CHAPTER 499

AN ACT Creating the Maine Criminal Code.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 17-A MRSA is enacted to read:

TITLE 17-A

MAINE CRIMINAL CODE

PART 1

GENERAL PRINCIPLES

CHAPTER 1

PRELIMINARY

§ 1. Title; effective date; severability

1. Title 17-A of the Revised Statutes Annotated shall be known and may be cited as the Maine Criminal Code. When it is alleged that an element occurred "on or about" a certain date, and the period so alleged may reasonably be interpreted to include the date on which this code becomes effective, the prosecution shall be governed by the prior law.

2. This code shall become effective March 1, 1976, and it shall apply only to crimes committed subsequent to its effective date. Prosecution for crimes committed prior to the effective date shall be governed by the prior law which is continued in effect for that purpose as if this code were not in force; provided, however, that in any such prosecution the court may, with the consent of the defendant, impose sentence under the provisions of the code. For purposes of this section, a crime was committed subsequent to the effective date if all of the elements of the crime occurred on or after that date; a crime was not committed subsequent to the effective date if any element thereof occurred prior to that date.

3. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

§ 2. Definitions

As used in this code, unless a different meaning is plainly required, the following words and variants thereof have the following meanings.

1. "Act" or "action" means a voluntary bodily movement.

2. "Acted" includes, where appropriate, possessed or omitted to act.

3. "Actor" includes, where appropriate, a person who possesses something or who omits to act.

3-A. "Armed" means in actual possession of, regardless of whether the possession is visible or concealed.

4. "Benefit" means any gain or advantage to the actor, and includes any gain or advantage to a person other than the actor which is desired or consented to by the actor.

5. "Bodily injury" means physical pain, physical illness or any impairment of physical condition.

6. "Criminal negligence" has the meaning set forth in section 10.

7. "Culpable" has the meaning set forth in section 10.

8. "Deadly force" means physical force which a person uses with the intent of causing, or which he knows to create a substantial risk of causing, death or serious bodily injury. Intentionally or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force.

9. "Deadly weapon" or "dangerous weapon" means any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is capable of producing death or serious bodily injury. If the actor intentionally presents, in a covered or open manner, a thing as a deadly weapon, it shall be presumed that the thing was a deadly weapon.

10. "Dwelling place" means any building, structure, vehicle, boat or other place adapted for overnight accommodation of persons, or sections of any place similarly adapted. It is immaterial whether a person is actually present.

11. "Element of the crime" has the meaning set forth in section 5.

12. "Financial institution" means a bank, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment.

12-A. "Firearm" means any weapon, whether loaded or unloaded, which will expel a projectile by the action of an explosive and includes any such weapon commonly referred to as a pistol, revolver, rifle, gun, machine gun or shotgun. Any weapon which can be readily made into a firearm by the insertion of a firing pin, or other similar thing in the actual possession of the actor or an accomplice, is a firearm.

13. "Government" means the United States, any state or any county, municipality or other political unit within territory belonging to the State, the United States, or any department, agency or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government or formed pursuant to interstate compact or international treaty.

14. "He" means, where appropriate, "she," or an organization.

15. "Intentionally" has the meaning set forth in section 10.

16. "Knowingly" has the meaning set forth in section 10.

17. "Law enforcement officer" means any person who by virtue of his public employment is vested by law with a duty to maintain public order, to prosecute offenders, or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

18. "Nondeadly force" means any physical force which is not deadly force.

19. "Organization" means a corporation, partnership or unincorporated association.

20. "Person" means a human being or an organization.

21. "Public servant" means any official officer or employee of any branch of government and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function. A person is considered a public servant upon his election, appointment or other designation as such, although he may not yet officially occupy that position.

22. "Recklessly" has the meaning set forth in section 10.

23. "Serious bodily injury" means a bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or extended impairment of the function of any bodily member or organ.

§ 3. All crimes defined by statute: Civil actions

1. No conduct constitutes a crime unless it is prohibited

A. By this code; or

B. By any statute or private act outside this code, including any rule or regulation authorized by and lawfully adopted under a statute, provided that it is expressly classified according to section 4, or the penalty applicable thereto, for a first or subsequent violation, includes a term of incarceration.

2. This code does not bar, suspend, or otherwise affect any right or liability for damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action, regardless of whether the conduct involved in such civil action constitutes an offense defined in this code.

§ 4. Classification of crimes; civil violations

1. Except for criminal homicide in the first or 2nd degrees, all crimes whether defined by this code or by any other statute of the State of Maine, are classified for purposes of sentencing by this section.

2. Crimes are classified as Class A, Class B, Class C, Class D and Class E crimes. In this code each crime is specifically assigned to a class. In statutes defining crimes which are outside this code, the class depends upon the imprisonment penalty that is provided as follows. If the maximum period authorized by the statute defining the crime:

A. Exceeds 10 years, the crime is a Class A crime;

B. Exceeds 5 years, but does not exceed 10 years, the crime is a Class B crime;

C. Exceeds 3 years, but does not exceed 5 years, the crime is a Class C crime;

D. Exceeds one year, but does not exceed 3 years, the crime is a Class D crime;

E. Does not exceed one year, the crime is a Class E crime.

3. If the statute outside the code prohibits defined conduct but does not provide an imprisonment penalty it is a civil violation and is hereby expressly declared not to be a criminal offense. Civil violations are enforceable by the Attorney General, his representative, or any other appropriate public official in a civil action to collect the amount of what may be designated a fine, penalty or other sanction, or to secure the forfeiture that may be decreed by the statute.

4. Notwithstanding subsections 2 and 3, the sentencing class applied upon conviction of an offense defined outside this code punishable by fine without imprisonment and which expressly provides that it may be committed by an organization, is determined by the maximum amount of the fine provided, as follows. If the maximum fine:

A. Exceeds $5,000, the crime is a Class B crime;

B. Exceeds $1,000, but does not exceed $5,000, the crime is a Class C crime;

C. Exceeds $500, but does not exceed $1,000, the crime is a Class D crime; and

D. Does not exceed $500, the crime is a Class E crime.

§ 5. Pleading and proof

1. No person may be convicted of a crime unless each element of the crime is proved beyond a reasonable doubt. "Element of the crime" means: The forbidden conduct; the attendant circumstances specified in the definition of the crime; the intention, knowledge, recklessness or negligence as may be required; and any required result. The existence of jurisdiction must also be proved beyond a reasonable doubt. Venue may be proved by a preponderance of the evidence. The court shall decide both jurisdiction and venue.

2. The State is not required to negate any facts expressly designated as a "defense," or any exception, exclusion, or authorization which is set out in the statute defining the crime, either:

A. By allegation in the indictment or information; or

B. By proof at trial, unless the existence of the defense, exception, exclusion or authorization is in issue as a result of evidence admitted at the trial which is sufficient to raise a reasonable doubt on the issue, in which case the State must disprove its existence beyond a reasonable doubt.

3. Where the statute explicitly designates a matter as an "affirmative defense," the matter so designated must be proved by the defendant by a preponderance of the evidence.

4. The existence of a reasonable doubt as to any culpable state of mind required as an element of a crime may be established by any relevant evidence, including evidence of an abnormal condition of mind or intoxication. As used in this section, "intoxication" means a disturbance of mental capacities resulting from the introduction of alcohol, drugs, or similar substances into the body. Intoxication is otherwise no defense.

§ 6. Application to crimes outside the code

The provisions of chapters 1, 3, 5, 7, 47, 49, 51 and 53 are applicable to crimes defined outside this code, unless the context of the statute defining the crime clearly requires otherwise.

§ 7. Territorial applicability

1. Except as otherwise provided in this section, a person may be convicted under the laws of this State for any crime committed by his own conduct or by the conduct of another for which he is legally accountable only if:

A. Either the conduct which is an element of the crime or the result which is such an element occurs within this State; or

B. Conduct occurring outside this State constitutes an attempt to commit a crime under the laws of this State and the intent is that the crime take place within this State;

C. Conduct occurring outside this State would constitute a criminal conspiracy under the laws of this State, an overt act in furtherance of the conspiracy occurs within this State, and the object of the conspiracy is that a crime take place within this State;

D. Conduct occurring within this State would constitute complicity in the commission of, or an attempt, solicitation or conspiracy to commit an offense in another jurisdiction which is also a crime under the law of this State;

E. The crime consists of the omission to perform a duty imposed on a person by the law of this State, regardless of where that person is when the omission occurs; or

F. The crime is based on a statute of this State which expressly prohibits conduct outside the State, when the actor knows or should know that his conduct affects an interest of the State protected by that statute; or

G. Jurisdiction is otherwise provided by law.

2. Subsection 1, paragraph A does not apply if:

A. Causing a particular result or danger of causing that result is an element and the result occurs or is designed or likely to occur only in another jurisdiction where the conduct charged would not constitute an offense; or

B. Causing a particular result is an element of the crime and the result is caused by conduct occurring outside the State which would not constitute an offense if the result had occurred there.

3. When the crime is homicide, a person may be convicted under the laws of this State if either the death of the victim or the bodily impact causing death occurred within the State. If the body of a homicide victim is found within this State, it is presumed that such death or impact occurred within the State. When the crime is theft, a person may be convicted under the laws of this State if he obtained property of another, as defined in chapter 15, section 352, outside of this State and brought the property into the State.

§ 8. Statute of limitations

1. It is a defense that prosecution was commenced after the expiration of the applicable period of limitations provided in this section; provided, however, that a prosecution for criminal homicide in the first or 2nd degree may be commenced at any time.

2. Prosecutions for crimes other than criminal homicide in the first or 2nd degree are subject to the following periods of limitations:

A. A prosecution for a Class A, Class B or Class C crime must be commenced within 6 years after it is committed;

B. A prosecution for a Class D or Class E crime must be commenced within 3 years after it is committed.

3. The periods of limitations shall not run:

A. During any time when the accused is absent from the State, but in no event shall this provision extend the period of limitation otherwise applicable by more than 5 years; or

B. During any time when a prosecution against the accused for the same crime based on the same conduct is pending in this State.

4. If a timely complaint or indictment is dismissed for any error, defect, insufficiency or irregularity, a new prosecution for the same crime based on the same conduct may be commenced within 6 months after the dismissal, or

during the next session of the grand jury, whichever occurs later, even though the periods of limitations has expired at the time of such dismissal or will expire within such period of time.

5. If the period of limitation has expired, a prosecution may nevertheless be commenced for:

A. Any crime based upon breach of fiduciary obligation, within one year after discovery of the crime by an aggrieved party or by a person who has a legal duty to represent an aggrieved party, and who is himself not a party to the crime, whichever occurs first; or

B. Any crime based upon official misconduct by a public servant, at any time when such person is in public office or employment or within 2 years thereafter.

C. This subsection shall in no event extend the limitation period otherwise applicable by more than 5 years.

6. For purposes of this section:

A. A crime is committed when every element thereof has occurred, or if the crime consists of a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated; and

B. A prosecution is commenced when a complaint is made or an indictment is returned, whichever first occurs.

7. The defense established by this section shall not bar a conviction of a crime included in the crime charged, notwithstanding that the period of limitation has expired for the included crime, if as to the crime charged the period of limitation has not expired or there is no such period, and there is evidence which would sustain a conviction for the crime charged.

§ 9. Indictment and jurisdiction

Notwithstanding any other provision of law:

1. All proceedings for Class A, B and C crimes shall be prosecuted by indictment, unless indictment is waived, in which case prosecution may be by information; and

2. All proceedings for criminal homicide in the first degree and in the 2nd degree shall be prosecuted by indictment; and

3. The District Courts shall have jurisdiction to try Class D and E crimes and to bind over for the grand jury all other crimes.

§ 10. Definitions of culpable states of mind

1. "Intentionally."

A. A person acts intentionally with respect to a result of his conduct when it is his conscious object to cause such a result.

B. A person acts intentionally with respect to attendant circumstances when he is aware of the existence of such circumstances or believes that they exist.

2. "Knowingly."

A. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

B. A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.

3. "Recklessly."

A. A person acts recklessly with respect to a result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result.

B. A person acts recklessly with respect to attendant circumstances when he consciously disregards a substantial and unjustifiable risk that such circumstances exist.

C. A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person's conduct and the circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

4. "Criminal negligence."

A. A person acts with criminal negligence with respect to a result of his conduct when he fails to be aware of a substantial and unjustifiable risk that his conduct will cause such a result.

B. A person acts with criminal negligence with respect to attendant circumstances when he fails to be aware of a substantial and unjustifiable risk that such circumstances exist.

C. A risk is substantial and unjustifiable within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable and prudent person would observe in the same situation.

5. "Culpable." A person acts culpably when he acts with the intention, knowledge, recklessness or criminal negligence as is required.

§ 11. Requirement of culpable mental states; liability without culpability

1. A person is not guilty of a crime unless he acted intentionally, knowingly, recklessly, or negligently, as the law defining the crime specifies, with respect to each element of the crime, except as provided in subsection 5. When the state of mind required to establish an element of a crime is specified as "wilfully," "corruptly," "maliciously," or by some other term importing a state of mind, that element is satisfied if, with respect thereto, the person acted intentionally or knowingly.

2. When the definition of a crime specifies the state of mind sufficient for the commission of that crime, but without distinguishing among the elements thereof, the specified state of mind shall apply to all the elements of the crime, unless a contrary purpose plainly appears.

3. When the law provides that negligence is sufficient to establish an element of a crime, that element is also established if, with respect thereto, a person acted intentionally, knowingly or recklessly. When the law provides that recklessness is sufficient to establish an element of a crime, that element is also established if, with respect thereto, a person acted intentionally or knowingly. When the law provides that acting knowingly is sufficient to establish an element of the crime, that element is also established if, with respect thereto, a person acted intentionally.

4. Unless otherwise expressly provided, a culpable mental state need not be proved with respect to:

A. Any fact which is solely a basis for sentencing classification; or

B. Any element of the crime as to which it is expressly stated that it must "in fact" exist.

5. If the statute defining the crime does not expressly prescribe a culpable mental state with respect to some or all of the elements of the crime, a culpable mental state is nevertheless required, pursuant to subsections 1, 2 and 3, unless:

A. The statute expressly provides that a person may be guilty of a crime without culpability as to those elements; or

B. A legislative intent to impose liability without culpability as to those elements otherwise appears.

§ 12. De minimis infractions

1. The court may dismiss a prosecution if, upon notice to or motion of the prosecutor and opportunity to be heard, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds the defendant's conduct:

A. Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the crime; or

B. Did not actually cause or threaten the harm sought to be prevented by the law defining the crime or did so only to an extent too trivial to warrant the condemnation of conviction; or

C. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in defining the crime.

2. The court shall not dismiss a prosecution under this section without filing a written statement of its reasons.

§ 13. Lesser offenses

The court is not required to instruct the jury concerning a lesser offense unless, on the basis of the evidence, there is a rational basis for the jury finding the defendant guilty of such lesser offense.

§ 14. Separate trials

A defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses were known to the appropriate prosecuting officer at the time of the commencement of the first trial and were within the jurisdiction of a single court, unless the court ordered such separate trials.

CHAPTER 3

CRIMINAL LIABILITY

§ 51. Basis for liability

1. A person commits a crime only if he engages in voluntary conduct, including a voluntary act, or the voluntary omission to perform an act of which he is physically capable.

2. A person who omits to perform an act does not commit a crime unless he has a legal duty to perform the act.

3. Possession is voluntary conduct only if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

§ 52. Ignorance and mistake

1. Ignorance or mistake as to a matter of fact or law is a defense only if:

A. The ignorance or mistake raises a reasonable doubt concerning the kind of culpability required for the commission of the crime; or

B. The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

2. Although ignorance or mistake would otherwise afford a defense to the crime charged, the defense is not available if the defendant would be guilty of another crime had the situation been as he supposed.

3. A mistaken belief that facts exist which would constitute an affirmative defense is not an affirmative defense, except as otherwise expressly provided.

4. A belief that conduct does not legally constitute a crime is an affirmative defense to a prosecution for that crime based upon such conduct if:

A. The statute violated is not known to the defendant and has not been published or otherwise reasonably made available prior to the conduct alleged; or

B. The defendant acts in reasonable reliance upon an official statement, afterward determined to be invalid or erroneous, contained in:

(1) a statute, ordinance or other enactment;

(2) a final judicial decision, opinion or judgment;

(3) an administrative order or grant of permission; or

(4) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the statute defining the crime. This subsection does not impose any duty to make any such official interpretation.

§ 53. Immaturity

1. No criminal proceeding shall be commenced against any person who had not attained his 18th birthday at the time of the alleged crime, except as the result of a finding of probable cause authorized by Title 15, section 2611, subsection 3, or in regard to the offenses over which juvenile courts have no jurisdiction, as provided in Title 15, section 2552.

2. When it appears that the defendant's age, at the time the crime charged was committed, may have been such that the court lacks jurisdiction by reason of subsection 1, the court shall hold a hearing on the matter and the burden shall be on the State to establish by a preponderance of the evidence that the court does not lack jurisdiction on such grounds.

§ 54. Duress

1. It is a defense that when a defendant engages in conduct which would otherwise constitute a crime, he is compelled to do so by threat of imminent death or serious bodily injury to himself or another person or because he was compelled to do so by force.

2. For purposes of this section, compulsion exists only if the force, threat or circumstances are such as would have prevented a reasonable person in the defendant's situation from resisting the pressure.

3. The defense set forth in this section is not available:

A. To a person who intentionally or knowingly committed the homicide for which he is being tried; or

B. To a person who recklessly placed himself in a situation in which it was reasonably probable that he would be subjected to duress; or

C. To a person who with criminal negligence placed himself in a situation in which it was reasonably probable that he would be subjected to duress, whenever criminal negligence suffices to establish culpability for the offense charged.

§ 55. Consent

1. It is a defense that when a defendant engages in conduct which would otherwise constitute a crime against the person or property of another, that such other consented to the conduct and that an element of the crime is negated as a result of such consent.

2. When conduct is a crime because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense only if:

A. Neither the injury inflicted nor the injury threatened was such as to endanger life or to cause serious bodily injury; or

B. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

C. The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods and the persons subjected to such conduct or injury have been made aware of the risks involved prior to giving consent.

3. Consent is not a defense within the meaning of this section if:

A. It is given by a person who is declared by a statute or by a judicial decision to be legally incompetent to authorize the conduct charged to constitute the crime, and such incompetence is manifest or known to the actor;

B. It is given by a person who by reason of intoxication, mental illness or defect, or youth, is manifestly unable or known by the defendant to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the crime; or

C. It is induced by force, duress or deception.

§ 56. Causation

Unless otherwise provided, when causing a result is an element of a crime, causation may be found where the result would not have occurred but for the conduct of the defendant operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the defendant was clearly insufficient.

§ 57. Criminal liability for conduct of another; accomplices

1. A person may be guilty of a crime if it is committed by the conduct of another person for which he is legally accountable as provided in this section.

2. A person is legally accountable for the conduct of another person when:

A. Acting with the intention, knowledge, recklessness or criminal negligence that is sufficient for the commission of the crime, he causes an innocent person, or a person not criminally responsible, to engage in such conduct; or

B. He is made accountable for the conduct of such other person by the law defining the crime; or

C. He is an accomplice of such other person in the commission of the crime, as provided in subsection 3.

3. A person is an accomplice of another person in the commission of a crime if:

A. With the intent of promoting or facilitating the commission of the crime, he solicits such other person to commit the crime, or aids or agrees to aid or attempts to aid such other person in planning or committing the crime. A person is an accomplice under this subsection to any crime the commission of which was a reasonably foreseeable consequence of his conduct; or

B. His conduct is expressly declared by law to establish his complicity.

4. A person who is legally incapable of committing a particular crime himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable.

5. Unless otherwise expressly provided, a person is not an accomplice in a crime committed by another person if:

A. He is the victim of that crime; or

B. The crime is so defined that it cannot be committed without his cooperation; or

C. He terminates his complicity prior to the commission of the crime by

(1) informing his accomplice that he has abandoned the criminal activity and

(2) leaving the scene of the prospective crime, if he is present thereat.

6. An accomplice may be convicted on proof of the commission of the crime and of his complicity therein, though the person claimed to have committed the crime has not been prosecuted or convicted, or has been convicted of a different crime or degree of crime, or has an immunity to prosecution or conviction, or has been acquitted.

§ 58. Mental abnormality

1. An accused is not criminally responsible if, at the time of the criminal conduct, as a result of mental disease or defect, he either lacked substantial capacity to conform his conduct to the requirements of the law, or lacked substantial capacity to appreciate the wrongfulness of his conduct.

2. As used in this section "mental disease or defect" means any abnormal condition of the mind, regardless of its medical label, which substantially affects mental or emotional processes and substantially impairs the processes and capacity of a person to control his actions.

3. The defendant shall have the burden of proving, by a preponderance of the evidence, that he lacks criminal responsibility as described in subsection 1.

