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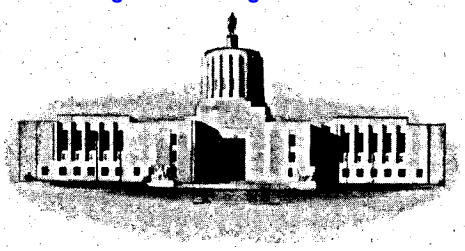

STATE OF OREGON
ADVISORY BOARD ON POLICE STANDARDS AND TRAINING
COMMERCE BUILDING
SALEM, OREGON 97310

BASIC CRIMINAL INVESTIGATION

ELEMENTS OF: PROOF - CASE PREPARATION

INVESTIGATIVE TECHNIQUES

ed by:
ON POLICE STANDARDS AND TRAINING
LAW ENFORCEMENT ASSISTANCE GRANT
Salem, Oregon - April - 1967

U.S. DEPARTMENT OF JUSTICE LAW ENFORCEMENT ASSISTANCE GRANT

INDEX

HOMICIDE

I. Murder.

A. First degree. (ORS 163.010)

Purposely and with deliberate and premeditated malice, or

In the commission of or attempt to commit rape, arson, robbery or burglary, or

Purposely kills one known to him to be a peace officer acting in the line of duty.

B. Second degree. (ORS 163.020)

Purposely and maliciously, but without premeditation or deliberation, or

In the commission of or attempt to commit any other felony, or

By an act imminently dangerous to others which shows a depraved mind and no regard for human life.

Get a statement--inculpatory (blameless or innocent) or exculpatory (tending to clear from guilt). In anticipation of defense of insanity, confessions should cover:

(1). Detailed account of activities during hours preceding killing, relating not only to crime, but to everything suspect did.

(2). Suspects knowledge that his act was wrong.

(3). Time when decision was made to commit the act.

(4). Reason for the act--"Why did you do it?"

Intoxication as a defense--may reduce first degree to second degree. Get statements from witnesses on this.

Interview suspect's spouse. Inquire about mental condition, blackouts, fainting spells, loss of consciousness, lapse of memory. If nothing in suspect's history indicating mental problem, get signed statement covering above matters. May be useful for impeachment purposes on trial.

Interview and if possible get signed statements from all witnesses who knew suspect socially, on the job, etc., especially those who had contact with him on the day of the killing.

Get signed statements if possible from all witnesses that might be called to prove the case. If no eyewitnesses, have suspect re-enact the scene.

Compile as much background material as possible--relations with victim, work record, standing in community, arrest record.

Reports, diagrams, pictures--the more the better. Better to give the DA too much than not enough.

The district attorney and the medical investigator have control over homicide investigations by statute.

II. Manslaughter.

A. Voluntary. (ORS 163.040) -- no malice, no deliberation, in sudden heat of passion caused by irresistible provocation.

B. Involuntary. (ORS 163.040) -- during the commission of a misdemeanor or during commission of lawful act without due caution.

C. By abortion. (ORS 163.060) -- administering substance or using instruments on pregnant woman with intent to destroy child, it not being necessary to save her life.

Get information on date of conception or length of pregnancy, report from examining doctor who may have seen her before abortion, her description of what took place during abortion, including what she saw that might have been removed, statement from doctor who may have treated her afterward.

III. Negligent Homicide. (ORS 163.091)

Causing death by grossly negligent operation of motor vehicle, or from defectively equipped or loaded vehicle.

"Gross negligence" means more than mere inadvertence. It is recklessness. Chose to follow a course of conduct which was highly dangerous.

Drinking generally involved. Get information on how much, what his condition was, how he himself describes how he felt.

Driving while sleepy--gross negligence if defendant knew of his condition and that he might fall asleep.

Diagrams and pictures are most helpful in this type of case.

ASSAULT AND ROBBERY

I. Hierarchy of Assault, Mayhem and Robbery.

A. Pointing Firearm at Another (ORS 163.320) (6 months or $500. fine, or both).

(1). Defendant over 12 years.

(2). Loaded or unloaded gun.

(3). Victim within range.

(4). With or without malice.

(5). Not in self defense.

(6). Purposely points or aims gun.

B. Negligent Wounding (ORS 163.310) (6 months or $500. fine, or both).

(1). Negligent wounding.

(2). Bullet or shot from gun or arrow from bow.

C. Assault and Battery (ORS 163.260) (1 year or $500. fine, or both).

(1). Assault a distinct offense and not merely incomplete battery.

(2). Intentional offer of forceful or violent injury.

(3). Present ability to carry out intention.

(4). Not armed with dangerous weapon.

D. Extortion (10 years). (ORS 163.480)

(1). May be involved in assault situation.

(2). May be committed in this type of case by threatening injury to person or property of victim or of parent, child, husband, wife, brother or sister of victim.

E. Aggravated Assault (5 years). (ORS 163.255)

(1). Not armed with dangerous weapon.

(2). Assault or assault and battery.

(3). By means of force likely to produce great bodily injury.

F. Assault with Dangerous Weapon (ORS 163.250) (10 years penitentiary or 1 year County jail or $1,000. fine).

(1). Armed with dangerous weapon.

(2). Assaults victim with the weapon.

(3). Conviction may be had for "threatening and menacing" the victim with the weapon.

G. Assault while Armed with Dangerous Weapon (10 years). (ORS 163.240)

(1). Armed with dangerous weapon.

(2). Assaults victim with whip or stick.

(3). Intent to intimidate or prevent victim from resisting or from self-defense.

H. Unarmed Robbery (15 years). (ORS 163.290)

(1). Not armed with dangerous weapon.

(2). Robs, steals or takes property from the person.

(3). By assault, or by putting in fear of force and violence or assault.

(4). Don't confuse with larceny from the person (5 years penitentiary or 1 year County jail or $500. fine).

I. Mayhem (20 years). (ORS 163.230)

(1). Purposely and maliciously, or in commission or attempt to commit felony.

(2). Specified serious injuries to eye, tongue, ear, nose, lip, limb or member.

J. Assault with Intent to Rob, Rape, or Commit Mayhem. (ORS 163. 270)

(1). Punishable as greater crime.

(2). Not necessary that defendant be armed with dangerous weapon.

K. Train Robbery (40 years). (ORS 163.330)

(1). Extremely broad statute, but train is required.

L. Assault with Intent to Kill (life). (ORS 163.280)

(1). Need only intend manslaughter.

M. Armed Robbery (life). (ORS 163.280)

(1). Assault with dangerous weapon (pointing, threatening and menacing probably enough).

(2). Robs, steals or takes property from person of victim.

II. Notes for Investigators.

A. Assault Cases.

(1). It is important that the investigator appreciate the distinctions between the various offenses in this area, and be able to check out the facts so that the prosecutor will have a fair chance to select the crime to be charged.

(2). Determination of truth is most difficult in assault cases, and the investigator should be on his guard at all times in interviewing witnesses.

(3). If the victim has sustained visible injury, colored slides, color pictures, medical investigation or at least careful and detailed notes as to the extent of injury should be made to preserve this evidence. If the officer arrives on the scene after the fight has broken up, as he probably will, it just isn't fair to the victim for the officer to be unable to corroborate the victim's testimony as to injury.

