

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 29B Robbery

Section 1. Aggravated Robbery (Revised 1-22-74. Original page 29B-1)

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

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

B. he is armed with a dangerous weapon.

2. Aggravated robbery is a class A crime.

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

Section 2. Robbery (Revised 1-22-74. Original page 29B-3)

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

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

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

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

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January 31, 1974 29B-5

- B. he recklessly inflicts bodily injury on another.
2. Robbery is a class B crime.
3. Theft is an offense included in robbery.

State of Maine

February 11, 1974 11-16

February 22, 1974 meeting

TITLE D1 GENERAL PRINCIPLES

Chapter 11 Preliminary

Section 11. Definitions

7. "Public servant" means any ^{official} officer or employee of ^{any branch of} government, including ~~legislators, judges~~ and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function.

Comment

Source: This section is taken from the Proposed Criminal Code of Massachusetts, chapter 263, section 3(r).

Current Maine Law: There does not appear to be any general definition of this sort in the Maine statutes.

The Draft: This section is necessary in view of the many parts of the code which speak of "public servants". It is designed to be comprehensive.

State of Maine
Sub D 1 March 12, 1973
Redraft August 29, 1973
2nd redraft February 13, 1974
February 22, 1974 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. (omitted)
2. (omitted)
3. (omitted)
4. (omitted)
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".

including but not limited to

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, but 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, ^{mature stalks,} except the resin extracted from such/ 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

*Use federal definition
Proposed Federal Code*

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".

analgesic and

A. Any substance having an/addiction forming or addiction sustaining property or liability similar to morphine or capable of such analgesic and conversion into a drug having/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 drug named or described on Schedule W, X, Y or Z of section 412.

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 Department of Public Safety.

22. (omitted)

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 subsection 23C of this section, except that possession of marijuana with such intent shall be deemed furnishing.

24. "Furnish",

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

B. to possess with the intent to do any act mentioned in subsection 24A of this section.

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, any amphetamine, or its salts, isomers, or salts of isomers, including but not limited to methamphetamine, or its salts, isomers, or salts of isomers.

B. 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, butobarbital, pentobarbital, secobarbital, thiopental, and methohexital.

C. Methaqualone or its salts.

D. Methprylon.

E. Flurazepam.

F. (omitted)

G. (omitted)

H. Glutethimide.

I. 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) Dipropyltryptamine
- (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, all narcotic drugs, including but not limited to heroin (diacetylmorphine), methadone, pethidine, morphine and opium.

B. 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

C. Phenmetrazine and its salts.

D. Nalorphine.

E. Methylphenidate.

F. Chlordiazepoxide or its salts.

G. Diazepam

H. Carbromal

I. Chloral hydrate

J. 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 schedule, 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. Methylphen^obarbital
- G. Paraldehyde
- H. Petrichloral
- I. Phenobarbital
- J. Codeine (methyilmorphine)
- 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. Meproba~~o~~mate

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 any federal or state requirement as to 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 what he knows or believes to be any 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. Violation of this section is

A. a class B crime if the drug is, in fact, a Schedule W drug;

B. a class C crime if the drug is in fact a Schedule X drug; or

C. a class D crime if the drug is, in fact a Schedule Y or Schedule Z drug.

TITLE D 4 DRUGS

Chapter 42 Trafficking in and Furnishing Drugs

Section 422 Trafficking in and Furnishing Counterfeit Drugs

A person who intentionally or knowingly trafficks in or furnishes a substance which he represents to be a Scheduled drug but which, in fact, is not a Scheduled drug, but is capable of causing death or serious bodily injury when taken or administered in the customary or intended manner, is guilty of a class C crime.

*not to
be
added*

TITLE D4 DRUGS

Chapter 42 Trafficking in and Furnishing Drugs

Section 423 Aggravated Trafficking or Furnishing

1. A person who trafficks with or furnishes to a child under 16 a Scheduled drug in violation of section 421 or 422 shall be guilty of aggravated trafficking or furnishing.

2. (omitted)

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

without

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 what he knows or believes to be 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. Violation of this section is

A. a class C crime if the drug is, in fact, a Schedule W drug;

B. a class D crime if the drug is, in fact, a Schedule X, Y, or Z drug.

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 useable amount of what he knows or believes to be 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. Violation of this section is

A. a class C crime if the drug is, in fact, a Schedule W drug;

B. a class D crime if the drug is, in fact, a Schedule X or Y drug.

*Z drugs
not included
Z - Marijuana*

TITLE D4 DRUGS

Chapter 44 Miscellaneous Drug and Drug-Related Crimes

Section 441 Allowing Premises to be Used for Drug Crime

(omitted)

Section 442. Acquiring Drugs by Fraud

A person who intentionally or knowingly acquires or obtains,
[] 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 [] 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 ^{furnishes or} 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.

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, unless with 10 days written notice to the prosecution, the defendant requests that a qualified witness testify as to such composition and quality.)

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 custody 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.

*Rootprone
decision
Simmons against
Prov. 1904
2212383 93
Similar*

State of Maine

December 21, 1973 29C-1
February 22, 1974 meeting

TITLE D2 SUBSTANTIVE OFFENSES

Sent to Commission
Feb. 15, 1974.

Chapter 29C Forgery and Related Offenses

Section 1. Definitions

As used in sections two and three of this chapter:

1. a person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of, or fully authorized by, its ostensible maker or drawer;

2. a person "falsely completes" a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of, or fully authorized by, its ostensible maker or drawer;

3. a person "falsely makes" a written instrument when he makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof;

term of art

4. "written instrument" includes any token, coin, stamp, seal, badge, trademark, other evidence or symbol of value, right, privilege or identification, and any paper, document, or other written instrument containing written or printed matter or its equivalent;

5. "complete written instrument" means a written instrument which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof; and

6. "incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

Comment

Source: The definition of written instrument is derived from the Hawaii Penal Code, section 850(1); the others are from the Proposed Criminal Code of Massachusetts, chapter 266, sections 1(b), 1(c), and 26(c).

