

STATE OF MAINE

Commission to Prepare a Revision of the Criminal Laws

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TO: COMMISSION AND CONSULTANTS

FROM: SANFORD J. FOX

Consultants

Hon. Robert B. Williamson
Hon. Sidney W. Wernick
Hon. Harold J. Rubin
Hon. Thomas E. Delahanty

OCTOBER 23, 1974

1. Enclosed are several items for consideration of the Commission. Whether they need to be discussed at a meeting is a question that depends on whether anyone is in strong enough disagreement to request a meeting.

2. The first enclosure is a grouping of crimes defined in the Code according to sentencing classification. Those marked with an asterisk represent my recommendation; the others are decisions of the Commission.

3. The second is also a tabular presentation. It is a follow-up to the memorandum I sent the Commission on June 26, 1974 concerning disposition of the present occupants of Title 17. The major differences are that (a) the enclosed table contemplates the Code as a new Title 17A, so that some of the present sections may just remain where they are; and (b) the enclosed table deals with all of Title 17. In the context of a limited amount of Commission members time, I would say that it is worth reviewing first the entries under Repeal since those are suggestions that what is now the law of Maine no longer be law anywhere in the statutes. The second list for review should be the Remain entries, and finally, a review of the Code entries to verify that the coverage in the Code is close enough, or a rational variation from, the present statutes.

4. The third set of enclosures are redrafts of existing material and original drafts of new things which it was determined by the Commission should be in the Code. These are:

A. Chapter 11, Section 4 (pp. 11-5 and 11-5A) There have been some minor rewording changes; but a new subsection 4 is important. Without it there would be no criminal offenses preserved from among those outside the present Title 17 which expressly relate to a corporation. In other words, if there are to be only civil violations where there are now only fines as penalties, any current crime which relates to a corporation, and therefore has only a fine penalty, would automatically become a civil offense. In order to prevent this, subsection 4 says that where the statute expressly says it relates to an organization, it remains a crime and is classified according to the amount of the fine. It is still, of course, possible to make any or all of these into civil violations by specific amendments to each particular statute.

B. Chapter 11, Section 5 (pp. 11-6 and 11-6A) There is a new subsection 4 which states the rule of evidence that is now found in Chapter 12, section 7 and in Chapter 12, section 10, subsection 4. These latter two provisions can be dropped from the Code. Subsection 3, relating to affirmative defenses, is more tentative than it has ever been since the Supreme Court decided last week to review Mullaney v. Wilbur. Although there is no way of knowing when it will be scheduled for argument or decided, there will probably be sufficient time prior to the effective date of the Code (March 1, 1976) to make whatever amendments would be called for by the opinion.

C. Chapter 11, Section 11 (pp. 11-14 and 11-14A) There is a new subsection 4A which sets out a rule we have otherwise been assuming. Subsection 5 is new and is designed to insure that if the legislature wants to create crimes which do not require that there be some subjective fault proved, there is no conflict with the general requirements of the Code.

D. Chapter 11, Section 13 (p. 11-16) This replaces the draft provision on Presumptions. It follows the rule of State v. Northrup, 318 A.2d 489 (Me. 1974) that the defendant is entitled to an instruction on a lesser offense only if the offense could rationally be found by a reasonable jury.

E. Chapter 28, Section 15 (p. 28-11) This is new to the Code and incorporates the provisions of the present section 551 of Title 17.

F. Chapter 28, Section 16 (p.28-12) This section is also new and is designed to replace section 3651 of Title 17. It is much more narrowly drawn than the present law as a result of constitutional limits on what may be prohibited in this respect.

G. Chapter 31, Section 5 (pp.31-7 and 31-8) The changes here are primarily in subsection 3 which requires specific findings by the court when it either imposes consecutive sentences, or when the length of the consecutive sentence exceeds the maximum for the most serious crime involved.

H. Chapter 34, Sections 1 and 2 (pp.34-1 and 34-2) Section 1 has been redrafted to reflect the decision that there is a mandatory life sentence for criminal homicide in the first degree. Section 2 has a new subsection which is designed to replace provisions in present law which authorize more severe sentences in similar circumstances. A major difference is that the draft requires "use" of the weapon, while present law, e.g. section 3151-A of Title 17, is cast in terms of "if armed with a firearm."

I. Chapter 34, Section 4 (p.34-4) Subsection 2 reflects decision taken by the Commission concerning how and when persons sentenced to life terms or terms in excess of 20 years obtain their release. Except for the granting and withholding of "good time" deductions, this section places the discretion for release in these cases in the Superior Court.

SENTENCING CLASSIFICATIONS

State of Maine

October 18, 1974

Sent to Commission

October 23, 1974.

Class A Crimes (20 years)

Chapter 21, section 1 - conspiracy to commit criminal homicide in the first or second degree.

