4 of Section 14-10-16.

Representative Lundene inquired as to whether Section 14-10-16 would ensure that the identification cards which were issued would be uniform. The Committee Counsel replied that they would not necessarily have to be. The way to ensure that they would be uniform would be to have the form provided by the Health Department rather than the clerk of each district court. Judge Heen noted that in Devils Lake numerous interested persons had gotten together and designed the form, and their form provided information on more things than the cardholder's age. Thereafter, REPRESENTATIVE HILLEBOE'S MOTION CARRIED.

Representative Hilleboe suggested that the reference to birth certificates in line 8 of Section 14-10-16 should be deleted, and reference should only be to satisfactory evidence of age. He stated this was because anyone could get a birth certificate for anyone else, and they did not necessarily prove the holder's

age. After further discussion, IT WAS MOVED BY REPRESENTATIVE HILLEBOE AND SECONDED BY REPRESENTATIVE ROYSE that Section 14-10-16 be adopted as amended. Representative Lundene reiterated that the card should be uniform throughout the State. The Committee Counsel again suggested that the words "clerk of the district court" be inserted in triple parentheses, and that the words "state department of health" be inserted immediately thereafter. Thereafter, REPRESENTATIVE HILLEBOE'S MOTION CARRIED.

The Committee next considered the proposed creation of Section 25-01-16 which would provide a general prohibition on treating persons admitted to a state institution under Title 25 of the Century Code with severity or cruelty. The section was being revised in accordance with directions received at the April 25-26, 1974, meeting of the Committee.

After discussion, IT WAS MOVED BY REPRESENTATIVE HILLEBOE, SECONDED BY SENATOR JONES, AND CARRIED that Section 25-01-16 be accepted as drafted.

The Committee then considered a redraft of Section 49-13-20 which had been previously considered during the July 25-26 meeting, and had been held in abeyance. The Committee Counsel noted that he had talked with Mr. Phil Davison who represented the railroads, and Mr. Davison had informed him that the conductor was equivalent to the captain of a ship, while the engineer was equivalent to the officer of the deck. He stated that Mr. Davison had indicated a desire that Section 49-13-20 be repealed, and that an intoxicated engineer be subject to civil liability for any damage caused, or to a charge of negligent homicide if a death occurs.

IT WAS MOVED BY REPRESENTATIVE STONE AND SECONDED BY REPRESENTATIVE HILLEBOE that Section 49-13-20 be repealed. Professor Lockney opposed the motion, and stated that more information was needed from the railroads before a decision could be made.

SENATOR JONES MADE A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE ROYSE, AND CARRIED that the present language of Section 49-13-20 be classified as a Class A misdemeanor, and that when so classified, the current language be readopted.

The Committee considered a proposed amendment to Subsection 26 of Section 12.1-01-04 which defines the word "property". The subsection was proposed for amendment to ensure that the word "property", when it is used in a context suggesting that it is or could be the subject of an offense, includes property owned by a government. The Committee Counsel stated that he has had a change of heart concerning this amendment, and felt that it was not necessary as property should automatically be construed to include property of the government. There being no action on the proposed amendment, the Committee passed on to the next proposed amendment.

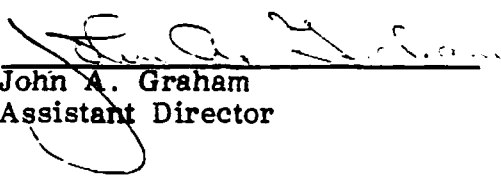
The next proposed amendment was to Subsection 1 of Section 12.1-32-02 which is the basic sentencing alternative subsection. The Committee Counsel noted that it had been amended to provide that the court could sentence a convicted offender to pay the reasonable costs of his prosecution. The Committee Counsel said that this amendment was being suggested because of Judge Thompson's request at the July meeting of the Committee.

Professor Lockney inquired as to why a provision like this was necessary. He asked whether it would not interfere with a man's right to trial if he knows that he has to pay costs should he be convicted.

Judge Heen noted that the district courts and other courts had traditionally been able to assess costs against a convicted offender. Professor Lockney stated that he disagreed very strongly with Judge Thompson's suggestion, and hoped that the Committee would not adopt the proposed amendment to Subsection 1 of Section 12.1-32-02. Judge Heen stated that he did not believe that the assessment of costs resulted in a denial of the right to trial and would like to see the present practice continued.

After further discussion, IT WAS MOVED BY PROFESSOR LOCKNEY, SECONDED BY JUDGE HEEN, AND CARRIED that the Committee defer further consideration of the proposed amendment to Subsection 1 of Section 12.1-32-02 until the next meeting, and that the staff be directed to do some research into the question of whether the assessment of costs against a convicted offender results in a denial of the right to trial.

Thereafter, the Chairman declared that, without objection, the meeting would adjourn, subject to the call of the Chair. There being no objection, the meeting adjourned at 5:15 p.m. on Tuesday, October 1, 1974.



John A. Graham
Assistant Director

ABORTION

Alternative No. 3

STAFF COMMENT: This alternative is based on the remarks of Dr. Fortman, the head of the North Dakota Right to Life Association, presented to the Committee on Judiciary "A" on July 26, 1974, and on the "Montana Abortion Control Act". This draft is not to be construed as being endorsed or supported by Dr. Fortman or the North Dakota Right to Life Association.

- 1 Chapter 14-02.1
- 2 NORTH DAKOTA ABORTION CONTROL ACT
- 3 14-02.1-01. PURPOSE.) The purpose of this chapter is to protect,
- 4 according to the highest standards, unborn human life and those persons
- 5 conceiving unborn human life.
- 6 14-02.1-02. DEFINITIONS.) As used in this chapter:
- 7 1. "Abortion" means the termination of human pregnancy with an
- 8 intention other than to produce a live birth or to remove a dead
- 9 embryo or fetus.
- 10 2. "Hospital" means an institution licensed by the state department
- 11 of health under chapter 23-16, and any hospital operated by the
- 12 United States or this state.
- 13 3. "Licensed physician" means a person who is licensed to prac-
- 14 tice medicine or osteopathy under this chapter, or a physician
- 15 practicing medicine or osteopathy in the armed services of the
- 16 United States, or in the employ of the United States.
- 17 4. "Medical facility" means a facility, other than a hospital, such
- 18 as a medical clinic, that has adequate staff and services neces-
- 19 sary to perform an abortion safely, to provide aftercare, and
- 20 to cope with any complication or emergency that might reason-
- 21 ably be expected to arise therefrom; or that has arrangements
- 22 with a nearby hospital to provide those services.
- 23 5. "Informed consent" means voluntary consent to abortion by the
- 24 woman upon whom the abortion is to be performed only after

- 1 full disclosure to her by the physician who is to perform the
2 abortion of such of the following information as is reasonably
3 chargeable to the knowledge of such physician in his profes-
4 sional capacity:
- 5 a. The state of development of the fetus, the method of abor-
6 tion to be utilized, and the effects of such abortion method
7 upon the fetus.
 - 8 b. The physical and psychological effects of abortion.
 - 9 c. Available alternatives to abortion, including childbirth and
10 adoption.