§ 59. Procedure upon plea of not guilty coupled with plea of not guilty by reason of insanity

1. When the defendant enters a plea of not guilty together with a plea of not guilty by reason of insanity, he shall also elect whether the trial shall be in 2 stages as provided for in this section, or a unitary trial in which both the issues of guilt and of insanity are submitted simultaneously to the jury. At the defendant's election, the jury shall be informed that the 2 pleas have been made and that the trial will be in 2 stages.

2. If a two-stage trial is elected by the defendant, there shall be a separation of the issue of guilt from the issue of insanity in the following manner.

A. The issue of guilt shall be tried first and the issue of insanity tried only if the jury returns a verdict of guilty. If the jury returns a verdict of not guilty, the proceedings shall terminate.

B. Evidence of mental disease or defect, as defined in section 58, shall not be admissible in the guilt or innocence phase of the trial, but shall only be admissible in the 2nd phase following a verdict of guilty.

3. The issue of insanity shall be tried before the same jury as tried the issue of guilt. The defendant may, however, elect to have the issue of insanity tried by the court without a jury.

4. If the jury in the first phase returns a guilty verdict, the trial shall proceed to the 2nd phase. The defendant and the State may rely upon evidence admitted during the first phase or they may recall witnesses. Any evidence relevant to the defendant's responsibility, or lack thereof, under section 58, is admissible. The order of proof shall reflect that the defendant has the burden of establishing his lack of responsibility. The jury shall return a verdict that the defendant is responsible, or not guilty by reason of mental disease or defect excluding responsibility. If the defendant is found responsible, the court shall sentence him according to law.

5. This section shall not apply to cases tried before the court without a jury.

§ 60. Criminal liability of an organization

1. An organization is guilty of a crime when:

A. It omits to discharge a specific duty of affirmative performance imposed on it by law, and the omission is prohibited by this code or by a statute defining a criminal offense outside of this code; or

B. The conduct or result specified in the definition of the crime is engaged in or caused by an agent of the organization while acting within the scope of his office or employment.

2. It is no defense to the criminal liability of an organization that the individual upon whose conduct the liability of the organization is based has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution.

§ 61. Individual liability for conduct on behalf of organization

1. An individual is criminally liable for any conduct he performs in the name of an organization or in its behalf to the same extent as if it were performed in his own name or behalf. Such an individual shall be sentenced as if the conduct had been performed in his own name or behalf.

2. If a criminal statute imposes a duty to act on an organization, any agent of the organization having primary responsibility for the discharge of the duty is criminally liable if he recklessly omits to perform the required act, and he shall be sentenced as if the duty were imposed by law directly upon him.

§ 62. Military orders

1. It is a defense if the defendant engaged in the conduct charged to constitute a crime in obedience to an order of his superior in the armed services which he did not know to be unlawful.

2. If the defendant was reckless in failing to know the unlawful nature of such an order, the defense is unavailable in a prosecution for a crime for which recklessness suffices to establish liability.

CHAPTER 5
JUSTIFICATION

§ 101. General rules

1. Conduct which is justifiable under this chapter constitutes a defense to any crime; provided, however, that if a person is justified in using force against another, but he recklessly injures or creates a risk of injury to 3rd persons, the justification afforded by this chapter is unavailable in a prosecution for such recklessness. If a defense provided under this chapter is precluded solely because the requirement that the actor's belief be reasonable has not been met, he may be convicted only of a crime for which recklessness or cirminal negligence suffices, depending on whether his holding the belief was reckless or criminally negligent.

2. The fact that conduct may be justifiable under this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

3. For purposes of this chapter, use by a law enforcement officer or a corrections officer of chemical mace or any similar substance composed of a mixture of gas and chemicals which has or is designed to have a disabling effect upon human beings is use of nondeadly force.

§ 102. Public duty

1. Any conduct, other than the use of physical force under circumstances specifically dealt with in other sections of this chapter, is justifiable when it is authorized by law, including laws defining functions of public servants or the assistance to be rendered public servants in the performance of their duties; laws governing the execution of legal process or of military duty; and the judgments or orders of courts or other public tribunals.

2. The justification afforded by this section to public servants is not precluded:

A. By the fact that the law, order or process was defective provided it appeared valid on its face and the defect was not knowingly caused or procured by such public servant; or,

B. As to persons assisting public servants, by the fact that the public servant to whom assistance was rendered exceeded his legal authority or that there was a defect of jurisdiction in the legal process or decree of the court or tribunal, provided the actor believed the public servant to be engaged in the performance of his duties or that the legal process or court decree was competent.

§ 103. Competing harms

1. Conduct which the actor believes to be necessary to avoid imminent physical harm to himself or another is justifiable if the desirability and urgency of avoiding such harm outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the statute defining the crime charged. The desirability and urgency of such conduct may not rest upon considerations pertaining to the morality and advisability of such statute.

2. When the actor was reckless or criminally negligent in bringing about the circumstances requiring a choice of harms or in appraising the necessity of his conduct, the justification provided in subsection 1 does not apply in a prosecution for any crime for which recklessness or criminal negligence, as the case may be, suffices to establish criminal liability.

§ 104. Use of force in defense of premises

A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using nondeadly force upon another when and to the extent that he reasonably believes it necessary to prevent or terminate the commission of a criminal trespass by such other in or upon such premises, but he may use deadly force under such circumstances only in defense of a person as prescribed in section 108 or when he reasonably believes it necessary to prevent an attempt by the trespasser to commit arson.

§ 105. Use of force in property offenses

A person is justified in using a reasonable degree of nondeadly force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking; but he may use deadly force under such circumstances only in defense of a person as prescribed in section 108.

§ 106. Physical force by persons with special responsibilities

1. A parent, foster parent, guardian or other similar person responsible for the long term general care and welfare of a person is justified in using a reasonable degree of force against such person when and to the extent that he reasonably believes it necessary to prevent or punish such person's misconduct. A person to whom such parent, foster parent, guardian or other responsible person has expressly delegated permission to so prevent or punish misconduct is similarly justified in using a reasonable degree of force.

2. A teacher or other person entrusted with the care or supervision of a person for special and limited purposes is justified in using a reasonable degree of force against any such person who creates a disturbance when and to the extent that he reasonably believes it necessary to control the disturbing behavior or to remove a person from the scene of such disturbance.

3. A person responsible for the general care and supervision of a mentally incompetent person is justified in using a reasonable degree of force against such person who creates a disturbance when and to the extent that he reasonably believes it necessary to control the disturbing behavior or to remove such person from the scene of such disturbance.

4. The justification extended in subsections 1, 2 and 3 does not apply to the purposeful or reckless use of force that creates a substantial risk of death, serious bodily injury, or extraordinary pain.

5. Whenever a person is required by law to enforce rules and regulations, or to maintain decorum or safety, in a vessel, aircraft, vehicle, train or other carrier, or in a place where others are assembled, may use nondeadly force when and to the extent that he reasonably believes it necessary for such purposes, but he may use deadly force only when he reasonably believes it necessary to prevent death or serious bodily injury.

6. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious bodily injury upon himself may use a degree of force on such person as he reasonably believes to be necessary to thwart such a result.

7. A licensed physician, or a person acting under his direction, may use force for the purpose of administering a recognized form of treatment which he reasonably believes will tend to safeguard the physical or mental health of the patient, provided such treatment is administered:

A. With consent of the patient or, if the patient is a minor or incompetent person, with the consent of the person entrusted with his care and supervision; or

B. In an emergency relating to health when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person concerned for the welfare of the patient would consent.

8. A person identified in this section for purposes of specifying the rule of justification herein provided, is not precluded from using force declared to be justifiable by another section of this chapter.

§ 107. Physical force in law enforcement

1. A law enforcement officer is justified in using a reasonable degree of nondeadly force upon another person:

A. When and to the extent that he reasonably believes it necessary to effect an arrest or to prevent the escape from custody of an arrested person, unless he knows that the arrest or detention is illegal; or

B. To defend himself or a 3rd person from what he reasonably believes to be the imminent use of nondeadly force encountered while attempting to effect such an arrest or while seeking to prevent such an escape.

2. A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary:

A. To defend himself or a 3rd person from what he reasonably believes is the imminent use of deadly force; or

B. To effect an arrest or prevent the escape from arrest of a person whom he reasonably believes

(1) has committed a crime involving the use or threatened use of deadly force, or is using a deadly weapon in attempting to escape, or otherwise indicates that he is likely seriously to endanger human life or to inflict serious bodily injury unless apprehended without delay; and

(2) he had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest and has reasonable grounds to believe that the person is aware of these facts.

3. A private person who has been directed by a law enforcement officer to assist him in effecting an arrest or preventing an escape from custody is justified in using;

A. A reasonable degree of nondeadly force when and to the extent that he reasonably believes such to be necessary to carry out the officer's direction, unless he believes the arrest is illegal; or

B. Deadly force only when he reasonably believes such to be necessary to defend himself or a 3rd person from what he reasonably believes to be the imminent use of deadly force, or when the law enforcement officer directs him to use deadly force and he believes such officer himself is authorized to use deadly force under the circumstances.

4. A private person acting on his own is justified in using nondeadly force upon another when and to the extent that he reasonably believes it necessary to arrest or prevent the escape from arrest of such other whom he reasonably believes to have committed a crime; but he is justified in using deadly force for such purpose only when he reasonably believes it necessary to defend himself or a 3rd person from what he reasonably believes to be the imminent use of deadly force.

5. A corrections officer or law enforcement officer in a facility where persons are confined, pursuant to an order of a court or as a result of an arrest, is justified in using deadly force against such persons under the circumstances described in subsection 2 of this section. He is justified in using

a reasonable degree of nondeadly force when and to the extent they reasonably believe it necessary to prevent any other escape from such a facility.

6. A reasonable belief that another has committed a crime means such belief in facts or circumstances which, if true, would in law constitute an offense by such person. If the facts and circumstances reasonably believed would not constitute an offense, an erroneous though reasonable belief that the law is otherwise does not make justifiable the use of force to make an arrest or prevent an escape.

7. Use of force that is not justifiable under this section in effecting an arrest does not render illegal an arrest that is otherwise legal and the use of such unjustifiable force does not render inadmissible anything seized incident to a legal arrest.

8. Nothing in this section constitutes justification for conduct by a law enforcement officer amounting to an offense against innocent persons whom he is not seeking to arrest or retain in custody.

§ 108. Physical force in defense of a person

1. A person is justified in using a reasonable degree of nondeadly force upon another person in order to defend himself or a 3rd person from what he reasonably believes to be the imminent use of unlawful, nondeadly force by such other person, and he may use a degree of such force which he reasonably believes to be necessary for such purpose. However, such force is not justifiable if:

A. With a purpose to cause physical harm to another person, he provoked the use of unlawful, nondeadly force by such other person; or

B. He was the initial aggressor, unless after such aggression he withdraws from the encounter and effectively communicates to such other person his intent to do so, but the latter notwithstanding continues the use or threat of unlawful, nondeadly force; or

C. The force involved was the product of a combat by agreement not authorized by law.

2. A person is justified in using deadly force upon another person when he reasonably believes that such other person is about to use unlawful, deadly force against the actor or a 3rd person, or is likely to use any unlawful force against a person present in dwelling while committing or attempting to commit a burglary of such dwelling, or is committing or about to commit kidnapping or a forcible sex offense. However, a person is not justified in using deadly force on another to defend himself or a 3rd person from deadly force by the other:

A. If, with a purpose to cause physical harm to another, he provoked the use of unlawful deadly force by such other; or

B. If he knows that he can, with complete safety

(1) retreat from the encounter, except that he is not required to retreat if he is in his dwelling and was not the initial aggressor, provided that

if he is a law enforcement officer or a private person assisting him at his direction and was acting pursuant to section 107, he need not retreat; or

(2) surrender property to a person asserting a claim of right thereto; or

(3) comply with a demand that he abstain from performing an act which he is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of causing death or serious bodily harm, the actor has provoked the use of force against himself in the same encounter.

PART 2

SUBSTANTIVE OFFENSES

CHAPTER 7

OFFENSES OF GENERAL APPLICABILITY

§ 151. Conspiracy

1. A person is guilty of conspiracy if, with the intent that conduct be performed which, in fact, would constitute a crime or crimes, he agrees with one or more others to engage in or cause the performance of such conduct.

2. If a person knows that one with whom he agrees has agreed or will agree with a 3rd person to effect the same objective, he shall be deemed to have agreed with the 3rd person, whether or not he knows the identity of the 3rd person.

3. A person who conspires to commit more than one crime is guilty of only one conspiracy if the crimes are the object of the same agreement or continuous conspiratorial relationship.

4. No person may be convicted of conspiracy to commit a crime unless it is alleged and proved that he, or one with whom he conspired, took a substantial step toward commission of the crime. A substantial step is any conduct which, under the circumstances in which it occurs, is strongly corroborative of the firmness of the actor's intent to complete commission of the crime; provided that speech alone may not constitute a substantial step.

5. Accomplice liability for crimes committed in furtherance of the conspiracy is to be determined by the provisions of chapter 3, section 57.

6. For the purpose of determining the period of limitations under chapter 1, section 8.

A. A conspiracy shall be deemed to continue until the criminal conduct which is its object is performed, or the agreement that it be performed is frustrated or is abandoned by the defendant and by those with whom he conspired. For purposes of this subsection, the object of the conspiracy includes escape from the scene of the crime, distribution of the fruits of the crime, and measures, other than silence, for concealing the commission of the crime or the identity of its perpetrators.

B. If a person abandons the agreement, the conspiracy terminates as to him only when:

(1) he informs a law enforcement officer of the existence of the conspiracy and of his participation therein; or

(2) he advises those with whom he conspired of his abandonment. The defendant shall prove his conduct under subparagraph 2 by a preponderance of the evidence.

7. It is no defense to prosecution under this section that the person with whom the defendant is alleged to have conspired has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, or is immune from or otherwise not subject to prosecution.

8. It is a defense to prosecution under this section that, had the objective of the conspiracy been achieved, the defendant would have been immune from liability under the law defining the offense, or as an accomplice under chapter 3, section 57.

9. Conspiracy is an offense classified as one grade less serious than the classification of the most serious crime which is its object, except that conspiracy to commit criminal homicide in the first or 2nd degree is a Class A crime. If the most serious crime is a Class E crime, the conspiracy is a Class E crime.

§ 152. Attempt

1. A person is guilty of criminal attempt if, acting with the kind of culpability required for the commission of the crime, and with the intent to complete the commission of the crime, he engages in conduct which, in fact, constitutes a substantial step toward its commission. A substantial step is any conduct which goes beyond mere preparation and is strongly corroborative of the firmness of the actor's intent to complete the commission of the crime.

2. It is no defense to a prosecution under this section that it was impossible to commit the crime which the defendant attempted, provided that it would have been committed had the factual and legal attendant circumstances specified in the definition of the crime been as the defendant believed them to be.

3. A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish his complicity under chapter 3, section 57 were the crime committed by the other person, even if the other person is not guilty of committing or attempting the crime.

4. Criminal attempt is an offense classified as one grade less serious than the classification of the offense attempted, except that an attempt to commit a Class E crime is a Class E crime, and an atttempt to commit criminal homicide in the first or 2nd degree is a Class A crime.

§ 153. Solicitation

1. A person is guilty of solicitation if he commands or attempts to induce another person to commit a particular Class A or Class B crime, whether as principal or accomplice, with the intent to cause the imminent commission of the crime, and under circumstances which the actor knows make it very likely that the crime will take place.

2. It is a defense to prosecution under this section that, if the criminal object were achieved, the defendant would not be guilty of a crime under the law defining the crime or as an accomplice under chapter 3, section 57.

3. It is no defense to a prosecution under this section that the person solicited could not be guilty of the crime because of lack of responsibility or culpability, or other incapacity or defense.

4. Solicitation is an offense classified as one grade less serious than the classification of the crime solicited, except that solicitation to commit criminal homicide in the first or 2nd degree is a Class A crime.

§ 154. General provisions regarding chapter 7

1. It shall not be a crime to conspire to commit, or to attempt, or solicit, any crime set forth in this chapter.

2. There is an affirmative defense of renunciation in the following circumstances.

A. In a prosecution for attempt under section 152, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

B. In a prosecution for solicitation under section 153, or for conspiracy under section 151, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited or of the crime contemplated by the conspiracy, as the case may be.

C. A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by: A belief that a circumstance exists which increases the probability of detection or apprehension of the defendant or another participant in the criminal operation, or which makes more difficult the consummation of the crime; or a decision to postpone the criminal conduct until another time or to substitute another victim or another but similar objective.

CHAPTER 9

OFFENSES AGAINST THE PERSON

§ 201. Criminal homicide in the first degree

1. A person is guilty of criminal homicide in the first degree if he commits criminal homicide in the 2nd degree as defined in section 202 and, at the

time of his actions, one or more of the circumstances enumerated in subsection 2 was in fact present.

2. The circumstances referred to in subsection 1 are:

A. The criminal homicide was committed by a person under sentence for criminal homicide in the first or 2nd degree;

B. The person had previously been convicted of a crime involving the use of serious violence to any person;

C. The person knowingly created a great risk of death to many persons;

D. The criminal homicide was committed for the purpose of avoiding or preventing lawful arrest or effecting an escape from lawful custody;

E. The criminal homicide was committed for pecuniary benefit;

F. The person knowingly inflicted great physical suffering on the victim.

3. An indictment for criminal homicide in the first degree must allege one or more of the circumstances enumerated in subsection 2.

4. The sentence for criminal homicide in the first degree shall be as authorized in chapter 51.

§ 202. Criminal homicide in the 2nd degree

1. A person is guilty of criminal homicide in the 2nd degree if he causes the death of another intending to cause such death, or knowing that death will almost certainly result from his conduct.

2. The sentence for criminal homicide in the 2nd degree shall be as authorized in chapter 51.

§ 203. Criminal homicide in the 3rd degree

1. A person is guilty of criminal homicide in the 3rd degree if, acting alone or with one or more other persons in the commission of, or an attempt to commit, or immediate flight after committing, or attempting to commit any Class A crime, or escape he or another participant causes the death of a person and such death is a natural and probable consequence of such commission, attempt or flight.

2. It is an affirmative defense to prosecution under this section that the defendant:

A. Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel or aid the commission thereof; and

B. Was not armed with a dangerous weapon, or other weapon which under circumstances indicated a readiness to inflict serious bodily injury; and

C. Reasonably believed that no other participant was armed with such a weapon; and

D. Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

3. Criminal homicide in the 3rd degree is a Class A crime.

§ 204. Criminal homicide in the 4th degree

1. A person is guilty of criminal homicide in the 4th degree if he:

A. Recklessly causes the death of another human being; or

B. Causes the death of another human being under circumstances which would be criminal homicide in the first or 2nd degree except that he causes the death under the influence of extreme emotional disturbance or extreme mental retardation. The defendant shall prove by a preponderance of the evidence the presence and influence of such extreme emotional disturbance or mental retardation. Evidence of extreme emotional disturbance or mental retardation may not be introduced by the defendant unless the defendant at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for cause permit, files written notice of his intention to introduce such evidence. In any event, the court shall allow the prosecution a reasonable time after said notice to prepare for trial, or a reasonable continuance during trial.

2. Criminal homicide in the 4th degree is a Class B crime, provided that it is a defense which reduces it to a Class C crime if it occurs as the result of the reckless operation of a motor vehicle.

§ 205. Criminal homicide in the 5th degree

1. A person is guilty of criminal homicide in the 5th degree if, with criminal negligence, he causes the death of another.

2. Criminal homicide in the 5th degree is a Class D crime.

§ 206. Criminal homicide in the 6th degree

1. A person is guilty of causing or aiding suicide if he intentionally aids or solicits another to commit suicide, and the other commits or attempts suicide.

2. Criminal homicide in the 6th degree is a Class D crime.

§ 207. Assault

1. A person is guilty of assault if he intentionally, knowingly, or recklessly causes bodily injury or offensive physical contact to another.

2. Assault is a Class D crime.

§ 208. Aggravated assault

1. A person is guilty of aggravated assault if he intentionally, knowingly, or recklessly causes:

A. Serious bodily injury to another; or

B. Bodily injury to another by means of a deadly weapon; or

C. Bodily injury to another under circumstances manifesting extreme indifference to the value of human life.

2. Aggravated assault is a Class B crime.

§ 209. Criminal threatening

1. A person is guilty of criminal threatening if he intentionally or knowingly places another person in fear of imminent bodily injury.

2. Criminal threatening is a Class D crime.

§ 210. Terrorizing

1. A person is guilty of terrorizing if he communicates to any person a a threat to commit or cause to be committed a crime of violence dangerous to human life, against the person threatened or another, and the natural and probable consequence of such a threat, whether or not such consequence in fact occurs, is:

A. To place the person to whom the threat is communicated in reasonable fear that the crime will be committed; or

B. To cause evacuation of a building, place of assembly or facility of public transport.

2. Terrorizing is a Class C crime.

§ 211. Reckless conduct

1. A person is guilty of reckless conduct if he recklessly creates a substantial risk of serious bodily injury to another person.

