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TITLE D1 GENERAL PRINCIPLES

Chapter 11 Preliminary

Section 9. Multiple Convictions

1. If a defendant is on trial for more than one crime, and his conduct may establish an element of more than one of such crimes, he may be convicted of more than one of such crimes, except under the following circumstances:

A. one crime is included in the other, as defined in section ; or

B. one crime consists of a conspiracy or solicitation to commit only the other crime; or

C. inconsistent findings of fact are required to establish the commission of the crimes; or

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

E. the crime is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific instances of conduct constitute separate crimes.

2. The application of this section is a question of law to be decided by the court prior to submission of the case to the trier of fact. Where this section requires that the trier of fact may not convict the defendant of all of the crimes submitted to it, the defendant may be convicted of such crimes as the trier, in its discretion, determines.

Comment

Source: Subsection 1 is based upon the Hawaii Penal Code of 1973, section 109, which is, in turn, patterned from the Model Penal Code section 1.07 (1). Subsection 2 does not appear in other codes

Current Maine Law: The provisions of this section are closely related to the rules governing joinder. See Maine Rules of Criminal Procedure, Rule 8 (indictment or information may charge more than one offense if they "are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions which are connected or which constitute parts of a common scheme or plan.") and Rule 13 (trial may be of multiple offenses if the offenses could have been joined in a single indictment or information"). This section assumes that these rules have been complied with and the defendant is properly facing a trial for more than one crime. There does not appear to be any present limit on the number of convictions in such a case.

The Draft: The prohibition against multiple convictions operates only as to crimes which have at least one element that may be satisfied by the same proof of defendant's conduct. The general rule is that multiple convictions are nonetheless permitted, with the provisions of subsection 1 serving to define exceptions in which only one conviction may be had. Subsection 2 requires the court to determine, prior to submission to the jury, whether multiple convictions are prohibited. This will usually be brought to the court's attention by defense counsel. The court would then instruct the jury, for example, that they may convict the defendant of the conspiracy or of the crime committed pursuant to the conspiracy, but not both. The choice is left to the jury by the provisions of subsection 2.

The need for a provision such as this has been the subject of some difference of opinion. In 1956, for example, the Comment to an early American Law Institute draft noted: "It has been argued that the limitation should apply not to convictions but to sentence, thus avoiding possibility of a reversal and new trial if a conviction for the wrong offense should be returned. . . But multiple convictions may import disabilities beyond a cumulative sentence, such, for example, as increased vulnerability to habitual offender or extended term provisions. We think, therefore, that multiple convictions ought to be precluded in the situations with which the subsection is concerned." Model Penal Code, Tent. Draft No. 5, pp. 31-32 (1956).

A contrary position was taken by the draftsmen of the Proposed Federal Criminal Code. "No limit on multiple convictions is established. Limitations on multiple convictions could be provided, but to require the court or prosecutor to choose one of several offenses to submit to the jury or upon which to enter judgment could result in an unjustified windfall to the defendant, where the charge for the offense chosen is dismissed on appeal. Accordingly, limitations have been placed instead on sentencing." Final Report of the National Commission on Reform of Federal Criminal Laws pp. 59-60 (1971). By referring to subsection 4 of section 5, chapter 31, it will be noted that the Commission now has before it draft sections representing both views, one of which needs to be adopted.

This draft section seeks to avoid some of these difficulties by placing the choice in the hands of the jury, rather than with the court or prosecutor. The jury will, of course, be instructed that it may not return a conviction for any offense, except those which are proved to its satisfaction beyond a reasonable doubt. Nor does this section disturb the rule that the court will not submit any charges to the jury where the evidence could not support a conviction.

Subsection 1A states a rule that is operative in situations defined by the next section. It prohibits, for example, a conviction both of an attempt to commit the crime, and the crime itself.

Subsection 1B views conspiracy and solicitation as being, for these purposes, a preparation for the commission of another offense and, therefore, as essentially part of the same criminal conduct involved in the commission of the offense. Where, however, the conspiracy or solicitation relates to more offenses than the one that is actually committed and charged, this is not so and the restriction is phrased so as not to operate under such circumstances.

Subsection 1C prohibits convictions when inconsistent findings of fact are required to sustain them.

Subsection 1D is designed to prohibit convictions of both a general "breach of the peace" sort of statute and of an assault which might be the conduct "breaching" the peace. It is, of course, not clear at this point that the Commission will propose a generalized statute of this sort.

The final subdivision of subsection 1 is illustrated in the Model Penal Code comments as: ". . . a person violates an unlawful cohabitation statute only once, no matter how long his unlawful cohabitating continues unless the conduct is interrupted, by issuance of process or otherwise, or unless the statute prescribes that specific periods constitute separate offenses." Tent. Draft No. 5, pp. 33-34 (1956). As was the case with the previous subdivision of subsection 1, the operation of this provision will largely depend upon the terms of crimes not yet defined by the Commission.

TITLE D1 GENERAL PRINCIPLES

Chapter 11 Preliminary

Section 10. Definitions of Culpable States of Mind

1. "Intentionally."

A. A person acts intentionally with respect to his conduct when it is his conscious object to engage in such conduct.

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

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

2. "Knowingly."

A. A person acts knowingly with respect to his conduct when he is aware that his conduct is of that nature.

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

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

3. "Recklessly."

A. A person acts recklessly with respect to his conduct when he consciously disregards a substantial and unjustifiable risk that he engages in such conduct.

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

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

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

4. "Negligently."

A. A person acts negligently with respect to his conduct when he should be aware of a substantial and unjustifiable risk that he engages in such conduct.

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

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

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

Is this subjective or objective standard?

