STATE OF MAINE

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

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COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

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TITLE D1 GENERAL PRINCIPLES

Chapter 11 Preliminary

Section 1. Title: Effective Date: Severability

1. Title 17 of the Revised Statutes Annotated shall be known, and may be cited as the Maine Criminal Code.

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

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

Section 2. All Crimes Defined by Statute: Civil Actions

1. No conduct constitutes a crime unless it is prohibited

A. by this Code; or

B. by any statute or private act outside this Code, including any rule or regulation authorized by and lawfully adopted under a statute, provided that it is expressly designated a class A, B, C, or D crime, or the penalty therein authorized includes a term of incarceration.

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

Section 3. Classification of Crimes: Civil Violations

1. Crimes are classified for sentencing purposes as class A, B, C, or D crimes

A. by this Code; or

B. by a statute or private act outside of the Code, including any rule or regulation authorized by and lawfully adopted under a statute. Any such law outside the Code which does not expressly include a classification shall be classified as follows. If the period of incarceration authorized is

(i) one year or less, it shall be a class D crime;

(ii) more than one year, but not more than five years, it shall be a class C crime;

(iii) more than five years, but not more than ten years, it shall be a class B crime;

(iv) more than ten years, it shall be a class A crime.

2. A civil violation is conduct which is prohibited by any statute, private act, or ordinance outside this Code, including any rule or regulation authorized by and lawfully adopted under such a statute, act or ordinance which provides as a penalty for engaging in such conduct a fine, forfeiture, penalty or other sanction that does not include a term of imprisonment. Civil violations are enforceable by the Attorney General, his representative or any other appropriate public official, in a civil action to recover the amount of the penalty or to secure the forfeiture.

Section 4. Pleading and Proof

1. No person may be convicted of a crime unless each element of the crime is proved beyond a reasonable doubt. "Element of the crime" means: (a) the forbidden conduct; (b) the attendant circumstances specified in the definition of the crime; (c) the required culpability; (d) any required result. The existence of jurisdiction must also be proved beyond a reasonable doubt. Venue may be proved by a preponderance of the evidence. The court shall decide both jurisdiction and venue.

2. Subsection 1 does not require the State to negate any facts expressly designated as a "defense", or any exception, exclusion, or authorization which is set out in the statute defining the crime, either

A. by allegation in the indictment or information; or

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

3. If the sentencing classification of a crime depends on facts expressly declared to be relevant to classification in the statute defining the crime, such facts shall be deemed elements of the crime, provided that proof of the facts authorizes the higher of the possible classifications. In such cases the burden is on the State to

A. allege the facts in the indictment or information; and

B. prove the facts beyond a reasonable doubt.

4. If the sentencing classification of a crime depends on facts expressly declared to be relevant to classification in the statute defining the crime, and proof of the facts authorizes only the lower of the classifications, the State is not required to negate such facts by allegations in the indictment or information. The State does, however, have the burden of disproving such facts beyond a

reasonable doubt, if the facts are in issue as a result of evidence admitted at the trial which is sufficient to raise a reasonable doubt on the issue.

5. Subsection 1 does not apply to any defense which the statute exclicitly designates as an "affirmative defense." Defenses so designated must be proved by the defendant by a preponderance of the evidence.

Comment

This section was approved by the Commission on January 18, 1973, with an amendment to subsection one to require proof beyond a reasonable doubt of jurisdiction, and to have the jurisdiction and venue questions decided by the court.

This has now been rewritten so as to provide new rules relating to statutory exceptions, which are quite important in the realm of drug laws, and to pleading and proof problems regarding facts relevant to the sentencing classification of crimes.

The new subsection 2 does not require the state to plead anything about a defense or a statutory exception. There is also no obligation to disprove any defense or the existence of an exception, unless there is evidence which raises a reasonable doubt on the issue. The evidence to raise such a doubt will most often come from the defendant, although it is possible for the state's witnesses to do the same thing, and the burden of

disproof beyond a reasonable doubt does not depend on the source of the initial evidence. The only substantive change here is to treat statutory exceptions the same way that the earlier draft dealt with matters of defense.

More importantly, subsections three and four provide pleading and proof rules relating to facts which are relevant solely for sentencing. The example most recently considered by the Commission (and giving rise to this redraft) can be found in Chapter 24, section 1, Kidnapping, where the sentencing classification is pegged at a class A crime, subject to reduction to class B if the victim is released unharmed. Subsection 4 would govern such a case. The government would not be required to plead that the victim was <u>not</u> released unharmed, and would be required to prove beyond a reasonable doubt that he was not released unharmed only if there is evidence in the case which raises a reasonable doubt about such a release.

Subsection 3, on the other hand, deals with a crime such as larceny where the sentencing classification may be put at one level if the property stolen is more than a given value, and at a lower level if it is below the specified amount. If the state wants a conviction at the higher level, it must both plead and prove the higher amount.

Section 5. Application to Crimes Outside the Code

The provisions of this Title are applicable to crimes defined outside this Code, unless the context of the statute defining the crime clearly requires otherwise.

Section 6. Territorial Applicability

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

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

B. conduct occuring outside this state constitutes an attempt to commit a crime under the laws of this state and the intent is that the crime take place within this state; or

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

D. conduct occurring within this state would constitute complicity in the commission of, or an attempt, solicitation or conspiracy to commit an offense in another jurisdiction which is

also a crime under the law of this state; or

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

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

G. jurisdiction is otherwise provided by law.

2. Subsection 1A does not apply if:

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

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

3. When the crime is homicide, a person may be convicted under the laws of this state if either the death of the victim or the bodily impact causing death occurred within the state. If the body of a homicide victim is found within this state, it is presumed that such death or impact occurred within the state. When the crime is theft,

a person may be convicted under the laws of this state if he obtained property of another, as defined in section 2 of chapter 25, outside of this state and brought the property into the state.

Section 7. Statute of Limitations

1. It is a defense that prosecution was commenced after the expiration of the applicable period of limitations provided in this section; provided, however, that a prosecution for aggravated murder or murder may be commenced at any time.

2. Prosecutions for crimes other than murder are subject to the following periods of limitations:

A. a prosecution for a class A or class B crime must be commenced within six years after it is committed;

B. a prosecution for a class C or class D crime must be commenced within two years after it is committed.

3. The periods of limitations shall not run:

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

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

4. If a timely complaint or indictment is dismissed for any error, defect, insufficiency or irregularity, a new prosecution for the same crime based on the same conduct may be commenced within six months after the dismissal, or during the next session of the grand jury, whichever occurs later, even though the period of limitations has expired at the time of such dismissal or will expire within such period of time.

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

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

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

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

6. For purposes of this section:

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

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

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

Section 8. Plea Negotiations.

1. A person charged with a crime may plead guilty or nolo contendere to that crime, or to any lesser included crime, and the plea may specify the sentence to the same extent as it may be fixed by the court upon conviction after a plea of not guilty. Any such plea must have been accepted by the State and must be approved by the court in open court before it shall become effective. If so accepted and approved, the defendant cannot be sentenced to a punishment more severe than that specified in the plea. If such plea is not accepted by the state and approved by the court, the plea shall be deemed withdrawn and the defendant may then enter such plea or pleas as would otherwise have been available. If such plea is deemed withdrawn, it may not be received in evidence in any criminal or civil action, or proceeding of any nature.

2. In determining whether to accept such a plea, the state may consider charging a different crime from the one originally charged, and may do so in the interests of justice. If it accepts a plea to such a different crime, the change shall be brought to the attention of the court when it considers approving the plea submitted to it.

3. No plea, or other part of the negotiations leading to the submission of a plea to the court, shall be a matter of public record unless and until such plea is approved by the court.

Comment

This is the generalized section on plea negotiations which the Commission suggested should be included in this chapter.

Chapter 11 Preliminary

Section 9. Definitions of Culpable States of Mind

1. "Intentionally."

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

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

2. "Knowingly."

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

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

3. "Recklessly."

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

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

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

4. "Criminal Negligence."

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

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

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

Section 10. Requirement of Culpable Mental States

1. Unless otherwise expressly provided, a person is not guilty of a crime unless he acted intentionally, knowingly, recklessly, or negligently, as the law defining the crime specifies, with respect to each element of the offense. When the state of mind required to establish an element of a crime is either not specified by such law, or is specified as "willfully", "corruptly", or in some other term importing a state of mind, that element is satisfied if, with respect thereto, the person acted intentionally or knowingly.

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

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

Section 11. Definitions

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

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

2. "Non-deadly force" means any physical force which is not deadly force.

3. "Dwelling" means any building, motor home, trailer, camper-body or other structure, though movable or temporary, which is for the time being any person's home or place of lodging.