Current Maine Law: The Maine statutes do not now contain formal definitions such as those contained in this section. There are, however, fragments of analogous definitions to be gleaned from various sources. Title 17, section 1502, for example, punishes any person who, with intent to defraud, "erases or obliterates" a writing or who "alters" any writing "in a material matter." Judicial opinions may also supply some of the definitions used in the present law. See, for example, State v. Talbot, 160 Me. 103, 106-107 (1964) where reference is made to dictionary meanings of alter and forge. Definitions of the things which may be the subject of the crime of forgery are contained in the various statutes dealing with that crime. Title 17, section 1501, for example, speaks of "any public record or proceeding filed or entered in any

court" and "any charter, deed, will, testament, bond, writing obligatory, power of attorney, letter of credit," etc. Forgery is also defined outside of Title 17. See, for example, Title 6, section 203 which punishes forgery of certain aeronautics certifications; Title 32, section 4403 creates the offense of forgery of permits to cut Christmas trees.

The Draft: The definitions in this section are designed to permit comprehensive treatment of forgery in the ensuing two sections. By setting forth the definitions separately, undue complexity is avoided in the sections which define and grade the forgery offenses. The definitions provided here do not appear to be in conflict with the present law, except that "falsely completes" provides the basis for defining forgery in a way that would conflict with the dictum in Abbott v. Rose, 62 Me. 194, 201 (1873) to the effect that fraudulently filling in the blanks in an incomplete instrument would not be forgery.

Section 2. Aggravated Forgery

1. A person is guilty of Aggravated Forgery if, with intent to defraud or deceive another person, he falsely makes, completes or alters a written instrument, or knowingly utters or possesses such an instrument, and the instrument is:

A. part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality; or

B. part of an issue of stocks, bonds or other instruments representing interests in or claims against a corporate or other organization or its property; or

C. a will, codicil or other instrument providing for the disposition of property after death; or

D. a public record or an instrument filed or required or authorized by law to be filed in or with a public office or public employee; or

(E. a prescription of a duly licensed physician; or) ^C

F. a check whose face value exceeds ^{five} fifty thousand dollars; or

G. any written instrument, and the defendant is convicted (at the same sitting of the court) of three or more violations of section 3. ^{but}

2. Aggravated Forgery is a class B crime.

Comment

Source: This section is patterned on the Proposed Criminal Code of Massachusetts, chapter 266, sections 26(a) and 27(b) and (d).

Current Maine Law: The basic forgery statutes are in Title 17, sections 1501 through 1507:

1501. Whoever, with intent to defraud, falsely makes, alters, forges or counterfeits any public record or proceeding filed or entered in any court; or process issued, or purporting to be issued by a competent court, magistrate or officer; or attestation or certificate of any person required by law or receivable as legal proof in relation to any matter; or any charter, deed, will, testament, bond, writing obligatory, power of attorney, letter of credit, policy of insurance, bill of lading, bill of exchange, promissory note, order or acceptance, or indorsement or assignment thereof, or of any debt or contract; or acquittance, discharge or accountable receipt for anything of value; or a motor vehicle operator's license or registration certificate; or any other written instrument of another, or purporting to be such, by which any pecuniary demand or obligation or any right in any property is or purports to be created,

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increased, conveyed, transferred, diminished or discharged; and whoever utters and publishes as true any instrument before-mentioned, knowing it to be false, forged or counterfeit, with like intent, shall be punished by imprisonment for not more than 10 years.

1502: Whoever, with intent to defraud, totally erases or obliterates any record or other written instrument described in this chapter, fraudulently connects together different parts of several bank bills, notes or other written instruments so as to produce one, or alters the same in a material matter, is guilty of forgery and shall be punished as if such instrument had been forged and counterfeited.

1503: If any person, legally authorized to take the proof or acknowledgment of any instrument that by law may be recorded, willfully and falsely certifies that such proof or acknowledgment was duly made, or if any person fraudulently affixes a fictitious or pretended signature, purporting to be that of an officer or agent of a corporation, to any written instrument purporting to be a draft, note or other evidence of debt issued by such corporation, with intent to pass the same as true, although such person never was an officer or agent of such corporation or never existed, he is guilty of forgery and shall be punished as provided in section 1501.

1504: If an officer or agent of a corporation willfully signs with intent to issue or issues any certificate purporting to be a certificate or other evidence of the ownership or of the transfer of any stock in such corporation, not authorized by its charter, bylaws or votes; or without such authority issues, sells or pledges such certificate or other evidence of ownership or transfer of stock after it is lawfully signed, he shall be punished by a fine of not more than \$1,000 and by imprisonment for not more than 10 years.

1505: Whoever with intent to defraud falsely makes, alters, forges or counterfeits any public security issued in any form or purporting to be by authority of the United States, or any state, territory or dependency thereof; or any indorsement or writing purporting to be a transfer thereof; or any bank bill or promissory note issued or purporting to be issued by any bank or banking company in any state,

territory or dependency of the United States, or in any foreign state, province or government; or any gold or silver coin current in this State; and whoever has in his possession at one time, 10 or more such forged or counterfeit public securities, notes or pieces of coin with intent to pass them, knowing them to be forged or counterfeit, shall be punished by imprisonment for life or for any term of years.

1506. Whoever brings into the State, or has in his possession with intent to pass the same or with intent to defraud, utters or tenders in payment as true any such coins, bank bills, notes or public securities, as are described in section 1505, knowing them to be forged or counterfeit, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 3 years. Whoever, after being convicted of an offense described herein, is again convicted thereof or is convicted of 3 such distinct offenses at the same term of the court shall be punished by imprisonment for not less than 3 years nor more than 10 years.

1507. Whoever forges or counterfeits gold or silver coin of a foreign government or country, with intent to export the same for the purpose of defrauding any foreign government or its subject, shall be punished by imprisonment for not less than one year nor more than 10 years.

The Draft: Two forms of forgery are provided, this section and the one following. They are distinguished largely by the nature of the thing forged. Subsection 1G serves to authorize a higher penalty for multiple forgeries.

Section 3. Forgery

1. A person is guilty of forgery if, with the intent to defraud or deceive another person, he:

A. falsely makes, completes or alters a written instrument, or knowingly utters or possesses such an instrument; or

B. causes another, by deception, to sign or execute a written instrument, or utters such an instrument.

2. Forgery is a class C crime.

Comment

Source: This section is derived from the Proposed Criminal Code of Massachusetts, chapter 266, section 28, and the Hawaii Penal Code, section 856.

Current Maine Law: The basic statutes are set forth in the Comment to section 2.

