Sent to Commission
November 6, 1972.

STATE OF MAINE

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

Draft Provisions for Consideration

by the

Commission on December 1, 1972

Augusta, Maine

CONTENTS

Commission 1

December 1, 1972

Send back to Sub-Comm.

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;

2. To safeguard offenders and the public from correctional experiences which serve to promote further criminality; Reword

Drop below 3.

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

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; and

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

7. Add perhaps seriousness of crime will not be depreciated

(Punishment and deterrence part of process
add to purposes statement of concept)

Society's stake

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

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.

¶ 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.

Puts in fines on individuals

NO DEATH PENALTY

Fines alternative punishments for C & D

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

Section 3. Sanctions for Organizations

A. 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.

B. 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.

C. 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.

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

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 a maximum term in excess of one year, the sentence shall be deemed tentative, to the extent provided in this section, for a period not to exceed six months prior to the expiration of such maximum.

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 Department, 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.

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

Section 5. Multiple Sentences

A. 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 an organization, the court may, subject to the provisions of this section, sentence the 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.

B. 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.

C. 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.

D. 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. Inconsistent findings of fact are required to establish the commission of the offenses.

applies only if 2 Tried by same jury

E. The limitations provided in this section shall apply not only when a defendant is sentenced at one time for multiple offenses, but also when a defendant is sentenced at different times for multiple offenses all of which were committed prior to the imposition of any sentence for any of them. Sentences imposed by any court, including federal courts and courts of other states, shall be counted in applying these limitations.

Clarify

OK - to be redrafted

TITLE 03 THE SENTENCING SYSTEM

Chapter 31 General Provisions

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 county attorney shall be notified and afforded an opportunity to be heard. If, following any such hearing, or waiver thereof by the prosecuting county 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.

2. Sentences imposed under this section are subject to the provisions of chapter 31, 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. Rule 11 problem

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

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, life, or any term of years not to exceed forty years, and shall, additionally, set 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.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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 whether the order has been complied with.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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.

Table

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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 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 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 prosecuting atty officer having custody of the offender 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.

no dead time

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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, and setting forth the reasons why he is being placed in a particular program.

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, pursuant to the provisions of chapter 37; or

B. In a county jail, pursuant to the provisions of chapter 38; or

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

4. Transfers from one program to another shall be made pursuant to the provisions of chapter 39.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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 prior to five years earlier than 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 yea 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 and be subject to supervision by the Department and remain in the 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 if 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 upervision 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. In such cases the Department may release such a person from the institution prior to the expiration of the maximum period set in the sentence and supervise him in the community 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.

TITLE D3 THE SENTENCING SYSTEM

Chapter 35 Fines Imposed on Organizations

Section 1. Amounts Authorized

1. An organization which has been convicted of a crime may be sentenced to pay a fine, subject to the provisions of section 2, which shall not exceed:

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 the pecuniary gain derived from the crime by the convicted organization.

2. As used in this section, "pecuniary gain" means the amount of money or the value of property derived by the organization 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 organization'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.

TITLE D3 THE SENTENCING SYSTEM

Chapter 35 Fines Imposed on Organizations

Section 2. Time and Method of Payment of Fines

1. If a convicted organization 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.

2. If a convicted organization 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, to be transmitted by the probation officer to the county where the crime is prosecuted.

3. The costs and expenses of the prosecution of offenses shall be paid by the county where the offenses are prosecuted, unless otherwise specially provided. Any law enforcement officer required in the performance of his duties in the connection with the administration of criminal justice to incur expenses for or incidental to interstate travel which are payable by a county pursuant to this subsection, shall be entitled to draw on the treasurer of such county in advance on account of such expenses in an amount set forth in a written estimate thereof bearing endorsement of approval thereof by a Justice of the Superior Court. Such officer shall be held accountable to said county for such advance.

TITLE D3 THE SENTENCING SYSTEM

Chapter 35 Fines

Section 3. Default in Payment of Fines

1. If the organization defaults in the payment of a fine 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 the person or persons authorized to make disbursements from the assets of the organization to show cause why he or they 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 or their appearance. Unless such persons show that the default was not attributable to a willful 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 the 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. 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.

