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February 28, 1975

Jon A. Lund, Esq.
Chairman
Criminal Law Revision Commission
Augusta, Maine 04330

Dear Jon:

I was disappointed at the poor showing made by the trial bar at the public hearing held last evening in Portland to discuss the proposed Maine Criminal Code. I hope that your Commission has had more input from the members of the bar than you received last evening.

I have a few comments on certain provisions of the Code which I will set forth below. By and large, however, I am pleased with the approach which the Commission has taken.

Many of the comments which I would have made were discussed last evening and I will not repeat them in this letter.

A. Page 3, section 2, paragraph 9.
"Deadly weapon" or "dangerous weapon" includes a firearm which, either in the manner it is used or is intended to be used, is capable of producing death or serious bodily injury. Section 401.2.A on page 65 classifies burglary as a class A crime if the defendant was "armed" with a firearm. Section 401.2.B defines burglary as a class B crime, in part, if the defendant was armed with a deadly weapon other than a firearm. Does the fact that "deadly weapon" is defined to include firearm pose any problems with the interpretation of section 401? Does "armed" with a firearm necessarily mean that the firearm must be loaded and/or capable of being fired in view of the definition of "deadly weapon" set forth above?

B. Page 5, section 4.3
In view of the fact that there are approximately 900 crimes outside of Title 17, I wonder if anyone has reviewed the statutes to identify those which will become civil violations. If so, and if a list is available, I would appreciate an opportunity to review it.

C. Chapter 25, section 602
This chapter deals with bribery and corrupt practices. Why then is "Private Bribery" found in Chapter 37 (page 107)? Moreover, section 602 defines the crime in terms of "promises, offers, or gives" whereas private bribery is defined in terms of "offers, gives or agrees to give". Is this an intentional distinction? Section 602 goes on to proscribe the giving of any "pecuniary benefit" whereas section 904 proscribes the giving of "any benefit". Again, is this an intentional distinction and, if so, why?

D. Page 117, section 1101.5
The present section 2382.1 of 22 M.R.S.A. §2382 includes in the definition of "Cannabis" the words "every compound, manufacture, salt, derivative, mixture or preparation of such plant". These words are omitted from the proposed definition. This is an area with which I am not familiar and I am sure there is a good reason for this omission but I would appreciate knowing what it is.

E. Page 118, section 1101.17
The new definition of "traffick" apparently is intended to include within its scope the former provisions of 22 M.R.S.A. §§2362 and 2383 for example. If so, why have they been omitted from the present draft?

F. Page 128, section 1114
Once again the words "under the control of any person" formerly found in sections such as 22 M.R.S.A. §2367 have been omitted. Was this deliberate and, if so, why?

no change in substance of conduct

add note to comments re

G. Page 150, sections 2212 and 2212-A
I do not understand the comment to these sections which states that no "substantive" change is made in the revision. I think it is more than a semantic difference when you change a crime to a civil violation. Moreover, I do not understand the policy reason behind these changes. I think it ought to remain a crime for a pharmacist knowingly to put different drugs in a prescription and to refill without the proper prescription from a physician. I would appreciate knowing the Commission's reasoning for these changes.

H. Page 151, section 36
The comment states that 22 M.R.S.A. § 2215 should be repealed. In the comment, there is reference to the fact that up to two years' imprisonment may be imposed for being in public under the influence of one of the drugs mentioned in the subchapter. I do not quarrel with that revision but the comment neglects to point out that there is an alternative to imprisonment in the present section, i.e. a fine of up to $1,000. Why is that being deleted?

I. Page 153-154, section 46
The present 22 M.R.S.A. §2370, sub-§5 proscribes dispensation of drugs without the scope of the employment of the individuals listed. The prohibitive words are "shall not". What is gained by rewriting this section to, as the Comment puts it, "put permission in affirmative language"?

J. Page 154, section 48
This section enacts a new section 2380 of 22 M.R.S.A. making violation of any provision of Chapter 557 of Title 22 a civil violation. I have already orally expressed my concern at decriminalization of marijuana and I will have some general comments on it below. In addition, I would point out that this revision affects more than marijuana possession since it purports to change the entire chapter. Thus, it affects §2363 for example and makes a civil offense out of a non-goodfaith prescription administration or dispensation of narcotic drugs. In the same vein, §§2364, 2370, 2371 and 2372 will be affected. I assume that these changes are intentional but I would appreciate knowing the policy reasons for each.

K. Page 154, section 51
The new §2383 of 22 M.R.S.A. proscribes, as a civil violation, possession of an "usable" amount of marijuana. Does anybody have an idea what is an "usable" amount. I assume we would have no trouble in defining the minimum amount (although I'm not absolutely sure of that) but does this also purport to have a maximum effect? I assume that a ton of marijuana is "usable". If so, a fine of not more than $100 does seem rather minimal. The comment to this section provides that the provisions of subsections 1 and 3 of former §2383 are now found in Chapter 45 of the proposed Criminal Code. I must have missed §3 in my reading of the Code and I would appreciate having it pointed out to me.

L. 22 M.R.S.A. §2387
This section has not been repealed yet it makes specific reference to §§ 2210, 2210-A, 2212-B, 2212-C, 2212-E, 2362, 2362-C and 2384 - all of which are repealed by this Code. Upon what property will the forfeiture provided in §2387 now operate?

I want to state again in writing my opposition to decriminalization of the crime of possession of marijuana. I recognize all the arguments which have been set forth in favor of this change. I remain convinced that there are some young people who have a respect and/or fear of the law and who will be deterred by continued criminalization of marijuana possession. It does not answer this argument to say that the laws are being flaunted. If this is the case, then other ways must be sought to strengthen or enforce these laws. Permissiveness in our society has become all persuasive. Those in positions of authority, and I include parents in this category, have a responsibility to those entrusted to their care during their formative and tender years. If you decriminalize marijuana you remove yet one further crutch, one further strong argumentative point, which parents can use to dissuade their children from its use.

Finally, as you know, I have requested the documentation to support the statement in the Comment to §1107 that marijuana is less harmful than either alcohol or tobacco. I don't understand why it's necessary to wait until Mr. Fox is available. I assume that the members of the Commission must have seen that material before they approved the Comment. The jury is clearly still out on the issue and I think it extremely prejudicial and unfortunate that the Commission elected to put that statement in its comment. In fact, regardless of what position

is ultimately advanced before the Legislature on decriminalization of marijuana, it obviously would advance your cause if you publicly deleted that comment.

I am not enclosing additional copies of these comments since I assume that you will see to their distribution to the other members of the Commission.

Thank you for your consideration and for the time that you and other members have obviously spent in this project.

Sincerely,

RILJr:njm

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P. O. BOX 164
207 - 846-9041

March 6, 1975

Miss Edith L. Hary
State of Maine Law Librarian
Augusta, Maine 04330

Re: Criminal Law Revision Commission

Dear Miss Hary:

I am writing to summarize in a short letter the comments I made at a Public Hearing held in Lewiston on the evening of February 25, 1975. My comments were directed against Sections 501, 502 and 505 of the proposed ordinance. Regarding §501, I suggested that in its place the Committee consider §250.6 of the Model Penal Code entitled "Loitering or Prowling." I felt that if the police had a statute which covered this particular brand of possible criminal behavior that they would be less likely to stretch Sections 501, 502 or 505 to handle these problems, which they were not in fact designed to cover

However the great majority of my comments were directed at what I thought was the unnecessarily vague and inprecise language of §505. I stated that cases such as Coates vs. City of Cinncinnati, 402 U.S. 611, or State vs. Aucoin, 278 A 2d 395, that both illustrated the close textual attention which the courts devote to loitering and obstruction statutes. I explained that this was precisely because the First Amendment of the Constitution may well grant to an individual a constitutionally protected right to do exactly what the statutes mean to prohibit. I said that after reading the cases in general that they established the following two principles:

1. The statute must be written so that "people of reasonable understanding do not have to guess at its meaning." Winters vs. The People of the State of New York, 335 U.S. 507.

2. The statute must be drawn as narrowly as possible to protect constitutionally protected rights of assembly, petition and freedom of speech.

After giving a list of the great variety of situations in which a citizen might find himself arguably within the boundaries of §505, that §505 as written had two faults:

1. First of all that the use of the word "reasonable" did not tell a citizen a sufficient amount of detail so as to allow him to recognize when he was in violation of the statute; and

2. The statute would be vastly improved if it included in its text at least a brief attempt to describe what constitutionally protected behavior is <u>not</u> within its meaning.

In place of the §505 I suggested that the Commission adopt instead §250.7 of the Model Penal Code entitled Obstructing Highways and Other Public Passages.

What the Commission must understand above all is that there is an almost irreconcilable conflict between anti-obstruction statutes and the First Amendment of the Constitution. Picketing speech making, and petitioning government for redress of grievances almost always necessitates the certain breach of anti-obstruction statutes. And when these statutes are drawn so crudely as is §505, it seems to me that we do a great disservice to the police and to the civil liberties of the citizens of Maine to say that all the guidance we will give to both parties, when they face each other on a First Amendment battle ground, is to stick the word reasonable between them. I hope for, and the people of Maine deserve, a better effort at drawing the statute than that.

Sincerely yours,

David A. Williams

DAVID A. WILLIAMS

DAW:nms

STATE OF MAINE

Commission to Prepare a Revision of the Criminal Laws

JON. A. LUND, *Chairman*
114 State Street
Augusta, Maine 04330

SANFORD J. FOX, *Chief Counsel*
Boston College Law School
Brighton, Massachusetts 02135

Minutes of meetings of Commission

1972

April 7
April 10 (Ex)
May 12
June 9
June 29 - O - A
July 20 O - B
July 21 O - A
August 10 - O - C
September 7
September 21 O - B
October 12 - O - C
October 26 - O - A
November 17 O - B
December 1
December 15
December 15 (Ex)

1973

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January 18
February 1 - O A
March 16
April 13
April 25
April 26
May 17
June 18
August 1
September 13 (2)
October 4
October 29
December 3

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January 22
February 1 - A
February 22
March 1
March 14
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June 5
June 10
August 15
September 16
September 24
October 10
December 18

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December 23

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Public meetings

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Ch. 41 (Title D4), 2d draft

September 13 Commission
Ch. 41 (Title D4), 2d draft

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Serious bodily injury
Classification of crime; civil violations
Pleading and proof
Intoxication
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Territorial applicability
Lesser offenses
Attempt
Definitions
Identification

1976

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revised material for next meeting
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Sexual offenses
Rape
Kidnapping
Theft
Escape

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Amendments:

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Classification of crime; civil violations
Pleading and proof
Lesser offenses
Separate trials
Enforcement of civil violations
Mental abnormality
Criminal homicide
Abandoning an airtight container
Escape
Public indecency
Drugs, analysis
Split sentences
Probation
Imprisonment
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February 26 Commission

Delay conversion to April 1

~~Legislative Reference~~ 1645

1 Hancock - OK
2 Marden
3 Archibald ?
4 Robbins
5 Shea
6 Berry — OK
7 Rubin
8 Perkins - OK
9 Lund - OK
10 Don Spear
11 Weinberger
12 Henry — OK
13 Glassman — ?
14 Silsby

8
3
5

catalog
SAG-1101

Frank Hancock

Copies
AL1 - Penal Code

Wed. Oct 23rd
Judiciary 1:30 P.M.

10 Penal

7 ordered 10/15/63

Other states studying
What have they tried to do

STATEMENT BY GOVERNOR KENNETH M. CURTIS TO THE COMMISSION TO PREPARE A REVISION OF THE CRIMINAL, STATE OFFICE BUILDING - ROOM 114 - FRIDAY, APRIL 7, 1972 - 10:00 A.M.

AS GOVERNOR, MY FUNCTION TODAY IS TO INITIATE THIS MEETING, MAKE INTRODUCTIONS, AND SEE THAT THE COMMISSION ELECTS A CHAIRMAN, VICE-CHAIRMAN AND SECRETARY-TREASURER.

BUT WHILE I HAVE THE OPPORTUNITY, I WOULD LIKE TO ADDRESS A FEW REMARKS TO THE MEMBERS AND THE IMPORTANT PURPOSES AND ACTIVITIES OF THE COMMISSION ITSELF.

I WISH TO THANK INDIVIDUALLY EACH PERSON WHO HAS AGREED TO SERVE AS A MEMBER OR JUDICIAL CONSULTANT ON THIS COMMISSION.

THE MAINE LEGISLATURE DESERVES CREDIT FOR AUTHORIZING THIS STUDY AND PROVIDING AN INSTRUMENT FOR PREPARING A LONG OVERDUE MAINE CRIMINAL CODE.

IN 1975, THIS CODE WILL BE PRESENTED FOR ADOPTION BY THE 107TH LEGISLATURE.

ALL STATUTES RELATING TO CRIMINAL PENALITIES AND PROCEDURES ARE TO BE REVIEWED, REVISED OR AMENDED AS NECESSARY OR DESIRABLE.

NEW PREVISIONS THAT WILL BETTER SERVE OUR STATE SHOULD BE INCLUDED IN YOUR RECOMMENDATIONS.

AND, THE COMMISSION IS EXPECTED TO KEEP THE PUBLIC INFORMED THROUGH HEARINGS WHERE FULL EXCHANGE OF VIEWS CAN BE TRANSMITTED.

WITH THE PASSAGE OF TIME THE ATTITUDE OF OUR SOCIETY TOWARDS CRIME AND PUNISHMENT HAS CHANGED.

OUR LAWS THAT DEFINE CRIMINAL ACTIVITY AND OUR TECHNIQUES FOR PREVENTING CRIME AND REHABILITATING VIOLATORS MUST ALSO CHANGE.

YOU HAVE ACCEPTED A VERY IMPORTANT RESPONSIBILITY FOR YOUR RECOMMENDATIONS CONCERNING LAWS RELATING TO CRIME WILL GREATLY AFFECT THE WELFARE OF MAINE AND THE WELL-BEING OF EACH PERSON AND FAMILY LIVING IN OUR STATE.

THIS IS AN AWESOME AND SOBERING CHARGE.

I AM ESPECIALLY GLAD TO NOTE THAT SUFFICIENT TIME, STAFF AND FUNDS WILL BE AVAILABLE TO THE COMMISSION TO CONDUCT A THOROUGH AND THOUGHTFUL REVIEW.

PLEASE ACCEPT MY ASSURANCE OF FULL COOPERATION BY ALL STATE AGENCIES THROUGHOUT THE COURSE OF THIS EFFORT.

Initial Meeting of the Commission to Prepare a Revision of the Criminal Laws. Those present were:

Governor Kenneth M. Curtis, Errol K. Paine, Esq., Bangor; Mrs. Caroline Glassman, Portland; Peter A. Anderson, Bangor; Louis Skolnik, Esq., Lewiston; Lewis V. Vafiades, Esq, Bangor; Dr.Bernard Saper, Orono; Col.Parker Hennessey, Maine State Police; Gerald F. Petruccelli, Portland; Edith L. Hary, Maine State Law Library; Merton R. Johnson, Men's Correctional Center, representing Warden Allan L. Robbins; Dr. Willard D. Callender, Jr., Machias; John Lund,Esq of Augusta; Jack Simmons, Esq., Lewiston; Daniel G. Lilley, Esq, of Portland; Richard Cohen, Attorney General's Office; Judge Delahanty, , Judge Wernick and Judge Williamson.

Governor Curtis first addressed the group by welcoming the distinguished participation in relation to the revision study to be done. Gov.Curtis stated there was some delay in getting under way; that he did certainly recognize the importance of it. There was an unusually long time taken to chose the membership, but this is far more than just a normal task force and it is a very far reaching committee. After he had chosen nominees and went through the task of contacting each one to see if he could serve, but there was one section of the bill stating the Governor was to call the first meeting, but after he had made the appointment he had waited for the first meeting to be called until it was brought about that it was up to the Governor to call the first meeting. We do have a good amount of time to do this, having until 1975 to complete the study so I feel it should be possible to do a very good job. My job today is to see that we do get organized and hopefully elect the officers, set your own pace and get going with this study. However, this is far more than a study. I'm sure all of you have read the legislation which points out that this is a complete

overhawl, complete revamping of criminal laws and procedures. I'm sure no-one in this room has to be reminded that this is probably a very timely action with a lot of questions being asked whether it be at the court level, state level or corrections level as to our method of applying criminal laws and procedures. So, what I'm really trying to say is that we have had a lot of citizen's task forces, citizen's commissions, we have provided a great deal of leadership for the state and its people and this one is very far reacing than I have appointed during my administration. I think one thing about this particular study that, contrary to the others, that I won't be here when it is completed, so it was suggested that maybe after 1975, I can volunteer as a citizen member of this committee to help see through with your recommendations. At any rate, I want to thank you all very much for being here this morning. I hope that a very thorough job can be done. The legislation does provide for good staff help for you and I'm sure that through the state departments, our resources are available to you to provide whatever assistance you find that you need. So let me express my appreciation again and I would like to turn the meeting over to Dick Cohen who will call the roll call of the membership and also I have asked him to preside over the meeting today until an election of a Chairman.

Mr. Cohen: At this time, it is in order for nominations from the floor if you like to pursue it to select a Chairman, Vice Chairman, Secretary-Treasurer. I would declare the floor open for nominations for Chairman:

Mr. Scolnik: I nominate Jon Lund as Chairman, seconded.

Mr. Cohen: Are there any nominations?

: I move nominations cease, seconded; voted.

Mr. Cohen: Nominations having ceased, Jon Lund is elected by the

acclamation of the Committee as Chairman. Jon, I'll turn the chair over to you for election of a Vice Chairman and Secretary-Treasurer.

Jon Lund: I would like to thank you for the confidence indicated here. According to our agenda then the next item for election might be the electionof the Vice Chairman. Perhaps, it might be in order for us, before we go ahead, I just wondered whether the Commission might like to become a little bit better acquainted with the members here, or have the members say something about themselves before going on to the meeting. Of course, you know who the Judges are and what they're doing. Let me just start off by saying that, as it happens this group does have some anticedents, there was a predecessor committee to advise the Attorney General on revision of the criminal laws going back eight or ten years. I don't recall if anyone from this committee was on that earlier groupor not, but as far as my on experience is concerned I served as prosecuting Attorney and Assistant Attorney and have been in the Legislature since that time, and I'll ask Dan if he would like to give us a brief biography. Here, each member of the group discussed briefly their work.

Following this, John Lund the pleasure of the Commission to proceed with the election of the remaining officers or take any other business at hand? A statement was made that some time had been lost here, and that the meeting should continue.

John Lund: We will now declare the meeting open for Vice Chairman. Dan Lilley was nominated for Vice Chairman which was seconded; Also nomination was made and seconded for Mrs. Glassman. Motion was made to cease nominations here, seconded and duly voted. Votes were collected and counted by Chairman Jon Lund and the Recording Secretary, Mrs. Errie Hasty. The results were as follows: Mrs. Glassman-9, Mr. Lilley-5. Hence, Mrs. Glassman was elected Vice Chairman.

Mr. Lund then opened the floor for nomination of the Secretary-Treasurer. The name of Edith Hary was nominated and seconded to fill this post. Nominations ceased and Miss Hary was declared Secretary-Treasurer.

Dick Cohen: I will explain some of the duties of the Secretary-Treasurer, stating that there is $10,00 in the Treasurer's account. The Treasurer will get involved in writing up federal grants and it will be some county procedure in some detail to take advantage of. There is money/set aside for that purpose. That will be Treasure'rs side of the position.

Jon Lund: The next item on our proposed agenda is scope, authority of commission, a discussion of Chapter 147 provided by special laws of 1971. Did you want to kick that off Dick?

Dick Cohen: In making out this agenda, I was requested by Allan Pease so I had to be somewhat flexible as to what should be given, so got down to the scope of Chapter 147, Section I of the special laws. You all have a copy of the laws. Does everyone have a copy of the law? The first key thing is that the time limits here that we are based with is the 107th Legislature that the Statute specifically says that there is a proposal should be reported to the regular session of the 107-Legislature and secondly, that it shall include a complete revision, redraft and rearrangements of all segments of the Maine Revised Statutes annotated pertaining to the criminal law, that clearly gives the intent of Title 17 and the next thing I will bring to your attention that it gives a complete flexibility as to the title revision indicated through this committee , it is completely flexible as to the perimeters as to the shaping of the law in the state.

The next factor I wish to bring out is that 1. due consideration should be given to the criminal laws in other states, and this includes

obviously the revisions that are no going on, and there are many, I think there are some 15 or 20 states presently undergoing revisions and then that the Commission shall employ a Chief Counsel. And then subject to the Chief Counsel's recommendation, any additional comments may be required. This obviously, without getting into a great deal of discussion, talks about who is going to do this report for this particular report and there have been over the past two or three years several agencies that have been interested in pursuing the employer of a revision if it ever took place.

Louis Skolnik: Are they involved in the drafting?

Dick Cohen: Yes. It is the same in other states.

Louis Skolnik: So would they qualify under the term Chief Counsel?

Dick Cohen: Yes, I think probably they would. Also, the statutes are specific that public hearings shall be, at some time during the revision, to acquate the public throughout the state as to what's going on and also, of course, obviously to solicit their viewpoints, and this is very flexible when you see the Statute and the number of hearings is left solely to the discretion of this committee. Also the Statute is clear as to intent that any authority is provided this Commission to give them full scope to get done what has to be done and do a comprehensive job in the state.

Section 2 talks about the membership and the consultants to bring the judiciary expertise to bear in a non-member fashion to the Committee which, of course is extremely essential./ Section 3 This meeting today is to adopt the rules of the administration of the Commission and its affairs and such financial records shall be kept.

Section 4 regards the Chief Counsel stating the commission shall contract a chief counsel who need not be a resident of this State, who will be responsible for legal research and drafting required in

preparation of the Criminal Code, under the direction and supervision of the commission. Also we talked about the prerequisites for a Chief Counsel and have some firm that has prior training in expertise ability in this area.

Section 5 deals with the reimbursement of expenses of the Commission members . Of course, nothing has been done at this time. However, there is $10,000 presently in the account that will have to be set up through Accounts and Control and a financial system set up by the Committee for reasonable expenses for attending meetings in this regard.

Section 5-Federal Funds: The Commission is authorized on behalf of the State to accept federal funds and may seek the advice and assistance of the Law Enforcement planning and Assistance Agency in carrying out its duties. The LEAA is very concerned with the Criminal Code Division and Jack Leet is Executive Director of the LEAA and was instrumental in having set aside, as of this time, Federal funds of $30,00 this year that this Commission can take advantage of through the proper channels to match the state funds and also set up on a multi-year plan, there is a minimum of $20,000 in 1973 and $10,000 in 1974. I am sure also being a member of the LEAA and serving as its Chairman right now that there is enough concerted interest on that Agency that really almost as much funds as is needed to do the proper job can and will be made available through one source or another to make sure that the proper job is done by this commission. There might possibly be other Federal funds available through LEAA IN Washington through a discretionary grant or possibly other funds. Of course, this is something the Commission might be able to take advantage of any type of funding that might be available. The last section view Appropriation;

We do have $10,000. The main purpose of that is that it will generate a great deal of Federal monies that will have to be used as matching to receive the Federal monies. Basically, Mr.Chairman that is the sum of our business here.

Question: In regard to the $30,000, is that the State's match with the Federal Government to which we have to apply a match.

Answer: That $30,000has been set aside for 1972 comprehensive criminal justice plan for the State and will have to be matched with State funds.

Question: Will that $10,000 be a match for that? What is the percentage of match? (75-25) Total Cost of Project $40,000 $10,000 State 25% $30,000 Federal 75%

Answer: I believe 49-51 is state and local. But besides match there is also other we can get. At any rate, there is that money available and I am sure that we can utilize that money.

Dick Cohen: Mr. Chairman, there is just one other item I might mention. I did pass out a 4-page compilation which actually might be of some benefit is the preface to the proposed Massachusetts revision which is just completed and I have actually received that book from Miss Hary and this will give some idea as to how they set up their committee.

Jon Lund: We are open for discussion on the question of Chapter 147 and anyone have any view as to how we may properly operate. Would anyone like to comment?

Question: Obviously the subject of criminal law, the way the Statute is read the implications in the change of procedure and court system is something that I am not well aware of, where does that leave us? Sometimes we have a problem whereas we don't know whether we are dealing with a felony or a misdemeanor before we get through with it. Am I correct in saying that the scope of this Committe is to produce changes and recommendations because it has an impact on a subsequent

law or work out some structures.

Answer: It's my view and we certainly hope it will become the Commission's view that not only are we authorized the change the definitions of crimes but we are also authorized to alter court procedure, all the punishments and all aspects of the criminal law. There certainly is nothing here that says subsequent crimes-criminal law deals with criminal law and I would hope that would include motor vehicles through court procedure, and some consideration to pleading guilty by reason of mental defect or mental disorder.

Answer: This is an opportunity where we can do an awful lot in this very vital area and I don't think we should narrow it in a certain area because its very hard to differentiate in the substance as to where the procedure begins and I think it should be wide open. I know that creates problems for the _____.

Dick Cohen: Again on this discussion, I think refer to page 2 of this Massachusetts compilation. You will see a list of 6 objectives with a pretty broad scope that Errol is referring to. This might be something to consider where you define some of the objectives.

Jon Lund: This project has really been so long in coming. We had one bill resting on the Appropriations table that was killed because of lack of funds. I tried to get a bill into Special Session two years ago and didn't suceed. My personal reaction is that is a might similar to you out in the audience, I feel a little bit as though, like the kids that were caught in the cookie jar and once we get there we ought to clean the cookie jar out. So perhaps that is good at that point.

Statement: On that issue, may I say something? I'm inclined to think that even if you do open it up, that you should at least eastablish a priority approach and have procedural aspects or even the County

District Attorney aspects to consider who have considerable political policies at least at the outset of subsidiaries concentrating on the aspect of the law and then having reached conclusions on that, see what the overtones are in relations to a pet grievance or a pet project that can be brought up at any time.

Jon Lund: That has had plenty of airing lately and there are a number of areas that haven't been touched that we certainly could propose. I think they would require a solution to that.

Statement: I think its also a matter of sounds to the approach, in a sense that simply might not agree with comments by some means and events that have taken place. It is rather difficult to assign a set of procedures before it is decided what sorts of conduct and presumably there is nothing said about keeping our hope on the perspective, whatever it is, in dealing with social conduct and the procedures in the penal system and all the rest of them is a means of the end and we put them in selective. This is why I raise this question to a point is that I assume we will take the cookie jar too.

Errol Paine: I have another comment. I don't truly agree with the last two comments and I do agree we should have a priority, but I dont think we should ever limit ourselves to simply redefining or trying to rewording the old Statutes. I really think to accomplish anything in this entire procedure we have to approach a philosophy in terms we want to punish and how we can assist in getting to the greatest accomplishment in the end. Not simply setting forth new crimes or redefining them or taking old model code and say let's make homicide, that obviously is part of it. I think that's a very minimal part of what we have to do. Thousands have prepared very excellent codes and we must set certain definitions of our crimes.

I don't think it will need four years for this bill to be drafted.
Mr. Skolnik: I agree with both comments, but I think the thing that bothers me ~~xx~~, and appears to bother Judge Wernick, is first we have to really decide philosophically what we want to be as punishable conduct. Col. Hennessey says he worries about is the victim.Philosophically, what we want to do away with is whether we want victimless crimes, intoxication or prostitution or some of these other things. We've got to adopt some general overall philosophy as I think this is one of the first things we have to decide upon. We come to various classes of crimes, we'll have to make these decisions, but I think we can wait before we start in deciding whether we're going to revamp the whole court structure or revamp the County Attorney to a District Attorney system or do away with a 12-man jury and have a six-man jury to get rid of court congestion and enforcement of the criminal laws. I think we first have to decide what conduct then we go to find out whether or not there are any problems in theadministration of the whole system.
Jon Lund: Some members have said very little so far. Would anyone like to respond?
Jack Simmons: Seems to me that everyone has obviously been correct. It seems to me that the order of business at this point is starting to determine how well we are going to work. It is very fine to talk about the philosophical concepts. Others may not agree and you can't start with that kind of a threshold and then work from that point down and then work from some specific Statutes. I think that we ought to deal with classifications of crimes as a type and apply philosophical background to the individual classification. For example: A victimless drug crime, as it now stands, is different than a victimless sex crime. There are different philosophical arguments can be made so

you can't make a general philosophical comment. I also think there are certain types of crimes that have more of apriority, as far as consideration is concerned. Those under Title 17 should be considered first before we get to the motor vehicle type of crimes. I think that we have to develop a system of analysis, second develop a system of working. It's no good to just sit and have "bull" sessions and have another meeting and have a report. It involves a lot of work prior to the meeting in order to make valid decisions and the report, whomever we hire, his function to a large part is to point out various areas of study that should be done by each of us individually. What I worry about is a broad, philosophical concept without talking about specific concrete problems.

Mr. Skolnik: I don't think I intended that we weren't going to do this but what I did mean is that you're going to get into discussing what kind of code we're going to have and these questions are going to be discussed as we take it up step by step. What I'm getting at is that I don't think we ought to get involved until afterwards in the whole question of rem dial part of it.

(Brief break-changed tape)

Statement: I would like to see some compilation here due to some basic background material furnish to members of the Commission.

Jon Lund: I think perhaps this can be done. Your point is well taken. I would like to respond in part that we could perhaps we could point out some matters orally to you. As far as Edith Hary was able to determine, I talked to her about this, the Maine Criminal Laws haven't ever been modified systematically or revised in any way since it has been put on the books. This is in contrast with the motor vehicle laws which have been modified a number of times and almost all the other laws in whcih segments of population, insurance, industry,

real estate people, commercial law--these have all been subject to periodic revision because there has been a vested interest on the outside of the Legislature that has been willing to push for and finance perhaps the work necessary for revision, so we're faced with a situation which a great deal of our criminal laws were inherited from Massachusetts and I believe probably many of them were written in Massachusetts Laws as a result of having been English criminal laws and added to that, there is a proliferation of certain provisions that just become entrusted on the law over the years dealing with some particular problem and the definition of these and the penalities attached to them have never been related one from another. In other words, at the last sesssion we found the Maine Legislature very reluctant to make certain crimes punishable by a jail sentence, and the proponents for the bill went through the Statutes and read off several offenses whereby one could be sent to jail and he read on for several minutes. Many of the offenses of which, many people would regard as rather trivial. But the point being that noone every steps back and takes a look at them. This is really part of the basic problem is that we are faced here. Beyond that, I'm sure we could get some material together that would be of help to you. Perhaps some of you peole here could suggest some ideas that we could bring in some books.

Statement:I would like to suggest that we get an overall view to sit down with a County Attorney or District Attorney with their views that are defined in a report with a general discussion.

Mr. Skolnik: I wonder if perhaps the Massachusetts Command didn't in its report when they submitted their proposed report to the Legislature didn't have some kind of a preliminary statement explaining what their commission did and how they approached the

whole thing and how they came up with a solution to it. Perhaps that might be something within itself, I'm sure that they faced the same problem that we now face and that might be a place to begin where they have done this so recently.

Dick Cohen: _____Institute as of ayear ago set up a clearing house of State-augmented progjects and were dealing on a regular basis. I have a letter here and think this would be a good source too to get from other states material they could aid on a greater focus on this problem. This could provide some in-depth formal material for all members.

Statement: We might tie it down and develop some guidelines as did Massachusetts. We could be authorized here to figure some guidelines from Massachusetts and other States, and perhaps an Executive Committee established.

Jon Lund: The proposal of an Executive Committee has been brought up and I think this is deserving of our attention.

Jack Simmons: I know in Massachusetts the list of membership is quite large and therefore if broken down into a number of sub-committees and an overall Executive Committee, although we have a sufficient number in this Committee to do that, I don't believe that we could form working sub-committees. I feel there is no need of it.

Mr. Chairman, yes Chief:

Chief: I notice that Prof. Louis Hall in Massachusetts is part of the Massachusetts commision, and we might consult with him on how to take off in a project of this kind.

Jon Lund: That certainly is a suggestion that is meaningful.

Dick Cohen: I agree with Jack that once we get going breaking up various crimes that subcommittees be established. I think it is a part of the Executive Committee and I agree with Justice Delahnty that we do need an Executive Committee to take care of getting all

information for this Commission and I feel the Chairman should be empowered to appoint an Executive Committee to take care of these things that have to be done on a daily basis. Here, Dick Cohen moved that the Chairman appoint an Executive Committee, seconded.

Jon Lund: Any discussion on the Executive Committee. Does anyone have any idea on how large it might be or what range or some way to determine what size it might be.

Answer: We can leave that to the discretion of the Chairman, who may add the nameds.

Jon Lund: It has been moved and seconded that a Executive Committee be established. Any further discussion.

Statement: I would like to suggest that other than an Executive Committee, it should also include an Advisor.

Answer: I would assume that the Executive Committee may have its own consultant.

Jon Lund: Motion to select an Executive Committee carried.

Jack Simmons: Going back to the consultant, I really believe that a consultant should be more than a consultant. We're talking about judiciary, prosecutor, defense attorney, certainly are working with criminal statutes more than anyone and certainly have, even though they may have individual biasis, much as humanly possible, I would like to suggest that consultants for internal purposes could be allowed to vote.

Jon Lund: Perhaps I can explain that the original draft of the bill as memoray serves me, it didn't provide for a consultant, it simply provided that members of the bench could be appointed and this met with objection fromthe Chief Justice expressing a concern about the problem of separation of the Legislature and its functions or the judiciary from other branches of the government and we were at a loss

to find any better way to involve the judiciary that we felt he should be and yet have been the objection which was opposed and so I'd like my comment to be that to serve as consultant there is room for anon-voting member and I would vote that he would follow the procedure by which the consultants to the Commission would participate fully as if they were members with the limitation of their participating member.

Statement: I would like to throw in just one small side with respect to voting. Having been involved in something like this however on a smaller scale, it seemed to involve in most effective results which were almost unanimous and the idea we might ever get anything through the Legislature is probably absurd. Probably we ought to be thinking less ourselves and less in gathering a majority of votes and less on getting amjority of votes. My general problem to the question as to who doesn't vote and who does vote, my opinion is biased.

Jon Lund: Speaking as your Chairman, my experience with working in this kind of problem is that drafting problems is the usual approach that usually works out the best, minimize the number of votes and we work toward getting a concensus as we move along. We would hope that we would have a minimum number of votes. This perhaps gets into a discussion on the adoption of rules as to the administration of its affairs and can move on to that item on the agenda if its your pleasure to do that.

Statement: Maybe we are moving along to that but before we leave the other priorities and philosophical approach that we're going to take, it seems to me that we move down by our discussion to #8 the alternatives method approach to accomplish the orderof business has to be the Chief Counsel, the rapport we are talking about. I would assume

that the person who has been through this who was involved in the Massachusetts code, the Michigan code has recently been revied and the guy who wrote this stuff most certainly must have some material that we all could use also, presumably have approaches and priorities and give us some idea to how the other states approached it. It seems to me we really need the Chief Counsel and then we might accept priorities to see how its working and we really need him at the outset or as soon as possible and that is a need for the Executive Committee to start on.

Mr. Skolnik: I concur wholeheartedly with what Dan has said and as a footnote, it seems to me that we could defer the establishment of rules until another meeting too because I would imagine that any Commission that has gone through this whole business has adopted a set of rules rather than sit down at this meeting and start adopting rules I think would be a little foolhardy. I agree that at to be the thing we should devote our attention to but I don't think we ought to do this hastily, but very carefully who is what that if we are to take a position we must make sure we have the kind of people we want so we get the very best of the systems.

Dick Cohen: I would make a motion that the adoption rules and administration of this commission be deferred until which time the Executive Committee deems it in the best interest to bring it back.

Answer: What you are saying is that we table any discussion of the adoption of rules?

Dick Cohen: Yes.

Statement: Some rules I think might well be handled at the outset, not necessarily rules as to how to operate, or things like I would hope you would not issue press releases. This type of thing should be taken care off at the outset, also meetings, I think from my point

of view that evening meetings would be preferable to daytime meetings. I think it would be appropriate at this time to at least get a consensus of when and where we shall have the meetings or move around in various geographic places. I don't know if that's a rule or not.

John Lund: I think you have raised a couple of points here as a matter of planning the meetings and certainly should be dealt with now. The difficulty, from my point of view, is that timing of meetings as to relationship with how long you are going to spend. The last extensive operation I was involved in at the University of Maine, we found there simply wasn't enough time and we found it necessary to meet prior to dinner and discuss for a period time, then go for the dinner hour and then reconvene after dinner. That gave us a little more time. Now, that is just a suggestion that I throw out for consideration.

Statement: (Harold?) I prefer to have a daytime meeting because you get home at somewhat a reasonable hour and there is a questions as to where you are holding the meetings. You say a later afternoon and then a dinner hour and meeting afterwards, for some it would be a very long drive back by the time you finally get there or you have to stay overnight. I prefer the morning to night anyway.

Jon Lund: Any more views or discussion?

Statement: I assume different points involve different kinds of problems. I can foresee the problem that we might have to start sometime at noon and go into the next day. Can we really decided this in any fixed sense?

John Lund: No we can't except that we can have some idea as to the next meeting. Would you prefer to have the next meeting in an evening meeting or have it some time through the course of the day?