It has been held that fraudulently obtaining the signature of a person to a document is a forgery of that document. State v. Shurtliff, 18 Me. 368 (1841).

The Draft: This section punishes all forgery that is not described in section 2. In addition, there is provision for the case of obtaining a signature by fraud, as is the present law under Shurtliff.

Section 4. Possession of Forgery Devices

1. A person is guilty of possession of forgery devices if
 - A. he makes or possesses with knowledge of its character, any plate, die, or other device, apparatus, equipment or article specifically designed or adapted for use in committing aggravated forgery or forgery; or
 - B. he makes or possesses any device, apparatus, equipment, or article capable of or adaptable to use in committing an aggravated forgery or forgery, with the intent to use it himself, or to aid or permit another to use it for purposes of committing aggravated forgery or forgery.
2. Possession of forgery devices is a class D crime.

Comment

Source: This section is a modification of the Hawaii Penal Code, section 854.

Current Maine Law: Title 17, section 1508 presently provides:

1508. Whoever makes or begins to make, mend, cast, stamp, engrave, mold or provide any plate, block, press, tool, instrument, paper or other material designed and adapted for making any false, forged or counterfeit coin, public securities, bank bills or notes mentioned in this chapter, or has the same in his possession partly or wholly made, with intent to use or permit them to be used for that purpose, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 3 years. All such tools, implements and materials shall be disposed of as provided in section 1813.

December 20, 1973 29C-9

The Draft: The two parts of subsection one differ from each other on the matter of whether the thing possessed is or is not specifically designed to commit forgery, e.g., plates to counterfeit stamps. If it is, then it need only be proved that the actor knew of this. Subsection 1B, on the other hand, relates to things usable to commit forgery, but are not specifically designed to that end, e.g., a printing press. In these latter cases, the prosecution must prove that there was an intent, accompanying the possession, to put the thing to use in a forgery.

Section 5. Criminal Simulation

1. A person is guilty of criminal simulation if

A. with intent to defraud, he makes or alters any property so that it appears to have an age, rarity, quality, composition, source, or authorship which it does not in fact possess; or with knowledge of its true character and with intent to defraud, he transfers or possesses property so simulated; or

B. he authors, prepares, writes, sells, transfers or possesses with intent to sell or transfer, an essay, term paper or other manuscript knowing that it will be, or believing that it probably will be, submitted by another person in satisfaction of a course, credit, or degree requirement at a university or other degree, diploma or certificate granting educational institution; or

C. he knowingly makes, gives or exhibits a false pedigree in writing of any animal; or

only for preliminary

D. with intent to defraud and to prevent identification, he alters, removes or obscures the manufacturer's serial number or any other distinguishing identification number, mark, or symbol upon any automobile, motorboat, aircraft or any other vehicle or upon any machine, or other object.

2. Criminal simulation is a class D crime.

Comment

Source: This section is a modification of the Proposed Massachusetts Criminal Code, chapter 266, section 33.

Current Maine Law: There does not appear to be any present Maine statute dealing specifically with this subject. Title 29, section 2185 prohibits transacting in a motor vehicle whose identification symbols have been tampered with, but does not prohibit merely the tampering.

The Draft: This section is designed to prevent specific kinds of fraud that are perpetrated by passing off something as what it is not.

Section 6. Suppressing Recordable Instrument AK

1. A person is guilty of suppressing a recordable instrument if, with intent to defraud anyone, he falsifies, destroys, removes or conceals any will, deed, mortgage, security instrument, or other writing for which the law provides public recording, whether or not it is in fact recorded.

2. Suppressing a recordable instrument is a class D crime.

Comment

Source: This section is taken from the New Hampshire Criminal Code, section 638:2.

Current Maine Law: Title 18, section 10 provides:

Whoever willfully suppresses, secretes, defaces or destroys any last will and testament of a deceased person, in his possession or under his control, with intent to injure or defraud any person interested therein, shall be punished by a fine of not more than \$1,000 and by imprisonment for less than one year.

In addition, Title 1, section 452 punishes the removal or destruction of records, documents or instruments from their official repositories in the state capitol, or in the hands of certain state officials.

The Draft: This section provides a general prohibition against conduct which aims at falsifying public records. So long as there is the intent to defraud, it is criminal under this section, that certain unauthorized conduct takes place in regard to things which are, or could be, part of a public record.

64 Section 7. Falsifying Private Records

1. A person is guilty of falsifying private records if, with intent to defraud any person, he:

- A. makes a false entry in the records of an organization
- or B. alters, erases, obliterates, deletes, removes or destroys a true entry in the records of an organization; or
- C. omits to make a true entry in the records of an organization in violation of a duty to do so which he knows to be imposed on him by statute; or

D. prevents the making of a true entry or causes the omission thereof in the records of an organization.

2. Falsifying private records is a class D crime.

Comment

Source: This section is a modified version of the Hawaii Penal Code, section 872.

Current Maine Law: There does not now appear to be a statute dealing with the subject of this section.

The Draft: This section is designed to prevent frauds by prohibiting the manipulation of private records in a way that is likely to produce a fraudulent transaction - namely, a manipulation with the particular intention that someone be defrauded. The requirement that the state prove this intention also serves to prevent the section from reaching simple, or even negligent or reckless, mistakes. The general definitions section will include one for "organization" that will have it mean a corporation, unincorporated association, or partnership.

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February 12, 1974 29D-1

March 1, 1974 meeting

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 29D Offenses Against Public Administration

Section 1. Obstructing Government Administration

1. A person is guilty of obstructing government administration if he uses force, violence, intimidation or engages in any criminal act with the intent to interfere with a public servant performing or purporting to perform an official function.

2. This section shall not apply to

A. refusal by a person to submit to an arrest;

narrow B. interference with a public servant in connection with a labor dispute against the government; or

C. escape by a person from official custody, as defined in section ____.

3. Obstructing government administration is a class D crime.

Comment

Source: This section is based on the New Hampshire Criminal Code section 642:1.

Current Maine Law: Chapter 95 of Title 17 contains six sections on Obstructing Justice:

§2951: Whoever, when required in the name of the State by any sheriff, deputy sheriff or constable, neglects or refuses to aid him in the execution of his office in any criminal case, or in the preservation of the peace, or in arresting and securing any person for a breach of the peace, or in preventing the escape or rescue of persons arrested on civil process shall be punished by a fine of not more than \$50 or by imprisonment for not more than 30 days.