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

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

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

TITLE D1 GENERAL PRINCIPLES

Chapter 12 Criminal Liability

Section 1. Basis for Liability

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

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

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

Section 2. Ignorance and Mistake

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

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

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

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

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

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

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

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

(1) a statute, ordinance or other enactment;

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

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

(4) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the statute defining the crime.

This subsection does not impose any duty to make any such official interpretation.

Section 3. Immaturity

1. No criminal proceeding shall be commenced against any person under the age of seventeen at the time of such proceeding except as the result of a finding of probable cause authorized by section 2611 (3) of Title 15, or in regard to the offenses over which juvenile courts have no jurisdiction, as provided in section 2552 of Title 15.

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

Section 4. Duress

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

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

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

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

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

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

Section 5. Consent

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

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

A. neither the injury inflicted nor the injury threatened was such as to threaten life or serious bodily injury; or

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

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

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

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

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

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

Section 6. Causation

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

Section 7. Intoxication

1. It is a defense that when a defendant engages in conduct which would otherwise constitute a crime, there is evidence of intoxication which is such as to create a reasonable doubt concerning an element of the crime. Otherwise, intoxication is no defense.

2. As used in this section, "intoxication" means a disturbance of mental or physical capacities resulting from the introduction of alcohol, drugs, or other similar substances into the body.

Section 8. Criminal Liability for Conduct of Another; Accomplices

1. A person is guilty of a crime if it is committed by the conduct of another person for which he is legally accountable.

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

A. acting with the kind of culpability that is sufficient for the commission of the crime, he causes an innocent person, or a person not criminally responsible, to engage in such conduct; or

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

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

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

A. with the intent of promoting or facilitating the commission of the crime, he solicits such other person to commit

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

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

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

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

A. he is the victim of that crime; or

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

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

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

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

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

TITLE D1 GENERAL PRINCIPLES

Chapter 13 Justification

Section 1. General Rules

1. Conduct which is justifiable under this Chapter constitutes a defense to any crime; provided, however, that if a person is justified in using force against another, but he recklessly injures or creates a risk of injury to third persons, the justification afforded by this chapter is unavailable in a prosecution for such recklessness.

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

Section 2. Public Duty

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

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

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

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

Section 3. Competing Harms

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

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

Section 4. Use of Force in Defense of Premises

A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using non-deadly force upon another when and to the extent that he reasonably believes it necessary to prevent or terminate the commission of a criminal trespass by such other in or upon such premises, but he may use deadly force under such circumstances only in defense of a person as prescribed in section 7 or when he reasonably believes it necessary to prevent an attempt by the trespasser to commit arson.

Section 5. Use of Force in Property Offenses

A person is justified in using a reasonable degree of non-deadly force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking; but he may use deadly force under such circumstances only in defense of a person as prescribed in section 7.

Section 6. Physical Force by Persons with Special Responsibilities

1. A parent, foster parent, guardian or other person responsible for the general care and welfare of a person under the age of 17 is justified in using a reasonable degree of force against such person when and to the extent that he reasonably believes it necessary to prevent or punish such person's misconduct. A person to whom such parent, foster parent, guardian or other responsible person has expressly delegated permission to so prevent or punish misconduct is similarly justified in using a reasonable degree of force.

2. A teacher or person otherwise entrusted with the care or supervision of a person under the age of 17 for special and limited purposes is justified in using a reasonable degree of force against any such person who creates a disturbance when and to the extent that he reasonably believes it necessary to control the disturbing behavior or to remove such person from the scene of such disturbance.

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

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

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

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

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

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

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

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

Section 7. Physical Force in Law Enforcement

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

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

B. to defend himself or a third person from what he reasonably believes to be the imminent use of non-deadly force encountered while attempting to effect such an arrest or while seeking to prevent such an escape.

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

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

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

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

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

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

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

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

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

5. A guard or law enforcement officer in a facility where persons are confined, pursuant to an order of a court or as a result of an arrest, is justified in using deadly force against such persons under the circumstances described in subsection 2 of this section. He is justified in using a reasonable degree of non-deadly force when and to the extent they reasonably believe it necessary to prevent any other escape from such a facility.

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

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

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

Section 8. Physical Force in Defense of a Person

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

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

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

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

2. A person is justified in using deadly force upon another person when he reasonably believes that such other person is about to use unlawful, deadly force against the actor or a third person, or is likely to use any unlawful force against the occupant of a dwelling while committing or attempting to commit a burglary of

such dwelling, or is committing or about to commit kidnapping or a forcible sex offense. However, a person is not justified in using deadly force on another to defend himself or a third person from deadly force by the other:

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

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

1. retreat from the encounter, except that he is not required to retreat if he is in his dwelling and was not the initial aggressor, provided that if he is a law enforcement officer or a private person assisting him at his direction and was acting pursuant to section 7, he need not retreat; or

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

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

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 21 Offenses of General Applicability

Section 1. Conspiracy

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

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

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

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

5. Accomplice liability for crimes committed in furtherance of the conspiracy is to be determined by the provisions of section 8 of chapter 12.

6. For the purpose of determining the period of limitations under section 8 of chapter 11:

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

B. If a person abandons the agreement, the conspiracy terminates as to him only when: (i) he informs a law enforcement officer of the existence of the conspiracy and of his participation therein; or (ii) he advises those with whom he conspired of his abandonment. The defendant shall prove his conduct under (ii) by a preponderance of the evidence.

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

8. It is a defense to prosecution under this section that, had the objective of the conspiracy been achieved, the defendant would have been immune from liability under the law defining the offense, or as an accomplice under section 8 of chapter 12.

9. Conspiracy is an offense classified as one grade less serious than the classification of the most serious crime which is its object, except that conspiracy to commit Aggravated Murder or Murder is a class A crime. If the most serious crime is a class D crime, the conspiracy is a class D crime.

Section 2. Attempt

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

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

3. A person who engages in conduct intending to aid another to commit a crime is guilty of criminal attempt if the conduct would establish his complicity under section 8 of chapter 12 were the crime committed by the other person, even if the other person is not guilty of committing or attempting the crime.

4. Criminal attempt is an offense classified as one grade less serious than the classification of the offense attempted, except that an attempt to commit a class D crime is a class D crime, and an attempt to commit Aggravated Murder or Murder is a class A crime.

Section 3. Solicitation

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

2. It is a defense to prosecution under this section that, if the criminal object were achieved, the defendant would not be guilty of a crime under the law defining the offense or as an accomplice under section 8 of chapter 12.

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

4. Solicitation is an offense classified as one grade less serious than the classification of the crime solicited, except that solicitation to commit a class D crime is a class D crime, and solicitation to commit Aggravated Murder or Murder is a class A crime.

Section 4. General Provisions Regarding Chapter 21

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

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

A. In a prosecution for attempt under section 2, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant avoided the commission of the crime attempted by abandoning his criminal effort and, if mere abandonment was insufficient to accomplish such avoidance, by taking further and affirmative steps which prevented the commission thereof.

B. In a prosecution for solicitation under section 3, or for conspiracy under section 1, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited or of the crime or crimes contemplated by the conspiracy, as the case may be.

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

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

Section 1. Aggravated Murder

1. A person is guilty of aggravated murder if he commits murder, as defined in section 2 and, at the time of his actions, one or more of the circumstances enumerated in subsection 2 was in fact present.

2. The circumstances referred to in subsection 1 are:

A. The murder was committed by a person under sentence for murder or aggravated murder.

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

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

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

E. The murder was committed for pecuniary gain.

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

3. An indictment for aggravated murder must allege one or more of the circumstances enumerated in subsection 2.

4. The court or jury before which any person indicted for aggravated murder is tried may find him guilty of a violation of sections 2, 3, 4 or 5.

5. The sentence for aggravated murder shall be as authorized in chapter 34.

Section 2. Murder

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

2. The court or jury before which any person indicted for murder is tried may find him guilty of a violation of sections 3, 4, 5 or 6.

3. The sentence for murder shall be as authorized in chapter 34.

Section 3. Promoting Criminal Homicide

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

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

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

B. was not armed with a firearm, destructive device, dangerous weapon, or other weapon which under the circumstances indicated a readiness to inflict serious bodily injury; and

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

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

Section 4. Manslaughter

1. A person is guilty of manslaughter if he:

A. causes the death of another human being by acting in disregard of an awareness he has that his conduct will create a high risk of such death, provided that his disregard of that risk is a gross deviation from the standard of care that a reasonable person would observe in his situation; or

B. causes the death of another human being under circumstances which would be aggravated murder or murder, except that he causes the death under the influence of extreme emotional disturbance or extreme mental retardation. The defendant shall prove by a preponderance of the evidence the presence and influence of such extreme

emotional disturbance or mental retardation. Evidence of extreme emotional disturbance or mental retardation may not be introduced by the defendant unless the defendant at the time of entering his plea of not guilty or within ten days thereafter or at such later time as the court may for cause permit, files written notice of his intention to introduce such evidence. In any event, the court shall allow the prosecution a reasonable time after said notice to prepare for trial, or a reasonable continuance during trial.

