13-12 C

PORTLAND POLICE DEPARTMENT

GENERAL ORDER 72-1

August 16, 1972

Index Number R-1

FIREARMS REGULATIONS

Sent to Commission
November 19, 1973.

I. PURPOSE:

The purpose of this General Order is to establish policy rule and procedure with regard to use of firearms. It is effective immediately and until superceded.

II. INTRODUCTION TO GENERAL ORDER 72-1

The most serious and far-reaching decision an officer has to make during his career is whether or not to draw his firearm and shoot, and possibly kill, another person.

The officer's necessarily quick decision to shoot another person and the facts leading up to that decision are subject to weeks, and even months, of legal and perhaps judicial review. At that time a decision is made as to the legal justification of the officer's action and whether or not he should face criminal or possibly civil action as the result of a wrong decision.

It seems somewhat incongruous that the law of the State of Maine forbids the penalty of death no matter how serious the proven crime, but is not concise as to the use of deadly force allowed a policeman in apprehending an alleged felon.

This places an awesome responsibility on an officer to make a legal and just decision with regards to the use of firearms.

I feel, therefore, that in light of State Law, or lack thereof, we must use prudent and sound judgement when faced with the question of using deadly force in the course of our duties.

A considerable amount of thought and research has gone into the formulation of new Department Firearms Regulations. The intent of the regulations is to provide the officer with guidelines which will result in the proper and legal use of firearms and protect the officer from subsequent criminal or civil action.

A. FIREARMS MAY BE USED IN THE FOLLOWING SITUATIONS:

1. Target practice with appropriate safeguards.

2. To kill animals which appear dangerous, or seriously injured.

3. Self Defense - To protect self and other persons from assaults which likely will produce serious injury or death.

4. Fleeing Offender - Only when it is a subject who has used, or threatened to use, deadly force in the commission of a crime and when all other attempts to prevent escape have failed. An important aspect in making the decision to use deadly force is:

   a. Whether or not to delay the arrest may result in serious injury or death to officer or other persons.

   b. The likelihood of a non-violent apprehension at a later time.

B. FIREARMS SHALL NOT BE USED IN THE FOLLOWING INSTANCES:

1. Resisting Offender - An officer shall not use deadly force to protect himself or others from assaults that are not likely to have serious results.

2. To apprehend fleeing misdemeanants.

3. To fire from moving vehicles, or to fire at moving vehicles.

4. To fire warning shots.

5. Suspicion of Felony - Deadly force shall not be used on mere suspicion that a crime, no matter how serious, has been committed, or that the person being sought committed the crime. The officer should either have witnessed the crime or have sufficient and reliable information to know as a virtual certainty that the suspect committed an offense in which deadly force was used or threatened.

6. When there is a clear and obvious danger of hitting bystanders who may be in or near the line of fire. Officers must be cognizant of the area with reference to dwellings and ricochet possibilities and respond with good judgement.

7. Known or Suspected Juvenile Offenders - Juveniles are more likely to panic in confrontations with the police, and this must be considered in evaluating their conduct as to Section A, Paragraphs 3 and 4 above.

**Note that the crime of burglary in and of itself is not considered a violent felony. Therefore, deadly force shall not be used to halt the escape of a burglary suspect. Better a delayed apprehension of a suspect, who in many cases is a juvenile, than placing an officer in legal jeopardy.

Temporary Section XXX. Definitions for Chapter 13.

(to be included among General Provisions)

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

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

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

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

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

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

Chapter 13 Justification

Section 5. Use of Force in Property Offenses

(Approved as revised 10-4-73. Original page 13-8)

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

Note: Revisions on sections 1 through 4, dated October 18, 1973, should be renumbered as pp. 13-16 and 13-17 to be consecutive.

Section 6. Physical Force by Persons with Special Responsibilities

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

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

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

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

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

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

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

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

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

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

TITLE D1 GENERAL PRINCIPLES

Chapter 13 Justification

(Approved 10-29-73
Original page 13-10)

Section 7. Physical Force in Law Enforcement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 8. Physical Force in Defense of a Person
(Approved 10-29-73 - page 13-13)

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

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

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

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

2. A person is justified in using deadly force upon another person when he reasonably believes that such other person is about to use unlawful, deadly force against the actor or a third person, or is likely to use any unlawful force against the occupant of a dwelling while committing or attempting to commit a burglary of such dwelling, or is committing or about to commit kidnapping or a forcible sex offense. However, a person is not justified in

using deadly force on another to defend himself or a third person from deadly force by the other:

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

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

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

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

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

State of Maine

November 19, 1973 27-13
December 3, 1973 meeting

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 27 Falsification in Official Matters

Section 4. Tampering with Witness or Informant

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

A. attempts to induce or otherwise cause a witness or informant to testify or inform falsely, withhold any testimony, information or evidence, or absent himself from any proceeding or investigation to which he has been summoned by legal process;or

B. commits any unlawful act in retaliation for anything done by another person in his capacity as witness or informant; or

C. solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in subsection 1A.

2. Tampering with witness or informant is a class D crime.

Comment

Source: This section is patterned on the Proposed Massachusetts Criminal Code, chapter 268, section 5.