11 Such informed consent may be evidenced by a written statement, in
12 the form prescribed by the state department of health and approved
13 by the attorney general, signed by the physician and the woman
14 upon whom the abortion is to be performed, in which statement the
15 physician certifies that he has made the full disclosure provided
16 above; and in which statement the woman upon whom the abortion is
17 to be performed acknowledges that the above disclosures have been
18 made to her and that she voluntarily consents to the abortion.

19 6. "Viable" means the ability of a fetus to live outside the mother's
20 womb, albeit with artificial aid.

21 14-02.1-03. CONSENT TO ABORTION.)

- 22 1. No abortion may be performed upon any woman in the absence
23 of informed consent.
- 24 2. No abortion, other than an abortion necessary to preserve her
25 life, may be performed upon any woman under eighteen years
26 of age in the absence of:
 - 27 a. The written consent of her husband, unless her husband is
28 voluntarily separated from her; or
 - 29 b. If the woman is unmarried and under eighteen years of age,
30 the written consent of a parent, if living, or the custodian
31 or legal guardian of such woman.

32 (Alternative I)

- 33 3. Informed consent of the pregnant woman is not required in the
34 event of a medical emergency when the woman is incapable of
35 giving her consent, if a licensed physician certifies the abor-

1 tion is necessary to preserve her life.

2 (Alternative II)

3 3. Informed consent of the pregnant woman is not required if she
4 is declared by a county board of mental health to be mentally
5 incapable of giving informed consent and a licensed physician
6 certifies that the abortion is necessary to preserve her life.

7 However, if a medical emergency exists requiring an immedi-
8 ate abortion to preserve the life of the pregnant woman and a
9 licensed physician so certifies in writing, the declaration of
10 mental incapacity by the county board of mental health is
11 waived.

12 4. No executive officer, administrative agency, or public employ-
13 ee of the state of North Dakota or of any local governmental body
14 has power to issue any order requiring an abortion or shall co-
15 erce any woman to have an abortion, nor shall any person co-
16 erce any woman to have an abortion.

17 14-02.1-04. LIMITATIONS ON THE PERFORMANCE OF ABORTIONS
18 - PENALTY.)

19 1. During the first twelve weeks of pregnancy, an abortion may be
20 performed by a licensed physician in an environment with such
21 equipment and services available as to meet all reasonable likely
22 emergencies.

23 2. After the first twelve weeks of pregnancy, but prior to the time
24 at which the fetus is viable, an abortion may be performed in a
25 licensed hospital or medical facility by a licensed physician.

26 3. After the fetus is viable, an abortion may be performed by a
27 licensed physician in a hospital, if, in the medical judgment of
28 the physician, the abortion is necessary to preserve the life or
29 health of the mother. An abortion under this subsection may
30 only be performed if:

31 a. The above-mentioned medical judgment of the physician who
32 is to perform the abortion is first certified to by him in
33 writing, setting forth in detail the facts upon which he re-
34 lies in making such judgment; and

35 b. Two other licensed physicians have first examined the patient

1 and concurred in writing with such judgment.

2 The foregoing certification and concurrence is not required if a
3 licensed physician certifies the abortion is necessary to preserve
4 the life of the mother.

5 The timing and procedure used in performing an abortion under this
6 subsection must be such that the viability of the fetus is not intention-
7 ally or negligently endangered. The fetus may be intentionally en-
8 dangered or destroyed only if necessary to preserve the life or health
9 of the mother.

10 4. Any licensed physician who performs an abortion without comply-
11 ing with the provisions of this section is guilty of a class A misde-
12 meanor.

13 5. It shall be a class B felony for any person, other than a physician
14 licensed under chapter 43-17, to perform an abortion in this state.

15 14-02.1-05. PRESERVING THE LIFE OF A VIABLE FETUS - PENALTY.)

16 The licensed physician performing an abortion must extend all reasonable
17 medical efforts to preserve the life and health of a fetus which has survived
18 the abortion and has been born alive as a premature infant viable by medical
19 standards. Failure to do so is a [class C felony] [class A misdemeanor].

20 14-02.1-06. FETAL EXPERIMENTATION - PENALTY.) No person may
21 use any premature infant born alive for any type of scientific research, or
22 other kind of experimentation except as necessary to protect or preserve the
23 life and health of such premature infant born alive. Any person violating
24 the provisions of this section is guilty of a [class C felony] [class A misde-
25 meanor].

26 14-02.1-07. SALE OF FETUS - PENALTY.) It shall be a class A mis-
27 demeanor for any person to sell or to buy a viable or non-viable fetus
28 whether in its mother's womb or removed therefrom.

29 14-02.1-08. SOLICITING ABORTIONS.) No licensed physician, medi-
30 cal facility, or licensed hospital, or any person employed by the licensed
31 physician, licensed hospital, or medical facility, nor any other person shall
32 advertise or participate in any form of communication having as its purpose
33 the inviting, inducing, or attracting of a pregnant woman to undergo an
34 abortion.

35 (Alternative No. 1)

1 14-02.1-09. REPORTING ABORTION COMPLICATIONS.) Any abor-
2 tion involving maternal death or complications must be reported in writing
3 to the state department of health, setting forth the particulars involved in
4 said maternal death or complications. This report shall be confidential and
5 shall not be divulged as to names and identity without an order of the dis-
6 trict court, although it may be used by the state department of health for
7 statistical purposes or for issuing appropriate medical reports to licensed
8 physicians, licensed hospitals, or medical facilities for their use and instruc-
9 tion.

10 (Alternative No. II)

11 14-02.1-10. REPORTING OF PRACTICE OF ABORTION.)