2. Reckless conduct is a Class D crime.

CHAPTER 11

SEX OFFENSES

§ 251. Definitions and general provisions

1. In this chapter the following definitions apply.

A. "Spouse" means a person legally married to the actor, but does not include a legally married person living apart from the actor under a defacto separation.

B. "Sexual intercourse" means any penetration of the female sex organ by the male sex organ. Emission is not required.

C. "Sexual act" means any act of sexual gratification between 2 persons involving direct physical contact between the sex organs of one and the mouth or anus of the other or direct physical contact between the sex organs of one and the sex organs of the other without penetration, or direct physical contact between the sex organs of one and an instrument or device manipulated by the other.

D. "Sexual contact" means any touching of the genitals, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire.

§ 252. Rape

1. A person is guilty of rape if he engages in sexual intercourse:

A. With any person who has not attained his 14th birthday; or

B. With any person, not his spouse, and he compels such person to submit:

(1) by force and against the person's will; or

(2) by threat that death, serious bodily injury, or kidnapping will be imminently inflicted on the person or on any other human being.

2. It is an affirmative defense that the defendant and the victim were living together as man and wife at the time of the crime.

3. Rape is a Class A crime. It is, however, a defense which reduces the crime to a Class B crime that the victim was a voluntary social companion of the defendant at the time of the crime and had, on that occasion, permitted the defendant sexual contact.

§ 253. Gross sexual misconduct

A person is guilty of gross sexual misconduct

1. If he engages in a sexual act with another person, not his spouse, and

A. He compels such other person to submit:

(1) by force and against the will of such other person; or

(2) by threat that death, serious bodily injury, or kidnapping will be imminently inflicted on such other person or on any other human being; or

B. The other person has not attained his 14th birhday; or

2. If he engages in sexual intercourse or a sexual act with another person, not his spouse, and

A. He has substantially impaired the other person's power to appraise or control his sex acts by administering or employing drugs, intoxicants, or other similar means; or

B. He compels or induces the other to engage in such sexual act by any threat; or

C. The other person suffers from mental illness or defect that is reasonably apparent or known to the actor, and which in fact renders the other substantially incapable of appraising the nature of the contact involved; or

D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to such sexual act; or

E. The other person is in official custody as a probationer or a parolee, or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over such other person.

3. It is a defense to a prosecution under subsection 2, paragraph A that the other person voluntarily consumed or allowed administration of the substance with knowledge of its nature.

4. Violation of subsection 1 is a Class A crime. It is, however, a defense to prosecution under subsection 1, paragraph A which reduces the crime to a Class B crime that the other person was a voluntary social companion of the defendant at the time of the offense and had, on that occasion, permitted him sexual contact. It is an affirmative defense to a prosecution under subsection 1, paragraph A that the defendant and the victim were living together as man and wife at the time of the crime.

5. Violation of subsection 2, paragraphs A, C or E is a Class B crime. Violation of subsection 2, paragraphs B or D is a Class C crime.

§ 254. Sexual abuse of minors

1. A person is guilty of sexual abuse of a minor if, having attained his 18th birthday he engages in sexual intercourse or a sexual act with another person who has attained his 14th birthday but has not attained his 16th birthday; provided the actor is at least 5 years older than such other.

2. It is a defense to a prosecution under this section that the actor reasonably believed the other person to have attained his 16th birthday.

3. Sexual abuse of minors is a Class D crime.

§ 255. Unlawful sexual contact

1. A person is guilty of unlawful sexual contact if he intentionally subjects another person, not his spouse, to any sexual contact, and

A. The other person has not expressly or impliedly acquiesced in such sexual contact; or

B. The other person is unconscious or otherwise physically incapable of resisting, and has not consented to the sexual contact; or

C. The other person has not attained his 14th birthday and the actor is at least 3 years older; or

D. The other person suffers from a mental disease or defect that is reasonably apparent or known to the actor which in fact renders the other person substantially incapable of appraising the nature of the contact involved; or

E. The other person is in official custody as a probationer or parolee or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over such other person.

2. Unlawful sexual contact is a Class D crime, except that a violation of subsection 1, paragraph C is a Class C crime.

CHAPTER 13

KIDNAPPING AND CRIMINAL RESTRAINT

§ 301. Kidnapping

1. A person is guilty of kidnapping if either:

A. He knowingly restrains another person with the intent to

(1) hold him for ransom or reward;

(2) use him as a shield or hostage;

(3) inflict bodily injury upon him or subject him to conduct defined as criminal in chapter 11;

(4) terrorize him or a 3rd person;

(5) facilitate the commission of another crime by any person or flight thereafter; or

(6) interfere with the performance of any governmental or political function; or

B. He knowingly restrains another person:

(1) under circumstances which, in fact, expose such other person to risk of serious bodily injury; or

(2) by secreting and holding him in a place where he is not likely to be found.

2. "Restrain" means to restrict substantially the movements of another person without his consent or other lawful authority by:

A. Removing him from his residence, place of business, or from a school; or

B. Moving him a substantial distance from the vicinity where he is found; or

C. Confining him for a substantial period either in the place where the restriction commences or in a place to which he has been moved.

3. Kidnapping is a Class A crime. It is however, a defense which reduces the crime to a Class B crime, if the defendant voluntarily released the victim alive and not suffering from serious bodily injury, in a safe place prior to trial.

§ 302. Criminal restraint

1. A person is guilty of criminal restraint if:

A. He knowingly restrains another person; or

B. Being the parent of a child under the age of 16, he intentionally or knowingly takes, retains, or entices such child from the custody of his other parent, guardian or other lawful custodian, and removes such child from the State, knowing that he has no legal right to do so; or

C. Knowing he has no legal right to do so, he intentionally or knowingly takes, retains or entices:

(1) a child under the age of 14; or

(2) an incompetent person; or

(3) a child who has attained his 14th birthday but has not attained his 16th birthday, provided that the actor is at least 18 years of age, from the custody of his parent, guardian or other lawful custodian, with the intent to hold the person permanently or for a prolonged period.

2. "Restrain" has the same meaning as in section 301.

3. Criminal restraint is a Class D crime.

CHAPTER 15

THEFT

§ 351. Consolidation

Conduct denominated theft in this chapter constitutes a single crime embracing the separate crimes such as those heretofore known as larceny, larceny by trick, larceny by bailee, embezzlement, false pretenses, extortion, blackmail, shoplifting and receiving stolen property. An accusation of theft may be proved by evidence that it was committed in any manner that would be theft under this chapter, notwithstanding the specification of a different manner in the information or indictment, subject only to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief if the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

§ 352. Definitions

As used in this chapter, unless a different meaning is plainly required by the context:

1. "Property" means anything of value, including but not limited to:

A. Real estate and things growing thereon, affixed to or found thereon;

B. Tangible and intangible personal property;

C. Captured or domestic animals, birds or fishes;

D. Written instruments, including credit cards, or other writings representing or embodying rights concerning real or personal property, labor, services or otherwise containing anything of value to the owner;

E. Commodities of a public utility nature such as telecommunications, gas, electricity, steam or water; and

F. Trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by him.

2. "Obtain" means, in relation to property, to bring about, in or out of this State, a transfer of possession or of some other legally recognized interest in property, whether to the obtainer or another; in relation to labor or services, to secure performance thereof; and in relation to a trade secret, to make any facsimile, replica, photograph or other reproduction.

3. "Intent to deprive" means to have the conscious object:

A. To withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value, or the use and benefit thereof, would be lost; or

B. To restore the property only upon payment of a reward or other compensation; or

C. To dispose of the property under circumstances that make it unlikely that the owner will recover it.

4. "Property of another" includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in the possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

5. The meaning of "value" shall be determined according to the following.

A. Except as otherwise provided in this subsection, value means the market value of the property or services at the time and place of the crime, or if such cannot be satisfactorily ascertained, the cost of replacement of the property or services within a reasonable time after the crime.

B. The value of a written instrument which does not have a readily ascertainable market value shall, in the case of an instrument such as a check, draft or promissory note be deemed the amount due or collectible thereon, and shall, in the case of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

C. The value of a trade secret which does not have a readily ascertainable market value shall be deemed any reasonable value representing the damage to the owner suffered by reason of losing an advantage over those who do not know of or use the trade secret.

D. If the value of property or services cannot be ascertained beyond a reasonable doubt pursuant to the standards set forth above, the trier of fact may find the value to be not less than a certain amount, and if no such minimum value can be thus ascertained, the value shall be deemed to be an amount less than $500.

E. Amounts of value involved in thefts committed pursuant to one scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the class or grade of the crime.

F. The defendant's culpability as to value is not an essential requisite of liability, unless otherwise expressly provided.

§ 353. Theft by unauthorized taking or transfer

1. A person is guilty of theft if he obtains or exercises unauthorized control over the property of another with intent to deprive him thereof.

2. As used in this section, "exercises unauthorized control" includes but is not necessarily limited to conduct heretofore defined or known as common law larceny by trespassory taking, larceny by conversion, larceny by bailee and embezzlement.

§ 354. Theft by deception

1. A person is guilty of theft if he obtains or exercises control over property of another as a result of deception and with an intention to deprive him thereof.

2. For purposes of this section, deception occurs when a person intentionally:

A. Creates or reinforces an impression which is false and which that person does not believe to be true, including false impressions as to law, value, knowledge, opinion, intention or other state of mind. Provided, however,

that an intention not to perform a promise, or knowledge that a promise will not be performed, shall not be inferred from the fact alone that the promise was not performed;

B. Fails to correct an impression which is false which he previously had created or reinforced, and which he does not believe to be true, or which he knows to be influencing another whose property is involved and to whom he stands in a fiduciary or confidential relationship;

C. Prevents another from acquiring information which is relevant to the disposition of the property involved; or

D. Fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

3. It is no defense to a prosecution under this section that the deception related to a matter that was of no pecuniary significance, or that the person deceived acted unreasonably in relying on the deception.

§ 355. Theft by extortion

1. A person is guilty of theft if he obtains or exercises control over the property of another as a result of extortion and with the intention to deprive him thereof.

2. As used in this section, extortion occurs when a person threatens to:

A. Cause physical harm in the future to the person threatened or to any other person or to property at any time; or

B. Do any other act which would not in itself substantially benefit him but which would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation or personal relationships.

§ 356. Theft of lost, mislaid or mistakenly delivered property

A person is guilty of theft if he obtains or exercises control over the property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, and he both:

1. Fails to take reasonable measures to return the same to the owner; and

2. Has the intention to deprive the owner of such property when he first obtains or exercises control over it, or at any time prior to taking reasonable measures to return the same to the owner.

§ 357. Theft of services

1. A person is guilty of theft if he obtains services which he knows are available only for compensation by deception, threat, force or any other

means designed to avoid the due payment therefor. As used in this section, "deception" has the same meaning as in section 354, and "threat" is deemed to occur under the circumstances described in section 355, subsection 2.

2. A person is guilty of theft if, having control over the disposition of services of another, to which he knows he is not entitled, he diverts such services to his own benefit, or to the benefit of some other person who he knows is not entitled thereto.

3. As used in this section, "services" includes, but is not necessarily limited to, labor, professional service, public utility and transportation service, restaurant, hotel, motel, tourist cabin, rooming house and like accommodations, the supplying of equipment, tools, vehicles or trailers for temporary use, telephone, telegraph or computer service, gas, electricity, water or steam, admission to entertainment, exhibitions, sporting events or other events for which a charge is made.

4. Where compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels, restaurants and garages, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception.

§ 358. Theft by misapplication of property

1. A person is guilty of theft if he obtains property from anyone or personal services from an employee upon agreement, or subject to a known legal obligation, to make a specified payment or other disposition to a 3rd person or to a fund administered by himself, whether from that property or its proceeds or from his own property to be reserved in an equivalent or agreed amount, if he intentionally or recklessly fails to make the required payment or disposition and deals with the property obtained or withheld as his own.

2. Liability under subsection 1 is not affected by the fact that it may be impossible to identify particular property as belonging to the victim at the time of the failure to make the required payment or disposition.

3. An officer or employee of the government or of a financial institution is presumed:

A. To know of any legal obligation relevant to his liability under this section; and

B. To have dealt with the property as his own if he fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of his accounts.

§ 359. Receiving stolen property

1. A person is guilty of theft, if he receives, retains or disposes of the property of another knowing that it has been stolen, or believing that it has probably been stolen, with the intention to deprive the owner thereof.

2. As used in this section, "receives" means acquiring possession, control or title, or lending on the security of the property.

§ 360. Unauthorized use of property

1. A person is guilty of theft if:

A. Knowing that he does not have the consent of the owner, he takes, operates or exercises control over a vehicle, or, knowing that a vehicle has been so wrongfully obtained, he rides in such vehicle;

B. Having custody of a vehicle pursuant to an agreement between himself and the owner thereof whereby the actor or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, he intentionally uses or operates the same, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or

C. Having custody of property pursuant to a rental or lease agreement with the owner thereof whereby such property is to be returned to the owner at a specified time and place, he intentionally fails to comply with the agreed terms concerning return of such property without the consent of the owner, for so lengthy a period beyond the specified time for return as to render his retention or possession or other failure to return a gross deviation from the agreement.

2. As used in this section, "vehicle" means any automobile, airplane, motorcycle, motorboat, snowmobile, any other motor-propelled means of transportation, or any boat or vessel propelled by sail, oar or paddle. "Property" has the meaning set forth in section 2 and includes vehicles.

3. It is a defense to a prosecution under this section that the actor reasonably believed that the owner would have consented to his conduct had he known of it.

§ 361. Claim of right; presumptions

1. It is an affirmative defense to prosecution under this chapter that the defendant acted in good faith under a claim of right to property or services involved, including, in cases of theft of a trade secret, that the defendant rightfully knew the trade secret or that it was available to him from a source other than the owner of the trade secret.

2. Proof that the defendant was in exclusive possession of property that had recently been taken under circumstances constituting a violation of this chapter or of chapter 27 shall give rise to a presumption that the defendant is guilty of the theft or robbery of the property, as the case may be.

3. Proof that the defendant concealed unpurchased property stored, offered or exposed for sale while he was still on the premises of the place where it was stored, offered or exposed, or in a parking lot or public or private way immediately adjacent thereto shall give rise to a presumption that the defendant obtained the property with the intent to deprive the owner thereof.

§ 362. Classification of theft offenses

1. All violations of this chapter shall be classified, for sentencing purposes, according to this section. The facts set forth in this section upon which the classification depends shall be proved by the State beyond a reasonable doubt.

2. Theft is a Class B crime if:

A. The value of the property or services exceeds $5,000;

B. The property stolen is a firearm or an explosive device; or

C. The actor is armed with a deadly weapon at the time of the offense.

3. Theft is a Class C crime if:

A. The value of the property or services is more than $1,000 but not more than $5,000; or

B. The actor has been twice before convicted of the theft of property or services; or

C. The theft is a violation under section 355, subsection 2, paragraphs A or B.

4. Theft is a Class D crime if:

A. It is a volation of section 360, regardless of the value involved; or

B. The value of the property or services exceeds $500 but does not exceed $1,000.

5. Theft is a Class E crime if the value of the property or services does not exceed $500.

CHAPTER 17

BURGLARY AND CRIMINAL TRESPASS

§ 401. Burglary

1. A person is guilty of burglary if he enters or surreptitiously remains in a dwelling place, or other building, structure or place of business, knowing that he is not licensed or privileged to do so, with the intent to commit a crime therein.

2. Burglary is classified as:

A. A Class A crime if the defendant was armed with a firearm, or knew that an accomplice was so armed; and

B. A Class B crime if the defendant intentionally or recklessly inflicted or attempted to inflict bodily injury on anyone during the commission of the burglary, or an attempt to commit such burglary, or in immediate flight after such commission or attempt or if the defendant was armed with a deadly weapon other than a firearm, or knew that an accomplice was so armed; or if the violation was against a dwelling place;

C. All other burglary is a Class C crime.

3. A person may be convicted both of burglary and of the crime which he committed or attempted to commit after entering or remaining in the dwelling place, but sentencing for both crimes shall be governed by chapter 47, section 1155.

§ 402. Criminal trespass

1. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so:

A. He enters in any secured premises; or

B. He remains in any place in defiance of a lawful order to leave which was personally communicated to him by the owner or other authorized person.

2. As used in this section, "secured premises" means any dwelling place, structure that is locked or barred, and a place from which persons may lawfully be excluded and which is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders, or which is fenced or otherwise enclosed in a manner designed to exclude intruders.

3. Criminal trespass is a Class D crime if the violation of this section was by entering a dwelling place, as defined in section 2. All other criminal trespass is a Class E crime.

§ 403. Possession of burglar's tools

1. A person is guilty of possession of burglar's tools if he possesses or makes any tool, implement, instrument or other article which is adapted, designed or commonly used for advancing or facilitating crimes involving unlawful entry into property or crimes involving forcible breaking of safes or other containers or depositories of property, including but not limited to a master key designed to fit more than one lock, with intent to use such tool, implement, instrument or other article to commit any such criminal offense.

2. Possession of burglar's tools is a Class E crime.

§ 404. Trespass by motor vehicle

1. A person is guilty of trespass by motor vehicle if, knowing that he has no right to do so, he intentionally or knowingly permits a motor vehicle belonging to him or subject to his control to enter or remain in or on:

A. The residential property of another; or

B. The nonresidential property of another for a continuous period in excess of 24 hours.

2. Upon proof that the defendant was the registered owner of the vehicle, it shall be presumed that he was the person who permitted the vehicle to enter or remain on the property.

3. Trespass by motor vehicle is a Class E crime.

CHAPTER 19

FALSIFICATION IN OFFICIAL MATTERS

§ 451. Perjury

1. A person is guilty of perjury if he makes:

A. In any official proceeding, a false statement under oath or affirmation, or swears or affirms the truth of a material statement previously made, and he does not believe the statement to be true; or

B. Inconsistent material statements, in the same official proceeding, under oath or affirmation, both within the period of limitations, one of which statements is false and not believed by him to be true.

2. Whether a statement is material is a question of law to be determined by the court. In a prosecution under subsection 1, paragraph B, it need not be alleged or proved which of the statements is false but only that one or the other was false and not believed by the defendant to be true.

3. It is an affirmative defense to prosecution under this section: That the defendant retracted the falsification in the course of the official proceeding in which it was made, and before it became manifest that the falsification was or would have been exposed; or, that proof of falsity rested solely upon contradiction by testimony of a single witness.

4. It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not mentally competent to make the statement or was disqualified from doing so. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

5. As used in this section:

A. "Official proceeding" means any proceeding before a legislative, judicial, administrative or other governmental body or official authorized by law to take evidence under oath or affirmation including a notary or other person taking evidence in connection with any such proceeding;

B. "Material" means capable of affecting the course or outcome of the proceeding.

6. Perjury is a Class C crime.

§ 452. False swearing

1. A person is guilty of false swearing if:

A. He makes a false statement under oath or affirmation or swears or affirms the truth of such a statement previously made and he does not believe the statement to be true, provided

(1) the falsification occurs in an official proceeding as defined in section 451, subsection 5, paragraph A, or is made with the intention to mislead a public servant performing his official duties; or

(2) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths; or

B. He makes inconsistent statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true. In a prosecution under this subsection, it need not be alleged or proved which of the statements is false, but only that one or the other was false and not believed by the defandant to be true.

2. It is an affirmative defense to prosecution under this section that, when made in an official proceeding, the defendant retracted the falsification in the course of such proceeding before it became manifest that the falsification was or would have been exposed; or that proof of falsity rested solely upon contradiction by testimony of a single witness.

3. It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not mentally competent to make the statement or was disqualified from doing so. A document purporting to be made upon oaths or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

4. False swearing is a Class D crime.

§ 453. Unsworn falsification

A person is guilty of unsworn falsification if:

A. He makes a written false statement which he does not believe to be true, on or pursuant to, a form conspicuously bearing notification authorized by statute or regulation to the effect that false statements made therein are punishable; or

B. With the intent to deceive a public servant in the performance of his official duties, he

(1) makes any written false statement which he does not believe to be true, provided, however, that this subsection does not apply in the case of a written false statement made to a law enforcement officer by a person then in official custody and suspected of having committed a crime; or

(2) knowingly creates, or attempts to create, a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(3) submits or invites reliance on any sample, specimen, map, boundary mark or other object which he knows to be false.

2. Unsworn falsification is a Class D crime.

§ 454. Tampering with witness or informant

1. A person is guilty of tampering with witness or informant if, believing that an official proceeding as defined in section 451, subsection 5, paragraph A, or an official criminal investigation, is pending or will be instituted:

A. He attempts to induce or otherwise cause a witness or informant

(1) to testify or inform falsely; or

(2) to withhold, beyond the scope of any privilege which the witness or informant may have, any testimony, information or evidence; or

(3) to absent himself from any proceeding or investigation to which he has been summoned by legal process; or

B. He solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in subsection 1, paragraph A, subparagraph (1); or

C. He solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in subsection 1, paragraph A, subparagraphs (2) or (3).

2. Violation of subsection 1, paragraph A, subparagraph (1) or paragraph B is a Class C crime. Violation of subsection 1, paragraph A, subparagraphs (2) or (3), or subsection 1, paragraph C is a Class D crime.