(4). Because the conflict in testimony in assault cases is always pronounced, it is important that the officer obtain a statement from the defendant which is detailed as possible. In preparing the case for trial, the prosecutor must know what the cross-examination of the victim will likely produce, and this is best determined by the version the defendant will have told his lawyer. The prosecutor will have to know those areas in which the victim's testimony can be corroborated by statements of the defendant, and those in which the victim's statement is wrong or untruthful.

(5). The thing that makes trying assault cases difficult is that it is hard to recreate, in the sober, clinical atmosphere of the courtroom, the violent rudeness of the defendant at the time of the assault. To connect the victim's testimony with reality, it is very valuable to collect whatever evidence can be found at the scene, even if it does not seem too important at the time. Pictures of the scene are also helpful, not because of what they show, but because they help to recreate the scene.

(6). Assault with intent to commit rape is probably easier to prove than either rape or attempted rape, and the penalty is the same as for rape and double that of attempted rape.

(7). Assault with intent to kill may be, and usually is, established by confession and by circumstances. It may also be established by statements made by the defendant to other people after the assault.

B. Robbery Cases.

(1). Again, it is important that the investigator be alert to the elements of several crimes--armed and unarmed robbery, assault with intent to rob, assault in various degrees, larceny from the person, and even the often-forgotten crime of extortion.

(2). In cases of unarmed robbery, obtain a statement from the victim before he decides that he was really a hero and wasn't afraid that the defendant would assault him after all. Rationalization by the victim can ruin an unarmed robbery case where the state relies on fear of force and violence.

(3). If possible, obtain a picture of the defendant if he is captured shortly after the incident. Also make careful notes on the manner in which the defendant was dressed. Sideburns and black leather jackets should be known to the jury.

(4). If the victim or the witnesses have written down any information, such as a license number, make sure he doesn't lose the paper. If the victim writes information on gas pump or some other immovable, take a picture of this note before it is rubbed off.

LARCENY

I. Elements of the Offenses of Larceny. (ORS 164.310)

A. Simple Larceny.

(1). Property subject of larceny.

(2). Property taken by trespass.

(3). Asportation. (Taking possession and moving the property.)

(4). Property taken with intent to permanently deprive the owner thereof.

B. Special Varieties of Larceny.

(1). Larceny in a building. (ORS 164.320)

a. Larceny in the particular structure.

b. Structure included in following list: dwelling house, banking house, office, store, shop, warehouse, ship, steamboat or other vessel; or

c. Breaking and entry of a church, courthouse, meeting house, town house, college, academy, or other building erected or used for public purposes.

(2). Entering vehicles with intent to steal or commit felony. (ORS 164.330)

a. Entry of an automobile, motor truck, or other motor vehicle, trailer, or trailer house.

b. Property in the vehicle.

c. Intent to steal or commit a felony therein.

(3). Larceny from the person. (ORS 164.340)

(4). Threshed grain. (ORS 164.350)

a. Larceny of wheat, barley, rye, oats or other grain, in sacks or bulk, after it has been harvested and threshed, whether on the premises of the owner or elsewhere.

(5). Larceny of Livestock. (ORS 164.380)

a. Includes farm animals, dogs, chickens. turkeys, ducks or geese.

II. Investigating Larceny Cases.

A. Ownership.

(1). May be established either by the owner or by someone else with personal knowledge.

(2). Determine whether owner consented to taking of property.

(3). In automobile cases, please determine whether the automobile is owned by the husband and wife jointly.

(4). Larceny may be proved where property is stolen from a bailee without permission, but be sure to attempt to find who is the true owner.

B. Trespass.

(1). Be sure to determine whether owner consented in any way to possession by the defendant.

(2). Be sure to determine whether title of the property passed to the defendant.

(3). Negative any possible good faith on the part of the defendant in taking the property, such as erroneous belief of ownership, of consent, of claim of right, or taking for innocent purpose.

C. Intent to Deprive Permanently.

(1). Establish specifically in confession.

(2). Is especially difficult to establish in case of auto theft, where property is almost certain to be recovered.

(3). May be established by false representations of the defendant in obtaining the property initially or in selling or pawning the property.

(4). May be established by changes in the property by the defendant, such as alterations or disfigurement.

(5). Is best established by a false explanation by the defendant as to circumstances under which he gained possession of the property. In this connection, it is my feeling that an exculpatory statement is often better than a confession, if it can be disproved. The fact that a defendant lies about the case is devastating on trial. Therefore, in interrogation the officer should endeavor to pin the defendant down as to details of an exculpatory statement.

D. Asportation.

(1). May be proved by showing the defendant obtained full custody and control over the property.

(2). Where the defendant states that he acquired the property and accounts for his possession, asportation is sufficiently proved.

E. Investigation.

(1). Identity of the accused may be established by:

a. Presence near the scene of the crime.

b. Tools found in the defendant's possession to commit theft or alter property.

c. Defendant's conduct before and after theft.

d. Evidence of flight.

e. Evidence that the property was in concealment at the time it was discovered.

f. That the defendant is the person who carried the property away.

g. In the event that the property stolen is money or convertible to money, unexplained wealth of the defendant is admissible.

BURGLARY

I. Elements of the Offenses of Burglary.

A. Burglary in a Dwelling. (ORS 164.230)

(1). Dwelling house of another.

(2). Entry with intent to commit a crime therein.

(3). One of the following:

a. Initially unlawful entry.

b. Breaking of the dwelling house.

c. Being armed with a dangerous weapon therein.

d. Assault upon a person lawfully therein.

B. Burglary Not in a Dwelling. (ORS 164.240)

(1). Types of buildings:

a. A building within the curtilage of a dwelling house but not forming a part thereof.

b. A building or part thereof, booth, tent, railroad, vessel, boat, or other structure or erection in which any property is kept and which is not a dwelling house.

(2). Unlawful entry.

(3). Intent to steal or commit a felony therein.

C. Breaking Out of Dwelling House at Night. (ORS 164.250)

(1). Dwelling house of another.

(2). Commission or attempted commission of a crime therein.

(3). Breaking of outer door, window shutter, or other part of the house to get out.

(4). Breaking must be at night.

D. Burglary by Explosives. (ORS 164.260)

(1). Any building.

(2). Nighttime at the time of breaking and entry.

(3). Breaking and entry.

(4). Intent to commit a crime therein.

(5). Use of explosives in the commission or attempted commission of the crime within the building.

II. Investigation of Burglary Cases.

A. The Complaining Witness.

(1). Be sure person reporting the crime disturbs nothing.

(2). Person reporting crime should be told to keep watch of building until police arrive, so that police testimony as to physical facts will be admissible.

(3). Please find out the name of the person who closed up the building, if it is a burglary at night! Please write this information down! Please have it when the deputy asks for it!

(4). Be sure to get the name of the owner of the business, the official name of the business, the owner of the premises, and the names of the employees.

(5). If the burglary is burglary of a store, be sure to interview employees and get their statements in writing as to whether they sold the stolen merchandise. This information must be obtained immediately before the witnesses forget.

(6). Obtain an inventory of any property missing.

B. Examination of Premises.

(1). Examine all possible points of entry. Unsuccessful attempts at entry may be better evidence than that found at the point of entry determined.

(2). If there are several points of attempted entry, or if point of entry is in doubt, be sure to check the roof.

(3) Ideally, every police officer should have a camera and know how to use it. Brownie flash pictures are cheap, and they are excellent evidence.

(4). If investigation is conducted at night, keep building under surveillance until morning, when a more thorough investigation can be conducted. This will protect the value of pry marks made at night.