- 12 1. Every medical facility or hospital in which an abortion is per-
13 formed shall keep on file, in the form prescribed by the state
14 department of health, a statement dated and certified by the
15 licensed physician who performed the abortion setting forth such
16 information with respect to the abortion as the state department
17 of health by regulation shall require; including, but not limited
18 to, information on prior pregnancies; the medical procedure em-
19 ployed to administer the abortion; the gestational age of the fetus;
20 the vital signs of the fetus after abortion, if any; and, if perform-
21 ed after viability, the medical procedures employed to protect
22 and preserve the life and health of the fetus.
- 23 2. The licensed physician performing an abortion shall cause such
24 pathology studies to be made in connection therewith as the state
25 department of health shall require by regulation, and the medi-
26 cal facility or hospital shall keep the reports thereof on file.
- 27 3. In connection with an abortion, the medical facility or hospital
28 shall keep on file the original of each of the documents required
29 by this Act relating to informed consent.
- 30 4. Such medical facility or hospital shall, within thirty days after
31 the abortion, file with the state department of health a report,
32 upon a form prescribed by the state department of health and
33 certified by the custodian of the records or licensed physician
34 in charge of such medical facility or hospital, setting forth all
35 of the information required in subsections 1, 2, and 3 of this sec-

1 tion, except such information as would identify any individual
2 involved with the abortion. The report shall exclude copies of
3 any documents required to be filed by subsection 3 of this sec-
4 tion, but shall certify that such documents were duly executed
5 and are on file.

6 5. All reports and documents required by this Act shall be confi-
7 dential, subject to such disclosure as is permitted by law; ex-
8 cept that statistical data not identifying any individual involved
9 in an abortion shall be made public by the state department of
10 health annually, and the report required by subsection 4 of this
11 section to be filed with the state department of health shall be
12 available for public inspection except insofar as it identifies any
13 individual involved in an abortion. Names and identities of per-
14 sons submitting to abortion shall remain confidential among medi-
15 cal and medical support personnel directly involved in the abor-
16 tion, and among persons working in the facility where the abor-
17 tion was performed whose duties include billing the patient or
18 submitting claims to an insurance company, keeping facility
19 records, or processing abortion data required by state law.

20 6. The department shall report to the attorney general any appar-
21 ent violation of this Act.

22 14-02.1-11. REFUSAL TO PARTICIPATE IN ABORTION.) No licensed
23 physician shall be required to perform an abortion when he refuses to do so
24 as a matter of conscience, nor shall any licensed hospital or medical facility
25 be required to allow its facilities to be used for the performance of an abor-
26 tion if that licensed hospital or medical facility chooses not to allow its facil-
27 ities to be used for abortions other than an abortion necessary to preserve
28 the life or health of the mother. No person employed by a licensed physician
29 or a licensed hospital or a medical facility shall be required to participate or
30 assist in the performance of an abortion other than an abortion to preserve
31 the life or health of the mother. No licensed physician, licensed hospital,
32 medical facility, or other person refusing to participate in an abortion under
33 the terms of this section, shall be subject to civil or criminal liability nor
34 shall said refusal serve as the basis for discriminatory, disciplinary, or
35 recriminatory action by any person. Any person required to assist in the

1 performance of an abortion after they have so expressed their refusal to
2 participate under the terms of this section shall be entitled to bring an ac-
3 tion for damages for any injury suffered thereby .

4 14-02.1-12. PROTECTION OF FETUS BORN ALIVE - PENALTY.)

5 1. A person is guilty of a class C felony if he knowingly, or negli-
6 gently, causes the death of a viable fetus born alive.

7 2. Whenever a fetus which is the subject of abortion is born alive
8 and is viable, it becomes an abandoned and deprived child, un-
9 less:

10 a. The termination of the pregnancy is necessary to preserve
11 the life of the mother; or

12 b. The mother and her spouse, or either of them, have agreed
13 in writing in advance of the abortion, or within seventy-two
14 hours thereafter, to accept the parental rights and respon-
15 sibilities for the fetus if it survives the abortion procedure.

16 14-02.1-13. HUMANE DISPOSAL OF NON-VIABLE FETUS.) The li-
17 censed physician performing the abortion, if performed outside of a licensed
18 hospital or medical facility, must see to it that the fetus is disposed of in a
19 humane fashion under regulations established by the state department of
20 health. A licensed hospital or medical facility in which an abortion is per-
21 formed must dispose of a dead fetus in a humane fashion in compliance with
22 regulations promulgated by the state department of health.

23 14-02.1-14. CONCEALING STILLBIRTH OR DEATH OF INFANT -

24 PENALTY.) It shall be a class A misdemeanor for a person to conceal the
25 stillbirth of a fetus or to fail to report to a physician or to the county coro-
26 ner the death of an infant under two years of age.

27 14-02.1-15. GENERAL PENALTY.) A person violating any provision
28 of this chapter for which another penalty is not specifically prescribed shall
29 be guilty of a class A misdemeanor. Any person willfully violating a rule or
30 regulation promulgated under this chapter is guilty of an infraction.

31 14-02.1-16. SHORT TITLE.) This chapter may be cited as the North
32 Dakota Abortion Control Act.

STAFF COMMENT: Section 23-16-14 (medical personnel not required to participate in abortion), and Chapter 12.1-19 (the abortion statutes contained in the new Criminal Code) would be repealed if this version were adopted.

PROPOSED ALTERNATIVE SECTION 14-02.1-03 OF
THE THIRD ALTERNATIVE ABORTION CONTROL ACT

- 1 14-02.1-03. CONSENT TO ABORTION.)
- 2 1. No abortion may be performed upon any woman in the absence
- 3 of informed consent.
- 4 2. No abortion, other than an abortion necessary to preserve her
- 5 life, may be performed upon any woman after the fetus is viable
- 6 in the absence of:
- 7 a. The written consent of her husband, unless her husband is
- 8 voluntarily separated from her; or
- 9 b. If the woman is unmarried and under eighteen years of age,
- 10 the written consent of a parent, if living, or the custodian
- 11 or legal guardian of such woman.

_____BILL NO._____

Introduced by

Alternative 4 - Obscenity Control

1 A BILL for an Act to provide for control of obscene materials
2 and performances; to repeal chapter 12.1-27 of the North Dakota
3 Century Code as contained in section 26 of chapter 116 of the
4 1973 Session Laws of the state of North Dakota and subsection 62
5 of section 40-05-01 of the North Dakota Century Code, relating
6 to controls on dissemination of obscene materials; and providing
7 penalties.