§ 455. Falsifying physical evidence

1. A person is guilty of falsifying physical evidence if, believing that an official proceeding as defined in section 451, subsection 5, paragraph A, or an official criminal investigation, is pending or will be instituted, he:

A. Alters, destroys, conceals or removes any thing relevant to such proceeding or investigation with intent to impair its verity, authenticity or availability in such proceeding or investigation; or

B. Presents or uses any thing which he knows to be false with intent to deceive a public servant who is or may be engaged in such proceeding or investigation.

2. Falsifying physical evidence is a Class D crime.

§ 456. Tampering with public records or information

1. A person is guilty of tampering with public records or information if he:

A. Knowingly makes a false entry in, or false alteration of any record, document or thing belonging to, or received or kept by the government, or required by law to be kept by others for the information of the government; or

B. Presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in subsection 1, paragraph A; or

C. Intentionally destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing, knowing that he lacks authority to do so.

2. Tampering with public records or information is a Class D crime.

§ 457. Impersonating a public servant

1. A person is guilty of impersonating a public servant if he falsely pretends to be a public servant and engages in any conduct in that capacity with the intent to deceive anyone.

2. It is no defense to a prosecution under this section that the office the person pretended to hold did not in fact exist.

3. Impersonating a public servant is a Class E crime.

CHAPTER 21

OFFENSES AGAINST PUBLIC ORDER

§ 501. Disorderly conduct

A person is guilty of disorderly conduct if:

1. In a public place, he intentionally or recklessly causes annoyance to others by intentionally:

A. Making loud and unreasonable noises; or

B. Activating a device, or exposing a substance, which releases noxious and offensive odors; or

2. In a public or private place, he knowingly accosts, insults, taunts or challenges any person with offensive, derisive or annoying words, or by gestures or other physical conduct, which would in fact have a direct tendency to cause a violent response by an ordinary person in the situation of the person so accosted, insulted, taunted or challenged;

3. In a private place, he makes loud and unreasonable noise which can be heard as unreasonable noise in a public place or in another private place, after having been ordered by a law enforcement officer to cease such noise.

4. A person violating this section in the presence of a law enforcement officer may be arrested without a warrant.

5. As used in this section:

A. "Public place" means a place to which the public at large or a substantial group has access, including but not limited to

(1) public ways as defined in section 505;

(2) schools, government-owned custodial facilities, and

(3) the lobbies, hallways, lavatories, toilets and basement portions of apartment houses, hotels, public buildings and transportation terminals;

B. "Private place" means any place that is not a public place.

6. Disorderly conduct is a Class E crime.

§ 502. Failure to disperse

1. When 6 or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance, or alarm, a law enforcement officer may order the participants and others in the immediate vicinity to disperse.

2. A person is guilty of failure to disperse if he knowingly fails to comply with an order made pursuant to subsection 1.

3. Failure to disperse is a Class D crime if the person is a participant in the course of disorderly conduct; otherwise it is a Class E crime.

§ 503. Riot

1. A person is guilty of riot if, together with 5 or more other persons, he engages in disorderly conduct;

A. With intent imminently to commit or facilitate the commission of a crime involving physical injury or property damage against persons who are not participants; or

B. When he or any other participant to his knowledge uses or intends to use a firearm or other dangerous weapon in the course of the disorderly conduct.

2. Riot is a Class D crime.

§ 504. Unlawful assembly

A person is guilty of unlawful assembly if:

1. He assembles with 5 or more other persons with intent to engage in conduct constituting a riot; or being present at an assembly that either has or develops a purpose to engage in conduct constituting a riot, he remains there with intent to advance that purpose; and

2. He knowingly fails to comply with an order to disperse given by a law enforcement officer to the assembly.

3. Unlawful assembly is a Class E crime.

§ 505. Obstructing public ways

1. A person is guilty of obstructing public ways if he unreasonably obstructs the free passage of foot or vehicular traffic on any public way, and refuses to cease or remove the obstruction upon a lawful order to do so given him by a law enforcement officer.

2. As used in this section, "public way" means any public highway or sidewalk, private way laid out under authority of statute, way dedicated to public use, way upon which the public has a right of access or has access as invitees or licensees, or way under the control of park commissioners or a body having like powers.

3. Obstructing public ways is a Class E crime.

§ 506. Harassment

1. A person is guilty of harassment if by means of telephone he:

A. Makes any comment, request, suggestion or proposal which is, in fact, offensively coarse or obscene, without consent of the person called; or

B. Makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number; or

C. Makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

D. Makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

E. Knowingly permits any telephone under his control to be used for any purpose prohibited by this section.

2. The crime defined in this section may be prosecuted and punished in the county in which the defendant was located when he used the telephone, or in the county in which the telephone called or made to ring by the defendant was located.

3. Harassment is a Class D crime.

§ 507. Desecration and defacement

1. A person is guilty of desecration and defacement if he intentionally desecrates any public monument or structure, any place of worship or burial, or any private structure not owned by him.

2. As used in this section, "desecrate" means marring, defacing, damaging or otherwise physically mistreating, in a way that will outrage the sensibilities of an ordinary person likely to observe or discover the actions.

3. Desecration is a Class E crime.

§ 508. Abuse of corpse

1. A person is guilty of abuse of corpse if he intentionally and unlawfully disinters, digs up, removes, conceals, mutilates or destroys a human corpse, or any part or the ashes thereof.

2. It is a defense to prosecution under this section that the actor was a physician, scientist or student who had in his possession, or used human

bodies or parts thereof lawfully obtained, for anatomical, physiological or other scientific investigation or instruction.

3. Abuse of corpse is a Class D crime.

§ 509. False public alarm or report

1. A person is guilty of false public alarm or report if:

A. He knowingly gives or causes to be given false information to any law enforcement officer with the intent of inducing such officer to believe that a crime has been committed or that another has committed a crime, knowing the information to be false; or

B. He knowingly gives false information to any law enforcement officer or member of a fire fighting agency, including a volunteer fire department, concerning a fire, explosive or other similar substance which is capable of endangering the safety of persons, knowing that such information is false, or knowing that he has no information relating to the fire, explosive or other similar substance.

2. False public alarm is a Class D. crime.

§ 510. Cruelty to animals

1. A person is guilty of cruelty to animals if, intentionally or recklessly:

A. He kills or injures any animal belonging to another person without legal privilege or the consent of the owner. The owner or occupant of property is privileged to use reasonable force to eject a trespassing animal;

B. He overworks, tortures, abandons, gives poison to, cruelly beats or mutilates any animal, or exposes a poison with the intent that it be taken by an animal;

C. He deprives any animal which he owns or possesses of necessary sustenance, shelter or humanely clean conditions;

D. He owns, possesses, keeps, or trains any animal with the intent that it shall be engaged in an exhibition of fighting, or if he has a pecuniary interest in or acts as a judge at any such exhibition of fighting animals; or

E. He keeps or leaves a domestic animal on an uninhabited or barren island lying off the coast of Maine during the month of December, January, February or March without providing sufficient food and proper shelter.

2. As used in subsection 1, paragraph B, "mulilates" includes, but is not limited to, cutting the bone, muscles or tendons of the tail of a horse for the purpose of docking or setting up the tail, cropping or cutting off the ear of a dog in whole or in part. As used in subsection 1, "animal" means birds, fowl, fish and any other living sentient creature that is not a human being.

3. It is an affirmative defense to prosecution under this section that:

A. The defendant's conduct conformed to accepted veterinary practice or was a part of scientific research governed by accepted standards; or

B. The defendant's conduct was designed to control or eliminate rodents, ants or other common pests on his own property.

4. Cruelty to animals is a Class D crime.

§ 511. Violation of privacy

1. A person is guilty of violation of privacy if, except in the execution of a public duty or as authorized by law, he intentionally:

A. Commits a civil trespass on property with the intent to overhear or observe any person in a private place; or

B. Installs or uses in a private place without the consent of the person or persons entitled to privacy therein, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in that place; or

C. Installs or uses outside a private place without the consent of the person or persons entitled to privacy therein, any device for hearing, recording, amplifying or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside that place.

2. As used in this section "private place" means a place where one may reasonably expect to be safe from surveillance but does not include a place to which the public or a substantial group has access.

3. Violation of privacy is a Class D crime.

§ 512. Failure to report treatment of a gunshot wound

1. A person is guilty of failure to report treatment of a gunshot wound if, being a licensed physician, he treats a human being for a wound apparently caused by the discharge of a firearm and knowingly fails to report the same to a law enforcement officer within 24 hours.

2. Failure to report treatment of a gunshot wound is a Class E crime.

§ 513. Maintaining an unprotected well

1. A person is guilty of maintaining an unprotected well if, being the owner or occupier of land on which there is a well, he knowingly fails to enclose the well with a substantial fence or other substantial enclosing barrier or to protect it by a substantial covering which is securely fastened.

2. Maintaining an unprotected well is a Class E crime.

§ 514. Abandoning an airtight container

1. A person is guilty of abandoning an airtight container if:

A. He abandons or discards in any public place, or in a private place that is accessible to minors, any chest, closet, piece of furniture, refrigerator, icebox or other article having a compartment capacity of 1½ cubic feet or more and having a door or lid which when closed cannot be opened easily from the inside; or

B. Being the owner, lessee, manager or other person in control of a public place or of a place that is accessible to minors on which there has been abandoned or discarded a container described in subsection 1, paragraph A, he knowingly or recklessly fails to remove such container from that place, or to remove the door, lid or other cover of the container.

2. Abandoning an airtight container is a Class E crime.

§ 515. Unlawful prize fighting

1. A person is guilty of unlawful prize fighting if:

A. He knowingly engages in, encourages or does any act to further a premeditated fight without weapons between 2 or more persons, or a fight commonly called a ring fight or prize fight; or

B. He knowingly sends or publishes a challenge or acceptance of a challenge for such, or carries or delivers such a challenge for acceptance, or trains or assists any person in training or preparing for such fight, or acts as umpire or judge for such fight.

2. This section shall not apply to any boxing contest or exhibition:

A. Conducted by license and permit of the Maine State Boxing Commission; or

B. Under the auspices of a nonprofit organization at which no admission charge is made.

3. Unlawful prize fighting is a Class E crime.

§ 516. Champerty

1. A person is guilty of champerty if, with the intent to collect by a civil action a claim, account, note or other demand due, or to become due to another person, he gives or promises anything of value to such person.

2. This section does not apply to agreements between attorney and client to bring, prosecute or defend a civil action on a contingent fee basis.

3. Champerty is a Class E crime.

CHAPTER 23

OFFENSES AGAINST THE FAMILY

§ 551. Bigamy

1. A person is guilty of bigamy if, having a spouse, he intentionally marries or purports to marry, knowing that he is legally ineligible to do so.

2. Bigamy is a Class E crime.

§ 552. Nonsupport of dependents

1. A person is guilty of nonsupport of dependents if he knowingly fails to provide support which he is able by means of property or capacity for labor to provide and which he knows he is legally obliged to provide to a spouse, child or other person declared by law to be his dependent.

2. As used in this section, "support" includes but is not limited to food, shelter, clothing and other necessary care.

3. Nonsupport of dependents is a Class E crime.

4. A person placed on probation as a result of a violation of this section may be placed under the supervision of the Department of Health and Welfare. Notwithstanding any other provision of law, the period of probation may extend to the time when the youngest dependent attains the age of 18.

§ 553. Abandonment of child

1. A person is guilty of abandonment of a child if, being a parent, guardan or other person legally charged with the long-term care and custody of a child under the age of 14, or a person to whom such care and custody has been expressly delegated, he leaves the child in any place with the intent to abandon him.

2. Abandonment of a child is a Class D crime.

§ 554. Endangering the welfare of a child

1. A person is guilty of endangering the welfare of a child if, except as provided in subsection 2, he knowingly permits a child under the age of 16 to enter or remain in a house of prostitution; or he knowingly sells, furnishes, gives away or offers to sell, furnish or give away to such a child, any intoxicating liquor, cigarettes, tobacco, air rifles, firearms or ammunition; or he otherwise knowingly endangers the child's health, safety or mental welfare by volating a duty of care of protection.

2. It is an affirmative defense to prosecution under this section that:

A. The defendant was the parent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of a child under the age of 16 who furnished such child a reasonable amount of intoxicating liquor in the actor's home and presence; or

B. The defendant was a person acting pursuant to authority expressly or impliedly granted in Title 12.

3. Endangering the welfare of a child is a Class D crime.

§ 555. Endangering welfare of an incompetent person

1. A person is guilty of endangering the welfare of an incompetent person if he knowingly endangers the health, safety or mental welfare of a person who is unable to care for himself because of advanced age, physical or mental disease, disorder or defect.

2. As used in this section "endangers" includes a failure to act only when the defendant had a legal duty to protect the health, safety or mental welfare of the incompetent person.

3. Endangering the welfare of an incompetent person is a Class D crime.

§ 556. Incest

1. A person is guilty of incest if, being at least 18 years of age, he has sexual intercourse with another person who is at least 18 years of age and as to whom he knows marriage is prohibited by Title 19, section 31.

2. Incest is a Class D crime.

§ 557. Other defenses

For the purposes of this chapter, a person who in good faith provides treatment for a child or incompetent person by spiritual means through prayer alone shall not for that reason alone be deemed to have knowingly endangered the welfare of such child or incompetent person.

CHAPTER 25

BRIBERY AND CORRUPT PRACTICES

§ 601. Scope of chapter

Nothing in this chapter shall be construed to prohibit the giving or receiving of campaign contributions made for the purpose of defraying the costs of a political campaign. No person shall be convicted of an offense solely on the evidence that a campaign contribution was made, and that an appointment or nomination was subsequently made by the person to whose campaign or political party the contribution was made.

§ 602. Bribery in official and political matters

1. A person is guilty of bribery in official and political matters if:

A. He promises, offers, or gives any pecuniary benefit to another with the intention of influencing the other's action, decision, opinion, recommendation, vote, nomination or other exercise of discretion as a public servant, party official or voter; or

B. Being a public servant, party official, candidate for electoral office or voter, he solicits, accepts or agrees to accept any pecuniary benefit from another knowing or believing the other's purpose to be as described in subsection 1, paragraph A, or fails to report to a law enforcement officer that he has been offered or promised a pecuniary benefit in violation of subsection 1, paragraph A.

2. As used in this section and other sections of this chapter, the following definitions apply.

A. A person is a "candidate for electoral office" upon his public announcement of his candidacy.

B. "Party official" means any person holding any post in a political party whether by election, appointment or otherwise.

C. "Pecuniary benefit" means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain; it does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

3. Bribing in official and political matters is a Class C crime.

§ 603. Improper influence

1. A person is guilty of improper influence if he:

A. Threatens any harm to a public servant, party official or voter with the purpose of influencing his action, decision, opinion, recommendation. nomination, vote or other exercise of discretion;

B. Privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, argument or other communication with the intention of influencing that discretion on the basis of considerations other than those authorized by law; or

C. Being a public servant or party official, fails to report to a law enforcement officer conduct designed to influence him in violation of paragraphs A or B.

2. "Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official or voter is interested.

3. Improper influence is a Class D crime.

§ 604. Improper compensation for past action

1. A person is guilty of improper compensation for past action if:

A. Being a public servant, he solicits, accepts or agrees to accept any pecuniary benefit in return for having given a decision, opinion, recommendation, nomination, vote, otherwise exercised his discretion, or for having violated his duty; or

B. He promises, offers or gives any pecuniary benefit, acceptance of which would be a violation of paragraph A.

2. Improper compensation for past action is a Class D crime.

§ 605. Improper gifts to public servants

1. A person is guilty of improper gifts to public servants if:

A. Being a public servant he solicits, accepts or agrees to accept any pecuniary benefit from a person who he knows is or is likely to become subject to or interested in any matter or action pending before or contemplated by himself or the governmental body with which he is affiliated; or

B. He knowingly gives, offers, or promises any pecuniary benefit prohibited by paragraph A.

2. Improper gifts to public servants is a Class E crime.

§ 606. Improper compensation for services

1. A person is guilty of improper compensation for services if:

A. Being a public servant, he solicits, accepts or agrees to accept any pecuniary benefit in return for advice or other assistance in preparing or promoting a bill, contract, claim or other transaction or proposal as to which he knows that he has or is likely to have an official discretion to exercise; or

B. He gives, offers or promises any pecuniary benefit, knowing that it is prohibited by paragraph A.

2. Improper compensation for services is a Class E crime.

§ 607. Purchase of public office

1. A person is guilty of purchase of public office if:

A. He solicits, accepts or agrees to accept, for himself, another person, or a political party, money or any other pecuniary benefit as compensation for his endorsement, nomination, appointment, approval or disapproval of any person for a position as a public servant or for the advancement of any public servant; or

B. He knowingly gives, offers or promises any pecuniary benefit prohibited by paragraph A.

2. Purchase of public office is a Class D crime.

§ 608. Official oppression

1. A person is guilty of official oppression if, being a public servant and acting with the intention to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

2. Official oppression is a Class E crime.

§ 609. Misuse of information

1. A person is guilty of misuse of information if, being a public servant and knowing that official action is contemplated, or acting in reliance on information which he has acquired by virtue of his office or from another public servant, he:

A. Acqiures or divests himself of a pecuniary interest in any property, transaction or enterprise which may be affected by such official action or information; or

B. Speculates or wagers on the basis of such official action or information; or

C. Knowingly aids another to do any of the things described in paragraphs A and B.

2. Misuse of information is a Class E crime.

CHAPTER 27

ROBBERY

§ 651. Aggravated robbery

1. A person is guilty of aggravated robbery if, in the course of committing robbery, as defined in section 652:

A. He intentionally inflicts or attempts to inflict bodily injury or uses physical force on another; or

B. He is armed with a dangerous weapon.

2. Aggravated robbery is a Class A crime.

§ 652. Robbery

1. A person is guilty of robbery if he commits theft and at the time of his actions:

A. He threatens to use force against any person present with the intent

(1) to prevent or overcome resistance to the taking of the property, or to the retention of the property immediately after the taking; or

(2) to compel the person in control of the property to give it up or to engage in other conduct which aids in the taking or carrying away of the property; or

B. He recklessly inflicts bodily injury on another.

2. Robbery is a Class B crime.

CHAPTER 29

FORGERY AND RELATED OFFENSES

§ 701. Definitions

As used in sections 702 and 703:

1. A person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of, or fully authorized by, its ostensible author, maker or drawer;

2. A person "falsely completes" a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of, or fully authorized by, its ostensible author, maker or drawer;

3. A person "falsely makes" a written instrument when he makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible author, maker or drawer, but which is not such, either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof;

4. "Written instrument" includes any token, coin, stamp, seal, badge, trademark, credit card, other evidence or symbol of value, right, privilege or identification, and any paper, document, or other written instrument containing written or printed matter or its equivalent;

5. "Complete written instrument" means a written instrument which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof; and

6. "Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

§ 702. Aggravated forgery

1. A person is guilty of aggravated forgery if, with intent to defraud or deceive another person or government, he falsely makes, completes or alters a written instrument, or knowingly utters or possesses such an instrument, and the instrument is:

A. Part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality;

B. Part of an issue of stocks, bonds or other instruments representing interests in or claims against an organization or its property;

C. A will, codicil or other instrument providing for the disposition of property after death;

D. A public record or an instrument filed or required or authorized by law to be filed in or with a public office or public employee; or

E. A check whose face value exceeds $5,000.

2. Aggravated forgery is a Class B crime.

§ 703. Forgery

1. A person is guilty of forgery if, with the intent to defraud or deceive another person or government, he:

A. Falsely makes, completes or alters a written instrument, or knowingly utters or possesses such an instrument; or

B. Causes another, by deception, to sign or execute a written instrument, or utters such an instrument.

2. Forgery is a Class D crime.

§ 704. Possession of forgery devices

1. A person is guilty of possession of forgery devices if:

A. He makes or possesses with knowledge of its character, any plate, die or other device, apparatus, equipment or article specifically designed or adapted for use in committing aggravated forgery or forgery; or

B. He makes or possesses any device, apparatus, equipment, or article capable of or adaptable to use in committing an aggravated forgery or forgery, with the intent to use it himself, or to aid or permit another to use it for purposes of committing aggravated forgery or forgery.

