

Criminal Code

Wisc.

N.H.

Vt.

N Mex

ABA

Crim Sec.

Ill 1961

Annual survey
of Am Law 1

41 J En L 125

✓ 52 Jr Crim L 392 Yes

~~48 Wash & Lee 187~~

~~✓ 71 Yale L Rev 1050 Puerto Rico
draft code~~

42 BUL Rev 267?

✓ 30 FRD 413 sentences

~~✓ 15 Vand L Rev 671~~

✓ 23 Md L Rev 1 Good

✓ 63 Col L Rev 589 Good 63

✓ 417 Min L Rev 417 (1/63) Good

✓ 13 Stan L Rev 252 Good

✓ 51 J Crim L 7 Good

~~✓ 25 Md L Rev 369~~

✓ U Del Law Forum 1960 Winter Good

✓ 61 Col L Rev 571 Comment on specific parts
of Model Penal Code

✓ 59 Col L Rev 1212 "

40 J Am Jud Soc 88 Good

33 Neb L Rev 396 Good

1986 Wisc 350 Discussion of Wisc. Code

65 Har 1097 Good

UNIVERSITY OF MAINE



PORTLAND, MAINE 04101

SCHOOL OF LAW
68 HIGH STREET

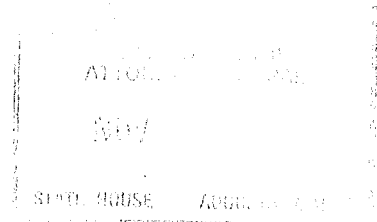
CRIMINAL DIVISION
RECEIVED

NOV 5 1970

DEPT. OF ATTORNEY GENERAL

November 3, 1970

Mr. Richard Cohen
Chief, Criminal Division
Attorney General's Office
State House
Augusta, Maine 04330



Dear Dick:

Although it has been some time since we had our discussion concerning the drafting of a new penal law, I have not forgotten my promise to give you my thoughts on the matter.

1. SCOPE OF THE REVISION

While I think it desirable to completely revise the definitions of most of the offenses presently in Title 17, to eliminate some of the offenses, and to consolidate others, I think we should not adopt or simply copy the Model Penal Code. I would hope that some of the philosophical questions dealt with by the Model Penal Code could be avoided in the drafting of a new penal law for Maine. The philosophical approach adds undue complexity and makes it difficult to prepare meaningful jury charges. For example, I would hope we could avoid distinctions based upon whether an individual was aware of the probable consequences of his conduct or whether a reasonable man would have been so aware. While in a philosophic sense this distinction may have significance in assessing the degree of moral culpability of a defendant, in a practical sense I do not believe a jury can understand or make such distinctions. We must devise standards of criminal liability which are understandable and workable.

The revision should also consider most of the defenses available in criminal cases including insanity, entrapment, mistake, intoxication and like defenses. I think it should avoid the strictly procedural problems such as double jeopardy, sufficiency of proof, effect of presumptions, and similar issues.

The revision must, of course, consider one procedural question and that is the scope of the judge's discretion in sentencing and the range of sentence alternatives available.

2. AGENCY

We discussed the matter of the agency which would undertake this project and it is my feeling that it should be a Criminal Law

Revision Commission with the commission members appointed by the governor to serve without pay. If the members hold a gubernatorial appointment, they are more likely to take their job seriously than if they are merely members of a committee. I would hope that the commission would include a broad representation of prosecutors, defense lawyers, judges, correctional officers, and a few lay individuals who have an interest in the field. I would avoid including many policemen on this commission since I think their legitimate concerns would be adequately represented by the prosecutors.

3. TIME FOR PROJECT

Obviously, any estimate as to length of time it would take to complete a project of this nature is dependent upon the availability of staff and other resources. Assuming, however, that the staff is approximately of the size I will indicate below, I would assume that there is a good probability that the project could be completed in a calendar year. This would include not only the revision, but also commission notes explaining how the revision would effect existing law. Without such a commentary the likelihood of selling any revision to the legislature would be substantially reduced.

4. STAFF

I can only make the roughest estimate as to staff. There should be one full-time reporter who is the principal draftsman for the project. This should be a position to which the occupant devotes his entire energies and not a part-time position. Obviously, it is desirable that the person filling this position have substantial familiarity with existing criminal law and the revisions and proposals for revision which have been published around the country. Secondly, there should be an assistant to the principal reporter. This should probably be a recent law school graduate to do basic research and assist in drafting. Other research assistants might be drawn from the student body of the law school as the occasion demanded. Third, at least one full-time well trained legal secretary would be essential, with the probability of additional part-time secretarial help when manuscripts were being prepared for distribution.

