Alaska Justice Forum

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Drug Bill Resolves Contradictions

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On May 25, 1977, Governor Hammond submitted to the Legislature a bill that comprehensively revises Alaska's statutes pertaining to drug offenses. Introduced as House Bill 549, it is a modified version of the Uniform Controlled Substances Act, which was drafted by the National Conference of Commissioners on Uniform State Laws and has been adopted in various forms by 44 states.

The bill is primarily the product of a series of working sessions involving the Department of Public Safety and the Criminal Division of the Department of Law. Representatives of other interests and disciplines were also consulted, including the defense bar, social workers, pharmacists, the Metro Unit, scientists, and members and staff of the Criminal Code Revision Subcommission.

Existing Law

The impetus to submit the legislation was the unsatisfactory state of the drug laws now in effect in Alaska. Current statutory provisions regulating drugs are found in AS 17.10, AS 17.12, and AS 17.15. AS 17.10, the Uniform Narcotic Drug Act, was originally adopted in 1949 and regulates narcotics. AS 17.12, adopted in 1968, regulates depressants, hallucinogenics and stimulants. AS 17.15, adopted in 1949, prohibits, except under specified circumstances, sale or transfer of drugs; it also contains forfeiture provisions for conveyances used in the illegal transportation of narcotic drugs.

Since originally adopted these statutes have evolved into a group of provisions of varying age, many of which were adopted in response to individual problems as they arose. This situation has been compounded recently by judicial decisions in **Ravin v. State,** 537 P.2d 494 (Alaska 1975), and **State v. Erickson,** Anchorage Superior Court No. 76-5772 Cr. (December 22, 1976). **Ravin** held that possession of marijuana by adults in a home for personal use is protected by the right to privacy guaranteed by Article 1, section 22 of Alaska's constitution. **Erickson** dealt with the propriety of classifying cocaine as a narcotic, and is now on appeal to the Supreme Court of Alaska. There is, in addition, no unified regulatory approach to enforcing our present statutes. AS 17.10, the Uniform Narcotic Drug Act, is administered by the Alaska Board of Pharmacy; AS 17.12 is administered by the Department of Health and Social Services; and AS 17.15 does not state the agency responsible for its administration. In view of these problems, a comprehensive revision of existing drug stat-

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Parole, Medical Care, Standards Stressed At Corrections Congress

By Roger Endell

United States Attorney General Griffin Bell feels that the Federal Government should lead the way in providing a model for the fifty states in correctional reform, according to Peter F. Flaherty, United States Deputy Attorney General. Flaherty was the keynote speaker at the 107th Congress of the American Correctional Association, held August 21-25 in Milwaukee.

The Department of Justice has reached agreement on a timetable for development of federal correctional standards which will be released within the next 60 days. Individual state compliance with the standards will be voluntary under the proposed plan, but will be mandatory for states utilizing Federal funds. Flaherty said that the states must have certain latitute in changing their systems, but that they must move swiftly. Smaller, regional and modern correctional centers and concepts will be given priority.

Because of the relatively smaller size of the Federal government's justice agencies (for example, the FBI has 8,000 enforcement officers, while the New York City Police Department has 25,000), the Federal government should be capable of establishing model systems and programs in all Federal justice agencies. Major steps toward streamlining at the Federal level include the current revision of the Federal Criminal Code and the funding of direct block grants to state and local governments.

Over 3,000 national, state, and local justice agency representatives attended the Congress. While the majority were correctional practitioners, ranging from those working in local jails to the directors of most states' correctional systems and the Director of the Federal Bureau of Prisons, the conference also attracted

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utes into a unified statutory scheme seems appropriate.

The Uniform Controlled Substances Act was adopted as the model for a statutory revision for a number of reasons. One reason is that the Uniform Act creates a coordinated system of drug control similar to that in effect at the federal level and in 44 other states. The Uniform Act is designed to complement federal legislation and to provide an interlocking effort by federal and state law enforcement, enabling government at all levels to control drug abuse more effectively.

The Uniform Act and House Bill 549 are essentially oriented toward the public safety aspects of drug control. However, the bill also regulates the legitimate drug industry. Under the Uniform Act the industry is subject to the same standards and requirements at federal and state levels. Conformity with federal record-keeping requirements and the use of uniform order forms is provided under the proposed legislation. This will create a closed regulatory system for legitimate handlers of controlled substances designed to curtail diversion of legitimate drugs to illegitimate channels.