(5). If the officer conducting the original investigation is to relinquish the investigation to a trained identification officer, the former should remain on the premises until the ID officer arrives. The ID officer should be thoroughly briefed. He should conduct most of his investigation while the first officer is still there. He should assume the first officer has done nothing. He will probably be right.

(6). Do not overlook "clues." They are seldom found, but they do occur and the failure to check for them can be costly on cross-examination. Cigarette butts, fingerprints, footprints, tire tracks, should all be sought earnestly. Do not assume you will find none.

C. Interior Examination.

(1). Again, check to rule out the existence of fingerprints or other clues.

(2). Have the store owner conduct a careful examination for missing property.

(3). Under the direction of the store owner, make a list of all stolen property. Have the person sign the inventory. This will be important, as the witness will later have to identify the inventory.

(4). Pay careful attention to merchandise that is knocked off shelves or is in disarray. This helps to prove that missing property was stolen rather than lost or sold.

(5). Have the owner check his records for any receipts or warehouse billings immediately. These may be unintelligible later on.

(6). If property is stolen from a store, note the manner in which property for sale is price-marked. This may help to connect stolen property when it is recovered. If property stolen is from a store, be sure to check the price for which the property was offered for sale at the time of the burglary. This is important to establish grand larceny if necessary, and also may serve to identify recovered property.

D. Connecting Defendant with Commission of Crime.

(1). Property may be found in defendant's possession and connected with similar property at the scene.

(2). Be certain in interrogating the defendant to prove every element of the crime, including venue, if the crime is committed outside the city.

(3). Check out each point in the defendant's confession. It often helps to be sure that the defendants recollection of the premises is accurate.

(4). Be sure to connect the defendant with clues without revealing them to him.

(5). If the defendant confesses, be sure to cover the question of intent at the time of entry. Do this by asking when he decided to hit this house, when he decided to get some money, or why he went into the building. If the evidence at trial develops another reasonable explanation for his entry into the building, the prosecutor will be without a case. If this is developed on investigation, other explanations for his entry onto the premises should be negatived, or a charge of larceny or aggravated larceny should be filed.

E. Character of the Building. Be sure to determine whether any portion of the building is used customarily as a sleeping place at night.

F. Personnel on Investigation. Make sure that as few officers as possible are involved in the investigation.

RECEIVING AND CONCEALING STOLEN PROPERTY

(ORS 164.045)

I. Elements of the Offense.

A. Property which had before been stolen.

B. Defendant was not the person who effected the asportation in the larceny of the goods.

C. The defendant knew or had good reason to believe the property was stolen.

D. The defendant bought, received, concealed or attempted to conceal the property.

E. The defendant intended to deprive the owner of the property of possession.

II. Persons Subject to Prosecution.

The essence of the offense is the act of knowingly aiding in the disposition of the fruits of the crime of larceny. While the purpose of the statute is clearly to punish those who purchase or receive property from the thief, the statute is probably primarily employed where the defendant denies the theft and proof of the larceny is weak.

The fact of the larceny may be easily established by the testimony of the owner that the property was taken without his permission, and that the property found in the possession of the defendant is that of the owner. At this point in the investigation, the person in possession of the property is almost certain to be asked how he got it. A false statement as to the manner of acquiring possession, which statement can be readily disproved, is probably the best evidence of receiving stolen property. This interview with the defendant should stress the defendant's denial of the theft of the property.

III. Investigation.

A. Property.

(1). Evidence must be sufficient to establish corpus delicti of larceny charge.

(2). Evidence must be strong that property stolen and property in defendant's possession are the same.

B. Defendant's receipt of the property.

(1). It is extremely important that the defendant's statement as to how he acquired possession be checked out in every possible detail. It is also extremely important that the defendant be asked to be specific about names, addresses and other descriptions, which are likely to be vague.

(2). It is important that the defendant's statement be verified as soon as possible. The district attorney should not be asked for a warrant until leads have been checked out.

C. Knowledge or reason to believe property stolen.

(1). While proof need only show that defendant had good reason to believe the property was stolen, this element must nevertheless be proved beyond a reasonable doubt.

(2). May be established by:

a. Statements of the defendant.

b. Property taken to defendant at unusual hour of night.

c. Purchase of goods at price greatly under actual value.

d. Unexplained possession of goods stolen very recently.

e. May be established by false or evasive statements by the defendant.

f. More easily established where there is a large amount or a large number of items of property, or where the property itself is bulky or unusual.

g. Evidence of similar transactions of a nature as to show a criminal scheme or systematic plan.

ENTERING MOTOR VEHICLE WITH INTENT TO STEAL

(ORS 164.330)

I. The crime: Entry of an automobile, motor truck or other motor vehicle, trailer or trailerhouse, in which any property is kept, with intent to steal or commit any felony therein.

A. Entry involves the act of going into an enclosed place.

B. Reaching into the bed of a truck or trailer is not an entry.

II. Unnecessary to show the property was actually stolen or that the felony was actually committed.

III. Necessary to show:

A. That the property was left in the automobile.

B. The defendant intended to steal at the time he entered the vehicle or commit some felony. Established by:

(1). The lack of a good reason for entering the vehicle, except to steal.

(2). By the fact that property was stolen by the defendant.

IV. Where suspect is accused of going through several cars:

A. Get names and addresses of registered owners and witnesses.

B. Make, model and year of cars involved.

CHECK AND FRAUD CASES

I. Forgery and knowingly uttering and publishing.

A. Elements of forgery. (ORS 165.105 and 165.110)

(1). An instrument apparently valid on its face and capable of effecting a fraud.

(2). A false making or altering.

(3). Intent to defraud.

(4). A doing of the false making or altering within the county where the prosecution is to be commenced.

B. Elements of knowingly uttering and publishing. (ORS 165.115)

(1). An instrument apparently valid and capable of effecting a fraud.

(2). That the instrument is falsely made or altered.

(3). An uttering of the instrument by giving as good and valid.

(4). Knowledge of the forged character of the instrument.

(5). Intent to defraud.

C. Forgery and knowingly uttering and publishing constitute the two basic crimes involving instruments, such as checks, which are false. They are to be distinguished from obtaining money under false pretenses and drawing a bank check on insufficient funds by the fact that in the latter two instances, the instrument, usually the check, will bear the true name of the maker. In the case of forgery or knowingly uttering and publishing the name of the maker will either be some person who has not given authority to sign his name, or a fictitious person.

D. To have properly established the elements of forgery it is imperative that the instrument be obtained. Without the instrument, practical prosecution is impossible. Therefore, in those cases where the person has attempted to pass the instrument and then fled the scene, careful search should be made to see if a torn or crumpled instrument can be recovered in that area.

E. Both crimes, forgery and knowingly uttering and publishing, have their advantages and their pitfalls. Often both have been committed, and care must be taken to pursue the best course.

(1). Forgery:

a. Carefully determine whether or not the false making can be proved to have occurred in the county of prosecution.

(a-1) The defendant admits it occured within the county.
(a-2) The check was written before a witness (such as a store clerk).

b. If one of these two means of proof is not available the better charge will probably be knowingly uttering and publishing.

(2). Knowingly uttering and publishing:

a. It must be established that the person uttering the instrument knew it was forged.

(a-1) He admits such knowledge.

(a-2) The name of the maker on the check is a person known to the defendant. (A former employer.)

(a-3) The handwriting on the face of the check, including the name of the maker, is the defendant's but the name is false or fictitious.