5. COST

I have absolutely no basis upon which I can make an evaluation of the cost of this project. I think it would be substantially more expensive than most people in this state have ever thought it would be. Assuming office space and office equipment were provided, it seems to me unlikely a project of this magnitude could be completed for less than \$75,000. In part, this judgment is based upon the budget which was used here at the law school for the Sea Grant project, financed by the federal government which as I recall was approximately \$65,000. I consider the scope of that project to be not as great as the revision of the penal law. It also did not involve expenses of Commission members for attending meetings and other similar administrative expenses.

To Mr. Richard Cohen

page three

There is no question that the cost could be reduced if we merely enacted the Model Penal Code. I am opposed to that since I believe the Model Penal Code would add to rather than reduce the complexity of our penal law. Other revisions are available and may just be copied, probably Illinois is the best. Any copy job is going to involve problems but that may be a cheap compromise.

I really think some very careful thought should be given to the need for a total revision as compared to other needs of our criminal justice system. I am satisfied that our major problems in Maine are administrative rather than substantive. If choices must be made, I would rather see money expended to deal with the administrative problems rather than spending it on substantive law revision which while desirable is not essential. How many guilty defendants are acquitted because of substantive defects? How many innocent people suffer because of substantive defects? Unless we are sure there are a substantial number in one category or the other, I'm not convinced of the need for substantive revision. Not when I know there is substantial injustice resulting from maladministration of our existing law.

Please understand, I do not oppose revision but wonder about it if priorities are involved. My ideas about cost, scope and method if the project is undertaken are just ideas. Do not consider this a proposal or some kind of an offer.

Sincerely,



Harry P. Glassman
Professor of Law

HPG/fmt

January 19, 1970

Hon. Edwin R. Smith
Bar Harbor, Maine 04609

Dear Judge Smith:

We are happy to lend you a copy of the MODEL PENAL CODE. It was adopted in this proposed form with the addition of the changes fastened inside the front cover.

Some years ago the Judicial Council did considerable ground work in this field stemming from general problems with sentencing. The idea was then handed along to the Bar Association and ultimately picked up by the Legislature in the form of a Resolve directing the Attorney General to be responsible for the study (see 1965 Resolves Chapter 78 and 1967 Resolves Chapter 21).

General Dubord did get the study organized and Harry Glassman was retained to be the consultant. Before much was done he had a heart attack. That was really the end of it. Apparently Jim Erwin was not aware that it was even an office project until last April. Now the Bar Association is starting in on it and I believe as recently as last week Dan Lilley was named chairman of the committee.

Sincerely yours

Edith L. Hary
Law Librarian

STATE OF MAINE
HOUSE OF REPRESENTATIVES
103rd LEGISLATURE

HOUSE AMENDMENT "A" to H.P. 520, L.D. 732, Bill, "An Act
Authorizing the City of Portland to Use Park Lands for
Public Highway Purposes."

Amend said Bill by striking out all of section 1 and
inserting in place thereof the following:

'Sec. 1. Park lands for highway purposes. The City of
Portland is authorized and empowered to use for public highway
purposes such portions of its lands acquired by condemnation or
by the expenditure of public funds for public park purposes
as may be deemed necessary by its city council. The remainder
of such land shall continue to be used as public park land.'

Filed by Mr. Conley of Portland.

Reproduced and distributed under the direction of the Clerk
of the House.

(Filing No. H-171)

4/13/67

EDWIN R. SMITH
BAR HARBOR, MAINE

January 15, 1970

Miss Edith Harty
State Library
Bangor, Maine

419-708

Dear Miss Harty,

Is there available for loan
a "Model Penal Code"? If not,
where is such a publication
obtainable?

Is there a committee
working on such a code in
Maine?

Thanks for any information
you can provide

Sincerely,

Edwin R. Smith

1965 Res Ch 78
Continue review of
Me crim statutes

1967 Res Ch 21

RICHARD J. DUBORD
ATTORNEY GENERAL



GEORGE C. WEST
DEPUTY ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA

August 4, 1966

Miss Edith Hary
Law Librarian
State House

Dear Edith:

As you undoubtedly know, the committee to study and evaluate our present criminal statutes and the model penal code was continued by legislative act in 1965. I have been talking to Professor Glassman recently who has indicated he would now be available to serve as a consultant on the study, after having completed various projects.