Jack Simmons: Again, I notice looking at the Massachusetts preface that all their meetings with the exception of 10 were dinner meetings. We're talking here about a number of people, all of whom are busy, if we start scheduled meetings perhaps Saturday or Meeting we're

going to have a highway problem, thenI think that you would have a smaller rate of absenteesism. Perhaps thinking of Waterville or Augusta depending on the geographic maku-up of this group. There's one person here from North, would would be difficult. I think Portland would be too far south, I think Waterville or Augusta might be good. At meetings I have gone to I have noticed a great response to either a later afternoon dinner meeting going on or evening meetings or week-end meetings.

Question: Could I asked here that we do hold our meetings in either the Augusta or Waterville area rather than go from location to location for accommodations.

Jon Lund: Yes. Would you like to make a motion in that request.
Statement:
I would like to make a motion that we hold meetings in theAugusta-Waterville area, subject to the question of public hearings be held around the state, seconded. Motion carried.

Jon Lund: I sense an indication of interest in the matter of the meeting starting at some point in the afternoon.

Answer: The only thought we ought to consider is if we go through dinner we are starting to spend some money for dinner which we are still on a limited budget, we ought to be careful on how many meals we spent that money for.

Statement: That leads to another question as to whether or not the commission wants to use the funds for it own personal reimbursements.

Jon Lund: A good deal can be accomplished at a dinner meeting and I have no reason to believe we need to apologize when we meet through the dinner hour and these should be part of our expenses.

Jon Lund: I think we have a sense of the feelings of the commission at that point. Can we return then to have the Executive Committee talk with the counsel, wouldyou like to invite one or more persons who have had prior experience as a counsel in this area to thenext

meeting?

Answer: The Executive Committee can screen several, I think there are quite a few around and when it is narrowed down to maybe two or three perhaps the commission, could discuss the problem.

Jack Simmons: It doesn't work. Most of us don't know anybody who is qualified to be a report so the Executive Committee is going to make a search and even if they narrowed down to two or three and they come to talk with us, they are going to come in with a recommendation as to which one to hire and I can't conceive not going along with that recommendation as we have no way in making judgments, so It hink the time is of essence and we have a fantastically large job and I think there will be a cross section of views and we should certainly screen.

Jon Lund: My first impression is that I take exception to that. My first reaction is that this consultant is going to have to work with each one of us, either as a committee as a whole or subcommittees in some fashion and I think perhaps the most single important decision to be made in the next six months is in the matter of a consultant and my personal reaction is that I would like to have people who are going to serve, or at least one or more of themmeet the whole committee. At least, we can get some ideas even if we don't hire them.

Statement: This may be the single most important decisionwe should impose upon an Executive Committee. Seems as though it ought to be a full commission decision and if it is a bad decision we all bear the responsibility.

Statement My point was screening because a lot of these people are very busy. It would be impractical.

Mr. Skolnik I don't think this is such a large body either. Usually you are talking about the Executive Committee doing this thing in a very large, cumbersome committee and we don't have that large a

committee as a whole and I don't think the Executive Committee ought to decide who our Chief Counsel is going to be. I don't see why the Executive Committee couldn't do this thing and come up with some pros and cons on each candidate so that we could summarize them and make a decision as an entire commission.

Question: I'm thinking in terms of the green stuff as an incentive to this individual. Does the committee want to screen this individual and give him some idea what he's getting into for money or no money and whether he's interested in this kind of money or that. Wouldn't that be practical in the screening process.

Jon Lund: I certainly dont' think it should be a factor but perhaps the questions should come the other way. Frankly, we seems to have ample funds to do a good job and if they want to ask the counsel to view the legislation we have here, tell us what he feels a working plan would be for him and for us , tellus what he feels it would cost.

Question: Would you feel that the Screening Committee be armed with a minimum, a maximum or nothing?

Dick Cohen: Yes, I agree that the Executive Committee shoudl do the screening, should look at the scope moreorleass and then be given a proposal as to what the cost will be. In exploring several potential reporters over the past year, the biggest thing is to explore several points. This does a great deal tiwh professional reporters. I don't think anything should be lessened, I think the proposal should be listed by each of the expected reports as to what their prospects should be.

Question: Would this be a flat rate basis or perdiem basis.

Dick Cohen: We haven't gotten into this.

Statement: It does seem rather strange though that if we did have a model code that all the drafting was practically done and we

have to start from scratch and they would have to start redrafting, I would guess there would be a time factor involved here.
The problem is if you get a contract price, you could find you are not getting what is needed.
Jon Lund: We could perhaps come to that decision at some point in the future. Would the commission like to see one person here at the next meeting or would the commission like to meet with several people? Let's get a practicaly decision here.
Mrs. Glassman: I suggest that the Executive Committee get a background for a proposal on a number of people, come back to the Commission and discuss this before asking any individual or indivduals to appear. There would be a lot of information on a lot of different people if the Executive Committee were able to do this. The entire commission could be released from that.
Jon Lund: I would suspect that there might be individual preferences on the part of these counsels on how they would like to work and I think there are factors of what they would do.
Mr. Skolnik: I really dont think it is a lot of time because I think this is a very important decision and once we make this selection, they are going to save us a lot of time and I think it's most important we make a good selection and take our time in doing it. Everyone says we are strapped for time, but Ithink we can do the job in three years. I'm not too worried about that part of it, but we've got to have the kind of full time help that this Chief Counsel in his depth is going to be able to give us.
Dick Cohen: I believe these reporters or potential counsel who might be interested in are used to filing written proposals designating the background work done, alternate cost figures in one little package.

He would have what practice he has had in this area and what they do in filing written proposals, scoping out and give background, etc. This is what we want the Executive Committee to report back to us.

Jon Lund: I'll give you some idea on how this proposal will proceed. If this is the pleasure of the commissionwe receive along the lines as Mrs. Glassman has requested--Motion accepted. The Executive Committee will invite proposals and bring those proposals with examples of some of the work of the Counsel to the next meeting it might be in order for the commission to authorize some person, some officer toexpend sufficient funds to take care of some house-= keeping details, supplies and the like. So moved, seconded.

Question: May I ask that each member of the commission be furnished a copy of the Maine Penal Code. I think it is in the terms of a paperback.

Jon Lund: It is suggested that each member be furnished a copy of the Model Penal Code. Any other suggestions as to the kind of things you would like to start off with?

Question: I wonder if there are funds available to prepare some of this material in advance so that before we get here we would have a chance to look over some of the credentials and be prepared to discuss them.

Question: Mr. Chairman there are several penal codes I believe. I think of this particular kind there are four or five.

Dick Cohen: There are several little ones, I have copies up in the office. I' m not sure, but there is more than one model penal code with variations on the lead.

Edith Hary: There have been codes adopted by states but the model itself is adopted as such.

Jon Lund: There's a motion pending authorizing the expenditure of items of a reasonable sum for materials to be used by the Commission, seconded, motion carried.

Edith Hary: Will the committee be regularly supplied with someone who will take minutes.

Jon Lund: I think that will be a necessity.

Edith Hary: I wanted to make sure that wasn't included in the work of the Secretary-Treasurer.

Jon Lund: Does anyone have any suggestions as to how we might apply for secretarial help.

Dick Cohen: I think possibly I might be able to make arrangements through LEPAA to provide this assistance at no additional cost. I will explore the matter.

Jon Lund: That's fine. Is there any other items of business that the commission feels we should take up before we have the next meeting.

Question: There are two items regarding federal funding and getting as much money as possibel. Do we have to authorize you and Dick to get as much money as possible.

Jon Lund: I think the bill aready contains lineage to that effect. Are you aware of any action at this particular time to initiate such action.

Dick Cohen: At this time, there need not be anything done within the next several months it will be necessary to forward the application to the MLEPAA asking for Federal funds but premature to this time it would be within the next several months.

Jon Lund: It wouldn't hurt then to authorize the grant application.

Question: When this is done I want to know whether this has to be sent to the Federal Government to get this type of money.

Dick Cohen: The State requires that the application is sent to

Washington- for approval. Once that's approved, there is set aside $30,000.

Question: Didn't you mention inthe beginning that there might be a possibility of some other Federal funding?

Jon Lund: I said that this should be explored.

Question: I assumed that you had $30,000 in other areas and I wondered how we explored the other areas?

Jon Lund: I don't know but possibly through LEAA funding directly from Washington or perhaps the Executive Committee talking to the Law Institute to see what else needs to be done.

Qustion: IN that connection, Dick, I understand that this type of activity, the time spent by the members of the commission is the part of the state contribution and that it is important that we keep track of that time somehow.

Dick Cohan: I think its very important.

Jon Lund: Can you suggest to us how this might be done? Should each member here pass in a time sheet?

(Changed tape)

Question: I don't know about public debat, but it seems to me that in the legislation itself indicate some public participation. I don't know as we ought to be overly secret about this. Perhaps a public debate is advisable. Seems to me it might serve as a useful purpose to have an individual from the Commission, if the case arises, they can point out the commission's job without necessarily giving out the substance of what is being done. I think it is important that we inform citizens of the state that a revision is going on. An other reason, I think its important that people be awareof this.

Mrs. Glassman-I am inclined to believe in a way, but that the Chairman should make the public release acquainting the state

generally that a revision is going on. We might consider the value too of a public debate, not for a disagreement within the commission but just to acquaint the issues on this and that they then be allowed to express their own reactions to it before final decision is made by the commission. I'm thinking for example if we decided to consider certain things; I think it might be accepted by society, it might be well to plan for the debate.

Dick Cohen: You are right, being a realist, although there will be some pros and cons on the commission it would be completely to the work. This envisions some of the things we will be getting into and getting all the public attitude, not that everybody is going along with everything else. This type of thing now I am in favor now of leaving at this time, public relations or releases to the Chairman and membersof the Executive Committee.

Parker Hennessey: From experience in my Agency where I have men scattered all over the state, you invite mail to a great degree and then you get into the task of answering it. So before you open this up I think at least it ought to be right down to par where we are going before we even consider this.

Mr. Skolnik: I think maybe there are two ideas that possibly could be supplied at public hearings, 1 is to have members of the public acqainted with the fact there is such a commission and maybe some people from various walks of life who have some specific ideas that they would like to present to our commission before we get to the work of pereparing a suggested application and that's one thing that we ought to include besides this getting proposals from our Chief Counsel and from other members of the commission itself. But I do really feel that we ought to sort of get the bulk of the work done, seems to me, argued out and aired and be close to what we think is going to be proposed

before we start having public hearings and maybe the work of a nucleus before we hear it from.

Jon Lund: This is the type of questions we can better take care of. I think probably now I think it should be some action of the commission at an appointed time. Perhaps having our counsel here will give us a little insight into this particular problem.

Jack Simmons: I was not talking about public hearings, I was talking about press release type, public statements, made by individuals to the meeting and is rather difficult at public hearings. I prefer public type of releases, I think it is necessary, it should be done to generate a certain amount of public relations but should come from the Chairman.

Jon Lund: Do you think its necessary to vote on that?

Jack Simmons: I think its necessary to see that there is no possibility and is equally obvious that as we debate these things we get into some very strong views and we should have the guidelines set down when we are calm and rational.

Jon Lund: I'll entertain a motion.

Jack Simmons: I would move that all press releases and individual statements made to the media in regard to this commission be issued by the Chairman or his designated assistant.

Jon Lund: It has been moved and seconded, but a point comes to my mind. I would hope that we would be able to have, perhaps not a transcript but at least a summary of more than just a formal votes taken at our meeting so that after a meeting we would be able to look back and see what actually happened. These could be very useful but they could also be misused and I would hope that your motion would include that kind of documentation.

Question: By individual, do I understand this would mean a question

of what the commission has done or statements of the individual position.

Jon Lund: I would hope this would be the statements of the Commission at this time. I

Question: I just wanted to know what your motion covers.

Answer: It covers everything.

Jon Lund: Perhaps the problem being raised here is a different one. I don't think that we attempting to tackle anyone's position on an issue outside of this commission. I think the sensitivity at this point is a personal statement within the commission which I think is probably a thing to be avoided.

Statement: I disagree with what appears to be the purpose of this. _____Seems to me there is a matter of tastelessness of someone who doesn't get their way on commission proceeding to talk with the media through _____ or misstatements of statements made bya member of the commission-those kinds of things are regular and hope we should not do that. I would ask that we discuss the merits of the quesion with the public or our capacity to discuss any of these issues in general. I frankly don't see how we ever enforce the police any rule we made, other than _____ and be a good loser, but I really don't know what we would accomplish by this and makes me a little nervous to do this.

Jon Lund: Are your objections to how we're going to write the criminal code?

Mr. Skolnik: I think timing is important here. I think its one thing. after six months of our business, we start getting to this as opposed to for example: when we're just about ready to make our proposal the Legislature---perhaps there are some people who have very strong feelings against bill and overruled by a majority rule which is being presented to the Legislautre. I think at that time certainly

a member of the commission, and I take the minority view of this, I don't think the commission's proposal on this is correct. I think it is perfectly proper, but I think what we're trying to avoid is if the whole thing got out into the public before the public even knew what the proposal was. Like the commission on marijuana, where the people say I'm going to be against this no matter what the commission comes out with. I think if we can avoid that kind of a thing, it would be to our advantage to do so.

Question: Mr. Chairman, may I make a suggestion. the publicity is a verty useful to the court judicial counsel.....I would hope that all official communications would come through the Chair, as a non-voting member whereby the judicial counsel would have no right to vote. I think we should be hesitate to limiting the _____. Perhaps we would find out from the public what is going on, not particularly what is going on here, but gentlemen this isn't_____. This is a large body, ww want _____

Answer: I think we should leave these matters up to the individual drawn of the membersof the comission. We could decide what was the problem. I was just wondering if whether -- if someone comes to you and says "what is this commission all about" we'd be afraid even to make a statement as to what the commission does.

Jon Lund: I would certainly hope that the discussion here if that question were asked a person would feel perfectly free to what the work is in general. But I think there are a couple of obvious things to be avoided, what the commission is doing substantively because, for instance, many of us has been taken to task for something said in the heat of a discussion.

Mrs. Glassman: Mr. Chairman, the suggestion I made possibly was misunderstood. I didn't mean that this would be two disgruntled

individuals discussing it with the public. I meant the possibility that as a decision of the commision, they use this as a device kind of public debate on members of the commission to acquaint the public with the problems that were being brought up and getting a reaction as to the public view; that it would be a definite determination by the commission this was a proper way to wait until it went to the Legislature and that they had no opportunity to discuss it further with the public. The criminal code implicates the wishes of society that we live in and this is what I meant not that it would be a tool on how the people_____.

Jon Lund: Do we want to discuss the matter of publicity any further?

Judge Wernik: I would like to make a comment. As aresult of this discussion, I think we have to face a basic problem and that is to what extent the public is to made a member of this commission during its process of working. I notice that the langugage of this that if we are going to hold these hearings to "acquaint" the public, I realize that is not necessarily a controlling figure. I would suggest that what would derive from it is the concept essentially we are to be the ones to mold positions. We reach the conclusions here as to what we think best and then we acquant the public we try to tell them why we reached these conclusions rather than have them participate in the process as we go along. Then, having acquainted them with the conclusions that we have reached, we try to urge those people in those areas which we get definitive reactions explore further. It might be a serious error to feel that we must conduct our business in the same sense which gives the public the right to higway. I think it might be advisable to say that we are essentially conceived as a representative body in the first instance to do the best we can to formulate something and we ought to send this to the public peacemeal as we

go along, thinking they are essential in the delivery process. And only after we reach some rather firm conclusions here, then having some substantial subject matter, we then go and sell it to the people. I feel rather strongly about this.

Mr. Skolnik: Very well put. I concur.

Judge Wernik: I personally feel very strongly about this and I personally would like to hear some other thoughts.

Errol Paine: I agree with what Judge Wernik says and what the Commission does and don't anticipate that I will, but I might go on television and express any views that I personally feel in regard to the commission.

Jon Lund: I don't think anyone here ought to feel they are taking their positions outside. I have no intent to do that. The business of the commission, as we're concerned with here.

Errol Paine: In terms of information itself, if we wish to make any statements in terms of the commission's position or on any of the issues.

Statement: I think that this is something that ought to be said before it happens that no member of the commission...I wouldn;t want to go on television as a consultant and say that Erroll Paine of Bangor takes this position. I think it is highly important.

Mrs. Glassman: I am inclined to disagree with the Justice Wernick as to the involvement in the definition of the criminal Statute in the State. I think it can be differentiated between the rules set forth; for example rules that are adopted, procedural rules, very definite things our society lives with that it should reflect more than this group as representative as it may be. It should have a greater input before the public before we, as a commission, make a decision as to what they should be.

Statement: Mr. Chairman, we should keep in mind our ultimate goal here is to come up with something that is going to be a good product, that the Legislature is going to buy. I'm not suggesting that we go out and be a lobbyist, but I feel we should keep that in mind what Mrs. Glassman just said.

Answer: I don't think we ought to worry about whether or not the Legislature is going to buy it or not, I think we should decide what we think is right and let the Legislature fulfill its function. If they feel some parts of it ought to be compromised, then its up to them to do just that and I think we ought to do it ahead of time. I don't know whether or not, Mrs. Glassman, you may not get the opportunity for public statement you're seeking when this proposal, like any other proposal in the Legislature, as complete legislative hearings, debate, arguments by Representatives and Senators, I just sort of think that the public should know about what we propose.

Errol Paine: I certainly don't agree that we should draft some sort of model code, present it to the Legislature and then hope that they'l do their function because their function is only to respond to what the public wants and therefore if we want to pass anything that's halfway sensible, we ought to educate the public to the reasons why in some fashion. I don't want to see 8 or 10 special interest groups come swooping down to the Legislature and pressure this whole thing all out of proportion which is basic /what's wrong with the law now with is various ways they ~~xxxx~~ pass one here and there with whose up in arms about something. I think this ought to be a rational thing and thought out, but I think its going to need the support of the public. I think its mandatory or we'll be wasting 3 years.

Col.Hennessey: Looking this over just briefly, I can't see any problem here in presenting a bill that we will acquaint the public with what we're doing at the public hearings and I can't concede

of acquainting them with anything without stirring a very good debate and getting their points of view directed back. This requires us to do this and we feel if we did do it, I don't see what we're really discussing. If we have to acquaint the public to what we have done.

Jon Lund: What may be contemplating possibly is a final draft which could be used as a basis for hearings and areview of that could be contemplated.

Mr. Skolnik: The statute does say, "as we deem it necessary", we may deem it necessary to have just two public hearings, one in Bangor and one in Portland. We're not required to have so many public hearings, but just whatever we consider necessary.

Jon Lund: Do you want to dispose of the motion with regard to publicity which Jack proposed.

Jack Simmons: I'll withdraw my motion.

Jon Lund: Is there any other business to come to the floor? Perhaps the date of the next meeting.

Statemen: May Isuggest we leave that up to the Executive Committee

Judge Wernik: Except that some of us have some firm commitments and we cannot just be flexible due to certain fixed terms of law court.

Jon Lund: Let's set a tentative date then.

Some discussion followed here regarding a date for the next meeting. Mr. Lund then set a date of Friday May 12th at 3:00 p.m. with a dinner meeting in the Waterville area. (the precise place will be announced).

Jon Lund: There is one other very important item. We have talked abbut and Executive Committee and I would like very, very much if the members of the commission would give some thought before they leave to our Executive Committee and if anyone would like to volunteer if they can devote some time it would be a great help to me if they could

take the time to do this. In any event, I would like to have you indicate here, or at some later date, if you could serve on the Executive Committee. I furtheris no further business...

Mr. Skolnik: There is one other small i tem-someone mentioned something about travel and expense vouchers at each meeting that members could obtain.

Jon Lund: Yes, please keep track of your expenses so that we will be able to reimburse you.

Question: Will we have a transcript by the next meeting?

Dick Cohen: We will hope to have it forwarded to you. Do we have your addresses?

Yes, they are on the sheet.

Jon Lund: If there is no further business to come before the meeting, Ill suggest that we adjourn. Meeting adjeurned at 12:20 p.m.

Respectfully submitted

Commission to Prepare a Revision

of the Criminal Laws

Minutes: Executive Committee

April 10, 1972

The Executive Committee met at the home of Chairman Lund in Augusta on April 10, 1972, at 7 P.M. Present were Jon Lund, Esq., Mrs. Caroline Glassman, Edith Hary, Errol Paine, Esq. and Jack Simmons, Esq.

Letters received by the Atty. General expressing interest in working on the Revision were reviewed. It was decided that the Chairman would contact Prof. Livingston Hall of Harvard and Prof. Herbert Wechsler of Columbia for any suggestions or advice they might give us. The deans of all New England Law Schools and Columbia are also to be solicited for names of potential counsel. The Exec. Comm. will meet again to screen responses for presentation to the Commission.

Meeting adjourned 9:30 P.M.

Respectfully submitted

Edith L. Hary

Edith L. Hary

CRIMINAL LAW REVISION COMMISSION
Minutes of Meeting
May 12, 1972

Held at

HOLIDAY INN
Augusta, Maine

ORDER OF BUSINESS:

Meeting called to order by Chairman Lund at 3:20 P.M.

ROLL CALL:

Members Present: Jon Lund, Esq., Chairman
Mrs. Caroline Glassman
Peter A. Anderson, Esq.
Louis Scolnik, Esq.
Dr. Bernard Saper
Lt. Jones for Col. Parker Hennessey
Gerald F. Petrucelli
Edith L. Hary
Dr. Willard D. CAllender, Jr.
Daniel G. Lilley, Esq.
Richard Cohen for James S. Erwin
Judge Delahanty, Consultant
Judge Rubin, Consultant
Judge Williamson, Consultant

Members Absent: Errol K. Paine, Esq.
Lewis V. Vafiades, Esq.
Allan Robbins, Warden
Jack Simmons, Esq.
Judge Wernick, Consultant

Guest: Professor Sanford J. Fox

MINUTES OF PREVIOUS MEETING:

It was duly moved and seconded that the reading of the Minutes of the Previous Meeting be waived, and the Minutes accepted as reported out.

REPORT: - Chairman Lund

Chairman Lund reported that, as authorized by the Executive Committee, letters had been sent and telephone calls made to law schools in Maine and throughout the northeast area in an effort to locate and hire a Reporter for the Maine Criminal Law Revision

Commission. A number of responses were received. In going over these, the Executive Committee felt that essentially there was only one real live prospect, Professor Sanford J. Fox.

Professor Fox was invited to meet with the Commission to tell about his experience, talk about his impressions of the task to be accomplished in Maine, and answer any questions members of the Commission might have.

Chairman Lund stated it was hoped that the Committee would be able to satisfy itself as to whether or not it felt Professor Fox would be a likely prospect, and if any decision was reached that the Commission would then authorize the Executive Committee to proceed further.

After explaining that this was essentially an interview, Chairman Lund then introduced Professor Sanford J. Fox.

Professor Fox gave his impression of the tasks to be accomplished and possible ways of doing it. It was his feeling that the best way for the group to go about doing the work would be to divide into subcommittees, perhaps three. One would be responsible for General Principles; one would be responsible for Sentencing; and one would be responsible for Redefining Elements of Substantive Offenses. The work of these subcommittees would be reviewed by the Commission as a whole periodically. The timing of the subcommittees would have to be decided on an ad hoc basis. The subcommittees meet with the Reporter and go over the drafts word by word, comma by comma, and paragraph by paragraph. Professor Fox suggested that these meetings not go over three hours or so. If they are too lengthy, they tend to become fun and unproductive. He suggested that the final report of the National Commission, plus the two volumes of working papers, be utilized as reference since it is the best overview of what there is to work with; the scope of the federal criminal law now being at least as broad as any of the state statutes.

Working on the basis he outlined, Professor Fox stated that a report of some sort ought to be available in about two years although a lot of nitty-gritty would remain to go through.

Chairman Lund stated that the Commission had expressed some reservations about breaking into small committees and had further expressed the desire of working as a whole.

The Professor said it was a bad idea to have a group do the redrafting. You get a variety of suggestions, and a large number tends to get out of hand. This is a matter of efficiency. However, subcommittee meetings ought to be open to anybody interested in what they are doing.

In answer to what he might propose as a budget, Professor Fox presented a budget he had prepared calling for an annual figure of $17,300, plus the loan of one set of Maine Statutes. As a part-time assistant, he would like to find some young law student with interest in doing this and maybe become expert on the penal code.

In answer to many of the questions, Professor Fox cited some of the problems and situations encountered by other states, and in some instances how these were handled.

In answer to the question as to how the Commission should relate to the public and whether or not there was a need for public hearings and when, Professor Fox replied that this should not take place until after a report had been published.

To the question as to how frequently subcommittees should meet, Professor Fox stated he felt it could be worked out to meet about once a month.

As to when he could start, Professor Fox stated about the middle of June.

Following a brief recess when Professor Fox left, the meeting resumed with a discussion by the members of their impression of the Professor and their thoughts with respect to employing him as Reporter for the Commission.

All through the discussion, it appeared to be the general concensus of opinion that Professor Fox certainly possessed the necessary background, had a great deal of experience, ability, and is well known in this type of work. Several members of the Commission stated that they were very favorably impressed.

The matter of the budget was also discussed, and the members were in agreement as to how this could be handled without any foreseeable problems at this time.

Following more discussion, Mr. Scolnik moved that the Commission request a written contract from Mr. Fox along the lines of his proposed budget and the Commission be authorized to accept such a proposal. Also, suggesting to him that he include services up to and including the submission to the Legislature and the testimony before the Legislature.

Motion seconded by Mr. Petrucelli.

The Commission voted unanimously in favor of the motion.

It was then agreed that the scope and boundary of the Study would be discussed after the Commission had reacted to the subcommittees and how they should be set up. It was suggested that perhaps each one of the three subcommittees could be made up of five members with a consultant assigned to each subcommittee. It was also felt that perhaps it would be well if any one member did not serve on more than one subcommittee.

Mrs. Glassman suggested that possibly some of the material could be gathered by University Sociology students, and that if this was looked into now something might be started there during

the summer rather than wait until next fall. Dr. Callender said he would be willing to call people and see what they had.

June 9th was designated as a tentative date for the next meeting to be held at the same time and possibly the same place.

On motion by Mr. Scolnik, duly seconded, adjourned at 5:40 P.M.

Prepared by Lucille Tillotson
Maine Law Enforcement Planning &
Assistance Agency

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

A meeting of the Commission was held June 9, 1972, at The Silent Woman, in Waterville, preceded by a brief meeting of the Executive Committee to discuss sub-committee assignments. Present were Peter Avery Anderson, Dr. Willard D. Callender, Jr., Richard S. Cohen, Edith L. Hary, Lt. Richard Jones, Jon A. Lund, Errol K. Paine, Allan L. Robbins, Dr. Bernard Saper, Louis Scolnik, Jack H. Simmons, Lewis V. Vafiades, and Professor Sanford J. Fox.

Chairman Lund called the meeting to order, and the report of the previous meeting, distributed in advance, was accepted.

Sub-committees were appointed as follows:

Sentencing (Sub-committee A)	Substantive Definitions (Sub-committee B)	General Principles (Sub-committee C)
Glassman, Chairman	Simmons, Chairman	Vafiades, Chairman
Callender	Cohen	Anderson
Robbins	Lilley	Hary
Saper	Paine	Hennessey
Scolnik		Petruccelli
	Delahanty, Consultant	
Rubin, Consultant	Wernick, Consultant	Williamson, Consultant

Meetings are scheduled as follows:

Sub-committee A	Sub-committee B	Sub-committee C
June 29	July 20	August 10
August 31	September 21	October 12
November 2	November 23	December 14

Whole Commission: January 5, 1973.

Meetings are set for 3:00 P M, Thursdays, at the Holiday Inn, Augusta.

At the September 21 meeting, a revision of the late November date will be in order. Any member of the Commission may attend any meeting of a sub-committee, but may vote only on the sub-committee to which he has been appointed. Notes should be taken at all meetings so that a non-verbatim report can be mailed to members prior to the next meeting.

Professor Fox said that a sub-committee meeting every three weeks is a reasonable time span, but that meetings can be made more frequent as the work progresses. Between meetings the members will review previous work and proposed drafts, noting criticism, comments and new ideas. Professor Fox will take "digestible pieces of information," form them into a preliminary draft, consider present Maine law, and circulate the draft to the entire Commission. Having a draft will be an advantage, tending to avoid "bull sessions." He will then meet with the appropriate sub-committee to discuss the draft.

Background reading can be accomplished between meetings. Professor Fox agreed to prepare a list, to be sent to Miss Hary for distribution. Such material will be purchased and made available. A copy of Menninger's CRIME OF PUNISHMENT will be purchased for each member. Several books and articles were recommended spontaneously by Professor Fox, and Dr. Callender suggested budgeting for books and xeroxing.

Professor Fox answered the question (Vafiades) "Can we pioneer?" affirmatively. ("My responsibility is to disclose options.") He is not in favor of having the entire Commission deal with General Principles: the subject does not require everyone's attention, and division into sub-committees results in more efficient work.

Asked (Anderson) to define General Principles, Professor Fox gave examples: the statute of limitations, defense of insanity, consequences of establishing insanity, venue, the line of immaturity, presumptions in criminal cases, circumstances defined (as, what kind of force can be used and when). He said that the provision at the head of this section would state that it governs criminal offenses no matter where defined.

The sub-committee on Substantive Definitions will be concerned with defining offenses: common law crimes (should we keep or abolish?), breach of peace, vagrancy. "The demands for being comprehensive are enormous." Professor Fox referred to the proposed Massachusetts statute covering "alarming conduct", a compromise to enable the police to intervene in a situation where a specific charge cannot logically be made. All offenses are classified by the Definitions sub-committee.

The Sentencing sub-committee must coordinate its work with the Definitions sub-committee. The irrationality of length of sentences according to Maine law was cited; plea bargaining must be considered. Professor Fox supports the ABA proposal to "make the whole thing honest." This sub-committee will determine the judge's role in fixing the maximum sentence, and in parole provision. A mandatory parole period makes sense if the parole system can absorb the work load. Concern was expressed (Robbins) about the long indeterminate sentences; e.g., "one to ten years." Discussion about difficulties of handling parole ensued, with questions about background statistics: (Lund) "How many parolees are reporting by mail?" Statistics are necessary to determine whether or not enactment is workable, and may be gathered from the Maine State Prison report, and sociological sources. Dr. Callender expressed an interest in working on any research and offered to accumulate sociological information. A feasibility report should be made, and "after a couple of years" a report on the effectiveness. This sub-committee should review the philosophy of sentencing and imprisonment, and view controlling the disparity of sentencing as of prime importance.

Professor Fox suggested that the Chief Judge of the District Court designate a representative of the District Court to sit in, ex officio, with the sub-committee on sentencing, and be placed on the mailing list to receive material which is approved by the Commission as a whole. A motion (Cohen) was carried that Judge Browne be contacted, and that he or his designee be the recipient of material, and attend as an adviser to the Commission whatever meetings he judged worth attending.

A motion (Simmons) was carried to invite Police Chief Robert Wagner, Bath, to attend meetings as an adviser to the Commission. Other possible invitees were discussed, but no official action was taken, it being the sense of the meeting to treat the matter on an individual basis.

The NCCD offer in connection with the Model Cities program to do an evaluation of Maine criminal law was introduced. Chairman Lund and Professor Fox will investigate the details (it is probably an evaluation chiefly of the sentencing portion of our work), consider possible duplication and interference, and are authorized to accept the offer if it is deemed beneficial. Caution was advised (Robbins).

A letter was read, from the ABA, regarding a $3,000 grant, which can be used as matching funds, supporting a comparative analysis of the Maine statutes with ABA Standards for Criminal Justice; and it was moved (Simmons) and carried that the Chairman be authorized to apply for any helpful funds, including the ABA. The Executive Committee was authorized to gather information on any funds available, and to expend funds to gather statistical information preparatory to the work of the Commission.

Miss Hary reported the LEAA office assistance in preparing our application for a Federal grant from LEAA.

A suggestion of using law intern help was briefly discussed, but action was postponed.

The meeting was adjourned at 6:00 P M.

Respectfully submitted

Edith L Hary, Secretary

(Minutes taken and transcribed by Mrs. Hilda M. Sacco)

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The sub-committee on sentencing met at the Holiday Inn, Augusta, on June 29 1972 at 3:00 P M. Present were: Mrs. Caroline Glassman, Dr. Willard D. Callender, Jr., Jon A. Lund, Louis Scolnik and Professor Sanford J. Fox.

The desirability of attendance at meetings by the consultants was emphasized, and the difficulty of setting firm meeting dates to avoid court assignments was recognized. It was suggested (Lund) that the chairman (Glassman) of the sub-committee express regret to Justice Rubin because he was unable to attend this meeting, and explore the possibility of having written comments from an absentee, or having another attend in his stead.

Dr. Saper also was unable to attend, but wrote to Professor Fox to record his belief that sentencing should be a rehabilitative process.

Police Chief Robert Wagner of Bath accepted the invitation to attend meetings, and is to be placed on the mailing list as an adviser.

It was agreed that the experience and counsel of Justice Rubin and Allan Robbins would be of such benefit that another meeting should be held before any firm decision on the subject matter was made.

A general discussion followed on the various methods of handling sentencing, the merits of vesting authority in judges (who presently have the most authority) or a sentencing board (should such a board include former offenders?).

The draft seems to avoid the word "punishment" (Callender), and there should be evidence that the public is receiving protection from crime. The public tends to equate the crime and the individual who commits the crime as the same. The word "punishment" should be used, and the punishment should be made specific, although no rights of the offender are taken away except that of "moving in space" (Callender). It was agreed that society presently demands punishment although it is less expensive, for instance, and more productive to send a girl to college than to Stevens (Glassman).

Professor Fox said that Vermont has recently changed the definition of felony and misdemeanor, prompting a suggestion (Glassman) that we place a limit on maximum sentence for felonies. The effectiveness of a sentence of more than five years was questioned, the Parole Board being disinclined to grant probation until the minimum sentence is served. How much does a penalty really deter? (Scolnik) Statistics indicate that most offenders do not serve over five years, although the public will find this hard to accept.

Minimum sentencing was discussed at length, sentiment being expressed against (Scolnik, Lund). If the judge were authorized to set a maximum sentence, the Parole Board could have the choice of when to grant probation. Sentencing might be simply to the Mental Health and Corrections Department, which would then determine the length and type of sentence (to which institution, for what treatment, under what specific supervision).

Alternate programs could be developed. Nothing except institutional confinement is now provided, so a non-institutional program might be considered. Trial wording was tested: "to be sent initially to Thomaston until Corrections makes the decision to ultimate destination," "sentenced to X number of years in the custody of the department," "the term of custody to commence at Thomaston," the use of the term "processing center."

Varieties of parole and conditional discharge were considered, and different ways of serving sentences (week end or evening imprisonment). Continuity could be achieved by a file system (Fox), but this would mean practical mechanical difficulties and additional clerical work (Scolnik). The judge could have the option of probation or conditional discharge (Fox).

Aggregate offenses were discussed, the difference between a deliberate act and an unintentional act, a possible "habitual criminal" act, fines (percentage, authority for installment payments). It was suggested (Callender) that fines are usually levied on the upper economic class, and prison terms on the lower. Also discussed were the sociopathic type, the criminal who will never repeat, the one who cannot be rehabilitated, plea bargaining (should be determined independently).

A relationship between the kind of crime and the sentence should exist, but an attempt toward flexibility should be made, and provision for gradations in control, with a reasonable expectation that the sentence will be sufficiently severe to prevent repetition of the offense.

It is important that the judge exercise proportion. Is it possible to have specially trained judges, or a board composed of trained psychologists, psychiatrists, and include a judge? (Scolnik) Or is it possible that before sentencing, the judge consult with specialists on the kind of individual and crime? (Glassman) Limits should be set on what such a board may do. In preventive detention cases, can it exercise better judgment? The majority thought not. Care should be taken not to duplicate the present system in providing for an advisory group (Fox). Flexibility is desirable, but we should not abandon present systems which are right (Lund). Does a judge or the Corrections Department have more knowledge about the defendant, his type of

crime, probability of recidivism? The effectiveness of any new approach will be judged by its results (Glassman).

The purpose of sentencing was discussed: is it to punish or to protect society? (Glassman) The pyramid effect was cited (Glassman) with an assertion that initial confinement is not a deterrent. There is, however, social benefit in the knowledge of imprisonment (Lund). In cases of property damage, for instance, aroused citizens want to know where the offender is and for how long.

Where there is need for public assurance, the code could be strengthened to permit the judge to send the offender to a specific place (Fox). It was agreed that a judge would have more publicity than a Parole Board, and a decision by the court would be simpler and more effective (Glassman). Constant evaluation should take place after the court sentences to a program (Glassman).

The State Prison could provide processing, serving as a diagnostic center (Glassman), but to avoid the stigma (Callender) of prison background, it would be necessary to change its image (Glassman), an achievement some think impossible (Scolnik).

Budget flexibility would be desirable if the Department determines the sentence: may Prison funds be channelled to halfway houses, group homes, and the like? Concern for procedural due process and safeguards was expressed (Scolnik), and it was believed that the safeguard would exist if the court had authority to place on probation, conditionally discharge, or refer to the Corrections Department.

Funding and timing (at least a six-month period was recommended for public acceptance) were explored, prudence being counselled (probability of legislative disinclination to favor a new program with a substantial price tag). A discretionary lump sum would be ideal. It might be useful for Professor Fox to confer with the Appropriations Committee on the possibility of a flexible budget.