Current Maine Law: Title 17, section 3002 provides:

> Whoever willfully 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.

There does not appear to be statutory law covering the remainder of the draft section.

The Draft: The aim of this section is to provide a comprehensive prohibition against improper interference with sources of official information. The section also prohibits the witness or informant from seeking to obstruct justice in this manner.

Section 5. Falsifying Physical Evidence

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

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

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

2. Falsifying Physical Evidence is a class D crime.

Comment

Source: This section is taken from the Proposed Criminal Code for Massachusetts, chapter 268, section 6.

Current Maine Law: There does not appear to be any statute on this subject in the present law.

The Draft: This section is a complimentary provision to section 4 of this chapter which prohibits subornation of perjury and other improper interferences with witnesses. The present section is directed toward the same end of supporting the integrity of official proceedings by prohibiting improper use or alteration of physical evidence.

Section 6. Tampering with Public Records or Information

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

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

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

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

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

Comment

Source: This section is taken from the Proposed Criminal Code of Massachusetts, chapter 268, section 7.

Current Maine Law: There does not appear to be a statute in the present law.

The Draft: This section shares with others in this chapter the aim of promoting the integrity of governmental functions. It is drafted, however, so as not to include inadvertent mishandling of material.

State of Maine

November 13, 1973 28-7
December 3, 1973 meeting

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 28 Offenses Against Public Order

Section 6. Harrassment

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

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

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

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

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

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

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

3. Harassment is a class D crime.

Comment

Source: This section is taken from chapter 269, section 5 of the Proposed Massachusetts Criminal Code.

Current Maine Law: There are two sections in Title 17 which seek to prevent the same sort of conduct described in this draft:

> §3703: Whoever having attained his 16th birthday willfully and wantonly or maliciously vexes, irritates, harasses or torments any person in any way, after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace, and whoever without reasonable cause or provocation willfully and wantonly or maliciously vexes, irritates, harasses or torments any person by communications or conversation with such person over or by means of any telephone, when such offense is of a high and aggravated nature, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years; but when such offense is not of a high and aggravated nature, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $100 or by imprisonment for not more than 11 months.
>
> $3704: Whoever willfully and wantonly or malicously uses a telephone facility to transmit to another any comment, request, suggestion or proposal which is obscene, lewd, lascivious or indecent; any threat to injure the person or property of any person; or repeated anonymous telephone calls, whether or not conversation ensues, which disturb the peace, quiet or right of privacy of any person, shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both.
>
> Use of a telephone facility under this section shall include all use made of such a facility between the points of origin and reception. Any offense under this section is a continuing offense and shall be deemed to have been committed at either the place of origin or the place of reception.

There appears to be only one reported decision, State v. Wagner, 141 Me. 403 (1945) under these statutes, relating, however, to a point not material to the present draft (holding that the word "vex" in what is now section 3703 requires a wrongful intent).

The Draft: This section relates only to abuses committed by means of a telephone. Assault and trespass statutes will deal with the other elements contained in section 3703.

Subsection 1A prohibits conversations of a sexual sort which would be considered by most people to be coarse or obscene. The phrase "in fact" serves to inject an objective standard into the law so that no offense can be committed when it is only the singularly delicate sensitivities of the "victim" which are harmed. The reference to consent is designed to prevent an offense from occurring when the conversation is already of a sexual nature when the remarks occur which constitute the purported offense. Whether consent can be implied in any given case will depend upon an examination of all the circumstances.

Subsection 1B contains a requirement that there have been no disclosure of identity in order to keep the prohibition from reaching things such as an honest call from a creditor informing the debtor that he will repossess property if an installment payment is not forthcoming. That sort of "threat" is not contemplated by this section, and is not likely to occur when the caller remains anonymous. If, however, the purpose of the caller is solely to harass the person called, then his repeated calls would constitute an offense under subsection 1D.

Subsection 1C prohibits a particularly annoying practice, namely, the calling of a number with no other purpose than to get someone to answer.

Subsection 1E constitutes a warning to persons who control telephones, such as proprietors of establishments with public telephones, or parents, that they would be punishable for permitting another to use the telephone for a violation of this law. The person in control must,of course, be shown to have known of the misuse of his telephone.

Section 7. Desecration

1. A person is guilty of desecration if he intentionally desecrates any public monument or structure, or any place of worship or burial.

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

3. Desecration is a class D crime.

Comment

Source: This section is taken from chapter 269, section 9 of the Proposed Massachusetts Criminal Code.