8

9 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
10 STATE OF NORTH DAKOTA;

11

12 SECTION 1. OBSCENITY - DEFINITIONS - DISSEMINATION -
13 CLASSIFICATION OF OFFENSES.)

- 14 1. A person is guilty of a class A misdemeanor if,
15 knowing of its character, he disseminates obscene
16 material, or if he produces, transports, or sends
17 obscene material with intent that it be disseminated.
- 18 2. A person is guilty of a class A misdemeanor if he
19 presents or directs an obscene performance for
20 pecuniary gain, or participates in any portion of a
21 performance which contributes to the obscenity of the
22 performance as a whole.
- 23 3. A person is guilty of a class A misdemeanor if he, as
24 owner or manager of an establishment licensed under
25 section 5-02-01, permits an obscene performance in his
26 establishment. A person is guilty of a class A mis-
27 demeanor if he participates, whether or not for com-
28 pensation, in an obscene performance in an establish-
29 ment licensed under section 5-02-01.

STAFF COMMENT: This subsection is in accordance with Chief Anderson's suggestions at the last meeting, and is an attempt to take advantage of the United States Supreme Court's decision in California v. LaRue, 409 U.S. 109 (1972), wherein the Court upheld California Department of Alcoholic Beverage Control regulations prohibiting explicitly sexual live entertainment or films in bars, basing its decision on the States' power to control the manner in which liquor is dispensed under the Twenty-first Amendment.

- 1 4. As used in this Act, the terms "obscene material" and
2 "obscene performance" mean material, including written
3 material, or a performance which:
 - 4 a. Taken as a whole, the average person, applying con-
5 temporary North Dakota standards, would find pre-
6 dominantly appeals to a prurient interest;
 - 7 b. Depicts or describes in a patently offensive manner
8 sexual conduct as described in subsection 7 of
9 this section; and
 - 10 c. Taken as a whole, lacks serious literary, artistic,
11 political, or scientific value.
- 12 That material or a performance is obscene shall be
13 judged with reference to ordinary adults, unless it
14 appears from the character of the material or the
15 circumstances of its dissemination to be designed for
16 minors or other specially susceptible audience, in
17 which case, the material or performance shall be
18 judged with reference to that type of audience.
- 19 5. As used in this Act, the term "disseminate" means to
20 sell, lease, advertise, broadcast, exhibit, or distribute
21 for pecuniary gain.
- 22 6. As used in this Act, the term "material" means any
23 physical object, including any type of sound recording,
24 used as a means of presenting or communicating informa-
25 tion, knowledge, sensation, image, or emotion to or
26 through a human being's receptive senses.
- 27 7. As used in this Act, the term "performance" means any
28 play, motion picture, television program, dance, or
29 other exhibition presented before an audience.
- 30 8. As used in this Act, the term "sexual conduct" means
31 actual or simulated:

- 1 a. Sexual intercourse,
- 2 b. Sodomy,
- 3 c. Sexual bestiality,
- 4 d. Masturbation,
- 5 e. Sado-masochistic abuse,
- 6 f. Excretion,
- 7 or a lewd exhibition of the male or female genitals.
- 8 As used in this subsection, the term "sodomy" means
- 9 contact between the penis and the anus, the mouth and
- 10 the penis, the mouth and the vulva, and the mouth and the
- 11 anus. As used in this subsection, the term "sado-
- 12 masochistic abuse" means a depiction or description of
- 13 flagellation or torture by or upon a person who is nude
- 14 or clad in undergarments or in a bizarre or revealing
- 15 costume; or the condition of being fettered, bound, or
- 16 otherwise physically restrained on the part of one so
- 17 clothed.

- 18 9. As used in this Act, the term "written material" means
- 19 any book, magazine, pamphlet, newspaper, or other article
- 20 made out of paper and containing printed, typewritten,
- 21 or handwritten words, or pictures, or both.

22 SECTION 2. PROMOTING OBSCENITY TO MINORS - DEFINITIONS.)

23 As used in this section and in section 12.1-27-03:

- 24 1. "Promote" means to produce, direct, manufacture, issue,
- 25 sell, lend, mail, publish, distribute, exhibit, or
- 26 advertise.
- 27 2. "Harmful to minors" means that quality of any description
- 28 or representation, in whatever form of sexual conduct
- 29 or sexual excitement, when such description or represen-
- 30 tation:
 - 31 a. Considered as a whole, appeals to the prurient
 - 32 sexual interest of minors;
 - 33 b. Is patently offensive to prevailing standards in the
 - 34 adult community in North Dakota as a whole with
 - 35 respect to what is suitable material for minors; and
 - 36 c. Considered as a whole, lacks serious literary,
 - 37 artistic, political, or scientific value for minors.

1 3. "Sexual excitement" means the condition of human male
2 or female genitals when in a state of sexual stimulation
3 or arousal.

4 SECTION 3. PROMOTING OBSCENITY TO MINORS - MINOR PERFORM-
5 ING IN OBSCENE PERFORMANCE - CLASSIFICATION OF OFFENSES.)

6 1. It shall be a class C felony for a person to knowingly
7 promote to a minor any material or performance which
8 is harmful to minors, or to admit a minor to premises
9 where a performance harmful to minors is exhibited or
10 takes place.

11 2. It shall be a class C felony to permit a minor to
12 participate in a performance which is harmful to minors.

13 SECTION 4. DEFINITIONS.) As used in sections 5 through 11,
14 unless the context otherwise requires:

15 1. "Actual defendant" means any party or intervenor in
16 civil proceedings commenced under this Act whose interest
17 was in showing that material or a performance was not
18 obscene.

19 2. "Constructive defendant" means any person, other than an
20 actual defendant, who is given actual prior notice in
21 writing of the initiation of a civil proceeding under
22 this Act, and who is also given actual notice in writing
23 of the final judgment resulting from that civil proceeding,
24 where that judgment is that certain material or a per-
25 formance is obscene and the commercial interest of the
26 person receiving notice will be adversely affected by
27 the judgment.

28 3. "Law enforcement officer" means the attorney general,
29 a state's attorney, or a sheriff, or any deputy or
30 assistant of any of the named officers.