2. Manslaughter is a class B crime, except that if it occurs as the result of the reckless operation of a motor vehicle, it is a class C crime.

Section 5. Negligent Homicide

A person is guilty of negligent homicide if he negligently causes the death of another. Negligent homicide is a class D crime.

Section 6. Causing or Aiding Suicide

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

Section 7. Assault

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

Section 8. Aggravated Assault

A person is guilty of aggravated assault, a class B crime, if he intentionally, knowingly, or recklessly causes:

1. serious bodily injury to another; or

2. bodily injury to another by means of a deadly weapon;or

3. bodily injury to another under circumstances manifesting extreme indifference to the value of human life.

Section 9. Criminal Threatening

A person is guilty of criminal threatening, a class D crime, if he intentionally or knowingly places another person in fear of imminent bodily injury.

Proposed Minn Crim Code
West 1962

Ill - Crim Code, 1961 eff 1/1/62
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Quiz co. attys, others re problem areas now in criminal laws

Booklet - MPC + Me R.S. + Comments from MK

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TITLE D2 SUBSTANTIVE OFFENSES

Chapter 23 Sex Offenses

Section 1. Definitions and General Provisions

1. In this chapter the following definitions apply:

A. "spouse" means a person legally married to the actor, but does not include a legally married person living apart from the actor under a judicial decree of separation.

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

C. "sexual act" means any act of sexual gratification between two persons involving direct physical contact between the sex organs of one and the mouth or anus of the other.

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

2. No person may be prosecuted for violating this chapter unless the alleged offense was reported to or discovered by a law enforcement officer (i) within three months after its occurrence; or (ii) within one month after a parent, guardian, or other competent person interested in the victim and who is not a party to the offense learns of it, if the alleged victim was younger than 16 years of age, incompetent, or unable to make complaint.

3. No person may be convicted for violating this chapter unless there is direct or circumstantial evidence, deemed credible by the court, other than the testimony of the alleged victim, which proves or which corroborates testimony of the alleged victim, and which proves the commission of the crime by the defendant.

Section 2. Rape

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

A. with any female under the age of 14; or

B. with any female, not his spouse, and he compels her to submit:

(i) by force and against her will; or

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

2. Sexual abuse of minors and unlawful sexual contact are offenses included in rape.

3. It is an affirmative defense that the defendant and the female were living together as man and wife at the time of the offense.

4. Rape is a class A crime. It is, however, a defense which reduces the crime to a class B crime that the female was a voluntary social companion of the defendant at the time of the offense and had, on that occasion, permitted him sexual contact.

Section 3. Gross Sexual Misconduct

A person is guilty of gross sexual misconduct

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

A. he compels such other person to submit:

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

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

B. the other person is under the age of 14; or

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

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

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

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

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

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

3. Sexual abuse of minors and unlawful sexual contact are offenses included in gross sexual misconduct.

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

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

6. Violation of subsection 2A, 2C or 2E is a class B crime. Violation of subsection 2B or 2D is a class C crime.

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

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

2. Unlawful sexual contact is a class D crime, except that a violation of subwection 1C is a class C crime.

Section 4. Sexual Abuse of Minors

1. A person is guilty of sexual abuse of a minor if, being at least 18 years of age he engages in sexual intercourse or a sexual act with another person who has attained his 14th birthday but has not attained his 18th birthday.

2. It is a defense to a prosecution under this section that the actor reasonably believed the other person to be 18 years of age or older.

3. Unlawful sexual contact is an offense included in sexual abuse of minors.

4. Sexual abuse of minors is a class C crime.

Section 5. Unlawful Sexual Contact

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

A. the other person does not expressly or impliedly acquiese in such sexual contact; or

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

C. the other person is less than 14 years of age and the actor is at least 3 years older; or

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 24 Kidnapping and Criminal Restraint

Section 1. Kidnapping

1. A person is guilty of kidnapping if either:

A. he knowingly restrains another person with the intent to:

1. hold him for ransom or reward; or

2. use him as a shield or hostage; or

3. inflict bodily injury upon him or subject him to conduct defined as criminal in chapter 23; or

4. terrorize him or a third person; or

5. facilitate the commission of another crime or flight thereafter; or

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

B. he knowingly restrains another person:

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

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

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

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

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

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

3. Criminal Restraint is a crime included in Kidnapping.

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

Section 2. Criminal Restraint

1. A person is guilty of criminal restraint if:

A. he knowingly restrains another person; or

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

C. he intentionally or knowingly takes, retains, or entices:

1. a child under the age of 14; or

2. an incompetent person; or

3. a child who has attained his 14th birthday but has not attained his 16th birthday, provided that the actor is at least 18 years of age, from the custody of his parent, guardian, or other lawful custodian, knowing he has no legal right to do so, with the intent to hold the person permanently or for a prolonged period.

2. "Restrain" has the same meaning as in section 1.

3. Criminal Restraint is a class D crime.

Comment

This section has been rewritten pursuant to decisions taken at the Commission meeting held on April 13, 1973. Subsection 1B reflects the decision to penalize parents under the circumstances of criminal restraint only if they remove the child from the state. Subsections 1B and 1C serve to create a limited privilege to engage in what would otherwise be an offense when the actor is under the age of 18 and the "victim" is 14 or 15 years old. These are the same ages as exempt consensual teenage sexual activity from criminality under chapter 23, section 4.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 25 Theft

Section 1. Consolidation

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

Section 2. Definitions

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

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

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

B. tangible and intangible personal property;

C. captured or domestic animals, birds or fishes;

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

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

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

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

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

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

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

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

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

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

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

B. The value of a written instrument which does not have a readily ascertainable market value shall, in the case of an instrument such as a check, draft or promissory note be

deemed the amount due or collectible thereon, and shall, in the case of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the the loss of the instrument.

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

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

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

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

Section 3. Theft by Unauthorized Taking or Transfer

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

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

Section 4. Theft by Deception

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

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

A. creates or reinforces an impression which is false and which that person does not believe to be true, including false impressions as to law, value, knowledge, opinion, intention or other state of mind. Provided, however, that an intention not to perform a promise, or knowledge that a promise will not be performed, shall not be inferred from the fact alone that the promise was not performed; or

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

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

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

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

Section 5. Theft by Extortion

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

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

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

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

Section 6. Theft of Lost, Mislaid, or Mistakenly Delivered Property

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

1. fails to take reasonable measures to return the same to the owner, and

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

Section 7. Theft of Services

1. A person is guilty of theft if he obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefor. As used in this section, "deception" has the same meaning as in section 4, and "threat" is deemed to occur under the circumstances described in subsection 2 of section 5.

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

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

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

Section 8. Theft by Misapplication of Property

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

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

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

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

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

4. As used in this section,

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

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

Section 9. Receiving Stolen Property

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

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

Section 10. Unauthorized Use of Property

1. A person is guilty of theft if

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

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

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

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

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

Section 11. Classification of Theft Offenses

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

2. Theft is a class B crime if

A. the value of the property or services exceeds five thousand dollars; or

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

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

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 26 Burglary and Criminal Trespass

Section 1. Burglary

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

2. As used in this section, "dwelling place" means any building, structure, vehicle, boat or other place adapted for overnight accommodation of persons, or sections of any place similarly adapted. It is immaterial whether a person is actually present.

3. Criminal Trespass is an offense included in Burglary.

4. Burglary is classified as

A. a class A crime if the state proves beyond a reasonable doubt that the defendant was armed with a firearm, or knew that an accomplice was so armed; or

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

C. All other burglary is a class C crime.

5. A person may be convicted both of burglary and of the crime which he committed or attempted to commit after entering or remaining in the dwelling place, but sentencing for both crimes shall be governed by the provisions of chapter 31, section 5.

Section 2. Criminal Trespass

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

A. he enters in any secured premises; or

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

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

3. Criminal Trespass is a class C crime if the state proves beyond a reasonable doubt that violation of this section was by entering a dwelling place, as defined in section 1. All other Criminal Trespass is a class D crime.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 27 Falsification in Official Matters

Section 1. Perjury

1. A person is guilty of perjury, a class B crime, if he makes:

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

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

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

3. No person shall be convicted under this section (1) if he retracts the falsification in the course of the official proceeding in which it was made, and before it became manifest that the falsification was or would have been exposed; or (2) where proof of falsity rests solely upon contradiction by testimony of a single witness. Whether a conviction is prohibited under this subsection is a question for the trier of fact.