Current Maine Law: Title 17, section 1252, deals with the subject matter of this section:

> Whoever willfully destroys or innures any tomb, gravestone, monument or other object placed or designed as a memorial of the dead, or any fence, railing or other thing placed about or enclosing a burial place; or willfully injures, removes or destroys any tree, shrub or plant within such enclosure shall be punished by a fine of not more than $500 or by imprisonment for less than one year.

Section 8. Abuse of Corpse

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

Abuse of a corpse is a class D crime.

Comment

Source: This section is taken from chapter 269, section 10 of the Proposed Massachusetts Criminal Code.

Current Maine Law: There are three statutes which deal with dead bodies in Title 17 and Title 22:

> §1251: Whoever, without permission of the clerk of a town, therein willfully digs up or removes any human body or its remains from its place of burial, or aids in so doing, or knowingly receives, conceals or disposes of the same; or whoever mutilates, conceals or unlawfully disposes of any human body or its remains, or unnecessarily and indecently exposes, throws away or abandons the same in any public place, river, stream or elsewhere, shall be punished by a fine of not more than $3,000, or by imprisonment for not less than one year nor more than 10 years; but any physician, surgeon or medical student may have in his possession or use human bodies or parts thereof lawfully obtained, for anatomical or physiological investigation and instruction.
>
> §1252: Whoever willfully destroys or injures any tomb, gravestone, monument or other object placed or designed as a memorial of the dead, or any fence, railing or other thing placed about or enclosing a burial place; or willfully injures, removes or destroys any tree, shrub or plant within such enclosure shall be punished by a fine of not more than $500 or by imprisonment for less than one year.

§2843: Except as authorized by the department, no dead human body shall be buried, cremated or otherwise disposed of, or removed from the State, until the person in charge of such final disposition or removal has obtained a permit from the clerk of the municipality where death occurred.

1. Each dead human body transported into this State for final disposition shall be accompanied by a permit issued by the duly constituted authority at the place of death. Such permit shall be sufficient authority for final disposition in any place where dead human bodies are disposed of in this state.

2. Except as ordered by a court of competent jurisdiction, no dead human body shall be disinterred or removed from any vault or tomb until the person in charge of such disinterment or removal has obtained a permit from the clerk of the municipality where such dead human body is buried or entombed.

3. The person in charge of each burying ground or crematory in this State shall endorse each such person with which he is presented, and return it to the clerk of the municipality in which such burying ground or crematory is located within 7 days after the date of the burial.

Section 9. False Public Alarm

1. A person is guilty of false public alarm if

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

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

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

3. False public alarm is a class D crime.

Comment

Source: This section is a modified version of Section 641:4 of the New Hampshire Criminal Code.

Current Maine Law: There are three statutes in Title 17 which relate to the substance of this section:

> §503: Whoever gives a false report, knowing such report to be false, to anyone as to the deposit of any bomb or infernal machine in any place shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both.

§504: Whoever calls out or causes to be called out any fire department, police department or other municipal department, sheriff department or State Police, or any portion or persons thereof, by intentionally giving a false report as to the deposit of any bomb or infernal machine in any place, knowing such report to be false, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 5 years, or by both.

§3958: Whoever calls out or makes a false report to any fire department, police department, State Police Department, sheriff's department or any state law enforcement agency or other municipal department or state department, or any portion or persons thereof, by giving a false alarm, call or report, knowing it to be false, to such department, or to any officer, member or employee thereof by any means whatsoever or knowingly and willfully causes to be given by any means whatsoever, any such false alarm, call or report, when such offense is of a high and aggravated nature, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than $500 or by imprisonment for not more than 2 years; but when such offense is not of a high and aggravated nature, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $100 or by imprisonment for not more than 11 months.

The Draft: The purpose of this section is to deter conduct which forces the dissipation of official resources which need to be conserved to deal with emergencies. Subsection one prohibits giving false information that a crime has been committed or that another person has committed a crime. In the latter circumstances, it is not necessary that any particular person be identified as the purported culprit, on the ground that it is as much a misuse of police forces for officers to search for a vaguely defined individual as it is for them to arrest or investigate a named person.

Subsection two deals with false fire alarms and bomb scares. In these cases it is not only the misuse of public resources that is at stake, but a great amount of public inconvenience and alarm that might be brought about.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 28 Offenses Against Public Order

Section 1. Disorderly Conduct (Approved as revised 10-29-73. Original page 28-1)

A person is guilty of disorderly conduct if:

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

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

3. in a private place, he makes unreasonable noise which can be heard as unreasonable noise in a public place or in another private place.