Schedules

The bill classifies abusable drugs into five schedules. The primary consideration in classifying each drug is the degree of danger which arises from abuse of the drug. The more specific classification criteria under the broader "dangerousness" heading include, among others: the scope, duration and significance of abuse of the substance, the medical hazard of abuse, and the probable physical and social impact of widespread abuse. The degree of dangerousness is reflected in the descending order of the schedules. In the present draft, Schedule I treats of heroin and other opiates; Schedule II treats cocaine and amphetamines; Schedule III treats barbituates, hallucinogenics, and small amounts of other drugs in therapeutic amounts; Schedule IV treats small amounts of drugs in solution and in recognized therapeutic amounts; and Schedule V treats marijuana.

The classification criteria in House Bill 549 depart in one way from the Uniform Act. Under the Uniform Act, the accepted medical use of a substance is a major classification criterion. This, however, results in illogical scheduling, as in the federal law where marijuana and heroin are classified together in Schedule I because neither has an accepted medical use. For this and similar reasons the accepted medical use criterion for classifying drugs was deleted from the bill.

The proposed legislation provides for administration of the Act by the Department of Health and Social Services. It also establishes the Controlled Substances Advisory Committee, consisting of the director of the Division of Public Health, the Director of the Office of Drug Abuse, one psychiatrist, one physician, and one pharmacist. This committee is delegated the duty of adding, deleting or rescheduling substances in the five schedules. The scheduling must be done according to the classification guidelines set out in the bill.

For example, the scope and significance of abuse of a drug may change and the committee may then be in a position to consider new evidence and scientific data of the danger of a drug, and determine whether a change in scheduling is appropriate. Before making a schedule change, however, the committee, along with the commissioner of health and social services, must promulgate public notice of its intent to do so and hold public hearings under the Administrative Procedure Act. Interested persons would have an opportunity to offer their opinions as to the dangerousness of a substance and the propriety of a scheduling change. Schedule changes are subject to legislative nullification by resolution. This administrative level scheduling allows for a quick response to changes in the use and abuse of drugs and to advances in the level of scientific knowledge available, without repeatedly seeking new legislation. By requiring public hearings before scheduling changes may be made, the bill provides for a viable mechanism for public input.

Penalty Revisions

House Bill 549 also proposes a comprehensive revision of the penalty provisions for violation of drug laws. The goal of this portion of the bill is to establish penalties which are (1) internally consistent according to the seriousness of the offense and the danger of the substance; (2) appropriate to the offense committed; and (3) more in line with the sentences actually imposed on drug offenders in Alaska.

Conduct made illegal in the bill, in order of its seriousness, includes the illegal sale of a controlled substance to a minor; illegal manufacture of drugs; sale in a commercial setting; illegal sale of drugs; and illegal possession of a controlled substance. In addition there are a variety of miscellaneous prohibitions such as use of a forged prescription to obtain a controlled substance and fraudulent use of a registration number. The penalty for each prohibited act is then set out according to the schedule of the substance with respect to which the violation occurred. Thus, sale of heroin, a Schedule I substance, to a minor, is the most serious offense in the bill and carries the most severe punishment.

From an enforcement perspective, the bill constitutes a substantial improvement over existing law. In addition to more rational penalty and sentencing provisions, it contains forfeiture provisions that are significantly more workable than the corresponding provisions in existing law. Although many of the various interests consulted may not agree with each provision of the bill there is general agreement that the bill is a badly needed and significant improvement over existing law.

In the transmittal letter which accompanied House Bill 549, Governor Hammond emphasized that the bill represents a focal point for a comprehensive examination of Alaska's drug statutes and requested that the Criminal Law Revision Subcommission review it during the interim as a part of their total revision effort. The subcommission will be meeting monthly until the beginning of the next legislative session and will be hearing testimony from interested persons.

Advise Us!

Alaska Justice Forum welcomes comments and criticism on the articles it publishes, and suggestions for future topics. Address correspondence to either of the Editors, or the Managing Editor.

A BRIEF HISTORY OF SEARCH AND SEIZURE

By Peter S. Ring

The concluding installment of our survey of search and seizure law deals with the doctrine of plain view, an issue of a complexity and difficulty rivalled, among search and seizure issues, only by auto searches.

Two requirements must be met if a seized item of evidence not particularly described in a search warrant is to be admissible under the plain view doctrine. The first is that the initial intrusion into protected space must be justified: that is, it must have been based on a search warrant or on one of the recognized exceptions to the search warrant requirement. Secondly, the plain view discovery must be inadvertent.

Initially, the doctrine does not apply to situations in which a law enforcement officer sees things in open fields or other constitutionally non-protected areas. Nor does it apply to situations in which an officer sees things in constitutionally protected areas (such as the home or garage or the automobile) from constitutionally non-protected areas (such as the street or other public places). In the former cases a seizure is lawful because no one has standing to allege the violation of a Fourth Amendment protection such as the right to privacy. In the latter cases, the sighting merely gives rise to the existence of probable cause for a warrant, or to the existence of probable cause to arrest for an offense being committed in the officer's **presence**; or it may give rise to exigent circumstances justifying a warrantless search, such as the observation of the destruction of known evidence.