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

5. As used in this section:

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

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

Section 2. False Swearing

1. A person is guilty of false swearing, a class C crime, if:

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

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

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

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

2. No person shall be convicted under this section (1) if, when made in an official proceeding, he retracts the falsification in the course of such proceeding before it becomes manifest that the falsification was or would have been exposed, or (2) where proof of falsity rests solely upon contradiction by testimony of a single witness. Whether a conviction is prohibited under this subsection is a question for the trier of fact, unless the evidence relating to such prohibition is insufficient as a matter of law.

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

Section 3. Unsworn Falsification

1. A person is guilty of unsworn falsification, a class D crime, if:

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

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

(1) makes any written false statement which he does not believe to be true; or

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

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

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 27 Falsification in Official Matters

Section 4. Tampering with Witness or Informant

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

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

(i) to testify or inform falsely; or

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

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

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

C. he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in subsections 1A(ii) or 1A(iii).

2. Violation of subsections 1A(i) or 1B is a class C crime. Violation of subsections 1A(ii), 1A(iii), or 1C is a class D crime.

Section 5. Falsifying Physical Evidence

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

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

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

2. Falsifying Physical Evidence is a class D crime.

Section 6. Tampering with Public Records or Information

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

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

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

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

2. Tampering with Public Records or Information is a class D crime.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 28 Offenses Against Public Order

Section 1. Disorderly Conduct

A person is guilty of disorderly conduct if:

1. in a public place he in fact creates a condition, other than by his mere presence or by his speech, which serves no useful purpose and is hazardous or physically offensive to one or more ordinary persons therein reacting reasonably to such condition; or

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

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

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

5. As used in this section:

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

(i) public ways as defined in section 5;

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

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

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

6. Disorderly conduct is a class D crime.

Section 2. Failure to Disperse

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

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

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

Section 3. Riot

1. A person is guilty of riot if he participates with five or more other persons in a course of disorderly conduct:

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

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

2. Riot is a class B crime.

Section 4. Unlawful Assembly

A person is guilty of unlawful assembly if:

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

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

3. Unlawful assembly is a class D crime.

Section 5. Obstructing Public Ways

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

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

3. Obstructing Public Ways is a class D crime.

Section 6. Harrassment

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

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

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

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

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

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

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

3. Harassment is a class D crime.

Section 7. Desecration and Defacement

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

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

3. Desecration is a class D crime.

Section 8. Abuse of Corpse

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

2. It is a defense to prosecution under this section that the actor was a physician, surgeon or medical student who had in his possession, or used human bodies or parts thereof lawfully obtained, for anatomical or physiological investigation and instruction.

3. Abuse of corpse is a class D crime.

Section 9. False Public Alarm or Report

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

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

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

2. As used in this section, "fire fighting agency" includes a volunteer fire department.

3. False public alarm is a class D crime.

Section 10. Cruelty to Animals (Tabled)

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

A. he kills or injures any animal belonging to another person without legal privilege or the consent of the owner; or

B. he overworks, tortures, abandons, gives poison to, cruelly beats, or mutilates any animal; or

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

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

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

3. It is an affirmative defense to prosecution under this section that the defendant's conduct conformed to accepted veterinary practice or was a part of scientific research governed by accepted standards.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 29 Offenses Against the Family

Section 1. Bigamy

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

2. Bigamy is a class D crime.

Section 2. Nonsupport of Dependents

1. A person is guilty of nonsupport of dependents if he knowingly fails to provide support which he is able to provide and which he knows he is legally obliged to provide to a spouse, child or other dependent.

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

3. Nonsupport of dependents is a class D crime.

Section 3. Abandonment of Child

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

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

Section 4. Endangering the Welfare of a Child

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

2. The prohibitions in subsection 1 shall not apply to:

A. the parent of a child under the age of 16 who furnishes such child a reasonable amount of intoxicating liquor in the parent's home and presence; or

B. any person acting pursuant to authority expressly or impliedly granted in RSA Title 12.

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

Section 5. Endangering the Welfare of an Incompetent Person

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

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

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

Section 6. Incest

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

2. Incest is a class D crime.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 29B Robbery

Section 1. Aggravated Robbery

1. A person is guilty of aggravated robbery if, in the course of committing robbery, as defined in section 2,

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

B. he is armed with a dangerous weapon.

2. Aggravated robbery is a class A crime.

3. Robbery and theft are offenses included in aggravated robbery.

Section 2. Robbery

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

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

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

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

B. he recklessly inflicts bodily injury on another.

2. Robbery is a class B crime.

3. Theft is an offense included in robbery.

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

Section 1. Purposes

The general purposes of the provisions of this Title are:

1. To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety.

2. To minimize correctional experiences which serve to promote further criminality;

3. To give fair warning of the nature of the sentences that may be imposed on the conviction of an offense;

4. To eliminate inequalities in sentences that are unrelated to legitimate criminological goals;

5. To encourage differentiation among offenders with a view to a just individualization of sentences;

6. To promote the development of correctional programs which serve to reintegrate the offender into his community; and

7. To permit sentences which do not diminish the gravity of offenses.

Section 2. Authorized Sentences

1. Every natural person and organization convicted of a crime shall be sentenced in accordance with the provisions of this Title.

2. Every natural person convicted of a crime shall be sentenced to one of the following:

A. Probation or unconditional discharge as authorized by Chapter 32; or

B. To the custody of the Department of Mental Health and Corrections as authorized by chapter 34.

C. To pay a fine as authorized by chapter 35. Subject to the limitations of chap. 35, sec. 2, such a fine may be imposed in addition to probation or a sentence authorized by chap. 34.

3. Every organization convicted of a crime shall be sentenced to one of the following:

A. Probation or unconditional discharge as authorized by chapter 32; or

B. The sanction authorized by section 3. Such sanction may be imposed in addition to probation.

C. A fine authorized by chapter 35. Such fine may be imposed in addition to probation.

4. The provisions of this chapter shall not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty. An appropriate order exercising such authority may be included as part of the judgment of conviction.

Section 3. Sanctions for Organizations

1. If an organization is convicted of a crime, the court may, in addition to or in lieu of imposing other authorized penalties, sentence it to give appropriate publicity to the conviction by notice to the class or classes of persons or sector of the public interested in or affected by the conviction, by advertising in designated areas or by designated media, or otherwise as the court may direct. Failure to do so may be punishable as contempt of court.

2. If a director, trustee or managerial agent of an organization is convicted of a class A or class B crime committed in its behalf, the court may include in the sentence an order disqualifying him from holding office in the same or other organizations for a period not exceeding five years, if it finds the scope or nature of his illegal actions makes it dangerous or inadvisable for such office to be entrusted to him.

3. Prior to the imposition of sentence, the court may direct the Attorney General, a County Attorney, or any other attorney specially designated by the court, to institute supplementary proceedings in the case in which the organization was convicted of the crime to determine, collect and distribute damages to persons in the class which the statute was designed to protect who suffered injuries by reason of the crime, if the court finds that the multiplicity of small

claims or other circumstances make restitution by individual suit impractical. Such supplementary proceedings shall be pursuant to rules adopted by the Supreme Judicial Court for this purpose. The court in which proceedings authorized by this subsection are commenced may order the state to make available to the attorney appointed to institute such proceedings all documents and investigative reports as are in its possession or control and grand jury minutes as are relevant to the proceedings.

Section 4. Sentence in Excess of One Year Deemed Tentative

1. When a person has been sentenced to the custody of the Department of Mental Health and Corrections for any minimum term or for a maximum term in excess of one year, the sentence shall be deemed tentative, to the extent provided in this section, until six months prior to the expiration of the maximum term of the sentence.

2. If, as a result of examination and classification by the Department of Mental Health and Corrections of a person under sentence for a maximum term in excess of one year, or as a result of the Department's subsequent evaluation of such person's progress toward a non-criminal way of life, the Department is satisfied that the sentence of the court may have been based upon a misapprehension as to the history, character, or physical or mental condition of the offender, or as to the amount of time that would be necessary to provide for protection of the public from such offender, the Depart-

ment, during the period specified in subsection 1, may file in the sentencing court a petition to resentence the offender. The petition shall set forth the information as to the offender that is deemed to warrant his resentence and may include a recommendation as to the sentence that should be imposed.