2. Possession of forgery devices is a Class E crime.

§ 705. Criminal simulation

1. A person is guilty of criminal simulation if:

A. With intent to defraud, he makes or alters any property so that it appears to have an age, rarity, quality, composition, source or authorship which it does not in fact possess; or with knowledge of its true character and with intent to defraud, he transfers or possesses property so simulated; or

B. In return for a pecuniary benefit;

(1) he authors, prepares, writes, sells, transfers or possesses with intent to sell or transfer, an essay, term paper or other manuscript knowing

that it will be, or believing that it probably will be, submitted by another person in satisfaction of a course, credit or degree requirement at a university or other degree, diploma or certificate-granting educational institution; or

(2) he takes an examination for another person in satisfaction of a course, credit or degree requirement at a university or other degree, diploma or certificate-granting educational institution;

C. He knowingly makes, gives or exhibits a false pedigree in writing of any animal; or

D. With intent to defraud and to prevent identification, he alters, removes or obscures the manufacturer's serial number or any other distinguishing identification number, mark or symbol upon any automobile, motorboat, aircraft or any other vehicle or upon any machine, firearm or other object.

2. Criminal simulation is a Class E crime.

§ 706. Suppressing recordable instrument

1. A person is guilty of suppressing a recordable instrument if, with intent to defraud anyone, he falsifies, destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording, whether or not it is in fact recorded.

2. Suppressing a recordable instrument is a Class E crime.

§ 707. Falsifying private records

1. A person is guilty of falsifying private records if, with intent to defraud any person, he:

A. Makes a false entry in the records of an organization, or

B. Alters, erases, obliterates, deletes, removes or destroys a true entry in the records of an organization; or

C. Omits to make a true entry in the records of an organization in violation of a duty to do so which he knows to be imposed on him by statute; or

D. Prevents the making of a true entry or causes the omission thereof in the records of an organization.

2. Falsifying private records is a Class E crime.

§ 708. Negotiating a worthless instrument

1. A person is guilty of negotiating a worthless instrument if he intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee.

2. It shall be presumed that the person issuing or negotiating the instrument knew that it would not be honored upon proof that:

A. The drawer had no account with the drawee at the time the instrument was negotiated; or

B. Payment was refused by the drawee for lack of funds upon presentation within a reasonable time after negotiation or issue, as determined according to Title 11, section 3-503, and the drawer failed to make good within 5 days after actual receipt of a notice of dishonor, as defined in Title 11, section 3-508.

3. As used in this section, the following definitions apply:

A. "Issue" has the meaning provided in Title 11, section 3-102, subsection (1), paragraph (a);

B. "Negotiable instrument" has the meaning provided in Title 11, section 3-104;

C. "Negotiation" and its varients have the meaning provided in Title 11, section 3-202.

4. Negotiating a worthless instrument is a Class D crime.

CHAPTER 31

OFFENSES AGAINST PUBLIC ADMINISTRATION

§ 751. Obstructing government administration

1. A person is guilty of obstructing government administration if he uses force, violence, intimidation or engages in any criminal act with the intent to interfere with a public servant performing or purporting to perform an official function.

2. This section shall not apply to:

A. Refusal by a person to submit to an arrest;

B. Escape by a person from official custody, as defined in section 755.

3. Obstructing government administration is a Class D crime.

§ 752. Assault on an officer

1. A person is guilty of assault on an officer, if:

A. He knowingly assaults a law enforcement officer while the officer is in the performance of his official duties; or

B. Being in custody in a penal institution or other facility pursuant to an arrest or pursuant to a court order, he commits an assault on a member of the staff of the institution or facility.

2. As used in this section "assault" means the crime defined in chapter 9, section 207. For purposes of subsection 1, a law enforcement officer takes another person into custody when he exercises physical control over that person's freedom of movement, or is in a position imminently to exercise such control and declares his intention to do so.

3. Assault on an officer is a Class D crime.

§ 753. Hindering apprehension or prosecution

1. A person is guilty of hindering apprehension or prosecution if, with the intent to hinder, prevent or delay the discovery, apprehension, prosecution, conviction or punishment of another person for the commission of a crime, he:

A. Harbors or conceals the other person; or

B. Provides or aids in providing a dangerous weapon, transportation, disguise or other means of avoiding discovery or apprehension; or

C. Conceals, alters or destroys any physical evidence that might aid in the discovery, apprehension or conviction of such person; or

D. Warns such person of impending discovery or apprehension, except that this subsection does not apply to a warning given in connection with an effort to bring another into compliance with the law; or

E. Obstructs by force, intimidation or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person; or

F. Aids such person to safeguard the proceeds of or to profit from such crime.

2. Hindering apprehension is a Class B crime if the defendant knew that the charge made or liable to be made against the other person was criminal homicide in the first or 2nd degree, or a Class A crime. Otherwise, it is one grade less than the charge made or in fact liable to be made against the other person; provided that if such charge is a Class E crime, hindering apprehension is a Class E crime.

§ 754. Compounding

1. A person is guilty of compounding if he intentionally solicits, accepts or agrees to accept, any pecuniary benefit as consideration for refaining from initiating or participating as informant or witness in a criminal prosecution.

2. Licensed or certified persons or institutions rendering treatment or services in connection with problems associated with the abuse of drugs pursuant to Title 32, sections 2595, 3292, 3817 and 4185-A and Title 22, section 1823 shall be exempt from the necessity of disclosure under this section of "possession" or "use" violations of chapter 45, known to such licensed or certified person or institution to have been committed by the person receiving treatment or services for problems associated with the abuse of drugs.

3. Compounding is a Class E crime.

§ 755. Escape

1. A person is guilty of escape if, without official permission, he intentionally leaves official custody, or intentionally fails to return to official custody following temporary leave granted for a specific purpose or a limited period.

2. In the case of escape from arrest, it is a defense that the arresting officer acted unlawfully in making the arrest. In all other cases, it is no defense that grounds existed for release from custody that could have been raised in a legal proceeding.

3. As used in this section, "official custody" means arrest, custody in, or on the way to or from a jail, police station, house of correction, or any institution or facility under the control of the Bureau of Corrections, or under contract with the bureau for the housing of persons sentenced to imprisonment, the custody of any official of the bureau, or any custody pursuant to court order. It does not include custody of persons under 18 years of age unless such person has been administratively transferred to custody in the men's or women's correctional center, or the custody is as a result of a finding of probable cause made under the authority of Title 15, section 2611, subsection 3 or is in regard to offenses over which juvenile courts have no jurisdiction, as provided in Title 15, section 2552. A person on a parole or probation status is not, for that reason alone, in "official custody" for purposes of this section.

4. Escape is a Class B crime if it is committed by force against a person, threat of such force, or while the defendant is armed with a dangerous weapon. Otherwise it is a Class C crime.

§ 756. Aiding escape

1. A person is guilty of aiding escape if, with the intent to aid any person to violate section 755:

A. He conveys or attempts to convey to such person, any contraband;

B. He furnishes plans, information or other assistance to such person; or

C. Being a person whose official duties include maintaining persons in official custody, as defined in section 755, subsection 3, he permits such violation, or an attempt at such violation.

2. As used in this section, and in section 757, "contraband" means a dangerous weapon, any tool or other thing that may be used to facilitate a violation of section 755, or any other thing which a person confined in official custody is prohibited by statute or regulation from making or possessing.

3. Aiding escape is a Class C crime, unless the contraband involved in a violation of subsection 1, paragraph A includes a dangerous weapon, in which case it is a Class B crime.

4. A person may not be indicted or charged in an information with both a violation of this section and as an accomplice to a violation of section 755.

§ 757. Trafficking in prison contraband

1. A person is guilty of trafficking in prison contraband if:

A. He intentionally conveys contraband to any person in official custody; or

B. Being a person in official custody, he intentionally makes, obtains or possesses contraband.

2. As used in this section "official custody" has the same meaning as in section 755, provided that solely for purposes of subsection 1, paragraph A, it does include the custody of all persons under the age of 18.

3. Trafficking in prison contraband is a Class C crime.

CHAPTER 33

ARSON AND OTHER PROPERTY DESTRUCTION

§ 801. Aggravated arson

1. A person is guilty of aggravated arson if he intentionally starts, causes or maintains a fire or explosion that damages any structure which is the property of himself or of another, in conscious disregard of a substantial risk that at the time of such conduct a person may be at or in proximity to such structure.

2. It is no defense to a prosecution under this section that no person was present in the structure.

3. In a prosecution under this section, the requirements of specificity in the charge and proof at the trial otherwise required by law do not include a requirement to allege or prove the ownership of the property.

4. As used in this section "structure" includes but is not limited to a building, tent, lean-to and a vessel or vehicle adapted for overnight accommodation.

5. Aggravated arson is a Class A crime if the fire or explosion causes death or serious bodily injury to any person at or in proximity to such structure. Otherwise it is a Class B crime.

§ 802. Arson

1. A person is guilty of arson if he starts, causes, or maintains a fire or explosion;

A. On the property of another with the intent to damage or destroy property thereon; or

B. On his own property or the property of another

(1) with the intent to enable any person to collect insurance proceeds for the loss caused by the fire or explosion; or

(2) in conscious disregard of a substantial risk that his conduct will endanger any person or damage or destroy the property of another.

2. In a prosecution under subsection 1, paragraph B, the requirements of specificity in the charge and proof at the trial otherwise required by law do not include a requirement to allege or prove the ownership of the property. In a prosecution under subsection 1, paragraph A, it is a defense that the actor believed he had the permission of the property owner to engage in the conduct alleged.

3. Arson is a Class B crime.

§ 803. Causing a catastrophe

1. A person is guilty of causing a catastrophe if he recklessly causes a catastrophe by explosion, fire, flood, avalanche, collapse of a structure, release of poison, radioactive material, bacteria, virus or other such force or substance that is dangerous to human life and difficult to confine.

2. As used in this section, "catastrophe" means death or serious bodily injury to 10 or more people or substantial damage to 5 or more structures, as defined in section 801.

3. Causing a catastrophe is a Class A crime.

§ 804. Failure to control or report a dangerous fire

1. A person is guilty of failure to control or report a dangerous fire if:

A. He starts, causes or maintains a fire or explosion, and knowing that its spread would endanger human life or the property of another, he fails to take reasonable measures to put out or control the fire or to give a prompt fire alarm;

B. Knowing that a fire is endangering a substantial amount of property of another, as to which he has an official, contractual, or other legal duty, he fails to take reasonable measures to put out or control the fire or to give prompt fire alarm; or

C. Knowing that a fire is endangering human life, he fails to take reasonable measures to save life by notifying the persons endangered or by taking reasonable measures to put out or control the fire or by giving a prompt fire alarm.

2. Failure to control or report a dangerous fire is a Class D crime.

§ 805. Aggravated criminal mischief

1. A person is guilty of aggravated criminal mischief if he intentionally or knowingly:

A. Damages or destroys property of another in an amount exceeding $1,000 in value, having no reasonable ground to believe that he has a right to do so; or

B. Damages or destroys property in an amount exceeding $1,000 in value, to enable any person to collect insurance proceeds for the loss caused; or

C. Damages, destroys or tampers with the property of a law enforcement agency, fire department or supplier of gas, electric, steam, water, transportation, sanitation or communication services to the public, having no reasonable ground to believe that he has a right to do so, and thereby causes a substantial interruption or impairment of service rendered to the public; or

D. Damages, destroys or tampers with property of another and thereby recklessly endangers human life.

2. Aggravated criminal mischief is a Class C crime.

§ 806. Criminal mischief

1. A person is guilty of criminal mischief if, intentionally or knowingly, he:

A. Damages or destroys the property of another, having no reasonable ground to believe that he has a right to do so; or knowingly damages or destroys property with the intent to enable any person to collect insurance proceeds for the loss caused; or

B. Damages, destroys or tampers with property of a law enforcement agency, fire department, or supplier of gas, electric, steam, water, transportation, sanitation or communication services to the public, having no reasonable ground to believe that he has a right to do so, and by such conduct recklessly creates a risk of interruption or impairment of services rendered to the public.

2. Criminal mischief is a Class D crime.

CHAPTER 35

PROSTITUTION AND PUBLIC INDECENCY

§ 851. Definitions

As used in this chapter:

1. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in sexual intercourse or a sexual act, as defined in chapter 11, section 251, in return for a pecuniary benefit to be received by the person engaging in prostitution or a 3rd person;

2. "Promotes prostitution" means:

A. Causing or aiding another to commit or engage in prostitution, other than as a patron; or

B. Publicly soliciting patrons for prostitution; or

C. Providing persons for purposes of prostitution; or

D. Leasing or otherwise permitting a place controlled by the defendant, alone or in association with others, to be regularly used for prostitution; or

E. Owning, controlling, managing, supervising or otherwise operating, in association with others, a house of prostitution or a prostitution business; or

F. Transporting a person into or within the State with the intent that such other person engage in prostitution; or

G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit pursuant to an agreement or understanding with any person, other than with a patron, whereby he participates or he is to participate in the proceeds of prostitution.

§ 852. Aggravated promotion of prostitution

1. A person is guilty of aggravated promotion of prostitution if he knowingly:

A. Promotes prostitution by compelling a person to enter into, engage in, or remain in prostitution; or

B. Promotes prostitution of a person less than 18 years old.

2. As used in this section "compelling" includes but is not limited to:

A. The use of a drug or intoxicating substance to render a person incapable of controlling his conduct or appreciating its nature; and

B. Withholding or threatening to withhold a narcotic drug or alcoholic liquor from a drug or alcohol-dependent person. A "drug or alcohol-dependent person" is one who is using narcotic drugs or alcoholic liquor and who is in a state of psychic or physical dependence or both, arising from the use of the drug or alcohol on a continuing basis.

3. Aggravated promotion of prostitution is a Class C crime.

§ 853. Promotion of prostitution

1. A person is guilty of promotion of prostitution if he knowingly promotes prostitution.

2. Promoting prostitution is a Class D crime.

§ 853-A. Engaging in prostitution

1. A person is guilty of engaging in prostitution if he engages in prostitution as defined in section 851.

2. Engaging in prostitution is a Class E crime except that it is subject only to the penalties provided in section 1301.

§ 854. Public indecency

1. A person is guilty of public indecency if:

A. In a public place

(1) he engages in sexual intercourse or a sexual act, as defined in chapter 11, section 251; or

(2) he knowingly exposes his genitals to a person under the age of 12, or under circumstances which, in fact, are likely to cause affront or alarm; or

B. In a private place, he exposes his genitals with the intention that he be seen from a public place or from another private place.

2. For purposes of this section "public place" includes, but is not limited to, motor vehicles which are on a public way.

3. Public indecency is a Class E crime.

CHAPTER 37

FRAUD

§ 901. Deceptive business practices

1. A person is guilty of deceptive business practices if, in the course of engaging in a business, occupation or profession, he intentionally:

A. Uses or possesses with the intent to use, a false weight or measure, or any other device which is adjusted or calibrated to falsely determine or measure any quality or quantity;

B. Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service;

C. Takes more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure;

D. Sells, offers or exposes for sale any commodity which is adulterated or mislabelled;

E. Sells, offers or exposes for sale a motor vehicle on which the speedometer or odometer has in fact been turned back, adjusted or replaced so as to understate its actual mileage, without disclosing the understatement;

F. Sells, offers or exposes for sale a motor vehicle on which the manufacturer's serial number has in fact been altered, removed or obscured;

G. Makes or causes to be made a false statement of material fact in any advertisement addressed to the public or to a substantial number of persons, in connection with the promotion of his business, occupation or profession or to increase the consumption of specified property or service;

H. Offers property or service, in any manner including advertising or other means of communication, as part of a scheme or plan with the intent not to sell or provide the advertised property or services

(1) at all;

(2) at the price or of the quality offered;

(3) in a quantity sufficient to meet the reasonably expected public demand unless the advertisement or communication states the approximate quantity available; or

I. Conducts, sponsors, organizes or promotes a publicly exhibited sports contest with the knowledge that he or another person has tampered with

any person, animal or thing that is part of the contest, with the intent to prevent the contest from being conducted in accordance with the rules and usages purporting to govern it, or with the knowledge that any sports official or sports participant has accepted or agreed to accept any benefit from another person upon an agreement or understanding that he will thereby be influenced not to give his best efforts or that he will perform his duties improperly.

2. It is a defense to a prosecution under subsection 1, paragraphs G and H, that a television or radio broadcasting station, or a publisher or printer of a newspaper, magazine or other form of printed material, which broadcasts, publishes or prints a false, misleading advertisement did so without knowledge of the advertiser's intent.

3. As used in this section:

A. "Adulterated" means varying from the standard of composition or quality prescribed for the substance by statute or by lawfully promulgated administrative regulation, or if none, as set by established commercial usage;

B. "Mislabeled" means having a label varying from the standard of truth and disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage.

C. "Intentionally" shall have the meaning set forth in section 10.

4. Deceptive business practices is a Class E crime.

§ 902. Defrauding a creditor

1. A person is guilty of defrauding a creditor if:

A. He destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest, as defined in Title 11, section 1-201, subsection (37), with the intent to hinder enforcement of that interest; or

B. Knowing that proceedings have been or are about to be instituted for the appointment of an administrator, he

(1) destroys, removes, conceals, encumbers, transfers or otherwise deals with any property with a purpose to defeat or obstruct the claim of any creditor; or

(2) presents in writing to any creditor or to an assignee for the benefit of creditors, any false statement relating to the debtor's estate, knowing that a material part of such statement is false.

2. As used in this section "assignee for benefit of creditors" means a receiver, trustee in bankruptcy or any other person entitled to administer property for the benefit of creditors.

3. Defrauding a creditor is a Class D crime.

§ 903. Misuse of entrusted property

1. A person is guilty of misuse of entrusted property if he deals with property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is a violation of his duty and which involves a substantial risk of loss to the owner or to a person for whose benefit the property was entrusted.

2. As used in this section "fiduciary" includes any person carrying on fiduciary functions on behalf of an organization which is a fiduciary.

3. Misuse of entrusted property is a Class D crime.

§ 904. Private bribery

1. A person is guilty of private bribery if:

A. He promises, offers or gives any pecuniary benefits to

(1) an employee or agent with the intention to influence his conduct adversely to the interest of the employer or principal of the agent or employee;

(2) a hiring agent or an official or employee in charge of employment upon agreement or understanding that a particular person, including the actor, shall be hired, retained in employment or discharged or suspended from employment;

(3) a fiduciary with the intent to influence him to act contrary to his fiduciary duty;

(4) a sports participant with the intent to influence him not to give his best efforts in a sports contest;

(5) a sports official with the intent to influence him to perform his duties improperly;

(6) a person in a position of trust and confidence in his relationship to a 3rd person, with the intention that the trust or confidence will be used to influence the 3rd person to become a customer of the actor, or as compensation for the past use of such influence; or

B. He knowingly solicits, accepts or agrees to accept any benefit, the giving of which would be criminal under subsection 1, paragraph A.

2. Private bribery is a Class D crime.

§ 905. Misuse of credit identification

1. A person is guilty of misuse of credit identification if, in order to obtain property or services, he intentionally or knowingly:

A. Presents or uses a credit card which is stolen, forged or cancelled; or

B. Presents a credit or billing number which he is not authorized to use.

2. It is an affirmative defense to prosecution under this section that the defendant believed in good faith that he had a right to present or use the card or number.

3. Misuse of credit identification is a Class D crime.

§ 906. Use of slugs

1. A person is guilty of use of slugs if:

A. With intent to defraud, he inserts or deposits a slug in a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle; or

B. He makes, possesses or disposes of a slug with intent to enable a person to insert or deposit it in a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle.

2. As used in this section, "slug" means an object or article which, by virtue of its size, shape or other quality, is capable of being inserted or deposited as an improper substitute for a genuine coin, bill, pass, key or token in a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle which is designed automatically to offer, provide, assist in providing or permit the acquisition of some property or services in return for the insertion or deposit of a genuine coin, bill, pass, key or token.

3. Use of slugs is a Class D crime.

CHAPTER 39

UNLAWFUL GAMBLING

§ 951. Inapplicability of chapter

Any person licensed by the Chief of the State Police as provided in Title 17, chapter 14, shall be exempt from the application of the provisions of this chapter insofar as his conduct is within the scope of such license.

§ 952. Definitions

As used in this chapter, the following definitions apply:

1. "Advance gambling activity." A person "advances gambling activity" if, acting other than as a player or a member of the player's family residing with a player in cases in which the gambling takes place in their residence, he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes, but is not limited to, bookmaking, conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. A person also

advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue, or makes no effort to prevent its occurrence or continuation.

2. "Bookmaking" means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.

3. "Contest of chance" means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

4. "Gambling." A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance.

5. "Gambling device" means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

6. "Lottery" means an unlawful gambling scheme in which:

A. The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and

B. The winning chances are to be determined by a drawing or by some other method based on an element of chance; and

C. The holders of the winning chances are to receive something of value.

7. "Mutuel" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

8. "Player" means a person who engages in social gambling solely as a contestant or bettor on equal terms with the other participants therein without receiving or becoming entitled to receive something of value or any profit therefrom other than his personal gambling winnings. "Social gambling" is gambling, or a contest of chance, in which the only participants are players and from which no person or organization receives or becomes entitled to

receive something of value or any profit whatsoever, directly or indirectly, other than as a player, from any source, fee, remuneration connected with said gambling, or such activity as arrangements or facilitation of the game, or permitting the use of premises, or selling or supplying for profit refreshments, food, drink service or entertainment to participants, players or spectators. A person who engages in "bookmaking" as defined in subsection 2 is not a "player."