(a-4) The defendant made the statements at the time of uttering the instrument, concerning the instrument, which were false. (If one of these situations does not exist, proving knowingly uttering and publishing will be extremely difficult.)

b. Have the instrument itself identified.

(b-1) By the defendant.

(b-2) By any witnesses who have previously observed it.

c. Establish there is no authority to make the instrument.

(c-1) The defendant admits it.

(c-2) The victim (if a real person) never gave anyone consent to sign his name and never by conduct indicated it would be all right to sign his name.

II. Obtaining money or property under false pretenses. (ORS 165.205)

A. Elements.

(1). A false statement of a past or present fact.

(2). Accompanied by a false token or writing.

(3). Reliance (by victim) on the false pretenses.

(4). Transfer of title to money or property.

(5). Knowledge of the truth (by the defendant).

(6). An intent to defraud.

B. If the false pretenses are expressed orally and there is no false token or writing there is no case. No matter how false the pretenses, no matter how much money or property the victim has lost, there is no case.

C. Always have the false token identified.

(1). By the defendant.

(2). By the victim.

(3). By the witnesses (if any).

D. Establish that the statement was of a past or present fact. Any statements or representations about what is going to be done in the future are not false pretenses under the law. Question the victim very closely concerning whether or not there was any indication different than the false pretenses. In the case of a check, ascertain if there was any indication the check should be held, or that there was money to be put in the bank or anything of this nature.

E. The title to money or property must be given to the defendant by the victim. Make particular note to ascertain whether the money or property given was loaned, on a conditional sales contract, or otherwise temporarily put in the defendant's possession. If title was not given to the defendant there is no case.

F. Carefully determine that the title to the money or property was given because of the false pretense. If the victim indicates in any way that the money or property would have been given regardless of the false pretense you have no case.

(Beware: Similar past conduct of the defendant which the victim knew.)

G. Question the defendant closely.

(1). Show him all checks or other instruments or tokens involved and have him identify the same.

(2). Ascertain that he knew that his pretenses were false (that he had no money in the bank).

(3). Ascertain that his purpose in making the false pretense was to obtain the money or property.

(4). Question him particularly that nothing was said to the victim to indicate that the instrument, check, or other false token given, was not good.

H. If you have no evidence that the money or property was obtained by the false pretenses, if a check is involved you may still have the crime of drawing a bank check on insufficient funds.

III. Drawing a bank check on insufficient funds. (ORS 165.225)

A. Elements.

(1). Making or uttering a bank check.

(2). Lack of sufficient funds in the bank to pay the check at the time it is made or uttered.

(3). Knowledge of this lack of funds.

(4). Intent to defraud.

B. It is not possible to commit the crime of obtaining money or property under false pretenses if the check is given in payment for a past bill or to obtain personal services rather than money or property. However, drawing a bank check on insufficient funds may still have been committed.

C. Question the victim closely.

(1). The check was not postdated.

(2). There was nothing said concerning putting money in the bank to cover the check.

(3). There was nothing said concerning holding the check.

(4). There was nothing said about "running the check through again" if it didn't clear.

(5). This person has not previously had checks held, run through again, or made them good with the consent of the victim.

Have the victim identify the check.

Have the victim identify the defendant.

Have the victim recount all the circumstances of the transaction which would help refresh his recollection at a future time.

Ascertain from the bank that at the exact time the check was written there were not funds in the bank for its payment. Ascertain also that there were not subsequently deposited funds which would cover the check.

(Beware: Ascertain that the defendant has not had overdraft checks paid by the bank. This establishes credit with the bank which the defendant can rely upon in writing checks though there are not sufficient funds.)

D. Question the defendant carefully.

(1). Show him the check and have him identify it.

(2). Show him any other checks involved in a similar transaction and have him identify those.

(3). When the checks are identified have them in the same form as they were last obtained, including yellow slip attached, bank stamps and any other notations thereon.

(4). Ascertain the defendant knew there were not funds.

(5). Ascertain the defendant knew he did not have credit with the bank.

(6). Ascertain from the defendant that he did not say anything to the victim which would indicate the check was not then and there valid.

(7). Ascertain from the defendant that his purpose was to have the victim rely upon the validity of the check that was given. Be careful in this regard as sometimes it is difficult to find evidence that the victim was any worse off by reason of accepting the check than he was before. In cases where there is a bill owing and a bad check is given to pay it the same amount of bill is still owing when the check is not good. Therefore, carefully question the defendant as to whether or not he sought to keep the victim from trying to recover his debt, or if he was trying to get additional credit from the victim, or what other motives or purposes he sought to accomplish by giving the check.

(Beware: The crime of drawing a bank check on insufficient funds is a misdemeanor unless the amount of the check is over $75.)

IV. Larceny by bailee. (ORS 165.010)

A. Elements:

(1). Possession of another person's personal property.

(2). Conversion of this property to the use of the defendant.

(3). An intent to deprive the owner of his property.

Larceny by bailee is the same as grand or petty larceny except it does not require a taking. The other elements of the crime are the same. It does require that the person having the property seek to deprive the owner of his property.

If the person with the property only intended to use the property more than his authority allowed and then to return it to the owner you'd have no case.

B. Many larceny by bailee cases are based upon conditional sales contracts. In such cases care must be exercised in the following:

(1). What person made the contract with the defendant.

(2). Was the contract fully filled out at the time it was signed by the defendant.

(3). Were any oral statements made by any person to the defendant which were different than the exact terms of the contract.

(4). Was there any other understanding or agreement different than that in the contract.

Ascertain whether or not the defendant has made any contact with or explanation to the owner of the property concerning his acts.

Be certain that sufficient time has passed within which the property was to be returned or delivered to indicate a clear intent on the part of the defendant to deprive the owner of the property.

C. Question the defendant on the following:

(1). Have him identify the contract if there is one.

(2). Have him identify his signature on the contract.

(3). Ask him specifically whether the contract was fully filled out at the time he signed it.

(4). Ask him directly if he understood that he had no authority or permission, express or implied, to use the property as he has.

(5). Ask him specifically and have him identify the property involved. The purpose of this is to establish that the property which he had in his possession and that owned by the alleged victim is one and the same. Many times, as in the case of household furniture, it is impossible to ascertain by serial numbers or the like that the property is the same.

(6). Inquire of the defendant concerning why he misused the property, to establish that he recognized he had no right, but that he did it for purposes of his own use and benefit.

I. Statutory Rape. (ORS 163.210)

A. Elements.

(1). Penetration of the female private parts by male private parts.

(2). Female under 16 years of age.

(3). This act occuring in the county of prosecution.

a. It is necessary that venue be established in every crime. However, in this memorandum it is mentioned only in those specific cases where it often is a problem. The victims of statutory rape, being young in age, often do not know whether the act occurred within specific county boundaries or specific city lines. Careful questioning by the interrogator can usually establish that it was within a specific city, or within a specific number of miles in a given direction from a specific city.

b. In establishing venue it is sometimes necessary, and undoubtedly is the best means, to have the victim take an officer to the place where the act occurred. Thereafter, the officer can testify that the area is within the boundaries of the county of prosecution.

c. When the technique is used of taking the officer to the place where the act occurred, it can be established whether or not the victim's description of the location and the surrounding terrain, as well as the conditions existing at that location was accurate. This is valuable evidence to put before the jury who must decide whether or not the act occured. Also, at this time a search can be made of the area for other paraphernalia which may be involved in the act of rape. An example is searching for a used prophylactic device which the victim or defendant may describe.