Does not include perjury

*Escape
constable in physical
to be added to
this chapter*

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February 12, 1974 29D-2

§2952: Whoever assaults, intimidates or in any manner willfully obstructs, intimidates or hinders any sheriff, deputy sheriff, constable, inland fish and game warden, coastal warden, forest ranger, employee or authorized representative of the Board of Environmental Protection, Insurance Commissioner or his authorized representative, liquor inspector, police officer or state probation-parole officer while in the lawful discharge of his official duties, whether with or without process, shall be punished by a fine of not less than \$100 nor more than \$500 or by imprisonment for not more than 11 months. The court may further order that restitution be made for damage to the property of a law enforcement officer resulting from any act or acts that have been found to be in violation of this section. In offenses under this section, not of an aggravated nature, the District Court may punish by a fine of not more than \$100 or by imprisonment for not more than 90 days.

This section shall apply to all personnel of a fire department in the performance of their duties; and the officers of the fire department or the members thereof so authorized by them shall have the right to deny access to any area or building in which an emergency exists and for which the fire department has responded.

§2953: Whoever willfully obstructs such officer or person in the service of any civil process or order, or of any process for an offense punishable by imprisonment and fine, or either, or whoever obstructs an inland fish and game warden or a coastal warden while in the lawful discharge of his official duty, whether with or without process, shall be punished by a fine of not more than \$300 and by imprisonment for not more than 11 months.

§2954: Whoever willfully obstructs an officer or other person authorized in the service of any process for an offense punishable by imprisonment for more than one year shall be punished by a fine of not more than \$500 or by imprisonment for not more than 2 years.

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February 12, 1974 29D-3

§2954: Whoever willfully obstructs an officer or other person authorized in the service of any process for an offense punishable by imprisonment for more than one year shall be punished by a fine of not more than \$500 or by imprisonment for not more than 2 years.

§2955: Whoever neglects or refuses to obey any justice of the peace when, in view of a breach of the peace or other offense proper for his cognizance, he requires such person to arrest and bring the offender before a court of competent jurisdiction shall be punished, if such prisoner was in custody for a felony, by imprisonment for not less than one year nor more than 7 years; and if for any other offense, by a fine of not more than \$500 and by imprisonment for less than one year; and if the justice made known or declared his office to such person, he shall not plead ignorance thereof.

§2956: Whoever disguises himself in any manner with intent to obstruct the due execution of the laws or to intimidate any officer, surveyor or other person in the discharge of his duty, although such intent is not effected, shall be punished by a fine of not more than \$500 and by imprisonment for less than one year.

The Draft: This section is a generalized form of the statutes now in Title 17. The limitations in subsection 2 are designed to insure that in the subjects mentioned, criminality is determined by the statutes specifically dealing with those particular issues.

*Counts to
mean
assault on an
Officer*

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Section 2. Resisting Arrest

1. A person is guilty of resisting arrest if he intentionally prevents, or attempts to prevent, a law enforcement officer whom he knows to be acting in an official capacity, from effecting the arrest of the actor or another person by:

A. using or threatening to use physical force against the law enforcement officer or another; or

B. using any other means creating a substantial risk of causing bodily injury to the law enforcement officer or any other person.

2. It is no defense to prosecution under this section that the officer was acting unlawfully in making the arrest, provided he was acting under color of his official authority. It is a defense that the conduct constituting a violation of subsection 1 was engaged in as a response to the use of force by the officer that was clearly and substantially in excess of that declared justifiable under section 7 of chapter 13.

*offenses will arise only after custody
has been effected*

Comment

Source: This section is a modification of Chapter 268, section 10 of the Proposed Criminal Code of Massachusetts.

Current Maine Law: See Title 17, §§2952-2954 quoted in Comment to section 1.

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The Draft: This section creates an offense which requires more than running away from an officer seeking to effectuate an arrest. Either of the two patterns of conduct set out in the subdivisions of subsection 1 must be present. But if there is this conduct, it makes no difference, generally, that the arrest was illegal, e.g., the officer lacked probable cause. The policy behind this is to encourage litigation on the issue of the legality of arrests, and to discourage self-help on the street when the person arrested believes the arrest to be illegal. There is, however, a limit imposed on this policy. If the officer uses an excess of force to effect the arrest, and the excess is substantial and clearly excessive, then the actions of the person in response to the excessive force does not constitute this offense.

Section 3. Hindering Apprehension or Prosecution

1. A person is guilty of hindering apprehension or prosecution if, with the intent to hinder, prevent, or delay the discovery, apprehension, prosecution, conviction or punishment of another person for the commission of a crime, he:

A. harbors or conceals the other person;

B. provides or aids in providing a dangerous weapon, transportation, disguise or other means of avoiding discovery or apprehension;

C. conceals, alters or destroys any physical evidence that might aid in the discovery, apprehension or conviction of such person;

D. warns such person of impending discovery or apprehension, except that this subsection does not apply to a warning given in connection with an effort to bring another into compliance with the law;

A-B
B-C
C-D

Always D

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E. obstructs by force, intimidation or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person; or

F. aids such person to safeguard the proceeds of or to profit from such crime.

2. Hindering apprehension or prosecution is a class D crime, unless the defendant knew that the charge made or liable to be made against the other person is aggravated murder, murder, or a class A crime, in which case it is a class B crime.

Comment

Source: This section is taken from the Proposed Criminal Code of Massachusetts, chapter 268, section 11.

Current Maine Law: Title 15, section 342 provides a general definition of an accessory after the fact:

§342: Every person, not standing in the relation of husband or wife, parent or child to the principal offender, who harbors, conceals, maintains or assists any principal felon or accessory before the fact, knowing him to be such, with intent that he may escape detection, arrest, trial or punishment, is an accessory after the fact and shall be punished by a fine of not more than \$1,000 and by imprisonment for not more than 7 years; but in no case shall such punishment exceed the punishment to which the principal felon on conviction would be liable.

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In addition, section 903 of Title 17 contains a similar offense:

§903: Any person who shall harbor or conceal any person for whose arrest for a felony a warrant or process has been issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant or process has been issued for the apprehension of such person, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 3 years, or by both.