I, therefore, would like to call what might be termed a reactivation meeting of the committee on August 11 at 1:30 p.m. in the Judiciary Room at the State House. At this time I would hope we might consider the employment of Professor Glassman in this capacity to assist in the completion of the committee's work.

Very truly yours,

A handwritten signature in cursive script that reads "Richard J. Dubord".

Richard J. Dubord
Attorney General

RJD:H



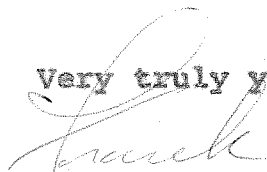
STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA
July 16, 1964

Miss Edith Hary
Law Librarian
State House
Augusta, Maine

Dear Edith:

There will be a meeting of the study committee of
the review of Maine criminal statutes to be held in the
Judiciary Committee Room at the State House at 10:00 A.M.
August 5, 1964.

Very truly yours,


Frank E. Hancock
Attorney General

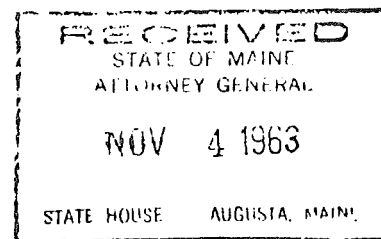
FEB:R

UNIVERSITY OF MAINE



PORTLAND, MAINE

SCHOOL OF LAW
68 HIGH STREET



November 1, 1963

Honorable Frank Hancock
Attorney General
Augusta, Maine

Dear Mr. Attorney General:

In accord with your suggestion following the meeting of your Advisory Committee on Review of the Penal Law, I shall attempt to outline briefly why the American Law Institute undertook a comprehensive restatement of substantive criminal law in the form of a Model Penal Code. A most informative article on this subject is Wechsler, The Challenge of a Model Penal Code, 65 HARV. L. REV. 1092 (1952).

The underlying premise of the project is the extreme importance of substantive criminal law; recognition that it provides the basic protection to society against those who engage in anti-social conduct, and, at the same time, is the means by which the state can bring to bear upon a single individual the full power of its coercive force. Obviously, a body of law which has such great potential for both good and evil should be as rational and just as is possible.

It was felt there were several indications that substantive criminal law was not as rational as it might be:

(1) The lack of any comprehensive review of substantive criminal law, even by scholars has left the courts and legislatures with little guidance in the development of the law either by exposing its underlying policies or by critical analysis of it.

(2) There are obvious substantive defects in the law, such as the failure of legislatures to precisely define criminal conduct or the doctrines relating to excuse, justification, or complicity. Penal legislation has been adopted piecemeal, drawing upon the concepts of the common law but without any attempt at system. In many areas of the law there is no legislation; the courts have been left to develop the law on a case by case basis, bound by stare decisis and the ancient dogma of the criminal law, and, therefore, unable to reexamine the basic premises of the penal system.

(3) There has been excessive reliance on those charged with administering the criminal law to avoid the injustice which can result from its irrational development. An example of this: Although adultery is a crime in most states, and, although, innumerable divorces are granted on the grounds of adultery, there are rarely prosecutions. The "immunity" of the adulterer from prosecution is not based upon the law, but upon the uncontrolled and unguided discretion of the prosecutor. Discrepancies between the law as written and the law as enforced suggest a need for study.

(4) Penal law has been subjected to extensive criticism by psychologists and other scientists. The thrust of this criticism being that the criminal law rejects or does not fully make use of the information which modern science affords - in short, it is ineffective, inhumane, and unscientific.

The Model Penal Code attempted a reexamination and restatement of several areas of penal law:

(1) Articles 2 through 5, and Articles 210 through 251 deal with what behavior ought to be criminal and how that behavior should be defined.

(2) Articles 6 and 7, and to a limited extent Articles 210 through 251, are concerned with the circumstances of the criminal behavior of the defendant and the factors in his character or background which should have an effect upon his sentence.

(3) Articles 301 through 306, and in part Articles 6 and 7 are concerned with the methods of correction and treatment which should be authorized, and the scope of discretion as to method which should be vested in the various agencies participating in the sentencing and correctional process.