Chapter 21, section 2 - attempt to commit criminal homicide in the first or second degree.

Chapter 21, section 3 - solicitation to commit criminal homicide in the first or second degree.

Chapter 22, section 3

Chapter 23, section 2 - unless victim was voluntary social companion and had permitted sexual contact (then a class B).

Chapter 23, section 3 - unless victim was voluntary social companion and had permitted sexual contact (then a class B)

Chapter 24, section 1 - unless defendant voluntarily released victim alive and not suffering serious bodily harm in a safe place prior to trial (then a class B).

Chapter 26, section 1

Chapter 29B, section 1

Chapter 29E, section 1 if the fire or explosion causes death or serious bodily injury (otherwise a class B).

Chapter 29E, section 3

October 21, 1974

Class B Crimes (10 years)

*Chapter 28, section 3

Chapter 29B, section 2

Chapter 29C, section 2

*Chapter 29D, section 3 - if defendant knew that the crime was criminal homicide in first or second degree, or a class A crime; otherwise one grade less than the crime charged, except if a class E crime, than hindering apprehension is a class E.

Chapter 29D, section 5 - if committed by force, threat or while armed (otherwise a class C)

Chapter 29D, section 6 - if contraband includes dangerous weapon (otherwise a class C)

Chapter 29E, section 1 - unless fire or explosion causes death or serious bodily injury (class A)

Chapter 29E, section 2

Chapter 29H, section 3

Chapter 21, section 1 - conspiracy to commit a class A crime.

Chapter 21, section 2 - attempt to commit a class A crime.

Chapter 21, section 3

State of Maine
October 21, 1984

Class C Crime (5 years)

Chapter 21, section 1 - conspiracy to commit class B crime.

Chapter 21, section 2 - attempt to commit class B crime.

Chapter 21, section 3 - solicitation to commit class B crime.

Chapter 22, section 4 - if it occurred as result of reckless operation of a motor vehicle.

Chapter 22, section 11

Chapter 23, section 3

Chapter 23, section 4

Chapter 23, section 5

Chapter 25, section 12

Chapter 26, section 1

*Chapter 27, section 1

*Chapter 27, section 4

Chapter 28, section 4

Chapter 29A, section 2

Chapter 29D, section 2

Chapter 29D, section 5 - unless committed by force, threat or while armed (class B)

Chapter 29D, section 6 - unless contraband includes dangerous weapon (class B)

Chapter 29E, section 5

Chapter 29F, section 2

*Chapter 29I, section 1

Class D Crime (1 year)

Chapter 21, section 1 - conspiracy to commit class C crime.

Chapter 21, section 2 - attempt to commit class C crime.

Chapter 22, section 5

Chapter 22, section 6

Chapter 22, section 7

Chapter 22, section 9

Chapter 22, section 12

Chapter 23, section 5

Chapter 24, section 2

Chapter 25, section 10

Chapter 25, section 12

*Chapter 26, section 2 - if dwelling place entered (class E)

*Chapter 27, section 2

*Chapter 27, section 3

*Chapter 27, section 4

Chapter 27, section 5

Chapter 27, section 6

*Chapter 28, section 2 - if person is a participant (otherwise Class E)

*Chapter 28, section 6

*Chapter 28, section 9

Chapter 28, section 10

*Chapter 28, section 11

Class D (cont.)

Chapter 29, section 3

Chapter 29, section 4

*Chapter 29, section 5

*Chapter 29, section 6

Chapter 29A, section 3

Chapter 29A, section 4

Chapter 29A, section 7

*Chapter 29C, section 3

Chapter 29C, section 8

Chapter 29D, section 1

*Chapter 29D, section 7

Chapter 29E, section 4

Chapter 29E, section 6

Chapter 29F, section 3

Chapter 29G, section 1

Chapter 29G, section 2

Chapter 29G, section 3

Chapter 29G, section 4

Chapter 29G, section 5

Chapter 29H, section 4

Chapter 29H, section 5

Chapter 29H, section 6

Chapter 29I, section 2

*Chapter 29J, section 1

*Chapter 29J, section 5

Class E Crime (6 months)

*Chapter 25, section 12

*Chapter 26, section 2 - unless dwelling place entered (class D)

*Chapter 26, section 3

*Chapter 26, section 4

*Chapter 27, section 7

*Chapter 28, section 1

*Chapter 28, section 2

*Chapter 28, section 5

*Chapter 28, section 7

*Chapter 28, section 8

*Chapter 28, section 12

Chapter 28, section 13

Chapter 28, section 14

*Chapter 29, section 1

Chapter 29, section 2

Chapter 29A, section 5

Chapter 29A, section 6

Chapter 29A, section 8

Chapter 29A, section 9

Class E (cont.)