B. Questioning the Victim.

(1). General Techniques. Every sex case must ultimately be successfully investigated by the information gained from questioning the victim and the defendant. Therefore the method of questioning the victim bears comment. What is said here in connection with statutory rape applies equally to all other types of sex crimes.

Sexual matters are generally felt to be intrinsically secret in nature, and therefore embarrassing to discuss, and, therefore (by some twist of human frailty) extremely interesting. Thus, in discussing with a victim the details of sexual activity approach the matter frankly, directly and with an attitude of being slightly bored. This form seems to be most effective.

Particularly, move the discussion quickly and directly into the area, when it appears natural in the discussion, and do not make statements of any sort concerning the nature of the matter. Do not state to the victim that she should not be embarrassed. Do not state to the victim that you're sorry we have to talk of this matter.

Statements of the above sort, invariably tend to point up the nature of the material and distract the victim from her train of thought in recollection of the facts of the event. Sometimes they may even cause embarrassment where none had existed up to that point.

The best approach is simply to talk about sex as though you were talking about "bales of hay." Sometimes, as with recalcitrant victims, a different procedure or approach may be utilized. Particularly where by her own participation or some romantic involvement the victim is reluctant, it may be an advantage to point up the enormity of the crime or the peculiar nature of the matter you are discussing.

(2). Questioning Children. Very young victims present additional problems. In those cases it is important to immediately arrive at a set of definitions, so that the child is capable of communicating the desired information.

Try to avoid euphemistic terms. "Potty," "peepee," etc. may be useful for expressing meaning in the home but are next to valueless in court.

A much better approach is to indicate by a model, a doll, or by pointing to a human person the area to be described. Thereafter to give it a proper term and thereafter refer to it only by that term. The more precise your definition and terms the more succinctly the child can relate the information.

Sometimes it may be of value to allow the child to utilize the doll in describing what occurred. The narrative can be interwoven with pointing to the doll in the particular area meant and demonstrating what had happened. If a doll is not available a medical type pictorial representation may suffice as well. When nothing better is available a simple line drawing made at the time on a piece of paper can be an advantage. Also the child should be encouraged, if it does not cause other difficulties, to illustrate on its own person.

C. Hints on Decorum.

(1). Treat all victims courteously. But do not treat them with overt sympathy. Be interested in the case, but not solicitous of the victim. In certain cases, such as complaint of forcible rape, care must be taken to ascertain the truth and accuracy of the victim's account. Therefore, it is important for the victim to realize that the investigator will not be turned to pity by the simple declaration on her part that she has been "raped."

(2). Be matter of fact in your questioning and your questions. Question in detail. Never be dissuaded from asking pointed and detailed questions by the nature of the material with which you are dealing.

(3). When interrogating female victims on sexual matters make particular point to have another female present. This can be a secretary, or matron, or some other person connected with the investigative agency. Her role is to be present, but unobtrusive in the questioning.

a. Never, never have present a parent, husband, or close friend of the victim. Firstly, there is a tendency on the part of the other person present to answer questions for the victim. This muddles the information, and suggests to the victim the answers the other person would like to hear them give.

b. Secondly, the victim is disturbed about answering certain questions, or types of questions, truthfully in the presence of such another person.

D. General Rules for Handling Victims in Sex Cases.

(1). Get particular information from the victim.

a. Establish the venue.

b. Identify as closely as possible the date of the act.

c. Paricularize the act. The act relied on must be individualized from others if there were a series of such acts. The particular act may be identified by the date, persons present, location where the act occurred, the manner in which the victim was dressed at the time, the activity which immediately preceded or followed the act, or any other matter surrounded or connected with the act which makes it different or distinct from others of the series.

(2). If possible have the victim give her statement for tape recording. This has two useful advantages. If she seeks later to change her story you can point out to her what was said previously. Also, this statement may be played at a later time to refresh her recollection of what occured.

(3). If the act is of recent occurrence have the victim examined by a physician. Such examination should include the following:

a. Any lesions or abrasions to and upon the vaginal lips and tract.

b. Any sperm cells or seminal fluid within or upon the victim.

c. A general determination of the likelihood, from the condition of the genital organs, of sexual experience.

(4). Ascertain from the victim any previous sexual experience; when, with whom, and how extensive. It is not an element of the crime that there has not been such activity. However, it is important to know and prepare for matters of this type which may prove to have a bearing on the case.

E. Question the Defendant Closely.

(1). Did his private parts actually penetrate into the private parts of the victim.

(2). Did this act occur within the county of prosecution.

(3). Did he use force on the victim. (As follows: Often the defendant will admit the act of intercourse by being asked did he force the victim into an act of intercourse, to which he will reply, No, she willingly permitted it.)

(4). Did he know the age of the victim (not necessary to case, but helpful).

(5). Go through the whole history of his association with the victim, including witnesses who can testify to establishing such relation.

(6). Ask about physical evidence which can be of assistance in proving the act. (Specifically ask if a contraceptive device was used; if so, how it was disposed of afterwards.

(7). Ascertain from the defendant particulars of the different acts, if there is a series, which will identify each or at least one particularly. Try to match this with the one which is particularized best by the victim.

II. Contributing to the Delinquency of a Minor. (ORS 167.210)

A. Elements.

(1). Child under the age of 18 years.

(2). Acts committed by the defendant in the county of prosecution.

(3). The acts are of a type which will manifestly tend to cause delinquency.

Note: Everything which has been said under the heading of statutory rape, concerning the questioning of the victim and establishing a venue applies equally to the crime of contributing to delinquency. In cases which are based upon intercourse between the individuals, everything said under statutory rape applies equally to this crime.

B. Some Observations. A broad range of activity, all of which falls within the prohibition of the contributing statute, makes it difficult to set down exact rules to use in each case.

In general, the best approach is to establish, from the victim and

any other witnesses available, exactly what has gone on between the defendant and the victim. This may be acts of giving alcoholic liquor, fondling and manipulating the private parts, sexual intercourse, attempted sexual intercourse, exposure of the private parts, encouraging and assisting in running away from home, assisting and encouraging in the commission of crimes.

The activity may be a combination of these acts, and usually is. Therefore, it is important to note from the victim and other witnesses, as well as in interrogating the defendant, as many individual acts which would manifestly tend to cause delinquency as possible. Then the defendant may be charged with doing all of these items, and a jury, at trial, may find him guilty if they find that he did any one of these acts. This is helpful in making successful prosecutions.

(Beware: Carefully establish from the victim that the act occurred within the county of prosecution.)

C. Questioning the Victim.

(1). If the victim has a romantic attachment to the defendant she may be prone to "flip."This may take the form of refusing to testify, lying to protect the defendant, or changing the story in material ways which will not develop guilt. Therefore, guard against it in the following ways:

a. Make a taped statement of the victim, exploring precise details of all that has occurred.

b. Impress upon the victim the legal responsibility to relate what has occurred.

c. Impress upon the victim the legal consequences of perjury and related type of activity, but only if it appears that the victim is inclined in that direction.

d. Seek to ascertain from the victim on first interview names of other witnesses by whom the case can be established in the absence of the victim's testimony if necessary. These persons may include individuals who have seen the victim and the defendant associating together, have seen some of the actual acts performed by the defendant against the victim, or have seen result of such acts (such as the victim in a drunken condition), or may be persons to whom the defendant has on occasion made statements admitting acts against the victim.