(4) Articles 401 through 405 deal with the organization of the correctional system.

It should be emphasized that the Model Penal Code is a model and nothing more. It was hoped that through the development of this code impetus would be given to the reform of penal law in the various states. It was never assumed the code would, as drafted, be enacted by any state. The reporter for the Model Penal Code, in the article cited earlier in this letter, recognized that differences between the various states would prevent such wholesale adoption: "Whether behavior ought to be made criminal may be affected by variations in social conditions and public attitudes from state to state. What treatment method ought to be employed may be in part a function of such factors as well as of such other variables as crime rates, the character of population, public budgets, facilities and personnel." (65 HARV. L. REV. 1092, 1132)

I gathered that most members of the Committee were concerned

with what they considered to be irrational and unjust sentencing. I might suggest that irrational sentences may have a variety of causes:

(1) Because the statutes defining two crimes of approximately equal magnitude provide for grossly disparate sentences.

(2) Because of individual variations in the attitudes of the judges fixing sentences.

(3) Because the judge fixing sentence does not and cannot have sufficient information concerning the defendant prior to fixing sentence to enable him to make a completely informed and rational judgment.

(4) Because the options available to the sentencing and correctional authorities are not sufficiently flexible to permit individual variations.

(5) Because the substantive criminal law is neither sufficiently developed nor sufficiently precise to distinguish between individuals engaging in similar conduct but under different circumstances.

For example, does our present law rationally distinguish between the individual who engages in conduct with a desire to bring about the consequences which actually ensue and the individual who engages in the identical conduct through mistake or as a result of intoxication? Is the line between murder and manslaughter so vague that a defendant may fall on one side or the other by chance?

The emphasis on irrational sentencing overlooks some other problems which may be worthy of review. Is there some conduct now made criminal which should not be? Is society adequately protected by the existing theft statutes or the statutes governing misconduct by government officials? Are the citizens of this state given fair notice of when their conduct may be criminal if the prosecutor has the right to secure indictments for conduct not declared criminal by statute but merely "contra bonos mores?" Is the crime of attempt broad enough to permit the police to intervene early enough in the preliminary stages of criminal conduct to prevent commission of the substantive crime?

The variety of problems which may be discovered in a study of any penal system is unlimited. The selection of an area for concentration is extremely difficult as all of the problems are interrelated. It may very well be, your Committee can perform its greatest public service by merely exposing the problem areas and expressing its opinion as to whether a comprehensive overhaul is necessary. By presently undertaking only minor revision, it seems

Honorable Frank Hancock


- 4 -

Nov. 1, 1963

to me, the Committee would be deciding that comprehensive revision is unnecessary, without having studied the matter fully.

I hope this review of the purpose of the Model Penal Code and the expression of my personal views will prove of some assistance to you.

Respectfully yours,



Harry P. Glassman

HPG:lm

FRANK E. HANCOCK
ATTORNEY GENERAL



GEORGE C. WEST
DEPUTY ATTORNEY GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA

October 9, 1963

Miss Edith Hary
Law Librarian
State Library
Augusta, Maine

Dear Edith:

I am calling a meeting of the Attorney General's Advisory Committee on the study and evaluation of our criminal statutes and the Model Penal Code for Wednesday, October 23rd, at 1:30 P.M. The meeting will be held in the Judiciary hearing room at the State House in Augusta.

I am in hopes that you will all be able to attend.

Sincerely yours,

Frank

Frank E. Hancock
Attorney General

231
11/10-10
FEH:H

SURVEY FOR STUDY AND EVALUATION
OF THE CRIMINAL STATUTES OF THE
STATE OF MAINE AND THE MODEL PENAL CODE

The Advisory Committee for the Study and Evaluation of the criminal statutes of the State of Maine and the Model Penal Code would appreciate your help in making the study authorized by Private and Special Laws, 1963, Chapter 203, by filling out this questionnaire. The survey, under the direction of the Attorney General will study and evaluate the present criminal statutes and the Model Penal Code and recommend to the 102nd Legislature such changes and amendments to the criminal statutes of the State as may be necessary.

We ask you to answer the questionnaire as completely as possible. The accuracy and comprehensiveness of the survey will depend to no small degree upon your reply.