Professor Fox will write to Ward Murphy and Commissioner Kearns to invite communications from them (or appearance at a meeting) on the matter of sentencing and departmental assignment to a correctional institution.

No hard decisions were made, but there will be another meeting of this sub-committee, and meanwhile Professor Fox will write in prose fashion the substance of today's draft, distribute it, and it can be the basis of further discussion.

Respectfully submitted
Edith L. Hary
Edith L. Hary
Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE REVISION OF THE CRIMINAL LAWS

Sub-committee B, Substantive Definitions, met at the Holiday Inn in Augusta on Thursday, July 20, 1972 with the following attendance: Jack H. Simmons, Richard S. Cohen, Daniel G. Lilley, Errol K. Paine, Hon. Thomas A. Delahanty, Hon. Sidney W. Wernick.

Professor Fox pointed out that the definitions established would apply to offenses, no matter where the offenses might appear in the statutes; and that the number of classifications is the business of other sub-committees. Individualized judgment is called for: if the offense requires only a fine, it can be dealt with individually, and need not invoke the entire criminal machine. There should be a penalty for every class of offense, including imprisonment or fine.

A fine imputes criminality if there is also a prison sentence (Wernick). Many things can call for a money payment and may not be labelled criminal, such as traffic cases. The problem of arrest if the offense is not criminal (Simmons) was considered, which led to the further consideration: what is civil penalty classification, and what is criminal classification? (Example: default by public servants is non-criminal.) And is the existing machinery adequate to collect fines and forfeitures?

Section 9, p 2-2, of the draft will be revised to take into account less than misdemeanor, fine-only situations. Misdemeanor is the lowest classification, and when it is a fine-only offense is not deemed criminal.

Much attention was given to the subject of conspiracy. The point must be defined at which criminal liability occurs when there is no victim yet. Criminal intent is not necessarily criminal liability. How far back should we go to prevent infractious harm? to protect potential victims of violation? Perhaps there is no such thing as a conspiracy to commit an infraction (Fox favors). Substantive offenses can be drafted to provide specific protection.

Under conspiracy (there is no objection to a conspiracy statute -- at present it is a greater crime to plan than to put into effect), should separate offenses be specified, the prosecution to elect which to charge; or should the statute provide for merger? Opinion was divided on the question of merger. Misdemeanor is already (Cohen) a merger in Maine; merger would mean potential double punishment for the same crime (Simmons). Merger has not been a practical problem (Delahanty) and the prosecution has made the choice. Various possibilities were considered: what to do when six conspire, but only one commits? (Wernick) Would the sentence provision make a difference? (Fox) Would sentences be served concurrently?

The state should decide between two persons and two charges -- which merits the punishment (Paine); planning and committing the crime do not constitute two crimes, and the state should not be permitted to try on two charges.

A motion that the state cannot charge a person with conspiracy and also attempt, or committing an overt act resulting in conspiracy, the choice being made at the time of indictment, failed. (Yes: Simmons. No: Cohen, Delahanty, Lilley, Paine, Wernick.)

A motion to eliminate conspiracy as a crime failed. (Yes: Lilley, Simmons. No: Cohen, Delahanty, Lilley, Paine, Wernick.)

The essence of conspiracy is agreement (adultery is agreement; bank robbery is not), and there are varying degrees of culpability. (Fox)

Opinion was divided on whether the principle of merging misdemeanors should apply to conspiracy. There are, however, ways of protecting, notes on sentencing in the draft may provide solution, although in their present form, it was doubted that they would solve the problem.(Wernick)

Discussion of varying mergers followed, with consideration of possible benefit or disadvantage to the defendant, and whether or not the prosecutor should decide. The paternal theory was investigated, and the possibility of discarding conspiracy, and defining the crime as "attempt." (Conspiracy equals agreement plus an attempt.)

Discussion of accessory before, accessory to attempt, conspiracy and substantive offense followed. The question was raised: what is the conspiracy draft punishing for -- an agreement plus, or an attempt plus? It was agreed that attempt is one thing, attempt plus agreement another, both punishable. The present draft seems an intermediate stage, some feeling that it was too radical. A suggestion was made to add "overt act." If there is no way to write an attempt statute without some judgment (unless keeping a mechanical choice), perhaps an attempt statute is unnecessary.

Section 1 was accepted as written, subject to reservations relating to attempt, which is to be re-written to reach a greater approximation at culmination. The step beyond agreement should be stronger (Wernick), but conspiracy as written is satisfactory. Paragraph 4 of conspiracy may be left for the present, but certain wording is not welcome: "or could expect," "is presumed." The section on renunciation will be restructured to make renunciation closer to the act of crime.

Each section received detailed analysis, with careful consideration from the points of view of prosecuting and defending attorneys, and judges. More elaboration of affirmative definitions instead of negative would be helpful to a judge.(Delahanty)

The section on solicitation was criticized, and it was decided to re-create it as work progresses; only solicitation of criminal acts as they are identified will be included. It was agreed that the section will say nothing is a crime unless in the code, or specifically identified.

An explanation of the accomplice section followed, the distinction being made between knowing and intending. There was some thought that it opened doors to abuse. (Wernick)

A motion to delete section 4 failed of passage (Yes: Lilley, Simmons, Wernick. No: Cohen, Delahanty, Paine.) This will be taken up at the next meeting.

The chair ruled, with unanimous agreement, that issues are always to be open for redetermination.

Adjourned at 7:25 P.M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

A special meeting of Sub-committee A (Sentencing) was held July 21 1972 at the Holiday Inn, Augusta. Present were Mrs. Caroline Glassman, Hon. Harold J. Rubin, Dr. Bernard Saper, Louis Scolnik, and Ward E. Murphy, Director, Bureau of Corrections, Department of Mental Health and Corrections, who was unanimously invited to attend meetings of this sub-committee as an adviser, and to receive minutes and notices of the meetings.

Immediate concern was given to the allocation of authority as between the courts and the Department of Mental Health and Corrections. Reviewing discussion of the previous meeting, it was stated that upon conviction, the court would have two basic choices: probation or a community program, or commitment to the custody of the department, which would impose the maximum limit of custody. The department, when receiving the offender, would have the choice of committing to an institution specified by the department, or not; could transfer from one institution to another; but could maintain custody no longer than the maximum sentence. Procedural safeguards would be spelled out, including release to parole status.

Discussion followed on the department's present alternatives, under which no program is possible unless the offender has minimum sentencing. A lack of funding limits work with personality problems and other social services.

Most liked the judge's responsibility of imposing the sentence, believing that the State of Maine was not ready to relinquish the function of sentencing to the department, that it held the judge responsible to society to impose a sentence as punishment.

Society demands punishment, but psychologists and psychiatrists are more concerned with treatment of the individual, and the department is given responsibility for treatment of offenders. The choice of an institution is presently limited by the statute pertaining to age, and by the kind of correctional institutions available. Community-based institutions and a diagnostic center are newer ideas, which could be made possible, with the development of other new programs, if a budget of greater flexibility could win approval.

Miss Murphy referred to a study of correctional institutions in Maine which recommends the use of Thomaston as maximum security, eliminating the Men's Correctional Center for youthful offenders, establishing centers for community services. She was requested to supply copies for the sub-committee.

Minimum, maximum, and indeterminate sentences were explored thoroughly. Capsule case histories were presented which seemed to indicate that long-term sentences do not necessarily achieve corrective results. Indeterminate sentences are unsatisfactory, but some limit to sentences should be written. Society will blame the judge if the sentence is regarded as inadequate, which led to the question of community pressure on a judge.

If the attitude of the public to hold a judge responsible can be reversed, he can share with the department the sentencing. It might be possible for the department to return to the judge for another hearing, after treatment of the offender, if the department felt that the sentence could be reduced. It was suggested that the department may be better qualified than the court to decide when rehabilitation has occurred, the judge presently having no further responsibility to the offender after sentencing. Professor Fox read the section of the Massachusetts law pertaining to this matter, which authorizes the judge to reduce the sentence on evidence of improvement.

Questions about fundamental philosophy were raised: are we sentencing for punishment or rehabilitation or as a deterrent? The public would vote for punishment, but punishment has not served as a deterrent. The sense of public security must nevertheless be satisfied, and the decision of punishment must be made by a responsible visible authority. A sentencing board is not as visible as a judge.

A motion that the initial sentencing responsibility be left in the hands of the court passed unanimously.

Tentative decisions can be made at this point, and sentencing can be reviewed later, after the sub-committee on definitions does further work.

Should sentences to the department include authorization for the department to determine the exact location for the offender? A motion that sentencing shall be to the department rather than a specific location (the exact wording to be developed by Professor Fox) was unanimously favored. It was agreed that the court should have the alternative of ordering probation.

If there is a minimum sentence, power should be given to the department to suggest change, notifying the court, which can then approve or set up a hearing, which would be a safeguard, sharing responsibility for a release. It was confirmed that there are presently offenders who could be released from an institution in the judgment of the department, but who must remain to finish a minimum sentence.

A motion that we have no authority for minimum sentences, except under restricted circumstances to be defined later, was defeated. (Yes: Saper. No: Glassman, Scolnik.)

A motion that we have no minimum sentences passed unanimously.

It was agreed that we would not be radical if we adopt a maximum sentence rather than a minimum, the maximum to be imposed for the most serious crimes (which will be specified). An option to return to the court for reconsideration in such cases would be desirable, or perhaps a required review. Procedural due process must be written in, and it was observed that the trend is to require periodic review by a parole board.

The August 31 meeting was changed to September 7, at 2:00 P M, at the Holiday Inn in Augusta.

Adjourned 4:30 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

Sub-committee C, General Principles, met at 3:00 P M, August 10, 1972 at the Holiday Inn, Augusta. Present were: Lewis V. Vafiades, Peter Avery Anderson, Edith L. Hary, Col. Parker F. Hennessey, Jon A. Lund, Gerald F. Petruccelli, Robert E. Wagner, and Hon. Robert B. Williamson.

Professor Fox opened the meeting with a brief description of uncontroversial but necessary items, and explained that much of the draft under consideration is designed to eliminate ex post facto problems which might arise in changing from present to new standards.

The final sentence in paragraph 2 of section 1 having created some perplexity, it was agreed that it would be clarified.

The problem of sentencing an offender before the new law is understood received attention. Prosecutors might avoid such cases; it might be impossible to prosecute; there could be a nol pros charge. A safeguard could be written in, providing that offenses repealed by this act would be repealed as of a given date unless re-defined in the statutes. Caution was urged about listing crimes omitted by the new code, so that the legislature would not feel antagonism.

The jury will not convict if the new law says the offense is no crime, and it was suggested that a solution might be generic power granted to the court to dismiss. The group was entreated not to give up certainty for uncertainty, and the feeling was that the timing of effective date of the new law was most important.

Progress and timing of the bill was considered, including the orientation operation of getting information and the bill itself before the public as well as the legislature. January 1 of the year immediately following passage was generally accepted as desirable. It was therefore unanimously voted that this act shall become effective January 1, 1976, subject to change if it seems necessary. Professor Fox will add a clarification sentence and the January date.

Discussion of various criminal offenses not spelled out in the statutes followed. Examples were cited from the Private and Special Laws, and provisions in city ordinances. Various wordings were suggested to cover the situation, and it was ultimately voted unanimously to accept section 2 as it stands, with the addition of a sentence to cover offenses specified in ordinances.

and prosecuting [illegible]

Professor Fox referred to section 3, and said that ad hoc nuisances should not be in a criminal code, and suggested that monetary penalties assessed for civil offenses could be enforced in civil actions. Observations were that this would jam the over-crowded courts, that a civil court to collect fines would not be workable, that it does not pay to collect very small fines. The Bath and Portland systems of collecting fines were explained. Some of these things should not be included in the criminal code, but some option should be left to the State. Alternate methods of dealing with traffic offenses were discussed, with care urged not to infringe on existing motor vehicle regulations.

A jail penalty for contumacious failure to pay a fine was agreed useless, because it would not be used, and "we should mean jail sentence when we say jail sentence." If only a fine is involved, a big corporation can take care of a monetary penalty. The question was raised: "Are we deciding that conduct which involves a financial penalty, but no jail sentence, is not criminal?" Professor Fox said that elimination of petty fine acts would solve this problem. Many small specific offenses can be covered by a blanket description. Language about the responsibility for enforcing and prosecuting should be clarified.

It was decided to defer action on the first section of section 3 until a list of crimes can be studied. Not all municipal ordinance offenses are crimes, and we should perhaps pick up items from ordinances and make them crimes. Who will be the prosecutor, for instance? Should municipalities provide counsel? The Attorney General need not himself prosecute: wording "enforceable by the appropriate public official" was suggested. After discussion, paragraph 1 of section 3 was accepted with the changes, and certain minor amendments to be made.

Paragraph 2 of section 3 introduced a question as to how many categories of crime would be listed. It was generally agreed that "the fewer, the better." We will tentatively get along with four categories, and watch the Definitions sub-committee's action. Each crime will be allotted to one of these categories. This will avoid having two sentencing systems, and a way of getting offenses outside Title 17 into the code, and will provide a frame into which future statutes can be fitted. Crimes will therefore be classified A, B, C or D, here or elsewhere.

The difference between a felony and a misdemeanor was discussed, and it was pointed out that such differences can be abolished simply by not using the words, and using the class letters. We should have a list of consequences: when can deadly force be used, for instance, and when can an arrest be made? We should have a list of crimes and penalties, and postpone a decision on the use of the words "felony" and "misdemeanor" until we have studied the list.

Impeachment of witnesses received serious attention. The use of prior convictions should probably no longer be allowed, because there is too much latitude to show a prior conviction just to blacken character, and it may be unrelated to the crime. (There is a tendency to impose restrictions on this.) It was proposed that no prior conviction be used against a defendant witness. There is a lot to be said for the protection of a citizen brought in as a witness, but a witness should be treated the same as the defendant. A general discussion followed of the advisability of disclosing intention to use prior conviction. Perhaps such disclosure should be only in response to inquiry, or disclosed only to court in the absence of the jury. Should the judge decide whether or not to include, or the jury? Or should the information be available, but the judge decide whether or not it would be admissible?

This led to a discussion of defenses: intoxication, insanity. Where and when should intention of these defenses be made?

No decision being recorded, several actual and hypothetical cases were described, providing intellectual entertainment, and the meeting adjourned at 7:30 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

Sub-committee B (Definitions) met at 3:00 P M, September 21, 1972 at the Holiday Inn, Augusta. Present were: Jack H. Simmons, Richard S. Cohen, Hon. Thomas A. Delahanty, Daniel G. Lilley, Jon A. Lund, and Hon. Sidney W. Wernick.

Initial attention was directed to re-drafts. Chapter 21, section 1, incorporates certain technical changes discussed at the previous meeting: the definition of "attempt" has been revised to incorporate present Maine law; "other than class A felony" has been changed. On the definition of "facilitation" no change of mind was recorded.

The definition of "accomplice" brought philosophical discussion, some believing that it is too vague, leaving a large measure of discretion to jury and prosecutor. Possible abuses and results were considered, it being agreed that the addition to law enforcement effort might not be balanced by commensurate benefit. It was finally decided that the question could properly be brought before the whole Commission.

Professor Fox was requested to make a list of questions on which the sub-committee was not in substantial agreement, with the intent of bringing these questions before the whole Commission.

Chapter 22, Offenses Against the Person, was then introduced. Professor Fox stated that a number of policy decisions were involved. Should there be one kind of murder or more? The sentencing for murder should be a separate category from other crimes, and we should provide some motivation for "not pulling the trigger on the gun." The draft suggests a

less mechanical approach to the felony murder problem, a more flexible standard. It is important that emphasis is placed upon "disregard for human life." Otherwise, there is not much change.

Analysis of this subject disclosed some unease with the wording, with the omission of "premeditation," with only one class of murder, with the words "manifesting extreme indifference to the value of human life," with the need for a distinction between "intentionally" and "knowingly." Inquiry about Massachusetts brought the information that with no death penalty, that state has only one class of murder.

A discussion of mitigating circumstances explored reckless driving, with and without reason, and it was suggested that reckless homicide should be classified as a felony manslaughter, rather than a murder.

A fundamental problem seemed to be: Should sentencing decisions be put into degree categories or put in the power of the judge to decide?

Suggestions were made to leave A as it is, delete B, develop a draft on felony murder; to use "whoever causes the death of another, intending the death."

The wisdom of retaining the present Maine statute wording was considered, with some modification, such as making a sharp distinction between felony murder and manslaughter, inclusion of the word "provocation" (the diminished responsibility theory), and providing for mitigating circumstances.

The opinion was offered that most of our crimes have been crimes of passion, of sudden anger; and they are regarded as worse when they are part of another crime such as robbery or contract murder. A felony should not be murder, but we should treat it just like murder. What is now felony murder could be called something else. The new draft as written gives the judge unlimited discretion.

We should be cautious not to mislead by the use of words, because of consequences in civil fields or elsewhere; other provisions in the Maine statutes could affect the situation as we change the wording. We can leave murder as "intentionally or knowingly causing death", with the reckless portion being termed manslaughter, and have a separate section on felonious homicide. We can specify that "if you do these things, you get these penalties."

Felony murder should be re-labelled.

There was a consensus that the getaway man, or one who doesn't pull the trigger, should be called by a different label from the trigger-puller. Maybe reckless homicide is manslaughter, or aggravated felony. The liability of the non-trigger-puller should be subject to a stiffer penalty if he knew he was a party to a felony which might result in homicide, but he should have the defense that he didn't know. His is the burden of persuasion.

There was no unanimity on the acceptability of the wording of the Federal code. It seems weak in defense, and withdrawal is not covered, which we should encourage. A tie vote on accepting the Federal code, including two bracketed descriptions of defense provisions, motivated the sub-committee to decide that a new section should be drafted to replace the felonious murder section, specifying that anyone committing a felony to endanger human existence should be subject to the Federal provision. The new draft will be taken up when it is ready. Meanwhile, A is accepted as it is, and a new section on offenses against the person will be added to replace B.

Crimes of violence against the person are horrendous, but death is even more so, and the penalty should be specific and severe. Crimes for which incarceration is obligatory should be specified, this sub-committee agreeing that there must be a period of confinement "behind bars," and that the court must specify maximum security in the case of most serious crimes.

The following statement was put to a vote: A person found guilty of murder as now defined, with no palliating circumstances, should be subject to some specified confinement, with a basic minimum, and no discretion by the judge. The majority vote was affirmative, and Professor Fox was directed to convey the expression of this feeling to Sub-committee A (Sentencing).

Section 2. The manslaughter section will now be the only place where reckless homicide is to be found. The common law manslaughter wording is abolished.

Family offenses, neglected children, etc., will be in a separate section.

Regarding motor vehicle homicide: present section 1315 must be repealed if we accept sub-section 2, but there is no conflict with section 1316, which section 3, chapter 22, covers.

The question was raised: does not "under exceptional emotional disturbance" apply to Part A as well as Part B? We have defined manslaughter by virtue of the feature of recklessness, and murder by the concept of knowing. Perplexity centered on the possible indictment on two counts, whether or not it would weaken the prosecution, require a judge to inform the jury of its option. Professor Fox read the Massachusetts section pertaining to this feature, and agreed to do some research on the subject. The matter might require a judicial decision.

It was observed that we may be creating more crimes, rather than eliminating; but opinion was expressed that as we continue the work, we will abolish some.

Section 4, Suicide. This new statute places a value on human life, but does not weaken the possibility of murder charge in the case of euthanasia.

Negligent homicide would include hunting statutes, which could be repealed; or they could be added to manslaughter. It was emphasized, however, that hunting laws occupy a hallowed place in legislative minds, that penalties are less punitive.

It was agreed that this sub-committee would adopt the drafts before it this afternoon, subject to changes already mentioned.

The next meeting of Sub-committee B was set for November 17, at 3:00 P M, at the Holiday Inn, Augusta. A meeting of the whole commission will be called for Friday, December 1, at 1:30 P M, at the Holiday Inn, Augusta.

Adjourned 7:15 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken
and transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

Sub-committee C (General Principles) met on October 12, 1972, at 3:00 P M, at the Holiday Inn in Augusta. Present were: Lewis V. Vafiades, Peter Avery Anderson, Edith L. Hary, Col. Parker F. Hennessey, Jon A. Lund, Gerald F. Petruccelli, Robert E. Wagner, Jr., and Hon. Robert B. Williamson.

In the course of putting together chapter 11 and working on joinder and lesser included offenses, certain issues are presented. Do we want to consider revision of the law now governing rules of procedure, or are present methods satisfactory? Statutes could solve more problems than rules, but it may not be our province to get into a revision of the rules, so if the rules are working well, we may want to let them stand.

We could communicate by narrative statement to the committee on rules, to make our feelings known, but neither we nor the Legislature should make procedural rules. This should be a judicial matter.

Professor Fox is to confer with an individual from M.I.T. and a law student, and also the Maine LEPA on the possibility of a systems analysis on actual sentences, frequency and kinds of crimes, rate of increase, prediction of future trends. He may be able to have an outline of such a study for the December 1 meeting.

Chapter 11, section 4, was an unfinished business from the August 10 meeting. Jurisdiction must be proved beyond reasonable doubt, to establish that the State has an interest in prosecuting when the law has been violated, although the question of whether the court has the power to act is less important than bringing an offender to trial. An illustration was offered: wardens have a problem in hunting and fishing cases -- they don't know what county they are in, but the offender can be tried.

The rule was cited about alibi and notice to prosecutor, and it was agreed that the use of alibi is part of our problem with the rules.

We must watch section 5 for impact on other laws (fish and game, for instance). Exceptions being provided for, section 5 was approved as it is.

Chapter 11, section 1, was accepted as revised. Section 2 was accepted, after discussion of jail sentence for failure to pay a fine. Municipal ordinances provide for jail sentence for such failure. The problem of an indigent (withholding sentence or making it a continued case?) is probably a matter for the sentencing committee.

In section 3 the language has been opened up in the revision to include anyone who can show proper authority. This section was accepted, provided the wording be made more felicitous.

Chapter 11, section 6, is based largely on Federal, but includes some Maine, rule. In Federal offenses, it was pointed out, larceny is nothing under $500; and in Maine, the most frequent crime is larceny, but it is under $500. Why should we take the most predominant crime in Maine and not want to impeach the witness? The answer seemed to be that "frequency is not related to veracity."

Some of those present, having in mind public revulsion to perpetrators of larceny, felt that any thief was an unreliable witness, and that prior conviction should be used. Polygraph experience was mentioned, tending to confirm that everyone had stolen something, if only as a childish prank. The general judgment was to the effect that presiding justices in Maine have used discretion in determining the difference between a minor and major thief, an accidental and a hard-core thief, and that we would be remiss to make it a statutory matter, rather than a judicial.

It was unanimously agreed to eliminate the nolo contendere exception, it being rarely used save in traffic cases.

A suggestion was made to eliminate A of sub-section 1. We could direct the judge's attention to the period of time elapsed from the prior conviction, without naming a rigid time limit. Certain corrections of wordings will be made in C.

Sub-section 5 received much attention. Should the provision be reciprocal? Would this create a pre=trial bottleneck? Modern retrieval systems can provide instant information. Invasion of privacy equals greater background data. This sub-section was finally accepted, with the

understanding that the wording is to be refined to specify application to criminal cases only.

A careful reading of chapter 11, section 7, is necessary, the subject matter being somewhat difficult to express. Section 8 received an explanation, illustrated by hypothetical cases. Manslaughter was excluded because it is a less serious crime than murder, and we want to highlight the seriousness of murder. To consider civil violations would be a "real Pandora's box," and recognition of the tendency of legislators to increase the period of limitation would seem to satisfy one committee member's belief that the statute of limitations should be as long for civil as for criminal cases.

Chapter 12, section 1, does not change the law, but states a fundamental part of law. A clause will be added to sub-section 2, defining better "legal duty."

Sub-section 3 was accepted as it is.

Meeting adjourned at 6:00 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

1972

The October 26 meeting of sub-committee A (Sentencing) was set at 2:00 o'clock at the Holiday Inn, Augusta. Present were: Mrs. Caroline Glassman, Dr. Willard Callender, Jr., Jon A. Lund, Hon. Harold J. Rubin, Garrell S. Mullaney, Miss Ward E. Murphy, and Louis Scolnik.

Professor Fox introduced the revised sections, pointing out the separation of murder from other offenses, the requirement of commitment to the Department of Mental Health and Corrections set at either life or not to exceed forty years, and the optional feature of B and C, by using the word "may."

Chapter 34, section 1, discussion centered on whether the judge or the Department should specify the correctional institution, and the advisability of including this directive in the statute. There are presently no degrees of murder, and the sub-committee on Definitions is dealing with that question.

The transfer laws are inadequate (a person can be transferred from a penal to a mental institution only if psychotic), but this is not the place to attempt change. The public insists on a sentence served in a penal institution, but there should be means of a later transfer if warranting conditions develop.

The ten-year sentence was argued, doubt being expressed of the wisdom of eroding the life sentence, as possibly treating murder too lightly. The Legislature, it was said, will "tinker" with this theory, but there is allowance for that in the construction of the

section. Most judges will set a minimum sentence. Public safety must be a consideration, but experience shows that 50% of lifers make an excellent adjustment to a penal institution. They are not the same people after a prison term as when they enter. "Situational" and exceptionally vicious murderers were considered in the light of the suggested sentencing procedure. A plea was made to trust the sentencing judge enough to provide the statutory authority to impose a maximum. He may not observe the prison adjustment, but he knows the offender's motivation and potential for harm at the time of sentencing.

A motion to strike the word "ten" from section 2B and substitute therefor "fifteen," leaving the rest as it stands, passed unanimously.

Speculation on what judges would have done, with more latitude permitted, is futile, but we must balance the public need for security with the advisability and possibility of rehabilitation. While striving for advance in penal change, we must bear in mind the judge's responsibility to the public. This section must deal with the worst kind of offender (can include felonious homicide).

Sentence reviewing and a separate sentencing body were considered. The advantage of having the trial judge make the determination is that he has actual contact with all the facts of the case. He now has no discretion, because the law lacks flexibility.

It was unanimously decided to make mandatory upon conviction, a commitment to the Department for X number of days for a complete investigation prior to sentencing, the Department to report to the court together with a recommendation for sentencing by the court.

Chapter 34, section 2, sub-section 1, contains authority for a minimum term, but not necessarily in an institution. Parole is possible at any time, or a community-type sentence, but supervision is provided. The maximum term simply defines the time beyond which the Department may have no more control.

Most states do not have a habitual offender statute, using for repeaters the upper reaches of the maximum term. Responses to the situation are numerous, and would be within the area of sub-committee B (Definitions).

Temporary holding in county jails was not favored. Although less stigma is attached to them, it is better to send the offender to Thomaston, where programs and treatment are available. Short-term programs could be set up in Thomaston or Windham.

After a brief discussion of the gap between specifications of maximum years in sections 2A and 2B, and the observation that recent tendency has been to shorten sentences, section 2 of chapter 34 was unanimously approved as is.

Chapter 34, sections 4, 5 and 6 have not been revised.

Section 5, sub-section 2, initiated some discussion about the pre-trial and classification report, and especially about the period of detention, which led to condemnation of most lockups. Some are depressing, indecent, and have been instrumental in suicides. The Department has control over county jails, but not lockups, although its counsel has been sought in upgrading attempts. It was decided

to add a small sub-section to section 5, specifying that lockups shall be subject to inspection and authority of the Department. Credit should be given for time spent in the lockup, even though it be brief, usually twenty-four hours, and no more than seventy-two. A problem exists in that lockups are not required to keep records.

What provision are we making for protection against self-incrimination relative to previous offenses? If the offender has some kind of protection, he might give more information.

Some courts take into consideration previous offenses. The defendant's attorney could be asked if the man would like to participate in the sentencing proceedings. If he would, the judge could then ask any questions. (The pertinent New Hampshire law was read.) An "immunity bath" could proliferate post-conviction remedies, but it could encourage making a clean breast of it, thereby starting the rehabilitative process.

The county attorney should be able to ask through the defendant's counsel, if other charges are pending: would he like to be tried on them now? This would permit a man to enter a plea to indictment in another county, eliminating from his record other felonies. The judge being under limit of the statute would tend to regard all as one crime, and would have the option to take into consideration or not. A plea would not be necessary, the judge getting enhanced sentencing authority, the defendant getting immunity. This can be put into the context of section 3 structure. Clerks can be required to communicate that the cases in the other counties have been disposed of by the one conviction. If charges in other counties are removed

to the county where the trial is being held, prosecutor and defendant must agree to the transfer. This will require a waiver of venue.

It was decided to consider the New Hampshire provision, and Professor Fox will draw up a draft for December 1, and we will inform the Commission that this sub-committee is considering it.

Chapter 34, section 6, is essentially the same as before. Sub-section 3 now includes the county jail, and chapter 37 includes provision for halfway houses or new programs the Department may inaugurate. Chapter 37, section 7, has dropped the word "parole," but makes mandatory a period of community supervision before release. This is not a reward for good behavior, but a testing period to prove to the community that the person can readjust to society.

A discussion of semantics followed, some believing that "good time" should not be abolished, others that mandatory supervision more sensibly replaces "good time" and conditional release. Recognizing that there has to be a release sometime, the control period is deemed a workable means of assuring the public some protection. Our obligation to protect the community is better discharged by providing for a supervision period, than by keeping a person incarcerated for the maximum time and then letting him out with no supervision.

It was emphasized that the offender can be returned to an institution to serve the rest of his maximum sentence, if he abuses the supervision period. Inability of the Parole Board to exercise meaningful supervision because of inadequacy of staff would force the System to supervise the worst kind of persons, allocating resources to those who are the maximum threat to the public.

The possible increase of length of sentence specified for class B crimes was mentioned; and the usefulness of a tabulation of crimes, sentences, period of release and supervision, to discuss before the whole Commission.

Chapter 35, section 1, differs from the present code. It is all-inclusive regarding fines, the amounts are higher than usual, and provides for exceeding the maximum fine in the case of organizations.

Objections were raised that opportunity exists for buying one's way out of an offense, that this section favors the rich and discriminates against the person without financial resources.

Section 4, sub-section 2, was examined. A person who should be made an example could receive a fine and a sentence. The question of eliminating fines in the case of class A felonies was raised, or making a fine applicable only in case of a suspended sentence, but it was insisted that we should not eliminate fines entirely, but should allow the court discretion. The idea that we would be putting a price tag on crime followed, and elimination of fines was still in mind. Instead, we could put on probation or give an unconditional discharge, except for corporate entities, thus eliminating discrimination between rich and poor.

For class A or B crimes, the judge could decide whether or not to impose a jail sentence, uninfluenced by the financial status of the defendant, but fines for lesser crimes would be acceptable, it being agreed that imposing a fine is a form of punishment.

Concern was expressed for the lack of rehabilitative value of a fine sentence. It was pointed out that opportunity to commit crime varies inversely with the socio-economic backgrounds, and fines would apply to those who can least afford it. It is more punishment to a rich man to go to jail, and to a poor man to pay a fine.

Those in favor of retaining fines spoke of the potential in terms of flexibility for the court, as useful in cases where profits have been realized. Restitution was discussed, out-of-pocket expenses, compensation for medical bills, as part of the release operation. Such compensation (provable expenses only) would be a good selling point for the Legislature and could be added to the list of financial conditions for probation in any judgment against an offender in a civil court.

It was thereupon decided to include the concept of restitution on the part of the defendant to include out-of-pocket expenses of the victim as condition of probation, or as part of the commitment. Where victims are not known, restitution can be made to the county treasury.

The situation of violation of probation was carefully considered, and procedure to deal with it. Suggestions offered included: all options are open, the court could now impose the sentence it had authority to impose originally. The arresting officer should not be the probation officer for psychological reasons. It could be the sheriff, the police, having received a complaint from the probation officer.

A problem is presented when violaters are arrested and tried on a new crime. If they are acquitted, should they be returned to parole status? Should probation remain intact until after final determination of the new offense? What about preventive detention, pending the trial? (He could be transferred to a county where trial can be held promptly, provided he waives venue. His option would be to remain in jail.)

Grounds for revocation of parole would be if the violater is charged with a new offense and found guilty in Superior Court. Cases of violation of probation should be accelerated on the docket. There is presumption of guilt in the finding of the lower court, but the District Court is not the final court, and the Superior Court should not be influenced by what happened in the District Court.

The hour of meeting of the whole Commission, set for December 1, will be advanced from 1:30 P M to 10:00 A M.

Adjourned 10:40 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken
and transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

Sub-Committee B (Definitions) met at Holiday Inn, Augusta, November 17, 1972, at 3:00 P M. Present were Jack H. Simmons, Hon. Thomas A. Delahanty and Jon A. Lund. Justice Wernick sent a message that he accepts the draft for this meeting.

Professor Fox explained revisions which had been made in conformity with decisions of the previous meeting. Pleading has been facilitated (drawn from the Massachusetts code) and "made more honest." Although one interpretation was that this was "bargaining with the judge," a suggestion was made that this concept could well be included in more than the murder section. Plea bargaining as written did not find complete favor. It was agreed that the court goes along with the county attorney's recommendation.

The importance of judicial familiarity with all procedures in a case was stressed, including pre-sentence investigation. It was recognized that sub-section 3 presented some risk (if the defendant confesses his guilt, and the judge does not accept, the case will go to trial anyway), and allows too little faith in judges and the appellate system. Plea bargaining is to remain as it now is, leaving the ultimate decision to the court. The only change is that when a plea is brought to the judge's attention, the defendant is told the consequences of his plea.

Examples of different courts and varying sentences were recalled. Under present procedure the defendant is informed of the county attorney's recommendations, and the option of the judge to over-rule is explained. Some problems have arisen when the attorneys have

discussed sentences, including the past of the defendant; but when the pre-sentence investigation shows offenses, if there has been no conviction, the judge is asked to discount. Speculation as to whether all felonies should have pre-sentence investigation resulted in a decision to leave the section in for now, and because of minimal support, the question should go before the whole Commission.

Chapter 22, section 2, takes up the felony murder problem. Should it be treated separately from murder? Nothing in section 2 precludes finding the person who holds the gun guilty of murder, or of manslaughter if his action is found to be reckless; and accomplice provisions are included. The penalty for the underlying crime and for an accomplice is different.

Professor Fox called attention to the model penal code's specifications of circumstances to justify the death penalty. The idea of distinction among murders, and non-eligibility for parole, was accepted, and a more severe penalty for the types of murder in the code's list was endorsed.

The question of putting a name to this type was considered: should it be "wilful," "aggravated," "murder I," defined as a separate crime, a new offense? Those present favored having Professor Fox "play with labels."

Section 3, Manslaughter: the State is required to prove beyond reasonable doubt, with no presumptions; but does not have the burden until the judge decides that a genuine jury issue exists. The burden should be satisfied by anybody's evidence. This, however, is to be left ambiguous until Rollins and Wilbur are settled. We can codify Rollins, subject to change, but are not to codify "presumption of malice."

The phrase "emotional disturbance" was discussed, it being explained that provocation was embraced in the wording, and that diminished responsibility was thereby implied. If the court is satisfied that murder was committed under extreme emotional disturbance, the jury chould be instructed to find manslaughter. This section does not cover a situation in which a person fails to carry out a duty to a helpless or infirm person, thus causing death: this falls under reckless or negligent homicide.

Chapter 22, section 6, Assault. A suggestion was made that threat by oral communication (by telephone, for instance) should be covered, perhaps in section 8. Assault with intent to kill, or aggravated assault, raises the problem of proof of cause of death, assuming the State feels it could prove a charge of murder. This has been said by the law court not to be a lesser included offense, because the essential elements are different.

If hunting accidents come under this section, we could exclude such accidents. Negligence might be considered civil rather than criminal, but juries have recognized "criminal negligence." We could retain "negligent homicide," but remove "negligent assault." Opinion differed on this point, and it was agreed to leave the decision about sub-section 2 to a further meeting of this sub-committee.

Adjourned 6:20 P M.

Respectfully submitted

Edith L Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda A. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

1972

A meeting of the Commission was held December 1 at 10:00 A M at the Holiday Inn, Augusta. Present were Jon A. Lund, Peter Avery Anderson, Dr. Willard D. Callender, Fernand LaRochelle for Richard S. Cohen, Hon. Thomas A. Delahanty, Edith L. Hary, Daniel G. Lilley, Ward E. Murphy, Garrell S. Mullaney, Errol K. Paine, Gerald F. Petruccelli, Dr. Bernard Saper, Louis Scolnik, Jack H. Simmons and Lewis V. Vafiades.

First on the agenda was the proposal of the Drug Abuse Council to revise completely the drug laws. It was agreed that revision touching criminal law only should be our responsibility, and that we should keep a liaison with the Council as with all groups concerned with revisions of laws which might relate to criminal law. The question was posed as to the lack of a broad base on the Council, and whether it might be wiser for its members to develop educational programs at this time, rather than attempting a revision with limited time for a thorough study. Professor Fox pointed out that pressure for a uniform act exists (the proposed Federal Uniform Controlled Substances Act), but that Massachusetts had required two years to adapt the act to Massachusetts, and now it is found necessary to "scrap the whole thing."

Suggestions that were put forward: that a moratorium on laws that affect our work be requested of the Legislature; that a sub-committee of our Commission work with a sub-committee of the Council; that a member of the Drug Abuse Council meet with us ex officio; that we would be glad to see anything they might work up, and we could report to them of our work on drug laws.