3. The court may, in its discretion, dismiss a petition filed under subsection 2 without a hearing if it deems the information set forth insufficient to warrant reconsideration of the sentence. If the court finds the petition warrants such reconsideration, it shall cause a copy of the petition to be served on the offender and on the county attorney, both of whom shall have the right to be heard on the issue. The offender shall have the right to be represented by counsel, and if he cannot afford counsel, the court shall appoint counsel.

4. If the court grants a petition filed under subsection B, it shall resentence the offender and may impose any sentence not exceeding the original sentence that was imposed. The period of his being in the custody of the Department of Mental Health and Corrections prior to resentence shall be applied in satisfaction of the revised sentence.

5. Any new sentence imposed under subsection 4 may be a modification of the maximum term, the minimum, if any, or both.

6. For all purposes other than this section, a sentence to the custody of the Department of Mental Health and Corrections has the same finality when it is imposed that it would have if this section were not in force. Nothing in this section shall alter the remedies provided by law for appealing a sentence, or for vacating or correcting an illegal sentence. As used in this section, "court" means the judge who imposed the original sentence, unless he is disabled or otherwise unavailable.

Section 5. Multiple Sentences

1. When multiple sentences to the custody of the Department of Mental Health and Corrections are imposed on a person at the same time or when such a sentence is imposed on a person who is already subject to an undischarged term of custody or imprisonment, the sentences shall run concurrently, or, subject to the provisions of this section, consecutively, as determined by the court. When multiple fines are imposed on a person or an organization, the court may, subject to the provisions of this section, sentence the person or organization to pay the cumulated amount or the highest single fine. Sentences shall run concurrently and fines shall not be cumulated unless otherwise specified by the court.

2. The court shall not impose consecutive custody terms or cumulative fines unless, having regard to the nature and circumstances of the offense, and the history and character of the defendant, it is of the opinion that such a sentence is required because of the exceptional features of the case, for reasons which the court shall set forth for the record in detail.

3. The aggregate maximum of consecutive custody sentences to which a defendant may be subject shall not exceed the maximum term authorized for the most serious offense involved, and the cumulated amount of fines shall not exceed that authorized for the most serious offense involved, except that a defendant being sentenced for two or more class C or D crimes may be subject to an aggregate maximum of custody and fines not exceeding that authorized for a class B crime if each class C or D crime was committed as part of a different course of conduct or each involved a substantially different criminal objective. The aggregated minimum term, if any, shall constitute the aggregate of all minimum terms, but shall not exceed one-half of the aggregated maximum term or ten years, whichever is less.

4. A defendant may not be sentenced to consecutive terms or cumulative fines for more than one offense when:

1. One offense is an included offense of the other;

2. One offense consists only of a conspiracy, attempt, solicitation or other form of preparation to commit, or facilitation of, the other; or

3. The offenses differ only in that one is defined to prohibit a designated kind of conduct generally, and the other to prohibit a specific instance of such conduct; or

4. In separate trials, inconsistent findings of fact are required to establish the commission of the offenses.

Section 6. Consideration of Other Crimes

1. If the convicted person consents, the court may, in its discretion, take into account in determining sentence, any other crimes committed by such person for which he has not been convicted; provided that if there is such consent, the prosecuting attorney shall be notified and afforded an opportunity to be heard. If, following any such hearing, or waiver thereof by the prosecuting attorney, the court takes into account such other crimes as are disclosed by the convicted person, the record shall so state and the sentence imposed shall bar the prosecution or conviction in this state of the person so sentenced. If the court does not take such other crimes into account, the convicted person's disclosure of them, in whole or in part, and any evidence derived directly or indirectly from such disclosure, shall not be admissible against him in any court. Before taking into account any such disclosed crimes, the court must be satisfied that the convicted person engaged in the conduct constituting such crimes.

2. Sentences imposed under this section are subject to the provisions of section 5. Upon the imposition of sentence under this section, the clerk of the court imposing sentence shall notify in writing the clerk of the court in which there are pending any of the crimes taken into account, and the clerk of the court in which they are pending shall cause the record of such pending cases to show that they were the subject of proceedings under this section. The record of the case in which sentence is imposed shall reflect all action taken under this section.

3. Before imposing sentence, the court shall inform the convicted person of the provisions of this section.

TITLE D3 THE SENTENCING SYSTEM

Chapter 32 Probation and Unconditional Discharge

Section 1. Eligibility for Probation and Unconditional Discharge

1. A person who has been convicted of any crime, except aggravated murder or murder, may be sentenced to probation or unconditional discharge, unless the court finds that

A. there is undue risk that during the period of probation the convicted person would commit another crime; or

B. the convicted person is in need of correctional treatment that can be provided most effectively by commitment to the Department of Mental Health and Corrections; or

C. such a sentence would diminish the gravity of the crime for which he was convicted.

2. A convicted person who is eligible for sentence under this chapter, as provided in subsection 1, shall be sentenced to probation if he is in need of the supervision, guidance, assistance or direction that probation can provide. If there is no such need, and no proper purpose would be served by imposing any condition or supervision on his release, he shall be sentenced to an unconditional discharge. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

Section 2. Period of Probation: Modification and Discharge

1. A person convicted of a class A or class B crime may be placed on probation for a period not to exceed three years; for a class C crime, for a period not to exceed two years; and for a class D crime, for a period not to exceed one year.

2. During the period of probation specified in the sentence made pursuant to subsection 1, and upon application of a person on probation, his probation officer, or upon its own motion, the court may, after a hearing upon notice to the probation officer and the person on probation, modify the requirements imposed, add further requirements authorized by section 3, or relieve the person on probation of any requirement that, in its opinion, imposes an unreasonable burden on him.

3. On application of the probation officer, or of the person on probation, or on its own motion, the court may terminate a period of probation and discharge the convicted person at any time earlier than that provided in the sentence made pursuant to subsection 1, if warranted by the conduct of such person. Such termination and discharge shall serve to relieve the person on probation of any obligations imposed by the sentence of probation.

Section 3. Conditions of Probation

1. If the court imposes a sentence of probation, it shall attach such conditions, as authorized by this section, as it deems to be reasonable and appropriate to assist the convicted person to lead a law-abiding life.

2. As a condition of probation, the court in its sentence may require the convicted person:

A. to support his dependents and to meet his family responsibilities;

B. to devote himself to an approved employment or occupation;

C. to undergo, as an out-patient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for that purpose. Failure to comply with this condition shall be considered only as a violation of probation and shall not, in itself, authorize involuntary treatment or hospitalization.

D. to pursue a prescribed secular course of study or vocational training;

E. to refrain from criminal conduct or from frequenting unlawful places or consorting with specified persons;

F. to refrain from possessing any firearm or other dangerous weapon;

G. to make restitution, in whole or in part, according to the resources of the convicted person, to the victim or victims of his crime, or to the county where the offense is prosecuted where the identity of the victim or victims cannot be ascertained. As used in this subsection, "restitution" includes the money equivalent of property taken from the victim, or property destroyed or otherwise broken or harmed, and out-of-pocket losses attributable to the crime, such as medical expenses or loss of earnings.

H. to remain within the jurisdiction of the court unless permission to leave temporarily is granted in writing by the probation officer, and to notify the court or the probation officer of any change in his address or his employment;

I. to refrain from drug abuse and excessive use of alcohol;

J. to report as directed to the court or the probation officer, to answer all reasonable inquiries by the probation officer and to permit the officer to visit him at reasonable times at his home or elsewhere;

K. to pay a fine as authorized by chapter 35.

L. to satisfy any other conditions reasonably related to the rehabilitation of the convicted person or the public safety or security.

3. The convicted person shall be given a written statement setting forth the particular conditions on which he is released on probation, and he shall then be given an opportunity to address the court on these conditions if he so requests at the time.

Section 4. Probation Revocation

1. At any time before the discharge of the person on probation or the termination of the period of probation, if the probation officer has probable cause to believe that there has been a violation of a condition of probation, the officer may apply to any court for a summons ordering the person to appear before the court for a hearing on the violation. The application for summons shall include a statement of the facts and conduct allegedly constituting the violation of probation. The person on probation shall be furnished a copy of the application by the probation officer.

2. Upon the receipt of the application provided for in subsection 1, the court may, in its discretion:

A. issue the summons and order a hearing on the allegations, or deny the application and order the person on probation released forthwith if he has been arrested on the allegations; or

B. if it is not the court which imposed the probation sentence, transfer the proceedings to such court which shall then proceed pursuant to this section.

C. If a hearing is ordered, the person on probation shall be notified, and the court, including the court to which the proceedings may have been transferred, may issue a warrant for his arrest and order him committed, with or without bail, pending the hearing.