FRANK E. HANCOCK
Attorney General

1. Do you feel that the Maine criminal statutes represent a sound approach to present criminal problems?

Explain:

*See
1 Am Crim Law Q#4
8/63*

2. Do you feel that the Maine criminal statutes reflect good definitions, classification, and gradation of substantive offenses?

Explain:

3. Do you feel that there is a proven need for change in the Maine criminal statutes?

Explain indicating specific areas of the Maine criminal statutes which you feel should be changed or repealed:

4. Do you feel that the present administration of justice in criminal cases needs strengthening?

Explain:

5. Do you feel that there is a disparity between the gravity of offenses and penalties?

Explain:

6. Do you feel that present sentencing practices and procedures should be improved?

Explain:

7. Do you feel that the present statutory provisions for punishment and rehabilitation represent a sound approach to corrections?

Explain:

PIERCE, ATWOOD, SCRIBNER, ALLEN & MCKUSICK

465 CONGRESS STREET

PORTLAND, MAINE

EDWARD W. ATWOOD
FRED C. SCRIBNER, JR.
CHARLES W. ALLEN
JOTHAM D. PIERCE
SIGRID E. TOMPKINS
VINCENT L. MCKUSICK
WILLIAM C. SMITH
RALPH I. LANCASTER, JR.
HORACE A. HILDRETH, JR.

JEREMIAH D. NEWBURY
DONALD W. PERKINS

CHARLES L. HUTCHINSON
1868-1960

LEONARD A. PIERCE
1885-1960

TELEPHONE 773-6411
AREA CODE 207

July 28, 1964

Miss Edith Hary
Law Librarian
State Library
Augusta, Maine

Dear Edith:

At Frank Hancock's request, I enclose a copy of A Comparison of the Model Penal Code Provisions Relating to Theft with the Maine Statutes and An Appendix of Selected Sections of the Revised Statutes of Maine, 1954, prepared by Prof. Harry Glassman at the University of Maine Law School here in Portland.

This material is in preparation for the meeting of the Attorney General's Advisory Committee on the study and evaluation of our criminal statutes to be held in the Judiciary hearing room at the State House in Augusta on Wednesday, August 5 at 10:00 a.m. I hope that this material will reach you in time for you to look it over prior to that meeting.

Sincerely yours,


Donald W. Perkins

DWP:cal
Enclosure

JUN 25 '63

203

STATE OF MAINE

BY GOVERNOR

P & S LAW

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SIXTY-THREE

S. P. 273 — L. D. 787

AN ACT Directing Review of Maine Criminal Statutes and Model Penal Code.

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

Sec. 1. Review of criminal statutes authorized. The Attorney General is authorized, during the fiscal years commencing July 1, 1963, and terminating June 30, 1965, to study and evaluate the present criminal statutes and the Model Penal Code, and to report to the next regular session of the Legislature. The Attorney General shall recommend such changes and amendments to said criminal statutes as may be necessary. For the purpose of the study and of preparing any proposed changes, the Attorney General may employ such technical and clerical assistance as he may find necessary.

Sec. 2. Advisory committee. The Attorney General is further authorized to appoint an advisory committee of not more than 12 persons, representing the bar, the courts, those dealing with rehabilitation and punishment and the public at large, to consult with him and advise during the progress of such study; the members of said committee to be paid necessary expenses actually incurred in attending such meetings as shall be called by the Attorney General.

Sec. 3. Appropriation. There is appropriated from the Unappropriated Surplus of the General Fund the sum of \$3,000 to carry out the purposes of this act, and said sum shall not lapse but shall remain as a carrying account until the purposes of this act have been accomplished.

IN HOUSE OF REPRESENTATIVES,.....1963

Read three times and passed to be enacted.

.....Speaker

IN SENATE,.....1963

Read twice and passed to be enacted.

.....President

Approved.....1963

.....Governor

Criminal Laws Grow Like Topsy

Telegram News Service

AUGUSTA — The 101st Legislature is being asked to approve a study designed to evaluate Maine's present criminal laws in the light of a recently completed Model Penal Code.

In addition, legislation backed by the Maine Judicial Council has been introduced calling for preparation, by the Supreme Court of new rules of procedure in criminal cases.

The study is designed to strengthen Maine's present criminal laws and provide consistency in the field of sentencing.

"Our criminal statutes have grown up much like Topsy," says newly appointed Supreme Court Justice Harold C. Marden, the past chairman of the Judicial Council's subcommittee on criminal procedures and penalties.