The Commission directed Chairman Lund and Mr. Scolnik to meet with the Governor and tell him of our work, discussing with him the possible conflict and duplication; and to communicate with the Drug Abuse Council, requesting that a submission of their draft of drug laws not be made at this time; explaining to both the Governor and the Council that we plan to include drug laws in our work.

Professor Fox brought up the printing of our report, indicating that West would probably issue it without charge. We will include in the distribution legislators, judges, lawyers, and others interested; and it was decided that two thousand (2,000) copies would be a reasonable number.

Professor Fox spoke of field research, ongoing evaluation in general terms, and the possibility of having a Criminal Law Reform Commission established as a monitoring agency. It would provide factual research into criminal justice as affected by the criminal code and information which our Commission could use, as for instance jury instructions, the explanation of Federal code enforcement, development of and interpretation of criminal law and justice.

Such information may be available, depending on what happens to the criminal prosecution bill. This will be a criminal data storage facility, but would be weighted with the prosecution view, rather than defense and judicial. An independent agency would therefore be more desirable. A legislatively established continuing review agency would be an official watchdog, and would militate against tampering, or "cut and paste" change.

The matter of developing instructions to the jury was considered, and after discussion it was agreed that this Commission's advisers from the judiciary would consult with others of the bench to see what course would be most helpful, following which we will consider further the subject.

Chapter 31, section 1 (sentencing problems) was next examined. Arguments were many, pro and con, regarding the inclusion of the word "punishment." The difficulty of defining the concept of punishment was emphasized, but some felt that punishment as such is a legitimate end and any restraint (not only a prison term) constitutes punishment, so we should use the word, which carries a reassurance to society. Several motions endeavoring to encompass varying philosophies regarding punishment, retribution and deterrent failed of passage, so a motion to refer the whole question back to sub-committee A passed.

Chapter 31, section 2. There is no alternative provision for fines for individuals because the body of crimes includes only those warranting a prison sentence. Everyone agreed that it is desirable to have some fine provision, which is itself a deterrent, and in some instances the correct punishment (young offenders, littering). It is not, as a jail sentence, part of a person's record. Although the possibility of "cash register justice" was deplored, and we should be prepared to condemn activity and not license it by fines, we believe that judges will temper fines to circumstances, and we favor providing fines as an alternative available to the court. It was thereupon moved and carried that fines (the maximum to be established) be made available as an alternative sentence to class C and D offenses. It was also voted not to include the death penalty as an alternative sentence.

Conditional discharge has not been included. The policing of it presents a problem, and probation should be sufficiently flexible, although some sentiment for limiting the conditions of parole was expressed.

Professor Fox described the Minnesota experiment in working out restitution between the offender and the individual, by direct confrontation. This has enormous potential for changing attitudes. The problems of evidence and proof, of ability to restitute, were recognized. A safeguard should be required to limit the probation officer's imposing undue conditions.

It was voted to accept Chapter 32, section 3, sub-section 2G as written.

Chapter 32, section 3, was approved, with modified wording of I and clarification of H to express "without permission of Probation Department."

Chapter 31, section 3, sub-section C, class action. Should this be taken from the Attorney General or the county attorney? If class action is ordered by the court, all information gathered by the State may in the court's discretion be made available to a private attorney. A move to leave class action discretionary passed, with a plea to retain as much flexibility as possible. It was voted that a judge may order discovery of documents including Grand Jury minutes. Chapter 31, section 3 was adopted, with the amendments.

Chapter 31, section 4. The provisions for re-sentencing came under scrutiny, especially regarding the requirements of location and particular judge. By statute only the sentencing judge can change the sentence; and after considering the practical and legal aspects, this section was adopted with the inclusion of "whenever practicable before the sentencing judge," and the understanding that there would be some re-writing of sub-section 1.

At the invitation of Chairman Lund, Miss Murphy described the intent of introducing permissive legislation before the 106th Legislature, to allow indeterminate sentences, with a fixed maximum, at the discretion of the judge. The Department proposes to submit to the Legislature a bill permitting up to five (5) years, stipulating that the prisoner must be heard no later than after serving 1½ years of the sentence. A request for professional help for evaluation will be made. Sentencing to the Department will be asked, rather than to a specific institution, and money to establish rehabilitative programs. This will increase the potential for serving institutional offenders, and will serve to expose the judiciary to the new philosophy, acquaint the Legislature with the direction in which this Commission is headed, and provide experience to show when we bring in our bill. Miss Murphy would also like provision for voluntary extension of control over a child, if agreeable to the child and the institution in which the child was formerly placed, after the present age limitation, to benefit the child by continuing his education and guidance.

Chapter 31, section 5, multiple sentences. Sub-section C provides that the maximum can be exceeded for any one of multiple crimes only if an offender is sentenced for one or more C and D crimes, having the effect that the commission of two class C crimes warrants a B penalty. Inconsistent findings were considered, and it was decided that sub-section D4 would apply only to two trials and that somewhere else there would be provision for one trial (assuming the facts to be inconsistent with two victims, one trial before one jury, the defendant would be entitled to a new trial on each offense).

Sub-section A will be re-written regarding fines.

Sub-section E will be re-worked.

Subject to these re-writings, section 5, chapter 31, was accepted.

Chapter 31, section 6. What action should be taken on inadmissible evidence? If an offender "makes a clean breast," and the court refuses to take into consideration, should the information be used? Rule 11 implications were discussed. It was said that the record of a foreign court should show which factual considerations are being taken into account, and that the judge must be satisfied that the offender is guilty of unacceptable conduct claimed. In sub-section 1, "prosecuting attorney" will be substituted for "county attorney." This section was then passed over, pending further consideration.

Chapter 22, section 1, and chapter 34, section 1, were considered together. Aggravated murder and felony murder received close attention. Felony murder should be distinguished not only for sentencing purposes but also for the opprobrium attached to such a deed. It was decided to eliminate from chapter 22, section 1, sub-section 2B, the words "or threat" and to insert the idea of serious violence, the test being the character of the act, not the person, involved; and to change "another person" to "a person." Also accepted was an expansion of the definition of

aggravated murder to include any murder which is committed in the course of a felony, the offender armed with any dangerous weapon.

A motion was carried to eliminate from sub-section 2A the words "or by a person confined in a penal institution under sentence for any crime," it being agreed that sub-section 2B would cover such a situation.

Chapter 34, section 1, sub-section 3A will have more attention from Professor Fox, with regard to suggestions of making the twenty-five years permissive rather than mandatory, or striking the last part of A. The suggestion of reducing the sentences was countered with the statement that the murder rate has gone up as the sentence has gone down. Successful rehabilitation for rape and other serious crimes, however, would indicate that we should be able to rehabilitate for murder.

A move to change "shall" to "may" in this sub-section was defeated. The minimum as now written must be set by the judge, but must never exceed twenty-five years.

Chapter 34, section 1, was accepted, subject to a clarification of the twenty-five year provision.

Chapter 22, section 1 F was judged possibly vague, and the use of the word "heinous" was questioned, although it is the language of the Model Penal Code. F will therefore be re-drafted.

Chapter 34, sections 2 and 3 were accepted.

The problem of an incorrigible was mentioned, and the observation made that authority exists for letting people out, but not for keeping them in.

Chapter 34, section 4. After a reading of the provisions, it was decided to defer further discussion until release and classification are examined.

Chapter 34, section 5 was accepted, with the agreement that there be no dead time, credit being given for all time from first being taken into custody, the prosecuting official to have responsibility for finding out how much time is to be credited. Sub-section 2 occasioned an explanation by Miss Murphy that this will give the Department authority for inspecting and evaluating both county jails and lock-ups. The county will continue to pay for the jail, but the Department will have much more authority.

Chapter 34, section 6. Several present believed that safeguards should be written in to ensure review of classification, which is concerned with such directions as programs of counselling, academic classroom work, and vocational training. A move that classification decision be subject to review by the Department and sub-committee A, and that language be drafted to provide for such review, was carried.

Section 6, sub-section 3B was accepted, with an amendment to provide for appeal.

A meeting of the whole Commission will be scheduled for December 15, at 12:00 noon, at the Holiday Inn; and the December 14 meeting of sub-committee C is cancelled.

Adjourned 5:15 P M.

Respectfully submitted

Edith L Hary

Edith L. Hary, Secretary

Minutes taken
and transcribed by
Mrs. Hild[illegible]. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The December 15th 1972 meeting of the whole Commission was held at Holiday Inn, Augusta, at 12:00 noon. Present were Jon A. Lund, Peter Avery Anderson, Dr. Willard D. Callender, Jr., Richard S. Cohen, Hon. Thomas A. Delahanty, Mrs. Caroline Glassman, Edith L. Hary, Col. Parker F. Hennessey, Ward E. Murphy, Gerald F. Petruccelli, Louis Scolnik, Jack H. Simmons, Lewis V. Vafiades, Robert E. Wagner, Jr., and Hon. Robert B. Williamson.

Opening discussion centered upon the discretion invested in the Department of Mental Health and Corrections under chapter 34, section 6, (Commitments to the Department). Mention of a televised interview with Judge Spencer, and the recent meeting of Attorneys General in California focussed attention on the California experiment and disenchantment with some of the results. The enlightened approach was commended, but the need of programs to take care of the situation was emphasized, it being doubted that Maine has such programs. Miss Murphy pointed out that we have the capacity now except at the Prison, and that we propose to include Thomaston.

The advisability of having further information from a responsible source about experience with this approach was urged, including indeterminate sentences, in what states, and with what results. This could be of interest to legislators also.

Professor Fox felt that programs would not be developed without the authority to use them, and that difficulties have been created from the use of administrative authority without regard for the rights of persons in such programs. He said that this is the approach taken by the Federal Criminal Code, and that Federal judges under this will be no

longer sentencing to an institution, but to a program. It was decided to leave this section as it is for the present, pending further consideration if further information warrants.

Chapter 34, section 7, requires persons to be released by the Department, if they are placed by the Department, a designated time before the expiration of their term, and provides for a period of supervision determined by the offense and the sentence, the purpose being mainly to ensure that they are not released "cold," that everybody gets out of prison, but has a period of supervision.

Apprehension was registered about the mandatory nature of this provision, and the length of time stated. The proportions set are intended to take care of public safety, erring on the side of length rather than brevity. Miss Murphy's advice was that the first six months of parole constituted the most vital period, and that if such a released person had given no trouble for two years, it was most unlikely that he would be returned to an institution. A motion to reduce from five to two years, however, resulted in a tie vote, and section 7 was accepted.

Chapter 32, section 1, sets forth the policy of putting everyone on probation save for the exceptions in A, B or C. (A move to change the word "may" to "shall" failed of passage.) This would avoid putting away without good reason a person who really does not require custody. The judge is directed to make a positive finding of A, B or C to warrant a sentence. Misgivings were expressed, and some feeling developed that a convicted person should serve a sentence, that society has a right to

know that this will result from a conviction. A question as to the necessity of A, B and C was answered by the statement that they are help given to a judge in focussing his decision. This section was accepted, with the understanding that aggravated murder will be included.

Chapter 32, section 2, is much the same as the present law, except for the period of probation, and was accepted.

Professor Fox read the modification of chapter 32, section 3, sub-section 2G. Restitution was re-considered, and the possibility of including damages. Vandalism is of increasing concern, but the ability to collect twice (in both criminal and civil actions) should not be made possible. The concept of damages will be incorporated, and a phrase will be inserted suggesting that the judge give attention to the ability of the offender to pay, not eliminating partial payment. Sub-section 2G was then accepted.

Sub-section 2C prompted a question: if it is determined that a person is mentally ill and should be kept beyond the length of his sentence, would he have to be released? The answer was: Yes, but his sentence could be extended by the court, or the judge could order out-patient treatment. It was felt that some clarification of sub-sections 2A, 2B and 2C was in order. These to be made, section 3 was accepted.

Chapter 32, section 4 changes the ability of parole personnel to arrest, thus preserving their relationship with parolees. Instead of probation officers, the police will arrest. The probation officer will report to the court probable cause in violation of probation. The court will then determine whether to dismiss or to find a violation, which finding will not necessarily require revocation. If it is decided

to have a hearing, a summons can be issued or the judge can order arrest. The probationer is entitled to notice of the hearing, counsel, witnesses, fact-finding.

In sub-section 1, "the court" will be changed to "any court," superior or district.

Sub-section 4 encountered objections, but a move to re-write it failed of passage. Much discussion followed. Where the alleged violation is commission of a crime, should the court be permitted to revoke probation on something less than conviction of the crime? It cannot sentence for the new crime. The solution would seem to be first revocation, then imposition of whatever the original sentence would have been, although some feeling developed that the original sentence should be extended. Concern was expressed that two different standards were being encouraged. It was admitted that two standards often exist and that the probation system suffers credibility with the public.

When and by what court should bail be set? by the court which has the power to revoke? when the person is charged with the second crime? or set even if he is not charged with the crime? Or should the court which is to hear revocation proceedings order the person held without bail? Even if he is not convicted of the second crime, circumstances may warrant revocation. There should be a distinction between violation and the original crime, one of the conditions of parole being to obey the laws, and the Department having a certain amount of control.

Unless the whole Commission refers a section back to a sub-committee, a sub-committee should not re-consider an item, so section 4 was placed on the agenda for a future reading.

Chapter 22, section 2, Murder. Felony murder has been excised out of this section; sub-section 2 resolves lesser included offenses; and in sub-section 3 plea bargaining has been made more honest.

The sub-section 1 definition of murder would be considered murder under the present law. The original draft we thought too broad, so it has been sub-divided, with a deliberate narrowing toward manslaughter and aggravated murder. Murder is a crime of specific intent.

Various suggested changes of wording were offered regarding "reckless," "almost certainly result," "knowingly"; and semantic points were debated, with Professor Fox explaining the degrees of risk implied by the different words. A statement was made that murder is murder, whether intentional, knowingly, or premeditated, "or whatever." Reckless homicide may be left as manslaughter, with the possibility of a minimum sentence, the judge having no authority to lock up the offender. In the case of murder, a minimum sentence would be possible also, but life could be the maximum, and the judge could lock up.

The possibility of something between murder and manslaughter was suggested, to cover the non-intentional but knowingly specification, and such cases as the battered child situation.

Plea bargaining as it operates in Maine was explained, and discussion revolved about whether or not to codify, or provide for a judge to make his own pre-trial investigation, and the possibility of jeopardizing a fair trial. Judicial views on plea bargaining have advanced, and a policy definition was deemed unnecessary. Nothing will be of record until there is agreement on the plea, and the same statute is to be applied to all other substantive offenses.

Chapter 22, section 4, Manslaughter. Reckless homicide under the present law would probably be murder. It involves indifference to risk and disregard of human life. Sub-section 1A will be augmented by a further definition of "recklessly." Sub-section 1B implies diminished responsibility, and is a modification of common law manslaughter, in which there is no requirement that the influence of extreme emotional disturbance be adequate. An affirmative defense is hereby provided, dropping down to manslaughter.

The words "extreme emotional disturbance" caused unease, some opposition developing to the diminished responsibility theory, and a respect for the tradition of "heat of passion" being registered. The questioned phraseology is found in the Model Penal Code, which has been adopted by a number of states. New Hampshire has the same language as our proposed draft. The purpose is to set forth a worthwhile distinction, for the law to make allowance for persons under extreme emotional disturbance. This does not preclude a situation in which drugs or alcohol are taken deliberately, thus inducing the described state, which some regarded as dangerous. Perhaps psychiatric help should be required in such cases?

Sub-section B was approved, save for this particular phrase. The concept of extreme emotional disturbance was accepted, although it does not cover mental retardation, and clarification was urged. Professor Fox will work on a definition.

The matter of judicial consultants voting was brought up, and the original decision was re-affirmed: that our consultants and advisers are of value in those capacities, but the privilege of voting is not extended to them.

A meeting of the whole Commission is called for Friday, January 5, at 12:00 noon, at the Holiday Inn, Augusta.

Adjourned 5:05 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

A brief meeting of the Executive Committee was held December 15 at the Holiday Inn, Augusta, with Jon A. Lund, Mrs. Caroline Glassman, Edith L. Hary, and Jack H. Simmons present.

Professor Fox reported that Robert Glass, legal adviser to the Boston Police Department, would be available to work as consultant on the drug portion of our criminal laws. He is recommended for this work, and is equipped by training and experience. Office space is available near Professor Fox, to whom he would be directly responsible. He would present his work before the whole Commission, rather than a particular sub-committee.

It was decided to employ Mr. Glass in this capacity, at $20.00 per hour, plus travel expenses, for up to six months, the total expense not to exceed $6,000.00.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The sub-committee on drugs held its initial meeting January 5 1977 at 9:30 A M at the Holiday Inn in Augusta. Present were Louis Scolnik, Richard S. Cohen, Edward J. Hansen, Jack Simmons and Robert Glass, who was introduced as the consultant retained for work on the drug laws.

Mr. Scolnik reported that he and Mr. Lund had conferred with Governor Curtis as directed, to explain this Commission's viewpoint and work on the criminal aspects of drug law revision, and Mr. Lund's letter to the Drug Council was read.

A general conversation took place, providing Mr. Glass with information on the manner in which our sub-committees and the Commission have so far worked.

Professor Fox stated that meetings of the whole Commission should be more frequent, and that the smallest piece which can be handled as a whole should be brought before the Commission.

Attention was accorded the question of whether to confine the work strictly to criminal law, or to include such details as administrative violations, in the drug laws. It is customary, and probably essential, to establish penalties for such violations. They are not, strictly speaking, part of the criminal procedure, but are usually dealt with in the same statutory chapter. The Uniform Act deals in unitary fashion, also the Federal Controlled Substances Act, and the Massachusetts act. We might write a strictly criminal act, and submit to the Drug Council suggestions which can be worked into law.

Although the expertise of the Commission is chiefly in the field of criminal law, it was agreed that we could learn. Expert technical assistance can be ours: for instance, the State's chief chemist, personnel from the Boards of Pharmacy and Registration of Medicine. Mr. Glass said that Federal advice is free, and that someone would attend a meeting, on invitation, and make a presentation, if we wish. We must accept the fact that our code will be submitted to the Legislature, and they are not experts on this subject, but they will decide on the bill.

We don't want pharmacologists to draft the law, but Mr. Glass can interview pharmacists, doctors, hospital personnel, and others who are acquainted with the drug situation, to determine what abuses they would like to see stopped by legislation, and what improvements statutorily defined.

He stated that the fastest growing drug problem is not heroin, but pills -- really legitimate drugs diverted to illegal use. Prevention should be our concern. Most drug users need some kind of rehabilitation. Keeping drugs a felony gives the State a hold for rehabilitation. If we get into this, we must consider permitting or forbidding certain types of treatment. There has been a levelling off of heroin, the biggest danger being barbiturates. Diversion is the result of deliberate prescription by doctors.

There is no active Federal prosecution. It is done by the State. Maine has had undercover agents operating for some time, and the indications are that the drug problem exists, but is not as great as the news media would have us believe. Marijuana is the chief drug, imported from Canada, Boston, Vietnam. There is no organized peddling in Maine, though we are told that there are laboratories in the state, with "chemists" imported from Canada and New Hampshire.

De-criminalizing or de-penalizing of some marijuana statutes was debated. There is some virtue in considering a civil proceeding, with only a fine penalty. It is important not to take steps which will invalidate the whole program, but we should recognize the difficulty of enforcing a marijuana crime law. It fosters disrespect for the law to have one on the books which cannot be enforced. We must also recognize that ten years from now jurors will include many who have smoked marijuana as kids, so we should have a realistic penalty. We could make it illegal to possess, subject to a substantial fine, but otherwise not criminal.

Whatever the law, it must have public acceptance, and it may well be that eventually marijuana will be legalized for sale and use. Some may not agree that society has the right to establish minimum moral standards, but a court decision has said that it has.

The Massachusetts law provides for a six-month maximum sentence, but the offender is given probation, upon completion of which the record is expunged. "Presence where" law has been eliminated, except for heroin.

A suggestion was offered to make possession of an ounce or less non-criminal, but contraband, subject to fine and seizure; over an ounce, a misdemeanor. Possession with intent was considered. A more discriminating way to deal with the facts is to decrease penalties for straight possession, but increase penalties for possession with intent. Intent can be proved by admission, amount, or equipment, but specific amount should be stated.

It was decided that we would start as we have with other sub-committees. Mr. Glass will analyze the field, bring a draft to the next meeting, submitting it with as objective commentary as possible. He will notify the sub-committee chairman, Mr. Scolnik, when he is ready for the next meeting.

Adjourned at 12:05 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary
Secretary of the Commission

Minutes taken
and transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The January 5 1973 meeting of the whole Commission was held at the Holiday Inn, Augusta, following the meeting of the sub-committee on drugs. The following were present: Jon A. Lund, Dr. Willard D. Callender, Jr., Richard S. Cohen, Hon. Thomas A. Delahanty, Robert Glass, Mrs. Caroline Glassman, Edith L. Hary, Col. Parker F. Hennessey, Daniel G. Lilley, Garrell S. Mullaney, Ward E. Murphy, Gerald F. Petruccelli, Hon. Harold J. Rubin, Louis Scolnik, Jack H. Simmons, Lewis V. Vafiades, Hon. Sidney W. Wernick, Hon. Robert B. Williamson.

Chairman Lund invited Mr. Scolnik, as chairman of the Drug Sub-committee, to report briefly on the initial meeting of that group. Mr. Lund reported that the questionnaires have been coming in. It was decided to change the meeting place through the season of inclement weather to the Howard Johnson's near exit 8 of the Maine Turnpike, and Miss Hary was directed to make arrangements, pending notification of the next round of meetings.

The advisability of having various elements of society represented in advisory capacity was considered, and the decision seemed to be that we could on specified occasions invite persons to the meetings. A sense of participation could be generated by having committees representing different groups (for instance, Prison inmates, Chiefs of Police) look at the total draft, or completed segments thereof. Until such points are reached, our work will go forward more smoothly without involvement with other groups.

Chapter 22, section 3, Criminal Homicide. This is the felony murder. Professor Fox explained the proposed Federal statute dealing with felony murder, reckless homicide, extreme indifference to human life, and said that it is difficult to separate a reckless homicide which has no indifference to human life, and that murder liability should not turn on matters of bad luck. A move to re-draft this section resulted in a tie vote, and a motion to adopt the section was carried.

Section 4, Manslaughter. The element of risk received close attention, Professor Fox pointing out that where the circumstances in sub-section 2 are not present, the defendant should bear the risk of responsibility. The probability of protracted litigation resulting from new phraseology was faced. Hypothetical instances involving killing a person while fleeing from a crime were considered.

Suggestions made included: to include extreme mental retardation; to remove the idea of flight, because if risk is an additional risk to human life, there should be an extra penalty; to remove liability for deaths that result from conduct not connected with a felony. An attempt was made to articulate the Commission's philosophy about felony murder. Professor Fox asked "Do we want to focus on the crime or the criminal?" and said that we are here dealing with the person who recklessly disregards human life, that we cannot treat homicidal conduct the same as reckless conduct. This brought the concept of causation into discussion. It appears through the code without definition, but when the sub-committee on General Principles defines it, the sections of the code will be adjusted to agree.

Returning to the problem of death resulting in cases of flight, some doubt was voiced that the previously accepted section covered all contingencies. Is death from a vehicle operated by one fleeing, having committed a crime, different from death when there is no crime and no flight? At what point does flight become unconnected with the felony? Can we define "immediate" or must we wait for the court to determine? It was suggested that we make an attempt at definition.

A motion to re-draft section 3 to take care of the penalty for death with relation to special risks in this kind of crime passed narrowly.

Chapter 22, section 5, Negligent Homicide. Professor Fox read the pertinent sections of the Massachusetts code, and said that a reckless person is aware of the risk, a negligent person is not. The possibility of having gross negligence emphasized was brought up, also of deleting the section, but caution was urged regarding deletion until we have definitions. Section 5 was thereupon tabled, to be taken up later.

Chapter 22, section 6, on Suicide, was approved and accepted. The matter of built-in safeguards for institution heads (particularly at the Prison) is supplied by the phrase "intent to cause."

Chapter 22, sections 7 and 8 were considered together. Some thought that extreme indignity should be spelled out, and that aggravated assault should be more serious if the offense were against an officer of the law or a prison guard who experiences more exposure than the ordinary citizen. There was general agreement that increasing the penalty would not help, and that the deterrent is actual prosecution. Sections 7 and 8 were jointly accepted.

Chapter 22, section 9, Criminal Threatening. There will be a section on extortion, but this section is designed to preserve psychological tranquillity and prevent breach of peace. A possibility that it could be used to dampen demonstrations or speeches and abridge the First Amendment was thought to weigh less than the provision for curbing violence, the collective social need for peace and freedom being recognized as a basic responsibility of law. If we were to use the word "serious" (as in the Massachusetts code), we would thereby exclude childish pranks and jokes. Section 9 was adopted as written.

Chapter 22, section 1, Conspiracy. Two basic changes have been made: to limit the objects serving as criminal conspiracy to crimes, and to restrict to overt acts which must be similar in proximity to the crime. Sub-section 4 provides for conviction of both, but sentencing for only one. Discussion of "substantial step" led to an overall probing of the idea of conspiracy, whether such a statute is needed (If we do not punish an individual for thinking, why should we punish a group for planning?) or would invite abuse, whether crime plus overt act would be sufficient.

The meeting was assured that at present organized crime is not a big problem, but because of the possibility of its increase, such a statute would be an effective tool. The President's Crime Commission has felt that witness immunity, electronic surveillance, and a conspiracy statute are essential to combatting crime. It was at first decided to delete the entire section on criminal conspiracy and direct the drafting of a new section to define more specifically those crimes which may be reached by conspiracy, but before final action, it seemed wise to avail ourselves of counsel from our advisers.

Agreement was unanimous to give the advisers present the opportunity to express an opinion.

Justice Williamson preferred the present law, welcomed a conspiracy law, had no objection to "substantial step" but saw no need to spell out various crimes.

Justice Wernick favored a conspiracy statute as a move in the right direction, liked the present draft, and said that much would depend on the prosecutors.

Justice Delahanty has observed no abuse of the present conspiracy statute, and would adopt without "substantial step."

Justice Rubin agreed to the need of a conspiracy law, but would not require "substantial step." He favored the merger of conspiracy with the actual crime, if, in fact, the crime was committed.

Miss Murphy regarded conspiracy an important crime, and felt the law a logical inclusion, and a tool of use in institutions.

A move to adopt the section as drafted, with clarification to include speech as conduct, carried.

A move to amend section 1, sub-section 4, to incorporate the Federal language, with alteration of actual terms (p. 26 Committee Print, section 1-285, paragraph A) was defeated.

Professor Fox will communicate with Chairman Lund about the next round of meetings. The next sub-committee to meet will be the Sentencing.

Adjourned 5:15 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary
Secretary of the Commission

Minutes taken and
transcribed by
Mrs. Hilda A. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The January 18 1973 meeting of the whole Commission was held at Howard Johnson's Motor Lodge at exit 8 of the Maine Turnpike, with the following present: Prof. Sanford J. Fox, Chairman Jon A. Lund, Hon. Robert L. Browne, Richard S. Cohen, Hon. Thomas E. Delahanty, Mrs. Caroline Glassman, Daniel G. Lilley, Errol K. Paine, Gerald F. Petruccelli, Louis Scolnik, Jack H. Simmons, Robert E. Wagner, Jr., Hon. Sidney W. Wernick.

Chapter 21, section 2, Crime of Attempt. There is little change from our present statute in this section, which is designed to bring together all attempt provisions in the code. Not included is the list of circumstances which constitute substantial steps, because case-by-case decisions should be made by our court without the pressure such a list would exert. This section was approved as drafted.

Section 3. There is presently no Maine statute describing solicitation, although there are Maine cases involving solicitation of a felony. It is a rather narrow offense, and would apply only in class A and B crimes because it is inchoate conduct, and our policy is not to interfere with what people do unless the action constitutes a serious risk. The sub-committee's divided mind as to whether there should be such a crime at all was recalled, and the whole Commission experienced the same division. It was felt that this statute would be a helpful tool for the police, because the tendency lately has been to change laws to benefit the criminal; others said it would constitute a dragnet, and that we should ensure an enduring quality by not making the code too specific. Conspiracy seemed acceptable, but it was suggested that solicitation and facilitation were unnecessary steps beyond.

Assertion followed that this section could reach a Mafia high operative, that perhaps it should include protection for the one who reports a solicitation attempt, and cover instances of pecuniary gain. The potential for abuse was explored, most crimes requiring an act, not just speech, and the probability that charges under this section would come from the least reliable persons. It was stated that the danger of abuse was over-emphasized, unless we have irresponsible and untrained persons, and that paragraph 2 preserves built-in immunities. A question was raised regarding the practicality of this statute in terms of charging and prosecuting, but most felt it would be workable, and Professor Fox reminded those present that we had considered instructions for the court, if they seemed desirable.

Sub-section 4 will be made consistent with sub-section 1.

Chapter 21, section 4, Facilitation. This draft is drawn from several places, including the report of a committee which drafted the Federal code, although this is not now in the Federal code. To make facilitation a crime was intended to provide a comfortable tool for the courts. The section did not meet with general acceptance, and a motion to eliminate the section carried.

Section 5 will be changed in several ways, including deletion of sub-section 2B. Affirmative acts are to be encouraged. A mitigating circumstance, for instance, would be reporting to the police. This section was accepted, subject to the re-drafting.

Chapter 35, Fines. Section 1 reflects the decision not to provide for fines for A and B crimes. The exception is that authority exists for imposing a pecuniary gain fine on any class of offense. The market value at the time of sentencing was considered fair. The Federal code provides for a fine of up to twice the pecuniary gain. A motion was carried that we stipulate not only the amount of pecuniary gain, but in addition a fine that does not exceed double the pecuniary gain.

The matter of charter revocation was introduced. No revocation is provided. The court has the authority to remove wrong-doers, and charter revocation should be a separate matter.

Section 2 implements the Supreme Court decision not to put poor people in jail just because they are poor. The problem of defining indigency arose. Is it perhaps unconstitutional to require the judge to determine the answer before sentencing? The assumption that, given sufficient time, everybody can pay a fine, did not meet with total acceptance. Installment payments were considered, and the method of payment, whether to a probation officer, or clerk of court. Caution was recommended about a final decision in view of pending cases, so the chapter on fines was tabled, pending the law court's speaking on two cases.

Chapter 11, section 1, provides title and date for this code. Sub-section 2 takes care of ex post facto, and sub-section 3 carries the severability clause. This section was accepted.

Section 2 abolishes common law crimes in Maine, saying that unless conduct is prohibited by an act of the Legislature, it is not a crime. Offenses in Private and Special Laws will be civil, not criminal, if the penalty is only a fine. This section was accepted.

Section 3 was accepted.

The question of juvenile laws is to be settled. If they are to remain, there must be an amendment, specifying crime or civil violation.

Chapter 11, section 4, states the presumption of innocence. Sub-section 1 excludes jurisdiction and venue from all reasonable doubt. A brief discussion of the advisability of this exclusion resulted in a

motion to amend by including jurisdiction as an element to be proved beyond reasonable doubt, which carried. A plea for consistency was buttressed by the statement that juries could be confused by the judges' instruction explaining both jurisdiction beyond reasonable doubt and venue by preponderance. After consideration of present-day mobility, the necessity of laymen's comprehension and a rational sense of justice, a motion was carried that the question of jurisdiction and venue be decided by the court without jury.

Section 5 was adopted.

Section 6. A motion not to allow impeachment by evidence of prior conviction failed of passage, although it was argued that knowledge of a record prejudices juries. Faith in the jury was expressed, and giving discretion to the court seemed to be a middle ground. To the objection that this matter is a rule of evidence, which we should not be putting into a criminal code, it was pointed out that compromises exist throughout the code, and where a rule of evidence conceptually fits, we should include it. A motion to table section 6 carried.

Section 7, Territorial Applicability, follows closely other codes. Maine has jurisdiction in spite of contacts outside the state. An insertion will be made to express over-ruling of the common law rule in larceny cases crossing state lines. Possession of stolen goods can be dealt with in general terms here or included in the larceny section, and is subject to change. Section 7 was accepted.

Section 8, Statute of Limitations. Line 3 will be amended to include aggravated murder. Otherwise, there is virtually no change from the Model Penal Code. There is presently no statutory limit on homicide cases, treason and manslaughter. A general discussion on limitation ensued, culminating in a motion to make it two years for class C and D crimes, and six years for class A and B crimes. The motion was carried.

A further motion was made that there be no limitation for not only murder, but also manslaughter and promoting criminal homicide. The motion carried.

A motion to re-consider failed to pass.

The next sub-committee meetings are scheduled as follows:

Sentencing, Thursday, February 1, at 10:00 A M, at Howard Johnson's, exit 8 Maine Turnpike

Substantive Offenses (Definitions), Thursday, February 15, at 10:00 A M, at Howard Johnson's, exit 8, Maine Turnpike

General Principles, Thursday, March 1, at 10:00 A M, at Holiday Inn, Augusta

Adjourned 2:20 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The February 1973 meeting of the Sentencing sub-committee was held at 10:00 A M at Howard Johnson's Motor Lodge, exit 8 Maine Turnpike, with the following present: Prof. Sanford J. Fox, Mrs. Caroline Glassman, Dr. Willard B. Callender, Jr., Hon. Harold J. Rubin, Louis Scolnik, Ward E. Murphy, and Ray Nichols.

Chapter 36, Release from Institutions and Community Supervision. An inquiry was made about the feasibility of combining section 1, sub-section 3, A and B, which Prof. Fox agreed could be done.

Miss Murphy spoke on the concepts of parole, and said that the Parole Board had always acted in accord with the recommendations of the Skowhegan institution, because of an identifiable program of rehabilitation. This statement served to launch a discussion of whether the release decision should be the responsibility of the institution, or of a state-wide policy established by the Parole Board.

Anyone outside under supervision should have that supervision by one agency only, according to a specified, consistent policy. Should the Parole Board have the ultimate authority, by approving the decisions of the institution, or by making its own? What of a person under no minimum sentence, in an institution as a result of classification, who should be "on the outside" after a month? Who makes the decision?

These questions led to a consideration of the Parole Board's function on a wider scale. The group debated having the Board enter into the classification proceedings, for consistency, on the ground that the same group should be making all the decisions. The Department, some said,

knows from daily observation, the readiness for release; the Parole Board does not. If the institution were to initiate the release recommendation, what review would the Parole Board make? If the institution should recommend non-release, would the Parole Board have authority to over-ride the recommendation?

The possible wisdom of doing away with the Parole Board found some favor, although no other state has taken this step. The prisoner would have recourse to the courts (habeas corpus, procedural due process). If the Parole Board were eliminated, we would have to structure whatever authority would perform the functions of the Board which would be retained. Such a group should be responsible to the Department, and an overlap could result.

Arguments in defense of the Parole Board were offered. Public interest must not be disregarded. The public looks to someone to be sure an offender is not released too soon. If we eliminate the Parole Board, we are leaving the matter of release up to the Department, and it will be decided solely on the philosophy of whatever group is then the Department, whereas the Parole Board is composed of differing philosophies. This would cast a heavy burden on the Department. On the other hand, it was insisted, the Department can best assess the individual and determine a proper program; therefore it knows best when a person is ready for release.

No objection surfaced against classification by the Department, but a legal obligation to protect the public indicated a necessity to provide checks and balances at the time the question of release arises.

We could specify that any group (for classification or release) include different elements of society, some representative of the public, the more important board for public representation being the classification. The public in general may not have the expertise which the Department has, but although we are concerned with treatment of the individual, which is good, we must also be concerned with public safety, and representing all points of view.

It was said that having a representative of the public on the classification board would be intellectually dishonest, a sop to the public, and that inasmuch as the Parole Board relies on the Department anyway, the Department should take the responsibility. The head of the Department being visible, he can be counted upon to err on the side of safety because of undesirable publicity.

Because we are seeking to adopt a completely revolutionary policy, it may be questionable that the public is ready to trust the Department with both classification and release, and it could be better to separate these procedures. An ideal classification board would include a psychologist, a security representative (the institutional classification officer), a vocational-educational person, a medical evaluation person (may be a doctor), and a social worker. This team would determine a program for the offender.

There might be too much work for one state-wide board, and the idea of area boards was proposed. Doubt was expressed that such composition would still be viewed as the Department, presenting a particular, professional, non-public point of view.

A further suggestion was to include the defense lawyer with the judge, although it was reiterated that the Department acquired more intimate knowledge of the individual than the judge. This statement did not meet with entire acceptance.

The situation was summed up as follows: public interests are first, reassurance about firm action, disapproval expressed by sentencing; second, the need of assurance that the individual will not commit further crimes. Interest in crime prevention must count, but sometimes the two interests conflict. After the judge's decision has been expressed, we should leave further decisions in the hands of experts.

Further consideration was accorded the idea of two separate bodies: one to deal with classification, and one with placement (the public safety factor). To write into statute the make-up of a classification board would not permit flexibility, and it might be desirable to change the make-up from time to time to get the point of view from as many different segments of society as are interested in the problem.

One theory holds that sometimes committing the crime is the answer to a person's problem, thus obviating the necessity for rehabilitation. It becomes a matter of what risks to take for the benefit to the individual. Some workers are advocates of the individual, and some consider public safety of prime importance. Someone, however, must take the initial responsibility of saying the person is ready to return to society.