2. If it appears that the default in the payment of a fine is excusable, the court may make an order allowing the organization 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 an organization. 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.

TITLE D3 THE SENTENCING SYSTEM

Chapter 35 Fines

Section 4. Revocation of Fines

A convicted organization which has been sentenced to pay a fine and has been not inexcusably defaulted in payment thereof, may at any time petition the court which sentenced it for a revocation of the fine or 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 fine or the unpaid protion thereof in whole or in part, or modify the time and method of payment.

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 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 depreciate the seriousness 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 whould 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.

TITLE D3 THE SENTENCING SYSTEM

Chapter 32 Probation and Unconditional Discharge

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.

TITLE D3 THE SENTENCING SYSTEM

Chapter 32 Probation and Unconditional Discharge

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 available medical or psychiatric treatment and to enter and remain in a specified institution when required for that purpose;

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;

by vote (G) to make restitution to the victim of his crime, or to the county where the offense is prosecuted where the identity of the victim cannot be ascertained. As used in this subsection, "restitution" includes the money equivalent of property taken from the victim 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 and to notify the court or the probation officer of any change in his address or his employment; clarify to include permission + probation officer

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

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 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.

TITLE D3 THE SENTENCING SYSTEM

Chapter 32 Probation and Unconditional Discharge

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 the 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.

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, after hearing, finds that there is probable cause to believe that the person on probation has committed the crime, it may order such person committed, with or without bail, pending a trial on the charge of having committed such a crime by the court having jurisdiction thereof, and the time of such commitment shall be credited as time served for the original crime if the person is not later convicted of such other crime; or

Not a final disposition

B. if the court has jurisdiction over such crime, it may

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

2. revoke probation if it finds by a preponderance of the evidence that the defendant committed the 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 D1 GENERAL PROVISIONS

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 offenses committed subsequent to its effective date. Prosecution for offenses 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, an offense was committed subsequent to the effective date if all of the elements of the offense occurred on or after that date; an offense 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.

TITLE D1 GENERAL PROVISIONS

Chapter 11 Preliminary

Section 2. All Crimes Defined by Statute; Civil Actions

1. No conduct constitutes a crime unless it is prohibited by this Code, or by any statute or private act outside this Code, including any rule or regulation authorized by and lawfully adopted under a statute.

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 divil action, regardless of whether the conduct involved in such civil action constitutes an offense defined in this Code.

TITLE D1 GENERAL PROVISIONS

Chapter 11 Preliminary

Section 3. Classification of Crimes; Civil Violations

1. A crime is conduct which is prohibited by this Code, or by any statute or private act outside this Code, including any rule or regulation authorized by and lawfully adopted under a statute, provided that the penalty for violation of such a statute, rule or regulation includes a term of imprisonment. 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.

2. Crimes are classified as class A, B, C, or D crimes by this Code or by a statute outside of the Code which defines a crime.

TITLE D1 GENERAL PROVISIONS

Chapter 11 Preliminary

Section 4. Proof: Affirmative Defenses

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 and classification of the crime; (c) the required culpability; (d) any required result. The existence of jurisdiction or venue is not an element of the crime, and may be proved by a preponderance of the evidence.

2. Subsection 1 does not require negating a defense

A. by allegation in the indictment or information, or

B. by proof at trial, unless the issue is in the case as a result of evidence admitted at the trial which is sufficient to raise a reasonable doubt on the issue.

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

TITLE D1 GENERAL PROVISIONS

Chapter 11 Preliminary

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 clearly requires otherwise.

Tabled 1/19

TITLE D1 GENERAL PROVISIONS

Chapter 11 Preliminary

Section 6. Impeachment by Evidence of Conviction of Crime

1. For the purpose of attaching the credibility of a witness testifying in a criminal trial, evidence that he has been convicted of a crime is admissible only if the crime involved acts of deceit, fraud, cheating, stealing or other acts reflecting adversely on his honesty and integrity, unless the judge determines that the probative value of the evidence of the crime is substantially outweighed by the danger of unfair prejudice. In making such a determination, account shall be taken of the amount of time that has elapsed since the conviction and the legitimate interest of the witness in maintaining privacy concerning his past.