Comment

Source: This section is taken from the Hawaii Penal Code of 1973, section 206.

Current Maine Law: The statutes now contain terms importing the mens rea requirement into the definition of offenses. A number of the terms used in this section are already frequently used among the provisions of Title 17. "Intentionally" or a variation of it appears, for example, in sixty separate sections of that Title; "knowingly" appears in forty three sections. There are also, however, terms used in Title 17 which are not repeated in this section, e. g., "maliciously", "corruptly", "fraudulently", "wantonly", and "wilfully".

The Draft: This section undertakes to reduce the mental states required as elements of crime to the manageable number of four (three if you choose not to regard negligence as a mental state - that's the subject of some controversey). In addition, the definitions provided here are also designed to provide a clarity for interpretive purposes. Although the exact form of this section is taken from the Hawaii Code, the substance is directly traceable to the Model Penal Code formulations.

TITLE D1 GENERAL PRINCIPLES

Chapter 11 Preliminary

Section 11. Requirement of Culpable Mental States

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

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

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

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

Comment

Source: This section is taken from several provisions of the Hawaii Penal Code of 1973, namely, sections 204, 207 and 208.

Currently Maine Law: There do not appear to be any present provisions of law dealing with the rules of construction set forth in this section.

The Draft: This section states several important rules for interpreting the substantive definitions provided in the law. Subsection one provides the important rule that there is to be no criminal liability imposed without proof of some sort of subjective fault on the part of the accused, unless the legislature expressly says that is the result it wants. Hopefully, that power will be sparingly used, if at all. It is not expected that this Code, at any rate, will create any such strict liability offenses, especially in view of the fact that the least serious crime provided in the Code can entail a prison term of as much as one year.

The second sentence of subsection one is directed at statutes, outisde of the Code, which do not clearly require a culpable state of mind, not do they satisfy the requirement of the first sentence that absolute liability be expressly created. Under these circumstances, the second sentence says that the state must show either intention, knowledge, or recklessness.

Subsection 2 is important as a guide to interpreting the scope of a particular mental state requirement in the law defining a crime. It says that the mental state must be satisfied as to each element in the definition, unless the statute has been written so as clearly to require a different result. This rule is, therefore, one in the nature of a presumption of legislative intent.

Subsection 3 provides a rule to govern cases where there is a variance between what the statute requires as a mental state, and what is proved. It says that if the state proves that the accused was more culpable than the statute requires, then he may be convicted, as where an offense may be committed negligently and it is shown that the defendant actually intended the result.

STATE OF MAINE

Sent to Commission
July 18, 1973

COMMISSION TO PREPARE A REVISION OF THE CRIMINAL LAWS

Material Acted On By Commission as of July 2, 1973

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TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

Section 1. Purposes

The general purposes of the provisions of this Title are:

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

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

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

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

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

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

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

Section 2. Authorized Sentences

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

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

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

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

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

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

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

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

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

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

Section 3. Sanctions for Organizations

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

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

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

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

Section 4. Sentence in Excess of One Year Deemed Tentative

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

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

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

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

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

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

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

Section 5. Multiple Sentences

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

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

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

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

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

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

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

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

Section 6. Consideration of Other Crimes

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

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

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

TITLE D3 THE SENTENCING SYSTEM

Chapter 32 Probation and Unconditional Discharge

Section 1. Eligibility for Probation and Unconditional Discharge

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

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

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

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

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

Section 2. Period of Probation: Modification and Discharge

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

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

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

Section 3. Conditions of Probation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Probation Revocation

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

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

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

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

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

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

4. When the alleged violation constitutes a crime:

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

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

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

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

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

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

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

3. order the person tried for such crime.

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

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

TITLE D3 THE SENTENCING SYSTEM

Chapter 34 Commitments to the Department of Mental Health and Corrections

Section 1. Commitments for Aggravated Murder and Murder

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Upper-Range Commitments

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

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

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

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

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

Section 5. Calculation of Period of Commitment

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

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

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

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

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

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

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

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

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

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

A. In a state institution; or

B. In a county jail; or

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

Section 7. Release from Imprisonment: Community Supervision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TITLE D3 THE SENTENCING SYSTEM

Chapter 35 Fines

Section 1. Amounts Authorized

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

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

B. $500 for a class D crime; and

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

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

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

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

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

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

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

Section 2. Criteria for Imposing Fines

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

Section 3. Time and Method of Payment of Fines

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

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

Section 4. Default in Payment of Fines

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

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

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

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

Section 5. Revocation of Fines

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

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

TITLE D3 THE SENTENCING SYSTEM

Chapter 36 Release from Institutions and Community Supervision

Section 1. Persons Eligible for Release: Criteria

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

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

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

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

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

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

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

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

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

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

Section 2. Preparation for Release Determination

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

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

Section 3. Release Hearings

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

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

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

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

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

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

D. reports of any physical and mental examinations;

E. any other relevant information as may be available.

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

Section 4. Conditions of Release

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

A. support his dependents;

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Period of Community Supervision

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

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

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

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

Section 6. Preliminary Hearing on Violation of Conditions of Release

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

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

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

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

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

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

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

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

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

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

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

(2) the violation involves:

(a) the commission of another crime; or

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

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

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

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

(2) the supervision and reporting be intensified; or

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

(4) a combination of the above three alternatives.