It was conceded by some that if public representation were admitted, the classification stage would be the proper point. Such a representative could give some insight about community reaction, though it was doubted that one person could reliably reflect the views of the state at large,

and this would be the weakest link, undesirable to put into the code. To have an inmate on the board was felt to be inconsistent, although it was pointed out that inmates were frequently harder on themselves than anyone else would be.

The sentencing structure was recalled to mind (the judge to use the upper range of authority in exceptional cases only), and the possibility of giving the court greater flexibility in the matter of minimum sentences. The public safety element has to be regarded in indeterminate sentences. The Department does not operate in a vacuum, and daily contact and observation should guarantee wise judgment of release readiness.

The possibility of having the judge express his viewpoint, recommending that the offender not be released before a certain time, was countered by the statement that the judge was no more qualified to assess public safety issues than the Department. Professional judgment on public safety should be separate from the classification issue.

Those favoring the judge's entering into such decisions felt that he did recognize public safety problems, and experience equipped him to recognize certain types of people; and therefore he acquired a working professionalism in this area. It would also provide a safety valve for the Parole Board.

A motion passed to incorporate in chapter 34, section 4, a sentence which would permit the sentencing judge to make a recommendation to the Department as to classification and term, it being understood that the recommendation is not binding upon the Department.

The existence of the Parole Board was temporarily in jeopardy, but there was doubt that the Legislature would accept its elimination. Its particular functions were examined and explained; the possibility of more, or less, litigation, if an appeal were to go back to the court instead of to the Parole Board; the constitutionality of its elimination.

An outside independent board, perhaps called a Classification and Parole Board, might be better psychologically from an inmate's point of view. Institutional adjustment is important, and its relationship can be soured, but structuring something special for inmates was said to be unnecessary, because they have recourse to the court, and this is better than appeal to the Department for rehabilitative reasons.

The Parole Board is generally regarded as an agent outside the Department in the eyes of inmates, and tends to give a parolee the benefit of reasonable doubt. The group which makes a release decision should hear parole violation cases. If we called it the Release Supervision Board, it could be concerned with release into the community, and with the present functions of the Parole Board. An appeal from an institutional release denial would go to the Department head.

Miss Murphy pointed out that all this may eventually be under an umbrella, the Department of Human Services. We should then have to re-structure.

The Parole Board could make policy and hear appeals without having policies spelled out in the statute, but setting release policy is a legitimate legislative function and prevents ad hoc legislation. A broad general policy is protection against manipulation -- broad enough to allow flexibility. All agreed that we cannot anticipate what any Legislature will do.

An increase of appeals would require additional personnel in Corrections. (Miss Murphy said that Maine's Parole Board gives more time to each individual case than any other state she knows of.) Any additional work load must be provided for in terms of personnel, and although a price tag on the code would diminish its chances with the Legislature, it was agreed that the cost might not produce an increase, because of different channelling. It was stated that if we have a Legislature which will buy the code, it will fund the change, which is a substantial departure from the present. Because there are fewer inmates at Thomaston, fewer appeals will be generated, and there would not be so many coming from the county jails, community houses or Windham, so some savings might be realized. One way to diminish the burden on the Department would be for the judge to determine the institution and term.

A move to approve chapter 36 was carried, stipulation being made to debate it further in the full Commission, and clarification of the implicit authority of the judge to make recommendation as to classification and term.

Attention was given to the advisability of making available to a person the conclusions of his psychological and psychiatric exam. A good relationship is based on honesty, and if a person is not ready to accept this evaluation, he is not ready for release. It was recognized, however, that confidential source is not the same as confidential information, that irreducible elements of confidentiality exist, and a psychiatrist could submit such information on a separate sheet.

In chapter 36, section 6, sub-section 1, we will add that the Board can issue a warrant if the violater absconds, and upon finding of probable cause. If a crime is involved, the police can pick him up immediately. These measures are to guard against flight to avoid a hearing.

In sub-section 3, it is suggested that the provision about "no further proceedings" be expanded by adding "on this alleged violation."

Recommendation was made to provide counsel, with pay, at hearings on alleged parole violation. If the violation is important enough to prosecute, it is important enough to have counsel.

Reluctance was apparent to have the Probation officer at the court hearing to terminate probation. The officer can be notified, and he can communicate with the judge by telephone.

Another meeting of this sub-committee will be arranged before the whole Commission meets again.

Adjourned 2:40 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

A meeting of the full Commission was held at 10:00 A M, Friday, March 16, 1973 at the State Office Building in Augusta, with the following present: Professor Sanford J. Fox, Chairman Jon A. Lund, Peter Avery Anderson, Richard S. Cohen, Mrs. Caroline D. Glassman, Edith L. Hary, Col. Parker F. Hennessey, Garrell S. Mullaney, Errol K. Paine, Gerald F. Petruccelli, Hon. Harold J. Rubin and Hon Robert B. Williamson.

Professor Fox distributed charts which tabulated the status of chapters 11, 12, 23 and 36. He suggested noting on these charts future action, and material sent by him between meetings. At each meeting updated charts will be available. A table of contents was distributed, with identifying page numbers. This can be used as a guide to make a set of material done to date. Miss Hary has a complete set, and doubts as to the correct page to keep may be resolved by inquiring of her. Any ideas for codes, charts, etc., helpful to organizing and keeping track of material in proper order will be welcomed by Professor Fox.

Administrative matters were first considered. A revised meeting schedule was proposed, with no sub-committee activity; however, an ad hoc committee could be appointed when necessary. Accordingly, the full Commission will meet on a three-week basis for the time being, April 6, April 27, May 17, at approximately 1:00 - 5:00 P M, starting with lunch, in Augusta. Notices will be mailed to each member, consultant and adviser, with details. A suggestion was made that those unable to attend meetings, who wanted their comments presented, could attend to the distribution of such comments, bearing the expense individually, or submitting a request for reimbursement with expense accounts.

It is hoped that drafts will be completed in fourteen months, and Professor Fox can then begin writing commentary for the Commission.

Professor Fox was authorized to explore available automated data service for analagous provisions, or identical, or judicial decisions, relevant to our new criminal code, including continuous input, and the possibility of getting a data bank here.

Chapter 23, Sex Offenses. In section 1A the insertion of the word "openly"was recommended so that it will read "living openly as man and wife," this being a defense to certain acts. In cases of alleged rape, the burden of proof is to be on the prosecution. Because "spouse" is understood as signifying legal marriage, Professor Fox will try to find another word, restricting the definition of "spouse", and adding that it is an affirmative defense that the victim and defendant are living together as man and wife.

Section 2, Rape. Juries are reluctant to give a rape conviction where any relationship at all exists between the parties. The problem of narrowing our definition to a stated length of time (one night? one year? how long?) can be taken care of by adopting the Massachusetts language "voluntary social companion," which is evidence of consent and would be an element of proof for the State, and certainly reduces the seriousness of the crime.

Although the infrequency of rape of a male does not necessitate a specific law, the section on abuse of young children could be manipulated to include this kind of protection.

It was felt that the word "immediate" instead of "imminent" would better convey the inherent danger. It will be made clear that this immediacy applies to all three threats in 1B-ii. "Any other human being" gives latitude, but it was agreed that this could be a jury question. The draft of section 2, sub-section 1B-ii was therefore accepted.

Sub-section 3 received much discussion. Some believed that all rape should be class A, others argued for class B. It was agreed that rape is an aggravated crime, a serious personal indignity, as well as a deep invasion of privacy. Class A and B sentence provisions were reviewed, also the Massachusetts phraseology "voluntary social companion." It was suggested that Professor Fox incorporate the Massachusetts language and bring the revision before the Commission.

Chapter 23, Sex Offenses, section 3, Gross Sexual Misconduct. The Federal terminology "sexual act" has been used, to avoid "unnatural," "devious" and "crime against nature." Sub-section 1A-ii will be re-worded to make it the same as Rape section 2-1B-ii. Sub-section 1 was then accepted. Sub-section 2A will be adjusted to conform to the Massachusetts language. In sub-section 2A, hypnosis was deleted, and also inducement by misrepresentation in 2B. "Threat" was defined as non-serious bodily harm ("slapping around.").

Sub-section 2C was accepted, after a brief discussion. This tries to protect those individuals who cannot appraise their actions. Sub-section 2D was accepted. Sub-section 2E will be revised to include the probationer-probation officer relationship.

The assertion that sentences are too long to be rehabilitative directed attention to the penalty provisions. It was stated that we are lowering barriers which have been quite high if we consider making any of these

crimes class C. It was, however, voted to assign sub-section 2A, 2C and 2E to class B, and 2B and 2D to class C.

Section 4, Sexual Abuse of Minors. Attention focused on the age differential. Society has re-structured our whole approach to the age element; therefore relationship, not age, should be considered. (We have legislation which says that an eighteen-year-old is an adult.) It was decided to modify section 3, sub-section 1B by raising "14" to "18," and adding "unless the defendant is himself over 18." A new section will be added providing that the "victim is 14 to 18, and the offender is at least four years older." This part will be re-drafted and re-submitted to the Commission.

Chapter 23, section 5, Unlawful Sexual Contact. Reference was made to the definitions in section 1D, and it was requested that "intimate parts" be specified as "genitals, breasts, buttocks, ear lobes." It was voted to eliminate sub-section 1D of section 5. Sub-section F will be made to conform with other clarifications.

Chapter 36, section 1, Persons Eligible for Release: Criteria. Relatively minor modifications were directed by the sub-committee. In 3A, determination shall be made at the end of the first year and annually thereafter. Sub-sections 1 and 2 concern discretionary release, except for murder. The sub-committee meeting was recapitulated. At this meeting it was felt that the matter should come before the whole Commission. Inasmuch as a small number was present March 10, it was suggested that this chapter be placed early on the agenda for the next full Commission meeting.

Chapter 11, section 9, Plea Negotiating. It was agreed to send this to the S.J.C. to see if they wish to accept it as an appropriate subject for role-making by them.

Chapter 12, Criminal Liability. Section 1, Basis for Liability, was unanimously accepted as drafted.

Section 2, Ignorance and Mistake. Sub-section 1A. The word "negates" will be replaced by "raises a reasonable doubt concerning." To sub-section 4B-4 will be added "This sub-section does not impose any duty to make any such official interpretation."

Section 2 was accepted as amended.

Section 3 raised questions about the juvenile court, but it is not in our province to make the determination. In sub-section 1, after the word "seventeen" will be inserted "at the time of such proceedings."

Section 4 will be considered later.

Section 5 was approved with the change of "negated" in sub-section 1 to "raises a reasonable doubt," and re-writing sub-section 3 to preclude consent to any fight between the individuals.

Section 6, Causation. "Unless otherwise provided, when causing a result is an element of a crime" will be placed at the beginning. This section was then accepted.

Section 7, Intoxication. The first sentence of sub-section 1 will be revised to read "It is a defense that when a defendant engages in conduct which would otherwise constitute an offense, there is evidence of intoxication which is such as to create a reasonable doubt concerning an element of the crime."

The definition of intoxication was not generally acceptable. "Substantial impairment of physical capacities" was suggested, but the particular crime charged would enter into the picture, and whether or not

the judge thinks it should go to the jury.

Time did not permit a thorough determination of this point.

Adjourned 4:25 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary-Treasurer

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The full Commission met on April 13 1973 at 1:00 P M in the State Office Building, Augusta, with the following present: Professor Sanford J. Fox, Chairman Jon A. Lund, Richard S. Cohen, Edith L. Hary, Garrell S. Mullaney, Hon. Harold J. Rubin, Louis Scolnik, Jack H. Simmons, Lewis V. Vafiades, Robert E. Wagner, Jr., Hon. Sidney W. Wernick, and Hon. Robert B. Williamson.

Professor Fox said that the complete draft of the drug material will come before the Drug Sub-committee some time this month, and should be reviewed and approved expeditiously. He recommended that the sub-committee avail itself of the advice of a pharmacologist.

Chapter 24, Kidnapping. The four sections are arranged in descending order of seriousness. Interference with the custody of a child differs from incompetents. The law is weighted toward non-interference.

Section 1, Aggravated Kidnapping. The alternatives are not numerous, if we don't use degrees. Aggravated is the more serious. Six states of mind are defined in sub-section 1, and basic conduct is defined in sub-section 2.

In sub-section 4, "prior to trial" instead of "prior to arrest" acts as an inducement to the kidnapper, and "serious bodily injury" can cover black and blue bruises, burns, injuries suffered when being forced into a car.

Sub-section 2 could conceivably cause a police officer, in cases of false arrest, to be regarded as a kidnapper. Alternative wording will be sought to avoid this possibility. "Without his consent" will be expanded to read "knowing that he does not have his consent." In sub-section 2A, it will read "his residence or place of business," and wording will be added to cover schools.

Section 2 will include a definition of knowledge. In cases of hi-jacking, giving information should be mitigation. Persons may not trust an officer, but they understand the law, if it is shown to them.

The assigning of kidnapping to class C crime was thoroughly discussed. Aggravated kidnapping seemed to warrant class A, but opinions differed about kidnapping (unaggravated). If the victim is released alive, with no injury, some argued for class B. A suggestion was put forward to leave all kidnapping a class A crime and leave it to the discretion of the judge, but our philosophy is to let the Legislature agree that some crimes are more serious than others.

If the victim is returned between the time of indictment and trial, should the indictment be changed? (The indictment should, however, state the facts.) Another suggestion was to reduce the penalty if the victim were released, without injury. We cannot, however, change the sentencing categories without defining a new offense.

A general discussion followed about crimes and penalties, after which it was agreed that sub-section 4 would be re-written and that exercise of legislation re sentencing would be provided in the General Provisions.

The parent-child relationship was explored in the kidnapping context. Sentiment increased to collapse sections 1 and 2 into one offense, with an exception being made to cover a parent's taking his child. An alternative to combining would be to leave the chapter as it is, with different sentencing provisions.

A move to make section 2 part of section 1, and abolish section 3, but add to section 1 "except the case of a minor kidnapped by his parent," was carried.

Criticism of setting the age of the child at sixteen was raised. Although it was made analogous to rape, it seems too high for this purpose, and a move to reduce sixteen to fourteen was accepted.

A motion to make it a crime of criminal restraint for a parent to take his own child from custody and across the border of the state was carried.

Section 3, sub-section 1B will be modified in accordance.

Restraint was discussed again, in section 1, sub-section 2, and section 3, sub-section 2. It should not be limited by time -- even five minutes could be significant. Restraint might be made a civil offense; it could be assault or aggravated assault. A move to delete section 3, sub-section 1A, was defeated.

The difficulty of defining competency was recognized. The judicially-declared, with a guardian appointed, is one kind; but there are different kinds of competency. No distinction is to be made between a parent's taking a competent or an incompetent child.

Chapter 36, Release from Institutions and Community Supervision. The Sentencing Sub-committee decided to refer this subject to the full Commission to decide whether to retain the Parole Board or allocate the responsibility to the Department of Mental Health and Corrections.

Retaining the Parole Board would provide some check, and the possibility of correction, but would require the Board to have continuing knowledge, and there was some feeling that persons serving on the Board are insufficiently trained.

Warden Mullaney described the work of the Vermont Parole Board. It holds frequent meetings, and there is more access to the members. In Maine the Board sees a man six months prior to the expiration of the minimum sentence, when he is eligible for release, and can release him or grant a work release. The warden also can put a man out on work release. The Prison inmates would prefer a Parole Board to the Department.

It was voted to accept chapter 36, section 1.

Section 4, sub-section 1-I. It was suggested that this stipulation was unnecessary, providing leverage for probation officers; but the natural environment and previous associates of an offender make it difficult to enforce. The Parole Board should work at correcting these associations.

In section 6, a provision has been included, forbidding waiver of the preliminary hearing.

In section 7, sub-section 1, provision will be inserted that the Board may issue a warrant for the person on release, and if such warrant cannot be served immediately, the 30-day period will begin when the warrant is served.

State funding of counsel in parole hearings would be desirable (perhaps administered by the Supreme Judicial Court), but may not now be constitutional. The public might think other fields more in need of counsel. Lawyers should be available elsewhere -- for instance, in divorce cases, where Pine Tree is available for the wife, but the incarcerated man has only the service of the Prison classification officer.

Considering the Parole Board expansion, the responsibilities of the Department of Mental Health and Corrections, and pay for attorneys to represent applicants for preliminary hearing on violation, an appropriation bill will be necessary for this code.

A move to delete the provision relating to court-appointed counsel in sub-sections 1 and 2 of section 7 was carried. We are advised to leave this out at this stage, in anticipation of the Supreme Court's speaking, and it was decided to keep silence about counsel.

A move to accept chapter 36 as amended passed.

The April 26 meeting will discuss the chapter on fines.

Adjourned 5:10 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

1973

The Drug Sub-committee met April 25 at 9:30 A M at the Augusta Civic Center, with the following present: Robert Glass, Chairman Louis Scolnik, Richard S. Cohen, Jack H. Simmons, and Robert Ericson, State Chemist.

Mr. Glass' introductory remarks pointed out the patchwork quality of existing Maine drug laws, which do not describe just what is criminal. We assume there will be permissive sections for doctors, pharmacists, etc. Unlawful is therefore defined. If the criminal revision including drug laws (Title 17) passes before the administrative laws (Title 22), the status quo can be preserved by saying "shall not apply to....."

The possibility of coordinating our work with that of the other drug committee was considered briefly, but the decision held to avoid the civil aspect, and let the other group regulate its own statutes. If it is a crime, it will be in Title 17; if it is not, it will not be in Title 17. Administrative matters will be incorporated by reference, and if the other drug committee does nothing, we can go through Title 22 and re-write where necessary.

The right of privacy was considered. Should we regard the possession and use of drugs a constitutional right of privacy, in which case we would control and regulate as we do liquor, instead of prohibiting. It would follow that the direct adverse consequences for others would be the basis for the law. Quality could be controlled, and drugs could be made available to those under 18 only on prescription.

Philosophically, people should perhaps be allowed to kill themselves with drugs, but it would be politically unacceptable. An experiment of this kind could be tried in a community which has a big heroin problem, but Maine has no serious heroin problem, and a migration of users would be invited.

The majority felt that hard drugs are socially destructive, and opposed the legalization of any drug except marijuana. If penalties are not too heavy, resulting in disrespect for the law, and hostility, illegality is itself a deterrent.

Offering the Legislature the opportunity of being a pioneer in this matter was attractive, but it was stated that the entire code could thus be jeopardized. A minority report can be presented to the full Commission on the civil liberty points.

Difference in types of dosage and methods of using were discussed, and physical symptons of withdrawal. Pure and counterfeit drugs merited close attention. Selling counterfeit should be a more serious offense, and trafficking in two substances should give the judge the ability to sentence for two crimes. Selling one drug, believing it to be another, should be a greater offense. A definition of counterfeit is necessary; otherwise, we would have to use larceny by false pretenses.

Chapter 41, section 411, sub-section 3B: Insert "licensed" before "medical practitioner." Sub-section 5A: Omit "Homeopathic Pharmacopoeia of the United States." We will tentatively omit definition of drugs.

Sub-section 6 brought a discussion of hashish and other derivatives of marijuana. The constitutionality of presumption in sub-section B was questioned because of hashish analysis, and Mr. Glass will check into this, in view of the possibility of our legalizing marijuana and derivatives such as hashish and THC ("The One"). Hashish can be dealt with by its percentage of THC. All marijuana has some THC, but we will class hashish as marijuana.

Sub-section 9B will be removed. Manufacturing is trafficking, but re-packaging is not in and of itself trafficking.

Sub-section 10A is from the Federal law. Maine law is contradictory. This provision and also sub-section 11 were acceptable.

Sub-section 12. The definition of opiate is taken from Massachusetts law, and includes synthetics such as demerol and methadone. A discussion of the phrase "similar to morphine" resulted in an examination of the convertible substances on the Federal list (Federal Register April 24, 1971). It was agreed that these should be listed, and that Mr. Glass would obtain copies of the President's drug committee recommendations for each member of our sub-committee.

Sub-section 15: The Board of Pharmacy will be authorized to add substances to Schedule Z as it determines.

Sub-section 21: We will reconsider whether to limit analyses to the State laboratory, or to include others under court order.

Undercover agents should be included in sub-section 22.

Sub-section 23: We are one of the few states not having "possession with intent." Possession penalties will probably be substantially reduced, so the intent provision would be advisable. Once the government proves trafficking, a partial defense could show that nothing was received in exchange. C will be re-written to show different levels: possession, furnishing without consideration, and trafficking for pecuniary gain. D will be eliminated.

Section 412: We will exclude from all schedules any non-prescription drug legally sold and unaltered as to form, legally available in the State of Maine.

Mr. Ericson was asked to review the lists of drugs and to notify Mr. Glass of over- or under-classification, and make recommendations. We do not have to follow Federal listing strictly, because Federal schedules include the medicinal drugs, and our list is criminal. We intend to recognize [illegible] drugs as the worst.

Section 423. A suggestion was made, applicable to Schedule W, that in sub-section 1 we lower the age of the child from 18 to 16, the seller to be over 21. Sub-section 2 should provide for a bifurcated trial in the case of a multiple offender for drugs on Schedules W, X and Y.

Commentary on the rest of the material (except for the Schedules) will be sent to the sub-committee members.

We will have the next (possibly final) meeting of this sub-committee June 15 at 9:30 A M, and Robert Campbell of the Board of Pharmacists will be invited to attend.

A copy of the book Licit and illicit drugs will be acquired for each member of the sub-committee and for Mr. Ericson.

Adjourned 3:30 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

1973

A meeting of the whole Commission was held April 26 at 1:00 P M at the Augusta Civic Center. The following were present: Professor Sanford J. Fox, Chairman Jon A. Lund, Peter Avery Anderson, Dr. Willard D. Callender, Jr., Mrs. Caroline Glassman, Edith L. Hary, Col. Parker F. Hennessey, Daniel G. Lilley, Garrell S. Mullaney, Gerald F. Petruccelli, Louis Scolnik, Jack H. Simmons, Lewis V. Vafiades, Robert E. Wagner, Jr., and Hon. Robert B. Williamson.

A brief report on the Drug Sub-committee meeting was heard. Time and length of future meetings received attention, and the decision was for starting with a 12:30 lunch, meeting at 1:00 P M, a dinner break at 5:30, followed by a short evening session. This schedule will apply to the May 17 meeting.

Chapter 35, Fines. It was voted to establish the fine at twice the amount of any pecuniary gain derived, and the value of the property shall be established as at the time of taking. The amounts in section 1 were approved.

Section 2 highlighted the problem of determining the ability of the person to pay a fine. The provision is that he may not be sent to the Department of Mental Health and Corrections because of inability to pay. The court has discretion as to when to use a fine, and it is possible to combine it with another sentence. No fine does not mean no punishment, but it was stated that probation would be the equivalent of sentencing to the Department. The group speculated on doing away with fines, authorizing them only as a condition of probation, or reducing in cases of inability to pay, although some argued that there is always a way to pay. It was finally voted to delete sub-sections 2 and 3 of section 2, and to accept section 1 as written.

Chapter 35, section 3. Sub-section 3 was deleted. Arguments were advanced for a record, but the District Courts have no stenographers, and it may be that the defendant does not even appear. Sub-sections 1 and 2 were accepted; and sub-section 4, no longer being needed, was eliminated. Sub-section 5 was deleted, as being outside our authority.

Section 4. "Or person" in line 3 of sub-section 1 will be deleted. If the fine is a condition of probation, payment will be to the probation officer; otherwise, to the clerk. Installment is another alternative. The clerk should send a form notice to the defaulter. This sub-section was approved, subject to giving credit for dead time.

In sub-section 2, a period will be placed after the word "Department" and the rest of the sentence deleted. Sub-sections 2 and 3 were approved.

Section 5 was accepted, with an amendment which will provide for a refund of the fine and a revocation of the sentence when they have been erroneously imposed.

Chapter 32, section 4, Probation Revocation. The question of revocation upon only the charge of a second crime occasioned much discussion. Some felt that we should specify revocation only upon conviction, proved by a preponderance of evidence, and that revocation proceedings should have a reporter. Others pointed out that a man once convicted and put on probation was already tainted by the verdict, and that society is protected by probation regulations from the person who has shown himself to be a menace toward society; also, that he has a hearing, and is not "just hauled right back in."

A motion that the accusation of commission of another crime cannot be used as basis for revocation until the matter has come to trial and judgment rendered, failed to pass. A motion that all probation revocation hearings involving accusation of the commission of a crime have a reporter failed to pass, because of a tie vote. A motion that all probation violation proceedings be proved beyond reasonable doubt failed to pass.

Chapter 23, Sex Offenses. Section 4 has been re-written. The age disparity engaged immediate attention, and it was decided that in section 4, a four-year disparity would be clearer than specified ages, this being chiefly a matter of imposition and consent. A move to lower "18th birthday" to "16th birthday" in sub-section 1B passed. These paragraphs will be revised to conform.

Section 1, sub-section 1D, prompted an extensive consideration of just what constitutes erogenous zones, and after several attempts to revise, it was voted to eliminate "buttocks, or female breast," and terminate the sub-section with the words "sexual act." A re-consideration move failed.

A possible ambiguity in section 1, sub-section 2B, will be clarified.

Section 2, sub-section 3, it was charged, presented word problems.
If "as man and wife" means "not lawfully married," we should say so.
If a continuing sexual relationship exists, we should say so.

Section 5, sub-section 1C, will be revised to provide for a three-year bridge at any level.

Section 2 will be revised to read "unlawful sexual conduct."

Adjourned 5:20 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

A meeting of the Commission was held May 17, 1973, at the Augusta Civic Center. Luncheon was served at 12:30 and the meeting was called to order at 1:15. The following were present: Chairman Jon A. Lund, Professor Sanford J. Fox, Jack H. Simmons, Daniel G. Lilley, Garrell S. Mullaney, Peter Avery Anderson, Mrs. Caroline Glassman, Gerald F. Petruccelli, Louis Scolnik, Richard S. Cohen and The Honorable Robert B. Williamson.

A brief discussion was held regarding meetings during the summer months. It was decided to skip a meeting in July and get together in late August or early September. Professor Fox needs this extra time for redrafting and assembling material which will be distributed to the Commission during the summer to read and digest before the early fall meeting.

The next meeting will be scheduled for June 18 at the Augusta Civic Center. It will follow the same schedule as the May meeting: 12:30 luncheon; meeting beginning at 1:00, continuing until 5:30 when a buffet dinner will be served followed by a brief evening session.

Since an Advisory Committee on Rules of Evidence has been established, some matters for consideration now before the Commission will be delayed until as late as possible and the Commission may with-

draw from other matters in favor of the new Advisory Committee.

Chapter 25 Theft Section 1. Consolidation. A lengthy discussion on "receiving" preceded a favorable vote to accept Section 1 as drafted.

Section 2. Definitions. There were many areas of debate in sub-section 1 pertaining to "property" including some grammar and punctuation questions. Professor Fox has agreed to redraft parts of this section and a motion made to accept sub-sections 1, 2, 3 and 4 as amended carried unanimously.

After a discussion concerning "constituting evidence of debt" in sub-section 5-B, and a redraft, it was voted to accept sub-section 5, A through F.

Section 3. Theft by Unauthorized Taking or Transfer. It was voted to accept this section as drafted.

Section 4. Theft by Deception. After some discussion and an agreement to some minor amendments, Section 4 was accepted.

Section 5. Theft by Extortion, was accepted as drafted.

Section 6. Theft of Lost, Mislaid, or Mistakenly Delivered Property, was accepted as drafted.

Section 7. Theft of Services, was accepted as drafted.

Section 8. Theft by Misapplication of Property, was accepted with an amendment to cover the "third party".

Section 9. Receiving Stolen Property. A motion to delete the phrase "or believing that it has probably been stolen," was de-

feated. Another motion to delete the word "probably" was also defeated. It was finally voted to accept Section 9, sub-section 1 as written.

It was voted to delete Section 9, sub-section 2.

Section 9, sub-section 3, was amended so that the phrase "'dealer' means a person in the business of buying or selling goods" was deleted. It was then voted to accept Section 9 as amended.

It was voted to adopt Section 10. Unauthorized Use of Property as written.

Section 11. Classification of Theft Offenses. It was agreed to amend the class C crime (sub-section 3-A) to read "five" hundred rather than "one" hundred as drafted. A typographic error in sub-section 4 was changed to reflect class D rather than C. A motion to accept Section 11 as amended was carried.

Meeting adjourned at 7:20 p.m.

Respectfully submitted,

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Mary C. Johnson.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met at the Augusta Civic Center, June 18, 1973 at 12:30 P M. Present were: Professor Sanford J. Fox, Chairman Jon A. Lund, Dr. Willard D. Callender, Jr., Richard S. Cohen, Mrs. Caroline Glassman, Edith L. Hary, Garrell S. Mullaney, Gerald F. Petruccelli, Hon. Harold J. Rubin, Jack H. Simmons, Lewis V. Vafiades, and Hon. Robert B. Williamson.

The next meeting was set for Wednesday, August 1, at 12:30 (lunch).

Chapter 26, Burglary. The common law requirement about breaking has been omitted as inconsequential. Entering or remaining, the owner being on the premises, is important.

The question of intent to invade privacy, as in the unauthorized copying of papers, was raised. The initial reaction was negative, unless the papers contain a trade secret. Examples of unauthorized examination were considered, and whether criminal trespass would cover the situation, or whether it would be a civil matter. A suggestion was offered that we broaden the definition of burglary to include some unlawful act such as violation of privacy, or define more actions as crimes.

The discussion proceeded to the relative seriousness of breaking into a dwelling house or an office building. It was generally agreed that the greater seriousness lay in breaking into a dwelling place, and the point was made that a daytime invader was usually the more dangerous, presumably being armed and prepared to risk confrontation. A dwelling house break, or a break by an armed person, could be labelled aggravated burglary, thus increasing the penalty. A plea was made to place "just breaking and entering" on the statutes. The word "surreptitiously" might qualify remaining on the premises, and is used in the model penal code.

Section 1. "Person or property" distinguishes between burglary and aggravated burglary. New sub-sections will further emphasize the dwelling house, and heighten the offense if the crime contemplated is against the person.

It was decided to combine section 2 with section 1 under the title Burglary, eliminating the word "Aggravated" in the title. In addition to dwelling place, the other places enumerated in section 2, sub-section 1, will be included in section 1, sub-section 1. Dwelling place will therefore become a factor in aggravated burglary.

A move to make breaking into a dwelling place where someone is present more serious (aggravated) than when no one is present failed of acceptance. Burglary will be a class C, with a firearm a class A, and other burglaries class B crimes, although all classifications are to be regarded as tentative, pending final review of such assignments.

Sub-section 5 brought a discussion of multiple charges, the possibility of double jeopardy, and the wisdom of trying for only the more serious crime charged. It was said that the jury should have the choice.

Plea bargaining received attention, and the possibility of having a survey, to provide us with a factual basis on which to make our policy. Professor Fox has conferred with a research assistant, and he was authorized to follow up the proposal, if the work could be made available in six months.

Chairman Lund reported that the LEAA had received the Drug Abuse Council's proposal, which seemed to be a duplication of our efforts, and that a second draft had been submitted.

Chapter 26, section 3, Criminal Trespass, deals with the least serious of our criminal offenses. Provision will be written in to allow for Great Pond access. In sub-section 1 B, the word "lawful" will be inserted before the word "order." A move to eliminate sub-section 1 C as being a traffic violation, properly in the motor vehicle law, carried.

Sub-section 3 will be class C, except when entering a dwelling place without license or privilege.

Sub-section 4 met with divided opinions, and its deletion was voted.

Chapter 12, section 8, Criminal Liability for Conduct of Another; Accomplices. The wording in sub-section 1 will be revised to mean explicitly the offense which is committed. The words "his own conduct" and "or both" will be eliminated.

Sub-section 4 will be re-drafted, and sub-sections 5 and 6 B will be clarified.

Sub-section 6 C brought a discussion of abandonment as a defense, and what exact type of abandonment, or notice to authorities, should be required. A motion was carried to amend to incorporate the statement that complicity be extended to things reasonably foreseeable as well as those subject to agreement, also that in essence abandonment be a defense if there is actual abandonment prior to the commission of the act and the actors are notified of the abandonment, and he removes himself from the scene of action.

Sub-section 7 brought consideration of admitting a previous acquittal as evidence, but a move to eliminate "or has been acquitted" and place a period after "conviction" failed.

Adjourned 5:30 P M.

Respectfully submitted

Edith L Hary

Secretary of Commission

Minutes taken
and transcribed by
Mrs. Hilda M. Jacob

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

1473

The August 1 meeting of the Commission was held at the Augusta Civic Center, beginning with 12:30 lunch. Present were: Chairman Jon A. Lund, Richard S. Cohen, Edith L. Hary, Gerald F. Petruccelli, Dr. Bernard Saper, Lewis V. Vafiades, William B. McClaren (Chief of Police, Portland), and Professor Sanford J. Fox.

Chapter 11, Section 9, Multiple Convictions. Inconsistencies were pointed out and previous discussions recalled as being concerned with multiple charges, not multiple convictions. It was felt that the discretion of the prosecutor should not be limited by this kind of provision. The general law now provides for no restriction. This being considered desirable, it was voted to delete section 9.

Section 10 helps to focus attention on conscious states of mind, and will be referred to for jury instructions. Case law and statutes are not clear. It is not uncommon for the state of mind to determine the seriousness of the crime. Motivation relevancy was explored, and the difficulty of determining with assurance just what is in a person's mind. Some re-drafting for the sake of clarification was advised, so with the understanding that "intentionally" and "knowingly" would be more precisely worded, Section 10, 1 and 2, were adopted.

Sub-section 3, A, B, C and D, were accepted, with a vote to re-consider later, when more Commission members, especially judges, are present.

Sub-section 4 is not concerned with mental state, but with action. It was adopted, with a proviso to review later.

Section 11, Requirement of Culpable Mental States. This interprets the presence and impact of mental states, with overall application. The final sentence of sub-section 1 will be clarified. The entire section 11 was adopted.

The matter of inconsistency about mitigation in the section on sexual contact was raised, and a request to discuss this subject at a later session.

The remaining material, intended for review, was postponed for a later meeting when more members are present.

The next meeting is scheduled for September 13, beginning with 12:30 lunch. At this meeting, the fall and winter dates will be set, and the convenience of various days, times and places will be determined.

Professor Fox recommended having more frequent meetings in the coming months.

Adjourned 3:25 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

1973

The Drug Sub-committee met September 13 at the Augusta Civic Center at 10:00 A M, with the following present: Chairman Louis Scolnik, Richard S. Cohen, Jack H. Simmons, Professor Sanford J. Fox, Robert Glass, Robert Ericson and Richard Clarke.

Introductory remarks by Mr. Glass preceded consideration of Title D4. A general discussion regarding the decriminalization of marijuana emphasized the changing attitudes in the past two years; although it was agreed that this course should not be spelled out to the Legislature, we could well leave the position open for future action.

Mr. Clarke, who is working under an LEPA grant, his work to be coordinated with that of our Commission, described a survey which the Drug Abuse Commission had undertaken, involving ninety-six persons, including police, county attorneys and judges, which showed that a majority favored complete legalization of marijuana. This reflected not an official, but a personal, off-the-record liberal opinion.

A similar recommendation by the Criminal Law Revision group would contribute to acceptance of decriminalization, even of legalization. Reference was made to the book Licit and illicit drugs and the influence it had had on the sub-committee's thinking. It was agreed that hard drugs ought to be illegal ("We don't want to make an invitation."), and Mr. Glass pointed out that even though the Maine law were to be liberalized, the Federal law would still make marijuana an illegal commodity.

Recent Maine legislation regarding forfeiture was held in disfavor, the forfeiture often being deemed worse than the penalty for possession.

Our concern is with street level, unregulated, traffic in drugs, not with supervised dispensing or rehabilitation, and should result in a sound criminal law framework. We are not out to put addicts in jail, but to prevent people from becoming addicts.

Chapter 41, section 411, Definitions, and

Section 412, Schedules W, X, Y and Z: Certain punctuation, spelling and word clarifications were recommended and approved. On page Sub D 12, the final paragraph will be adjusted to read "...legally sold in the State of Maine without any Federal or State requirement as to prescription..."

Section 411, sub-section 10, page Sub D 3: The definition of marijuana is of long standing, but exceptions will be clarified.

Page Sub D 5, sub-section 22 was judged unnecessary and is to be eliminated.

In the definitions and also the comments, even though penalties may be identical, trafficking, furnishing and possession should be clearly defined, as well as "knowingly or intentionally", especially in regard to trafficking.

The schedule of drugs will be scrutinized by Mr. Ericson, perhaps with a pharmacist (Mr. Campbell as possibility).

Page Sub D 12, Schedule Z: The discretion delegated to the Board of Pharmacy was considered, and the possible risk that this authorization might not be constitutional; but all felt it to be acceptable, if the Board's decisions were made responsibly.

Heroin will be removed from Schedule W and placed in Schedule X.

Section 421, Trafficking. Adjustment will be made to allow for the penalty to fit whatever the drug turns out to be, and this drug may be a more highly classified drug than the trafficker thought.

Section 422, Trafficking in Counterfeit Drugs. A question about the constitutionality of sub-section 1 being raised, it was decided to take the issue before the whole Commission.