MAKING CLEAR that he's speaking as a former member of the Judicial Council and not as a Supreme Court member, Justice Marden said, "It is felt that there is a certain inconsistency in sentencing because the criminal statutes were enacted on a piecemeal basis."

For example, a person convicted of one crime today considered less serious than another may find himself serving a long sentence because of the variance in penalties in the statutes.

In a report to Gov. John H. Reed the Judicial Council added that "we are not conscious of any urgent difficulties in our present system but rather are aware of the possibilities for improvement and the availability of such new tools to guide us as the Model Penal Code."

The Model Penal Code, which was recently completed and accepted by the American Law Institute, is designed to serve as a guide for states seeking to strengthen their criminal laws.

Insofar as possible the model code classifies crimes and sentences on an overall, instead of a piecemeal basis.

Sen. Ralph W. Farris Jr., R-Gardiner, is sponsoring the bill directing the review. Carrying an appropriation of \$7,500 for the study, the bill directs the Attorney General, and any technical assistants he needs, to evaluate criminal statutes and then recommend changes to the 102nd Legislature.

The revisions of criminal statutes would follow in the footsteps of a civil procedure rules revision which went into effect in 1959.



Justice Marden

JUSTICE MARDEN said it's not intended that Maine should completely adopt the Model Penal Code for use, but rather to adapt it to strengthen Maine's existing laws.

If the Legislature approves the study, it's likely that the study will probe carefully the possibility of having convicted and sentenced persons serve sentences in an institution named by the Department of Mental Health and Corrections.

In effect, a convicted person would be sentenced by a judge, not to any particular institution, but to the Corrections Department. The department, after studying the case, would deter-

mine in which state institution the convicted person could best be rehabilitated.

"Ideally," Justice Marden said, "the Model Penal Code recommends that a convicted person be given a battery of tests at a central location prior to delivering sentence. That might work in a compact state but in a big state like Maine it would be difficult."

The groundwork for the study was laid by Donald W. Perkins, now a Portland attorney and in 1960 a student at Harvard Law School. Perkins, for the Judicial Council's subcommittee, prepared a study of Maine's criminal statutes compared to the model code and to recently-adopted codes in New Hampshire, Vermont and Wisconsin.

The study resulted in recommended classes of criminal penalties to aid in the drafting of appropriate legislation.

SIMILAR legislation, sponsored by Rep. Norman Minsky, R-Bangor, calls for a \$7,500 appropriation to be used by the Supreme Court to prepare general rules of procedure to be applied in criminal cases.

Re Penal Code

STATE OF MAINE

JUDICIAL COUNCIL

REPORT

1961 - 1962

To the Honorable John H. Reed, Governor of Maine:

The Judicial Council submits herewith its report for the years 1961 and 1962.

Very respectfully

/s/Robert B. Williamson
Ex officio Chairman

/s/Edith L. Hary
Secretary

January, 1963

THE JUDICIAL COUNCIL OF MAINE

1961-1962

		Term Expires
Robert B. Williamson Chief Justice, Supreme Judicial Court	Augusta	(ex officio chairman but not a member of the Council)
Frank E. Hancock Attorney General	Ogunquit	(ex officio member)
Armand A. Dufresne, Jr. Harold C. Marden Justices of the Superior Court	Lewiston Waterville	Sept. 6, 1965 (a)
Christy C. Adams Frank E. Southard, Jr. Albert P. Putnam Judges of Municipal Courts	Rockland Augusta Houlton	Sept. 7, 1964 April 7, 1962 (b)
Louis C. Stearns, III Judge, Probate Court	Bangor	(c)
George A. Cowan Clerk of Courts	Wiscasset	April 18, 1966
George B. Barnes Ralph I. Lancaster, Jr. Members of the Bar	Houlton Portland	April 18, 1966 Jan. 25, 1965
Mrs. Alyce M. Connor Miss Edith L. Hary Orren C. Hormell Lay Members	Bangor Hallowell Brunswick	Sept. 16, 1963 March 25, 1963 April 18, 1966

-
- (a) Completed service Dec. 10, 1962; ineligible to continue due to elevation to membership on the Supreme Judicial Court
 - (b) Succeeded Mr. Southard, serving from June 6, 1962 to November 28, 1962; ineligible to continue due to replacement of Houlton Municipal Court by the Second District Court
 - (c) Completed service on Dec. 31, 1962 on expiration of term as Judge of Probate

REPORT OF THE JUDICIAL COUNCIL

PREFACE

In 1932 the Association of Municipal Judges suggested to Governor William Tudor Gardiner the appointment of a Judicial Council "to consider and recommend improvements in judicial procedure in the interests of increasing efficiency of the various courts." Acting informally such a Committee was appointed and within six months presented a substantial list of proposals, including legislation to give the Judicial Council legal standing.