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

Section 8. Finality of Decisions

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

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

TITLE D-3 SENTENCING (SUB A)

1973

DRAFTS	Page No.	Date	Date of Covering Memo	Date of Subc Meeting	Subc Action	Date of Redraft	Date of Memo to Comm.	Date of Comm. Meeting	Commissi Action
Chap 36 Sec 1	A 1,2,3,4	1-2	1-26	2-1	Amended		3-8		
2	A 5,a	1-2	1-26	2-1	Amended		3-8		
3	A 6,7,8	1-2	1-26	2-1	Amended		3-8		
4	A 9,10,11	1-2	1-26	2-1	none		3-8		
5	A 12,13	1-2	1-26	2-1	none		3-8		
6	A 14,15- a,b,c	1-24	1-26	2-1	Amended		3-8		
7	A 16,17 18,19	1-24	1-26	2-1	Amended		3-8		
8	A 20,a	1-24	1-26	2-1	none		3-8		

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August 29, 1973

Sub D 1

March 12, 1973

September 13, 1973 meeting

SUBTITLE D4 DRUGS

Chapter 41 Definitions and Schedules of Drugs

Section 411. Definitions

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

1. "Agency", any department, commission, board, agency, laboratory or institution of the State of Maine, or of any subdivision thereof, which is charged with the enforcement or performance of any provision of this subtitle.

2. "Attorney General", the Attorney General/Deputy Attorney General or an Assistant Attorney General.

3. "Counterfeit drug".

A. A substance which is, or is intended to be, represented by a trafficker to be a particular scheduled drug, but which is in fact not such a drug.

B. This term shall not include any drug or substance lawfully administered in good faith by a physician or other licensed medical practitioner to a patient as a placebo or as a substitute for any drug.

4. "County Attorney", a County Attorney or Assistant County Attorney.

5. (omitted)

6. "Tetrahydrocannabinol (THC)."

A. Any substance, including hashish or marijuana, of which the concentration therein of delta-9 or delta-8 tetrahydrocannabinol exceeds ten per cent.

B. (omitted)

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

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

9. "Manufacture".

A. To produce, prepare, propagate, compound, convert or process, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis;

B. (omitted)

10. "Marijuana".

A. All parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, not including the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake of the sterilized seed of the plant or the sterilized seed of the plant which is incapable of germination.

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

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

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

C. Opium poppy and poppy straw.

12. "Opiate".

A. Any substance having an analgesic and addiction forming or addiction sustaining property or liability similar to morphine or capable of conversion into a drug having such analgesic and addiction forming or addiction sustaining property or liability.

B. This term does not include, unless specifically designated or listed in Schedule W, X, Y, or Z the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts, dextromethorphan, but does include its racemic and levorotatory forms.

13. "Opium poppy", the plant of the species Papaver somniferum L., except its seeds.

14. "Poppy straw", all parts, except the seeds, of the opium poppy, after mowing.

15. "Prescription drug", any drug upon which the manufacturer or distributor - - - - - - - - is obliged to place, in order to comply with federal law and regulations, the following legend: "Caution, Federal law prohibits dispensing without prescription."

16. "Scheduled drug", any Schedule W, X, Y or Z drug.

17. "Schedule W drug", any drug named, listed, or described in Schedule W of section 412.

18. "Schedule X drug", any drug named, listed, or described in Schedule X of section 412.

19. "Schedule Y drug", any drug named, listed, or described in Schedule Y of section 412.

20. "Schedule Z drug", any drug named, listed, or described in Schedule Z of section 412.

21. "State laboratory", a laboratory of any state agency which is capable of performing any or all of the analyses that may be required to establish that a substance is a Scheduled or a counterfeit drug, including, but not limited to, the laboratory of the State Department of Health and Welfare and any such laboratory that may be established within the Maine State Police.

22. "Law enforcement officer", a police officer, or agent of any agency.

23. "Traffick".

A. To make, create, manufacture; or

B. to grow or cultivate, except with respect to marijuana; or

C. to sell, barter, trade, exchange or otherwise furnish for consideration;

D. (omitted)

E. to possess with the intent to do any act mentioned in clause C, except that possession of marijuana with such intent shall be deemed furnishing.

24. "Furnish"

A. To furnish, give, dispense, administer, prescribe, deliver, or transfer to another;

B. To possess with the intent to do any act mentioned in clause A.

Chapter 41 Definitions and Schedules of Drugs

Section 412. Schedules W, X, Y and Z

For the purposes of defining crimes under this subtitle and of determining the penalties therefor, there are hereby established the following Schedules, designated W, X, Y and Z.

1. Schedule W

A. Unless listed or described in another Schedule, all narcotic drugs, including but not limited to heroin (diacetylmorphine), methadone, pethidine, morphine and opium.

B. Unless listed or described in another Schedule, any amphetamine, or its salts, isomers, or salts of isomers, including but not limited to methamphetamine, or its salts, isomers, or salts of isomers.

C. Unless listed or described in another Schedule, or unless made a nonprescription drug by federal law, barbituric acid or any derivative of barbituric acid, or any salt of barbituric acid or of a derivative of barbituric acid, including but not limited to amobarbital, butabarbital, pentobarbital, secobarbital, thiopental, and methohexital.

D. Methaqualone or its salts.

E. Methprylon.

F. Flurazepam.

G. (omitted)

H. (omitted)

I. Glutethimide.

J. Unless listed or described in another Schedule, any of the following hallucinogenic drugs, or their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3, 4-methylenedioxy amphetamine

(2) 5-methoxy-3, 4-methylenedioxy amphetamine

(3) 3, 4, 5-trimethoxy amphetamine

(4) 4-methyl-2, 5, -dimethoxyamphetamine

(5) Diethyltryptamine

(6) Dimethyltryptamine

(7) Dipropyltriptamine

(8) Lysergic acid diethylamide

(9) 2,-3 methylenedioxy amphetamine

K. Lysergic acid.

L. Lysergic acid amide.

M. Cocaine, coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical to any of these substances, except decocainized coca leaves or extractions whereof which do not contain cocaine or ecgonine.