(2). Carefully ascertain the previous history and activity of the victim and whatever witnesses might be utilized to show such previous activity. A standard defense in contributing cases is to show that the girl was such a delinquent type that no activity could further affect her.

(3). Ascertain what, if any, motives the victim could have in making accusations against the suspect.

D. Questioning the Defendant.

(1). Cover in specific detail every act he has done in association with the victim. As noted above, there may be several acts of a type which would tend to cause delinquency.

(2). Did he know the victim's age (not necessary to case, but helpful).

(3). Cover the complete details of their association, looking for other witnesses who can establish the case.

(4). Did the acts occur in the county of prosecution.

(5). Particularize the individual act if there are several of the same kind in a series.

(6). What does the defendant know of the victim's previous history and activities.

(7). Did the defendant believe what he was doing was wrong.

(8). Why did the defendant do the acts with the victim that were done.

(9). What motives would the victim have for making accusations against the defendant.

E. Aids in Interrogating the Defendant. Interrogation in a case of this type may be greatly assisted in the following ways:

(1). Playing the taped statement made by the victim to the defendant so he realizes "all is known."

(2). Playing the statement aforesaid and asking the defendant to comment upon whether or not this is the truth, thus making of the statement evidence to be used in court.

(3). Offering to the defendant lie detector tests "if he is telling the truth."

(4). Sympathizing with the defendant concerning what has happened, i.e., "we know it wasn't your fault, this girl led you on."

III. Sodomy. (ORS 167.040)

A. Elements.

(1). The acts occurred in the county of prosecution. (As noted this is an element in every crime.)

(2). Three different divisions of this crime vary the elements.

a. Crime against nature: anal penetration by private parts or carnal connection by or with an animal.

b. Osculatory connection with private parts.

c. Act of sexual perversity: an act involving the sexual organs of one of the persons involved, and not being an act which is part of, or preparatory to, normal sexual intercourse.

B. Sodomy, though not as broad as contributing to the delinquency of a minor in the acts it encompasses, nevertheless involves four main catagories in which the crime is usually found.

(1). Molesting of children by an adult.

(2). Homosexual relations.

(3). Perversity in heterosexual relations.

(4) Carnal connection with animals.

Each of the various catagories requires different investigative techniques and different elements and facts to be noted. In cases of child molesting, where the activity goes to the point of being sexual perversity, everything said under statutory rape concerning interrogating the victims applies. It applies in the other catagories mentioned where it properly can relate.

Care must be taken in these cases to establish that the acts occurred in the county of prosecution. Often young victims do not know, in any sense, where they were.

C. Corroborating an Accomplice.

(1). Whenever the activities were mutually consented and joined in by both parties then each is an accomplice to the act of the other. Therefore care must be taken to obtain evidence which will corroborate the accomplice before the case can be successfully prosecuted. This evidence will usually take one of two forms:

a. Confession by the defendant of the act. (Confessions can give a false sense of security, because if the accomplice will not testify as to what has occurred there still is no case.)

b. An independent witness who has seen acts between the individuals tending to prove that the crime of sodomy exists.

(2). Except for this particular note, the approach in the matters to be discovered and shown are the same as in statutory rape and contributing to delinquency. (However, in the former two crimes the victim is not, nor can he be, an accomplice. Therefore, their testimony does not need to be corroborated as it does in the mutually participated acts of sodomy.)

IV. Forcible Rape. (ORS 163.210)

A. Elements.

(1). Penetration of the private parts of a female by the private parts of a male.

(2). The act occurred in the county of prosecution.

(3). The act was against the will of the female. Establishing forcible rape requires that the act be accomplished by actual force against good faith resistance of the female; or, that the act be consumated by causing the female's resistance to cease, either by actual violence committed against her, or the threat of harm and violence (as by putting a gun at her head).

B. The matters which have been previously discussed concerning sex crime investigation apply to this crime. However, certain aspects should be carefully evaluated:

(1). Was the victim drinking before the acts occurred.

(2). Does the victim have a bad reputation in her community.

(3). Carefully evaluate the good faith resistance made by the female.

(4). Learn all you can of the previous conduct of the victim toward the defendant. (This also includes conduct toward other males which was known to the defendant.)

(5). Did the victim have a motive for claiming rape.

a. Was her husband angry at her being out.

b. Did she become pregnant from an act of intercourse.

c. Does she have antagonistic feelings toward the defendant.

C. In most other ways this crime should be investigated the same as any other sex crime.

V. Lewd Cohabitation. (ORS 167.015)

A. Elements.

(1). Living together as husband and wife; holding out to the community as such.

(2). Sexual relations between the parties. (This constitutes the lewdness.)

(3). Lack of a marriage between the parties.

B. The best advice to be given an investigator concerning lewd cohabitation cases is to refuse them whenever possible.

C. These cases, for proper proof, require that the parties have by act, appearances or words purported to be husband and wife. Therefore, question the following potential witnesses:

(1). The neighbors.

(2). The landlord.

(3). Any other persons living on the same premises (including children).

(4). Employers and business associates of the parties.

D. If it can be shown the parties have purported themselves as husband and wife there still must be evidence of lewdness.

(1). Check the number of beds in the house. (Do any davenos make into beds.)

(2). Make the arrest at a time when the parties will have retired.

(3). Question any other persons, as outlined above, for statements or acts which they have observed which indicate a likelihood of sexual relations between the parties.

E. Beware: The complainant who brings you the case (as a former husband) may state many facts he can't testify to.

(1). Is probably motivated by jealousy.

(2). Desires to obtain custody of the children, or

(3). Seeking to get lower support payments.

Question him on these matters. These persons are always vociferous but never helpful.

F. These cases will usually hinge on the ability to obtain a statement admitting they are living together and engaging in sexual intercourse over a substantial period of time.

EX-CONVICT IN POSSESSION

(ORS 166.270)

I. Unlawful for any person who has been convicted of a felony against the person or property of another to own or have in his possession any pistol, revolver, or other firearm capable of being concealed upon the person.

II. Basic elements of the crime, with a brief discussion of each from the law enforcement standpoint.

A. Convicted Felon. Problem is in determining whether or not the person was convicted of a crime which was a felony in the jurisdiction where it was actually committed. Not sufficient that the crime, if committed in the state of Oregon, would be a felony. Unless the information in possession of the law enforcement officer indicates clearly that the crime was a felony at the time and place of the conviction, the officer should try to determine whether or not it was a felony. Inquire about:

(1). Whether defendant was imprisoned in a penitentiary, or if he got probation whether it would have been the penitentiary had he been sentenced.

(2). The date and location of his previous conviction and, if he knows, the exact name of the offense and the institution of imprisonment. (Useful if the defendant can be shown evidence of his past records such as an FBI rap sheet and have him identify and acknowledge the particular offenses and the disposition made.)

B. Firearm Capable of Being Concealed on the Person. The statute requires that the ownership, possession, custody or control be of a firearm capable of being concealed upon the person (or a machine-gun).