As finally established by Chapter 52 of the Public Laws of 1935 (now 1954 R.S. Ch. 113 s.195-197, as amended) the Judicial Council is charged with the following duties:

To make a continuous study of the organization, rules and methods of procedure and practice of the judicial system of the state, the work accomplished and the results produced by that system and its various parts;

To report biennially to the Governor;

To submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Many other suggestions of that initial group have engaged the interest and support of various bodies through the years, the most notable culminating in enactment in 1961 of the "Act creating a District Court" after extensive study by the Legislative Research Committee and with the support of the Maine State Bar Association.

1961 - 1962

During this biennium the first stirrings of another major undertaking have occupied nearly the full attention of the Council. In the fall of 1959 the sub-committee on Criminal Procedures and Penalties was asked to study criminal penalties in Maine as compared to the same offenses in other states and current penological thinking. Looking for the research assistance necessary in so large a task, the sub-committee was fortunate to have the study accepted in the fall of 1960 as the basis for a seminar thesis by Donald W. Perkins, third year student in the Harvard Law School and a participant in Dr. Sheldon Glueck's seminar on "The Administration of Criminal Justice."

By March 1961 Mr. Perkins submitted to the Committee "A Proposal for Revision of the Revised Statutes of Maine along the Lines of the Model Penal Code." It includes one hundred eleven pages of tabular comparison of the penalties imposed by Maine law, the Model Penal Code and recently adopted codes in New Hampshire, Vermont and Wisconsin with recommended categorizations of criminal penalties and comment to aid in the drafting of appropriate legislation.

The Council studied the report with welcome assistance in its discussions from Mr. Perkins, Mr. Perry Hayden, late commissioner of Mental Health and Corrections, Warden Allan L. Robbins of the Maine State Prison and Judge James P. Archibald. It was finally voted to affirm our interest in a redrafting of Maine's substantive criminal provisions and categorization of penalties according to the Model Penal Code.

We would make it quite clear that we are not conscious of any urgent difficulties in our present system but rather are aware of the possibilities for improvement and the availability of such new tools to guide us as the Model Penal Code.

Mr. Perkins attended the May 1962 meeting of the American Law Institute in Washington at which the final draft of the new Model Code was presented for approval to aid him in his further work for the Council. In August he transmitted to the Council a study organized to facilitate evaluation of the Model Penal Code with citations to comparable Maine statutes. The Council then determined to ask the Maine State Bar Association to approve a study of the revision of the penal laws of Maine to conform, as far as seems wise, with the Model Penal Code, including a study of criminal procedures in general. It is gratifying to report the prompt response of the State Bar Association and the appointment of its committee consisting of Donald W. Perkins, Esq. of Portland, Municipal Court Judge Benjamin Butler of Farmington, and Kennebec County Attorney Jon Lund.

To Dr. Sheldon Glueck of the Harvard Law School faculty we express our most sincere appreciation for his efforts in securing so able a student to undertake this study. To Mr. Perkins our lasting thanks for services "above and beyond the call of duty" rendered freely and with distinction.

In other areas a sub-committee of the Council has prepared a preliminary report on the "Maine Dead Man's Statute," also known as the administrator's rule, with a view to modification or repeal.

At the 1961 session of the Legislature the Council proposed legislation re the "Record of Facts Used to Impose Sentence on Persons Convicted" (P.L.1961 Ch.90) and to change our reporting period from annual to biennial (P.L.1961 Ch.64). "An Act Providing for Municipal Court Conferences" was substantially covered by provision for regular annual conferences in the new District Court Act. A bill "Relating to Immunity for Information under Oath in Sex Crimes" failed of passage. At the special session the Council added its endorsement to the proposal to create an additional judgeship for the Superior Court, which was enacted.