2. Schedule X

A. Unless listed or described in another Schedule, any of the following drugs having a depressant effect on the central nervous system:

(1) Chlorhexadol

(2) Sulfondiethylmethane

(3) Sulfonethylmethane

(4) Sulfonmethane

B. Phenmetrazine and its salts.

C. Nalorphine.

D. Methylphenidate.

E. Chlordiazepoxide or its salts.
F. Diazepam
G. Carbromal
H. Chloral hydrate
I. Unless listed in another schedule, any of the following hallucinogenic drugs, or their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Bufotenine

(2) Ibogaine

(3) Mescaline, including but not limited to peyote

(4) N-methyl-3-piperidyl benzilate

(5) N-ethyl-3-piperidyl benzilate

(6) Psilocybin

(7) Psilocyn

(8) Tetrahydrocannabinols

(9) Phencyclidine

J. Unless listed in another class, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof:

(1) Not more than 300 milligrams of dehydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 300 milligrams of dehydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 1.8 grams of dehydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(4) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

3. Schedule Y

A. Barbital

B. Chloral betaine

C. Ethchlorvynol

D. Ethinamate

E. Methohexital

F. Methylphenbarbital

G. Paraldehyde

H. Petrichloral

I. Phenobarbital

J. Codeine (methylmorphine)

K. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredient in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 2.5 milligrams of diphenoxylate with not less than 25 micrograms of atropin sulfate per dosage unit.

L. Meprobromate

M. Ergot

4. Schedule Z

A. All prescription drugs other than those included in Schedules W, X, or Y.

B. Marijuana

C. All non-prescription drugs other than those included in Schedules W, X, or Y as the Board of Pharmacy shall duly designate.

5. Notwithstanding anything in this section, no drug or substance which is legally sold in the State of Maine without a prescription and which is unaltered as to its form shall be included in Schedule W, X, Y, or Z.

SUBTITLE D4 DRUGS

Chapter 42 Trafficking in and Furnishing Drugs

Section 421. Unlawful Trafficking in Scheduled Drugs

1. A person is guilty of unlawful trafficking in a Scheduled drug if he intentionally or knowingly trafficks in a Scheduled drug, unless the conduct which constitutes such trafficking is either

A. expressly authorized by Title 22, or

B. expressly made a civil violation by Title 22.

2. Unlawful trafficking in a Schedule W drug is a Class B crime.

3. Unlawful trafficking in a Schedule X drug is a Class C crime.

4. Unlawful trafficking in a Schedule Y or Z drug is a Class D crime.

TITLE D4 DRUGS

Chapter 42 Trafficking in and Furnishing Drugs

Section 422. Trafficking in Counterfeit Drugs

1. A person who intentionally or knowingly trafficks in a counterfeit drug shall be guilty of a class C crime; except that such person who proves by a preponderance of the evidence that the counterfeit drug was in fact substantially harmless to human life and health when taken or administered in the customary or intended manner shall be guilty of a class D crime.

2. (omitted)

3. A person may be guilty of a crime both under this section and also under section 421 if he intentionally or knowingly trafficks in a counterfeit drug which is itself a Scheduled drug.

SUBTITLE D4 DRUGS

Chapter 42 Trafficking in and Furnishing Drugs

Section 423. Aggravated Trafficking

1. A person ~~21 years of age or older~~ who trafficks with a child under 16 in a Scheduled or counterfeit drug in violation of section 421 or 422 shall be guilty of aggravated trafficking.

2. A person who trafficks in a Schedule W, X, or Y drug or in a counterfeit drug in violation of section 421 or 422 shall be guilty of aggravated trafficking if

A. such person has previously been convicted of a crime under this chapter; or

B. such person has previously been convicted of a crime, however designated, under the former laws of the State of Maine, or under the existing or former laws of the United States or of any State, where the conduct which forms the basis of such previous conviction would constitute a crime under this chapter.

C. Such previous convictions shall be alleged in a separate indictment, information, or complaint which shall be tried to a court or jury, if such previous convictions be denied by the person, after the person has been convicted of the substantive crime of trafficking. If the original trial was to a jury, the same jury may hear and determine the question of whether the person has previously been convicted as alleged.

3. Aggravated trafficking is a crime one class more serious than such trafficking would otherwise be.

TITLE D4 DRUGS

Chapter 42 Trafficking in and Furnishing Drugs

Section 424. Unlawfully Furnishing Scheduled Drugs

1. A person is guilty of unlawfully furnishing a Scheduled drug if he intentionally or knowingly furnishes a Scheduled drug, unless the conduct which constitutes such furnishing is either

A. expressly authorized by Title 22, or

B. expressly made a civil violation by Title 22.

2. Unlawfully furnishing a Schedule W drug is a class C crime.

3. Unlawfully furnishing a Schedule X or Y drug is a class D crime. or 2

SUBTITLE D4 DRUGS

Chapter 43 Possession of Drugs

Section 431. Unlawful Possession of Schedule W, X and Y Drugs

1. A person is guilty of unlawful possession of a Scheduled drug if he intentionally or knowingly possesses a Scheduled drug, unless the conduct which constitutes such possession is either

A. expressly authorized by Title 22, or

B. expressly made a civil violation by Title 22.

2. Unlawful possession of a Schedule W - - -drug is a Class C crime.

3. Unlawful possession of a Schedule X or Y drug is a Class D crime.

TITLE D4 DRUGS

Chapter 44 Miscellaneous Drug and Drug-Related Crimes

Section 441. Allowing Premises to be Used for Drug Crime

A person who knowingly allows or permits premises owned, leased possessed or controlled by him to be used by another person for the purpose of committing any crime under this subtitle shall be guilty of a Class D crime.