"Furnishing" will be included with "trafficking" in the title and sections 422 and 423.

Section 423, Aggravated Trafficking:

Sub-section 1: "21 years of age or older" will be eliminated.

Sub-section 2 will be clarified regarding previous conviction, the conviction to be before the second offense.

Section 424, sub-section 3: Schedule Z to be included with Schedules X and Y.

Section 431, sub-section 1 will be adjusted to read "...possesses a usable amount of Scheduled drug...."

Section 441 is to be taken up before the whole Commission.

Sections 442 and 443 will be kept, but with the "attempt" language deleted. Mr. Glass will see that penalty for attempt and act is made consistent throughout the code.

Section 445 will be revised to include "furnishes" as well as "possesses."

Section 451. It was decided that the chemist's certificate would be prima facie evidence unless the defense demands a chemist present.

Section 472. A period will be placed after "State" and the rest of the sentence deleted.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met September 13 (1971) at the Augusta Civic Center, following the Drug Sub-committee meeting, with attendance of Chairman Jon A. Lund, Richard S. Cohen, Mrs. Caroline Glassman, Edith L. Hary, Daniel G. Lilley, William B. McClaren, Garrell S. Mullaney, Hon. Harold J. Rubin, Lewis V. Vafiades, Hon. Robert B. Williamson, Professor Sanford J. Fox, Robert Ericson and Richard Clarke.

Mr. Glass prefaced the meeting with introductory remarks, explaining that the second draft incorporated earlier notes, comments and revisions determined by the Drug Sub-committee.

The administrative angle has been avoided. This chapter does not deal with rehabilitation, prescription, pharmacists, which should be left to those with expertise (chemists, doctors, hospitals, etc.). The criminal portions of Maine drug laws are our concern, and we should leave to the Drug Abuse Commission the definition of permissive sections of any drug law. We are not sponsors of revised Title 22, only the repealer sections. We expect Titles 17 and 22 to be available at the same time for the Legislature. The Drug Abuse Commission work is to be submitted to Professor Fox and Mr. Glass, and through them to this Commission.

Section 411, Definitions, sub-section 24, page Sub D 6: Insert "otherwise" before "transfer."

Section 422, sub-section 1: The subject of counterfeit drugs received a long discussion, culminating in a decision to re-phrase as follows: A person who 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 of causing serious

bodily harm or death when taken or administered in the customary or intended manner, shall be guilty of a class C crime.

Mr. Glass will adjust the general rule, and also provide that anyone giving anyone else a Schedule W drug shall be guilty of a class B crime.

Sub-section 3 was deleted.

Section 423, Aggravated Trafficking: A motion to delete sub-section 2 A, B and C carried.

The meeting returned to the subject of decriminalization of marijuana, which is being recommended by responsible organizations. In Iowa and Oregon, it is now a civil offense. Arguments pro and con were heard: "When a law is no longer enforceable, it ceases to be a mandate of society," and "It is basically dishonest, a cop-out, to decriminalize marijuana." A non-binding vote taken showed a majority of those present to favor decriminalization.

The next four meetings were set for October 4, October 29, November 15 and December 3, beginning with 12:30 lunch.

Adjourned 5:20 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met October 4, 1973 at the Augusta Civic Center. The following were present: Chairman Jon A. Lund, Peter Avery Anderson, Dr. William D. Callender, Jr., Edith L. Hary, Erroll K. Paine, Gerald F. Petruccelli, Hon. Harold J. Rubin, Dr. Bernard Saper, Louis Scolnik, Lewis V. Vafiades, Hon. Robert B. Williamson, and Professor Sanford J. Fox.

Chapter 27, Falsification in Official Matters, was taken up first, and Professor Fox pointed out that this section does not pertain to property or a false report to a law enforcement officer, but is evidence in a more or less formal setting. The importance of the matter furnished is to people outside one's own interests, such as swearing or affirming before a notary.

Section 1, Perjury. This is not very different from the present law. Perjury, it was agreed, is a real problem in the courts, and a careful consideration of the wording resulted in certain alterations. "In any official proceeding" was regarded as important and will apply to both A and B, deleting "in the same official proceeding." This section as amended was accepted.

Section 2, False Swearing. The severity of the penalty was questioned, and a move to delete the section as being unnecessary lost. The code, it was said, is supposed to establish a scale of penalties, and the Legislature will have an opportunity to judge its appropriateness.

Section 3, Unsworn Falsification. In sub-section 1-A, a recommendation was made that we specify the size of print in the notification by using the word "conspicuous" or some such qualification. Criticism of the wording in 1-B(2) showed a need for clarification.

Chapter 11, Section 10, Definitions of Culpable States of Mind was reviewed, especially sub-section 4, "Negligently." The real meaning of negligence was examined, the standards (individual or community) involved, society's stake. Substitute wordings were offered: culpable awareness, culpable unawareness, criminal indifference, wanton and willful. A strong plea was made not to omit the law which makes negligent homicide a crime.

In sub-section 4-D, the objective test for risk is the individual's capacity for awareness. The objection that this is a license for those of low intellects to commit crimes was answered by the assertion that they should be aware of what a law-abiding citizen would observe.

In sub-section 2-C "almost" will be substituted for "practically."

In sub-sections 3 Recklessly and 4 Negligently, paragraph A will be omitted, and nobody will be guilty of a crime unless his action is voluntary. Hunting laws were discussed here, to which the word "negligently" should be applicable. "Criminal negligence" will be incorporated and the homicide statute adjusted.

Section 11, Requirement of Culpable Mental States, sub-section 1 is a plea for uniformity in mens rea. Simplifying language has been used: intentionally, knowingly or negligently ("recklessly" will be deleted). The final sentence will be revised to read "is either not specified by such law, or is specified as willfully, maliciously, corrupt or in some other specified state of mind..."

Sub-sections 2 and 3 are providing uniformity. In a case of attempt, the defense is that the crime was committed. Guilt of attempt may be found, but not of the crime.

Chapter 13, Justification. In sections 1 and 2, an exception will be incorporated to provide for a search warrant, knowingly defectively procured by an officer.

Section 3, Competing Harms. This is the "Choice of Evils" doctrine, which is seldom needed. The harm is qualified by the sense of immediacy and the degree of physical harm. A possible re-wording of sub-section 1 to emphasize the imminence of harm was suggested.

Section 4, Use of Force in Defense of Premises, will be considered when section 7 is before the Commission.

Section 6, Physical Force by Persons with Special Responsibilities excited comment regarding corporal punishment and differing opinions as to its need, and will be reviewed later.

Adjourned 5:10 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken
and transcribed by
Mrs. Hilda M. Jacob

The Commission met October 29, 1973, at the Augusta Civic Center, with the following present: Chairman Jon A. Lund, Peter Avery Anderson, Caroline Glassman, Edith L. Mary, Garrell D. Mullaney, Louis Scolnik, Lewis V. Vafiades, Hon. Sidney W. Wernick, Hon. Robert T. Williamson, and Professor Sanford J. Fox.

Chapter 13, Section 6, Physical Force by Persons with Special Responsibilities, was reviewed. In effect, sub-section 1 creates authority for such kinds of punishment (the only place where punishment appears. Teachers are not permitted to punish.). The definition of a minor is subject to rapid change, but it was agreed that by "child" we mean a person of no more than sixteen. The word "minor" will therefore be changed to "a person under the age of seventeen" for purposes of this statute. "Force" will be modified by the insertion of "reasonable" in all the sub-sections. Misconduct is determined by a breach of whatever rules the parent decides to establish. Primary authority will be spelled out, and delegation of authority will be provided, at the parent's option. An addition regarding the justification for use of force was recommended.

Sub-section 2 was accepted. This will change the present law, and deals with the controversial position of teachers. It applies to such individuals as scoutmasters, swimming instructors, camp directors, music teachers, etc.

Sub-section 3. We will specify "mentally" incompetent. Hesitation was registered about punishing a mentally incompetent person, because he cannot comprehend punishment. He should be removed from the scene of disturbance, confined to a room or bed, but not punished. It was pointed out that those committed to Pineland or Stretsor can understand punishment. The institution becomes the legal guardian, in which case sub-section 1 applies. We should, however, make the power in sub-section 3 co-extensive with that in sub-section 2, with the addition of some language to exert immediate control.

Sub-section 4 restricts the previous sub-sections by warning against specific dangers. It was accepted, subject to correction of "reckless" to "substantial" use of force, and "extraordinary" in place of "substantial" pain.

Sub-section 5 covers such persons as trolley car conductors, airline pilots, school bus drivers (though the latter could come under sub-section 2). The difference between reasonable belief and reasonable necessity, and the phrase "authorized by law" were examined. If there are rules of decorum, this operates. "Charged by law" rather than "authorized" was approved. "Law" would include state and federal. Although there was some feeling that this section was both "indecisive" and "too tight," it was accepted.

Sub-section 6 brought a wide-ranging philosophical discussion of the right to take one's own life, euthanasia, and abortion; but it was finally approved.

Sub-section 7 was also [illegible], with the proviso that "marriage" be [illegible].

Section 7, Physical Force in Law Enforcement occasioned a spirited exchange of views on the use of force by police. We should not encourage an element of brutality. We should train police officers to use restraint, although we agree that they must make an arrest sooner or later, regardless of resistance. With the reservation to define what constitutes deadly force, and when it can be used, this section was adopted.

Section 8, Physical Force in Defense of a Person was accepted, with the understanding that wording will be added to cover mobile homes, campers, and the like.

Chapter 28, Offenses Against Public Order. This replaces the laws about breach of peace, dealing with actions which may well lead to violence.

Sub-section 1 A seems vague, if it relates to behavior. It could cover the personal cleanliness, grooming aspect. Some standard should be written in, precluding visual appearance.

Sub-section 1 B was stricken, and thereupon Section 1 was accepted as amended.

Section 2, Failure to Disperse, is riot prevention, and will be revised to include words, gestures or physical conduct which is offensive.... This section was accepted.

It was decided that persons in the immediate vicinity who fail to disperse should be charged with a class D, not a class C, crime.

Sub-section 3. "D" in "class D crime" is a typographical error: it should be class C.

Adjourned 5:35 P.M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

[illegible]

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

A meeting scheduled for November 26, 1973, had insufficient attendance to justify taking any action. Present were Professor Sanford J. Fox, Richard S. Cohen, Jon A. Lund, Garrell S. Mullaney and Jack H. Simmons.

General conversation raised questions concerning possible exemptions in the criminal statutes, on account of religious beliefs, in cases of the safety and protection of children. The desirability of an incest statute was stressed. Public corruption being currently of such public awareness and concern, it was felt that some statute would be necessary.

Professor Fox said that he expected us to have a report out by the end of next summer, and between then and January 1975 it should have a lot of public debate. He hoped that various organizations (such as medical, bar, chiefs of police) would look carefully at the report.

The Commission met at the Augusta Civic Center on December 3, 1973, with the following present: Professor Sanford J. Fox, Peter Avery Anderson, Caroline Glassman, Edith L. Hary, William B. McClaran, Garrell S. Mullaney, Jack H. Simmons, Lewis V. Vafiades and Hon. Robert B. Williamson.

Dates were set for the next six meetings:

December 21	in	Portland
January 18	in	Augusta
February 1	in	Augusta
February 22	in	Augusta
March 15	in	Augusta
April 11	in	Augusta

Chapter 28, Section 4, Unlawful Assembly, and

Chapter 28, Section 5, Obstructing Public Ways, were reviewed. These sections represent an effort to produce rules to enable police to control incipient riots. It is difficult to prove, and should be, because we do not want to keep people from standing around, but we do want the police to be able to move before something happens. The public expects this sort of protection. Discussion centered about the possibility of misuse and misinterpretation. The safeguard of including a requirement to declare an assembly unlawful before taking action was written in as an amendment, and sections 4 and 5 were then adopted.

Chapter 28, Section 1, Disorderly Conduct, sub-section 3, will also be amended to include a provision requiring a warning.

Chapter 28, Section 6, Harrassment, was accepted.

Section 7, Desecration. After a discussion of outraged sensibilities, it was perceived that this section was not designed to protect property interests, but solely the sensibilities of citizens. The words "the defendant knows" were eliminated, and sub-section 1 was amended to require only that the structure not be owned by the perpretrator. The implication of the word "desecrate" was carefully examined. Either "desecration" or "defacement" will be used. This section was accepted.

Section 8, Abuse of Corpse, was accepted; but parts of present section 1251 of Title 17 will be saved.

Section 9, False Public Alarm. The use of "alarm" was felt to be too strong, and it was changed to "report." The section was accepted.

Section 10, Cruelty to Animals received brief attention, and the suggestion that views and comments from veterinary organizations, humane societies and animal welfare leagues be obtained met with agreement. The section was thereupon tabled.

Chapter 27, Section 4, Tampering with Witness or Informant. In sub-section 1 and in section 5, "section 5A" should instead read "sub-section 5A of section 1."

In sub-section 1, the adjustment to conform to the ABA decision was recommended. Action on this matter will wait, pending a determination of the current rule. (See enclosed ABA material, courtesy of Mr. Simmons.)

Adjustments in assigning the crimes to a class were made: in 1A, attempt to induce...to testify or inform falsely will be class C; absenting will be class D; and in 1C, class C will pertain. Agreeing that it should not be a crime to induce a person to assert his right to refuse to testify, and that in-court communications not be reached by this, the meeting

directed that this section 4 be re-worked to clarify.

It was voted to eliminate sub-section 1B because "unlawful" means "civilly actionable."

Section 5, Falsifying Physical Evidence. Objection was raised to what was judged the wide-open nature of sub-section 1A. Explanatory words will be written in to require that whatever is destroyed have relevance to the investigation. Although there was some misgiving about the need of this sub-section, section 5 was accepted.

Section 6, Tampering with Public Records or Information, was accepted.

Adjourned 4:40 P.M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken
and transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met January 22, 1974, at the Augusta Civic Center, at 11:00 A M. Present were: Chairman Jon A. Lund, Peter Avery Anderson, Richard S. Cohen, Edith L. Hary, Erroll K. Paine, Gerald F. Petruccelli, Lewis V. Vafiades, Hon. Robert B. Williamson and Professor Sanford J. Fox.

The problem of local citizens' mounting dissatisfaction with court leniency, especially in the district courts, was discussed. Organization of community vigilante groups emphasizes the feeling. It is important for this Commission to recognize the motivation. It could hurt our effort.

Suggested solutions were: an agency responsible for reporting to the Legislature; the inclusion of supervisory language in the statutes to enable the Chief Justice to monitor lower court decisions; limiting the privilege of filing cases , making it subject to the State's approval.

Dates for the next four meetings were set and/or confirmed: February 1, February 22, March 1, and March 15, all in Augusta.

Our material should be ready for the printer by late summer, and ready for introducing in the Legislature by late January 1975, prior to which the Revisor of Statutes should be consulted. An appointment with the Revisor will be made by Chairman Lund and Professor Fox.

Chapter 29, Section 1, Bigamy. This provides for liability only when a person knows he is married, and does not intend to trap one who makes an honest mistake. Accepted.

Section 2, Nonsupport of dependents. The criminal statute will function as a lever. Accepted.

Section 3, Abandonment of Child. The penalty has been reduced. Clarification will be written in to include a babysitter. Accepted.

Section 4, Endangering the Welfare of a Child. This covers the entire child abuse statute. In sub-section 1-B, "near beer" will be eliminated, but we will comply with the State liquor laws. Exception: parents who, in their own home, permit their own child to consume a "reasonable amount." Reference to firearms, and sub-section 2, will be made to comply with the Fish and Game laws.

An appeal was made for a strong child abuse statute, and it was agreed that the restraint should be written into the law. Section 4 will be re-written.

Section 5, Endangering the Welfare of an Incompetent Person, affords the same protection as section 4, except that the person is incompetent to care for himself. The elderly should be included also. Accepted.

Professor Fox will judge the adequacy of the present reporting statute, it being agreed that one is advisable, particularly affecting nursing homes. Abuses should be reported by a nurse or physician.

Section 6, Incest. This is drawn to be a bit more narrow than the present statute. It will be a class D crime. Accepted with the amendment.

Chapter 29B, Robbery. Our basic policy is to separate the more serious robbery from the less serious, and identify the harm done to a person, as with a dangerous weapon. It is distinguished from simple larceny by the threat.

Discussion centered around specifying the use of force. Is this necessary, in view of the presence of a dangerous weapon? A weapon, or force, used to accomplish a theft, is robbery. Some believed that robbery should include an intended threat to a person.

Section 1, Aggravated Robbery. 1-B (i) and (ii) will be transferred to the sentence preceding 1-A.

Section 2, Robbery will be re-drafted. Section 2 may become section 1, and Aggravated Robbery may be "piggy-backed" (as we did with Murder and Aggravated Murder) on Robbery.

Chapter 36, section 9, Establishment of Parole Board. The provision for a full-time board, and the cost, may have legislative disapproval. On the other hand, a full-time board might be sanctioned, but with fewer numbers. Accepted as written.

Chapter 28, Offenses Against Public Order. In section 2, "to the assembly" will be omitted. In section 7, sub-section 2 will include words to cover ashes of a human corpse, the remains, or parts thereof.

In section 9, False Public Alarm or Report, sub-section 1-A will include "or causes false information to be given."

Section 1, Disorderly Conduct, prompted a discussion of what really constitutes disorderly conduct and a disorderly response. It was voted to delete in sub-section 2 the words "to provoke a disorderly response, or."

Sub-section 3 will alter an "order" to a "request."

Sub-section 5 should include bars.

Adjourned 3:45 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken
and transcribed
by Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met in Augusta on February 1, 1974, with the following present: Chairman Jon A. Lund, Peter Avery Anderson, Dr. Willard D. Callender, Jr., Hon. Thomas E. Delahanty, Mrs. Caroline Glassman, Edith L. Hary, Gerald F. Petruccelli, Hon. Harold J. Rubin, Louis Scolnik, Jack H. Simmons, Lewis V. Vafiades, Hon. Sidney W. Wernick, Hon. Robert B. Williamson, and Professor Sanford J. Fox.

Chapter 29B, Robbery, was reviewed. Concern was expressed for the balance between aggravated assault (which is now class B) and aggravated robbery (which is now class A). To qualify for class A, it was asserted that real injury should be sustained. It was pointed out that the penalty uses the words "up to," not "must," so there is room for judgment in sentencing. After a discussion of just how much harm and physical contact equals "bodily injury," it was decided to broaden sub-section 1 of Aggravated Robbery to include threat, and amended language will include the use of any force. The use of reckless force will mean plain robbery, but intentional force will be aggravated robbery. Chapter 29B as amended was approved.

Chapter 29A, Offenses Involving Conduct of Public Officials and Employees consists of three parts: definitions, bribery, and conflict of interest, not all entailing criminal penalties.

Section 1, Definition of Terms. In sub-section 2, the word "responsible" met with favor. Sub-section 6 should be adjusted to include quasi-municipal agencies such as urban renewal agencies, planning boards, school administrative districts, multi-county agencies, task forces. Enabling legislation will be consulted by Professor Fox.

Suggestions were made: to simplify the language by referring to those who are discharging a governmental function and writing in exclusions (this would be complicated); to list broad prohibitions with exceptions for disclosure (this permits the danger of gaps); to define municipal employee and say that anyone else is state or county.

It was decided to reserve decision.

Sections 4, 11, 17, Improper Compensation and Representation by State, County and Municipal Employees. "Particular matter" gave rise to differing interpretations. Present statutes on conflict of interest are largely inadequate and very narrow. "Special state employee" created doubts, and possible problems were aired. No solution had ready acceptance, so Professor Fox will distribute to the Commission a couple of different models on conflict of interest for consideration, and the subject will be taken up again.

Section 2, Bribery. Sub-section 1A should cover an arbitrator, an auctioneer, anyone acting in a judicial capacity.

Sub-section 2 is sweeping. It was amended by agreeing that a pardon would wipe out a conviction, and that a limitation on holding office be written in, the time to be based on the date of final conviction (at the conclusion of any appeal procedure). We will add to sub-section 2 that the forfeiture does not apply to a constitutional office.

The meeting voted for suspension with pay from public office upon indictment, and suspension without pay upon a jury verdict of guilty. If the conviction is reversed, or the case terminated, the official should be paid for the period of suspension, or to a time when the office itself is terminated.

Dates for the next two meetings were confirmed: Friday, February 22, and Friday, March 1, both at 11:00 A M in Augusta.

Adjourned 4:10 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

1974

The Commission met June 5 at the Augusta Civic Center with the following present: Chairman Jon A. Lund, Richard S. Cohen, Mrs. Caroline Glassman, William B. McClaran, Garrell S. Mullaney, Ward E. Murphy, Louis Scolnik, Lewis V. Vafiades and Professor Sanford J. Fox.

Consideration of the conflict of interest law is postponed, pending more consultation with attorneys.

Prof. Fox outlined matters to be taken up at the August meeting:

1. a tentative final draft of provisions which will have been reviewed
2. a sentencing table for review
3. offenses outside Title 17 -- disposition and definition
4. disposition tables describing what happens to Title 17 items outside the code
5. derivation table listing everything in the code, referring to present counterpart, or labelling as new

The date of the August meeting will be Thursday, August 1, 8, 15 or 22, determined after polling the members for the largest attendance possible. After this review, Prof. Fox will ready the material for publication, anticipating early or mid-September distribution. Next will be meetings with organizations and any interested, discussing and explaining, picking up criticisms and suggestions. One or two fall meetings of the Commission will be scheduled, and the final decisions will be put into bill form for submission to the Legislature.

Chairman Lund announced that Dr. Saper had sent a letter of resignation, but it was agreed that an effort would be made to persuade him to reconsider.

Chapter 29H, Unlawful Gambling, Section 1, Inapplicability to Beano and Bingo. A criticism of sub-section 2 was that it gave an opportunity to those not directly connected with the organization to take advantage. These games are sometimes contracted out, with no supervision by the organization. The law is designed not to prohibit recreation -- only commercial interests. It will therefore be adjusted to agree with legislation of the 1974 special session, and a requirement will be written in that the game must be run by the organization itself.

Section 2, Definitions, sub-section 9. The wording will be changed from "participate in" to "receive part of" the proceeds.

Section 3, Aggravated Unlawful Gambling, brought a discussion of bookmaking and gambling, poker games, friendly bets, and a concern about providing against an influx of organized crime and the promotion of floating games.

Prof. Fox said that comments in the summer printing will simplify understanding: "What this law does is.....". He will send all new sections to the Commission and request notification of what needs to be reviewed at the August meeting.

Section 5, Possession of Gambling Records is meant to catch the person in business.

This chapter provides a major change from the present law in letting the player out.

Chapter 29H with changes was accepted.

Chapter 22, Offenses Against the Person. Our law must be sufficiently clear to incorporate the rule in the Sondergaard case. The title of section 11 will be changed to "Threatening Communication," and the word "fear" to "apprehension."

The threat must be "against the person to whom it is communicated or another." Sub-section 1A will read "to place the person to whom the threat is communicated in reasonable apprehension of serious bodily injury." The phrase "dangerous to human life" was discussed. Should we loosen it, covering threats to witnesses, for instance? It was decided to make the change to "serious bodily injury." An observation was made that the present malicious vexation statute is very useful, and we could well include such provision in our code.

A section parallel to section 1 will be drafted, broadening the scope of the threat, perhaps limiting it to the immediate family.

Sections 11 and 12, with amendments, were accepted.

When we submit the code to the Legislature, we can suggest that any new criminal bill be examined as to how it fits with the code. It might be feasible to establish a monitoring function, with responsibility for suggesting amendments and additions. Should this Commission be continued, with one or two paid assistants, for this purpose?

Chapter 29C, section 8, Negotiating a Worthless Instrument, uses UCC terminology, and was accepted.

Chapter 12, Criminal Liability. Sections 9, 10 and 11 all change present law. "Appropriate public or private facility" will be written into sub-sections 9-3 and 9-4. Section 9 was accepted, and we decided to ask Mr. Schumacher to look it over.

Sections 10 and 11 occasioned a discussion of flexibility in moving a person from one institution to another; of two-stage trials; of more than one test for insanity (before the trial, and after a finding of guilty). If judged insane at the time of the crime, but sane at the time of trial, it was said a person should not be sent to a state hospital, but could be held in custody to have a sanity hearing. We could specify that the Bureau of Corrections should transfer to a state hospital anyone who meets certain standards. It was pointed out that rehabilitation funds and programs exist at state hospitals, but not at the Prison.

Sections 10 and 11 were accepted.

Chapter 29D, Section 7, Trafficking in Prison Contraband, was accepted.

Consideration of alternative sentencing was postponed, to be taken up when a larger attendance could be obtained. A meeting for this will be held June 10 or 18, after a telephone poll of the membership.

Adjourned 3:40 P M.

Respectfully submitted

Edith L. Harry

Secretary of the Commission

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met at the Augusta Civic Center February 22, 1974, with the following attendance: Chairman Jon A. Lund, Peter Avery Anderson, Hon. Thomas E. Delahanty, Robert Ericson, Edith L. Hary, William B. McClaran, Gerald F. Petruccelli, Jack H. Simmons, Hon. Robert B. Williamson, and Professor Sanford J. Fox.

The photocopies of conflict of interest models present a bribery orientation approach. We must consider whether we want to restrict corrupt influence laws to bribery. It is possible to pick up the more egregious offenses and add them to bribery. We should include the misuse of office concept, and guard against people leaving government service and enjoying unfair advantage, but we don't want to prohibit people from having any business with government officials.

Chapter 11, Section 11, Definitions was adjusted to read "Public servant means any officer, official, or employee of any branch of government, and any person participating..... function." Acceptance was tentative because later we will go through all definitions and adjust as necessary.

The drug laws (Chapter 41) were deliberated. The definition of marijuana being judged still vague, it was finally decided to use that of the Federal criminal code. It will not be an offense to possess (although it is still contraband), but only with the intent to sell; nor is it unlawful to grow. "Useable amount" should be in the law. Misspellings will be corrected.

Chapter 42, section 421, Unlawful Trafficking in Scheduled Drugs incorporates the penalties suggested at our last meeting on this issue, and varies in accordance with what the drug turns out to be. The question was raised: Are you guilty of possession if you think you have heroin, but don't? This point will be clarified, and we can drop the definition of counterfeit drugs.

Section 424, Unlawfully Furnishing Scheduled Drugs: any transfer of marijuana (including giving it away) is illegal, whether for consideration or not. After a discussion of whether to revise the provision by saying that giving, without consideration, should not be a crime, it was decided that the group on February 22 was too small to make this decision. Section 423 gives the option of restricting so that it wouldn't apply to young people.

Section 451, Analysis of Scheduled Drugs: some misgiving about the constitutionality of sub-section 2 was expressed, and it was noted that we have provided an option to require the defense to produce a "live" witness.

Following speculation regarding the way we want to present the marijuana question to the Legislature, it was agreed that a mild compromise might find support, and accordingly a motion was made to decriminalize furnishing marijuana without consideration to a non-child, for immediate personal use. This motion carried.

Section 471, Arrest Without Warrant... The whole arrest question was postponed, pending final scrutiny of classification of crimes. Section 471 was deferred, and a note made to bring it up later.

A revised table of contents will be distributed soon, and new pages of text including revisions since last July, which can be inserted in the original book. A copy will be sent in answer to a request from A.L.I.,marked "Tentative," and will not be for dissemination.

Chapter 29C, Forgery and Related Offenses. Both forgery and aggravated forgery require the intent to deceive, the subject of the forgery determining the difference. Sections 2 and 3 turn on section 1, which is an effort to deal comprehensively with everything we consider forgery (not just paper, but coins, etc.). A government official will be included as a person deceived.

A motion to make section 2, sub-section 1-E forgery, rather than aggravated forgery, placing it in class C, was carried. There was a discussion of the advisability of moving forgery of a prescription into the drug law, making the penalty equivalent to the penalty applicable to the drug in the forgery. No formal vote was taken, but the consensus was to leave this matter in the forgery chapter.

Sub-section 1-F. The amount will be reduced from fifty to five thousand dollars.

Sub-section 1-G was eliminated as impractical, judicial discretion being relied upon to consider the situation and the flexible sentencing provisions. Check-passing needs no proof of intent, and we don't need a habitual offender statute for "paper-hangers."

Section 3, Forgery, sub-section 1-B. A motion to relate the penalty to pecuniary gain was withdrawn. Instances were cited of harm caused with no such gain, as in politics or divorces. The political process should be dignified wherever we can, and the specific question of forged signatures (even inadvertent, or not intending deception) on political papers is already covered under false certification.

Section 5, Criminal Simulation induced a number of questions. Should the penalty section be divided, making the offense for pecuniary gain class C, and otherwise class D? Should all criminal simulation be class C? A move to make the false pedigree a class C offense was lost.

Sub-section 1-B occasioned considerable discussion of scholastic imposters, term papers written as a favor or for pecuniary interest; whether to penalize the writer or the one who submits the paper. A motion to amend if the authoring is done for pecuniary interest carried.

A move to accept chapter 29C as amended at this meeting carried.

Adjourned 3:30 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken
and transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met March 1, 1971, at the Augusta Civic Center. The following were present: Chairman Jon A. Lund, Dr. Willard D. Callender, Richard S. Cohen, Edith L. Hary, Garrell S. Mullaney, Gerald F. Petruccelli, Hon. Harold J. Rubin, Louis Scolnik, and Hon. Robert B. Williamson.

Although the drug laws were not on the agenda, the subject of arrest without a warrant (section 471 of chapter 47) was brought up, and the present law (22 MRSA 2383) was quoted. Concern was expressed about possible abuse, violation of civil liberties, and expansion of warrantless arrest. It was agreed that better training in police departments, and having their own legal counsel, is desirable. Observation was made that a new criminal code would put a burden of learning new things, not only by police, but by others who are affected by the new code. No action was taken, pending decision on the law of arrest.

A report from Richard Clarke indicated that a working draft of the drug material for which his group is responsible could be presented to this Commission in six or eight weeks. The Commission decided against accepting this procedure, and will review only the final draft.

Chapter 29D, Section 1, Obstructing Government Administration. Escape and contraband in institutions will be added later. Influencing a juror and jurist is not covered by this, and although we have a section on improper influence, this is worth defining separately. Sub-section 2B was judged to be too broad, and will be narrowed to cover a judge. Subject to this narrowing, section 1 was approved.

Section 2, Resisting Arrest. Dangers of over-reacting were voiced, the amount of force used by an officer, the tendency by some officers to regard any attempt to avoid arrest as resistance. Examples of undue harshness (handcuffs, immediate jailing) were presented. The point at which an officer has physical custody of the arrestee should determine when resist occurs. This led to discussion of assault on an officer, and the possibility of raising the penalty. We could have a fourth sub-section of Aggravated Assault, patterned after Aggravated Murder. The defense would be that it is not assault if it is in response to police use of force clearly in excess of authorization. Assuming that we reach a satisfactory definition of arrest, our policy was established that it is not an offense to run in order to prevent being arrested. All offenses in this area, including escape, do not occur until arrest has been made.

A suggestion was made that we add to Aggravated Assault an assault on an officer committed after arrest has been made and custody has taken place. This is not a general protection of officers. Distinction should be made between evasion and assault, and possibly the degree of physical danger or harm should be graded. Further distinction could be made so that scuffling or jostling will not be escalated into a charge of bodily injury. It was decided to leave assault on an officer in this chapter, and section 2 will be re-written in conformity with today's discussion.

Section 3, Hindering Apprehension or Prosecution was amended by agreeing that hindering in the case of murder should be class B, but in other instances it would be one class lower than the crime charged, except that D will be class D. Section 3 was approved as amended.

Section 4, Compounding. After a brief discussion, a move to strike sub-section 2 was made, and carried. Section 4, as thus amended, was accepted.

Chapter 29E, Arson, consolidates the Maine statutes, of which there are a large number. The risk to human life is the most serious type. We will add that in prosecution, it is not necessary to allege or prove the ownership of the property, but it must be identified. The word "structure" being deemed insufficiently descriptive, we will say that it includes, but is not limited to "tents, campers, mobile homes, etc."

Section 2, sub-section 1. Class C was considered too lenient in the case of arson for gain, so 1A will be class B, and 1B will be class C. Protection will be written in for a person hired to burn property (grass, for instance). Section 2 was then adopted as adjusted.

Section 3, Causing a Catastrophe. Following a brief discussion of "recklessly" (conscious disregard of substantial risk), this section was adopted.

Section 4, Failure to Control or Report a Dangerous Fire was accepted.

Sections 5 and 6, with some adjustment of "intentionally or knowingly," were adopted.

It was recommended that the law on obscenity be left as it is now, the potential hazard being that any change would be regarded by some as too lenient, and by others as too severe.

The date of the next meeting was changed from March 15 to March 14.

Adjourned 3:40 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met March 14, 1974, at the Augusta Civic Center, with the following attendance: Chairman Jon A. Lund, Peter Avery Anderson, Lt. Jerry F. Boutilier, Richard S. Cohen, Hon. Thomas E. Delahanty, Mrs. Caroline Glassman, Edith L. Hary, Garrell S. Mullaney, Hon. Harold J. Rubin, Lewis V. Vafiades, Hon. Sidney W. Wernick, Hon. Robert B. Williamson, and Prof. Sanford J. Fox.

Prior to the agenda, there was general conversation about rural crime, the public's desire to increase punishment, and criticism of the courts' leniency and laxity. Lack of communication between the public-at-large and the courts, and between the Legislature and the courts, accounts for some hostility. This emphasizes the hazard of our colliding with the Legislature which can well reflect the same hostility. To present a criminal code which flies in the face of the philosophy of the Legislature, dooms it. We do not want to find ourselves "on the shelf," and compromise from an ideal situation will therefore be advisable. A choice of sentencing structures, with recommendations, might meet with acceptance.

One area contributing to the antagonism is that of vandalism, breaking and entering, with apparent lack of concern for the victim. Financial compensation might relieve the feeling, but Maine is probably not ready to accept this idea. Several states have such a plan, which can be constructed in various ways. Prof. Fox will gather and circulate information on the subject.

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Public distrust of the probation process was mentioned. Although statistics are lacking, it is probable that the program is more successful than we know.

We should be aware of the Quaker theory of advocating a set punishment for a given crime, and doing away with rehabilitation. It was recommended that we purchase two copies of a small book by the American Friends Service Committee, Struggle for justice, and make them available to the Commission.

Initial steps should now be taken toward acquainting the public with our work, and involving the public, especially legislators. Suggestions were offered: a TV presentation, with a panel of judges and legislators, and audience participation; the possibility of adopting the Federal idea of sentencing institutes; a two- or three-day conference; small groups, or regional, meetings; using available public relations expertise from the LEPA; involving bar associations; making this a project for Law Day, or as a follow-up; taking advantage of the Legal Affairs Committee's statewide hearings; the possibility of a TV package, or a documentary film.

Mr. Vafiades will discuss the matter with Charles Smith, President of the Maine Bar Association, and Justice Wernick will bring it to the attention of the Cumberland County Bar Association. Prof. Fox will make inquiries as to the way the Federal sentencing institutes were organized.

It was voted that the Executive Committee of this Commission undertake meetings with the media to explore ways to begin a broad-based educational program to reach the State of Maine on the whole criminal process.

A report that the anticipated drug material from Mr. Clarke was not in progress led to the decision to have a letter sent to him from the Chairman to the effect that his services would no longer be required. The LEPA grant

to Mr. Clarke for this purpose has been terminated, but the money will be held and can be made available to us, in case we need it for expenses involved in preparing the material. Prof. Fox will undertake to do the work, or have it done.

Chapter 29D (p. 29D-9), Section 1, Obstructing Government Administration was not narrowed. In sub-section 1, the word "intimidation" will be strengthened, and raised to a level which will exclude picketing. On consideration, it was thought best to eliminate the original sub-section 2B, and include the escape from custody.

Section 2 was accepted.

Chapter 11, Section 12, De Minimis Infractions. No offense which carries a mandatory sentence can be considered De Minimis. Sub-section 1B would include a lot of threatening communications. It was voted to amend sub-section 2 by requiring the judge to notify the prosecutor, and give him opportunity to be heard; and to file written reasons for dismissing under this section.

Section 12 was adopted as amended.

Further discussion followed about filing after a finding of guilty, whether it is possible to file without referring to this section, the problem of cases where the defendant has skipped and these cases are carried for two or three years. It was decided to leave the section as it is for now.

Chapter 29F, Prostitution and Public Indecency. Structural aspects and promoting activities are dealt with here. Section 1, sub-section 2A, will be clarified by including "other than as a patron." Sub-section 2B will specify soliciting "for another," and will prohibit soliciting in a public place. Procuring is prohibited anywhere.

Someone said that the VD problem comes not so much from prostitution as from young people, and should be a health issue. We would only aggravate the VD problem by making prostitution a crime. A discussion of legalized prostitution resulted in the observation that the presence or absence of a law would not matter -- "if the business is there, they'll be there" -- although some wanted to guard against organized crime, arguing that if we don't make prostitution a crime, we have a wide open opportunity for police corruption and organized crime. Motions to make prostitution and patronage of prostitutes offenses, lost.

Section 2. The title has a peculiar ring, and will be smoothed.

Sections 1, 2 and 3, as amended, were accepted.

In the final product, the comments will be at the end, rather than sandwiched between sections.