In short, the visual observation itself may be lawful, but will not in itself justify further action. For a plain view seizure to be lawful, then, it must be preceded by some lawful intrusion such as entering a room to execute a search warrant or looking into a legally stopped vehicle to see who the driver is while asking for his license. The police will not be required to obtain a search warrant before seizing a ton of heroin if they find it, in the first example, in the middle of the floor, or, in the second example, on the passenger side of the front seat.

Sight and View

The difficulties with the doctrine arise from the physical impossibility of preventing the eye from telling the brain that it has observed something. **State v. Speitz**, 531 P2d 521 (Alaska 1975), provides the best example of this problem. In **Speitz** officers went to the defendant's home to execute an arrest warrant (the legality of which was unchallenged). One of the officers knocked on the door. The defendant opened the door and immediately stepped out onto the porch. He was immediately arrested. The doorway remained opened. As the arresting officer was conducting a pat-down search of the defendant he noticed another person inside the home. He promptly ordered the person to step out onto the porch, which the person did. In this brief interval, the officer's eye saw a tub on the floor. The eye relayed to the officer's brain the fact that the tub had a green vegetable material in it. This observation connected with the officer's retained knowledge of what marijuana looked like, the brain told the officer that what he saw was marijuana (or the officer saw marijuana in **plain sight**) and he entered and seized it. It was suppressed and the State appealed. The Court upheld the suppression. Why?

The marijuana may have been in **plain sight**, but it was not in **plain view** in the constitutionally accepted sense. The marijuana was within a constitutionally protected area: the home. The officer was outside a constitutionally protected area: on the porch. Therefore, what was in **plain sight** only gave him probable cause to do something else, in this case, to arrest Speitz for possession of marijuana in addition to the original charges contained in the arrest warrant. But once having arrested Speitz on the porch, the seizure of the marijuana could be justified only if it could be said to be within the immediate control or reach of Speitz. It was not, therefore **Chimel v. California** controlled.

Since the officers did not have a search warrant the marijuana could be seized only under another recognized exception to the warrant requirement. There was no consent. There was no emergency. There was no hot pursuit.

Was there, however, the possibility of imminent destruction of known evidence? The Court found that the State failed to demonstrate this to be the case. Speitz and the other person did not know that the police were coming. There was plenty of time to get a warrant since Speitz and the other person had been arrested on the porch and never again re-entered the house, and there were three other officers present who could protect the premises while the first two officers took the prisoners off to jail and obtained the warrant.

But what about someone else within the house? Could the police not conduct a search of the premises to protect themselves? The Court found that the State had failed to make this case as well. There was no testimony that the officers' safety was threatened. They were familiar with the premises and could see a substantial portion of the inside from where they stood outside.

In short, there was **no prior justification** for the entry. Had the officers had that prior justification, then what was in **plain sight** on the porch would have been in **plain view** inside the home once they entered and then it would have been admissible.

Inadvertence

As we have noted, two levels of justification must be met if evidence is to be admitted under the "plain view" exception to the Warrant Clause. Beyond the requirement of an initial justification, the discovery of the evidence must also be inadvertent. This constitutional limit to the plain view doctrine has been best explained in **Coolidge v. New Hampshire**, supra., in the following manner:

> Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the plain view doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges. 403 U.S. at 466.

In short, the police cannot go "looking" for evidence: it must be immediately apparent that it is evidence.

The Alaska Supreme Court in **Bell v. State**, 482 P2d 854, 860 (1971), provided the following definition of "plain view":

> [A] n officer may seize evidence of a crime even though such property is not particularly described in the search warrant

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when the objects discovered and seized are reasonably related to the offense in question, when the searching officer at the time of the seizure has a reasonable basis for drawing a connection between the observed objects and the crime which furnished the basis for the search warrant, and the discovery of such property is made in the course of a good faith search conducted within the authorized perimeters of the search warrant (footnotes omitted).

Breadth of Search

The reader may wonder why so much emphasis is devoted to the Warrant Clause and its relationship to the plain view doctrine. The reason, quite simply, is that by their very nature the exceptions to the warrant requirement limit a search. A search incident to a lawful arrest, for instance, is limited to the area within the immediate reach and control of the arrested person.

A search warrant, on the other hand, generally authorizes a search of a much broader nature. In describing the items to be seized, it overcomes the fishing expedition problems of general warrants. But, nothing in the Fourth Amendment requires that each item to be seized be described as being located in a specific place.