Section 442. Acquiring Drugs by Fraud

A person who intentionally or knowingly acquires or obtains, or attempts to acquire or obtain, possession of a Scheduled drug by misrepresentation, fraud, forgery, deception or subterfuge, including but not limited to the making or tendering of a forged or falsified prescription, or the nondisclosure of a material fact, shall be guilty of a Class C crime.

Section 443. Stealing Drugs

A person who steals or attempts to steal a Scheduled drug, other than by false pretenses or other misrepresentations, from a person authorized to possess or traffick in such drug shall be guilty of a class B crime.

Section 444. Trafficking in Hypodermic Apparatuses

A person who intentionally or knowingly trafficks in a hypodermic apparatus shall be guilty of a Class C crime, unless the conduct which constitutes such trafficking is either

A. expressly authorized by Title 22; or

B. expressly made a civil violation by Title 22.

Section 445. Possession of Hypodermic Apparatuses

A person who intentionally or knowingly possesses a hypodermic apparatus shall be guilty of a Class D crime, unless the conduct which constitutes such possession is either

A. expressly authorized by Title 22; or

B. expressly made a civil violation by Title 22.

Redraft

August 29, 1973

Sub D 20

March 12, 1973

SUBTITLE D4 DRUGS

Chapter 45 Analysis and Destruction of Scheduled Drugs by State Laboratories

Section 451. Analysis of Scheduled Drugs

1. (omitted)

2. A State laboratory which receives a drug or substance from a law enforcement officer or agency for /analysis under this chapter shall, if it is capable of so doing, analyze the same as requested, and shall issue a certificate stating the results of such analysis. Such certificate, when duly signed and sworn to by a qualified chemist, or by a laboratory technician whose testimony as an expert has been received in any court of the State of Maine, of the United States, or of any State, shall be admissible in evidence in any court of the State of Maine, and shall be prima facie evidence that the composition and quality of the drug or substance is as stated therein.

3. Transfers of drugs and substances to and from a State laboratory for purposes of analysis under this chapter may be by certified or registered mail, and when so made shall be deemed to comply with all the requirements regarding the continuity of physical evidence.

4. Nothing contained in this section shall be deemed to prevent analyses of drugs from being performed by laboratories of the United States, of another State, or of private persons or corporations.

TITLE D4 DRUGS

Chapter 45 Analysis and Destruction of Scheduled Drugs by State Laboratories

Section 452 Destruction of Scheduled Drugs

(omitted in entirety)

Chapter 46 Forfeiture of Drugs and Other Property

Section 461 Property Subject to Forfeiture

(omitted in entirety)

Section 462 Seizure and Custody of Property Subject to Forfeiture

(omitted in entirety)

Section 463 Commencement, Conduct, and Disposition of Forfeiture Proceedings

(omitted in entirety)

Section 464 Destruction of Contraband Drugs and Hypodermic Apparatuses

(omitted in entirety)

Section 465 Summary Seizure and Destruction of Contraband Plants

(omitted in entirety)

TITLE D4 DRUGS

Chapter 47 Special Procedures with Respect to Drugs and Drug Crimes

Section 471. Arrest without Warrant by Police Officer for Drug Crimes

1. A police officer shall have the authority to arrest without a warrant any person who he has probable cause to believe has committed or is committing any crime under this subtitle.

2. The powers of arrest conferred upon police officers by this section are not exclusive, but are in addition to all other powers provided by law.

Section 472. Schedule Z Drugs: Contraband Subject to Seizure

All Schedule Z drugs,the unauthorized possession of which constitutes a civil violation under Title 22, are hereby declared contraband, and may be seized and confiscated by the State, with or without process, as provided by law, as if their unauthorized possession constituted a crime.

August 29, 1973

COMMENTS ON 2d DRAFT

TITLE D4 DRUGS

Included herein are matters discussed at the Drug Subcommittee meeting of April 25, 1973, and also comments on those parts of the original draft of March 12, 1973, to which no commentary was provided in the supporting material of March 19, 1973.

Chapter 41. Definitions and Schedules of Drugs

Section 411 Definitions

Subsec. 2. "Attorney General" now includes Deputy Attorney General.

Subsec. 3.B. "Licensed" has been inserted before "medical practitioner". Since the time of the April 25, 1973, meeting, the Maine legislature (chap. 501 of the public laws of 1973) has amended 22 MRSA by adding section 2387, dealing with "counterfeit substances", the definition of which is substantially the same as in the draft.

Subsec. 5. The entire definition of "drug" has been omitted as probably unnecessary.

Subsec. 6.B. In view of the Drug Subcommittee's decision to treat all but the strongest hashish as marijuana, the question of the constitutionality of the presumption concerning hashish in the original draft of this subsection becomes academic. This presumption was evidentiary only, and did not shift the burden of proof to the defendant. Cf. State v. Wilbur, 278 A. 2d 139, 145-147. To make this clear, the word "presumption" should probably not have been used, but, rather, a phrase such as "prima facie evidence". Since the burden of proving all elements of the crime beyond a reasonable doubt would still be on the State, there would be no conflict with In re Winship, 397 US 358, 90 S. Ct. 1068 (1970

Chemists of the Massachusetts State Police Laboratory estimate that the great bulk of hashish contains from 5 to 10 percent tetrahydrocannabinol (THC). Therefore, in accordance with the Drug Subcommittee's desire to reclassify all but the strongest hashish from THC to marijuana, the dividing line between marijuana and THC has been drawn at 10 percent. Thus, the definition of "marijuana" in subsection 10 now includes all hashish - unless and until the State shows that the percentage of THC in a given sample of hashish is over 10 percent, in which event such hashish, while still marijuana, becomes for legal purposes THC as well. A definition of "THC" has been inserted in this subsection in place of the original definition of "hashish".