9. "Profit from gambling activity." A person "profits from gambling activity" if, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

10. "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property, or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

11. "Unlawful" means not expressly authorized by statute.

§ 953. Aggravated unlawful gambling

1. A person is guilty of aggravated unlawful gambling if he intentionally or knowingly advances or profits from unlawful gambling activity by:

A. Engaging in bookmaking to the extent that he receives or accepts in any 24-hour period more than 5 bets totaling more than $500; or

B. Receiving in connection with a lottery or mutuel scheme or enterprise, money or written records from a person other than a player whose chances or plays are represented by such money or records; or

C. Receiving in connection with a lottery, mutuel or other gambling scheme or enterprise, more than $500 in any 24-hour period play in the scheme or enterprise.

2. Aggravated gambling is a Class B crime.

§ 954. Unlawful gambling

1. A person is guilty of unlawful gambling if he intentionally or knowingly advances or profits from gambling activity.

2. Unlawful gambling is a Class D crime.

§ 955. Possession of gambling records

1. A person is guilty of possession of gambling records if, other than as a player, he knowingly possesses any writing, paper, instrument or article, which is being used or is intended by him to be used in the operation of unlawful gambling activity, as defined in this chapter.

2. Possession of gambling records is a Class D crime.

§ 956. Possession of gambling devices

1. A person is guilty of possession of gambling devices if he manufactures, sells, transports, places, possesses or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of any gambling device, knowing it is to be used in the advancement of unlawful gambling activity, as defined in this chapter.

2. Possession of gambling devices is a Class D crime.

§ 957. Out-of-state gambling

In any prosecution under this chapter it is not a defense that the gambling activity, including the drawing of a lottery, which is involved in the illegal conduct takes place outside this State and is not in violation of the laws of the jurisdiction in which the lottery or other activity takes place.

§ 958. Injunctions; recovery of payments

1. When it appears to the Attorney General that any person has formed or published a lottery, or taken any measures for that purpose, or is engaged in selling or otherwise distributing tickets, certificates, shares or interests therein, whether such lottery originated in this State or not, he shall immediately make complaint in the name of the State to the Superior Court for an injunction to restrain such person from further proceedings therein. If satisfied that there is sufficient ground therefor, such court shall forthwith issue such injunction and thereupon it shall order notice to be served on the adverse party to appear and answer to said complaint. Such court, after a full hearing, may dissolve, modify or make perpetual such injunction, make all orders and decrees necessary to restrain and suppress such unlawful proceedings and, if the adverse party neglects to appear, or the final decree of the court is against him, judgment shall be rendered against him for all costs, fees and expenses incurred in the case and for such compensation to the Attorney General for his expenses, as the court deems reasonable.

2. Payments, compensations and securities of every description, made directly or indirectly in whole or in part, for any such lottery or ticket, certificate, share or interest therein, are received without consideration and against law and equity, and may be recovered.

CHAPTER 41

CRIMINAL USE OF EXPLOSIVES AND RELATED CRIMES

§ 1001. Criminal use of explosives

1. A person is guilty of criminal use of explosives if he intentionally or knowingly:

A. Without right, throws or places explosives into, against or upon any real or personal property;

B. Makes, imports, transports, sends, stores, sells or offers to sell any explosives without a proper permit under the regulations, or in violation of the regulations;

C. Sells or supplies explosives to, or buys, procures or receives explosives for, a person prohibited by the regulations from receiving explosives; or

D. Possesses explosives with the intent to do any of the acts prohibited in this section.

2. As used in this section:

A. "Explosives" means gunpowders, powders used for blasting all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixtures or other ingredients in such proportions, quantities or packing that ignition by fire, by friction, by concussion, by percussion or by detonation of the compound or material or any part thereof may cause an explosion; and

B. "Regulations" means the rules, regulations, ordinances and bylaws issued by lawful authority pursuant to Title 25, section 2441.

3. Criminal use of explosives is a Class C crime.

§ 1002. Criminal use of disabling chemicals

1. A person is guilty of criminal use of disabling chemicals if he intentionally sprays or otherwise uses upon any other person chemical mace or any similar substance composed of a mixture of gas and chemicals which has or is designed to have a disabling effect upon human beings.

2. Criminal use of disabling chemicals is a Class D crime.

3. This section shall not apply to the use of such disabling chemicals when said use is for the purpose of self-defense.

§ 1003. Criminal use of noxious substance

1. A person is guilty of criminal use of noxious substance if he intentionally deposits on the premises or in the vehicle or vessel of another, without his consent, any stink bomb or other device or substance which releases or is designed to release noxious offensive odors.

2. Criminal use of noxious substance is a Class E crime.

CHAPTER 43

WEAPONS

§ 1051. Possession of machine gun

1. A person is guilty of possession of a machine gun if, without authority to do so, he knowingly possesses a machine gun.

2. As used in this chapter, "machine gun" means a weapon of any description, by whatever name known, loaded or unloaded, which is capable of discharging a number of projectiles in rapid succession by one manual or mechanical action on the trigger or firing mechanism.

3. Possession of a machine gun is a Class D crime.

§ 1052. Right to possess, carry or transport machine gun

Any law enforcement officer of the State of Maine, any law enforcement officer of another state or a territory of the United States, members of the Armed Forces, Maine National Guard and Maine State Guard may possess a machine gun if the possession or carrying of such weapon is in the discharge of his official duties and has been authorized by his appointing authority.

Machine guns manufactured, acquired, transferred or possessed in accordance with the National Firearms Act, as amended, shall be exempt from this chapter.

§ 1053. Confiscation and seizure of machine gun

Any machine gun possessed in violation of section 1051 is declared to be contraband and is subject to forfeiture to the State. Any law enforcement officer shall have the power to seize the same with due process.

When a machine gun is seized as provided, the officer seizing the same shall immediately file with the judge before whom such warrant is returnable, a libel against the machine gun, setting forth the seizure and describing the machine gun and the place of seizure in a sufficient manner to reasonably identify it, that it was possessed in violation of law and pray for a decree of forfeiture thereof. Such judge shall fix a time for the hearing of such libel and shall issue his monition and notice of same to all persons interested, citing them to appear at the time and place appointed to show cause why such machine gun should not be declared forfeited, by causing true and attested copies of said libel and monition to be posted in 2 public and conspicuous places in the town and place where such machine gun was seized, 10 days at least before said libel is returnable. In addition, a true and attested copy of the libel and monition shall be served upon the person from whom said machine gun was seized and upon the owner thereof, if their whereabouts can be readily ascertained 10 days at least before said libel is returnable. In lieu of forfeiture proceedings, title to such seized machine gun may be transferred in writing to the State of Maine by the owner thereof. If title to and ownership in the machine gun is transferred to the State, a receipt for the machine gun shall be given to the former owner by the law enforcement officer who seized the machine gun.

§ 1054. Forfeiture of machine gun

If no claimant for a machine gun seized under the authority of section 1053 appears, the judge shall, on proof of notice, declare the same to be forfeited to the State. If any person appears and claims such machine gun, as having a right to the possession thereof at the time when the same was seized, he shall file with the judge a claim in writing stating specifically the right so claimed, the foundation thereof, the item so claimed, any exemption claimed, the time and place of the seizure and the name of the law enforcement officer who seized the machine gun, and in it declare that it was not possessed in violation of this chapter, and state his business and place of residence and sign and make oath to the same before said judge. If any person so makes claim, he shall be admitted as a party to the process, and the libel, and may hear any pertinent evidence offered by the libelant or claimant. If the judge is, upon hearing, satisfied that said machine gun was not possessed in violation of this chapter, and that claimant is entitled to the custody there-

of, he shall give an order in writing, directed to the law enforcement officer having seized the same, commanding him to deliver to the claimant the machine gun to which he is so found to be entitled, within 48 hours after demand. If the judge finds the claimant not entitled to possess the machine gun, he shall render judgment against him for the libelant for costs, to be taxed as in civil cases before such judge, and issue execution thereon, and shall declare such machine gun forfeited to the State. The claimants may appear and shall recognize with sureties as on appeals in civil actions from a judge. The judge may order that the machine gun remain in the custody of the seizing law enforcement officer, pending the disposition of the appeal. All machine guns declared forfeited to the State, or title to which have been transferred to the State in lieu of forfeiture proceedings shall be turned over to the Chief of the Maine State Police. If said machine gun is found to be of a historic, artistic, scientific or educational value, the State Police may retain the machine gun for an indefinite period of time. Any other machine gun declared forfeited and in possession of the State Police shall be destroyed by a means most convenient to the Chief of the State Police.

§ 1055. Trafficking in dangerous knives

1. A person is guilty of trafficking in dangerous knives, if providing he has no right to do so, he knowingly manufactures or causes to be manufactured, or knowingly possesses, displays, offers, sells, lends, gives away or purchases any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade which opens or falls or is ejected into position by the force of gravity, or by an outward, downward or centrifugal thrust or movement.

2. Trafficking in dangerous knives is a Class D crime.

CHAPTER 45

DRUGS

§ 1101. Definitions

As used in this Title, the following words shall, unless the context clearly requires otherwise, have the following meanings.

1. "Marijuana" includes the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not; but shall not include the resin extracted from any part of such plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin including hashish and further, shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake or the sterilized seed of such plant which is capable of germination.

2. "Hypodermic apparatus," hypodermic syringe, hypodermic needle or any instrument designed or adapted for the administration of any drug by injection.

3. "Isomer," the optical isomer, except wherever appropriate, the optical, position or geometric isomer.

4. "Manufacture," to produce, prepare, propagate, compound, convert or process, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis.

5. "Hashish" includes the resin extracted from any part of the cannabis plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin.

6. "Narcotic drug," any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

A. Opium and any opiate, and any salt, compound, derivative or preparation of opium or opiate;

B. Any salt, compound, isomer, ester, ether, derivative or preparation thereof which is chemically equivalent or identical to or with any of the substances referred to in paragraph A, but not including the isoquinoline alkaloids of opium; or

C. Opium poppy and poppy straw.

7. "Opiate."

A. Any substance having an analgesic and addiction forming or addiction sustaining property or liability similar to morphine or capable of conversion into a drug having such analgesic and addiction forming or addiction sustaining property or liability.

B. This term does not include, unless specifically designated or listed in Schedule W, X, Y or Z, the dextrorotatory isomer or 3-methoxy-n-methylmorphinan and its salts, dextromethorphan, but does include its racemic and levorotatory forms.

8. "Opium poppy," the plant of the species Papaver somniferum L., except its seeds.

9. "Poppy straw," all parts, except the seeds, of the opium poppy, after mowing.

10. "Prescription drug," any drug upon which the manufacturer or distributor is obliged to place, in order to comply with federal law and regulations, the following legend: "Caution, federal law prohibits dispensing without prescription."

11. "Scheduled drug," any drug named or described in section 1102, schedule W, X, Y or Z.

12. "Schedule W drug," any drug named, listed or described in section 1102, schedule W.

13. "Schedule X drug," any drug named, listed or described in section 1102, schedule X.

14. "Schedule Y drug," any drug named, listed or described in section 1102, schedule Y.

15. "Schedule Z drug," any drug named, listed or described in section 1102, schedule Z.

16. "State laboratory," a laboratory of any state agency which is capable of performing any or all of the analyses that may be required to establish that a substance is a scheduled or a counterfeit drug, including, but not limited to, the laboratory of the State Department of Health and Welfare and any such laboratory that may be established within the Department of Public Safety.

17. "Traffick:"

A. To make, create, manufacture;

B. To grow or cultivate, except with respect to marihuana;

C. To sell, barter, trade, exchange or otherwise furnish for consideration; or

D. To possess with the intent to do any act mentioned in paragraph C, except that possession of marijuana with such intent shall be deemed furnishing.

18. "Furnish:"

A. To furnish, give, dispense, administer, prescribe, deliver or otherwise transfer to another;

B. To possess with the intent to do any act mentioned in paragraph A.

§ 1102. Schedules W, X, Y and Z

For the purposes of defining crimes under this chapter and of determining the penalties therefor, there are hereby establishd the following schedules, designated W, X, Y and Z.

1. Schedule W:

A. Unless listed or described in another schedule, any amphetamine, or its salts, isomers, or salts of isomers, including but not limited to methamphetamine, or its salts, isomers, or salts of isomers;

B. Unless listed or described in another schedule, or unless made a nonprescription drug by federal law, barbituric acid or any derivative of barbituric acid, or any salt of barbituric acid or of a derivative of barbituric acid, including but not limited to amobarbital, butabarbital, pentobarbital, secobarbital, thiopental, and methohexital;

C. Unless listed or described in another schedule, any of the following hallucinogenic drugs, or their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation

(1) 3,4-methylenedioxy amphetamine

(2) 5-methoxy-3, 4-methylenedioxy amphetamine

(3) 3, 4, 5-trimethoxy amphetamine

(4) 4-methyl-2, 5, -dimethoxyamphetamine

(5) Diethyltryptamine

(6) Dimethyltryptamine

(7) Dipropyltryptamine

(8) Lysergic acid diethylamide

(9) 2,-3 methylenedioxy amphetamine.

D. Lysergic acid;

E. Lysergic acid amide;

F. Cocaine, coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical to any of these substances, except decocainized coca leaves or extractions whereof which do not contain cocaine or ecgonine.

G. Phenmetrazine and its salts;

H. Methylphenilate;

I. Unless listed or described in another schedule, all narcotic drugs, including but not limited to heroin (diacetylmorphine), methadone, pethidine, morphine and opium.

2. Schedule X:

A. Unless listed or described in another schedule, any of the following drugs having depressant effect on the central nervous system

(1) Chlorhexadol

(2) Sulfondiethylmethane

(3) Sulfonethylmethane

(4) Sulfonmethane

B. Nalorphine;

C. Unless listed in another schedule, any of the following hallucinogenic drugs, or their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation

(1) Bufotenine

(2) Ibogaine

(3) Mescaline, including but not limited to peyote

(4) N-methyl-3-piperidyl benzilate

(5) N-ethyl-3-piperidyl benzilate

(6) Psilocybin

(7) Psilocyn

(8) Hashish

(9) Phencyclidine;

D. Unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof

(1) not more than 300 milligrams of dehydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium

(2) not more than 300 milligrams of dehydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage units, with one or more active nonnarcotic ingredients in recognized therapeutic amounts

(3) not more than 1.8 grams of dehydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts

(4) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active nonnarcotic ingredients in recognized therapeutic amounts

(5) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

E. Methaqualone or its salts;

F. Methprylon;

G. Glutethimide.

3. Schedule Y:

A. Barbital;

B. Chloral betaine;

C. Ethchlorvynol;

D. Ethinamate;

E. Methohexital;

F. Methylphenobarbital;

G. Paraldehyde;

H. Petrichloral;

I. Phenobarbital;

J. Codeine (methylmorphine);

K. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more non-narcotic active medicinal ingredient in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone

(1) not more than 2.5 milligrams of diphenoxylate with not less than 25 micrograms of atropin sulfate per dosage unit;

L. Meprobamate;

M. Ergot;

N. Flurazepam;

O. Chlordiazepoxide or its salts;

P. Diazepam;

Q. Carbromal;

R. Chloralhydrate.

4. Schedule Z:

A. All prescription drugs other than those included in schedules W, X or Y;

B. Marijuana;

C. All nonprescription drugs other than those included in schedules W, X or Y as the Board of Pharmacy shall duly designate;

5. Notwithstanding anything in this section, no drug or substance which is legally sold in the State of Maine without any federal or state requirement as to prescription and which is unaltered as to its form shall be included in schedule W, X, Y or Z.

§ 1103. Unlawful trafficking in scheduled drugs

1. A person is guilty of unlawful trafficking in a scheduled drug if he intentionally or knowingly trafficks in what he knows or believes to be any

scheduled drug, and which is, in fact, a scheduled drug, unless the conduct which constitutes such trafficking is either:

A. Expressly authorized by Title 22; or

B. Expressly made a civil violation by Title 22.

2. Violation of this section is:

A. A Class B crime if the drug is a schedule W drug;

B. A Class C crime if the drug is a schedule X drug; or

C. A Class D crime if the drug is a schedule Y or schedule Z drug.

§ 1104. Trafficking in or furnishing counterfeit drugs

1. A person is guilty of trafficking in or furnishing counterfeit drugs if he intentionally or knowingly trafficks in or furnishes a substance which he represents to be a scheduled drug but which, in fact, is not a scheduled drug, but is capable, in fact, of causing death or serious bodily injury when taken or administered in the customary or intended manner.

2. Trafficking in or furnishing counterfeit drugs is a Class C crime.

§ 1105. Aggravated trafficking or furnishing scheduled drugs

1. A person is guilty of aggravated trafficking or furnishing scheduled drugs if he trafficks with or furnishes to a child under 16 a scheduled drug in violation of section 1103 or 1104.

2. Aggravated trafficking or furnishing is a crime one class more serious than such trafficking or furnishing would otherwise be.

§ 1106. Unlawfully furnishing scheduled drugs

1. A person is guilty of unlawfully furnishing scheduled drugs if he intentionally or knowingly furnishes what he knows or believes to be a scheduled drug, and which is, in fact, a scheduled drug, unless the conduct which constitutes such furnishing is either:

A. Expressly authorized by Title 22; or

B. Expressly made a civil violation by Title 22.

2. Violation of this section is:

A. A Class C crime if the drug is a schedule W drug; or

B. A Class D crime if the drug is a schedule X, Y or Z drug.

3. A person shall be presumed to be unlawfully furnishing a scheduled drug if he intentionally or knowingly possesses more than 1½ ounces of marijuana.

§ 1107. Unlawful possession of schedule W, X and Y drugs

1. A person is guilty of unlawful possession of a scheduled drug if he intentionally or knowingly possesses a useable amount of what he knows or believes to be a scheduled drug, and which is, in fact, a scheduled drug, unless the conduct which constitutes such possession is either:

A. Expressly authorized by Title 22; or

B. Expressly made a civil violation by Title 22.

2. Violation of this section is:

A. A Class D crime if the drug is a schedule W or X drug; or

B. A Class E crime if the drug is a schedule Y drug.

§ 1108. Acquiring drugs by deception

1. A person is guilty of acquiring drugs by deception if he violates chapter 15, section 354, knowing or believing that the subject of the theft is a scheduled drug, and it is, in fact, a scheduled drug.

2. For purposes of this section, information communicated to a physician in an effort to violate this section, including a violation by procuring the administration of a scheduled drug by deception, shall not be deemed a privileged communication.

3. Acquiring drugs by deception is a Class D crime.

§ 1109. Stealing drugs

1. A person is guilty of stealing drugs if he violates chapter 15, sections 353, 355 or 356, knowing or believing that the subject of the theft is a scheduled drug, and it is, in fact, a scheduled drug, and the theft is from a person authorized to possess or traffick in such drug.

2. Stealing drugs is a Class D crime.

§ 1110. Trafficking in hypodermic apparatuses

1. A person is guilty of trafficking in hypodermic apparatuses if he intentionally or knowingly trafficks in a hypodermic apparatus, unless the conduct which constitutes such trafficking is either:

A. Expressly authorized by Title 22; or

B. Expressly made a civil violation by Title 22.

2. Trafficking in hypodermic apparatuses is a Class C crime.

§ 1111. Possession of hypodermic apparatuses

1. A person is guilty of possession of hypodermic apparatuses if he intentionally or knowingly furnishes or possesses a hypodermic apparatus, unless the conduct which constitutes such possession is either:

A. Expressly authorized by Title 22; or

B. Expressly made a civil violation by Title 22.

§ 1112. Analysis of scheduled drugs

1. A state laboratory which receives a drug or substance from a law enforcement officer or agency for analysis under this chapter shall, if it is capable of so doing, analyze the same as requested, and shall issue a certificate stating the results of such analysis. Such certificate, when duly signed and sworn to by a qualified chemist, or by a laboratory technician whose testimony as an expert has been received in any court of the State of Maine, of the United States, or of any state, shall be admissible in evidence in any court of the State of Maine, and shall be prima facie evidence that the composition and quality of the drug or substance is as stated therein, unless within 10 days written notice to the prosecution, the defendant requests that a qualified witness testify as to such composition and quality.

2. Transfers of drugs and substances to and from a state laboratory for purposes of analysis under this chapter may be by certified or registered mail, and when so made shall be deemed to comply with all the requirements regarding the continuity of custody of physical evidence.

3. Nothing contained in this section shall be deemed to prevent analyses of drugs from being performed by laboratories of the United States, of another state, or of private persons or corporations.