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

5. As used in this section:

A. "public place" means a place to which the public at large or a substantial group has access, including public ways as defined in section 5, schools, government-owned custodial facilities, and the lobbies, hallways, lavatories, toilets and basement portions of apartment houses, hotels, public buildings and transportation terminals;

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

6. Disorderly conduct is a class D crime.

Section 2. Failure to Disperse (Approved as revised 10-29-73. Original page 28-3)

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

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

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

Section 3. Riot (Approved as revised 10-29-73. Original page 28-4

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

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

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

2. Riot is a class B crime.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 28 Offenses Against Public Order

Section 10. Cruelty to Animals

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

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

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

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

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

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

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

Comment

Source: This section combines portions of present law and the Proposed Criminal Code of Massachusetts, chapter 269, section 11.

Current Maine Law: Chapter 43 of Title 17 contains a large number of statutes regulating matters pertaining to animals, some of which impose criminal penalties, while others relate to the machinery for enforcement. Among the most comprehensive of the former are:

> §1091: Every person, who overdrives, overloads or overworks, who torments, tortures, maims, wounds or deprives of necessary sustenance, or who cruelly beats, mutilates or kills any horse or other animal or causes the same to be done, or having the charge or custody thereof, as owner or otherwise, fails to provide such animal with proper food, drink, shelter, and protection from the weather; every person, owning, or having the charge or custody of any animal, who knowingly and willfully authorizes or permits the same to suffer tortures or cruelty; and every owner, driver, possessor or person having the custody of an old maimed, disabled or diseased animal, who works the same when unfit for labor or who abandons such animal; and every person who carries or causes to be carried, or has the care of any animal in, upon, or attached to a car or other vehicle or otherwise, in a cruel or inhumane manner shall for every such offense be punished by a fine of not less than $50 nor more than $500, or by imprisonment for not more than 11 months, or by both.
>
> §1092: Whoever willfully or maliciously kills, wounds, maims, disfigures or poisons any domestic animal or dog, or exposes any poisonous substance with intent that the life of such animal or dog shall be destroyed thereby, or steals or entices away or confines or harbors such animal for the purpose of obtaining a reward or for any other illegal purpose shall, when the offense is not of a high and aggravated nature, be punished by a fine of not more than $300 or by imprisonment for not more than 3 months, or by both, and when the offense is of a high and aggravated nature by a fine of not more than $1,000 or by imprisonment for not more than 4 years.

§1131: Whoever instigates, or promotes, or acts as umpire, or judge, or promoter, or is connected with, or participates in, or promotes a bullfight of any kind or nature, or any fight between game birds or game cocks, dogs or bulls, or between dogs and rats or other animals, premeditated by any person having custody thereof shall be punished by a fine of not more than $200, or by imprisonment for not less than 10 days nor more than 6 months.

The Draft: This section serves primarily to consolidate and repeat the major offenses now with the law of Maine. The most significant departure from the present law is the reversal of the policy against vivisection currently found in Title 17, section 1055:

No person in any of the schools of the State supported wholly or in part by public money shall practice vivisection or perform any experiment upon a living animal, or exhibit to any pupil in such school an animal which has been vivisected or experimented upon. Whoever willfully violates any of the provisions of this section shall be punished by a fine of not less than $10 nor more than $25.

State of Maine

November 21, 1973 29-1
January 22, 1974 meeting

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 29 Offenses Against the Family

Section 1. Bigamy

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

2. Bigamy is a class D crime.

Comment

Source: This section is a combination of the New Hampshire Criminal Code, section 639:1 and the Hawaii Penal Code, sec. 900.

Current Maine Law: The present bigamy statute is Title 17, section 351:

> If any person, except one legally divorced or one whose husband or wife has been continually absent for 7 years and not known to him or her to be living within that time, having a husband or wife living, marries another married or single person, or if any unmarried person knowingly marries the husband or wife of another, when such husband or wife is thereby guilty of polygamy, he or she shall be deemed guilty of polygamy and punished by a fine of not more than $500 or by imprisonment for not more than 5 years. The indictment for such offense may be found and tried in the county where the offender resides or where he or she is apprehended.

It has been held that the state must plead that the defendant was not within the statutory exception, and that the factors of seven year absence and not known to be living, constitute a single exception. State v. Damon, 97 Me. 323 (1903). That is, it is no defense to raise a reasonable doubt concerning how long the other spouse has been missing unless a doubt is also raised about whether the defendant knew the spouse to be alive; the defendant prevails only if there is a reasonable doubt as to both.

The Draft: This section seeks to simplify the law of bigamy and to change the substantive rules concerning when a person who has previously been married, is permitted to marry again without violating the penal law.

The basic requirement of this crime is that the defendant knew that he was legally ineligable to marry. The inclusion of the requirement that he also have a spouse is designed to keep the statute from being a broad "illegal marrying" prohibition that would extend to young persons who married before they were legally eligible to do so.

Under this statute it makes no difference how long a spouse may have been missing and believed to be dead. If the defendant honestly believes that the spouse is not alive, he is free to marry without violating the penal law.