However, as the Alaska Supreme Court has pointed out in **Anderson v. State** 525 P2d 251, (1976), police officers are limited in their searches authorized by warrants to "places reasonably likely to reveal items enumerated in the warrant." In plain words, you cannot look for a large television set described in a warrant in a small dresser drawer.

In Alaska searches and seizures under the plain view doctrine, as well as those authorized by warrants, must also satisfy privacy requirements. In effect, a person's reasonable expectation of privacy will limit the boundaries of a search to those areas of the home or to those papers and effects likely to be hiding the sought after items listed in the warrant. Small items such as drugs will permit more extensive searches than will larger items, such as automobile parts.

Before concluding our discussion of plain view, we should point out that items of evidence may be brought into plain view by artificial means such as a flashlight. This is especially true in cases involving automobile stops during evening hours where the use of the flashlight may be essential in determining who is occupying the vehicle.

Readers of Forum who have been following this survey of the law of search and seizure are invited to comment on its usefulness as well as on its contents. If there are aspects of search and seizure which have been overlooked, the author will be happy to deal with them. If there have been errors in interpretation, the author would like to correct them. If a different style of presentation would make similar surveys more useful, the author will be pleased to consider such suggestions. In short, these surveys are designed to aid you, the practitioner. To that end, we depend upon your comments.

-Corrections Congress-

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sizeable numbers of professionals from peripheral areas. These included representatives of the American Medical Association, the American Bar Association, the Federal and State Court Systems, various sheriff's departments, and colleges and universities. The range of participation clearly indicates that correctional issues are no longer of concern only to the correctional practitioner. Far too few state legislators attended, however.

Sessions of the four-day conference addressed the major issues confronting correctional administrators across the nation. Medical standards, prisoner rights, due process, recent judicial decisions, the need for legislative expertise and support, and the importance of community interaction and participation were among the topics.

President's Message

William D. Leeke, American Correctional Association President, emphasized the urgency and importance of implementing the just-published (August, 1977) A.C.A. accreditation Standards for Adult Correctional Institutions and other areas of corrections. He pointed out that the A.C.A. can and should play an important and effective part in planning for the future in collaboration with colleges and universities nationwide. Further, he argued that the debate over whether or not rehabilitation "works" is meaningless and futile. Programs must be available. Inmates have a right to education, medical treatment, religious practices, communications, etc., and the courts will continue to oversee correctional operations to insure these rights. He warned that there will never be enough money, that criticism will always exist, that the "lock 'em up" philosophy will continue, as will the defensiveness of correctional administrators on hearing constructive criticism. He stressed that increasing case loads and overcrowding of prisons are major national domestic issues that must receive the attention of the national Congress, Cabinet and state legislatures.

Parole v. "Flat Time"

George J. Reed, Vice Chairman of the U.S. Parole Commission, spoke to the "unfounded criticism" of the parole system. Reed found Dr. David Fogel's justice model for corrections inappropriate, citing the extensive research on parole outcomes by Gottfredson and Wilkins, which indicates that parole supervision is effective when based on a continuing national five year follow-up and on parole profiles. He said that it is of the utmost importance that courts-corrections-parole practitioners work together to separate the situational or immature from the hard-core offenders and that the latter "should be given much more time."

Sentencing guidelines are being developed on the basis of predictive and validated decision-making instruments for parole, according to Reed. The U.S. Parole Commission Guidelines are based on the Uniform Parole Reports of 250,000 male and female offenders for one, two and three year follow-ups, which indicate that 82% have successfully continued on parole and 14% have recidivated. Reed emphasized that empirical research indicates a success rate of anywhere from 79% to 86% for offenders on parole, and that law makers nationwide must examine these findings thoroughly before considering legislation

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Code Simplifies Crimes Of Assault

This is the third article in a series highlighting the major areas of rewriting in the Proposed Revised Alaska Criminal Code.

By Steve Hutchings
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Criminal Code Revision Subcommission

Existing Alaska law provides for more than ten separate statutory offenses encompassing various forms of assaultive behavior, without defining what constitutes an assault. Each offense embraces some peculiarities of assaultive conduct, not always in terms related to the other offenses. The Proposed Revised Alaska Criminal Code provides for four degrees of assault in addition to the crimes of simple assault and reckless endangerment. Each offense specifies one of the four culpable mental states used in the Revised Code and provides for commonly defined aggravating factors.

Three factors, operating singly or in combination, determine degree of assault under the Revised Code: 1) the actor's culpable mental state; 2) whether physical injury was inflicted, and if so was the injury serious; and 3) whether the assault was committed by means of a weapon, and if so whether the weapon was "deadly" or merely "dangerous." These are substantially the same as the aggravating factors in existing law.