31 SECTION 5. CIVIL PROCEEDING A PREREQUISITE TO CRIMINAL
32 LIABILITY.) A criminal prosecution for violation of section 1 or
33 section 3 of this Act relating to the dissemination of written
34 material shall not be commenced against a person until the written
35 material which the person may be charged with disseminating has

1 been adjudged obscene in a civil proceeding in accordance with
2 sections 6 through 8 of this Act.

3 SECTION 6. COMMENCEMENT OF CIVIL PROCEEDING - INTERVENTION -
4 SEIZURE OF MATERIALS.)

- 5 1. Whenever any law enforcement officer has cause to believe
6 that a person is disseminating, or will disseminate,
7 obscene written material, the officer may institute
8 a civil proceeding in the district court for the county
9 wherein the alleged dissemination is taking place, or is
10 about to take place. The civil proceeding will be for
11 the purpose of determining whether a particular piece of
12 written material is or is not obscene material, and the
13 district court, at the close of the proceeding, shall
14 enter its declaratory judgment determining that question.
- 15 2. Any person about to disseminate written material chal-
16 lenged in a civil proceeding under this chapter may
17 intervene in that civil proceeding as a matter of right,
18 and thereupon shall have all the rights of an original
19 party to the proceeding, and will be bound by any
20 judgment entered in the proceeding.
- 21 3. The appropriate law enforcement officer must give actual
22 prior written notice that he is about to institute a civil
23 proceeding to any person about to disseminate said
24 materials if said person is to be a constructive
25 defendant.
- 26 4. Upon issuance of a search warrant by a district judge, the
27 appropriate legal officer may seize a single copy of the
28 allegedly obscene written material to secure and pre-
29 serve evidence for the civil, and any possible crimi-
30 nal, proceedings under this Act, subject to the following
31 provisions:
 - 32 a. If only a single copy of the material is available
33 within the jurisdiction, the defendant shall either
34 provide a duplicate or make the original available
35 for duplication, at the county's expense, by the
36 court during time periods when the material is not

1 on sale or exhibition.
2 b. If only a single copy of such materials is available
3 within the jurisdiction and circumstances make
4 duplication either impossible or impractical, the
5 defendant shall immediately make the single copy
6 available for viewing by the court and subsequently
7 available for viewing at trial.

8 SECTION 7. PROCEDURES - EXPANDED DISTRICT COURT - APPEAL.)

9 1. Any party shall have the right to a trial by the court,
10 or by an expanded district court consisting of three
11 district judges, chosen as provided in this subsection.
12 When an expanded district court is demanded by a party,
13 the district judge shall notify the chief justice of
14 the supreme court of that fact, and the chief justice,
15 within five days after receiving the notice, shall
16 appoint two other district judges to sit with the
17 district judge before whom the proceeding was originally
18 brought. The decision of an expanded district court may
19 be rendered by any two of the three judges sitting. A
20 court, including an expanded district court, shall give
21 priority to proceedings brought under section 6 of this
22 Act.

23 2. Either party, or an intervenor, may, if aggrieved by the
24 court's decision, appeal to the supreme court in the
25 manner provided in the rules of appellate procedure.

26 SECTION 8. JUDGMENT - EFFECT - NOTICE TO CONSTRUCTIVE
27 DEFENDANTS - USE IN CRIMINAL PROSECUTIONS.)

28 1. If the court finds the written material not to be
29 obscene, the court shall enter said declaration in the
30 judgment and dismiss the suit.
31 2. If the court finds the written material to be obscene,
32 the court may in the judgment or subsequent order of
33 enforcement enter a permanent injunction against any
34 party or intervenor in the civil proceedings prohibiting
35 said party or intervenor from disseminating the materials
36 declared to be obscene.

- 1 3. The declaration obtained pursuant to this section
- 2 may be used to establish scienter in a subsequent
- 3 criminal prosecution under sections 1 or 3.
- 4 4. The declaration obtained pursuant to this section may be
- 5 used for the purposes stated in subsections 2 and 3 and
- 6 for no other purposes.
- 7 5. The appropriate law enforcement officer must give actual
- 8 written notice of the final judgment to any person who
- 9 is, or is about to, disseminate written material de-
- 10 clared obscene in order to perfect his status as a
- 11 constructive defendant.

12 SECTION 9. PRELIMINARY INJUNCTION - LIMITATIONS.)

- 13 1. The appropriate law enforcement officer may seek a
- 14 preliminary injunction on notice to all the parties and
- 15 intervenors. The district court may grant the application
- 16 for a preliminary injunction, if, in the discretion of
- 17 the court, the written material itself or the manner
- 18 in which it is being disseminated poses an immediate
- 19 danger to the community.
- 20 2. Except as provided in subsection 1, no temporary or
- 21 preliminary injunction, ex parte or otherwise, shall be
- 22 issued in proceedings brought under this Act.

23 SECTION 10. CONFLICTING DECISIONS - RESOLUTION.) In the

24 event the same written material is declared to be obscene

25 in one jurisdiction in the state and not obscene in another

26 jurisdiction, there shall be no criminal prosecution

27 based on the declaration of obscenity until the matter

28 shall have been finally resolved by application to the

29 supreme court of this state. Any party, including con-

30 structive defendants, shall have the right, at any time

31 such a conflict exists, to petition the supreme court

32 to review such conflicting decisions and to finally

33 determine the question.

34 SECTION 11. SEIZURE OF OBSCENE MATERIALS - PROCEDURE.)

35 Allegedly obscene material, except obscene written material subject

36 to seizure under subsection 4 of section 6 of this Act, which is

1 being offered for sale to the public may be seized under a search
2 warrant issued and executed in accordance with this section. When
3 a law enforcement officer has reasonable cause to believe that
4 material is obscene, he may request a magistrate to accompany him
5 to the place where the material is being offered for sale. If the
6 magistrate has probable cause to believe that the material would
7 be found to be obscene material as defined in this Act, he may,
8 immediately or later, issue a warrant authorizing the seizure of
9 the material for possible use as evidence in a criminal proceeding.

10 SECTION 12. EXCEPTIONS TO CRIMINAL LIABILITY.) Sections 1 and
11 3 shall not apply to the possession or distribution of material
12 in the course of law enforcement, judicial, or legislative activi-
13 ties; or to the possession of material, other than written material,
14 in the course of bona fide school, college, university, museum, or
15 public library activities, or in the course of employment of such
16 an organization or retail outlet affiliated with and serving the
17 educational purposes of such an organization.