Subsection 9.B. This subsection (packaging or repackaging) has been struck.

Subsection 15. The words "has placed or" have been struck after the word "distributor".

Subsection 20. An undercover agent is a police officer and is therefore included within the definition of "law enforcement officer" as written.

Subsection 23 & 24. In accordance with the instructions of the Drug Subcommittee, "trafficking" in subsection 23 has been limited to selling or otherwise furnishing for consideration. Possession with intent to sell or furnish for a consideration remains trafficking, except that possession of marijuana with intent to sell or furnish for a consideration is treated as simple furnishing, which is a newly created offense and is defined in the new subsection 24.

It should be noted that since the time of the Drug Subcommittee meeting on April 25, 1973, the Maine legislature has created the crime of possession with intent to sell, etc. Chapter 510 of the public laws of 1973 amends 22 MRSA, sec. 2384 so as to punish equally "whoever sells, exchanges, delivers, barters, gives or furnishes" marijuana, mescaline, or peyote and whoever possesses the same "with intent to sell, exchange, deliver, barter, give or furnish".

It is the opinion of the Reporter on Drugs and of the Drug Subcommittee that the definitions of "traffick" and "furnish" would cover the following sorts of fact situations without further amendment:

(1) Defendant slips LSD into an unsuspecting drinker's coffee, with the result that the victim becomes disoriented and terrified. This would constitute "furnishing" (and also, of course, assault and battery). If a third party paid defendant to slip the victim LSD, it would be trafficking.

(2) Defendant sells a Schedule W drug thinking it was Schedule Y. The phrase "knowingly or intentionally" relates only to the act of selling, etc., and therefore defendant is guilty of trafficking in a Schedule W drug. See State v. Kidder, 302 A. 2d 320, 321.

Section 412. Schedules W, X, Y and Z

Comments on this pharmacological section have been omitted by request of the Drug Subcommittee. Changes from the original draft of 4/12/73 will be noted, however.

Subsection 4. To Schedule Z has been added subsection C, delegating to the Board of Pharmacy power to add non-prescription drugs to Schedule Z.

Subsection 5 has been added, which excludes from all Schedules any non-prescription drug which has been legally sold in the State of Maine and is unaltered as to form.

In accordance with the suggestions of Mr. Erickson, several changes have been made in the Schedules. Subsection 1.J. (4) has been corrected to "4- methyl-2, 5,-dimethoxyamphetamine", and subsection 1.J (8) to "lysergic acid diethylamide". Phencyclidine has been moved from Schedule W (subsection 1.J (7)) to Schedule X (subsection 2.I(9)). Dipropyltriptamine has been inserted in Schedule W (subsection 1.J(7)), as has been 2,-3 methylenedioxy amphetamine (subsection o.J(9)). Carbromal and chloral hydrate have been moved from Schedule W (subsection 1.G and H) to Schedule X (subsection 2. G and H). Meprobromate and Ergot have been added to Schedule Y (subsection 3.L and M). It is not feasible to incorporate the changes suggested by Mr. Erickson with respect to the definition and lists of opiates.

Chapter 42. Trafficking in and Furnishing Drugs

"Furnishing" has been added in the title.

Section 421. Unlawful Trafficking in Drugs

Source: New.

Current Maine Law: See the Chart of Existing Maine Drug Laws, dated March 19, 1973 (hereinafter the Chart).

The Draft: See the comments of the original draft of 3/12-73 to section 411, subsection 23, "traffick".

Section 422. Trafficking in Counterfeit Drugs

Source: New.

Current Maine Law: Chapter 501 of the public laws of 1973, drawing for its definition of "counterfeit substance" on Mass. GL c. 94C, sec. 1, creates the crime of selling, exchanging, delivering, bartering, giving or furnishing a counterfeit substance. The penalty is a fine of not more than $1,000 and/or 5 years imprisonment, and for a second or subsequent offense, imprisonment of not less than 2 nor more than 10 years, without suspension of sentence or probation.

The Draft: Instead of a flat maximum penalty, regardless of the drug, the draft attempts to differentiate between drug counterfeits on the basis of the harmfulness of the product passed off.

The draft of 3/12/73 made the harmfulness or substantial harmlessness of the counterfeit drug an issue for the court without jury after a defendant has been found guilty; but that approach (and, accordingly, subsection 2) has been abandoned as involving some risk of violating a defendant's right to jury trial.

Section 423. Aggravated Trafficking

Source: New.

Current Maine Law: See the Chart, column 13 (selling, etc., narcotics to child under 18). See also 17 MRSA sec. 855 (selling cigarettes to child under 16), sec. 856 (intoxicating liquor), and sec. 857 (near beer).

For examples of enhanced punishments for repeated drug offenders see the Chart, generally.

The Draft: Subsection 1 aggravation, based on age, now occurs only when the defendant is 21 or older and the child is under 16.

Subsection 2 aggravation, based on prior drug offenses, occurs only with respect to Schedule W, X, or Y drugs (for the substantive offense - the prior sales may be of Schedule Z drugs), and is determined by means of a bifurcated trial to avoid unnecessary prejudice.

Section 424. Unlawfully Furnishing Scheduled Drugs

Source: New.

Current Maine Law: See the Chart.