First Degree

The actor commits assault in the first degree, a class A felony, when

1) with intent to cause physical injury to another person he causes or attempts to cause physical injury to any person by means of a deadly weapon;

2) with intent to cause serious physical injury to another person he causes serious physical injury to any person; or

3) he recklessly causes serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life.

Subsection (1) parallels existing law by providing that assault by means of a deadly weapon is treated more severely than most other forms of assault. The Revised Code emphasizes that an unloaded firearm is a deadly weapon, thus qualifying assault with such a weapon as assault in the first degree. The existing statutes refer only to "dangerous weapons," a designation which encompasses unloaded firearms only when used as bludgeons.

Subsection (2) of the first degree assault statute requires that the defendant act with an intent to cause serious physical injury and that he cause such injury. This subsection parallels the existing mayhem statute. The subsection also prohibits some conduct now classified as aggravated assault.

The third way in which assault in the first degree may be committed is particularly significant when considered in conjunction with the section of the Revised Code that classifies the same conduct as murder if death results. The murder provision applies to conduct of extreme depravity that results in death, such as firing a pistol into a crowd without any homicidal intent.

Subsection (3) of the proposed assault in the first degree statute applies to situations identical except that only serious physical injury results.

Second Degree

Assault in the second degree, a class B felony, is similar to the first degree offense but does not require proof of certain aggravating factors necessary under the first degree statute. A person commits assault in the second degree when

(1) with intent to cause physical injury to another person he causes or attempts to cause physical injury to any person by means of a dangerous instrument;

(2) with intent to cause physical injury to another person he causes serious physical injury to any person;

(3) he recklessly causes physical injury to another person by means of a deadly weapon; or

(4) he intentionally places or attempts to place another person in fear of imminent serious physical injury by means of a deadly weapon or dangerous instrument.

Subsection (1) parallels the corresponding subsection of assault in the first degree but requires use of only a "dangerous instrument" rather than a "deadly weapon." Thus, under the Revised Code assault with a deadly weapon, an object designed for and capable of causing death or serious physical injury, is treated more severely than assault with a dangerous instrument, an object that becomes dangerous only because of the manner in which it is used. Intentional assault by means of a dangerous instrument is classified as first degree assault, however, when it results in serious physical injury.

Subsection (2) also parallels the corresponding provision of the first degree assault statute. In committing the second degree offense, however, the defendant need only act with an intent to cause physical injury, not an intent to cause serious physical injury as required for the first degree offense. Subsection (3) provides that a defendant commits assault in the second degree if he recklessly causes physical injury by means of a deadly weapon.

Subsection (4) of the second degree statute describes an aggravated form of assault in the fourth degree. Use of either a deadly weapon or a dangerous instrument in an attempt to frighten another aggravates the lesser crime to assault in the second degree, a serious felony offense.

Third Degree

Assault in the third degree is designated as a class C felony because of the seriousness of the victim's injury despite the fact that the defendant may not have intended to achieve that result. A person commits the crime of assault in the third degree when

(1) with criminal negligence he causes serious physical injury to another person by means of a deadly weapon or dangerous instrument; or

(2) he recklessly causes serious physical injury to another person.

Both forms of assault in the third degree require that serious physical injury occur. If the defendant acts recklessly, there is no requirement that the assault be accomplished by a particular means. However, if the defendant acts with criminal negligence, the lowest form of culpability, use of a deadly weapon or a dangerous instrument is required.

Fourth Degree

The four subsections of assault in the fourth degree, a class A misdemeanor, require that the victim either suffer physical injury or be threatened with such injury. A person commits the crime of assault in the fourth degree when

(1) with intent to cause physical injury to another person, he causes injury to any person;

(2) he recklessly causes physical injury to another person;

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eliminating parole.

Medical Care

The representative of the American Medical Association's National Jail Project stressed that the incarcerated must be provided with medical and mental health care comparable to that available in the general community. Special attention must be given to the legal obligations and responsibilities of correctional and medical staffs toward pre-trial detainees. The detainee is in an excellent position to litigate for his civil rights as a full citizen. Convicted offenders appear to be in a somewhat less advantageous position. "Deliberate indifference" to the medical needs of inmates constitutes cruel and unusual punishment, a Federal offense. Individual and class actions, charging anyone involved with conspiring to permit cruel and unusual punishment in violation of civil rights, can result. The courts are then left to "winnow out" those actually responsible. However, the deliberate indifference standard implies a concerted effort to deny medical care, and therefore negligence alone may not be considered sufficient grounds for litigation.