We note with appreciation the services of Judge H. C. Marden which were concluded on his elevation to the Supreme Judicial Court on December 10, 1962. Judge Marden has served on the Council since its reactivation in 1954. During the biennium his active leadership has guided the work of the sub-committee on Criminal Procedures and Penalties. Albert P. Putnam, Esq., Frank E. Southard, Jr., Esq. and Louis C. Stearns, III, Esq. have also completed terms in public offices which terminate their services on the Council. Each made measurable contributions to its work.

SESSION ON
JUDICIAL REVIEW OF SENTENCES IN CRIMINAL CASES
RESPONSIBILITY OF THE MENTALLY ILL FOR CRIMINAL CONDUCT

August 25, 1960

Judicial Review of Sentences in Criminal Cases

Chief Justice Paul C. Reardon of the Massachusetts Superior Court discussed the background of, and experience with, the Massachusetts statute providing for review of sentences in criminal cases. He explained that there was great latitude provided by statute in Massachusetts between minimum and maximum sentences with reference to specific crimes. The resulting disparities in sentencing was a matter of concern to legislative committees and the Judicial Council, among others. They sought to provide an efficient and expensive method of achieving justice, as well as relieving tensions within the maximum security institutions. The Massachusetts act sets up an appellate division, which sits in Boston for about a week every two months, for review of court sentences, except in cases where a different sentence could not have been imposed. Appeals on questions of law still go up to the Supreme Court. The statute has relieved the latter of a great deal of work which, the speaker felt, was better handled by a division of the trial court. Chief Justice Reardon indicated that it had been his policy to appoint to this appellate division older judges of broad experience, who are respected by the judges whose sentences may be changed, and he has avoided turnover in the membership of this division to maintain broad, statewide policies on sentencing.

A defendant may request leave of the judge to appeal for review of his sentence. If the appeal is not granted within ten days, it may be granted by the appellate division within a month. Furthermore, such leave may be granted by the division at any time, for cause shown. The division may consider the appeal with or without hearing, and it may increase or decrease sentences. Its decision is final. At the time of passage of this act, about seventeen years ago, it was made retroactive. There has been a great variation in the number of appeals, especially in recent years. Only in a few instances has the appellate division changed sentences.

Procedure at the hearing of the appeal is quite informal. Witnesses are not sworn and, other than the defendant, are other than the defendant are discouraged. The Assistant District Attorney, however, is heard. The appellate division makes its decisions quickly. After an instance of increase in a sentence, appeals are withdrawn with more rapidity, it has been demonstrated. They can be withdrawn until the judges have made their decision.

The Department of Corrections considers it beneficial that hearings are held in Boston rather than at the prison, and tensions at the maximum security institution have been minimized by the fact that prisoners have had a second chance as far as sentence is concerned. The review process also has had a salutary effect on disposition by judges who are aware that they are under review. They have the right to state reasons for length of the sentence when it is imposed and are required to submit such reasons to the appellate division upon request in connection with a review. The statute thus has worked well and has had the desired effect of leveling sentences.

In conclusion, the speaker noted that several years ago, Connecticut adopted the Massachusetts statute almost verbatim, and invited comments on the experiences of that state under its law.

Chief Justice Raymond E. Baldwin of Connecticut explained that the Connecticut statute was enacted in 1957, for reasons similar to those outlined by Chief Justice Reardon for Massachusetts, and the experiences in Connecticut also were rather parallel. The number of appeals for review was very high in the beginning, because no time limit had been provided. Now a prisoner can apply within sixty days after imposition of sentence. Chief Justice Baldwin reported that hearings, which are very informal and at which only the prisoner appears, are held at the prison, for security reasons, and that a written finding is filed in each case with the clerk of the appellate division. Changes in sentence are made in ten to fifteen per cent of cases. He indicated that it had been his practice also to appoint older judges, with broad experience, to sit on the appellate division, and that he was currently working on a system whereby no man would sit on this division for more than two years, providing for continuity, however, by staggering their terms. He considered and recommended the statute as helpful not only in reducing tensions in prison but in bringing about greater uniformity in sentencing. To further encourage the latter, he was planning a special meeting with trial court judges.

Address of Governor Kent, January, 1838.

I have thought that a codification of the criminal law, embodying a definition of all crimes known in the Statutes and common law, and the punishment for each, would serve to render the law more certain, and better understood by the community, and leave less to construction or inference. You may perhaps deem it expedient to create a board for this purpose. I submit the proposition to your mature consideration.