The Draft: This section spells out what is described in general terms in present law as "harbors, conceals, maintains or assists". In addition, this section prohibits obstructing others who are in pursuit of the principal offender. Subsection 1F also reaches the person who aids the criminal by hiding the loot, converting it into currency, or otherwise assists in making the original enterprise profitable. This subsection goes beyond the common law, and the present Maine statute, which required that the assistance be rendered directly to the offender.

Section 4. Compounding

1. A person is guilty of compounding if he intentionally solicits, accepts or agrees to accept, any pecuniary benefit as consideration for refraining from initiating or participating as informant or witness in a criminal prosecution.

2. It is an affirmative defense to a prosecution under this section that the pecuniary benefit did not exceed an amount which the defendant believed to be due him as restitution or indemnification for the loss caused by the crime.

3. Compounding is a class D crime.

draft
No defense if he refuses to be a witness after being pled

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February 12, 1974 29D-8

Comment

Source: This section is a modification of the Hawaii Penal Code, section 1013.

Current Maine Law: Two sections of Title 17 are relevant:

§901: Whoever, having knowledge of the commission of an offense, takes any valuable consideration, gratuity or promise thereof with an agreement or understanding, express or implied, to compound, conceal, not to prosecute or not to give evidence of such offense shall be punished, if such offense is punishable with imprisonment for life or an unlimited term of years, by a fine of not more than \$500 or by imprisonment for not more than 5 years; but if the offense is punishable by imprisonment in the State Prison for a limited term of years, he shall be punished by a fine of not more than \$500 and by imprisonment for less than one year.

§902: Whoever, having knowledge of the actual commission of a felony cognizable by courts of this State, conceals or does not as soon as possible disclose and make known the same to some one of the judges or some officer charged with enforcement of criminal laws of the State shall be punished by a fine of not more than \$500 or by imprisonment for not more than 3 years, or by both.

Licensed or certified persons or institutions rendering treatment or services in connection with problems associated with the abuse of drugs pursuant to Title 32, sections 2606¹, 3154, 3817 and 4185-A and Title 22, section 1823 shall be exempt from the necessity of disclosure under this section of "possession" or "use" violations of Title 22, chapter 551, subchapter II, chapter 557 and chapter 558, known to such licensed or certified person or institution to have been committed by the person receiving treatment or services for problems associated with the abuse of drugs.

The Draft: This section does not include the misprision offense in section 902 of Title 17. It otherwise follows the present elements of section 901, except that an affirmative defense is provided for the person who takes what he honestly believes is due him as a result of the criminal conduct.

State of Maine

February 22, 1974 29E-1

March 1, 1974 meeting

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 29E Arson and Other Property Destruction

Section 1. Aggravated Arson

- Definition
Arson, Arson*
1. A person is guilty of aggravated arson if he intentionally starts, causes, or maintains a fire or explosion that damages any structure which is the property of himself or of another, in conscious disregard of a substantial risk that at the time of such conduct a person may be in such structure.
 2. It is no defense to a prosecution under this section that no person was present in the structure.
 3. Aggravated arson is a class A felony if the fire or explosion causes death or serious bodily injury to any person actually present in the structure. Otherwise it is a class B crime.

Comment

Law

Source: This section is based on Section 2-8B1 of S.1, 93d Congress First Session, and the Proposed Criminal Code of Massachusetts, chapter 266, section 3.

In pros. under this sec. it is not necessary to allege or prove who owned prop.

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February 22, 1974 29E-2

Current Maine Law: Following are seven statutes under Title 17 covering arson, enacted in 1967, and section 163-A, enacted in 1971.

§161: First degree. Any person who willfully and maliciously (1) sets fire to (2) burns (3) causes to be burned or (4) aids, counsels or procures, the burning of any dwelling house, mobile home or house trailer, whether occupied, unoccupied or vacant, or any kitchen, shop, barn, stable or other out-house that is parcel thereof, or belonging to or adjoining thereto, whether the property of himself or another, shall be guilty of arson in the first degree and upon conviction thereof, shall be punished by imprisonment for not more than 20 years. Should the life of any person be lost in consequence of any such burning, such offender shall be deemed guilty of murder and be punished accordingly.

§162: Second degree. Any person who willfully and maliciously (1) sets fire to (2) burns (3) causes to be burned or (4) aids, counsels or procures the burning of any building or structure of whatsoever class or character, whether the property of himself or of another, not included or described in section 161, shall be guilty of arson in the second degree, and upon conviction thereof, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 10 years, or by both.

§163: Third degree. Any person who willfully and maliciously (1) sets fire to (2) burns (3) causes to be burned or (4) aids, counsels or procures the burning of any personal or real property of whatsoever class or character, and the property of another person, not included or described in section 161 or 162, shall be guilty of arson in the third degree and upon conviction thereof, shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than 3 years, or by both.

§163-A: Firearm. Any person, if armed with a firearm, who willfully and maliciously sets fire to, burns or causes to be burned any of the buildings or property mentioned in sections 161 to 163 shall be punished by imprisonment for not less than 2 nor more than 25 years. The imposition or execution of such sentence shall not be suspended and probation shall not be granted.

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§164: Fourth degree. Any person who willfully and maliciously (1) attempts to set fire to (2) attempts to burn (3) aids, counsels or procures the burning of any of the buildings or property mentioned in sections 161 to 163, or (4) commits any act preliminary thereto, in furtherance thereof shall be guilty of arson in the fourth degree and upon conviction thereof shall be punished by imprisonment for not more than 11 months, or by a fine of not more than \$1,000, or by both.

The placing or distributing of any flammable, explosive or combustible material or substance, or any device in, on or adjacent to any building or property mentioned in sections 161 to 163 in an arrangement or preparation with intent to eventually willfully and maliciously (1) set fire to (2) burn same, or (3) to procure the setting fire to or burning of same shall, for the purposes of this chapter, constitute an attempt to burn such building or property.

§165: Liability of wife. Sections 161 to 164 are applicable to a married woman committing any of such offenses without the consent of her husband, although the property set on fire and burned belonged wholly or in part to him.

§166: Assault with intent to commit. Whoever assaults another with intent to commit arson, if armed with a dangerous weapon, shall be punished by imprisonment for not more than 10 years; when not so armed, by a fine of not more than \$1,000 or by imprisonment for not more than 5 years.