Section 4, Public Indecency. Sub-section 1A will be removed and put in the prostitution section.

Sub-section 1 will be revised to specify "in a private place, which can be publicly seen." Sub-section 1C should include both public and private places, and is really what we call indecent exposure. Although we can expect adults nowadays to take a sophisticated view of such matters, we should protect young children from possible trauma, so it was voted to add "in the presence of a child under 12." Prosecution might not result, with the only witness a child, but there would be an investigation, anyway.

We will also specify that the exposure is to one or more persons, in circumstances which objectively evaluated are likely to cause affront or alarm.

Adjourned 4:30 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met April 11, 1974, at the Augusta Civic Center, with the following attendance: Chairman Jon A. Lund, Lt. Jerry F. Boutilier, Edith L. Hary, Daniel G. Lilley, Louis Scolnik, Lewis V. Vafiades, Hon. Robert B. Williamson, Professor Sanford J. Fox; and guest Wayne Blacklock, who is working with the trial court group. For his information, our work was described in general terms.

The next two meetings were scheduled for May 8 and June 5, at 11:00 A M at the Augusta Civic Center. At these meetings, we will act upon drafts, after which Prof. Fox will go through everything to ensure consistency, and then our meetings will become review sessions.

A bill (S.300) now before Congress is a modification of the Safe Streets Act, and would provide Federal funds to help states compensate victims of violent crime, but not for property damage. The Commission considered the drafting of a similar scheme, but decided it should be a separate bill, and not part of our code. It was moved and voted that Prof. Fox draft such a bill, to be presented with our recommendations to the Legislature simultaneously with our code.

Public feeling about leniency in sentencing was brought up again, and the possibility of alternate sentencing structures suggested. The wisdom of classification is that if a crime is classified, the sentencing structure can be changed. Reference was made to the recent Maine law requiring a mandatory sentence for a second offense of breaking, entering and larceny, and it was pointed out that the first time was probably just the first time he got caught.

The exercise of discretion having gone largely uncontrolled, perhaps we should include mandatory sentences. One favoring factor is that prisoners would then know when they are due to get out. During the period of our work, conditions have changed and attitudes toward sentencing, so we should take another look at our decisions on sentencing.

Chairman Lund reported that he had approached two TV-radio stations regarding proposed programs, and had met with initial interest. Further discussion will produce more definite information. Bar seminars were also suggested, and the importance of involving legislators was stressed.

Chapter 22, Section 10, Endangering Human Life. "Product" will be re-defined so that "service" is included. This law simply says that no one is allowed to endanger people's lives and health in order to make money. It does not extend to pollution laws, but it makes Maine a safer place to live. The Federal regulation is there, but this adds another arm of enforcement. It is a gamble on the zealousness of the prosecution system. Diligent lobbyists will be energetic in attempting to defeat it, but that is not a reason to avoid this statute. We are really going after corporate offenses. "Knowingly" requires that notice be given, for instance, of an intolerable level of beryllium. If nothing is done, the law is twice violated, and the endangering becomes a crime. It was suggested that in any instance where an individual has been given time to comply by one responsible for enforcing the codes, this statute would not apply. Put to a vote. this section was carried.

Chapter 29G, Fraud. There is no uniform deceptive practices act. This is designed to control practices which are essentially fraudulent, consolidating Maine provisions, which are scattered. Sub-section 1 of Section 1 lists what cannot be done. Sub-section 1F: add "altered." Sub-section 1E should have provision for disclosing knowledge of change. Sub-section 4: read "Class D" instead of "misdemeanor." Section 1 as amended was accepted.

Section 2, Defrauding a Creditor. In sub-section 1-B2, "orally or" will be eliminated. In sub-section 2, and throughout section 2, "administrator" will be changed to "assignee for the benefit of creditors." Section 2 was accepted with these changes.

Section 3. The title will be changed to "Misuse of Entrusted Property." No provision for negligence will be included, this being judged a violation of duty. Section 3 was then accepted.

Section 4, Private Bribery is an all-new section, in addition to bribery of public officials. In sub-section 1A, read "to" for "upon." Prof. Fox will draft a section covering false advertising. A disclosure requirement is what we want. Section 4 was then accepted.

A brief discussion of Chapter 29F, Prostitution, resulted in a decision to take up the matter again at a later meeting.

Adjourned 3:45 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken
and transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met May 8, 1974, at the Augusta Civic Center, with the following present: Chairman Jon A. Lund, Peter Avery Anderson, Dr. Willard D. Callender, Jr., Richard S. Cohen, Edith L. Hary, Lt. Jerry F. Boutilier, William B. McClaran, Garrell S. Mullaney, Errol K. Paine, Hon. Harold J. Rubin, Jack H. Simmons, Lewis V. Vafiades, Hon. Robert B. Williamson and Professor Sanford J. Fox.

Before taking up the agenda, conversation revolved around the problem of placing sentencing responsibility with the Department of Mental Health and Corrections, or with the courts. The implication of recent judicial decisions has a bearing on our recommendations, and we are obliged to consider the political angle. The Department has suffered budgetary cuts, especially in personnel, and this means our original thinking on sentence referral should be modified. The discretion of the court is traditional. We may have to make more categories, and define more closely, and also look at overlap in sentences.

Chapter 29D, Section 5, Escape, consolidates a lot of existing statutes, defining escape from different institutions under different circumstances. Sub-section 2A. The word "not" was deleted, and it was voted to add that resisting illegal arrest, with no use of force, shall not be an offense. Sub-section 3 will include probation and parole, as being considered official custody. Venue will be where arrested, or where any elements of the offense occurred. The expense is to the county now, but we can incorporate a general venue provision with the statewide court system, if and when it comes. Decision was postponed on consolidation of existing offenses. Word changes: "Bureau of Corrections" to "Department of Mental Health and Corrections"; "pursuant to" to "as a result of." An exception will be added to the

under-18-year-olds to cover the escape of those judged to be incorrigibles.

Sub-section 4. Force means force against a person; this will be clarified. Discussion followed of escapes from various places -- from courts, or from the State Prison, escapees from the latter being more dangerous persons. It was suggested classifying the offense as a B, or even an A if a gun were involved, and making escape without force a C.

Professor Fox will prepare a new separate section for the crime of escape when it is deviation from place or route of temporary leave, specifically on prison furlough or work release.

Section 6, Aiding Escape. After a discussion of what really constitutes contraband (anything which is prohibited in the institution, but under this section, intent to use it in aiding escape must be present), and the suggestion that a dangerous weapon should be more serious than other contraband, it was voted to require the prosecution to make a selection of one charge only, either aiding to escape, or accessory. There is opportunity for multiple indictments, but the prosecution has flexibility and must resolve for the one charge.

Chapter 29G, Fraud. Sections 5 and 6 were accepted, although it was felt that with only a D classification, difficulty in making arrests could be experienced, and there was some sentiment for authorizing the police to arrest on probable cause.

Chapter 26, Section 3, Possession of Burglar's Tools. A move to delete this section lost. It was argued that it would give police an opportunity to arrest in suspicious circumstances, but would be subject to mis-use and could be used as a tool to make an otherwise illegal search. It was also pointed out that an officer's badge was his authority, and the various police forces were no more riddled with corruption than other professions. The question was raised as to whether this section would be a real deterrent, but with an amendment to write in protection of police acting on good faith, it was

accepted. A further amendment was offered to require authorization of prosecutor before a complaint is issued, with protection of the officer in case of non-issuance of the complaint (and if declined, the test of the officer's liability to be his good faith). This failed of passage. Examples of illegal use of keys and ingenious slugs were described in off-the-record conversation.

In sub-section 1, word changes: "vehicle" will be changed to "lock"; "a criminal offense" to "any such offenses."

Section 4, Trespass by Motor Vehicle. This section (labelled a "$20.00 case, with court-appointed counsel") will be re-drafted, with additions:

a 24-hour rule for the built-up section of a community, except for urban community parking lots;

exclusion of claims of right;

presumption of ownership, without which the section would be ineffectual;

the present statute about blocking driveways, the 24-hour rule not to apply.

Chapter 22, Section 11, Terrorizing was briefly considered. The person to whom the communication is made should be the person in fear, but it is unclear. No decision was reached on this section.

Adjourned 3:55 P M.

Respectfully submitted

Edith L. Hary, Secretary

Minutes taken and transcribed by Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met June 10 1974 at the Augusta Civic Center, with the following present: Chairman Jon A. Lund, Edith L. Hary, Daniel G. Lilley, William B. McClaran, Garrell S. Mullaney, Gerald F. Petruccelli, Louis Scolnik, Lewis V. Vafiades and Professor Sanford J. Fox.

The alternative sentencing system, chapters 1A, 2A, 3A and 4A constituted the agenda. Professor Fox explained the features which are different from the present system. A lot of existing discretion is transferred from judges, lawyers, corrective officers, to the Legislature, partly because it is based on diminished reliance on corrections and prison, reflecting our belief that the public is not ready to accept the rehabilitative philosophy embodied in our first proposal.

The alternative chapters provide probation but no parole. Parole is not well designed to accomplish rehabilitation. Probation is more useful. It is neither desirable nor possible to send everybody to prison, but services should be provided for these people.

The new system provides seven sentencing classifications, each with a mandatory feature. We need revision of our prior classification of offenses, because prior convictions, depending on the crime, bring a higher mandatory sentence, at the time of a later conviction. Plea bargaining is still possible, but not on prior conviction.

The new system was warmly and thoughtfully debated. The pendulum of public reaction to so-called "permissiveness" in courts was regarded as extreme, and will probably moderate in time. We should not be influenced from our first proposal, which has flexibility, and expresses more essentially what we want to accomplish in the field of rehabilitation.

The new draft rigidifies the system, tends to eliminate rehabilitation and individualization of sentences. Mandatory sentencing makes it politically attractive, because the public wants to see punishment, and expects an offender to serve a sentence in prison. Our first sentencing structure would not find ready legislative acceptance, and might imperil the whole code, but to incorporate the wider range in the new draft would lessen resistance. The new draft would be more acceptable, but we should write in some flexibility. We cannot count on the Legislature to fund halfway houses and rehabilitative measures.

Because there is no parole in the new draft, a greater burden will be placed on the Prison. We would lose a lot of ground that we have made in getting a man ready for release. Strengthening the parole-probation system held appeal for some, and reserving an institution sentence for those who just cannot make it, especially because some supervision after release is desirable. Criticism of parole does not take into account the amount of success that it has had.

Release on bail pending appeal, and denial of bail as a means of detention were discussed, and examples of malicious mischief given to show that fear of continued vandalism or other harm keeps the system inoperative. We were reminded of the right to trial in ten days. A person can wait in jail until the case comes up. Preventive detention is reasonable in the situation of a repeater or prior conviction, and the case could be advanced to the top of the docket. Professor Fox will put together a bail and bail-on-appeal section for our consideration.

Opposition was not firm to mandatory sentences, but a plea was made for a lower maximum in the whole range of sentences.

The possibility of submitting both the developed sentencing structures to the Legislature was explored, but it seemed too complicated, though candid (one said it would show our "fantastic integrity").

We were urged to approach cautiously with our new recommendations, in view of the new prosecutorial system. The cost of any change was emphasized as a deterrent to passage. Mandatory sentences cost, and it must be explained to the Legislature that every additional crime made mandatory has a price tag.

After laboring over a decision, it was decided that Professor Fox will clean up the offense and sentencing definitions and will bracket for the alternative sentencing title, and that the August meeting will be an extended session to reach final determination on the sentencing problem.

Of the possible August dates (1, 8, 15 or 22), the 15th seemed most acceptable to those present. Unless a major part of the Commission cannot attend at that time, an all-day meeting will be scheduled, beginning at 9:30 A M.

Adjourned 4:30 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met August 15, 1974, at the Augusta Civic Center, with the following attendance: Chairman Jon A. Lund, Peter Avery Anderson, guest Wayne Blacklock, Lt. Jerry F. Boutilier, Dr. Willard D. Callender, Jr., Richard S. Cohen, Hon. Thomas E. Delahanty, Mrs. Caroline Glassman, Edith L. Hary, Daniel G. Lilley, William B. McClaran, Garrell S. Mullaney, Errol K. Paine, Gerald F. Petruccelli, Hon. Harold J. Rubin, Louis Scolnik, Jack H. Simmons, Lewis V. Vafiades, Hon. Sidney W. Wernick, Hon. Robert B. Williamson and Professor Sanford J. Fox.

One more full meeting is anticipated, this to include reviewing Title 17 offenses. September 16 was set for this meeting.

The work session opened with Prof. Fox reviewing briefly the sentencing structure developed by the Commission in 1973, and the alternative proposal now being considered.

Various possibilities of loosening the term were explained. Parole can be manipulated. Sentencing clauses are open to definition. The basic decision is: is it ever appropriate for the Legislature to say that a judge has no discretion to determine whether or not anybody can be locked up? This does not eliminate probation. A mandatory sentencing structure can include a specification that a person may not be locked up.

The apparent change of the Commission's philosophy regarding mandatory sentencing was explored at length. A noticeable inclination toward giving the court discretion developed. The public's concern with invisible authority was emphasized, the feeling being that a judge is visible, and the Bureau of Corrections less so. We should find a way to impart more information to the public, which does not understand, for instance, that "five to ten years" really means 3.8 years.

Elimination of the Parole Board was advocated by some, who felt that a return to court for review (perhaps at a certain point in the sentence) was preferable; and that the judge should specify initially the earliest date an offender could be subject to release. The term could be set, less good time and dead time, and the judge should so word the sentence.

A motion was carried that any proposal regarding sentencing providing discretion in the court (i.e., imprisonment) include a provision that the judge may suspend or unconditionally discharge.

A motion carried that for any sentence which can be suspended in whole or in part, the judge may give a split sentence (and if probation is violated, the rest of the sentence must be served).

It was also voted that the initial period served in Thomaston in a split sentence be limited to not more than ninety (90) days.

It was voted that the court be authorized to sentence to a particular institution, and that the institution on its responsibility may ask the court for early release under such terms as the court may determine, with the proviso that notice be given to the victim of the crime, the judge to retain the right to summary denial.

It was voted that the court be authorized to sentence offenders up to twenty-six years of age to South Windham without parole, for not more than five years, less good time and dead time. Judge Williamson went on record as saying that if he had a vote, he would vote against this.

Rehabilitation was discussed at length, and programs existent or prospective at Thomaston and South Windham were described, also the possibility of making South Windham a minimum security institution, and Thomaston a maximum.

A trend toward accepting some parts of the original sentencing draft, and some of the alternative, developed. Although a suggestion was made to offer the Legislature choices, specifying priorities in our estimation, stronger voices insisted that we should come up with a code as nearly as possible representing the Commission's collective judgment. It is realized that the Legislature can alter it, and will make the decision anyway, regardless of our recommendation.

Prof. Fox will endeavor to incorporate today's comments and bring a new draft to the September meeting.

Adjourned 3:10 P M.

Respectfully submitted

Edith L. Harry

Edith L. Harry, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met September 16, 1974, at the Augusta Civic Center. The following were present: Chairman Jon A. Lund, Lt. Jerry F. Boutilier, Dr. Willard D. Callender, Richard S. Cohen, Hon. Thomas E. Delahanty, Mrs. Caroline Glassman, Edith L. Hary, Garrell S. Mullaney, Hon. Harold J. Rubin, Louis Scolnik, Lewis V. Vafiades, Hon. Sidney W. Wernick, guest Wayne Blacklock, and Professor Sanford J. Fox.

A communication from the Evidence Revision Committee was introduced, requesting our Commission's counsel on the exemption of certain proceedings from rules of evidence. Recommendations after consideration of the points were:

Proceedings for extradition -- not to exclude.

Preliminary examination -- not to eliminate the rules of evidence.

Detention hearing in criminal cases -- eliminate the rules ("make it informal").

Sentencing -- rules should not apply.

Revoking probation -- rules should apply.

Issuance of warrants for arrest, criminal proceedings, and search warrants -- rules should not apply.

Juvenile proceedings -- rules should be retained in adjudication, but not disposition.

Scope of the informer privilege -- unanimously voted to pass over.

It was decided to strike our provision about presumption, which is properly in the evidence, rather than criminal, code.

Chapter 34, Section 2, Imprisonment for Crimes Other than Aggravated Murder or Murder. Good time was immediately brought up, and the lack of understanding by the public which contributes to lack of confidence in the court. Warden Mullaney explained the system and the Federal law which regulates the matter. Various ways were explored of making the sentence visible, the actual time served known to the public.

Present good time is seven days a month. The New England average is ten days, and some states award a higher amount. It was voted to establish good time in Maine at ten days.

Section 4, Release from Imprisonment, Sub-section 2. The Commission considered the non-uniformity of a "life" sentence, and debated whether a distinction should be made between murder and aggravated murder. If mandatory life sentence is pronounced, there will be no deception about how much time is served. Either mandatory life sentence or twenty-five years for aggravated murder should mean a lesser sentence for non-aggravated murder, such as no less than twenty years. If a life sentence is determined, provision for requesting a reduction after a specified time could be written in.

A move to fix the sentence for aggravated murder at mandatory life with only the governor's pardon and commutation authority, and the sentence for murder at any term of years not less than twenty, failed to pass.

A move was passed to retain the mandatory life sentence for aggravated murder, with the eligibility to petition the court at the end of sixteen years, (but see later action on Criminal Homicide I) and request a commutation to no less than twenty-five years, which with good time allowance would require actual time served of approximately 16.78 years.

It was voted to change the terminology in Chapter 22, Offenses Against the Person, in sections 1 through 6. These will now be labelled Criminal Homicide in various degrees.

Some thought new terminology would present difficulties, but others pointed out the wisdom in removing some of the public's emotional response by using neutral terms.

The sentence for Criminal Homicide I will be mandatory life as voted for the former Aggravated Murder, but after having served actual time of fifteen years, a petition to the court may be made to have the term reduced to not less than thirty years, which with good time allowance would require actual time served of approximately 20.14 years.

For Criminal Homicide II, it will be any term at the court's discretion, but not less than twenty years. In a sentence for twenty-five years or more, a petition to the court may be made at the end of twelve years, for a reduction of the sentence to not less than twenty, which with good time allowance would require actual time served of approximately 13.42 years.

In Chapter 34, Section 2, sub-section 2-A, thirty will be changed to twenty for Class A.

A blanket recidivist statute was considered, and it was decided to keep the present law which is discretionary. Any prior conviction within ten years will mean, except for Class E, moving up one class, except for Class A, and that will bring a ten-year increase. Consecutive sentences will be left to the judge, who may make the sentences run consecutively, up to the maximum.

The next meeting was set for Tuesday, September 24, 1974, at 9:30 A M, at the Augusta Civic Center.

Adjourned 4:00 P M.

Respectfully submitted

Edith L Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met September 24, 1974, at the Augusta Civic Center. The following were present: Chairman Jon A. Lund, Dr. Willard D. Callender, Jr., Richard S. Cohen, Gerrell C. Mullaney, Gerald F. Petruccelli, Louis Scolnik, Hon. Robert B. Williamson, and Professor Sanford J. Fox.

It was proposed to make the effective date of the Code March 1, 1976, rather than January 1, to allow for possible legislative amendments. Title 17 can remain on the books, to include those statutes which we do not change. Our Code will then become Title 17A. We will repeal selectively.

A list of items for repeal consideration was presented:

Obscenity -- we will not re-state, and will exclude from the repealer.

Subversive activities -- can be re-drawn with no trouble.

Treason -- repeal.

Oleo -- repeal.

Cure for venereal disease -- repeal.

Boxing -- leave, but insert an exemption for non-profit organizations.

Budget planning -- leave as is.

Bucket shops -- eliminate from Code.

Champerty -- an ethical problem; we will leave it in, but modernize the language.

Blacklisting -- leave it in.

Religious holiday -- leave it in.

White cane law -- leave it in.

Libel and slander -- repeal.

Litter control -- leave it in.

Nuisance statutes -- leave in.

Consecutive or concurrent sentences came up again. The decision should be discretionary but with guidelines, the court setting forth its reasons. Consecutive sentences will be only in unusual cases, justified by the court, and cannot exceed the maximum for the most serious offense involved. The attempt to eliminate sentencing inequities would be taken care of by a specification that the court must consider not only the offense, but also the offender.

Any violent offense in prison, escape from prison, and offenses against the prison staff, shall be mandatory consecutive.

Assigning classifications next received attention.

Homicide III (felony murder) will be Class A.

Criminal Homicide IV. A move to eliminate section 3, sub-section 2, lost. Section 4, sub-section 2, was accepted as written.

Section 5 was approved.

The question of re-defining lesser included offenses was debated. We want to prevent a jury's compromise verdict, but we do not want to jeopardize the right to trial by jury. It was decided that the court be not obliged to instruct on what would otherwise be a lesser included offense where it has no rational basis for finding the elements of such offense.

Section 6 will be Class D.

Section 7 will be Class D, and the term "Assault" will be retained.

Section 8 will be Class B, and the term "Aggravated Assault" will be retained.

Section 9 will be Class D. Some adjustment of phraseology will be effected.

Section 10 will be Class B. Wording will be altered to read "...to protect persons employed by him, or consuming his products...". A brief discussion followed, as to where enforcement lies. There is no worry until bodily injury occurs. We are concerned that the little guy doesn't take the rap, that the law reaches the one with responsibility; and therefore Chapter 12, Section 13, requires some adjustment by Professor Fox. It will be amended to restrict responsibility to high managerial positions.

Chapter 22, Section 11, will be Class C.

Section 12 will be re-named "Reckless Conduct" and assigned Class D.

Chapter 23, Sex Offenses, Section 1, sub-section 1-D. The bracketed words will be included. In sub-section 3, the corroborative stipulation will be eliminated.

Inasmuch as the attendance was small, it was decided not to take up further discussion on change of form. Professor Fox will proceed to assign categories as the general sense of meetings has indicated, and can send by mail such a tabulation. Members can then register objection or agreement.

The recent Corrections Task Force report was referred to, with a plea that our Commission take into consideration its recommendations. It was argued that our present sentencing policy is a compromise between our first draft and the alternative, and that we should leave an option for the judge to sentence to the Bureau of Corrections for a community program, or an individualized plan to be administered by Corrections. The elimination of the Parole Board should mean that more money will be available for halfway houses and better probation.

Titles 15 and 34 will be pieced together and brought into Title 17.

The next meeting is scheduled for October 10, 1974, at 9:30 A M.

Respectfully submitted

Edith L Hary

Edith L. Hary, Secretary

Minutes taken
and transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE REVISION OF THE CRIMINAL LAWS

The Commission met October 10, 1974, at the Augusta Civic Center. The following were present: Chairman Jon A. Lund, Peter Avery Anderson, Richard S. Cohen, Lt. Jerry F. Boutilier, Daniel G. Lilley, Garrell S. Mullaney, Ward E. Murphy, Jack H. Simmons, and Professor Sanford J. Fox.

Chapter 12, Section 9, Mental Ability to Stand Trial. A strict time limitation is imposed on the determination whether to stand trial, but the trial will go ahead anyway. The outstanding rule proposed by sub-section 7 is that the court grants no continuance on the grounds of the defendant's incompetence. Sub-sections 7A, 7B and 7C show how to modify the trial to take into consideration the mental incompetent's disability. One of the major purposes is to separate the trial for crime from the hearing to establish mental disability, thus separating criminal liability from commitment to a mental institute. One is not affected by the other.

The otherwise applicable rules of procedure in relation to the defendant's disabilities should be applicable. If on the defendant's initiative, the court waives a rule of evidence, the rule is waived for both parties in that direction. This makes the court a "big brother" to the defendant, but insures a fair trial for the defendant who is incompetent to stand trial. If the defendant is judged guilty, it plugs right into the sentencing procedure. Chapter 12, section 9, was approved.

An effort should be made to get some remedial disclosure to compensate for lack of information from the mentally disabled client. It is needful to articulate the misconception about the admissibility of mental abnormality evidence is always admissible if it raises reasonable doubt about any element [illegible].

Section 10, sub-section 4, will be moved to General Principles, a move to drop it having failed of acceptance.

Section 10, sub-section 3. It was voted to alter by stipulating that once there is some evidence raising the question of sanity, the State shall have the burden of proving sanity beyond reasonable doubt.

Section 11 presents a procedure for bifurcated trial. It is very close to the Wisconsin law which is working well there, and not causing delay. Approved, with this modification: that the defendant should be able to get the insanity issue tried by a judge, even if the first phase of the trial was before a jury.

Section 10 is a particularized statement of the rule, and not an insanity defense. The advantage in this formula, widely adopted, is that other jurisdictions will understand Maine's law. Capacity, rather than symptoms, is considered.

At the break for lunch, it was noted that a newsman had been present during the latter part of the morning. The Chairman introduced the question of the presence of any reporter, and the Commission unanimously voted that the remainder of the day's meeting would be held in executive session, and the newsman was so informed.

Chapter 29A is substituted for the chapter on conflict of interest. Discussion centered on requirement of disclosure, and consideration of placing a limit on the amount of contribution, and a requirement to keep records. This chapter was accepted, and Section 2, Bribery, was declared a Class C offense.

Chapter 25, Section 11, will be amended to make clear that sub-section 1 rule relates to trade secrets as well.

Chapter 28, Section 11, is new, was approved, and assigned to Class D.

Sections 12, 13 and 14 are taken straight out of present law, and were accepted.

Chapter 28, Section 10. The question of shooting dogs which are harrassing cattle, sheep or chickens resulted in a decision to include protection for a person who destroys such a dog. We will include justification to use reasonable force to eject a trespassing animal.

Sub-section 1-E will state that it is cruelty to animals to keep sheep on barren or uninhabited islands.

Cruelty to animals will be Class D.

Chapter 29 I, Criminal Use of Explosives and Related Crimes. In Section 1, sub-section 1-B, insert the word "sends" after "transports." Sub-section 2-B will read "'Regulations' means the rules, regulations, ordinances and by-laws issued by lawful authority pursuant to T 25 sec. 2441."

A discussion of the use of mace brought a suggestion to allow law enforcement use in more expanded circumstances than when a gun may be used (to break up a fight, control riots, for self-defense). After a consideration of circumstances which might justify its use, the damage it can cause, and examples of experiences with it, the decision was for an ad hoc rule that disabling chemicals are a non-deadly force for law enforcement purposes.

Section 1 will be Class C. Section 2 will be Class D. Section 3 will be Class E.

General agreement was reached that use of a deadly weapon increases the seriousness of an offense, and except regarding crimes already labelled Class A, an offense committed by use of firearms is one grade higher in sentencing.

The sentencing classification is to be distributed for review.

Chapter 11, Section 10, sub-section 3-C: instead of "law-abiding," we will use the "ordinary reasonable prudent man" definition.

Chapter 12, Section 3. The problem of a 17-year-old offender's reaching his 18th birthday before he comes to trial, and no court therefore having jurisdiction, was solved by stating that any juvenile law would apply.

Section 4. Re-phrasing will follow existing language: "firmness of a reasonable person."

Chapter 23, Section 1, sub-section 3. The Commission moved to strike out the necessity for corroborative testimony. Sub-section 1-D, the words "buttocks, or female breast" will be stricken.

Chapter 11, Section 8, sub-sections 2-A and 2-B will be modified in view of our creating more sentencing provisions: 2-A will carry a limitation of 6 years; 2-B will carry a limitation of 6 years for Class C, and 3 years for Classes D and E.

Professor Fox will communicate with West Publishing Company regarding the printing schedule, and if it is unsuited to our needs, Tower Printing Company will be considered. Chairman Lund will work with Professor Fox on the printing.

Chairman Lund will accept responsibility for arranging to have the code introduced in the Legislature. It was urged that at public and legislative hearings the Commission members attend and support the code.

A move to close the executive session passed, and in open meeting the code, with minor word changes, but no policy change, was unanimously accepted.

Adjourned 3:15 P M.

Respectfully submitted

Edith L. Harry

Edith L. Harry, Secretary

Minutes taken and transcribed by Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met December 16, 1974, at the Augusta Civic Center, for a final review of the proposed Criminal Code. Present were: Chairman Jon A. Lund, Peter Avery Anderson, Mrs. Caroline Glassman, Edith L. Hary, Garrell S. Mullaney, Ward E. Murphy, Gerald F. Petruccelli, Hon. Harold J. Rubin, Hon. Louis Scolnik, Jack H. Simmons, Lewis V. Vafiades, Hon. Robert B. Williamson, and Professor Sanford J. Fox.

Chapter 28, Section 16, Subversive Activities. It was agreed that the behavior here described is controlled elsewhere in the Code, and after considering the infrequency of treason against the state, it was voted to delete this section. (17 MRSA 3651 will be repealed.)

The split sentence provisions were considered, and the 90-day limitation was removed. The court may require imprisonment in a designated institution for any portion of the probation. If the initial period of the probation is to be in the State Prison, that period shall not exceed 90 days.

A move to adopt the double jeopardy provision as set forth in the model penal code was carried.

The offenses of being under the influence of drugs in public, and of glue-sniffing, were deleted.

Chapter 23, Section 5, Sexual Abuse of Minors, was reviewed, and the problem of setting the age differential was discussed. The final decision was to amend by adding that the actor be at least three years older.

The discontinuance of the Parole Board was discussed, and a method for providing supervision while phasing out the Board, and also after it is no longer in operation. No action was felt necessary at this time.

Miss Hary explained the prospective printing plan. The Code will be filed (or pre-filed, if time permits) as a legislative bill, and printed as a legislative document. It is estimated that this should be available by mid-January, and it will be distributed to a statewide list, including the judiciary, bar, legislators, police chiefs, libraries, colleges, medical associations, district attorneys, Commission members, and press.

Professor Fox's comments in appropriate places will serve as the statement of facts, and he will write a brief analysis of substantial changes, which will be especially useful for the press, as well as for any who do not want to study the entire Code.

Proposals for publicizing the Code included a press conference, seminars, TV appearances, public hearings, as well as the usual legislative hearings. From these we may pick up suggestions and comments which can be considered for amendments. The Chairman will keep in touch with these matters, and notify Commission members when their appearance is desired.

It was agreed that although each member has a right to express his individual opinion, as a general policy, statements in public should be to the effect that there have been dissenting judgments on some individual issues, but the Commission supports the Code in whole.

Adjourned 2:15 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and transcribed by
Mrs. Hilda M. Jacob

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

A public meeting was held in Bangor, at the Holiday Inn East, on Thursday, February 20, 1975, at 7:00 P M. Attending were Chairman Jon A. Lund, Peter Avery Anderson, Errol K. Paine, Lewis V. Vafiades, and approximately sixty interested persons, including Representatives Stephen T. Hughes and James S. Henderson of the Judiciary Committee.

Mr. Lund opened the meeting with introductory remarks outlining briefly the work of 2½ years, stressing the compromise nature of the final draft, and mentioning the further hearings scheduled.

The first comment referred to the marijuana issue, and Mr. Vafiades explained the difference between criminal and civil penalties.

Ben O'Leary, a 9-year Navy veteran, presently a University student, asked how section 62 on page 23 affects civil society, saying that he would expect to find this in Title 32A (military code). Mr. Paine answered that it was designed more to deal with the problem of the National Guard shooting students (Kent State) and not actual war situations (My Lai). The possibility of prosecution under this section was explored; the definition of "reckless" (p.11) was pointed out; and Mr. O'Leary decided that "probably" the section was good and should be here.

David Cox quietly de-fused the marijuana issue by saying that "it may be a red herring," and although he does not favor decriminalization and thinks the Legislature will not accept it, it does not merit discussion because there are much more important issues in the Code.

Mr. Cox, of Brewer, is District Attorney of District #5 (Penobscot, Piscataquis.)

Questioned, Mr. Cox said he had not experienced more pressure lately in marijuana cases, that he would not want to treat it as a felony, but neither as equivalent to a traffic offense.

He spoke favorably of the drug provisions being clarified, saying they will make it easier to bring someone before the court.

Intoxication as a defense (p.6) was discussed, the intent, and whether a matter of semantics is involved. Mr. Lund said the Commission did not intend to work any change in the present law, and the matter would be reviewed with Professor Fox.

Don Holley, Probation and Parole officer, of Bangor, believed that the definition of intoxication needs further clarification (beyond Mr. Lund's illustrative verse), and the language strengthened to be sure "substantial" disturbance is described.

Separate trials or one (p.13) sparked comment. Eva Garnett of Steuben favored trying an offender for each offense, each time the law is broken, and not for one selected offense.

Mr. Cox referred to section 52 (p.14). Mr. Lund said that the purpose of this section is to see to it that crimes are those that are published. This led to discussion of whether the cop on the beat is enforcing or interpreting the law, and Mr. Paine said he thought that the jury did not expect the officer to interpret the law. Mr. Cox recommended tightening the definition if we are going to use it.

David Fuller of Bangor brought up common law offenses, and Mr. Lund said that the Code makes an effort to spell out just what crimes exist.

Thelma Look of Washington County, as a representative of the County's Municipal Officers Association, expressed concerns: the use of another's vehicle, leniency shown criminals, lack of protection for the citizenry, and the prevalence of unpunished vandalism. A particular case was described, in which she said vandals (with arms and drugs) were brought to court, but the case was dismissed without the knowledge of the sheriff and other officers.

Mr. Vafiades assured her that the Commission had concern about these matters, but that we should not lose sight of the fact that we are a country of law. Mr. Lund added his appreciation of her distress, saying that there is a limit to what can be done in a criminal code, and beyond that, citizen involvement is needed.

The provision regarding fines (p.144) and restitution were also matters of concern to Mrs. Look. She registered an objection to plea bargaining, and Mr. Vafiades pointed out that it has to be done in open court, which is good insurance against the kind of situation she described. Mr. Henderson said that other issues before the Legislature will also help in this field.

A representative of the press inquired about the legislative procedure for the Code. Mr. Lund explained, and Mr. Henderson listed the various hearings scheduled, adding that separate sections would have individual hearings.

To a question about how the Criminal Code was coordinated with the work of the Corrections Task Force, the answer was that it wasn't: that the Code was essentially reducing a patchwork to logical sequence, and was really a restatement with an attempt to make the penalties logical.

Mr. Holley referred to pages 140 and 141, the manner of serving the sentence, and explained community-based correction programs.

The classification table on page 5 was briefly questioned for information.

A question was raised about section 510E (p.77). Does this mean only sheep, or any animal? The answer: the judge says maybe goats -- anything that couldn't forage for itself would die overnight.

On this note, the meeting closed at 8:40 P M. Several persons spoke to the Chairman and Commission members afterward, not for attribution, including one homosexual who expressed satisfaction with the way the Code handled sexual matters.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

A public hearing was held in Chase Hall, Bates College, Lewiston, Tuesday, February 25, 1975, at 7:00 P M, with a total attendance of 26, including Commission members Jon A. Lund, Richard S. Cohen, Edith L. Hary, and Jack H. Simmons; and former member Hon. Louis Scolnik. The chairman introduced also Judiciary Committee members Robert W. Clifford, Samuel W. Collins, Jr., Roland A. Gauthier, James S. Henderson, Stephen T. Hughes and Margaret B, Miskavage.

David Williams, a Yarmouth attorney, expressed general support for the Code, approved removing "clutter" from the courts, but said he was disappointed that the Code didn't remove squealing tires and noisy mufflers, and otherwise give attention to motor vehicle laws. It was explained that a separate study should deal with such laws, they being more civil than criminal in nature.

The obstruction of public ways, loitering, prowling, and the possibility of the sections on disorderly conduct becoming a cover for harassment of youth, were the basis of Mr. Williams' comments. (Chapter 21, sections 501, 502, 505.) He recommended drawing a more narrow statute to protect the freedom of assembly and speech, and favored saying what is not a crime. He felt that the Model Penal Code (250.6, 250.7) contains clearer wording.

Mr. Simmons explained that the Commission had consulted the Model Penal Code as well as other codes, and spoke of the drafting danger in writing negative statutes, which tend to be self-limiting. As the statutes are applied, he said, the courts will set the perimeters.

Mr. Williams said the word "reasonable" should be defined; that although it has been in the law a long time, it is constitutionally vague, subject to misunderstanding by the average citizen.

Mr. Williams accepted the invitation from Chairman Lund to submit to the Commission his comments in writing.

Thomas E. Delahanty II, District Attorney for Franklin, Androscoggin and Oxford Counties, applauded the Commission for its work, and said the Code was not to be looked at lightly. He liked the sentencing structure, the elimination of the Parole Board, the classification of crimes, and the definition of "dwelling place."

The definitions of "armed," "deadly weapon" and "dangerous weapon" should be stated clearly. Discussion followed on concealed weapons, the manner in which carried, and the use intended. The Commission members agreed that clarification was needed.

A drafting change will be made to show that the Grand Jury has jurisdiction above Class D.

Section 5-2-B (p.6) came in for some criticism, and the Millett case was discussed for relevancy.

Sgt. Roger Bisson of the Lewiston Police Department expressed appreciation of the difficulties encountered in drawing up such a code, and listed several areas for consideration. Section 752 on page 94 deals only with those in custody. Sgt. Bisson would like to have assault on

an officer not so limited, but have the section applicable to assault on an officer in the line of duty.

Section 209, Criminal Threatening (p.42) was questioned, and the exact meaning of "imminent bodily injury." A class will be assigned.

He recommended expanding section 403 on page 66 to define circumstances in which ordinary household tools become burglar's tools.