C. Owns, Possesses, or Has Under Custody or Control. Not required that the firearm actually be concealed--only that it be capable of being concealed upon the person. If the suspect owns the weapon, this would be sufficient. Desirable that the defendant be connected with the particular weapon involved; if at all possible the defendant should be persuaded to identify the particular weapon by its general description and serial number, etc. If the suspect has actually purchased the weapon and this fact is known, determine the source of the weapon and learn whether any record was kept of the particular sale. The record of the sale as supported by the clerk's testimony can be very useful in establishing ownership. If a sales slip or firearms registration certificate is obtained, it should be shown to the defendant and an attempt made to get him to acknowledge it. It should be noted that while actual concealment of the firearm on the defendant's person or within a vehicle is not required, any set of facts which would support a concealed weapons charge against a convicted felon will certainly support a charge of convicted person in possession on the question of custody and control.

FUGITIVES FROM JUSTICE

(ORS Chapter 147)

I. Three basic procedures provided by statute whereby the arrest of fugitives from justice may be achieved.

A. Arrest with Governor's Warrant. (ORS 147.070 and 147.080)
Generally involves no particular problems for law enforcement officers. Warrant signed and issued by the governor of Oregon. Before the fugitive can be delivered over to the agents of the demanding state, he must be informed of the demand made for his surrender and of the crime with which he is charged, and that he has a right to legal counsel. If the prisoner, his friends or counsel state that he or they wish to test the legality of the arrest, then the prisoner must be taken forthwith before a judge of a court of record (meaning circuit court) who shall fix a reasonable time within which the prisoner may apply for a writ of habeas corpus.

B. Arrest with Bench Warrant. (ORS 147.130)
It is also possible to secure the fugitive's arrest by means of a bench warrant issued pursuant to the filing of a fugitive complaint in district or justice court. The fugitive complaint simply charges that the defendant has committed a crime in some other state (or if convicted, that he has escaped or that he has broken conditions of parole, probation, or bail), and has fled from justice. No particular technical problems are faced by law enforcement officials in this situation.

C. Arrest without a Warrant. (ORS 147.140)
Fugitive may be arrested without a warrant by an officer or private citizen, based upon reasonable information that the subject stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year. This reasonable information may take many forms--letters from out of state law enforcement agencies, copies of out of state warrants, etc. What constitutes reasonable information is largely a matter of good judgment and will normally present no problem.

II. Once arrested fugitive must be taken before the judge involved; if a fugitive complaint is filed, he is arraigned and if arrest without a warrant was made, then a fugitive complaint must be obtained prior to arraignment. If the arrest was by governor's warrant, the defendant is either delivered over to the agents of the demanding state, or if he contests, the matter rests with the circuit court.

III. If contested and a hearing is held, the state must show some evidence at least of the following three things.

A. That the defendant is the individual named in the complaint. Get an admission that his name is the one appearing in your warrant, complaint, or other information. This can be accomplished by the routine approach and once the admission is made it is presumed by virtue of similarity of name that he is the identical person named in the complaint or warrant.

B. That he is charged with the commission of a crime in demanding state. If at all possible, and if you have a copy of the out of state warrant or complaint, show it to the defendant after he has admitted his name and inquire if he knows he is wanted. If the defendant acknowledges even this much, the state has acquired valuable evidence helpful in establishing that he is charged with the commission of a crime in the demanding state. The District Attorney's office will follow through on this point with certified and exemplified copies of the complaint and warrant on the out of state offense.

C. That he is a fugitive from that state. Really presents little difficulty, since the fact of defendant's presence in our state gives rise to a presumption that he is a fugitive and has fled, provided it is established that he is charged with a crime in the demanding state.

WELFARE FRAUD

There are two major types of welfare fraud crimes:

I. Unlawfully Obtaining Public Assistance. (ORS 411.630 to 411.640) There are four ways in which this crime can be committed:

A. Knowingly obtaining or attempting to obtain public assistance for the suspect's benefit or for the benefit of any other person (to which neither the suspect nor the other person is entitled) by (1) false representation, or (2) fraudulent device. The false representation and/or the fraudulent device is the welfare application form. "Knowingly" is the magic word here. Although the word "knowingly" appears before the word "obtain" in the statute, presumably the statute requires that the false representation or fraudulent device must be known by the defendant to have been false or fraudulent at the time that it was used. An admission to the investigating police officer of this fact, to wit: that the defendant knew that the representation or fraudulent device was false at the time of its use, is essential to a prosecution. This point is almost impossible to prove at the time of the trial without a specific admission.

B. Intentionally concealing, or transferring, or disposing of any money or property in order to:

(1). conceal the recipient's ineligibility for public assistance, or

(2). hinder or prevent the public welfare commission from recovering fraudulently obtained public assistance. (A conveyance of land to establish a tenancy by the entirety is excluded from this section). This crime also requires for prosecution an admission of the defendant of the specific intent to conceal the property for the purposes of concealing his ineligibility for public assistance. In other words, an admission of specific intent by the defendant to the police officer is neccessary.

C. Knowingly aiding and abetting any person to violate any of these other three subsections. Again the key is "knowingly" and again an admission of specific intent is imperative.

D. This crime is also committed by a person who receives any money or property from the welfare recipient in order to enable the recipient to appear qualified for assistance or to hinder the state welfare commission from recovering fraudulently obtained public assistance.

It has been our experience with this crime that it is impossible to prove without specific admissions of the required criminal intent. It is extremely difficult to prove the mens rea (since there is no assistance by presumptions) and without the admissions to the police officer the prosecution is of no avail. In other words, unless you are going to get a guilty plea or unless you have a strong statement that the conduct was engaged in with the specific intent to defraud the public assistance agency, a prosecution may be fruitless.

Another point to keep well in mind when investigating these cases is who is going to sign the complaint. If the police officer has the proper admissions described above, he can sign the complaint. It is usually difficult to find another person in a position to do so.

II. Unauthorized Sharing of Public Assistance (Star Boarder). (ORS 148.140)

A. Elements:

(1). Defendant must be a male person over the age of 18, not a stepchild, and not related within the fourth degree (first cousin) to the female householder who is a welfare recipient.

(2). Habitually accept subsistence or lodging.

(3). In the dwelling place of a female householder.

(4). It is a defense to pay in cash or in kind the actual cost of such subsistence or lodging, provided the payments are made pursuant to an express agreement about which the State Welfare Commission has been informed.

B. Suggestions for Investigation.

(1). Make sure at the outset that your suspect is not excluded from the statute, that is, that he be not related, over the age of 18 and a male person. If the parties have been married at one time make sure the divorce is final.

(2). There is an unresolved question of whether or not the female householder is a recipient of public assistance when the aid is for the children in the household. It would be well to check with the welfare commission to determine whether the female householder is receiving any assistance directed to herself personally.

(3). The usual situation is the case where the parties are divorced and they have reconciled without the trouble of remarrying and the woman remains on welfare.

(4). A hint for investigation is to approach the matter as if you were investigating a lewd cohabitation case. Present to the suspect an accusation of lewd cohabitation. The automatic response will be "I've been sleeping downstairs on the davenport." Of course this rules out your lewd cohabitation but you have a nice admission of the star boarder crime.

(5). The word "habitual" is a problem in this type of case. It is suggested that the investigating officer interview neighbors who may have seen the suspect's car parked in front of the house over a period several weeks or a month, and could testify that the suspect was seen going in and out of the house. for a period of time.

(6). The real problem in these cases and the automatic defense is that the star boarder bought some groceries. It is best to determine at the outset exactly when he purchased groceries and in what amount because the value of the groceries that the defendant purchased automatically increases and by trial time the prosecutor has a real problem. Oftentimes the investigator can get an admission that the groceries were purchased with the public asistance money that was directed to the female householder. Also, a defense that has been raised a number of times is that the suspect did some repair work around the house which would compensate for the lodging. Here again determine at the outset the value of the services rendered because the value will grow between the time of the arrest and the time of the trial.