3. If a hearing is held, the person on probation shall be afforded the opportunity to confront and cross-examine witnesses against him, to present evidence on his own behalf, and to be represented by counsel. If he cannot afford counsel, the court shall appoint counsel for him.

4. When the alleged violation constitutes a crime:

A. If the court hearing the violation is a District Court, it may

1. accept a plea of guilty or nolo contendere to such crime, provided all the requirements for accepting such pleas are complied with; or

2. if it has jurisdiction to try such crime, revoke probation if it finds by a preponderance of the evidence that the person on probation committed the crime, or it may order him tried for such crime; or

3. order the allegation of such new crime to be brought before the Superior Court, if it does not have jurisdiction to try such crime.

B. If the court hearing the violation is a Superior Court, it may

1. accept a plea of guilty or nolo contendere to crime, provided all the requirements for accepting such pleas are complied with; or

2. revoke probation if it finds by a preponderance of the evidence that the person on probation committed the crime; or

3. order the person tried for such crime.

5. If the alleged violation does not constitute a crime and the court finds that the person has inexcusably failed to comply with a requirement imposed as a condition of probation, it may revoke probation. In such case, the court may impose any sentence that might have been imposed originally.

6. If the person on probation is convicted of a new crime during the period of probation, the court may sentence him for such crime and revoke probation and impose any sentence for the original crime that might have been imposed originally, subject to the provisions of section 5 of chapter 31.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

Section 1. Commitments for Aggravated Murder and Murder

1. A person who has been convicted of a crime may be sentenced to the custody of the Department of Mental Health and Corrections pursuant to the provisions of this chapter.

2. In the case of a person convicted of aggravated murder or murder, the court shall commit him to the custody of the Department for purposes of an evaluation of such person as is relevant to sentence. No later than 120 days from such commitment, the Department shall return the convicted person to the court, along with the report of its evaluation and a recommended sentence.

3. Upon receipt of the report and recommendations provided for in subsection 2, the court shall commit him to the custody of the Department and

A. in the case of aggravated murder set as a maximum term for the commitment of life and a minimum term not to exceed twenty-five years; or a maximum of any term of years not to exceed fifty years, and a minimum term not to exceed twenty-five years or one half of the maximum term of years set by the court, whichever is less.

B. In the case of murder, the court shall set a maximum term of life or any term of years not to exceed forty, and may, in its discretion, set a minimum term not to exceed fifteen years or one half of the maximum term of years set by the court, whichever is less.

C. In the case of aggravated murder or murder, the court may, in its discretion, order that the minimum term be served in a penal institution under the control of the Department, with the specific institution to be determined by the Department.

Section 2. Commitments for Crimes Other Than Aggravated Murder or Murder

1. In the case of a person convicted of a crime other than aggravated murder or murder, the court may commit to the custody of the Department of Mental Health and Corrections for a maximum term as provided for in this section and in section 3, and for a minimum term if the conviction is for one of the following crimes: manslaughter, rape, robbery, arson or kidnapping. No such minimum term shall be imposed, however, unless there has been a pre-sentence investigation pursuant to Rule 32 (c) of the Maine Rules of Criminal Procedure.

2. Subject to the provisions of section 3, the court shall set the maximum term for the commitment as follows:

A. In the case of a class A crime, the court shall set a maximum period not to exceed thirty years;

B. In the case of a class B crime, the court shall set a maximum period not to exceed ten years;

C. In the case of a class C crime, the court shall set a maximum period not to exceed five years;

D. In the case of a class D crime, the court shall set a maximum period not to exceed one year.

3. If the court sentences a person convicted of one of the crimes listed in subsection 1 to a minimum term, such minimum may be set at any term of years not to exceed one half of the maximum set under subsection 2.

4. The sentence of commitment made under this section or section 3 shall not include any provision concerning where the convicted person is to serve the period of commitment, and the further disposition of such persons shall be governed by the provisions of section 6.

5. The court may add to the sentence of commitment a restitution order as is provided for in chapter 32, section 3 (2) G. In such cases, it shall be the responsibility of the Department to determine whether the order has been complied with, and consideration shall be given in Department decisions concerning the committed person as to whether the order has been complied with.

Section 3. Upper-Range Commitments

1. If a convicted person is committed to the Department of Mental Health and Corrections pursuant to section 2, the maximum term shall not be set at more than twenty years for a class A crime, seven years for a class B crime, three years for a class C crime, or six months for a class D crime unless, having regard to the nature and circumstances of the crime, and the history and character of the defendant, the court is of the opinion that a term in excess of these limits is required for the protection of the public from further criminal conduct of the convicted person.

2. The court shall not impose an upper-range commitment under this section unless there has been a pre-sentence investigation pursuant to Rule 32 (c) of the Maine Rules of Criminal Procedure.

3. If a person is committed to the Department under this authority of this section, the court shall set forth for the record its detailed reasons for doing so.

Section 4. Transmittal of Statements to the Department of Mental Health and Corrections

After sentence has been imposed under section one, section two or section three, the judge, the person representing the state, the attorney representing the convicted person, and any law enforcement agency which investigated the case or participated in the prosecution, may file with the clerk for transmittal to the Department a brief statement of their views respecting the person convicted and of the crime. Upon request, any such statement shall be made available by the clerk to any of the above named persons or agencies.

Section 5. Calculation of Period of Commitment

1. The sentence of any person committed to the custody of the Department of Mental Health and Corrections shall commence to run on the date on which such person is received into the custody of the Department.

2. When a person sentenced to the custody of the Department has been committed for presentence evaluation pursuant to subsection 2 of section 1, or has previously been detained to await trial, in any state or county institution, or local lock-up, for the conduct for which such sentence is imposed, such period of evaluation and detention shall be deducted from the minimum term of such sentence, if any, or from the

maximum term of such sentence. The Department shall have the same authority regarding such local lock-ups as is provided regarding county jails by chapter 34, section 3. The attorney representing the state shall furnish the court, at the time of sentence, a statement showing the length of any such detention, and the statement shall be attached to the official records of the commitment.

Section 6. Authority of the Department of Mental Health and Corrections

1. Subject to the provisions of a sentence which may be made pursuant to subsection three of section one, upon receiving a person committed to its custody under section one, section two or section three, the Department shall place the person in a classification program, the aim of which is to determine which institution or program available to the Department is most likely to insure the lawful conduct of such person upon his release from the custody of the Department.

2. The Department shall, by regulation, provide for the classification process to include:

A. An opportunity for the person being classified to communicate, orally or in writing, concerning the program he is to be placed in; and

B. A written statement from the Department to such person stating the classification decision that has been made, notifying him of his right to appeal under subsection 2C, and setting forth the reasons why he is being placed in a particular program; and

C. An appeal of the classification decision to the Commissioner of the Department. Such appeals shall be decided within 60 days from the time they are taken.

3. Upon completion of the classification process, and subject to the provisions of a sentence which may be made pursuant to subsection three of section one, the Department may place a person committed to its custody as follows:

A. In a state institution; or

B. In a county jail; or

C. In a program of community supervision pursuant to the provisions of chapter 36.

Section 7. Release from Imprisonment: Community Supervision

1. The Department of Mental Health and Corrections shall, in its discretion exercised pursuant to the provisions of Chapter 36, release persons convicted of aggravated murder or murder and sentenced to imprisonment either

A. at the expiration of the minimum term specified in the sentence; or

B. if there is a maximum term of years specified in the sentence, at any time no later than five years prior to the expiration of such maximum term of years; or

C. if the maximum period specified in the sentence is life, then at any time following expiration of the minimum term, or at any time if no minimum term is included in the sentence.

2. Upon the release from imprisonment of any person pursuant to subsection 1, the Department shall maintain him under its supervision in the community for a period not to exceed five years. At any time during such five year period, if the Department determines that the protection of the public no longer requires further supervision, it may terminate such supervision, in which event the maximum period of commitment specified in the sentence shall be deemed to have expired.

3. A person convicted of any crime other than aggravated murder or murder who has been committed to the custody of the Department, and placed thereupon by the Department in a state or county penal institution, shall be released from such institution, be subject to supervision in the community by the Department, and remain in the legal custody of the Department as follows:

A. If the maximum period of commitment set in the sentence is nine years or less, the period of community supervision shall be one-third of such maximum, so that in no event shall the release be delayed beyond the expiration of two-thirds of the maximum;

B. If the maximum period of commitment set in the sentence is more than nine years but less than fifteen years, the period of community supervision shall be three years, so that in no event shall the release be delayed beyond three years prior to the expiration of the maximum;

C. If the maximum period of commitment set in the sentence is fifteen years or more, the period of community supervision shall be five years, so that in no event shall the release be delayed beyond five years prior to the expiration of the maximum.