18 SECTION 13. STATE PRE-EMPTION OF LOCAL LAWS REGULATING
19 OBSCENITY.) This Act shall be applicable and uniform throughout
20 the state, and no political subdivision shall enact new, or enforce
21 existing, ordinances or resolutions regulating or prohibiting the
22 dissemination of obscene materials, or controlling obscene per-
23 formances.

24 SECTION 14. REPEAL.) Chapter 12.1-27 of the North Dakota
25 Century Code as contained in section 26 of chapter 116 of the 1973
26 Session Laws of the state of North Dakota and subsection 62 of
27 section 40-05-01 of the North Dakota Century Code are hereby
28 repealed.

1 45-11-08. UNLAWFUL USE OF FICTITIOUS PARTNERSHIP NAME.)
 2 (((Every person transacting))) It shall be unlawful for any person to transact
 3 business in the name of a person, as a partner, who is not interested in his
 4 firm, or (((transacting))) to transact business under a firm name in which the
 5 designation "and company" or "& Co." is used without representing an actual
 6 partner, except in (((the))) cases in which the continued use of a copartner-
 7 ship name is authorized by law (((, is guilty of a misdemeanor))).

8
 9 45-11-09. GENERAL PENALTY.) Any person violating any provision
 10 of this chapter for which another penalty is not specifically set forth shall be
 11 guilty of a class A misdemeanor.

1 51-10-05. ADVERTISING, OFFERING OR SELLING ARTICLE AT LESS THAN
 2 COST - PENALTY.) Any retailer or wholesaler who shall advertise, offer to
 3 sell, or sell any article of merchandise at less than cost to such retailer or whole-
 4 saler as defined in this chapter, or who gives, offers to give, or advertises the
 5 intent to give away any article of merchandise, with the intent, or with the effect
 6 of injuring competitors and destroying competition, shall be guilty of a class A
 7 misdemeanor. (((Proof of any such advertising, offer to sell or to give away,
 8 or sale or gift, of any article of merchandise by any retailer or wholesaler at
 9 less than cost, as defined in this chapter, shall be prima facie evidence of a
 10 sale below cost.)))

1 42-02-01. WHO MAY BRING ABATEMENT.) The attorney general, his
 2 assistant, the state's attorney, or any citizen of the county where a (((common)))
 3 nuisance exists or is maintained, may bring an action in the name of the state
 4 to abate and perpetually to enjoin the nuisance.

1 42-02-02. INJUNCTION - PROCEEDINGS.) If the action is brought by a
 2 citizen, he shall give a bond in an amount sufficient to cover the costs of such
 3 action as the court may direct. An injunction shall be granted at the commence-
 4 ment of an action for the abatement of a (((common))) nuisance in the usual
 5 manner of granting injunctions, except that the affidavit or complaint, or both,
 6 may be made by the state's attorney, the attorney general, or his assistant,
 7 upon information and belief. When an injunction, either temporary or permanent,
 8 has been granted under the provisions of this section, it shall be binding on
 9 the defendant or defendants throughout the entire state.

1 42-02-04. (((COMMON))) NUISANCE - ABATEMENT.) If a place is found,
2 upon the judgment of a jury, court, or judge having jurisdiction, to be a (((com-
3 mon))) nuisance. (((the sheriff, his deputy, or any constable of the proper
4 county, or the police or marshal of any city or village))) a law enforcement
5 officer of the county or city where the nuisance is located, shall (((be directed
6 to))) close and abate such place by taking possession thereof, together with all
7 personal property used in keeping and maintaining (((such))) the nuisance, and
8 (((to))) close the same against use by anyone, and (((to))) keep it closed for
9 a period of one year from the date of the judgment decreeing it to be a (((com-
10 mon))) nuisance. After judgment, such officer publicly shall destroy such personal
11 property used in keeping and maintaining the nuisance. Any person breaking
12 open said building, erection, or place, or using the premises so ordered to be
13 closed, shall be punished for contempt as provided by this chapter.

1 42-02-07. EVIDENCE ADMISSIBLE.) In a prosecution under this chapter
2 in a civil proceeding, evidence of the general reputation of the house, building,
3 room, or place designated in the complaint shall be admissible for the purpose
4 of proving the existence of a (((common))) nuisance. Proof of the fact that
5 any person has pleaded guilty to violation of the provisions of any city ordinance
6 or any other law of the land enacted to prevent a (((common))) nuisance also
7 is admissible, if it can be shown further that such person, when pleading guilty,
8 was or had been, at the time and place mentioned in the complaint in the action
9 then pending before the court, a frequenter or inmate of such house, building,
10 room, or place, and such proof shall be deemed prima facie evidence of the guilt
11 of the defendant.

1 42-02-10. INJUNCTION - PENALTY FOR VIOLATION.) (((If))) Any person
2 violating the terms of an injunction for the abatement of a (((common))) nuisance
3 (((are violated))) in any place in the state of North Dakota (((, the offending
4 party))) shall be (((punished for contempt by a fine of not less than twenty-
5 five dollars nor more than one thousand dollars, and by imprisonment in the
6 county jail for not more than one year))) guilty of criminal contempt under section
7 12.1-10-01.

1 44-06-13. ACTING AS NOTARY WHEN DISQUALIFIED - PENALTY.) Any
2 notary public who exercises the duties of his office with knowledge that his
3 commission has expired or has been cancelled or that he is disqualified other-

4 wise (((, or who appends his official signature to any document when the parties
5 thereto have not appeared before him,))) is guilty of (((a misdemeanor and
6 shall be punished by a fine of one hundred dollars for each offense))) an infrac-
7 tion, and (((also shall be removed from office))), if appropriate, his commission
8 shall be cancelled by the secretary of state.

1 44-06-13.1. WRONGFULLY NOTARIZING DOCUMENT - PENALTY.) Any
2 notary public who appends his official signature to any document when the
3 parties thereto have not executed the document in his presence is guilty of
4 an infraction and his commission shall be cancelled by the secretary of state.
5 who shall give written notice of such cancellation to the notary public.
6

1 SECTION 1. CARRYING IN PARADE OR THE DISPLAY OF CERTAIN FLAGS,
2 ENSIGNS, BANNERS, AND STANDARDS PROHIBITED.) No flag other than the
3 flag of the United States or a state flag, or the flag of a friendly foreign nation,
4 or the dependencies of such nations, shall be:

- 5 1. Carried in parade on any public street or highway within this state;
- 6 2. Exhibited in any hall or public place; or
- 7 3. Displayed or exhibited:
 - 8 a. On any vehicle;
 - 9 b. On any building or premises; or
 - 10 c. In any other manner in public within the state.