§ 1113. Arrest without warrant by police officer for drug crimes; inspection

1. A law enforcement officer shall have the authority to arrest without a warrant any person who he has probable cause to believe has committed or is committing any crime under this chapter.

2. The powers of arrest conferred upon law enforcement officers by this section are not exclusive, but are in addition to all other powers provided by law.

3. State law enforcement officers, members of the Board of Commissioners of the Profession of Pharmacy and pharmacy inspectors shall have the right to inspect the records of any pharmacy which relate to any scheduled drug or any substance designated as a "potent medical substance" under Title 22, section 2201.

§ 1114. Schedule Z drugs; contraband subject to seizure

All scheduled Z drugs, the unauthorized possession of which constitutes a civil violation under Title 22, are hereby declared contraband, and may be seized and confiscated by the State.

§ 1115. Notice of conviction

On the conviction of any person of the violation of any provision of this chapter, or on his being found liable for a civil violation under Title 22, a copy of the judgment or sentence and of the opinion of the court or judge, if any opinion be filed, shall be sent by the clerk of court or by the judge to

the board or officer, if any, by whom the person has been licensed or registered to practice his profession or to carry on his business. The court may, in its discretion, suspend or revoke the license or registration of the person to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked and upon proper showing and for good cause, said board or officer may reinstate such license or registration.

PART III

CHAPTER 47

GENERAL SENTENCING PROVISIONS

§ 1151. Purposes

The general purposes of the provisions of this part are:

1. To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety;

2. To encourage restitution in all cases in which the victim can be compensated and other purposes of sentencing can be appropriately served.

3. To minimize correctional experiences which serve to promote further criminality;

4. To give fair warning of the nature of the sentences that may be imposed on the conviction of a crime;

5. To eliminate inequalities in sentences that are unrelated to legitimate criminological goals;

6. To encourage differentiation among offenders with a view to a just individualization of sentences;

7. To promote the development of correctional programs which elicit the cooperation of convicted persons; and

8. To permit sentences which do not diminish the gravity of offenses.

§ 1152. Authorized sentences

1. Every natural person and organization convicted of a crime shall be sentenced in accordance with the provisions of this Part.

2. Every natural person convicted of a crime shall be sentenced to one of the following:

A. A suspended period of imprisonment with probation as authorized by chapter 49;

B. Unconditional discharge as authorized by chapter 49;

C. To a period of imprisonment as authorized by chapter 51; or

D. To pay a fine as authorized by chapter 53. Subject to the limitations of chapter 53, section 1302, such a fine may be imposed in addition to probation or a sentence authorized by chapter 51.

3. Every organization convicted of a crime shall be sentenced to one of the following:

A. Probation or unconditional discharge as authorized by chapter 49;

B. The sanction authorized by section 1153. Such sanction may be imposed in addition to probation or a fine; or

C. A fine authorized by chapter 53. Such fine may be imposed in addition to probation or the sanctions authorized by section 1153.

4. The provisions of this chapter shall not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty. An appropriate order exercising such authority may be included as part of the judgment of conviction.

§ 1153. Sanctions for organizations

1. If an organization is convicted of a crime, the court may, in addition to or in lieu of imposing other authorized penalties, sentence it to give appropriate publicity to the conviction by notice to the class or classes of persons or sector of the public interested in or affected by the conviction, by advertising in designated areas or by designated media, or otherwise as the court may direct. Failure to do so may be punishable as contempt of court.

2. If a director, trustee or managerial agent of an organization is convicted of a Class A or Class B crime committed in its behalf, the court may include in the sentence an order disqualifying him from holding office in the same or other organizations for a period not exceeding 5 years, if it finds the scope or nature of his illegal actions makes it dangerous or inadvisable for such office to be entrusted to him.

3. Prior to the imposition of sentence, the court may direct the Attorney General, a district attorney, or any other attorney specially designated by the court, to institute supplementary proceedings in the case in which the organization was convicted of the crime to determine, collect and distribute damages to persons in the class which the statute was designed to protect who suffered injuries by reason of the crime, if the court finds that the multiplicity of small claims or other circumstances make restitution by individual suit impractical. Such supplementary proceedings shall be pursuant to rules adopted by the Supreme Judicial Court for this purpose. The court in which proceedings authorized by this subsection are commenced may order the State to make available to the attorney appointed to institute such proceedings all documents and investigative reports as are in its possession or control and grand jury minutes as are relevant to the proceedings.

§ 1154. Sentences in excess of one year deemed tentative

1. When a person has been sentenced to imprisonment for a term in excess of one year and such imprisonment has not been suspended, the sentence shall be deemed tentative, to the extent provided in this section.

2. If, as a result of the department's evaluation of such person's progress toward a noncriminal way of life, the department is satisfied that the sentence of the court may have been based upon a misapprehension as to the history, character or physical or mental condition of the offender, or as to the amount of time that would be necessary to provide for protection of the public from such offender, the department may file in the sentencing court a petition to resentence the offender. The petition shall set forth the information as to the offender that is deemed to warrant his resentence and shall include a recommendation as to the sentence that should be imposed.

3. The court may, in its discretion, dismiss a petition filed under subsection 2 without a hearing if it deems the information set forth insufficient to warrant reconsideration of the sentence. If the court finds the petition warrants such reconsideration, it shall cause a copy of the petition to be served on the offender, the district attorney, the Attorney General and the victim of the crime or, in the case of a criminal homicide, on the victim's next of kin, all of whom shall have the right to be heard on the issue.

4. If the court grants a petition filed under subsection 2, it shall resentence the offender and may impose any sentence not exceeding the original sentence that was imposed. The period of his being in the custody of the Department of Mental Health and Corrections prior to resentence shall be applied in satisfaction of the revised sentence.

5. For all purposes other than this section, a sentence of imprisonment has the same finality when it is imposed that it would have if this section were not in force. Nothing in this section shall alter the remedies provided by law for appealing a sentence, or for vacating or correcting an illegal sentence. As used in this section, "court" means the judge who imposed the original sentence, unless he is disabled or otherwise unavailable, in which case it means any judge exercising similar jurisdiction.

§ 1155. Multiple sentences

1. Other provisions of this section notwithstanding, when a person subject to an undischarged term of imprisonment is convicted of a violation of chapter 31, section 755, or of a crime against the person of a member of the staff of the institution in which he was imprisoned, or of an attempt to commit either of such crimes, the sentence shall run consecutively to the undischarged term of imprisonment.

2. When multiple sentences of imprisonment are imposed on a person at the same time, or when such a sentence is imposed on a person who is already subject to an undischarged term of imprisonment, the sentences shall run concurrently, or, subject to the provisions of this section, consecutively, as determined by the court. When multiple fines are imposed on a person or an organization, the court may, subject to the provisions of this section, sentence the person or organization to pay the cumulated amount or the highest single fine. Sentences shall run concurrently and fines shall not be cumulated unless otherwise specified by the court pursuant to subsections 3 and 4.

3. Unless the court sets forth in detail for the record the findings described in subsection 4, it shall not either:

A. Impose consecutive imprisonment terms or cumulative fines which exceed the maximum term or the highest fine authorized for the most serious crime involved; or

B. Impose consecutive imprisonment terms or cumulative fines at all.

4. The findings referred to in subsection 3 are the reasons why, having regard to the nature and circumstances of the crime, and the history and character of the defendant, the court is of the opinion that there are exceptional features to the case which require the sentence imposed.

5. A defendant may not be sentenced to consecutive terms or cumulative fines for more than one crime when:

A. One crime is an included crime of the other;

B. One crime consists only of a conspiracy, attempt, solicitation or other form of preparation to commit, or facilitation of, the other;

C. The crimes differ only in that one is defined to prohibit a designated kind of conduct generally, and the other to prohibit a specific instance of such conduct; or

D. In separate trials, inconsistent findings of fact are required to establish the commission of the crimes.

CHAPTER 49

PROBATION AND UNCONDITIONAL DISCHARGE

§ 1201. Eligibility for probation and unconditional discharge

1. A person who has been convicted of any crime, except aggravated murder or murder, may be sentenced to a suspended term of imprisonment with probation or to an unconditional discharge, unless the court finds that:

A. There is undue risk that during the period of probation the convicted person would commit another crime;

B. The convicted person is in need of correctional treatment that can be provided most effectively by commitment to the Department of Mental Health and Corrections; or

C. Such a sentence would diminish the gravity of the crime for which he was convicted.

2. A convicted person who is eligible for sentence under this chapter, as provided in subsection 1, shall be sentenced to probation if he is in need of the supervision, guidance, assistance or direction that probation can provide. If there is no such need, and no proper purpose would be served by imposing any condition or supervision on his release, he shall be sentenced to an unconditional discharge. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

§ 1202. Period of probation; modification and discharge

1. A person convicted of a Class A or Class B crime may be placed on probation for a period not to exceed 3 years; for a Class C crime, for a period not to exceed 2 years; and for a Class D crime or Class E crime, for a period not to exceed one year.

2. During the period of probation specified in the sentence made pursuant to subsection 1, and upon application of a person on probation, his probation officer, or upon its own motion, the court may, after a hearing upon notice to the probation officer and the person on probation, modify the requirements imposed, add further requirements authorized by section 1204, or relieve the person on probation of any requirement that, in its opinion, imposes an unreasonable burden on him.

3. On application of the probation officer, or of the person on probation, or on its own motion, the court may terminate a period of probation and discharge the convicted person at any time earlier than that provided in the sentence made pursuant to subsection 1, if warranted by the conduct of such person. Such termination and discharge shall serve to relieve the person on probation of any obligations imposed by the sentence of probation.

§ 1203. Split sentences

1. Subject to the limitations in subsection 2, the court may require that a person placed on probation be imprisoned in a designated institution for any portion of the probation.

2. If, pursuant to subsection 1, the court requires the person placed on probation to be imprisoned in the State Prison for the initial period of the probation, it shall fix such period of imprisonment not to exceed 90 days.

§ 1204. Conditions of probation

1. If the court imposes a sentence of probation, it shall attach such conditions, as authorized by this section, as it deems to be reasonable and appropriate to assist the convicted person to lead a law-abiding life.

2. As a condition of probation, the court in its sentence may require the convicted person:

A. To support his dependents and to meet his family responsibilities;

B. To devote himself to an approved employment or occupation;

C. To undergo, as an out-patient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for that purpose. Failure to comply with this condition shall be considered only as a violation of probation and shall not, in itself, authorize involuntary treatment or hospitalization;

D. To pursue a prescribed secular course of study or vocational training;

E. To refrain from criminal conduct or from frequenting unlawful places or consorting with specified persons;

F. To refrain from possessing any firearms or other dangerous weapon;

G. To make restitution, in whole or in part, according to the resources of the convicted person, to the victim or victims of his crime, or to the county where the offense is prosecuted where the identity of the victim or victims cannot be ascertained. As used in this subsection, "restitution" includes

the money equivalent of property taken from the victim, or property destroyed or otherwise broken or harmed, and out-of-pocket losses attributable to the crime, such as medical expenses or loss of earnings;

H. To remain within the jurisdiction of the court unless permission to leave temporarily is granted in writing by the probation officer, and to notify the court or the probation officer of any change in his address or his employment;

I. To refrain from drug abuse and excessive use of alcohol;

J. To report as directed to the court or the probation officer, to answer all reasonable inquiries by the probation officer and to permit the officer to visit him at reasonable times at his home or elsewhere;

K. To pay a fine as authorized by chapter 53; or

L. To satisfy any other conditions reasonably related to the rehabilitation of the convicted person or the public safety or security.

3. The convicted person shall be given a written statement setting forth the particular conditions on which he is released on probation, and he shall then be given an opportunity to address the court on these conditions if he so requests at the time.

§ 1205. Preliminary hearing on violation of conditions of probation

1. If a probation officer has probable cause to believe that a person under his supervision has violated a condition of his probation, he may issue a summons to such person to appear before the district supervisor or such other official as may be designated by the Director of Probation and Parole for a preliminary hearing to determine whether such probable cause in fact exists. If the alleged violation constitutes the commission of a new crime, the probation officer may communicate the basis for his belief that there is probable cause that the person under supervision has committed a crime to any law enforcement officer who may, in his discretion, thereupon arrest such person. The probation officer shall forthwith provide the arrested person with a written notice of a preliminary hearing before the district supervisor to determine whether there is probable cause to believe that he has committed the new crime.

2. The preliminary hearing shall be held within 48 hours if a person under supervision has been arrested, and as soon as practicable if he has not. It shall be held as near to the place where the violation is alleged to have taken place as is reasonable under the circumstances. The summons and written notice provided for in subsection 1 shall name the place and time of the preliminary hearing, state the conduct alleged to constitute the violation, and inform the person of his rights under this section. In no case shall there be a waiver of the right to a preliminary hearing.

3. At the preliminary hearing the person alleged to have violated a condition of his probation has the right to confront and cross-examine persons who have information to give against him, to present evidence on his own behalf, and to remain silent. If the district supervisor determines on the basis of the evidence before him that there is not probable cause to believe

that a condition of probation has been violated, he shall terminate the proceedings and order the person on probation forthwith released from any detention he may then be in. In such case, no further proceedings to revoke the probation, based on the conduct alleged to have been the violation may be brought. If he determines that there is such probable cause, he shall prepare a written statement summarizing the evidence that was brought before him, and particularly describing that which supports the belief that there is probable cause. The person on probation shall be provided a copy of this statement. At the outset of the preliminary hearing, the district supervisor shall inform the person of his rights under this section and of the provisions of section 1206. Such person may waive, at the preliminary hearing, his right to confront and cross-examine witnesses against him, his right to present evidence in his own behalf, and his right to remain silent. No other rights may then be waived.

§ 1206. Court hearing on probation revocation

1. If, as a result of proceedings held under section 1205, there is a determination of probable cause, the Director of Probation and Parole may apply to any court for a summons ordering the person to appear before the court for a hearing on the alleged violation. The application for summons shall include a copy of the written statement prepared pursuant to section 1205, subsection 3. The person on probation shall be furnished a copy of the application by the Director of Probation and Parole.

2. Upon the receipt of the application provided for in subsection 1, the court may, in its discretion:

A. Issue the summons and order a hearing on the allegations or deny the application and order the person on probation released forthwith if he has been arrested on the allegations;

B. If it is not the court which imposed the probation sentence, transfer the proceedings to such court which shall then proceed pursuant to this section; or

C. If a hearing is ordered, the person on probation shall be notified, and the court, including the court to which the proceedings may have been transferred, may issue a warrant for his arrest and order him committed, with or without bail, pending the hearing.

3. If a hearing is held, the person on probation shall be afforded the opportunity to confront and cross-examine witnesses against him, to present evidence on his own behalf, and to be represented by counsel. If he cannot afford counsel, the court shall appoint counsel for him.

4. When the alleged violation constitutes a crime:

A. If the court hearing the violation is a District Court, it may

(1) accept a plea of guilty or nolo contendere to such crime, provided all the requirements for accepting such pleas are complied with;

(2) if it has jurisdiction to try such crime, revoke probation if it finds by a preponderance of the evidence that the person on probation committed the crime, or it may order him tried for such crime; or

(3) order the allegation of such new crime to be brought before the Superior Court, if it does not have jurisdiction to try such crime.

B. If the court hearing the violation is a Superior Court, it may

(1) accept a plea of guilty or nolo contendere to crime, provided all the requirements for accepting such pleas are complied with;

(2) revoke probation if it finds by a preponderance of the evidence that the person on probation committed the crime; or

(3) order the person tried for such crime.

5. If the alleged violation does not constitute a crime and the court finds that the person has inexcusably failed to comply with a requirement imposed as a condition of probation, it may revoke probation. In such case, the court shall impose the sentence of imprisonment that was suspended when probation was granted.

6. If the person on probation is convicted of a new crime during the period of probation, the court may sentence him for such crime, revoke probation and impose the sentence of imprisonment that was suspended when probation was granted, subject to chapter 47, section 1155.

CHAPTER 51

SENTENCES OF IMPRISONMENT

§ 1251. Imprisonment for criminal homicide in the first or 2nd degree

1. A person who has been convicted of a crime may be sentenced to imprisonment pursuant to this chapter.

2. In the case of a person convicted of criminal homicide in the 2nd degree, the court shall commit him to the custody of the department for purposes of an evaluation of such person as is relevant to sentence. No later than 120 days from such commitment, the department shall return the convicted person to the court, along with the report of its evaluation and a recommended sentence.

3. Upon receipt of the report and recommendations provided for in subsection 2, the court shall sentence him to the State Prison for any term of years that is not less than 20.

4. A person convicted of criminal homicide in the first degree shall be sentenced to life imprisonment.

§ 1252. Imprisonment for crimes other than criminal homicide in the first or 2nd degree

1. In the case of a person convicted of a crime other than criminal homicide in the first or 2nd degree, the court may sentence to imprisonment for

a definite term as provided for in this section. The sentence of the court shall specify the place of imprisonment, provided that no person shall be sentenced to imprisonment in the Men's Correctional Center located at South Windham, Maine, if his sentence exceeds 5 years or he is, at the time of sentence, more than 26 years old.

2. The court shall set the term of imprisonment as follows:

A. In the case of a Class A crime, the court shall set a definite period not to exceed 20 years;

B. In the case of a Class B crime, the court shall set a definite period not to exceed 10 years;

C. In the case of a Class C crime, the court shall set a definite period not to exceed 5 years;

D. In the case of a Class D crime, the court shall set a definite period of less than one year; or

E. In the case of a Class E crime, the court shall set a definite period not to exceed 6 months.

3. The court may add to the sentence of imprisonment a restitution order as is provided for in chapter 49, section 1204, subsection 2, paragraph G. In such cases, it shall be the responsibility of the department to determine whether the order has been complied with and consideration shall be given in the department's administrative decisions concerning the imprisoned person as to whether the order has been complied with.

4. If the State pleads and proves that a Class B, C, D or E crime was committed with the use of a dangerous weapon then the sentencing class for such crime is one class higher than it would otherwise be. In the case of a Class A crime committed with the use of a dangerous weapon, such use should be given serious consideration by the court in exercising its sentencing discretion.

§ 1253. Calculation of period of imprisonment

1. The sentence of any person committed to the custody of the Department of Mental Health and Corrections shall commence to run on the date on which such person is received into the custody of the department.

2. When a person sentenced to imprisonment has been committed for pre-sentence evaluation pursuant to section 1251, subsection 2, or has previously been detained to await trial, in any state or county institution, or local lock-up, for the conduct for which such sentence is imposed, such period of evaluation and detention shall be deducted from the time he is required to be imprisoned under such sentence. The department shall have the same authority regarding such local lock-ups as is provided regarding county jails by Title 34, section 3. The attorney representing the State shall furnish the court, at the time of sentence, a statement showing the length of such detention, and the statement shall be attached to the official records of the commitment.

3. Each person sentenced to imprisonment for more than 6 months whose record of conduct shows that he has observed all the rules and requirements of the institution in which he has been imprisoned shall be entitled to a deduction of 10 days a month from his sentence, commencing, in the case of all convicted persons, on the first day of his delivery into the custody of the department.

4. An additional 2 days a month may be deducted in the case of those who are assigned duties outside the institution or who are assigned to work within the institution which is deemed to be of sufficient importance and responsibility to warrant such deduction.

§ 1254. Release from imprisonment

1. An imprisoned person shall be unconditionally released and discharged upon the expiration of his sentence, minus the deductions authorized under section 1253.

2. A person sentenced to life imprisonment may, after having served 25 years, and annually thereafter, and a person sentenced to a term of years in excess of 20 years, may, after having served 4/5 of said sentence, and anually thereafter, petition the Superior Court of the county in which he is imprisoned for a reduction of his sentence to a term of years. Upon notice to the Attorney General and the victim or the next of kin of the victim, the court shall hold a hearing on the petition and may, in its discretion, reduce the sentence from life imprisonment to a term of years that is not less than 30, and reduce any other sentence to a term that is not less than 20. If the sentence is so reduced the imprisoned person shall be unconditionally released and discharged upon the expiration of the term specified in such sentence, minus such deductions authorized under section 1253 as he shall have accumulated; provided, however, that notwithstanding any deductions that may be accumulated under section 1253, no such person shall be so released and discharged until he has served 25 years, if his sentence is life imprisonment or 4/5 of his sentence, if that sentence is for a term of years in excess of 20 years.

3. All persons in the custody of the Bureau of Corrections serving a criminal sentence on the effective date of this code shall be released and discharged according to the law as it was in force on the date they were sentenced and such law shall continue in force for this purpose as if this code were not enacted; provided, however, that any such person may elect to be released and discharged according to section 1253 and of this section. Upon such election he shall be released and discharged as if section 1253 and this section were in force on the date he was sentenced.

CHAPTER 53

FINES

§ 1301. Amounts authorized

1. A natural person who has been convicted of a Class C, Class D or Class E crime may be sentenced to pay a fine, subject to section 1302, which shall not exceed:

A. $1,000 for a Class C crime;

B. $500 for a Class D crime;

C. $250 for a Class E crime; and

D. Regardless of the classification of the crime, any higher amount which does not exceed twice the pecuniary gain derived from the crime by the defendant.