D. At any time during the period of community supervision provided for in this subsection, the Department may terminate its supervision and custody if it determines that the protection of the public no longer requires further supervision and custody, in which

event the maximum period of commitment specified in the sentence shall be deemed to have expired; provided, however, that no such termination shall be made prior to the expiration of any minimum period of commitment included in the sentence.

4. A person convicted of any crime other than aggravated murder or murder who has been committed to the custody of the Department, and made subject thereupon by the Department to supervision in the community, may subsequently be placed in a penal institution pursuant to the provisions of chapter 36, section 6. In such cases the Department may release such a person from the institution at any time prior to the expiration of the maximum period set in the sentence and supervise him in the community until expiration of the maximum period, or it may delay release until expiration of the maximum period.

5. As used in this section, "thereupon" means upon the completion of the classification process provided for in section 6.

6. All releases from institutions which are not made mandatory by this section shall be made pursuant to the provisions of chapter 36.

TITLE D3 THE SENTENCING SYSTEM

Chapter 35 Fines

Section 1. Amounts Authorized

1. A natural person who has been convicted of a class C or class D crime may be sentenced to pay a fine, subject to the provisions of section 2, which shall not exceed:

A. $1,000 for a class C crime;

B. $500 for a class D crime; and

C. regardless of the classification of the crime, any higher amount which does not exceed twice the pecuniary gain derived from the crime by the defendant.

2. As used in this section, "pecuniary gain" means the amount of money or the value of property at the time of the commission of the crime derived by the defendant from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority prior to the time sentence is imposed. When the court imposes a fine based on the amount of gain, the court shall make a finding as to the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding, the court may conduct, in connection with its imposition of sentence, a hearing on this issue.

3. If the defendant convicted of a crime is an organization, the maximum allowable fine which such a defendant may be sentenced to pay shall be:

A. $50,000 for a class A crime;

B. $20,000 for a class B crime;

C. $10,000 for a class C or class D crime; and

D. any higher amount which does not exceed twice the pecuniary gain derived from the crime by the convicted organization.

Section 2. Criteria for Imposing Fines

No convicted person shall be sentenced to pay a fine unless the court determines that he is or will be able to pay the fine. In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the offender and the nature of the burden that its payment will impose. No person shall be committed to the Department of Mental Health and Corrections under Chapter 34 solely for the reason that he will not be able to pay a fine.

Section 3. Time and Method of Payment of Fines

1. If a convicted person is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine shall be payable forthwith to the clerk.

2. If a convicted person sentenced to pay a fine is also placed on probation, the court may make the payment of the fine a condition of probation. In such cases, the court may order that the fine be paid to the probation officer.

Section 4. Default in Payment of Fines

1. When a convicted person sentenced to pay a fine defaults in the payment thereof or of any installment, the court, upon the motion of the official to whom the money is payable, as provided in section 3, or upon its own motion, may require him to show cause why he should not be sentenced to be committed to the Department of Mental Health and Corrections for non-payment and may issue a summons or a warrant of arrest for his appearance. Unless such person shows that his default was not attributable to a wilful refusal to obey the order of the court or to a failure on his part to make a good faith effort to obtain the funds required for the payment, the court shall find that his default

was unexcused and may order him committed to the Department until the fine or a specified part thereof is paid. The term of commitment for such unexcused non-payment of the fine shall be specified in the order of commitment and shall not exceed one day for each five dollars of the fine or six months, whichever is the shorter. When a fine is imposed on an organization, it is the duty of the person or persons authorized to make disbursements from the assets of the organization to pay it from such assets and failure so to do may be punishable under this section. A person committed for non-payment of a fine shall be given credit towards its payment for each day that he is in the custody of the Department, at the rate specified in the order of commitment. He shall also be given credit for each day that he has been detained as a result of an arrest warrant issued pursuant to this section.

2. If it appears that the default in the payment of a fine is excusable, the court may make an order allowing the offender additional time for payment, reducing the amount thereof or of each installment, or revoking the fine or the unpaid portion thereof in whole or in part.

3. Upon any default in the payment of a fine or any installment thereof, execution may be levied, and such other measures may be taken for the collection of the fine or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against a person. The levy of execution for the collection of a fine shall not discharge a person committed to the custody of the Department for non-payment of the fine until such time as the amount of the fine has been collected.

Section 5. Revocation of Fines

1. A convicted person who has been sentenced to pay a fine and has not inexcusably defaulted in payment thereof, may at any time petition the court which sentenced him for a revocation of any unpaid portion thereof. If the court finds that the circumstances which warranted the imposition of the fine have changed, or that it would otherwise be unjust to require payment, the court may revoke the unpaid portion thereof in whole or in part, or modify the time and method of payment.

2. If, in any judicial proceeding following conviction, a court issues a final judgment invalidating the conviction, such judgment may include an order that any or all of a fine which the convicted person paid pursuant to the sentence for such conviction be returned to him.

TITLE D3 THE SENTENCING SYSTEM

Chapter 36 Release from Institutions and Community Supervision

Section 1. Persons Eligible for Release: Criteria

1. Except in those cases in which the Department is required to release convicted persons from institutions pursuant to section 7 of chapter 34, all eligibility for release from an institution is governed by this section.

2. All persons committed to the Department pursuant to chapter 34 are eligible at any time for release from an institution in which they may have been placed, except that in the case of a person convicted of aggravated murder or murder, release shall not take place prior to the expiration of the minimum term specified in a sentence of commitment which requires that such minimum be served in a penal institution.

3. The State Parole Board shall determine, pursuant to the procedures set forth in section 3, whether a person who is eligible for release shall be released as follows:

A. In the case of persons whose maximum sentence is more than one year, the determination shall be made at the end of the first year and annually thereafter;

B. In the case of any person confined in an institution as a result of a revocation decision authorized by section 7, the determination shall be made one year from the time he entered the institution as a result of such a decision, and annually thereafter.

C. The Department may, by regulation, provide for determinations for release to be made at additional times, such as upon the recommendation of the person in charge of the institution in which the convicted person is confined.

4. The State Parole Board shall grant a release to a person whose case is before it for determination according to the schedule set forth in this section unless:

A. there is an undue risk that the person would commit another crime during the period of community supervision; or

B. his continued correctional treatment in an institution would substantially enhance his capacity to lead a law-abiding life when released at a later date; or

C. his release at that time would seriously diminish the gravity of his crime.

Section 2. Preparation for Release Determination

1. Within 60 days of when a person becomes eligible for a Parole Board decision concerning his release under section 1, he shall be requested by the Parole Board to prepare a plan setting forth the manner of life he intends to lead if released, including such specific information as where and with whom he will reside and what occupation or employment he will follow, together with such other information as he considers relevant to the criteria set forth in subsection 4 of section 1, a copy of which shall be furnished him at the time the request for a plan is made.

2. In the course of preparing such a release plan, the person may request that he be temporarily released from the institution purusant to the provisions of Title 34, section 527. The Bureau shall also render such aid as it considers to be reasonable to the person preparing the plan.

Section 3. Release Hearings

1. The Board of Parole shall meet at such times and places as are necessary to make the determinations required by this chapter.

2. The person whose release is being considered shall be given the opportunity to appear personally at a hearing before the Board, to present his plan and to examine, a reasonable time prior to the time his case will be determined, the material being considered by the Board pursuant to subsection 3, subject to the discretion of the Board to delete confidential sources of information in such material prior to its disclosure.

3. The Department shall cause to be furnished to the Board of Parole:

A. a report by the institutional staff, relating to the person's adjustment to authority, and including any staff recommendations as to the release determination;

B. all official reports of his prior delinquency or criminal record, including reports and records of earlier probation and parole or community supervision experiences, if any;

C. a copy of any presentence evaluation or presentence investigation report which was submitted to the court which sentenced the offender;

D. reports of any physical and mental examinations;

E. any other relevant information as may be available.

4. The Board shall render its decision within a reasonable time after the hearing and shall state the basis therefor, both in the records of the Board and in written notice to the person in whose case it has acted. In its decision, the Board shall either set the person's release date or inform him of the date when the Board will next consider his case.