The Draft: The desire of the Drug Subcommittee to distinguish between trafficking (for compensation) and furnishing (without compensation) will be difficult to give effective expression to on account of the severely limited number of responses available under a system of class A, B, C and D crimes. As redrafted, the penalties for furnishing are exactly the same as for possession since there is no room between these two major categories of drug offenses. It is possible, therefore, that upon reconsideration, furnishing will be absorbed by possession or re-absorbed by trafficking.

Section 431. Unlawful Possession of Schedule W, X and Y Drugs

Source: New.

Current Maine Law: See the Chart. Chapter 546 of the public laws of 1973 has amended 22 MRSA sec. 2383, subsection one by differentiating between simply possessing marijuana and possessing it (or having it under one's control) "in connection with manufacturing, cultivating or growing" it. The penalty for the former is still a fine of not more than $1,000 and imprisonment for not more than 11 months; but there is no longer any enhanced punishment for subsequent offenses. Simple possession of mescaline and peyote continues to be treated as shown on the Chart.

Chapter 502 of the public laws of 1973 amends 22 MRSA sec. 2383 so as to abolish the crime of being present where marijuana is kept, though it retains that crime with respect to mescaline and peyote.

The Draft: As noted in the comment to section 424, the penalties in the current redraft are the same for possession and for furnishing because of the limited number of classes of crimes.

Simple possession of Schedule Z drugs (e.g. marijuana) is not made a crime by this section.

Chapter 44. Miscellaneous Drug and Drug-Related Crimes

Section 441. Allowing Premises to be Used for Drug Crime

Source: New.

Current Maine Law: 17 MRSA secs. 2741, 2742 punishes the maintenance of a narcotic drug nuisance by a fine of not less than $200 nor more than $1,000 and imprisonment of not less than 60 days nor more than 11 months.

The Draft: The purpose of this section is to fill some of the gaps in the law of possession to reach persons who knowingly maintain what have been called drug nuisances. The scope and intent of this section is broader than the existing law in that the type of illegal drug is irrelevant and it is not necessary to show continued or repeated offenses.

Section 442. Acquiring Drugs by Fraud

Source: 22 MRSA secs. 2375, 2380.

Current Maine Law: See the Chart, column 11.

The Draft: This is a slight broadening of the language of the existing law without, however, changing its intent.

Section 443. Stealing Drugs

Source: Mass. GL c. 94C, sec. 37.

Current Maine Law: Violating of 22 MRSA sec. 2375, 2380 may constitute stealing in some circumstances. Otherwise, there is no statute to cover these situations.

The Draft: This statute is designed strongly to discourage breaking into, stealing from, or robbing pharmacies, doctors' offices and the like. Such crimes, paradoxically, tend to increase when enforcement of the drug laws against street trafficking is most effective. "Fraudulently acquiring" drugs in violation of the preceding section may, but need not, amount to "stealing" under other provisions of the Code; but such "thefts" of drugs are treated more leniently than the more dangerous and violence-risking types of theft which are the particular targets of this section.

Section 444. Trafficking in Hypodermic Apparatuses

Section 445. Possession of Hypodermic Apparatuses

Source: New.

Current Maine Law: 22 MRSA sec. 2362-A punishes equally the selling and possession of hypodermic needles, etc. See the Chart, columns 5 and 14.

The Draft: These sections distinguish between possession and trafficking.

Chapter 45. Analysis of Scheduled Drugs

The phrase "and destruction" has been dropped from the title.

Section 451. Analysis of Scheduled Drugs

Source: New.

Current Maine Law: Under 22 MRSA, sec. 2203 the Director of the Maine Agricultural Experimental Station may furnish a certificate of the chemical analyses of certain drugs which is prima facie evidence of their composition and quality.

The Draft: Subsection 1 of the original draft of 3/12/73 raised problems with respect to the financing and budget of the State Laboratory and so has been omitted.

Subsections 2 through 4 are designed to facilitate the routine identification and judicial proof of drugs by the State (see State v. Appleton, - A.2d - (11/29/72)) without, however, depriving the defendant of the right to challenge any identification so made, See State v. Cloutier, 320 A.2d 84; State v. Pritchett, - A.2d - (3/14/73)), or lifting from the State its burden of proving the identity of the drug beyond a reasonable doubt.

Section 452. Destruction of Scheduled Drugs

Omitted, for the reasons set forth in the comment to the following chapter.

Chapter 46. Forfeiture of Drugs and Other Property

Sections 461 through 465 of the original draft of 3/12/73, dealing with forfeiture and destruction of drugs and other property, have been omitted from this draft because of the intervening enactment of chapter 524 of the public laws of 1973. This Act creates a new section 2387 in Title 22, which is based largely on Mass. GL c. 94C, sec. 47.

Chapter 47. Special Procedures with Respect to Drugs and Drug Crimes.

Section 471. Arrest without Warrant by Police Officer for Drug Crime.

Source: Mass. GL c. 94C, sec. 41.

Current Maine Law: 22 MRSA sec. 2383 (3) provides for a right of arrest on probable cause, without regard to whether the crime is a felony or misdemeanor, or to whether it takes place in the officer's presence. See State v. Burns, - A.2d. (6/12/73).

This statute, however, is limited to a very few drug crimes, namely, possession, manufacture, cultivation, etc., of marijuana, mescaline and peyote, and being present where mescaline and peyote are kept.

The Draft: This section makes more feasible the reduction of many drug crimes by maintaining or, in some cases, increasing the enforcement powers of the police as compared to what they have today.

Section 472. Schedule Z Drugs: Contraband Subject to Seizure

Source: New.