2. Evidence of a conviction is not admissible under this section if:

A. the conviction has been the subject of a pardon, annulment, or other equivalent procedure, and

B. the procedure under which the same was granted or issued required a substantial showing of rehabilitation or was based on innocence.

3. Evidence of an adjudication as a juvenile delinquent is not admissible under this section.

4. The conviction admissible under this section may be shown by cross-examination of the witness sought to be impeached, or by documentary evidence of the conviction. Such documentary evidence is presumed to be of the conviction of the witness if the names of the witness and of the person to whom the evidence of conviction refers are identical.

5. Upon the request of the defendant, the state shall furnish him such evidence of prior conviction of witnesses or prospective witnesses as is in its possession, custody, or control, or shall make reasonable efforts to obtain any such evidence. Upon the request of the state, the defendant shall furnish a list of prospective witnesses, but need not indicate whether he himself intends to testify.

6. The trial of issues arising under this section relating to the admissibility, for impeachment, of evidence of prior convictions shall be determined by the court and shall be conducted out of the hearing of the jury.

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TITLE D1 GENERAL PROVISIONS

Chapter 11 Preliminary

Section 7. Territorial Applicability

1. Except as otherwise provided in this section, a person may be convicted under the laws of this state for any offense 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 offense or the result which is such an element occurs within this state; or

B. conduct occuring outside this state constitutes an attempt to commit an offense under the laws of this state and the intent is that the offense 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 an offense 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 an offense under the law of this state; or

E. the offense 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 offense 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 an offense 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 offense 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.

4. As used in this section, "state" means the land and water, and the air space above such land and water, with respect to which the state of Maine has legislative jurisdiction.

TITLE D1 GENERAL PROVISIONS

Chapter 11 Preliminary

Section 8. Statute of Limitations

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

2. Prosecutions for offenses other than murder + aggravated murder manslaughter, promoting criminal homicide are subject to the following periods of limitations:

6 yrs
- A. a prosecution for a class A crime must be commenced withinin six years after it is committed;
- B. a prosecution for a class B crime must be commenced within three years after it is committed;

2 yrs
- C. a prosecution for a class C crime must be commenced within one year after it is committed;
- D. a prosecution for a class D crime must be commenced within six months 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 offense 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 offense based on the same conduct may be commenced within three months after the dismissal even though the

period of limitations has expired at the time of such dismissal or will expire within such three months.

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

A. any offense based upon breach of fiduciary obligation, within one year after discovery of the offense 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 offense, whichever occurs first; or.

B. any offense 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. an offense is committed when every element thereof has occurred, or if the offense 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 an offense included in the offense charged, notwithstanding that the period of limitation has expired for the included offense, if as to the offense 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 offense charged.

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 is strongly corroborative of the firmness of the actor's intent to complete commission of the crime.

5. Accomplice liability for offenses committed in furtherance of the conspiracy is to be determined by the provisions of section ____ of chapter ____.

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 ____ or chapter ____.

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 a conspiracy to commit a class D crime is a class D crime.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 21 Offenses of General Applicability

Section 2. Attempt

1. A person is guilty of criminal attempt if, acting with the kind of culpability required for the commission of a 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 could 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 ____ of chapter ____ 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.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 21 Offenses of General Applicability

Section 3. Solicitation

1. A person is guilty of solicitation if he commands, requests 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 strongly corroborative of that intent, and the person solicited takes a substantial step toward commission of the crime.

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 ____ of chapter ____.

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 of 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.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 21 Offenses of General Applicability

Section 4. Facilitation

1. A person is guilty of facilitation if he knowingly provides substantial assistance to a person intending to commit a class A or class B crime, and that person, in fact, commits the crime contemplated, or a like or related class A or class B crime, employing the assistance so provided. The ready lawful availability from others of the goods or services provided by the defendant is a factor to be considered in determining whether or not his assistance was substantial. This section does not apply to a person who is either expressly or by implication made not accountable by the statute defining the crime facilitated or related statutes.