Section 4. Conditions of Release

1. If the Board of Parole decides to release a person, it shall require as a condition of the release that he refrain from engaging in criminal conduct. The Board may also require that he conform to any of the following conditions:

A. support his dependents;

B. devote himself to an approved employment or occupation and to notify his parole officer of any change therein;

C. remain within fixed geographic limits unless granted written permission to leave such limits;

D. report, as directed, upon his release to his parole officer at such intervals as may be required, answer all reasonable inquiries by the parole officer, and permit the officer to visit him at reasonable times at his home or elsewhere;

E. reside at any fixed place and notify his parole officer of any change in his address;

F. attend or reside in a facility established for the instruction, recreation, treatment or residence of persons released from institutions, on probation, or otherwise under community supervision of the Department;

G. refrain from possessing a firearm or other dangerous weapon.

H. make restitution as provided in chapter 32, section 3, subsection 2 G.

I. refrain from associating with persons known to him to be engaged in criminal activities or, without permission of his parole officer, with persons known to him to have been convicted of a crime;

J. to undergo available medical or psychiatric treatment as provided in chapter 32, section 3, subsection 2 C. Failure to comply with this condition shall be considered only as a violation of a condition of release, and shall not, in itself, authorize involuntary treatment or hospitalization;

K. refrain from drug abuse and excessive use of alcohol;

L. comply with any other codition or conditions deemed by the Board to be reasonably related to the rehabilitation of the person or the public safety.

2. Before being released, the person shall be provided with a written statement of the conditions of his release, and shall sign a statement agreeing to such conditions.

3. Upon written notice to the person under supervision, the Board may modify the conditions of release.

Section 5. Period of Community Supervision

1. In any case in which the sentence contains a minimum term, the period of community supervision may not be terminated prior to the expiration of such term. It may be terminated by the Department at any time following the expiration of such minimum.

2. When there is no minimum term contained in a sentence, the period of community supervision may be terminated by the Department at any time.

3. Unless sooner terminated, the period of community supervision automatically terminates upon the expiration of the maximum period specified in the sentence. Whenever the Department terminates the period of community supervision, such termination shall have the effect of satisfying the maximum term specified in the sentence.

4. Upon the termination of the period of supervision, the Department shall furnish the person a certificate of discharge which shall include a statement that the sentence has been satisfied.

Section 6. Preliminary Hearing on Violation of Conditions of Release

1. If a parole officer has probable cause to believe that a person under his supervision has violated a condition of his release, he may issue a summons to such person to appear before the District Supervisor or such other official as may be designated by the Director of Probation and Parole for a preliminary hearing to determine whether such probable cause in fact exists. If the alleged violation constitutes the commission of a new crime, the parole officer may communicate the basis for his belief that there is probable cause that the person under supervision has committed a crime to any law enforcement officer who may, in his discretion, thereupon arrest such person. The parole officer shall forthwith provide the arrested person with a written notice of a preliminary hearing before the District Supervisor to determine whether there is probable cause to believe that he has committed the new crime.

2. The preliminary hearing shall be held within forty eight hours if a person under supervision has been arrested, and as soon as practicable if he has not. It shall be held as near to the place where the violation is alleged to have taken place as is reasonable under the circumstances. The summons and written notice provided for in subsection 1 shall name the place and time of the preliminary hearing, state the conduct alleged to constitute the violation, and inform the person of his rights under this section. In no case shall there be a waiver of the right to a preliminary hearing.

3. At the preliminary hearing the person alleged to have violated a condition of his release has the right to confront and cross-examine persons who have information to give against him, to present evidence on his own behalf, and to remain silent. If the District Supervisor determines on the basis of the evidence before him that there is not probable cause to believe that a condition of release has been violated, he shall terminate the proceedings and order the person under supervision forthwth released from any detention he may then be in. In such a case, no further proceedings to revoke the release, based on the conduct alleged to have been the violation, may be brought.

If he determines that there is such probable cause, he shall prepare a written statement summarizing the evidence that was brought before him, and particularly describing that which supports the belief that there is probable cause. The person under supervision shall be provided a copy of this statement. At the outset of the preliminary hearing, the District Supervisor shall inform the person of his rights under this section and of the provisions of section 7. Such person may waive, at the preliminary hearing, his right to confront and cross-examine witnesses against him, his right to present evidence in his own behalf, and his right to remain silent. No other rights may then be waived.

Section 7. Parole Board Hearing on Violation of Condition of Release

1. If, as a result of proceedings under section 6, the District Supervisor or other designated official finds probable cause, he shall transmit the record of the case to the Board of Parole which shall schedule a hearing on the alleged violation within thirty days from the time of the District Supervisor's decision. The Board may issue a warrant for the arrest of the person on release. If such a warrant cannot be executed due to the failure of reasonable efforts to locate the person on release, the thirty day period shall not commence to run

until the warrant is executed. The person on release shall be notified in writing of the time and place of the hearing, of the violation he is alleged to have committed, and of the nature of the evidence against him. The notice shall also inform such person of his right to be present at the hearing, to confront and cross-examine witnesses against him, to present evidence on his own behalf and to remain silent.

2. At the outset of the hearing, the Board shall inform the person of the rights specified in subsection 1, and provide him the opportunity to admit or deny the violation charged against him. If the violation is admitted, the Board shall proceed as provided in subsection 3. If the violation is denied, the Board shall proceed to hear the evidence which is alleged to establish the violation, and the evidence denying it, and provide each side the opportunity to comment on the evidence. The Board shall then decide whether the violation has been established by a preponderance of the evidence. If it finds that the violation has not been so established, it shall dismiss the proceedings and order the person released from any restraints that have been imposed as a result of the allegations of a violation. In such case, no furher proceeding to revoke the release may be brought that is based on the same conduct. If it finds that there was a violation, it shall furnish the person on release with a written notice of its decision and the reasons therefor and proceed as provided in subsection 3.

3. Upon the admission or finding that there has been a violation of a condition of release, the Board shall provide the person found to have committed the violation the opportunity to explain or otherwise comment upon the violation.

A. The Board may then order the release revoked and the person confined in an institution if it is satisfied that:

(1) the person has failed, without a satisfactory excuse, to comply with a requirement imposed as a condition of his release, and

(2) the violation involves:

(a) the commission of another crime; or

(b) behavior indicating a substantial risk that he will commit another crime; or

(c) behavior indicating that the person is apparently unwilling or unable to comply with all of the conditions of his release.

B. If the Board does not make an order under subsection 3 A, it may order that:

(1) the person receive a reprimand and warning from the Board; or

(2) the supervision and reporting be intensified; or

(3) the person be required to conform to one or more additional conditions of release, including living in a named community residential facility; or

(4) a combination of the above three alternatives.

4. If a person on supervision is confined in an institution pursuant to an order made under subsection 3 A, the period of time during which he was under community supervision shall be credited against his sentence.

Section 8. Finality of Decisions

1. No decision which is authorized by this chapter to be made by the Board of Parole, or by the Department, on a discretionary basis, shall be subject to review in any court of the state.

2. Any denial of procedural rights granted by this chapter or failure to comply with any of the mandatory requirements of this chapter shall be reviewable by a justice of the Superior Court.

TITLE D3 THE SENTENCING SYSTEM

Chapter 36. Release from Institutions and Community Supervision

Section 9. Establishment of Parole Board

1. There is hereby established a Parole Board within the Department of Mental Health and Corrections.

2. The Board shall consist of five persons who are residents and citizens of this state. They shall be appointed by the Governor with the advice and consent of the Council. One member of the Board shall be designated by the Governor as Chairman and shall serve as Chairman at the pleasure of the Governor. The members of the Board shall have had at least 5 years of actual experience in the fields of penology, corrections, law enforcement, sociology, law, education, social work, medicine, psychology, other behavioral sciences, or a combination thereof, or have served at least 2 years previously on the Parole Board of this state.

3. No more than 3 members of the Board shall be members of the same political party. No member of the Board shall, at the time of his appointment or during his tenure, serve as the representative of any political party, or of any executive committee or governing body thereof, or as an executive officer or employee of any political party, organization, association or committee.

4. Each member of the Board shall devote full time to the duties of his office and shall not hold any other salaried public office, whether elective or appointed. No member of the Board shall engage in any other business or profession.

5. The Chairman of the Board shall receive $22,500 a year and each other member $20,000.

6. The terms of the present members of the Parole Board shall expire on the third Monday in January, 1976. The Governor shall appoint two members whose terms shall expire on the third Monday in January, 1978, two members whose terms shall expire on the third Monday in January, 1980, and one member whose term shall expire on the third Monday in January, 1982. Their respective successors shall be appointed for terms of 6 years from the third Monday in January of the year of appointment. Each member shall serve until his successor is appointed and qualified, and may be reappointed. Any member may be removed by the Governor for cause shown.

7. In the event of an inability to act of any member, the Governor may appoint some person qualified under this section to act in his stead during the continuance of such inability. Such person shall count toward an official quorum and shall be paid $100 per diem and necessary expenses.