General AMA and ABA advice to correctional leaders included recommendations for: utilizing nurse practitioners and physician's assistants to provide medical and mental health care while being supervised by a contractual licensed physician; liability insurance programs for all staff and contractual employees; the "dumping" of all sleeping pills and tranquilizers; and close working relationships between medical/correctional staff and administrators. Free community resources and services should be widely utilized for TB, VD, eye and hearing examinations, etc. Community drug and alcohol counselors should be utilized for in-house, pre-release, and community release programs. The AMA medical standards for those incarcerated indicate that **sentenced** populations should be treated only for acute and emergency problems. Correctional and medical counter suits are growing quickly against inmates and attorneys bringing "nuisance suits." Costs are being awarded to these personnel in growing numbers of "malicious prosecution" cases.

Legislative Impact

The Honorable Jack Etheridge, Former Georgia Superior Court Trial Judge and Chairman-elect of the National Conference of Trial Judges, reminded the Conference, "The amount of money a state wishes to spend is not a factor which can be considered when relief is to be granted. A state's failure to provide sufficient funds may be reason to excuse a prison official, however. But in general, the courts have decided that a state is not at liberty to afford its citizens only those constitutional rights which fit comfortably within its budget."

Etheridge argued that interests must be balanced in correctional issues: in law, a balance must be struck between individual constitutional rights and the rights of states to govern police matters; in politics, between the need for reform in the prison system and the right of the public to choose its own priorities. He emphasized, "It cannot be ignored that many state politicians are privately delighted with court interference, which can force the necessary reforms without legislators being blamed for the appropriations. Prison administrators should receive substantial funding, however reluctantly, via legislatures." Judge Etheridge stated that standarization will be the result and will lead to re-examination of the basic premises for the existence of corrections.

The Honorable H. Parker Evatt of the South Carolina House of Representatives warned, in addressing the same topic, that "bad [correctional] legislation is most often passed or pushed by uninformed legislators," and therefore correctional people **must** lobby, must establish positive cooperative and open relationships with citizen advisory committees as well as with legislative leaders. Evatt stated that legislators have an obligation to be informed about correctional issues and included in the planning process. Both emotional and political motives must be eliminated from the de-

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-Code's Assault Classifications-

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(3) with criminal negligence he causes physical injury to another person by means of a deadly weapon or dangerous instrument; or

(4) by word or conduct he intentionally places or attempts to place another person in fear of imminent physical injury.

Subsections (1) and (2) parallel the existing assault and battery statute by providing that intentionally or recklessly causing physical injury is a misdemeanor assault. A person acting with criminal negligence may commit assault in the fourth degree only if, pursuant to subsection (3), he causes physical injury by means of a deadly weapon or a dangerous instrument. Subsection (4) parallels the same subsection of the second degree assault statute but does not require that the defendant use a deadly weapon or a dangerous instrument in the attempt to place a person in fear of physical injury.

Simple Assault

The crime of simple assault, a class B misdemeanor, is committed when a person "intentionally touches another person with reckless disregard for the offensive, provocative, injurious or insulting effect which the act may have on that person." This statute was drafted primarily to cover those sexual touchings which, though offensive, do not qualify as sexual contact under the sexual assault article. It is also broad enough to cover such physical contact as "trivial slaps, shoves and kicks," as well as contact that might cause injury.

Reckless Endangerment

If a person engages in reckless conduct that results in death, he commits murder or manslaughter, depending on whether the conduct evidenced an "extreme indifference to the value of human life." If no one is killed, but someone is injured, some form of assault has been committed. The crime of reckless endangerment is a residual offense which covers reckless conduct that though it does not cause injury does create a substantial risk of serious physical injury. This conduct is not covered as attempted assault since attempt requires an intent to commit a crime and one cannot, by definition, recklessly intend a result.

Though the crime would be new to existing law, a number of statutes now prohibit particular types of conduct that endanger, but do not necessarily involve injury to a person. The single crime of reckless endangerment replaces these statutes and provides that all forms of reckless conduct that create a substantial risk of serious physical injury are class A misdemeanors.

The next article in this series will discuss defenses associated with justifiable use of force.

Justice Training Calendar

This calendar will list upcoming conferences and training sessions for criminal justice practitioners throughout the United States.

West

Oct. 2-5: "Justice System Services for the Abused Child," Los Angeles (Delinquency Control Institute, University of Southern California, 3601 S. Flower St., Los Angeles, Ca. 90007).

Oct. 2-7: "Personnel Administration," San Diego, Cal. (Institute for Court Management, 1405 Curtis St., Ste. 1800, Denver, Colo. 80202).

Oct. 2-7: "Juvenile Justice Management Institute," Reno, Nev. (National College of Juvenile Justice, P.O. Box 8978, Reno, Nev., 89557).

Oct. 2-7: "Civil Litigation," National College of the State Judiciary, University of Nevada, Reno, Nev. 89557.