§167: Burning to defraud insurer. Any person who willfully and with intent to injure or defraud the insurer (1) sets fire to (2) burns (3) causes to be burned (4) attempts any of the foregoing or (5) aids, counsels or procures, the burning of any building, structure or personal property, of whatsoever class or character, whether the property of himself or of another, which shall at the time be insured by any person, company or corporation against loss or damage by fire, shall be guilty of a felony and upon conviction thereof, be sentenced to imprisonment for not more than 5 years.

In Title 25, section 2435 states:

Whoever with intent to injure another causes a fire to be kindled on his own or another's land, whereby the property of any other person is injured or destroyed, shall be punished by a fine of not less than \$20 nor more than \$1,000 or by imprisonment for not less than 3 months nor more than 3 years.

Section 3752 in Title 17 contains a statute to deal with tramps who build fires on the land of another without consent:

Further, section 1401 of Title 12 covers restrictions on out-of-door fires; and section 1402 of Title 24 with limitations of fire insurance recovery.

The Draft: This section, and the three next following all deal with damaging property by fire or explosion. They are graded as to sentencing class on the basis of the nature of the risk which is presented to life and property by the particular conduct.

Section 2. Arson

1. A person is guilty of arson if he starts, causes, or maintains a fire or explosion on his own property or the property of another:

A. with the intent to enable any person to collect insurance proceeds for the loss caused by the fire or explosion; or

B. in conscious disregard of a substantial risk that his conduct will endanger any person or damage or destroy the property of another.

2. Arson is a class C crime.

Comment

Source: This section is taken from the Proposed Criminal Code of Massachusetts, chapter 266, section 4, and section 2-8B2 of Senate 1, 93d Congress, First Session.

Current Maine Law: See Comment to section 1.

The Draft: This section is graded on the basis of dangers created solely in order to collect on insurance or in reckless disregard to the dangers posed to other persons or their property.

Section 3. Causing a Catastrophe

1. A person is guilty of causing a catastrophe if he recklessly causes a catastrophe by explosion, fire, flood, avalanche, collapse of a structure, release of poison, radioactive material, bacteria, virus, or other such force or substance that is dangerous to human life and difficult to confine.

2. As used in this section, "catastrophe" means death or serious bodily injury to ten or more people or substantial damage to five or more structures (or dwelling places.)

3. Causing a catastrophe is a class A crime.

Comment

Source: This section is patterned on section 14.070 of the Proposed Criminal Code for the State of Missouri, 1973.

Current Maine Law: See comment to section 1.

The Draft: This section is graded as a class A crime on the basis of the risk that is consciously created by fire, explosion, etc., and which in fact results in mass death or destruction. If the conduct is done intentionally, it would be murder, or perhaps aggravated murder.

al
Section 4. Failure to Control or Report a Dangerous Fire

1. A person is guilty of failure to control or report a dangerous fire if

A. he starts, causes, or maintains a fire or explosion, and knowing that its spread would endanger human life or the property of another, he fails to take reasonable measures to put out or control the fire or to give a prompt fire alarm: or

B. knowing that a fire is endangering a substantial amount of property of another, as to which he has an official, contractual, or other legal duty, he fails to take reasonable measures to put out or control the fire or to give prompt fire alarm; or

C. knowing that a fire is endangering human life, he fails to take reasonable measures to save life by notifying the persons endangered or by taking reasonable measures to put out or control the fire or by giving a prompt fire alarm.

2. Failure to control or report a dangerous fire is a class D crime.

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Comment

Source: This section is patterned on section 2-8B4 of Senate 1, 93d Congress, First Session.

Current Maine Law: There does not seem to be any statute on this subject.

The Draft: This section imposes affirmative duties on persons who are in a position of responsibility in regard to the harm that might be caused by a fire or explosion. Subsection 1A places such a duty on the person who starts a fire, even if it had been started accidentally and without fault on his part. Subsection 1B relates to persons such as bailees of large amounts of property or hotel managers with whom people entrust their property. The final portion of subsection 1 is broader than the first two in that all persons who know there to be a fire dangerous to others are obligated to do something to help save those lives.

Section 5. Aggravated Criminal Mischief

1. A person is guilty of aggravated criminal mischief if he intentionally or knowingly

A. damages or destroys property of another in an amount exceeding one thousand dollars in value, having no reasonable ground to believe that he has a right to do so; or

B. damages or destroys property in an amount exceeding one thousand dollars in value, to enable any person to collect insurance proceeds for the loss caused; or

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February 22, 1974 28E-8

C. damages, destroys or tampers with the property of a law enforcement agency, fire department, or supplier of gas, electric, steam, water, transportation, sanitation or communications services to the public, having no reasonable ground to believe that he has a right do do so, and thereby causes a substantial interruption or impairment of service rendered to the public; or

D. damages, destroys, or tampers with property of another and thereby recklessly endangers human life.

2. Aggravated criminal mischief is a class C crime.

Comment

Source: This section is patterned on the Proposed Criminal Code of Massachusetts, chapter 266, section 6.

Current Maine Law: There are presently five statutes in chapter 83 of Title 17:

§2351: Whoever willfully or maliciously destroys, injures or removes any public building, armory, breastwork, trench, fortification, wharf, pier or dock; or any property, pipe line, reservoir, structure or apparatus used in supplying water to the public or to any portion thereof; or any dam, reservoir, fishway, fish screen, canal, trench or their appurtenances; or the gear or machinery of a mill or manufactory; or draws off the water from a mill pond, canal or trench; or destroys or injures any engine or its apparatus for the extinguishment of fire; or any posts, glass caps, wires or other material used in the construction and operation of a telegraph, telephone, electric light or electric power line; or removes, injures or destroys any public or toll bridge, or places any obstruction on such bridge or on any public road with intent to injure persons or property passing thereon, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 3 years. -941-

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February 22, 1974 28E-9

§2352: Whoever unlawfully and intentionally taps or interferes with the water pipes or fixtures belonging to any water company or to any city, town or water district, or pipes lawfully connected therewith, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 11 months, or by both.