1 SECTION 2. RED OR BLACK FLAGS PROHIBITED.) No red or black flag,
2 or any banner, ensign, or sign having upon it any inscription opposed or antagonistic
3 onistic to the existing government of the United States, or of the state of North
4 Dakota, or any flag, banner, ensign, or sign, the use or display of which would
5 tend to occasion a breach of the public peace, shall be:

- 6 1. Carried or displayed in any parade on any public street or highway
7 in the state of North Dakota; or
- 8 2. Exhibited in any hall or public place or upon any vehicle or any building
9 or premises or exhibited in public in any other manner within
10 the state.

1 SECTION 3. PENALTY.) Any person who violates any of the provisions
2 of sections 1 or 2 is guilty of a class B misdemeanor.

1 12-44-25.1. PROHIBITED ACTS BY SHERIFF OR JAILER.) A sheriff or
2 jailer, or his agent, is guilty of a class A misdemeanor if he:

- 3 1. Places or keeps male and female inmates together in the same room,
4 cell, or apartment unless they are husband and wife.
5 2. Gives, sells, or delivers to any prisoner for any cause whatever,
6 any alcoholic beverage unless prescribed by a physician.

1 12-44-28. PERSON OTHER THAN OFFICER GIVING ALCOHOLIC BEVERAGES
2 TO PRISONER - (((MISDEMEANOR))) PENALTY.) (((If any))) Any person,
3 other than the sheriff or jailer, who shall sell or deliver to any person committed
4 for any cause whatever, any alcoholic beverage (((or shall have any such alcoholic
5 beverage in his possession in the precincts of any jail with intent to carry or
6 deliver the same to any prisoner confined therein, he))) shall be guilty of a
7 class A misdemeanor.

1 SECTION 12.1-01-04.

2 6. "Dangerous weapon" means, but is not limited to, any switch blade or
3 gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy,
4 blackjack, sap, bludgeon, cudgel, metal knuckles or sand club; any
5 slungshot; any bow and arrow, crossbow, or spear; any weapon which
6 will expel, or is readily capable of expelling, a projectile by the action
7 of a spring, compressed air, or compressed gas including any such
8 weapon, loaded or unloaded, commonly referred to as a b.b. gun, air
9 rifle, or CO₂ gun; and any projector of a bomb or any object containing
10 or capable of producing and emitting any noxious liquid, gas, or sub-
11 stance;

1 SECTION 12.1-03-01

2 b. With intent that an offense be committed, he commands, induces,
3 procures, or aids the other to commit it, or, having a (((legal)))
4 statutory duty to prevent its commission, he fails to make proper
5 effort to do so; or

1 SECTION 12.1-08-02.

2 1. A person is guilty of a class A misdemeanor if, with intent to prevent
3 a public servant from effecting an arrest of himself or another for a
4 misdemeanor or infraction, or from discharging any other official duty,
5 he creates a substantial risk of bodily injury to the public servant or

6 to anyone except himself, or employs means justifying or requiring
7 substantial force to overcome resistance to effecting the arrest or the
8 discharge of the duty. A person is guilty of a class C felony if, with
9 intent to prevent a public servant from effecting an arrest of himself
10 or another for a class A, B, or C felony, he creates a substantial risk
11 of bodily injury to the public servant or to anyone except himself,
12 or employs means justifying or requiring substantial force to overcome
13 resistance to effecting such an arrest.

1 SECTION 12.1-08-03.

- 2 1. A person is guilty of hindering law enforcement if he intentionally
3 interferes with, hinders, delays, or prevents the discovery, appre-
4 hension, prosecution, conviction, or punishment of another for an
5 offense by:
- 6 a. Harboring or concealing the other;
 - 7 b. Providing the other with a weapon, money, transportation,
8 disguise, or other means of avoiding discovery or apprehension;
 - 9 c. Concealing, altering, mutilating, or destroying a document or
10 thing, regardless of its admissibility in evidence; ((or))
 - 11 d. Warning the other of impending discovery or apprehension other
12 than in connection with an effort to bring another into compliance
13 with the law; or
 - 14 e. Giving false information or a false report to a law enforcement
15 officer knowing such information or report to be false.

1 12.1-13-04. IMPERSONATING OFFICIALS.)

- 2 1. A person is guilty of an offense if he falsely pretends to be:
- 3 a. A public servant, other than a law enforcement officer, and acts
4 as if to exercise the authority of such public servant; ((or))
 - 5 b. A public servant or a former public servant and thereby obtains
6 a thing of value; or
 - 7 c. A law enforcement officer.
- 8 2. It is no defense to prosecution under this section that the pretended
9 capacity did not exist or the pretended authority could not legally
10 or otherwise have been exercised or conferred.
- 11 3. An offense under subdivision b or subdivision c of subsection 1 is
12 a class A misdemeanor. An offense under subdivision a of subsection 1
13 is a class B misdemeanor.

1 SECTION 12.1-16-01.

- 2 3. Acting either alone or with one or more other persons, commits or
3 attempts to commit treason, robbery, burglary, kidnapping, felonious
4 restraint, arson, rape, aggravated involuntary sodomy, or escape
5 and, in the course of and in furtherance of such crime or of immediate
6 flight therefrom, he, or another participant, if there be any, causes
7 the death of ((a)) any person ((other than one of the participants));
8 except that in any prosecution under this subsection in which the
9 defendant was not the only participant in the underlying crime, it is
10 an affirmative defense that the defendant:
- 11 a. Did not commit the homicidal act or in any way solicit, command,
12 induce, procure, counsel, or aid the commission thereof; and
 - 13 b. Was not armed with a firearm, destructive device, dangerous wea-
14 pon, or other weapon which under the circumstances indicated
15 a readiness to inflict serious bodily injury; and
 - 16 c. Reasonably believed that no other participant was armed with
17 such a weapon; and
 - 18 d. Reasonably believed that no other participant intended to ((engaged))
19 engage in conduct likely to result in death or serious bodily injury.