Current Maine Law: Under 22 MRSA, sec. 2211 adulterated drugs for example, may be forfeited and destroyed.

The Draft: In the current draft, the mere possession of Schedule Z drugs such as marijuana is non-criminal. This section is designed to reinforce society's disapproval of the unauthorized possession (and use) of such drugs, to make it clear that possession, while not criminal, is nonetheless illegal, and to give the State a mechanism for controlling and discouraging the possession and use of such drugs without resort to fully criminal sanctions.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 27 Falsification in Official Matters

Section 1. Perjury

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

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

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

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

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

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

5. As used in this section:

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

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

Comment

Source: This section is taken from the Proposed Criminal Code of Massachusetts, chapter 268, section 1. Similar provisions are in the other recodifications, e.g., N. H. Criminal Code, section 641:1, which are based on the Model Penal Code, Article 241.

Current Maine Law: There are three statutes on the subject of perjury:

> §3001: Whoever, when required to tell the truth on oath or affirmation lawfully administered, wilfully and corruptly swears or affirms falsely to a material matter, in a proceeding before any court, tribunal or officer created by law, or in relation to which an oath or affirmation is authorized by law, is guilty of perjury; and whoever procures another to commit perjury is guilty of subornation of perjury, and shall be punished in either case, if the perjury was committed in a trial of a crime punishable by imprisonment for life, by imprisonment for any term of years not less than 10, and if committed in any other case, by imprisonment for not more than 10 years.
>
> §3002: Whoever wilfully and corruptly endeavors to incite or procure another to commit perjury, although it is not committed, shall be punished by imprisonment for not more than 5 years.
>
> §3003: When a witness or party, legally sworn and examined or making affidavit in any proceeding in a court of record, testifies in such a manner as to raise a reasonable presumption that he is guilty of perjury therein, the court may immediately order him committed to prison, or take his recognizance with sureties for his appearance to answer to a charge of perjury; and may bind over any witnesses present to appear at the proper court to prove such charge, order the detention so long as necessary of any papers or documents produced and deemed necessary in the prosecution of such charge, and cause notice of such proceedings to be given to the state's attorney for the same county.

In addition, section 3004 contains a statutory form of indictment.

Under section 3001, a number of judicial opinions have provided amplification of the statutory terms. Thus, "material matter" has been declared to be "any statement which is relevant to the matter under investigation". State v. True, 135 Me. 96, 99 (1937). The True court went on, however, to quote with approval from a Rhode Island decision which appears to be more restrictive. "'The ordinary test of materiality is whether the testimony given could have probably influenced the tribunal before whom the case was being tried, upon the issue involved therein. If it tended to do so, it was material.' State v. Miller, 26 R. I. 282, 58 A. 882, 884". Whether a statement is material is a matter of law for the court, not the jury. True at 102.

The falsity of the statement made which is alleged to be perjured must be proved by two witnesses, or by one witness and some corroborating circumstances. State v. Rogers, 149 Me. 32 (1953). But two witnesses who heard the same utterance will satisfy this rule. True.

If the witness makes several false statements in the course of a single judicial proceeding, he commits only one perjury. State v. Shannon, 136 Me. 127 (1939).

The Draft: This section makes little change in the present law. It continues the requirement that the alleged perjury relate to a material matter, that the statement can be made on oath or affirmation, and that a conviction for perjury may not rest on only the testimony of a single witness that the statement in issue is false.

The retraction provided for in subsection 3(1) does not appear in current Maine law. It is included as an inducement to witnesses to come forward with the truth, even after they have once given a false account. But if the truth were to appear, or be about to appear, without the retraction then there is no need for the inducement.

Subsection 4 similarly appears not to be part of the present law. Its provisions are designed to assure that criminal liability is not affected by matters that are essentially irrelevant, e.g., whether the proper form of words was followed in the oath or whether the oath-taker raised his hand, etc.

The definition of official proceeding in subsection 5A brings the perjury prohibition in at every official proceeding in which an oath is taken.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 27 Falsification in Official Matters

Section 2. False Swearing

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

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

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

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

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

2. No person shall be convicted under this section (1) if he retracts the falsification in the course of the official proceeding in which it was made before it becomes manifest that the falsification was or would have been exposed, or (2) where proof of falsity rests solely upon contradiction by testimony of a single

witness. Whether a conviction is prohibited under this subsection is a question for the trier of fact.

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

Comment

Source: The same provisions as are found in this section are in the New Hampshire Criminal Code, section 641:2, and the Proposed Criminal Code of Massachusetts, chapter 268, section 2.

Current Maine Law: There does not appear to be any statute or case law which penalizes the conduct described in this section.

The Draft: This section is similar to section one of this chapter, except that there is no requirement that the statement be a material one, and there is found in this present section a prohibition against falsely swearing to a statement for the purpose of misleading a public servant in the performance of his official functions. Violation of this section entails a lesser degree of crime.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 27 Falsification in Official Matters

Section 3. Unsworn Falsification

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

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

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

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

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

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

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

3. It is not a defense to prosecution under this section that the declarant was not mentally competent to make the statement or was disqualified from doing so.

Comment

Source: This section adopts the provisions of the Proposed Criminal Code of Massachusetts, chapter 268, section 3.

Current Maine Law: There does not appear to be any statute or case law penalizing the conduct described in this section.

The Draft: This section continues the pattern of the first two sections of this chapter by providing a lesser penalty for falsity that is neither sworn nor in any official proceeding. The deception of a public servant is penalized here in narrow circumstances. There need not be any oath or affirmation when these circumstances occur.

The provisions concerning available and unavailable defenses contained in the first two sections are continued here as well.