The scope of this offense could be broadened by providing that it is an affirmative defense which the defendant must establish that he thought he was eligible to marry; further expansion would be brought about by requiring that he have been reasonable in arriving at this belief. These alternatives have not been proposed on the ground that an absence of good faith is the essence of the offense and should, therefore, be proved by the state.

Section 2. Nonsupport of Dependents

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

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

3. Nonsupport of dependents is a class D crime.

Comment

Source: This section is a modification of the Hawaii Penal Code, section 903.

Current Maine Law: The basic statute on this subject is Title 19, section 481, as amended in 1969. The fundamental change brought about by the 1969 revision was to drop any reference to failure to support a wife, and to leave the statute solely in terms of failure to support children under the age of 18. It also appears that the 1969 statute continues the rule which had developed under the earlier version, to the effect that only legitimate children are within its provisions. State v. McCurdy, 116 Me. 359 (1917).

The Draft: This section provides a comprehensive prohibition relating to all circumstances in which one person is a dependent of another and there is a culpable failure to provide the support called for by the relationship. This section does not, however, undertake to define who is a dependent of whom; other statutes do this. Title 19, section 301 presently obliges a man to support his wife and minor children; section 219 of the same Title requires adult children to support their dependent parents. Quere whether section 301 should be amended to lay an equal obligation on the wife-mother.

Section 3. Abandonment of Child

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

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

Comment

Source: This section is patterned on the Hawaii Penal Code section 902. It is similar to Title 19, section 487 of the present law in Maine.

Current Maine Law: Section 487 of Title 19 provides:

> If the father or mother of a child under the age of 6 years, or a person to whom such child is entrusted, exposes it in any place with intent wholly to abandon it, he shall be punished by a fine of not more than $500 or by imprisonment for not more than 5 years.

The Draft: The draft raises the age of present law from 6 to 14, but otherwise leaves the elements of the offense basically as they are now. The Hawaii age limit has been proposed, in preference to the present age of 6, on the ground that the deterrent force of the law is still required for the older children who are still largely incapable of making major decisions for themselves and are still not ready to be wholly responsible for themselves.

Section 4. Endangering the Welfare of a Child

1. A person is guilty of endangering the welfare of a child if:

A. being a parent, guardian or other person charged with the care and custody of a child under the age of 16, he knowingly endangers the child's health, safety or mental welfare by violating a duty of care or protection; or

B. he knowingly sells, furnishes, gives away, or offers to sell, furnish or give away to a child under the age of 16: intoxicating liquor, cigarettes, tobacco, air rifles, firearms, ammunition, or any malt beverage under the name of "near beer"

or any other name which tends to infer that such beverage has an alcoholic content, or any malt extract which may be used in the manufacture of beer; or he knowingly permits such a child to remain in a place that is a house of prostitution.

2. As used in subsection 1A "endangers" includes, but is not limited to the conduct specified in subsection 1B; provided, however, that the persons specified in subsection 1A may authorize a child under the age of 16 to use a dangerous weapon or a firearm for hunting or target shooting in the presence of and under the supervision of a person licensed to use such a weapon or firearm.

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

Comment

Source: This section is patterned on the New Hampshire Criminal Code section 639:3, but it also includes many provisions of present Maine Law.

Current Maine Law: Chapter 35 of Title 17 is made up of 11 sections relating to protection of children. The most important of these are:

§851. Whoever admits or allows to remain in any disorderly house, house of ill fame, gambling place or other place injurious to health or morals, owned, kept, maintained, managed or controlled by him in whole or in part, any child under the age of 16 years, shall be punished by a fine of not more than $100 or by imprisonment for not more than 60 days.

§852. No person shall employ or cause to be employed, exhibit, use or have in custody, or train for use, employment or exhibition any child under 16 years of age, and no parent, guardian or other person having care, custody and control of such child shall procure or permit the training, use, employment or exhibition of any such child, in begging or soliciting or receiving alms in any manner or under any pretense, or in any illegal, indecent or immoral exhibition or practice, or in any exhibition of any such child when mentally ill or idiotic, or when possessing any deformity and unnatural physical formation, or in any practice, exhibition or place dangerous or injurious to the life, limb, health or morals of such child. Whoever violates this section shall be punished by a fine of not more than $100 or by imprisonment for not more than 60 days.

§853. Whoever gives, furnishes or sells to any child under the age of 16 years any dangerous weapon or firearm or ammunition, except in cases where the parents, guardians, teachers or instructors of children may furnish them with such weapons for hunting or target shooting outside the thickly settled portions of any town or city, or where such weapons may be used in any licensed shooting gallery, shall be deemed guilty of encouraging, causing or contributing to the delinquency or distress of such child and, upon conviction, shall be punished by a fine of not more than $100 or by imprisonment for not more than 60 days.