1 SECTION 12.1-17-01.

- 2 2. Simple assault is a class B misdemeanor except when the victim is
3 a peace officer ((on duty)) acting in an official capacity, and the
4 actor knows that to be a fact, in which case the offense is a class C
5 felony.

1 12.1-22-05. STOWING AWAY.) A person is guilty of a class A misdemeanor
2 if, knowing that he is not licensed or privileged to do so, he surreptitiously
3 remains aboard a vehicle, train, vessel, or aircraft with intent to obtain trans-
4 portation.

1 12.1-23-06. UNAUTHORIZED USE OF A VEHICLE.)

- 2 1. A person is guilty of an offense if, knowing that he does not have
3 the consent of the owner, he takes, operates, or exercises control
4 over an automobile, train, aircraft, motorcycle, motorboat, or other
5 motor-propelled vehicle of another.
- 6 2. ((It is a defense to a prosecution under this section that the actor
7 reasonably believed that the owner would have consented had he known

8 of the conduct on which the prosecution was based.
9 3.))) The offense is a class C felony if the vehicle is an aircraft or if the
10 value of the use of the vehicle and the cost of retrieval and restora-
11 tion exceeds five hundred dollars. Otherwise the offense is a class A
12 misdemeanor.

1 SECTION 12.1-23-09 (1) (a) (to be repealed)

1 SECTION 12.1-25-02.

- 2 1. A person is guilty of a class C felony if he:
- 3 a. Knowingly supplies a firearm, dangerous weapon, or destructive
4 device for use in a riot;
 - 5 b. Teaches another to prepare or use a firearm, dangerous weapon,
6 or destructive device with intent that any such thing be used in
7 a riot; or
 - 8 c. While engaging in a riot, is knowingly armed with a firearm,
9 dangerous weapon, or destructive device.

1 12.1-27-04. INDECENT EXPOSURE.) A person is guilty of a class A
2 misdemeanor if, with intent to arouse or gratify the sexual desire of any person,
3 including the actor, he exposes his genitals or performs any other lewd act
4 under circumstances in which, in fact, his conduct is likely to be observed by
5 a person who would be offended or alarmed. A person is guilty of a class B
6 misdemeanor if he exposes his genitals under circumstances in which, in fact,
7 his conduct is likely to be observed by a person who would be offended or
8 alarmed.

1 SECTION 12.1-28-01.

- 2 4. "Gambling house" means any location or structure, stationary or mov-
3 able, wherein gambling is permitted or promoted, or where a lottery
4 is conducted or managed. (((In the application of this definition,
5 any place where gambling apparatus is found is presumed to be a
6 gambling house, provided that this presumption shall not apply where
7 cards, dice, or other games are found in a private residence.)))

1 SECTION 12.1-32-02.

- 2 6. If an offender is sentenced to a term of imprisonment, that term of
3 imprisonment commences at the time of sentencing, unless, upon motion
4 of the defendant, the court orders the term to commence at some other
5 time.

1 SECTION 12.1-32-11 (1) (to be repealed)

1 14-10-16. (((BIRTHDAY))) IDENTIFICATION CARDS - APPLICATION -
2 MISREPRESENTATION OF AGE - FALSIFYING CARDS - PENALTY. (((Every)))

- 3 1. A person (((who attains the age of eighteen years))) may apply to the
4 clerk of the district court of the county, or a person designated by the
5 clerk, in which the person resides or is temporarily located, on a farm
6 provided by the clerk of the district court, for an (((eighteenth birthday)))
7 identification card, which shall be accompanied with a photograph of the
8 applicant. The applicant shall present with the application his birth cer-
9 tificate or other satisfactory evidence (((that he is eighteen years))) of
10 his age, and shall pay a fee of (((one dollar and fifty cents))) two dollars,
11 to be deposited in the county general fund. The clerk shall file the appli-
12 cation and issue the card to the applicant in a form prescribed by the
13 clerk. The applicant shall sign the card with his name, and the card
14 (((shall))) may thereafter be exhibited (((upon demand of a licensee,
15 employee, or other person selling, giving, or disposing of alcoholic
16 beverages or of any peace officer))) as evidence of the cardholder's age.
17 Any misrepresentation of age or other deceit practiced in the procurement
18 of a card, or (((the))) use or exhibition for the purpose of (((procuring
19 alcoholic beverages of a card belonging to a person other than the person
20 exhibiting the card))) misleading any other person as to the age or identity
21 of the user, or use of the card of another, is a class A misdemeanor.
22 2. It shall be a class C felony for any person, except that person or
23 persons authorized by the clerk of district court under this section, to
24 print or otherwise produce or reproduce cards which are intended to
25 be utilized as identification cards issued pursuant to this section. It
26 shall be a class A misdemeanor to display a card issued under this section
27 which has been altered in any manner so as to not truly indicate the
28 bearer's identity or age.

- 1 25-01-16. TREATING PATIENTS CRUELLY - PENALTY.) Any person respon-
2 sible for the care or custody of any person admitted to a state institution in accord-
3 ance with the provisions of this title, who shall treat the person admitted with
4 severity, harshness, or cruelty, or who shall abuse that person in any way,
5 shall be guilty of a class A misdemeanor.

1 49-13-20. INTOXICATED ENGINEER OR CONDUCTOR - PENALTY.) Every
2 person who is intoxicated while in charge as engineer of a locomotive engine
3 or while acting as conductor or driver upon a railroad train or car is guilty
4 of a class A misdemeanor.

11-6-74

Tentative Agenda

COMMITTEE ON JUDICIARY "A"

Meeting of Friday, November 8, 1974
Room G-2, State Capitol
Bismarck, North Dakota

- 9:30 a.m. Call to order
Roll call
Minutes of previous meeting
- 9:45 a.m. Consideration of bill draft on abortion control
- 12:00 noon Luncheon recess
- * * * * *
- 1:15 p.m. Consideration of memo on constitutionality of assessing costs of prosecution against a convicted defendant
- 2:00 p.m. Consideration of proposed amendments to Section 29-01-15, and possible reconsideration of Section 39-08-01
- 2:45 p.m. Consideration of proposed amendments to Section 24-06-27
- 3:00 p.m. Consideration of proposed amendments to Sections 16-20-08, 16-20-09, and 16-20-17.1
- 3:45 p.m. Consideration of proposed amendments to Sections 4-02-06 and 4-10-22
- 4:15 p.m. Miscellaneous business
- 4:30 p.m. Adjourn