2. It is no defense to a prosecution under this section that the person whose conduct the defendant facilitated has not been prosecuted for or convicted of any offense based upon the conduct in question, or has been convicted of a different offense or class or degree of offense, or has an immunity to prosecution or conviction or has been acquitted.

3. Facilitation of a class A crime is a class B crime. All other facilitation is a class D crime.

TITLE D? SUBSTANTIVE OFFENSES

Chapter 21 Offenses of General Applicability

Section 5. General Provisions Regarding Chapter 21

1. It shall not be an offense to conspire to commit, or to attempt, solicit, or facilitate any offense 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 facilitation under section 4, it is an affirmative defense that, prior to the commission of the felony which he facilitated, the defendant made a reasonable effort to prevent the commission of such felony.

C. 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.

D. 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

Chapter 21 Section 5 cont.

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 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, or by a person confined in a penal institution under sentence for any crime.

B. The person had previously been convicted of a crime involving the use (or eliminate threat) of ~~violence~~ serious to ~~another~~ 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 murder was especially heinous, atrocious or cruel, manifesting exceptional depravity. inflicted extreme suffering. Vague sustained

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. Upon an indictment for aggravated murder, the defendant may plead guilty to aggravated murder or to any crime listed in subsection 4, 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 be accepted by the attorney

for the state and 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.

4. The sentence for aggravated murder shall be as authorized in Chapter 34.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

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 2, 3, or 4.

3. Upon an indictment for murder, the defendant may plead guilty to murder or to any crime listed in subsection 2, 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 be accepted by the attorney for the state and 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.

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

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

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.

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.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

Section 4. Manslaughter

1. A person is guilty of manslaughter if he:

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

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

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

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.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

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.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

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.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

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.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

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.

SENTENCING: COMMITMENTS AND IMPRISONMENT — December 1, 1972

Offense Class	Ordinary Maximum	Upper-Range Maximum	Minimum	Release Eligibility	Release Required	Mandatory Period of Community Supervision
Aggravated Murder [2]	Life or 40 years	Life or 40 years	25 years or 1/2 maximum [1] (mandatory)	Expiration of minimum. If no minimum, at any time.	5 years prior to expiration of maximum term of years	Maximum of 5 years
Murder [2]	Life or 40 years	Life or 40 years	15 years or 1/2 maximum [1] (mandatory)	Same as above	If maximum is life, release never required.	Same as above
Class A Crime	20 years	30 years	1/2 of maximum for offenses listed in Chap 34 §2 [3]	Any time	If maximum is 15 years or more, 5 years prior to its expiration.	Maximum of 5 years
Class B Crime	7 years	10 years	Not authorized	Any time	If maximum is 9-15, 3 years prior to its expiration. [4]	Maximum of 3 years
Class C Crime	3 years	5 years	Not authorized	Any time	If maximum is less than 9, at expiration of 2/3 of maximum. [5]	Maximum of 1/3 of maximum.
Class D Crime	6 months	1 year	Not authorized	Any time		

1. Court may order minimum served in penal institution.
2. Mandatory presentence 120 day commitment for evaluation and report.
3. Court not authorized to order minimum served in penal institution.
4. Applies to Class A and B crimes.
5. Applies to all crimes.

1. A person is convicted of aggravated murder and is sentenced to 25 years to life with the minimum to be served in a penal institution. He must be imprisoned and may not be released before 25 years. The Department is authorized never to release him. If it does release him of the 25 years, he must be supervised in the community for a period not to exceed 5 years.

2. A person is convicted of murder and sentenced to 10 to 30 years, with the minimum to be served in a penal institution. The Department may place him in Thomaston or any other penal institution. He is not eligible for release for 10 years. The longest the Department may keep him in the institution is 25 years. He must then be released and kept under supervision for a maximum of an additional 5 years. In other words, the last 5 years of the sentence must be served out of prison and under supervision.