§854. Whoever sells or gives away an air rifle to any child under the age of 14 years shall be punished by a fine of not less than $5 nor more than $20.

§855. Whoever by himself, clerk, servant or agent directly or indirectly sells, offers for sale, has in his possession with intent to sell or gives away to, or in any way obtains for any person under the age of 16 years, any cigarette, cigarette paper, so called, or tobacco, such as is used for making any cigarette, shall be punished by a fine of not more than $50 or by imprisonment for not more than 30 days.

§856. Whoever sells or gives to any child under the age of 16 years, or furnishes any such child with intoxicating liquor or encourages such child to use the same, unless prescribed by a physician or otherwise used in case of sickness, shall be deemed guilty of encouraging, causing or contributing to the delinquency or distress of such child and, upon conviction, shall be punished by a fine of not more than $100 or by imprisonment for not more than 60 days.

§857. Any person who shall sell to a minor any malt beverage under the name of "near beer" or any other name which tends to infer that such beverage has an alcoholic content, or shall sell to a minor any malt extract which may be used in the manufacture of beer, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than $100 or by imprisonment for not more than 60 days. The word minor as used in this section shall mean anyone under the age of 18 years.

§858. Whoever sells, gives, administers or dispenses or conspires to sell, give, administer or dispense any substance defined as a narcotic drug under laws of this State, unless prescribed by a physician or otherwise used in case of sickness, to any person under the age of 18 shall be punished by imprisonment for not more than $10,000. Except in the case of a conviction for a first offense for violation of this chapter, the imposition or execution of sentence shall not be suspended. Parole shall not be granted until the minimum imprisonment herein provided for the offense shall have been served.

§859. Any person who shall be found to have caused, induced, abetted, encouraged or contributed toward the waywardness or delinquency of a child under the age of 17, or to have acted in any way tending to cause or induce such waywardness or delinquency, shall be punished by a fine of not more than $500, or by imprisonment for not more than 11 months, or by both.

The Draft: This section is designed to substitute for §859 of the present statutes and to insure that the prohibitions specifically mentioned in chapter 35 of Title 17 are continued, with the following exceptions. The section relating to narcotic drugs is not included since that will be covered in the drug law revisions, and the section on begging or exhibiting is not included as being unnecessary.

Section 5. Endangering the Welfare of an Incompetent Person

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

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

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

Comment

Source: This section is a modified version of the Hawaii Penal Code section 905.

Current Maine Law: There does not appear to be any statutory provision on this subject.

The Draft: This section is a counterpart to the draft provision relating to endangering the welfare of children. In many penal codes these are treated together in one section, e. g., New Hampshire Penal Code, section 639:9. It would, however, be awkward to attempt to consolidate the two sections as they are presently written.

This draft section relates to all persons, not merely those who are guardians of incompetent persons. Omissions are punishable, however, only when they are on the part of those who have an affirmative legal duty to act.

Section 6. Incest

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

Comment

Source: This section is similar to the Proposed Criminal Code of Massachusetts, chapter 272 section 7.

Current Maine Law: Title 17, section 1851 now provides:

> §1851. When persons within the degrees of consanguinity or affinity, in which marriages are declared incestuous and void, intermarry or commit fornication or adultery with each other, they shall be punished by imprisonment for not less than one year nor more than 10 years.

The Draft: This section provides for the crime of incest only when the participants are at least 18 years old. Sexual intercourse with a child under the age of 14 will be Rape under section 2 of chapter 23, while intercourse with a child between 14 and 18 is punishable as Sexual Abuse of Minors under section 5 of chapter 23.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter ~~30~~ 29B Robbery

Section 1. Aggravated Robbery

1. A person is guilty of aggravated robbery if, in the course of committing theft:

A. he attempts to kill another, or intentionally inflicts or attempts to inflict serious bodily injury on another; or

B. he is armed with a dangerous weapon and he uses force against any person present, with the intent to

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

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

2. Aggravated robbery is a class A crime.

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

COMMENT

Source: This section is patterned on the Hawaii Penal Code, section 840 and the Proposed Criminal Code of Massachusetts, chapter 266, section 16.

Current Maine Law: The present robbery statute is Title 13, section 3401:

> Whoever, by force and violence or by putting in fear, feloniously steals and takes from the person of another property that is the subject of larceny is guilty of robbery and shall be punished by imprisonment for any term of years.

In 1971 this statute was supplemented by sections 3401-A and a revision of 3402. The former enactment punished stealing with "force and violence"

while armed with a firearm. The penalty was set at any term of years and suspended sentence and probation were forbidden. The new section 3402 defined an offense which is assault with intent to rob while armed with a dangerous weapon and authorized a sentence of not less than 2 nor more than 25 years, with a similar prohibition on suspended sentences and probation.