On the subject of marijuana he urged setting an age limit, and a specific limit to the amount a person may possess. He made a plea especially on behalf of children uncontrolled by parents, but Mr. Simmons replied that the Commission had not tried to deal with the juvenile law. Sgt. Bisson said he would not argue against decriminalization, but thought it would open a lot of trouble. In general he favored the Code, and felt the sentences were more just.

John Cole, Assistant District Attorney in Mr. Delahanty's office, pointed out an apparent inconsistency in sentencing, which presented opportunity to explain the conversion table. See page 5.

An inquiry about changes was answered by saying that the Commission would offer amendments to the Judiciary Committee after the public hearings and its March 14 meeting.

The meeting closed at 8:45 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission held a public hearing Thursday, February 27, 1975, at the University of Maine Law School in Portland. Over 50 attended, including Commission members Jon A. Lund, Richard S. Cohen and Gerald F. Petruccelli; and Judiciary Committee members Barry J. Hobbins, Philip L. Merrill and Stephen L. Perkins.

Following introductory remarks by the Chairman, Prof. Melvyn Zarr spoke, with particular attention to sentencing and probation and parole. Section 1252 (p. 140) represents to him too radical a change from the present minimum-maximum system which has certain strengths, as well as disadvantages. Prof. Zarr proposed that section 1252 be added to the present alternative, with requirement that the judge choose one or the other, avoiding restriction of "bullet-straight" sentences.

Prof. Zarr did not object to eliminating the Parole Board, on which he has experience of service. He did feel that its functions should be preserved, perhaps by having the judge periodically review the cases. He believes it unwise to permit the warden to screen the cases for judicial review. Mr. Lund pointed out that the Code authorizes the Corrections Department to make such recommendations and does not specify the warden. It would be an administrative matter within the Department. Prof. Zarr insisted, however, that it would be the warden, and recommended that the Code state just who would do the screening.

Ms. J. Mills inquired about section 252-1-B (p.46), and whether it would be rape in the case of a separated couple without a divorce decree. Mr. Petruccelli explained the thinking of the Commission, that the wording had taken into account contemporary living patterns without legalities, as well as the generally understood meaning of the term "spouse."

Frances Harriman, co-director of Rape Crisis Center, spoke on Chapter 11, Sex Offenses, and recommended adding the clarifying word "cohabiting" to the definition of "spouse." She asked the Commission to understand the seriousness of force in rape, the violence and humiliation which could be (especially in the case of a married woman) more frightening than the actual sexual act. Her suggestions were submitted in more detailed form in writing. See enclosed.

Howard T. Reben, attorney, was concerned with section 501 (p. 73), and especially with what was understood to be a "loud or unreasonable noise." Mr. Petruccelli said the Commission had tried to write something which would consider the general affront to public order. Mr. Reben argued that the proper remedy for such behavior would be simple ejection from a public place; that a loud noise should not be a crime. He said that sub-section 2 is good, an attempt to tailor an enforceable standard, but that 501-A cancels it, and he hoped that the Commission would re-consider, and strike 501-1-A. "The purpose is still accomplished," he said.

Sally McIntyre returned the meeting's attention to section 252 (p.46), and said that 19 MRSA 581 bears on the couple living apart, and that the Code would provide no protection in case of rape.

Ted Hoke inquired about the point at which the grand jury enters, and said he thinks the present draft of D crimes is vague.

Steve Hanscom raised a question about section 62 (p. 23), Military orders, saying it is overly broad, and is really covered by section 102 (p. 24). Mr. Lund replied that the Code had attempted to minimize guesswork, and Mr. Petruccelli added that it spelled out some form of protection to the military.

Ellen George queried the Code's provision for bifurcated trials, said it changes Maine procedure, the Comment is not persuasive, and asked "Why not give the judge discretion?" Mr. Cohen emphasized it as an option of the defense, and Mr. Lund said there could be a constitutional problem in not affording the defendant that defense if he wanted it. The Commission thought it should statutorily allow what has been only a judicial decision.

Peter Ballou, Assistant District Attorney in District #2, congratulated the Commission on the overall approach, and expressed general approval. He submitted in writing suggestions which showed serious and extensive study of the Code. He spoke briefly on some of these from a prosecutorial viewpoint: the inclusion of a simulated firearm among weapons, territorial jurisdiction, definition of "appropriate prosecuting officer," immaturity, the value of a blank check, classification of theft offenses, assault on an officer (He was assured that it will be classified.), and arson. See enclosed.

Francis Jackson asked about the definition of imprisonment, and Mr. Lund answered that it included time in maximum security and also a community program, and would include a community program operated by a private house. Under probation conditions, Mr. Jackson regarded unreasonable the requirement to support dependents (section 1204-2-A, p. 136), and asked the reason for it. Mr. Lund said that the court might well find it appropriate to specify this requirement, and Mr. Petruccelli said that the idea of probation was to afford an alternative to going to an institution and necessarily required a restructured and restrained life.

Mr. Jackson criticized the phrase "excessive use of alcohol" (section 1204-2-I, p. 136). The difficulty in determining what is excessive use has led to a probation rule of non-use, he said, and a standard should be set.

He asked if the seven purposes of sentencing (section 1151, p. 129) were arranged in order of importance, and said that nos. 4 and 5 were contradictory. Mr. Lund spoke of the philosophical problem, and invited the submission of a suggested draft. Mr. Jackson said the Code is in many ways an improvement, that the penalties are more consistent, but that he is disappointed in the number of new offenses created, and that decriminalization of some things hasn't progressed to a point he would have wished.

Dan McIntyre spoke about section 404 (p. 67), saying that he had been guilty of leaving his car in an A&P parking lot over 24 hours, and believed it should not be a crime. It was explained that this was intended to cover situations of a high nuisance nature. He also said that the Code placed too high a penalty on the use of slugs in a machine.

Mr. McIntyre contended that section 516 (p. 80) could well be voided, and offered the opinion that in certain circumstances champerty would be a good idea. The Commission members did not go on record as agreeing, but showed interest.

Mr. Hoke spoke again on the matter of restitution, and Mr. Lund said that the Commission regarded restitution as wholesome rehabilitation, and had tried to correct a lack of concern on the part of the courts for the injured citizen. Asked if restitution would be required in cases where there was actual imprisonment, he was told that it was contemplated.

Allan Caron, identifying himself as an ex-convict, focussed attention on section 1252 (p. 140), asserting that the terms set forth would really allow an indeterminate sentence. He believed that contradictions existed, presenting a problem of flexibility at every level. His effectiveness being impaired by personal reaction, he agreed to submit his comments in writing.

Meeting closed 9:45 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob.

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met Friday, March 14, 1975, at the Augusta Civic Center at 10:00 A M, with the following attendance: Chairman Jon A. Lund, Dr. Willard D. Callender, Jr., Richard S. Cohen, Caroline Glassman, Edith L. Hary, Lt. Jerry F. Boutilier, Garrell S. Mullaney, Jack H. Simmons, Lewis V. Vafiades, Hon. Robert B. Williamson, and Professor Sanford J. Fox. Guests with permission to present suggestions and comments were Dr. Ulrich Jacobsen, Charles Leadbetter and Vern Arey.

Each member was asked to name sections which needed discussion, bearing in mind the limited time available. The most important seemed to be insanity defense, jurisdiction of different courts, definition of culpable states of mind, section 210 provisions as bearing on OSHA regulations, and a list prepared by a group resulting from study of the proposed Code by the District Attorneys.

Professor Fox spoke of the justification sections, saying that instead of a black and white situation, mistakes should be taken into consideration.

Dr. Ulrich (Maine Psychiatric Association, consultant in forensic psychiatry at the Augusta Mental Health Institute, work with courts) presented the view of psychiatrists on section 58 (p.19). The definition, and in fact the use, of "mental abnormality" is unacceptable to psychiatrists. He registered strong objections to the court's sending a person to a mental hospital, which means that the court controls the situation, and makes the hospital a pseudo-prison. Dr. Ulrich favored the wording of L.D.550, and said that the English "guilty but insane" would be workable, especially if "more appropriately in a hospital" were added. He insisted that

hospitalization should be a medical decision, as well as treatment and discharge; explained the difference to psychiatrists between personality disorders and real psychoses; and suggested that the proposed Code might be in conflict with Title 15.

After Dr. Ulrich left, a brief discussion took place, on whether to change the proposed wording. L.D.550 is in the hopper, and ultimately the Legislature will decide what wording will become law. Professor Fox said that the Code is not an effort to identify medical terms, but rather to define culpability, adding that if "mental disease or defect" misleads the psychiatrists, we could use "mental disorder" or just "abnormality." A motion to change our present definition failed of passage.

Charles Leadbetter was the spokesman for the prosecutorial study group, reinforced by Vern Arey, both of the Attorney General's staff.

Mr. Leadbetter brought up section 1, sub-section 2, saying it presented a latent ambiguity in cases where the dates of some essential element of the crime cannot be determined. Professor Fox will clarify.

Section 2, sub-section 1 (p.2): the meaning of the word "voluntary" should be spelled out, Mr. Leadbetter said. He referred to the comment on page 51, saying that LaFave and Scott is meaningless to Maine attorneys, and that "voluntary" should mean non-reflexive acts. The Commission agreed to pass over this criticism.

To the definition of "dwelling place," Mr. Leadbetter would like to have an intent to return expressed, this having been a defense. There was no real objection, although Professor Fox regarded it as excess, and said that once you raise one state of mind, you exclude all others. Something can be put in a comment.

Among other definitions deemed deficient was "structure." Although a structure has been traditionally attached to land, and we intended the definition to be comprehensive, we will put something in the comment to make this clear -- that we include, for instance, a trailer.

In Section 5, "abnormal condition of mind" (sub-section 4, p.6) was questioned. The Commission had already been interrogated on the intoxication part. Difference of opinion existed as to whether the Code changes Maine law. It was voted to delete from sub-section 4 "intention, knowledge, or recklessness," and substitute "culpable state of mind."

Mr. Leadbetter was assured that the ability to prosecute under one section did not preclude opportunity to prosecute under another section.

A few other points were raised, but no changes were effected.

Plea negotiations, however, produced discussion which resulted in a vote to delete the subject from the Code, with the understanding that the Criminal Rules Committee would be contacted by Mr. Simmons, with a view to having plea bargaining taken up by that body.

Comments and criticisms received from public and Judiciary Committee hearings were introduced. A suggestion was offered to include a simulated firearm in no. 9 (p.3), but a move to expand to include a toy pistol failed to pass. Latitude is available to the judge, and the defendant can require the prosecution to establish that a deadly weapon was used. Armed with a dangerous weapon should include possession, and the definition shall so say.

Heroin will be reclassified and made one grade higher.

Section 510, sub-section 1-E (p.77) will say "domestic animal" instead of "sheep."

A provision will be added to section 752 (p.94) covering an officer who is simply carrying out his official duties, and known to be an officer. The penalty for this section will be class D.

Recognizing the growing public anxiety for restitution, the Legislature would like a strong statement of policy requiring the court to consider such remedy in all sentencing, and the Judiciary Committee has requested this statement. Professor Fox will add to the general purposes of sentencing, listing restitution as a benefit to the offender as well as the victim.

The Commission admitted that ordinary household tools become burglar's tools on occasion, but did not change the wording of the Code, simply stating that intent must be proved.

The Commission thoroughly considered submitted suggestions on sex offenses and prostitution, but was not inclined to accept the many changes proposed. Section 251, sub-section 2 (p.45): "3 months" and "one month" will be changed to "90 days" and "30 days."

Warden Mullaney expressed concern that section 1252 (p.140) will mean an increase in Prison population that will exceed the capacity of that institution. He would like to receive only class A, B and C offenders, and have first offenders and those receiving less than a year to go to the county jails. He said that the District Court should not be able to sentence to Prison. Justice Williamson agreed. A more direct description of the sentencing problem should be written. Mr. Mullaney expanded on the problem of the disruptive influence of young persons, their short term rendering it impossible for them to fit into any program. A motion to exclude the District Court from sentencing to State Prison failed to pass. A point was made that the Bureau of Corrections could transfer the offender.

Section 53, sub-section 1 (p.15): "at the time of the proceeding" will be changed to "at the time of the offense."

Section 404 (p.67): motions for changes failed of acceptance.

Attention was given to section 210 (p.42), which, it was said, probably would not pass in its present form. A compliance agreement having been entered into should be a mitigating circumstance, and the penalty should be graduated, depending on whether or not injury actually occurred. Illustrations were offered: the urban problem of housing, the Cocoanut Grove fire. The result of the deliberation: immunity during formal compliance period; a two-step penalty; bodily injury having occurred rates class B, without injury rates class C.

Section 203, sub-section 2-B (p.39), and 2-C (p.40): "dangerous weapon" is sufficient. Surplus language will be omitted, as Mr. Leadbetter suggested.

The meaning of "extreme emotional disturbance" was taken to be equal to "heat of passion," and suddenness should be an element, said Mr. Leadbetter. He queried inclusion of mental retardation. The statement was made that the court has rejected diminished responsibility.

Ralph Lancaster's letter next received attention. On the matter of private bribery, the answer was that chapter 25 does not deal with private bribery, but is trying to keep the government honest. Professor Fox will, however, make the language consistent.

Robert Ericson, State Chemist, will be asked to check paragraph D.

Paragraph G did not meet with agreement of the Commission, which said that there is a crime of recklessly endangering human life, but that just using a different ingredient in compounding should not be a crime. Professor Fox will make suitable addition to the comment.

The answer to paragraph H was that section 2215 was repealed because it serves no useful purpose. Paragraphs I and J were passed over. The criticism of "usable" (sec. 2383, p. 154) was answered by saying that the Commission intended to exclude petty amounts. Paragraph L: Professor Fox will consult 22 MRSA 2387 for an answer.

On the argument that marijuana is less harmful than tobacco and alcohol, it was agreed that Chairman Lund will tell Mr. Lancaster that the Commission members examined different authorities, and found especially convincing the book LICIT AND ILLICIT DRUGS by Edward M.Brecher (Consumers Union Report).

The desirability of appearance of Commission members at Judiciary Committee hearings was emphasized, and the dates of the hearings announced.

The possible continuance of this Commission or a similar one, to draw up model charges, indictments, and jury instructions, was explored. Some courts (including Federal) use such jury instructions and find them useful. Justice Williamson will consult our other consultants for a view of this matter. An additional grant might be obtained for such work, as well as for an educational program to provide further acquaintance with the Criminal Code. Chairman Lund mentioned the TV film , now in the planning stage.

Other functions of a continuing group were put forth: to look at sentencing practices, to develop remedies for Mr. Mullaney's problem, to examine future amendments and fit them in properly. The meeting decided that the Chairman should discuss with the Judiciary Committee the possibility of a continuing commission, and provision for membership, in case it seemed advisable to have legislative authorization at the present session.

Adjourned 5:00 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

A meeting of the Commission was called for September 17, 1975, at the State House, in Augusta, at 11:00 A.M. Present were Chairman Jon A. Lund, Richard S. Cohen, Caroline Glassman, Edith L. Hary, Daniel G. Lilley, Gerald F. Petruccelli, and Professor Sanford J. Fox. Invited to attend and present were John N. Ferdico of the Attorney General's office, and members appointed from the Judiciary Committee to work with the Commission: Senators Samuel W. Collins, Jr., and Robert W. Clifford and Representatives James S. Henderson and Stephen L. Perkins.

The chairman expressed appreciation to the Commission and to the Judiciary Committee for cooperation and time spent at meetings and legislative hearings; and read the legislation which extends the life of the Commission until March 1, 1976.

An agenda was informally suggested: the impact on regulatory agencies, proposed legislation, activities of the Commission in the next few months, indictment forms, jury instructions, marijuana case procedure, education, and funding.

Members of the Judiciary Committee spoke of several areas which should or might warrant attention during this period, and Commission members suggested others: offenses now outside the Code, model complaint forms, pattern jury instructions, analysis of the jury system, the educational effort authorized by the Legislature, valid points made by attorneys in letters which should be answered, any inconsistencies in and amendments to the Code.

Problems and comments can be solicited in the next Bar Bulletin, and at the November seminar for trial lawyers. Chairman Lund and Edith Hary will consult about this.

Regulatory agencies. The Code will have some impact on the enforcement elements of state regulatory agencies. Attorneys assigned to these departments will be asked to undertake an analysis of this effect. It was voted to formalize the request by a letter from the Commission, developed by the chairman, to the Attorney General, requesting the analysis. The effect of the Code on municipalities should also be explored. A letter from the Commission to municipal attorneys would alert them to examine the Code.

Marijuana. The question of civil procedure in marijuana cases was raised, and it was pointed out that marijuana fines have helped to support the Court. A lot of previous crimes will become civil matters, and agencies will have to decide what to do. They may ignore, or say they haven't the capacity to enforce, passing the authority to the Attorney General, or the District Attorneys. For traffic violations, an actual physical form exists, and such a form should be developed for marijuana cases. It would be useful to find out how Oregon has handled this.

The Rules Committee is working on a rule in connection with the traffic ticket. A copy of its draft will be made available to Prof. Fox and for the Commission to look at at the next meeting.

Education. A request for a grant from the Criminal Justice Planning and Assistance Agency will be developed to employ an attorney to coordinate educational seminars, meetings, or courses for law enforcement officers, and would not include the Commission's activities. "Private" courses now being taught are not sufficient.

A team effort is contemplated, involving District Attorneys and personnel of the Attorney General's office. That the assignment would be too much for one person was agreed, and the possibility of hiring a professional teacher to do a video tape for courses was discussed, this tape to be accompanied by a lawyer-instructor to answer questions. Another suggestion was to place several of the tapes around the state (the LEPAA has funded fifteen or twenty video tape systems; all UofM campuses are so equipped). To confine this effort to law enforcement officials was thought to be inadequate: any interested should have access to the information and explanation -- the bar, the general public, for instance.

It was voted to have the chairman increase the grant application to include hiring a professional teacher to do the tape, and include in the statement availability by the general public and the bar. The Commission will sponsor, but the grant will be to the Attorney General. If the Legislature terminates the Commission next March 1, the grant can be revised to turn it all over to the Attorney General.

Commission activities. It is important to have liaison with the legislative screening committee for proposed legislation, so that the Commission's reaction to suggested amendments will be available to legislators.

Concern was expressed about commissions which are created for specific purposes or periods, but then extend their lives for one reason or another. The pros and cons of extending this Commission were discussed. It was agreed that an indefinite extension should not be anticipated, but that it would be useful to have a group to which questions could be referred. If a funding request were modest, the Legislature might approve. Proper reasons for an extension are to

analyze the impact on regulatory agencies, to sponsor the grant for educational purposes, and to examine the offenses outside the Code, as well as to serve as a group to answer questions and view prospective legislation affecting the Code.

A final motion was passed to authorize the chairman to request a second grant of the Criminal Justice Planning and Assistance Agency to include the things discussed.

Indictment forms, Jury instructions. A difference of opinion was noticeable: whether or not the Court would approve, what other states have done, actual usefulness, "canned" jury instructions, the matter of Commission priorities -- all were debated. A motion that the Commission should not, as a policy matter, undertake preparation of indictment forms, passed. Inasmuch as a quorum was not present, the matter could be reconsidered.

Adjourned 2:55 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob

A meeting of the Executive Committee was held following the regular meeting of the Commission September 17, 1975, at which a budget for 1975-76 was discussed. Professor Fox will be retained to do additional work on the offenses outside the Code, and the impact of the Code on regulatory agencies. The letter to agencies from the Attorney General will have a covering letter from Professor Fox. December 1 will be set as the date that he must receive the responses. His conclusions and comments will be sent to Richard S. Cohen.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Criminal Law Revision Commission met at 10:00 A M, Tuesday, December 23, 1975, at the State House in Augusta. Present were Chairman Jon A. Lund, Richard S. Cohen, Edith L. Hary, Lt. Jerry F. Boutilier, Garrell S. Mullaney, Ward E. Murphy, Jack H. Simmons, Lewis V. Vafiades, Hon. Robert B. Williamson and Professor Sanford J. Fox. Members of the Judiciary Committee attending were Senators Samuel W. Collins, Jr., and Robert W. Clifford; and Representatives Roland A. Gauthier and James S. Henderson. Also attending were Charles Leadbetter of the Attorney General's Department; Peter Ballou, Assistant District Attorney in Cumberland County; and Stephen L. Diamond, working on the Criminal Code's educational program under a Criminal Justice Planning and Assistance Agency grant.

Mr. Diamond was invited to report on this program. A series of lectures to police has reached 900-1,000 law enforcement officials. Question-and-answer periods were useful in bringing out some problems, with which it is planned to deal by articles in Alert and other AG publications.

Videotapes covering the entire Code are complete, will be used mornings by the Maine Public Broadcasting stations, are available to District Attorneys. Some courses are under way and the program will be complete in all districts by March 1. Initial feedback on the tapes has been fairly good. Further dissemination is planned: to the Bar, the Trial Lawyers Association, and Professor Fox is to talk to the justices of the Supreme and Superior Courts on January 26.

Senator Collins has submitted the subject "Revision of the Criminal Code" as a title for a bill to be presented to the 1976 special session. Amendments can be added later. A skeletal bill to include some priority matters should be ready by January 14.

The following proposed amendments from the list of 41 distributed by Professor Fox were taken up, the discussion combining relevant parts of the amendments suggested by the prosecutors' group, Mr. Ballou and Mr. Leadbetter answering questions and explaining the prosecutors' suggestions.

1. Section 752. Assault on an Officer. Approved.

2. Section 1201. Eligibility for Probation and Unconditional Discharge. After a brief discussion acknowledging the difficulty of the court's ability to match rehabilitative experience, and the fact that the general purposes of sentencing on page 183 of the Code covered a broad range, this amendment was approved.

3. Section 252. Rape. Unanimity between gross sexual misconduct and rape was urged. To maximize protection of those under 14, it was decided to insert "in fact" in appropriate places relative to 14-year-olds. Approved.

4. Section 253. Gross Sexual Misconduct. Approved.

5. Section 1254. Release from Imprisonment. Approved.

6. Section 652. Robbery. Grading and language changes were discussed. Incorporation of attempt wording was accepted, and an addition providing that the defendant must have knowledge that his accomplice was armed. Section 652 will be repealed. The content will be joined with section 651, to be called simply Robbery, the

distinction between Robbery and Aggravated Robbery to be established in the penalty section. Robbery as amended was then approved.

7. Section 360. Unauthorized Use of Property. Sub-section 1-C-2: the final sentence is to be deleted. With this deletion, the amendment was approved.

8. Section 254. Sexual Abuse of Minors. It was agreed to include the words "not his spouse," and to change 18 to 19. Approved.

9. Section 556. Incest. Incest will be re-defined in terms of consanguinity, the bottom age limit for the victim will be removed, and the suggested word change was approved.

10. Section 854. Public Indecency. Approved.

11. Section 14. Separate Trials. (See also 20.) The change proposed in the prosecutors' list is from the ABA standards. The present section was a compromise derived from the Uniform Code. Flexibility for the court under both was discussed. A move to retain section 14, with the addition of section 107, sub-section 3, from the Model Penal Code, was approved.

12. Section 362. Classification of Theft Offenses. A motion to make forgery and bad checks an enhancement of theft was approved. Appropriate amendment will be made in sections 703 and 708.

13. See 12.

14. Section 2, sub-section 23. Serious bodily injury. Approved, with the addition of "necessary to recovery of physical health.

15. Section 4. Classification of crime; civil violations. This clarifies the double standard: civil for an individual acting on his own; criminal if he acts for a corporation; criminal for a corporation. Professor Fox will develop the rationale into a comment. Approved.

16. The same policy as in no. 15 was accepted.

17. Section 5. Pleading and proof. This amendment was not accepted. Section 5, sub-section 4 of the Code will be repealed, and both Intoxication and Abnormal Condition of the Mind will be located elsewhere. The prosecutors' language for Intoxication was approved, to become a new section 58-A. Abnormal Condition of the Mind will be numbered 58-1, following the wording submitted by the prosecutors. Present sections 58-1, 58-2 and 58-3 will be re-numbered 58-2, 58-3 and 58-4.

18. Section 7. Territorial applicability. The suggested addition was debated, but failed of acceptance.

19. Section 13. Lesser offenses. With Professor Fox's suggested addition in his notes, this was approved.

20. See no. 11.

21. Section 152. Attempt. The vote was not to accept this amendment.

22. Section 352. Definitions. Sub-section 5-E is amended by accepting the first sentence in Professor Fox's list.

A question was raised regarding implementation of civil violation enforcement. What is the procedure when identification is refused? Professor Fox will find out what Oregon and other states have done. Should penalties for civil violations be in the Code or left to the courts? It was moved and accepted that failure to provide identification

be an offense. Professor Fox will determine a penalty to propose to the Commission.

A suggestion was made that in case of fines being paid month by month, the provision be to increase by 50% the balance due when an installment is skipped. No vote was taken on this.

Pollution complaints were mentioned, and how enforcement would be handled. A warrant on the spot seemed to be the answer, officers being authorized to issue the complaint, by a form to be determined.

There should be provision for arrest to secure a probationer's appearance in court.

These subjects which were briefly discussed after action on the foregoing 22 amendments will have attention at the next meeting, scheduled for Thursday, January 8, 1976, at 10:00 A M, at the State House in Augusta.

Adjourned 3:30 P M.

Respectfully submitted

Edith L Hary

Minutes taken
and transcribed by
Mrs. Hilda M. Jacob

Edith L. Hary, Secretary

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met Thursday, January 8, 1976, in Augusta. Attending were Chairman Jon A. Lund, Lt. Jerry F. Boutilier, Richard S. Cohen, Edith L. Hary, Lewis V. Vafiades and Professor Sanford J. Fox; consultant Hon. Robert B. Williamson; adviser Ward E. Murphy; from the Judiciary Committee Senators Samuel W. Collins, Jr., and Robert W. Clifford; and Representatives Roland A. Gauthier, James S. Henderson and Stephen L. Perkins. Also present were Charles Leadbetter, Peter Ballou, Stephen L. Diamond, and from the Probation Board, Raymond Nichols.

Chairman Lund explained the conditions which have been attached by the Criminal Justice Planning and Assistance Agency to the Commission's grant request, requiring the development of model complaint and indictment forms and model jury instructions.

The sense of the Commission is that its work has been done, and that this additional work could well be undertaken by another group. Mindful also that the Legislature would not be amenable to continuing the Commission for a period sufficiently long to accomplish the additional responsibility, the Chairman read a letter which he has sent to the Agency, stating these reasons for considering the conditions inappropriate.

Professor Fox distributed material embodying changes authorized at the December meeting, and included unfinished business from that meeting.

Section 16, Enforcement of Civil Violations will be added to Chapter 1 of the Code. After discussion of possible interpretations of "reasonably credible," an amendment was approved to the effect that where evidence of identification is not immediately credible, an officer may hold a person

for a reasonable length of time, not to exceed two hours, while attempting to verify identification. Pat-down for guns is authorized, but not full search. If verification is impossible, the person may be arrested and charged with Class E crime.

Section 1105, Aggravated trafficking or furnishing scheduled drugs, sub-section 1, will add a reference to section 1106.

Section 506, Harassment. Authorization for communication by letter, which attorneys say has proved effective, will be incorporated. Law enforcement officers will be included so that they can handle neighborhood problems.

Section 1102, Schedules W, X, Y and Z of drugs. Corrections and additions were suggested in a letter from Robert Ericson, State Chemist. It was pointed out that the Board of Pharmacy is presently authorized to designate new drugs, and the Code will accept in Schedule Z. A motion to adopt the changes and additions proposed was carried.

Mr. Nichols presented an appeal to authorize probation officers to arrest in cases of violation of probation. Concern about arrest except for new offenses, which would be criminal, and non-criminal infraction of probation rules, was expressed. Both the Commission and the Judiciary Committee had considered the situation, and the vote at this meeting was not to change the Code.

The Code does not deal with authority to arrest in cases of violation of rules pertaining to work release and furlough, and an increase in these programs is anticipated after March 1, 1976. The concept of a holding action until the head of the institution involved can be notified was approved. Prof. Fox will look at the Bureau of Corrections policies, especially with a view to determining whether or not Morrissey poses a problem. Some sort of formality is required.

The question of the amount of good time to be applied to those serving sentences under the old statute was raised. Christopher St. John of the Pine Tree Legal Assistance made inquiries. Such persons would be taking a gamble to return to court for re-sentencing after March 1. It was voted to apply the ten-day good time to old sentences for any time to be served after March 1. There appears to be a problem about Section 1253, sub-section 3, in that a six-month sentence benefits from good time, but a five-month does not. No action was taken.

Section 58, Mental abnormality. The amendment in the prosecutors' language, clarifying mental disease or defect, serving to preclude some litigation, was adopted.

Section 107, Physical force in law enforcement. The amendment offered by the prosecutors was accepted, as not changing anything, only clarifying.

Section 107, sub-section 2 (2). The suggested amendment encountered resistance, as requiring a reversal of policy which had been determined after much discussion by the Commission. It was voted to pass over.

Section 107, sub-section 4. The amendment was adopted through the words "deadly Force," but the last two sentences were not adopted.

Section 361, Claim of right; presumptions. The amendment was adopted.

Section 108, Physical force in defense of a person. This amendment adds robbery to the section. It was adopted.

Section 204, Criminal homicide in the 4th degree. Discussion centered around the jury's authority to return a manslaughter verdict upon consideration of provocation, the heat-of-passion theory, and the objective standard in the model penal code. The amendment was adopted.

Section 201, Criminal homicide in the first degree. Sub-section 2-B was amended to emphasize serious bodily injury, and 2-A was amended as suggested with added reference to the revised 2-B. Sub-section 2-C was amended by specifying four or more persons. It was voted to pass over the proposed new sub-section 2-G.

At present an assault in prison is Class D, and assault is the same on a prison guard as on a law enforcement officer. It was voted to make simple assault Class C rather than D. The conversion table will be used to determine the actual length of time to be served.

Chapter 11, Sex offenses. Section 251, sub-section 1-C was amended as suggested, adding that penetration is immaterial, and that it shall not be necessary to allege or prove penetration or lack thereof.

Section 252, Rape. Sub-section 2 will be limited to sub-section 1-B.

Section 301, Kidnapping. The feeling was that the Code already covers the suggested amendment. No formal vote was taken.

Chapter 15, Theft. The amendment to section 352 was accepted, subject to codifying Gordon.

Section 755, Escape. On the whole, the Code hasn't dealt with venue problems. This amendment will be made compact, and institutions generically defined; and then approved.

Prof. Fox will send revised material to members before the next (probably final) meeting, set for January 29. The final form of amendments must be in the legislative drafting office shortly thereafter.

Adjourned 5:00 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The Commission met Thursday, January 29, 1976, at the Augusta Civic Center at 10:00 A M. Present were Chairman Jon A. Lund, Richard S. Cohen, Edith L. Hary, Charles K. Leadbetter, Garrell S. Mullaney, Errol K. Paine, Gerald F. Petruccelli, and Prof. Sanford J. Fox; consultant Hon. Robert B. Williamson, Senator Samuel W. Collins, Jr., Peter Ballou and Stephen Diamond.

Representative Maynard G. Conners appeared before the Commission to speak in favor of retaining the mandatory fine and sentence for night hunting. The sharp drop in night hunting is attributed to the deterrent effect of such penalty. Sections 1252 and 1301 are affected. It was voted to preserve the present (1975) law, and the conversion table will not apply.

The meeting then considered the amendments proposed in the package sent to members and consultants by Prof. Fox on January 20.

Section 2, Definitions, sub-section 23: "necessary for recovery of physical health" will be added.

Section 4, Classification of crime; civil violations. Sub-section 3 will be clarified by imposing a criminal fine but not imprisonment.

Section 5, Pleading and proof, sub-section 2-A. Approved, but sub-section 4 was repealed in its entirety, the substantive content being in another part of the Code. Relevant portions of the matter are in section 58, sub-section 1, and the new section 58-A as amended. (See action taken at the December 23rd meeting.)

Section 13, Lesser offenses, and Section 14, Separate trials, were considered together, accompanied by a discussion of possible inconsistencies and difficulty about using "venue" or "jurisdiction." Prosecutorial and judicial districts are not necessarily the same, and change of venue is civil, not criminal. Section 14 is from the Model Penal Code. Alterations to the amendment were noted: 2d line, after "trials," insert "in the same venue"; 4th line, after "officer," insert "and occur within his jurisdiction;" 6th line, change "jurisdiction" to "venue"; restore the word "ordered."

A new section 15, Arrests, was proposed. Citizen arrest received attention, and the question of possible harassment charges if we allow enforcement officers to arrest on probable cause in class D crimes, or in all classes. There will be a bill before the Legislature, and the Judiciary Committee will assume responsibility for decision.

A new section 16, Enforcement of civil violations, received approval, with these changes: paragraph 2, 8th line, remove the words "the officer"; paragraph 4, 1st line, omit the word "intentionally." Failure to appear is the offense. Circumstances which render appearance impossible is an affirmative defense. The Judiciary Committee is now researching whether or not it is permissible to increase by 100% a traffic fine if not paid within thirty days.

Section 58, Mental abnormality. The amendment had been previously accepted, but discussion arose regarding the trend to de-institutionalize persons and get them back into the community. The Code properly does not attempt to segregate the treatable from the untreatable. The further

amendment proposed by the Department of Mental Health and Corrections would nullify the present provision which permits a psychiatrist to testify and invite a verdict of not guilty by reason of insanity. It was voted to adhere to the draft as now written.

Section 201, Criminal homicide in the first degree. A motion to add "attempt" failed of acceptance. A motion to exclude any and all reference to previous crimes anywhere, and confine ourselves to defining only the present crime, lost, the reasoning being that the judge may consider any previous crimes. It was voted to eliminate sub-section 2-B.

An adjustment will be made to state our policy expressed in "intentionally or knowingly committing a crime involving serious bodily harm." Death or bodily injury should be included, but an exemption for persons under section 204.

Section 206, Criminal homicide in the 6th degree. The amendment was accepted with changes: "A person is guilty of causing or aiding...."; in the second line, omit "or knowingly."

Section 514, Abandoning an airtight container. The idea of storing was considered too broad, and the words "stores" and "stored" were not accepted.

Section 701, Definitions. Sub-section 1 will not include "endorsement," but it will be put in section 703-1-A.

Section 755, Escape, sub-section 3-A. The suggested amendment was accepted, with this change: "to which he was sentenced" will become instead "from which leave was granted."

Section 854, Public indecency, sub-section 1-A-2. Reference to the age of a person will be omitted. Consent is a defense to this crime.

Section 1112, Analysis of scheduled drugs. The elimination of "state" in the first sentence was approved. A qualified chemist may be available nearer than Augusta, but he should be certified by the Department of Human Services. It was therefore voted to add a new sub-section 4 defining a qualified chemist as a person so certified. "Laboratory technician" will be omitted, also the rest of the sentence in sub-section 1.

A move to amend section 1203, Split sentences, was ruled out of order, although the statement was made that this is poor penology philosophy to mix the kind of offenders that will now result. We will make sure, however, that the authority of the Prison Warden to transfer is not affected.

Section 1205, Preliminary hearing on violation of conditions of probation. This will be re-constructed, incorporating ideas explored at the meeting. Ambiguities regarding tolling were observed. If there is a new crime, the running period of probation shall be tolled from the time of arrest, or when a complaint is filed, or indictment returned -- whichever is earliest.

Section 1251, Imprisonment for criminal homicide in the first or 2d degree. The suggested amendment was regarded as a step toward mandatory sentencing, and it was remarked that judges are serious when considering sentencing. The vote was not to accept. References to sub-section 201-2-B will be eliminated from the amendment to sub-section 4.

Section 1252, Imprisonment for crimes other than criminal homicide in the first or 2d degree. The amendment to sub-section 1 was accepted.

Sections 451, Perjury, and 452, False swearing. "Mentally competent" will be removed, and in its place will appear "not a competent witness who was disqualified from making the statement."

Adjustments and corrections such as "housekeeping" matters, typographical errors, necessary repeal of sections in MRSA, were approved.

Adjourned 5:00 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

The final meeting of the Commission was held at 10:00 A M, Thursday, February 26, 1976, in the State Office Building at Augusta. Those present were Chairman Jon A. Lund, Lt. Jerry F. Boutilier, Richard S. Cohen, Edith L. Hary, Charles K. Leadbetter, Garrell S. Mullaney; and Professor Sanford J. Fox and Stephen Diamond.

In the absence of a quorum, and because Professor Fox was unable to reach Augusta until after twelve o'clock, a general discussion took place regarding certain issues remaining before the Commission.

Inasmuch as consideration of crimes outside the Code was incomplete, it was generally agreed that the impact of the conversion table be delayed until April 1, 1976, to give adequate time for state agencies to review their statutes.

It was also generally agreed that it was desirable to present legislation which would continue some aspects of the work of the Commission, with different personnel, to review the effect of the Code, complete work on crimes outside the Code, and investigate the preparation of complaint forms and model jury charges.

Discussion of more specific matters was limited, but the Commission was given to understand that material had been given to the Judiciary Committee regarding such points as permissive uses of deadly force, trial of civil violations, and municipal liability in cases of riot.

Adjourned 1:45 P M.

Respectfully submitted

Edith L. Hary

Edith L. Hary, Secretary

Minutes taken and
transcribed by
Mrs. Hilda M. Jacob