Oct. 3-7: "Field Training Officers," Modesto Regional Criminal Justice Training Center, P.O. Box 4065, Modesto, Ca. 95352.

Oct. 9-14: "Criminal Evidence," National College of the State Judiciary.

Oct. 11-14: "Group Counseling," Modesto.

Oct. 13-15: "50th Annual Seminar," California Association of Criminalists (Don M. Harding, Laboratory of Criminalistics, Office of the District Attorney, Santa Clara County, 1557 Berger Dr., Ste. B-2, San Jose, Ca. 95112).

Oct. 17-20: "Annual Training Seminar," Tucson, Az. (International Association of Women Police, 11017 Jacaranda Dr., Sun City, Az. 85351).

Oct. 17-21: "Vehicle Theft Investigation," Modesto.

Oct. 23-27: "Appelate Judges' Seminar," San Francisco (ABA Judicial Administration Div., Appelate Judges' Conference, 1155 E. 60th St., Chicago, Ill. 60637).

Oct. 23-28: "Appelate Court Administration," San Francisco (Institute for Court Management, 1405 Curtis St., Ste. 1800, Denver, Co. 80202).

Oct. 23-28: "Evidence," National College of the State Judiciary.

Oct. 23-Nov. 4: "Special Court," National College of the State Judiciary.

Oct. 24-28: "Problems in Case Management, 2", Modesto.

Oct. 24-Nov. 4: "Advanced Investigation for Coroners Cases," Modesto.

Oct. 27: "Seminar on Evidence," Los Angeles (West Continuing Legal Education Seminar, 50 W. Kellogg Blvd., P.O. Box 3526, St. Paul, Minn. 55165).

Oct. 30-Nov. 4: "Search and Seizure," National College of the State Judiciary.

Nov. 6-11: "Evidence, " National College of the State Judiciary.

Nov. 6-11: "Sentencing Misdemeanants," National College of the State Judiciary.

Nov. 6-18: "Fall College," National College of Juvenile Justice, P.O. Box 8978, Reno, Nev., 89507.

Nov. 13-16: "Law Office Management," San Francisco (National College of District Attorneys, College of Law, University of Houston, Houston, Tx. 77004.

Nov. 13-18: "Administrative Law," National College of the State Judiciary.

Nov. 13-18: "The Decision-Making Process," National College of the State Judiciary.

Nov. 14-17: "Police Discipline," San Diego, Cal. (International Association of Chiefs of Police, Eleven Firstfield Road, Gaithersburg, Md. 20760).

Nov. 21-22: "Community Resources," Modesto.

Midwest

Oct. 3-14: "On-Scene Accident Investigation," Northwestern University Traffic Institute, 405 Church St., Evanston, Ill. 60204.

Oct. 6-7: "Evaluating Personnel," Case Western Reserve University Center for Criminal Justice, Gund Hall, 11075 E. Blvd., Cleveland, Ohio 44106.

Oct. 10-14: "Police Budget Preparation Workshop," Northwestern.

Oct. 11-13: "Police Communication," Case Western Reserve.

Oct. 17-20: "Police Labor Relations," St. Louis, Mo. (International Association of Chiefs of Police).

Oct. 17-Dec. 16: "59th Basic Police School," Case Western Reserve.

Oct. 18-Nov. 17: "Private Investigation Training," Case Western Reserve.

Oct. 24-28: "Supervision of Personnel," Case Western Reserve,

Oct. 25-29: "Trial Techniques," Chicago (National College of District Attorneys).

Oct. 29: "Traffic Template and Calculator Workshop," Northwestern.

Oct. 30-Nov. 2: "Legal Problems in Police Administration Seminar," Northwestern.

Nov. 3-4: "Hostage Procedures and Negotiations," Case Western Reserve.

Nov. 7-18: "Law Enforcement Planning Officers' Seminar," Northwestern.

Nov. 7-18: "Selective Traffic Enforcement Program," Northwestern.

Nov. 8-10: "Rape Investigation," Case Western Reserve.

Nov. 9-12: "National Educational Conference," National College of Probate Judges, 200 W. Monroe St., Ste. 1606, Chicago, Ill., 60606.

Nov. 15-17: "Crime Prevention," Case Western Reserve.

Nov. 28-Dec. 2: "Basic Finger Printing," Case Western Reserve.

Nov. 28-Dec. 9: "Traffic Law Enforcement," Northwestern.

East

Oct. 25-27: "Government Project Management", New York University School of Continuing Education, Div. of Business and Management, 360 Lexington Ave., New York, N.Y. 10017.

Nov. 3: "Seminar on Evidence," New York (West Continuing Legal Education Seminar).

South

Oct. 3-Oct. 7: "Gambling Investigation, 2" Dade County Institude on Organized Crime, 16400 N.W. 32 Avenue, Miami, Fla. 33054.