§2353: Whoever unlawfully and intentionally injures or destroys or suffers to be injured or destroyed any meter, pipe, conduit, wire, line, pole, lamp or other apparatus belonging to an individual, copartnership or corporation engaged in the manufacture or sale of gas or electricity for lighting purposes or power purposes, or belonging to any water company, or unlawfully and intentionally prevents an electric, water or gas meter from duly registering the quantity of electricity, water or gas supplied, or in any way interferes with its proper action or just registration, or without the consent of such individual, copartnership or corporation unlawfully and intentionally diverts any electric current from any wire of such individual, copartnership or corporation, or otherwise unlawfully and intentionally uses or causes to be used without the consent of such individual, copartnership or corporation any electricity manufactured or distributed by such individual, copartnership or corporation, or unlawfully and intentionally and without the consent of such company taps or interferes with the pipes or fixtures of any gas company, shall for every such offense be punished by a fine of not more than \$100 or by imprisonment for not more than 11 months, or by both.

§2354: Whoever unlawfully and intentionally injures, molests or destroys any insulator, wire, posts, crossarm, bracket or other structure or mechanism which forms part of, or is used in connection with an electrical transmission line constructed and maintained for the transmission of intelligence, heat, light or power by electricity, or destroys or in any way interferes with the proper working of such transmission line or anything pertaining thereto, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 11 months, or by both.

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§2355: Whoever, without the prior consent of the utility owning or using the pole, places any poster, bill or advertisement, tack, nail or other object on any utility pole, whether or not within the limits of a public way, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 30 days, or by both.

And section 2404 from the supplement:

Whoever willfully and maliciously takes or removes or attempts to take or remove the lubricating pads, the waste or packing, the friction bearing or the wedge from a journal box or boxes of a locomotive, engine, tender, carriage, coach, car, baboose or truck used or operated upon a railroad, whether operated by diesel, or by steam engine or by electricity, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 3 years, or by both.

The Draft: This section and the next following deal with damage or destruction of property, and set out a grading scheme which depends partly on the value of the property involved, partly on whether human life is endangered, and partly on whether a great inconvenience to the public is caused by the acts of the accused.

Section 6. Criminal Mischief

1. A person is guilty of criminal mischief if he

intentionally and knowingly
A. intentionally or knowingly damages or destroys the property of another, having no reasonable ground to believe that he has a right to do so; or knowingly damages or destroys property with the intent to enable any person to collect insurance proceeds for the loss caused; or

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B. ~~intentionally or knowingly~~ damages, destroys, or tampers with property of a law enforcement agency, fire department, or supplier of gas, electric, steam, water, transportation, sanitation, or communication services to the public, having no reasonable ground to believe that he has a right to do so, and by such conduct recklessly creates a risk of interruption or impairment of services rendered to the public.

2. Criminal Mischief is a class D crime.

Comment

Source: This section is a modified version of section 2-8B6 of Senate 1, 93d Congress, First Session.

Current Maine Law: See comment to section 5.

The Draft: This section differs from section 5 on the basis of the absence of consideration to the value of damage caused, and on the absence of a requirement that there be in fact an interruption of the public service which the accused tampered with.

Revised

State of Maine

February 28, 1974 29F-1

March 14, 1974 meeting

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 29F Prostitution and Public Indecency

Section 1. Definitions

As used in this chapter

1. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in sexual intercourse or a sexual act, as defined in chapter 23, section 1, in return for a pecuniary benefit to be received by the person engaging in prostitution or a third person.
2. "Promotes prostitution" means
 - A. causing or aiding another ^{other than patron} to commit or engage in prostitution; or
 - B. procuring or soliciting patrons for prostitution; or
 - C. providing persons for purposes of prostitution; or
 - D. leasing or otherwise permitting a place controlled by the defendant, alone or in association with others, to be regularly used for prostitution; or
 - E. owning, controlling, managing, supervising, or otherwise operating, alone or in association with others, a house of prostitution or a prostitution business; or
 - F. transporting a person into or within the state with the intent that such other person engage in prostitution; or

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G. accepting or receiving, or agreeing to accept or receive, a pecuniary benefit pursuant to an agreement or understanding with any other person whereby he participates or is to participate in the proceeds of prostitution.

Comment

Source: These definitions are adaptations of provisions found in the Hawaii Penal Code, 1973, section 1201; the Proposed Criminal Code of Massachusetts, chapter 272, section 4; and the Proposed Criminal Code for the State of Missouri, section 12.010.

Current Maine Law: Section 3052 of Title 17 provides: "The term 'prostitution' shall be construed to include the offering or receiving of the body for sexual intercourse for hire and shall be construed to include the offering or receiving of the body for indiscriminate sexual intercourse without hire."

Other definitions are contained in subsections 1 through 6 of Section 3051 of Title 17:

It shall be unlawful:

1. Occupation of building for prostitution. To occupy any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation, or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, lewdness or assignation, with knowledge or reasonable cause to know that the same is or is to be used for such purpose;
2. To receive any person in such building. To receive or to offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation, or to permit any person to remain there for such purpose;

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3. To direct, transport any person to such building. To direct, take or transport or to offer or agree to take or transport any person to any place, structure or building or to any other person with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation;

4. To procure or solicit. To procure or solicit or to offer to procure or solicit, for the purpose of prostitution, lewdness or assignation;

5. To reside in, remain in such building. To reside in, enter or remain in any place, structure or building, or to enter or remain in any conveyance for the purpose of prostitution, lewdness or assignation;

6. To engage in or aid prostitution. To engage in prostitution, lewdness or assignation, or to aid or abet prostitution, lewdness or assignation by any means whatsoever.

Any person who violates any of the provisions of this section shall be subject to imprisonment in or commitment to any penal or reformatory institution in this State for not more than 3 years. Probation or parole shall be granted or ordered in the case of a person infected with venereal disease only on such terms and conditions as shall insure medical treatment therefor and prevent the spread thereof, and the court may order any convicted defendant to be examined for venereal disease.

No female who shall be convicted of violating any of the provisions of this section shall be placed on probation or on parole in the care or charge of any person except a woman probation-parole officer.

The Draft: This section sets forth definitions that are required for the offenses described in this chapter.