2. As used in this section, "pecuniary gain" means the amount of money or the value of property at the time of the commission of the crime derived by the defendant from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority prior to the time sentence is imposed. When the court imposes a fine based on the amount of gain, the court shall make a finding as to the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding, the court may conduct, in connection with its imposition of sentence, a hearing on this issue.

3. If the defendant convicted of a crime is an organization, the maximum allowable fine which such a defendant may be sentenced to pay shall be:

A. $50,000 for a class A crime;

B. $20,000 for a Class B crime;

C. $10,000 for a Class C crime;

D. $5,000 for a Class D crime or a Class E crime; and

E. Any higher amount which does not exceed twice the pecuniary gain derived from the crime by the convicted organization.

§ 1302. Criteria for imposing fines

No convicted person shall be sentenced to pay a fine unless the court determines that he is or will be able to pay the fine. In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the offender and the nature of the burden that its payment will impose. No person shall be imprisoned solely for the reason that he will not be able to pay a fine.

§ 1303. Time and method of payment of fines

1. If a convicted person is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine shall be payable forthwith to the clerk.

2. If a convicted person sentenced to pay a fine is also placed on probation, the court may make the payment of the fine a condition of probation. In such cases, the court may order that the fine be paid to the probation officer.

§ 1304. Default in payment of fines

1. When a convicted person sentenced to pay a fine defaults in the payment thereof or of any installment, the court, upon the motion of the official to whom the money is payable, as provided in section 1303, or upon its own motion, may require him to show cause why he should not be sentenced to be imprisoned for nonpayment and may issue a summons or a warrant of arrest for his appearance. Unless such person shows that his default was not attributable to a wilful refusal to obey the order of the court or to a failure on his part to make a good faith effort to obtain the funds required for the payment, the court shall find that his default was unexcused and may order him imprisoned until the fine or a specified part thereof is paid. The term of imprisonment for such unexcused nonpayment of the fine shall be specified in the court's order and shall not exceed one day for each $5 of the fine or 6 months, whichever is the shorter. When a fine is imposed on an organization, it is the duty of the person or persons authorized to make disbursements from the assets of the organization to pay it from such assets and failure so to do may be punishable under this section. A person imprisoned for nonpayment of a fine shall be given credit towards its payment for each day that he is in the custody of the department, at the rate specified in the court's order. He shall also be given credit for each day that he has been detained as a result of an arrest warrant issued pursuant to this section.

2. If it appears that the default in the payment of a fine is excusable, the court may make an order allowing the offender additional time for payment, reducing the amount thereof or of each installment, or revoking the fine or the unpaid portion thereof in whole or in part.

3. Upon any default in the payment of a fine or any installment thereof, execution may be levied, and such other measures may be taken for the collection of the fine or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against a person. The levy of execution for the collection of a fine shall not discharge a person imprisoned for nonpayment of the fine until such time as the amount of the fine has been collected.

§ 1305. Revocation of fines

1. A convicted person who has been sentenced to pay a fine and has not inexcusably defaulted in payment thereof, may at any time petition the court which sentenced him for a revocation of any unpaid portion thereof. If the court finds that the circumstances which warranted the imposition of the fine have changed, or that it would otherwise be unjust to require payment, the court may revoke the unpaid portion thereof in whole or in part, or modify the time and method of payment.

2. If, in any judicial proceeding following conviction, a court issues a final judgment invalidating the conviction, such judgment may include an order that any or all of a fine which the convicted person paid pursuant to the sentence for such conviction be returned to him.

Sec. 2. 15 MRSA §§ 2, 102, 341, 342, 451, 452, 751, 1701-A, 1703, 1741 to 1743 and 1842 are repealed.

Sec. 3. 15 MRSA § 1702, 2nd ¶, as amended by PL 1965, c. 356, § 55, is repealed.

Sec. 4. 15 MRSA § 1904, as amended by PL 1965, c. 425, § 10, is repealed.

Sec. 4-A. 15 MRSA § 2555 is enacted to read:

§ 2555. Possession of marijuana by minor

1. A juvenile is guilty of possession of marijuana by a minor if, being less than 18 years old, he possesses a usable amount of what he knows or believes to be marijuana.

2. All of the dispositional powers of the juvenile court provided in section 2611 shall apply to a juvenile who is found to have violated this section, except that no commitment of such juvenile shall be made under section 2611, subsection 4, paragraphs A-1 and B and any fine required under section 2611, subsection 4, paragraph H, shall not exceed $200.

Sec. 5. 17 MRSA cc. 1, 5, 8, 9, 11, 15, 19, 21, 23, 25, 27, 31, 33, 35, 37, 39 and 41 are repealed.

Sec. 5-A. 17 MRSA § 52 is repealed.

Sec. 6. 17 MRSA §§ 1053-1055, 1058, 1091, 1092, 1094, 1131, 1133 and 1134 are repealed.

Sec. 7. 17 MRSA cc. 45, 51, 53, 55 and 57 are repealed.

Sec. 8. 17 MRSA §§ 1601, 1602, 1603-A, 1604-1608, 1609, 1612-1617 and 1619-1634 are repealed.

Sec. 9. 17 MRSA cc. 61, 63 and 65 are repealed.

Sec. 10. 17 MRSA § 1951 is repealed.

Sec. 11. 17 MRSA cc. 71, 73, 75 and 77 are repealed.

Sec. 12. 17 MRSA § 2301 is repealed.

Sec. 13. 17 MRSA c. 82 is repealed.

Sec. 14. 17 MRSA §§ 2351-2355, 2403, 2441, 2442, 2491-2493-A, 2494-2496, 2498, 2501-2505, 2507 and 2508 are repealed.

Sec. 15. 17 MRSA cc. 85, 87, 89, 95, 97 and 99 are repealed.

Sec. 16. 17 MRSA §§ 3101-3103 are repealed.

Sec. 17. 17 MRSA c. 103 is repealed.

Sec. 18. 17 MRSA §§ 3281, 3282 and 3301 are repealed.

Sec. 19. 17 MRSA cc. 107, 109, 111, 112, 113, 115 and 119 are repealed.

Sec. 20. 17 MRSA §§ 3701-3703 are repealed.

Sec. 21. 17 MRSA cc. 123 and 125 are repealed.

Sec. 22. 17 MRSA §§ 3851-3853 and 3854-3858 are repealed.

Sec. 23. 17 MRSA c. 129 is repealed.

Sec. 24. 17 MRSA §§ 3951-3955, 3957-3961, 3963 and 3965 are repealed.

Sec. 25. 17 MRSA c. 132 is repealed.

Sec. 26. 17 MRSA § 3104, 2nd sentence, as last amended by PL 1973, c. 785, § 1, is repealed.

Sec. 27. 22 MRSA § 2201 is amended to read:

§ 2201. Regulations

The Board of Commissioners of the Profession of Pharmacy, hereinafter in this subchapter called the "board," may from time to time, after notice and hearing, by regulations, designate as potent medicinal substances any compounds of barbituric acid, amphetamines or any other central nervous system stimulants or depressants, psychic energizers or any other drugs having a tendency to depress or stimulate which are likely to be injurious to health if improperly used ~~and it shall be unlawful for any person, firm or corporation to sell, furnish or give away or to offer to sell, furnish or give away any such potent medicinal substances so designed, except as prescribed in section 2210~~.

Sec. 28. 22 MRSA § 2205 is repealed.

Sec. 29. 22 MRSA §§ 2207, 2210, as amended, 2210-A, as enacted by PL 1971, c. 621, § 2, are repealed.

Sec. 30. 22 MRSA § 2207-A is enacted to read:

§ 2207-A. Permissive use of drugs

1. Physicians, dentists, veterinarians, drug jobbers, drug wholesalers, drug manufacturers and pharmacists and pharmacies registered under Title 32, section 2901, are authorized to deal professionally with dangerous substances.

2. As used in this section, "to deal professionally" means:

A. In the case of a physician, dentist, in good faith and to his own patients as part of professional treatment, to prescribe, administer or deliver, or to possess for such purpose;

B. In the case of a veterinarian, in good faith and for an animal under his professional treatment, to prescribe, administer or deliver, or to possess for such purpose;

C. In the case of a drug jobber, drug wholesaler or drug manufacturer, in good faith to possess, sell, furnish, give away or offer to sell, furnish or give away to pharmacists, pharmacies, physicians, dentists, veterinarians, hospitals and to each other;

D. In the case of pharmacies and pharmacists registered under Title 32, section 2901,

(1) To sell at retail upon the written order or prescription of a physician, dentist or veterinarian and in good faith to each other and to possess for such purpose; and

(2) To sell at retail in good faith and for the purpose which it is intended, any compound, mixture or preparation containing a dangerous substance which,

(a) Also contains a sufficient quantity of another drug or drugs to cause it to produce an action other than its hypnotic, somnifacent, stimulating or depressant action; or

(b) Is intended for use as a spray or gargle or for external application and contains some other drug or drugs rendering it unfit for internal administration.

3. As used in this section, "dangerous substance" means:

A. Opium, morphine, heroin, codeine or any salt or compound of the same, or any preparation containing any of the said substances or their salts or compounds, or alpha or beta eucaine or their salts or compounds or any synthetic substitute for them, or any preparation containing alpha or beta eucaine or their salts or compounds;

B. Any drug bearing on its container the legend "Caution — federal law prohibits dispensing without prescription," or any veronal or barbital, or any other salts, derivatives or compounds of barbituric acid, or any registered, trademarked or copyrighted preparation registered in the United States Patent Office containing the substances in this paragraph, or any drug designated by the board as a "potent medicinal substance;" and

C. Any amphetamines or derivatives or compounds thereof.

Sec. 31. 22 MRSA § 2212, as last amended by PL 1971, c. 282, § 12, is repealed and the following enacted in place thereof:

§ 2212. Using drugs not in prescription

If a pharmacist shall knowingly use any drugs or ingredients in preparing or compounding a written or oral prescription of any physician different from those named in the prescription, such use shall constitute a civil violation for which a forfeiture of not more than $1,000 nor less than $50 may be adjudged.

Sec. 32. 22 MRSA § 2212-A, as last amended by PL 1971, c. 282, § 2, is repealed and the following enacted in place thereof:

§ 2212-A. Refill prescriptions

If a pharmacist or person employed by a pharmacist refills from a copy of the original, any prescription for depressant, stimulant or oral contraceptive drugs, such refilling shall constitute a civil violation for which a forfeiture of not more than $1,000 nor less than $50 may be adjudged.

Sec. 33. 22 MRSA § 2212-B, as last repealed and replaced by PL 1971, c. 487, § 2, is repealed.

Sec. 34. 22 MRSA § 2212-C, as last amended by PL 1971, c. 621, § 3, is repealed.

Sec. 35. 22 MRSA § 2212-E, as enacted by PL 1971, c. 621, § 4, is repealed.

Sec. 36. 22 MRSA §§ 2214 and 2215, as amended, are repealed.

Sec. 37. 22 MRSA § 2362, as last amended by PL 1971, c. 621, § 6, is repealed.

Sec. 38. 22 MRSA § 2362-A, as last amended by PL 1971, c. 544, § 77-A, is repealed.

Sec. 39. 22 MRSA § 2362-B, as enacted by PL 1971, c. 296, is repealed.

Sec. 40. 22 MRSA § 2362-C, as enacted by PL 1971, c. 621, § 7, is repealed.

Sec. 41. 22 MRSA § 2362-D is enacted to read:

§ 2362-D. Hypodermic syringes; prescriptions

1. Hypodermic apparatus may be possessed by a physician, dentist, podiatrist, funeral director, nurse, veterinarian, a manufacturer or dealer in embalming supplies, wholesale druggist, manufacturing pharmacist, pharmacist, manufacturer of surgical instruments, an employee of an incorporated hospital acting under official direction, a carrier or messenger engaged in the transportation of hypodermic apparatus as an agent of any of the above, employees of scientific research laboratories, employees of educational institutions, employees of an agency or organization duly authorized by the Maine Board of Commissioners of the Profession of Pharmacy or a person who has received a written prescription issued under subsection 2.

2. A physician, dentist, podiatrist or osteopathic physician may issue to a patient under his immediate charge a written prescription to purchase a hypodermic apparatus. The Maine Board of Commissioners of the Profession of Pharmacy shall, by regulation, prescribe the form of prescription that the physician shall use and the records and information that shall be kept by the physician and by the pharmacist filling such prescription.

3. As used in this section, "hypodermic apparatus" has the meaning set forth in Title 17-A, chapter 45, section 1101, except that it does not include a syringe, needle or instrument for use on farm animals and poultry.

Sec. 42. 22 MRSA § 2364, the first ¶ is repealed and the following enacted in place thereof:

Subject to the limitations in subsection 3, the following is expressly authorized:

Sec. 43. 22 MRSA § 2364, sub-§§ 2 and 3 are repealed and the following enacted in place thereof:

2. Liniments, etc. Prescribing, administering, dispensing or selling at retail of liniments, ointments and other preparations that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments or preparations, except that this authorization shall not apply to any liniments, ointments and other preparations that contain coca leaves in any quantity or combinations.

3. The authorization contained in this section shall apply to the following:

A. Prescribing, administering, dispensing or selling to any one person, or for the use of any one person or animal, any preparation or preparations included within this section, when the actor knows or can by reasonable diligence ascertain that such prescribing, administering, dispensing or selling will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is prescribed, administered, dispensed or sold, within any 48 consecutive hours, with more than 4 grains of opium, or more than ½ grain of morphine, or of any of its salts, or more than 4 grains of codeine or any of its salts, or will provide such person or the owner of such animal, within 48 consecutive hours, with more than one preparation authorized by this section; and

B. A medicinal preparation or liniment, ointment or other preparation susceptible of external use only, prescribed, administered, dispensed or sold which does not contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than that possessed by the narcotic drug alone; and any preparation which is prescribed, administered, dispensed or sold not in good faith as a medicine and for the purpose of evading the law.

4. The board may by regulation provide for further authorization to such extent as it determines to be consistent with the public welfare, pharmaceutical preparations found by the board after due notice and opportunity for hearing:

A. Either to possess no addiction-forming or addiction-sustaining liability sufficient to warrant imposition of all of the requirements of law; and

B. Does not permit recovery of a narcotic drug having such an addiction-forming or addiction-sustaining liability, with such relative technical simplicity and degree of yield as to create a risk of improper use.

In exercising the authority granted in paragraph A, the board by regulation and without special findings may grant authorizations relating to such pharmaceutical preparations as determined to be exempt under the federal narcotic law and regulations.

If the board shall subsequently determine that any such pharmaceutical preparation does possess a degree of addiction liability that, in its opinion, results in abusive use, it shall by regulation publish the determination in the state papers. The determination shall be final and the authorization shall cease to apply to the particular pharmaceutical preparation.

Sec. 44. 22 MRSA § 2366 is repealed and the following enacted in place thereof:

§ 2366. Persons and corporations exempted

The following are authorized to possess and have control of narcotic drugs: Common carriers or warehousemen while engaged in lawfully transporting or storing such drugs, any employee of the same acting within the scope of his employment, temporary incidental possession by employees or agents of persons lawfully entitled to possession and persons whose possession is for the purpose of aiding public officers in performing their official duties.

Sec. 45. 22 MRSA § 2368 is repealed and the following enacted in place thereof:

§ 2368. Licenses for manufacturers and wholesalers

Any person having a license from the Bureau of Health is authorized to manufacture or supply narcotic drugs within the scope of his license.

Sec. 46. 22 MRSA § 2370, sub-§ 5 is repealed and the following enacted in place thereof:

5. Use. A person in charge of a hospital or of a laboratory, or in the employ of this State or of any other state, or of any political subdivision thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory or the District of Columbia to practice his profession, or a retired commissioned medical officer of the United States Army, Navy or Public Health Service employed upon such ship or aircraft, who obtains narcotic drugs under this section or otherwise, is authorized to administer, dispense or otherwise use such drugs within the State, only within the scope of his employment or official duty, and then only for scientific or medicinal purposes.

Sec. 47. 22 MRSA § 2375, as last amended by PL 1971, c. 282, § 12, is repealed.

Sec. 48. 22 MRSA § 2380 is repealed and the following enacted in place thereof:

§ 2380. Violation of provisions

Any conduct in violation of this chapter is a civil violation for which a forfeiture of not more than $1,000 nor less than $50 may be adjudged.

Sec. 49. 22 MRSA § 2381, as enacted by PL 1969, c. 443, § 7, is repealed.

Sec. 50. 22 MRSA § 2382, as last amended by PL 1971, c. 544, § 77-C, is repealed.

Sec. 51. 22 MRSA § 2383, as last amended by PL 1973, c. 546, is repealed and the following enacted in place thereof:

§ 2383. Possession

Possession of a usable amount of marijuana is a civil violation for which a forfeiture of not more than $200 may be adjudged.

Sec. 52. 22 MRSA § 2384, as last repealed and replaced by PL 1973, c. 510, is repealed.

Sec. 53. 22 MRSA §§ 2385 and 2386, as last amended by PL 1971, c. 472, § 4, are repealed.

Sec. 53-A. 22 MRSA § 2387, sub-§ 1, ¶¶ A and B, as enacted by PL 1973, c. 524, are amended to read:

A. All materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing or exporting any substance in violation of ~~sections 2210, 2210-A, 2212-B, 2212-C, 2212-E, 2362, 2362-C or 2384~~ Title 17-A, chapter 45.

B. All conveyances, including aircraft, watercraft, vehicles or vessels, which are used or are intended for use, to transport, conceal or otherwise to facilitate the manufacture, dispensing, or distribution of, or possession with intent to manufacture, dispense or distribute a substance in violation of ~~sections 2210, 2210-A, 2212-B, 2212-C, 2212-E, 2362, 2362-C or 2384~~ Title 17-A, chapter 45.

Sec. 53-B. 22 MRSA § 2387, sub-§ 3, ¶ A, as enacted by PL 1973, c. 524, is amended to read:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of ~~sections 2210, 2210-A, 2212-B, 2212-C, 2212-E, 2362, 2362-C or 2384~~ Title 17-A, chapter 45.

Sec. 54. 22 MRSA § 2388, as enacted by PL 1973, c. 788, § 88, is repealed.

Sec. 54-A. 30 MRSA § 2701 is repealed.

Sec. 55. 34 MRSA § 133 is repealed.

Sec. 56. 34 MRSA § 527, 4th ¶, as last repealed and replaced by PL 1973, c. 381, is repealed.

Sec. 57. 34 MRSA § 594 is repealed.

Sec. 58. 34 MRSA § 705, first 2 sentences, as amended by PL 1965, c. 210, are repealed as follows:

~~Each convict, whose record of conduct shows that he has faithfully observed all the rules and requirements of the State Prison, shall be entitled to a deduction of 7 days a month from the minimum term of his sentence, commencing on the first day of his arrival at the State Prison. An additional 2 days a month may be deducted from the sentence of those convicts who are assigned duties outside the prison walls or security system, or those convicts within the prison walls who are assigned to work deemed by the Warden of the State Prison to be of sufficient importance and responsibility to warrant such deduction~~

Sec. 59. 34 MRSA § 710, as last amended by PL 1973, c. 647 is repealed.

Sec. 60. 34 MRSA § 753 is repealed.

Sec. 61. 34 MRSA § 753-A, as enacted by PL 1971, c. 539, § 23, is repealed.

Sec. 62. 34 MRSA § 754 is repealed.

Sec. 63. 34 MRSA § 755, as last amended by PL 1973, c. 75, is repealed.

Sec. 64. 34 MRSA § 756, as last amended by PL 1973, c. 582, § 7, is repealed.

Sec. 65. 34 MRSA § 802, as last amended by PL 1971, c. 544, § 118-B, is repealed.

Sec. 66. 34 MRSA § 807, as last amended by PL 1973, c. 567, § 20, is repealed.

Sec. 67. 34 MRSA § 853, as last amended by PL 1973, c. 788, § 171, is repealed.

Sec. 68. 34 MRSA § 859, as last amended by P & SL 1973, c. 221, § 7, is repealed.

Sec. 69. 34 MRSA § 865, as enacted by PL 1967, c. 391, § 25, is repealed.

Sec. 70. 34 MRSA §§ 1631 - 1634, as amended, are repealed.

Sec. 71. 34 MRSA §§ 1671 - 1679, as amended, are repealed.

Directors note: Refer to P.L. 1975, c. 623, §§ 83 and 84 concerning the effective date of sections 2 to 71 of this Act.

CHAPTER 500

AN ACT to Revise the Laws Relating to Financial Institutions.

***Be it enacted by the People of the State of Maine,* as follows:**

Sec. 1. 9-B MRSA is enacted to read:

TITLE 9-B

FINANCIAL INSTITUTIONS

PART 1

GENERAL PROVISIONS

CHAPTER 11

POLICY