The Draft: This section and the one following, Robbery, follow the Maine statutes and the common law conception of robbery as an aggravated form of theft. This section seeks to identify the most serious forms of aggravation in subsection 1. In 1A the measure is the amount of force that is used or attempted in the theft, while in 1B any force will constitute the aggravating circumstances, provided the actor was armed and the force was used to get or keep the property, to get someone to open the safe or engage in similarly motivated conduct.

The next following section, Robbery, is graded as a less serious crime and identifies as the aggravating circumstances of the theft, less destructive use of force.

Chapter 30. Robbery

Section 2. Robbery

1. A person is guilty of robbery if, in the course of committing theft:

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

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

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

B. he recklessly inflicts serious bodily injury on another.

2. Robbery is a class B crime.

3. Theft is an offense included in robbery.

COMMENT

see the comment to Aggravated Robbery.

TITLE D3 THE SENTENCING SYSTEM

Chapter 36. Release from Institutions and Community Supervision

Section 9. Establishment of Parole Board

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

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

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

This page missing.

See February 1, 1974, compilation.

Comment

Source: This section is patterned primarily on section 1003-3-1 of the Illinois Unified Code of Corrections, 1973, with portions taken from the Model Penal Code, section 402.1(2).

Current Maine Law: The present "establishment" law is Title 34 §1551:

> A State Parole Board, as heretofore created within the Department of Mental Health and Corrections and in this chapter called the "board" shall consist of 3 members who are citizens and residents of the State. Two of the members shall be appointed by the Governor, with the advice and consent of the Council, from persons with special training or experience in law, sociology, psychology or related branches of social science. The Commissioner of Mental Health and Corrections shall be ex officio a member of the board, except that he may appoint any suitable person from his department to serve during his pleasure, in his absence, as a member of the board, but in no case longer than his term of office as commissioner. The term of the regularly appointed members of the board shall be 4 years and until their successors have been appointed and qualified, or during the pleasure of the Governor and Council. A vacancy shall be filled for the unexpired term in the same manner in which a regular appointment is made. The regularly appointed members of the board shall be paid $25 per day and necessary expenses for each day actually spent in the work of the board. The members of the board shall elect a chairman who shall preside at all meetings of the board when present. The board shall meet at least once each month and in addition may meet as often as necessary, at such times and places as the chairman may designate. Any 2 members constitute a quorum for the exercise of all powers of the board. The Department of Health and Welfare, Department of Mental Health and Corrections, officers and staffs of the penal and correctional institutions, and law enforcement agencies in the State shall cooperate with the board in exercising its administration.

The Draft: This section is designed to create the full time, professional board which is necessary to exercise the powers granted in chapter 36 of the draft code.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 27 Falsification in Official Matters

Section 4. Tampering with Witness or Informant (Revised 12-3-73. Original p. 27-13)

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

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

(i) to testify or inform falsely; or

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

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

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

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

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

Section 5. Falsifying Physical Evidence (Approved as revised 12-3-73. Page 27-14)

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

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

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

2. Falsifying Physical Evidence is a class D crime.

Section 6. Tampering with Public Records or Information

(Approved 12-3-73. Original page 27-15)

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 28 Offenses Against Public Order

Section 4. Unlawful Assembly (Approved as revised 12-3-73)

A person is guilty of unlawful assembly if:

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

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

3. Unlawful assembly is a class D crime.

Section 5. Obstructing Public Ways

(Approved 12-3-73)

Section 6. Harrassment

(Approved 12-3-73)

Section 7. Desecration and Defacement (Approved as revised 12-3-7 Original page 28-10)

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

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

3. Desecration is a class D crime.

Section 8. Abuse of Corpse (Approved as revised 12-3-73. Original page 28-11)

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

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

3. Abuse of corpse is a class D crime.

Section 9. False Public Alarm or Report (Approved as revised 12-3-73. Page 28-13)

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

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

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

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

3. False public alarm is a class D crime.

Section 10. Cruelty to Animals

(Tabled 12-3-73. Original page 28-18)

Section 1. Disorderly Conduct (Approved as revised 10-29-73 and 12-3-73. Original pages 28-1, 28-15)

A person is guilty of disorderly conduct if:

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

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

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

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

5. As used in this section:

A. "public place" means a place to which the public at large or a substantial group has access, including public ways as defined in section 5, schools, government-owned custodial facilities, and the lobbies, hallways, lavatories, toilets and basement portions of apartment houses, hotels, public buildings and transportation terminals;

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

6. Disorderly conduct is a class D crime.

TITLE D2 SUBSTANTIVE OFFENSES

Sent to Commission
January 2, 1974.

Chapter 29A Offenses Involving Conduct of Public Officials and Employees

Section 1. Definition of Terms

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

1. "compensation" means any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another;

2. "competitive bidding" means all bidding, where the same may be prescribed by applicable sections of the Revised Statutes or otherwise, given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising, where the contract is to be awarded to the lowest responsible bidder;

3. "county agency" means any department or office of a county government and any division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder:

4. "county employee" means a person performing services for or holding an office, position, employment, or membership in a county agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis;

5. "immediate family" means the employee and his spouse, and their parents, children, brothers and sisters;

6. "municipal agency" means any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder;

7. "municipal employee" means a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis.