3. A person is convicted of a class A crime. He is sentenced to a maximum of 15 years. The Department may put him in an institution, or in a program outside an institution. If he is imprisoned, the Department may release him at any time, and must release him at the expiration of 10 years. Whenever he is released, however, the Department must supervise him for a period not to exceed five years.

4. A person is convicted of a class C crime and is sentenced to a maximum of 3 years. The Department may put him in an institution, or in a program outside an institution. If he is imprisoned, the Department may release him at any time and must release him at the end of 2 years. Whenever he is released, the Department must supervise him for a period not to exceed 1 year.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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.

Tabled 1-18-73

TITLE D1 GENERAL PROVISIONS

Chapter 11 Preliminary

Section 6. Impeachment by Evidence of Conviction of Crime

1. For the purpose of attaching the credibility of a witness testifying in a criminal trial, evidence that he has been convicted of a crime is admissible only if the crime involved acts of deceit, fraud, cheating, stealing or other acts reflecting adversely on his honesty and integrity, unless the judge determines that the probative value of the evidence of the crime is substantially outweighed by the danger of unfair prejudice. In making such a determination, account shall be taken of the amount of time that has elapsed since the conviction and the legitimate interest of the witness in maintaining privacy concerning his past.

2. Evidence of a conviction is not admissible under this section if:

A. the conviction has been the subject of a pardon, annulment, or other equivalent procedure, and

B. the procedure under which the same was granted or issued required a substantial showing of rehabilitation or was based on innocence.

3. Evidence of an adjudication as a juvenile delinquent is not admissible under this section.

4. The conviction admissible under this section may be shown by cross-examination of the witness sought to be impeached, or by documentary evidence of the conviction. Such documentary evidence is presumed to be of the conviction of the witness if the names of the witness and of the person to whom the evidence of conviction refers are identical.

5. Upon the request of the defendant, the state shall furnish him such evidence of prior conviction of witnesses or prospective witnesses as is in its possession, custody, or control, or shall make reasonable efforts to obtain any such evidence. Upon the request of the state, the defendant shall furnish a list of prospective witnesses, but need not indicate whether he himself intends to testify.

6. The trial of issues arising under this section relating to the admissibility, for impeachment, of evidence of prior convictions shall be determined by the court and shall be conducted out of the hearing of the jury.

Tabled 1-18-73.

Commission 47

December 1, 1972

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

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.

Tabled 1-5-73.

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.

Revised 12-1-72. Pending 12-15-72.
Tabled 1-18-73.

Commission 2

December 15, 1972

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

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. Such a fine may be imposed in addition to probation or a sentence authorized by chapter 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.

Approved 12-1-72 as amended by insertion of 2 C.

Commission 3

December 15, 1972

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

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.

Approved 12-1-72 as amended by addition of last sentence in 3.

Commission 4

December 15, 1972

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

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 Department, 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 finaltiy 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.

Approved 12-1-72 as amended by addition of last sentence in subsection 6 and minor wording changes in subsection

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

Section 5. Multiple Sentences

A. 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.

B. 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.

C. 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.

D. 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.

E. The limitations provided in this section shall apply not only when a defendant is sentenced at one time for multiple offenses, but also when, at the time of sentencing, it appears that the defendant has already been convicted and sentenced for other offenses committed subsequent to commission of the offense for which he is then being sentenced and has satisfied the sentence imposed for such other offenses. In such cases, the prior sentence shall be deemed to be merged in the sentence then being imposed so that, unless the court otherwise provides, the convicted person shall automatically be given credit for satisfaction of the earlier sentence.

Tabled 1-18-73

Commission 8

December 15, 1972

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Provisions

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 chapter 31, 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.

Approved 12-1-72 as amended by addition to last two sentences to subsection 1 and last sentence to subsection 2.

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.

Approved 12-1-72 with minor wording changes in subsection 3A, and a change therein of the maximum term of years from forty to fifty (1) so as to sharpen the distinction between murder and aggravated murder; and (2) to permit 25 years to seem as the highest minimum while still being no more than half of the highest maximum term of years.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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.

Approved 12-1-72 with minor wording changes in subsection 5.

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December 15, 1972

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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.