Oct. 5-7: "Hostage Negiotion Seminar," Florida Institute for Law Enforcement, P.O. Box 13489, St. Petersburg, Fla. 33733.

Oct. 8: "Seminar on Evidence," Washington, D.C. (West Continuing Legal Education Seminar).

Oct. 9-13: "Management Skillshop for Police Executives," Law Enforcement Institute, University of Maryland, College Park, Md. 20742.

Oct. 11-15: "Organized Crime," Houston (National College of District Attorneys).

Oct. 17-21: "Police Corruption Issues," Atlanta, Ga. (International Association of Chiefs of Police).

Oct. 17-21: "Auto Theft Seminar,"

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-Corrections Congress-

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cision-making process for corrections, by establishing short and long term objectives based on research, participatory management principles, and professional knowledge. He suggested that the various state governors call annual correctional policy conferences, to be informed by input from the attorney general, the court system, corrections, the public, the press, the legislative leaders, as well as special interest groups. He cited prison inspection bills, correctional standards, and community correctional concepts as nationwide priorities.

Correctional Standards

The underlying theme of the conference, "Corrections Organizing for Action," was derived from the recently completed American Correctional Association standards for correctional operations. Oliver J. Keller, University of Florida professor and past president of the A.C.A., emphasized the importance of implementing the comprehensive standards across the nation. He warned of the many obstacles and high costs. Single units of a minimum of 60 square feet per inmate, toilets in each room, recreational space, training and education, and law libraries were used as exemplary requirements.

Research done by William G. Nagel, Director of the Institute of Corrections of the American Foundation, Inc., was cited as important. Mr. Nagel has demonstrated, among other things, that the building of additional prisons does not reduce the rate of crime. With prison populations burgeoning, those in the criminal justice system and the various legislatures, as well as the public, should be made aware of the policy statement of the Board of Directors of the National Council on Crime and Delinquency. The statement urges that nondangerous offenders not be imprisoned, stating:

> Prisons are destructive to prisoners and those charged with holding them. Confinement is necessary only for offenders who, if not confined, would be a serious danger to the public. For all others, who are not dangerous and who constitute the great majority of offenders, the sentence of choice should be one or another of the wide variety of non-institutional dispositions.

Keller concluded that correctional administrators must emphasize to the public that implementation of the correctional standards on federal, state and local levels will result in more effective probation/parole supervision; that improved institutional conditions will mean that less angry, less dangerous individuals will return to society, that there will be less damage to state property; and that there will be fewer prisoner rights cases demanding costly litigation. Correctional standards must be submitted to the public as public misinformation can be even worse than public indifference. A major constituency can and should be built in support of good services, good care, and emphasis on community programs. Diversion should be stressed, including restitution concepts (both saving dollars).

Perhaps the summary statement for the 107th A.C.A. Congress of Corrections is best found in a small sticker produced by the Citizen Action Volunteer Program of the Georgia Department of Corrections/Offender Rehabilitation:

"CORRECTIONS IS EVERYBODY'S BUSINESS"

-Justice Training Calendar-

(Continued from page 7)

Florida Institute for Law Enforcement.

Oct. 20-21: "Coping with Collective Bargaining, Seminar 2," Tampa, Fla. (Public Safety Research Institute, Inc., P.O. Box 40095, St. Petersburg, Fla. 33743).

Oct. 32-Nov. 3: "Advanced Police Computer Applications and Management," Washington, D.C. (International Association of Chiefs of Police).

Oct. 31-Nov. 4: "Check and Forgery Seminar," Florida Institute for Law Enforcement.

Oct. 31-Nov. 11: "Narcotics Conspiracy Investigation," Dade County Institute on Organized Crime.

Nov. 7-9: "Interview and Interrogation Seminar," Florida Institute for Law Enforcement.

Nov. 13-16: "Schools, Educational Services, and the Justice System," Richmond, Va. (Delinquency Control Institute, University of Southern California).

Nov. 14-17: "Developing Police Computer Capabilities, Orlando, Fla. (International Assoc. of Chiefs of Police).

Nov. 14-17: "Police and the Juvenile Offender," University of Md.

Nov. 14-18: "Bomb Investigation Seminar," Florida Institute for Law Enforcement.

Nov. 16-19: "Trial of a Drug Case," El Paso, Texas (National College of District Attorneys).

Nov. 28-Dec. 2: "Robbery Investigation," University of Maryland.

Nov. 30-Dec. 2: "World Congress of Crime Prevention," New Orleans, La. (R. Allen McCartney, Director of Research, Crime Prevention International, 2100 Gardiner Lane, Louisville, Ky. 40205).

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