8. "official act" means any decision or action in a particular matter or in the enactment of legislation;

9. "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action;

10. "participate" means participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise;

11. "particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the state legislatur

12. "person who has been selected" means any person who has been nominated or appointed to be a state, county or municipal employee or has been officially informed that he will be so nominated or appointed;

13. "special county employee" means a county employee who is performing services or holding an office, position, employment or membership for which no compensation is provided; or who is not an elected official and

A. occupies a position which, by its classification in the county agency involved or by the terms of the contrac or conditions of employment, permits personal or private employmer during normal working hours, or

B. in fact did not earn compensation as a county employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special county employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation;

(1) "special municipal employee" means a municipal employee who is not a mayor, a member of a board of aldermen, a member of a city council, or a selectman in a town with a population in excess of one thousand persons, and whose position or employment has been expressly classified by the city council, or board of aldermen if there is no city council, or the board of selectmen as that of a special employee under the terms and provisions of this chapter. Such classification shall be made by employing standards reasonably related to the terms and provisions of this chapter and all employees who hold equivalent offices, positions, employment or membership in the same government agency shall have the same classification. All employees of any city or town wherein no such classification has been made shall be deemed to be "municipal employees" and shall be subject to all the provisions of this chapter with respect thereto without exception;

(2) "special state employee" means a state employee who is performing services or holding an office, position, employment or membership for which no compensation is provided; or who is not an elected official and (1) occupies a position which, by its classification in the state agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or (2) in fact does not earn compensation as a state employee for an aggregate of more than eight hundred hours during the preceding

three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special state employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation;

(3) "state agency" means any department of state government including the executive, legislative, or judicial, and all councils thereof and thereunder, and any division board, bureau, commission, institution, tribunal or other instrumentality within such department, and any independent state authority, district, commission, instrumentality or agency, but not an agency of a county, city or town;

(4) "state employee" means a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the state legislature and executive council.

COMMENTS TO THIS CHAPTER FOLLOW THE LAST SECTION ON PAGE 29A-46.

(See p. 745)

Section 2. Bribery

1. A person is guilty of bribery, if he intentionally or knowingly, directly or indirectly:

A. gives, offers or promises anything of value to any state, county or municipal employee, or to any person who has been selected to be such an employee, or to any member of the judiciary, or to any juror, or who offers or promises any such employee or any member of the judiciary or any juror, or any person who has been selected to be such an employee or member of the judiciary or a juror, to give anything of value to any other person or entity, with intent

(1) to influence any official act or any act within the official responsibility of such employee or member of the judiciary or juror or person who has been selected to be such employee or member of the judiciary or juror; or

(2) to influence such an employee or member of the judiciary or juror or person who has been selected to be such an employee or member of the judiciary or juror, to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the state or a government agency or in a judicial proceeding; or

(3) to induce such an employee or member of the judiciary or juror, or person who has been selected to be such an employee or member of the judiciary or juror to do or omit to do any act in violation of his lawful duty; or

B. being a state, county or municipal employee or a member of the judiciary or juror, or a person selected to be such an employee or member of the judiciary or a juror, solicits, accepts, receives or agrees to receive, anything of value for himself or for any other person or entity, in return for

(1) being influenced in his performance of any official act or any act within his official responsibility; or

(2) being influenced to commit or aid in committing, or to collude in, or allow any fraud, or make opportunity for the commission of any fraud, on the state or on a state, county or municipal agency, or in a judicial proceeding; or

(3) being induced to do or omit to do any acts in violation of his official duty.

2. A person convicted of a violation of this section shall be incapable of holding any office of honor, trust or profit under any state, county or municipal agency.

3. Bribery is a class C crime.

Section 3. Improper Influence

1. A person is guilty of improper influence if he intentionally or knowingly, directly or indirectly:

A. gives, offers or promises, otherwise than as provided by law for the proper discharge of official duty, anything of substantial value to any present or former state, county or municipal employee or to any member of the judiciary or to any juror, or to any person selected to be such an employee or member of the judiciary or juror, for or because of any official act performed or to be performed by such an employee or member of the judiciary or juror or person selected to be such an employee or member of the judiciary or juror; or

B. being a present or former state, county or municipal employee or member of the judiciary or juror, or person selected to be such an employee or member of the judiciary or juror, solicits, accepts, receives or agrees to receive, otherwise than as provided by law for the proper discharge of official duty, anything of substantial value for himself for or because of any official act or act within his official responsibility performed or to be performed by him.

2. Improper Influence is a class D crime.