Approved 12-1-72

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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.

Tabled 1-18-73

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December 15, 1972

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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.

Approved 12-1-72 as amended in subsection 2 to provide credit for time spent in presentence evaluation, and to make the prosecutor responsible for furnishing the court with the relevant information.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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, pursuant to the provisions of chapter 37; or

B. In a county jail, pursuant to the provisions of chapter 38; or

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

4. Transfers from one program to another shall be made pursuant to the provisions of chapter 39.

Approved 12-1-72 as amended by addition of subsection 2C.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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 prior to five years earlier than 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 and be subject to supervision by the Department and remain in the 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 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.

Approved 12-15-72. Subsection 4 has been modified by addition of the last clause in order to clarify the choices open to the Departmen Subsection 6 has been added as an appropriate cross-reference.

Chapter 35 Tabled 1-18-73
ding report of two cases involving fines now before the SJC.

Commission 15

December 15, 1972

TITLE D3 THE SENTENCING SYSTEM

Chapter 35 Fines

Section 1. Amounts Authorized

1. A natural person who has been convicted of a 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. 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 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.

Comments 1-18-73: Chap 35, §1 (2) clarify that value at time of sentence is meant. Change C to reflect that it applies to all offenses and fine can be 2 X pecuniary gain; same re 3 D.

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 the pecuniary gain derived from the crime by the convicted organization.

TITLE D3 THE SENTENCING SYSTEM

Chapter 35 Fines

Section 2. Criteria for Imposing Fines

1. No convicted person shall be sentenced to pay a fine unless the court finds 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 solely for the reason that he will not be able to pay a fine.

2. A person sentenced to the custody of the Department of Mental Health and Corrections, pursuant to chapter 34, shall not be sentenced to pay a fine in addition unless he has derived or has attempted to derive pecuniary gain from the crime, or the court is of the opinion that such a fine will promote the public safety through its deterrent effect or the rehabilitation of the convicted person.

3. The court shall not sentence a convicted person only to pay a fine, unless having regard to the nature and circumstances of the crime and to the history and character of the offender, it is of the opinion that the fine alone suffices for protection of the public.

TITLE D3 THE SENTENCING SYSTEM

Chapter 35 Fines

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.

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, to be transmitted by the probation officer as the court may direct, pursuant to this section.

3. In cases involving desertion, non-support or illegitimacy, the court may order the fine paid over to the spouse of the convicted person or to the city, town, corporation, society or person actually supporting the spouse, child or children, or to the state treasurer for the use of department of welfare to the extent that it has actually supported the spouse, child or children. In all other cases, the fine shall be paid into the treasury of the county where the offense is prosecuted, for the use of such county.

4. The convicted person shall be informed of the form and recipient of payment at the time of sentencing. If such person defaults in the payment, the designated recipient shall take appropriate action for its collection.

5. The costs and expenses of the prosecution of offenses shall be paid by the county where the offenses are prosecuted, unless otherwise specially provided. Any law enforcement officer required in the performance of his duties in the connection with the administration of criminal justice to incur expenses for or incidental to interstate travel which are payable by a county pursuant to this subsection, shall be entitled to draw on the treasurer of such county in advance on account of such expenses in an amount set forth in a written estimate thereof bearing endorsement of approval thereof by a Justice of the Superior Court. Such officer shall be held accountable to said county for such advance.

TITLE D3 THE SENTENCING SYSTEM

Chapter 35 Fines

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 or person 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 willful 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.

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, or may impose such sentence of commitment to the custody of the Department as is authorized in subsection 1.

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.

TITLE D3 THE SENTENCING SYSTEM

Chapter 35 Fines

Section 5. Revocation of Fines

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 the fine or 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 fine or the unpaid portion thereof in whole or in part, or modify the time and method of payment.

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Sent to Commission
December 22, 1972.

DECEMBER 20, 1972

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Commission 2

December 15, 1972

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

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. Such a fine may be imposed in addition to probation or a sentence authorized by chapter 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.

Approved 12-1-72 as amended by insertion of 2 C.

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

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.

Approved 12-1-72 as amended by addition of last sentence in 3.