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Section 2. Aggravated Promoting, ^{on of} Prostitution

1. A person is guilty of aggravated promoting prostitution if he knowingly

A. promotes prostitution by compelling a person to enter into, engage in, or remain in prostitution; or

B. promotes prostitution of a person less than 18 years old.

2. As used in this section "compelling" includes but is not limited to

A. the use of a drug or intoxicating substance to render a person incapable of controlling his conduct or appreciating its nature; and

B. withholding or threatening to withhold a narcotic drug from a drug dependent person. A "drug dependent person" is one who is using narcotic drugs and who is in a state of psychic or physical dependence or both, arising from the use of the drug on a continuing basis.

3. Aggravated promoting prostitution is a class C crime.

Comment

Source: This section is patterned on the Proposed Criminal Code for the State of Missouri, section 12.050.

Current Maine Law: This section defines an offense encompassed now by Title 17, sections 3055-3059.

The Draft: This is the first of the two sections which will deal with prostitution. Neither one defines prostitution itself as an offense. This present draft seeks to identify the most serious forms of promoting prostitution, leaving the next section to define an offense which is all other means of promoting prostitution.

Section 3. Promoting Prostitution

1. A person is guilty of promoting prostitution if he knowingly promotes prostitution.

2. Promoting Prostitution is a class D crime.

Comment

See comment to section 2.

objective likelihood of affront

Section 4. Public Indecency

1. A person is guilty of public indecency if, in a public place

public or view

A. he solicits another person to engage in, or offers to engage in, or offers to procure another person to engage in, sexual intercourse or a sexual act, as defined in chapter 23, section 1; or

B. he engages in sexual intercourse or a sexual act, as defined in chapter 23, section 1; or

C. he knowingly exposes his genitals under circumstances in which he knows that his conduct is likely to cause alarm.

to one or more persons

2. Public indecency is a class D crime.

*Public exposure & indecent exposure
victim under age
7 12*

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Sent to Commission March 8, 1974.

TITLE D1 GENERAL PRINCIPLES

Chapter 11 Preliminary

Section 11 Definitions (Approved as amended 2-22-74)

7. "Public servant" means any official officer or employee of any branch of government and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function.

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February 27, 1974 29C-13

Sent to Commission March 8, 1974.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 29C Forgery and Related Offenses

Section 1. Definitions (Accepted as amended 2-22-74)

As used in sections two and three of this chapter:

1. a person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of, or fully authorized by, its ostensible author, maker or drawer;

2. a person "falsely completes" a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of, or fully authorized by, its ostensible author, maker or drawer;

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3. a person "falsely makes" a written instrument when he makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible author, maker or drawer, but which is not such either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof;

4. "written instrument" includes any token, coin, stamp, seal, badge, trademark, other evidence or symbol of value, right, privilege or identification, and any paper, document, or other written instrument containing written or printed matter or its equivalent;

5. "complete written instrument" means a written instrument which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof; and

6. "incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

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Section 2. Aggravated Forgery (Accepted as amended 2-22-74)

1. A person is guilty of Aggravated Forgery if, with intent to defraud or deceive another person or government, he falsely makes, completes or alters a written instrument, or knowingly utters or possesses such an instrument, and the instrument is:

A. part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality; or

B. part of an issue of stocks, bonds or other instruments representing interests in or claims against a corporate or other organization or its property; or

C. a will, codicil or other instrument providing for the disposition of property after death; or

D. a public record or an instrument filed or required or authorized by law to be filed in or with a public office or public employee; or

E. a check whose face value exceeds five thousand dollars.

2. Aggravated Forgery is a class B crime.

Section 3. Forgery (Accepted as amended 2-22-74)

1. A person is guilty of forgery if, with the intent to defraud or deceive another person or government, he:

- A. falsely makes, completes or alters a written instrument, or knowingly utters or possesses such an instrument;
or
B. causes another, by deception, to sign or execute a written instrument, or utters such an instrument.

2. Forgery is a class C crime.

Section 4. Possession of Forgery Devices (Accepted 2-22-74)

1. A person is guilty of possession of forgery devices if

A. he makes or possesses with knowledge of its character, any plate, die, or other device, apparatus, equipment or article specifically designed or adapted for use in committing aggravated forgery or forgery; or

B. he makes or possesses any device, apparatus, equipment, or article capable of or adaptable to use in committing an aggravated forgery or forgery, with the intent to use it himself, or to aid or permit another to use it for purposes of committing aggravated forgery or forgery.

2. Possession of forgery devices is a class D crime.

Section 5. Criminal Simulation (Amended 2-22-74)

1. A person is guilty of criminal simulation if

A. with intent to defraud, he makes or alters any property so that it appears to have an age, rarity, quality, composition, source, or authorship which it does not in fact possess; or with knowledge of its true character and with intent to defraud, he transfers or possesses property so simulated; or

B. in return for a pecuniary benefit;

(i) he authors, prepares, writes, sells, transfers or possesses with intent to sell or transfer, an essay, term paper or other manuscript knowing that it will be, or believing that it probably will be, submitted by another person in satisfaction of a course, credit, or degree requirement at a university or other degree, diploma or certificate granting educational institution; or

(ii) he takes an examination for another person in satisfaction of a course, credit, or degree requirement at a university or other degree, diploma, or certificate granting educational institution.

C. he knowingly makes, gives or exhibits a false pedigree in writing of any animal; or

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D. with intent to defraud and to prevent identification, he alters, removes or obscures the manufacturer's serial number or any other distinguishing identification number, mark, or symbol upon any automobile, motorboat, aircraft or any other vehicle or upon any machine, or other object.

2. Criminal simulation is a class D crime.

Section 6. Suppressing Recordable Instrument (Approved 2-22-74)

1. A person is guilty of suppressing a recordable instrument if, with intent to defraud anyone, he falsifies, destroys, removes or conceals any will, deed, mortgage, security instrument, or other writing for which the law provides public recording, whether or not it is in fact recorded.

2. Suppressing a recordable instrument is a class D crime.

Section 7. Falsifying Private Records (Approved 2-22-74)

1. A person is guilty of falsifying private records if, with intent to defraud any person, he:

A. makes a false entry in the records of an organization, or

B. alters, erases, obliterates, deletes, removes or destroys a true entry in the records of an organization; or

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C. omits to make a true entry in the records of an organization in violation of a duty to do so which he knows to be imposed on him by statute; or

D. prevents the making of a true entry or causes the omission thereof in the records of an organization.

2. Falsifying private records is a class D crime.