(7). A very real problem in these cases is that you have a reluctant complaining witness. Usually the female householder is not willing to testify at the trial and turns out to be a hostile witness. That is why it is good to nail these matters down with statements at the outset after they have been put on the defensive by the thought that they are being investigated for lewd cohabitation.

NONSUPPORT

(ORS 167.605)

The crime of nonsupport is defined in ORS 167.605. The statutory elements of this crime are a failure"without just and sufficient cause" to provide support for a male child under the age of 16 or a female child under the age of 18.

There is no precise definition of the meaning of "just and sufficient cause" and it is a matter which is usually settled on the basis of the officer's investigation of the factors described below.

To prove the crime the state must show that the defendant had some income during a particular period of time and failed to contribute some reasonable portion of that income for the support of his children. The amount of the income is not as important as the manner in which the defendant uses it. Men have been convicted of nonsupport whose only income was unemployment compensation of $40.00 per week.

The basic information needed by the district attorney is the source and amount of the defendant's income during the period of a year before the date of the defendant's arrest or since his separation from his children. It is also very helpful to know what the defendant's excuses are for failing to contribute to the support of his children.

The majority of complaints for nonsupport are filed against men who have failed to contact or maintain contact with the district attorney of the county where the defendant's children reside. Consequently the district attorney has little, if any, information about the defendant at the time the complaint is filed. Usually all that is known is that the man has children that he is not supporting and has failed to keep the district attorney informed as to the defendant's location or his ability to support. A complaint for nonsupport is never filed until the district attorney has tried without success to deal with the nonsupporter on a voluntary basis over a period of weeks or months, sometimes even years.

The district attorney, lacking any detailed current knowledge about the defendant's source and amount of income, must necessarily rely on the arresting officer or the officer who returns the defendant to his jurisdiction for prosecution to provide the evidence directly from the defendant himself. Answers to the questions which are listed below are invaluable to the district attorney, both in determining how to proceed with the defendant on the pending nonsupport charge as well as dealing with the defendant long after the criminal proceeding is completed.

There is one very important thing for the police officer to keep in mind when dealing with nonsupporters. Prosecution for nonsupport is different from any other criminal prosecution in that it is not instituted to segregate the defendant from society or as a form of punishment. The practical use of a criminal nonsupport charge is to return the defendant to society under the club of a suspended sentence or the supervision of probation with the hope that he will, with this inducement, make a successful effort to support his children.

A guilty plea achieves this result quickly and without the expense of a trial. Naturally a guilty plea is more likely to be made when the defendant and his attorney know that we have the facts on which a conviction would be secured. This is more true in nonsupport than any other crime because in practice the first offender nonsupporter rarely, if ever, receives any jail time. Therefore, he has less reluctance to admit his guilt.

One other thing the police officer should be aware of in dealing with nonsupporters: very often the nonsupporter who has the ability to support fails to do so because of intense bitterness toward the mother of his children. In many instances he has good cause to be bitter. But any personal problems between the defendant and the mother of his children is not a defense to nonsupport. The officer should be particularly on guard against letting sympathy for the defendant detract from the basic questions of the defendant's ability to contribute to the support of his children and his stated reasons for failing to support.

The following are questions to which the officer should secure answers from the defendant. The best results are usually attained when the information is elicited in an informal conversation rather than in going down the list item by item asking each question and recording the answer in the presence of the defendant.

Nonsupport Interrogation Check List

(1). Date, time, and place where defendant contacted. Names of others present.

(2). Defendant's present address.

(3). Where arrested. (Often nonsupporters are apprehended in taverns or as a result of drunk charges. This is good evidence to present to a jury. Also, we are interested in knowing if he is arrested in a dwelling place in the company of a woman not his wife.)

(4). Does he deny being the father of any child involved in the charge?

(5). Was he employed at time of arrest? Name and address of employer, net income, length of employment, other jobs or income prior to that. Total income for preceding year or since separation from his children, whichever is shorter period.

(6). If he is unemployed, source and amount of his income or means of support.

(7). Does defendant appear to be in good health? Does he claim any mental or physical disability which interferes with working?

(8). What is defendant's attitude toward his children and the mother of his children?

(9). Does he acknowledge a duty to support his children?

(10). Does he admit having been contacted in any manner prior to his arrest regarding the matter of his duty to support and his ability to support?

(11). Does he admit using intoxicants excessively? Does he impress you as being an alcoholic?

(12). Does he have any prior criminal convictions? Dates, places and type of offense are important. We are interested in knowing of misdemeanor convictions including major traffic offenses and whether he paid a fine or served out a fine during the period of time mentioned in 5.

(13). Very important: does defendant admit that he had the ability and funds to contribute to the support of his children in a greater amount than he had in fact been doing?

(14). Does the defendant know who is supporting his children; does he know whether or not his children are receiving welfare assistance?

(15). What dependents, if any, has defendant been supporting prior to his arrest? (This would include any adult female and her children regardless of whether the defendant is married to the woman or is the father of any of her children. The fact that the defendant is supporting a subsequent family is no defense to a charge of failing to contribute to the support of his prior family. It is, of course, very good evidence of his guilt.)

CONSUMER FRAUD

(ORS 646.605 to 646.645)

A. Elements:

(1). A representation made by a seller, may be either in form of oral statement or in written material.

(2). The representation must be made to a purchaser or a person solicited to purchase the product.

(3). Seller knew such representation to be false, or through reasonable care should have known the representation to be false. The knowledge or constructive knowledge must be present at the time the representation was made.

(4). The statute (ORS 646.615) specifies the representations that are subject to the prohibition. The representation must be false and one of the following or substantially similar representations:

(a) Purchaser's property will be used as a model or for demonstration purposes.

(b) Purchaser will get a commission in exchange for use of his product as a model or demonstrator.

(c) The product will require no future maintenance or care.

(d) The color or appearance of the product will not change.

(e) Other assets of the puchaser will increase in value as a result of the purchase.

(f) The seller's price for the purchaser is less than is charged other persons.

(g) The purchaser's home is termite infested or subject to similar defects.

(h) The seller's product will eliminate the termites or the similar defect.

(i) The seller is associated with a government or business entity.

(j) The seller is a trained expert.

(k) The seller's product will reduce fuel costs.

(l) The purchaser's present equipment is unrepairable or that it must be replaced for health and safety reasons.

(m) The manufacturer of the purchaser's present product has ceased the production and repair parts are unavailable.

(5) This crime may also be committed (1) by performing services on or dismantling equipment in a residence when not authorized by the owner, or (2) by soliciting by telephone or in person without identifying oneself, whom he represents and the purpose of the call or solicitation within 30 seconds.

B. Notes for Investigators:

The basic problem in this type of case is to prove the exact representations made to the purchaser. If a statement was made, get it verbatim in writing. It may often be difficult to distinguish a salesman's mere "puffing" of his product and an actual false representation. Look for a definite statement that has not been hedged by qualifications.

The following points should be emphasized:

(1) The date and time of any conversations between the purchaser and the seller must be accurately placed.

(2) The trade name of seller's product and his employer.

(3) Find out if the seller has contacted neighbors of the victim and made similar misrepresentations to them.

(4) Examine any written material, especially a contract.

Salem, Oregon
April, 1967