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

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 Department, 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 finaltiy 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.

Approved 12-1-72 as amended by addition of last sentenc in subsection 6 and minor wording changes in subsection

Commission 8

December 15, 1972

TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Provisions

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 chapter 31, 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.

Approved 12-1-72 as amended by addition to last two sentences to subsection 1 and last sentence to subsection 2.

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.

Approved 12-1-72 with minor wording changes in subsection 3A, and a change therein of the maximum term of years from forty to fifty (1) so as to sharpen the distinction between murder and aggravated murder; and (2) to permit 25 years to seem as the highest minimum while still being no more than half of the highest maximum term of years.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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.

Approved 12-1-72 with minor wording changes in subsection 5.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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.

Approved 12-1-72

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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.

Approved 12-1-72 as amended in subsection 2 to provide credit for time spent in presentence evaluation, and to make the prosecutor responsible for furnishing the court with the relevant information.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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, pursuant to the provisions of chapter 37; or

B. In a county jail, pursuant to the provisions of chapter 38; or

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

4. Transfers from one program to another shall be made pursuant to the provisions of chapter 39.

Approved 12-1-72 as amended by addition of subsection 2C.

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

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 prior to five years earlier than 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 and be subject to supervision by the Department and remain in the 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 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.

Approved 12-15-72. Subsection 4 has been modified by addition of the last clause in order to clarify the choices open to the Departme Subsection 6 has been added as an appropriate cross-reference.

Commission 20

December 20, 1972

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.

Approved 12-15-72. With modification in introductory part of subsection 1 to take account of new offense of aggravated murder and minor word modification in 1C to conform with chapter 31, section subsection 7.

TITLE D3 THE SENTENCING SYSTEM

Chapter 32 Probation and Unconditional Discharge

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.

Approved 12-15-72.

TITLE D3 THE SENTENCING SYSTEM

Chapter 32 Probation and Unconditional Discharge

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.

Approved 12-1-72. As amended by providing for obtaining written permission to leave the jurisdiction in subsection 2H, and minor wording changes in subsections 2G and 2I. Amended further 12-15-72 to clarify 2C concerning voluntary treatment and hospitalization; to have 2G depend on financial ability and to have restitution include damaged property; and to insert 2K.

TITLE D3 THE SENTENCING SYSTEM

Chapter 32 Probation and Unconditional Discharge

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.

Approved 12-15-72. With amendments to section 2 which permit the court hearing the probation revocation to commit with or without bail and deleting any reference to such commitments by the court which will hear the new crime. Section 4 has been modified without any substantive change so as to segregate the provisions relating to District Courts from those relating to Superior Court.

Commission 42
December 15, 1972

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. Upon an indictment for aggravated murder, the defendant may plead guilty to aggravated murder or to any crime listed in subsection 4, 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 be accepted by the attorney for the state and 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.

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

Approved 12-1-72 As amended by deleting in 2A the reference to a person confined in a penal institution; in 2B by deleting the inclusion of crimes involving threat of violence; and in 2F by new wording without any substantive change.

Commission 44

December 20, 1972

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

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. Upon an indictment for murder, the defendent may plead guilty to murder or to any crime listed in subsection 2, 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 attorney for the state and must be approved by the court in open court before it shall become effective. If so accepted and approved, the defendent 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 defendent 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. The plea

made by the defendent under this subsection shall not be a matter of public record unless and until it is approved by the court.

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

Approved 12-15-72. With addition of last sentence in subsection 3 and renumbering of section referred to in subsection 2.

Commission 46

December 20, 1972

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 22 Offenses Against the Person

Section 4. Manslaughter

1. A person is guilty of manslaughter if he:

A. recklessly causes the death of another human being by acting in disregard of an awareness he has that his conduct will create the 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 defendent shall prove by a preponderance of the evidence the presence and influence of such extreme emotional disturbance. Evidence of extreme emotional disturbance may not be introduced by the defendent unless the defendent 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.

Approved 12-15-72. With definition of recklessness added in 1A, and "extreme mental retardation" inserted in 1B.