Chapter 21, section 1 - conspiracy to commit class D or class E crime.

Chapter 21, section 2 - attempt to commit class D or class E crime.

*Chapter 29C, section 4

*Chapter 29C, section 5

*Chapter 29C, section 6

*Chapter 29C, section 7

*Chapter 29D, section 3 - where hindering apprehension is for a class E crime.

*Chapter 29D, section 4

*Chapter 29F, section 4

*Chapter 29G, section 6

*Chapter 29I, section 3

PROPOSED DISPOSITION OF MAINE REVISED STATUTES
ANNOTATED TITLE 17

In light of the Commission's decision to recommend the Criminal Code as a new Title 17A, the present sections in Title 17 which the Commission intends neither to revise nor to repeal will simply remain in Title 17. The remainder of Title 17 will be repealed - for either of two reasons: (1) the law contained in some sections has been revised and is represented in the Code; or (2) the basis for other sections no longer represents sound policy and the law ought not to be continued. The following Table represents a proposal for either of these three dispositions for the present Title 17. Some are Commission decisions; others are my recommendation. Since such a Disposition Table should be part of the final report, it should be carefully reviewed.

<u>Section</u>	<u>Remain in Title 17</u>	<u>In Criminal Code</u>	<u>Repeal</u>
1		x	
2		x	
51			x
52			x
101			x
161		x	
162		x	
163		x	
163A		x	
164		x	
165			x
166		x	
167		x	

<u>Section</u>	<u>Remain in Title 17</u>	<u>In Criminal Code</u>	<u>Repeal</u>
201		x	
201A		x	
202		x	
203		x	
251		x	
252		x	
301	x		
302	x		
303	x		
303A	x		
304	x		
305	x		
306	x		
307	x		
330-346	x		
351		x	
401	x		
451			x
452			x
501		x	
502		x	
503		x	
504		x	
551		x	
553			x
601-608		x	
651			x
652			x
653			x
654			x
701	x		
702	x		
703	x		
751		x	
751A		x	
752		x	
753		x	
754		x	
754A		x	
755		x	
801		x	
851-861		x	

<u>Section</u>	<u>Remain in Title 17</u>	<u>In Criminal Code</u>	<u>Repeal</u>
901-903		x	
951		x	
952		x	
1001			x
1051	x		
1052	x		
1053		x	
1054		x	
1055			x
1056	x		
1057	x		
1058			x
1091		x	
1092		x	
1093	x		
1094		x	
1131		x	
1133		x	
1134		x	
1171	x		
1172	x		
1173	x		
1174	x		
1175	x		
1176	x		
1177	x		
1211	x		
1212	x		
1213	x		
1214	x		
1215	x		
1216	x		
1251		x	
1252		x	
1253			x
1301A	x		
1311-1316	x		
1351-1354	x		
1401-1404		x	
1404A		x	
1405		x	
1405A		x	
1406		x	
1451		x	
1452		x	
1501-1503		x	

<u>Section</u>	<u>Remain in Title 17</u>	<u>In Criminal Code</u>	<u>Repeal</u>
1504			x
1505-1508		x	
1509			x
1510			x
1551			x
1601		x	
1602		x	
1603	x		
1603A		x	
1604		x	
1605-1608		x	
1608A	x		
1609		x	
1609A	x		
1610	x		
1611	x		
1612-1617		x	
1618	x		
1619-1623		x	
1624-1634		x	
1661-1667	x		
1701-1706	x		
1801-1815		x	
1851		x	
1901		x	
1951		x	
2002-2004	x		
2051		x	
2051A		x	
2101-2109		x	
2109A		x	
2110-2113		x	
2151			x
2201-2207			x
2252	x		
2253	x		
2261-2271	x		
2301		x	
2302-2305	x		
2321-2326		x	
2351-2354		x	
2355			x
2401	x		
2402	x		
2403		x	
2441		x	

<u>Section</u>	<u>Remain in Title 17</u>	<u>In Criminal Code</u>	<u>Repeal</u>
2442		x	
2491-2493A		x	
2494-2496		x	
2497	x		
2498		x	
2499	x		
2500	x		
2501-2503		x	
2504			x
2505			x
2506	x		
2507		x	
2508		x	
2551		x	
2551A		x	
2552		x	
2601		x	
2601A		x	
2602		x	
2651-2657		x	
2701-2706	x		
2741-2744	x		
2791-2797	x		
2799-2804	x		
2851-2853	x		
2901-2905	x		
2951			x
2952-2954		x	
2955			x
2956			x
3001-3004		x	
3051-3062		x	
3101-3103		x	
3104 (less 2nd sentence)	x		
3151		x	
3151A		x	
3152-3154		x	
3201-3209	x		
3241	x		
3281		x	
3282			x
3301			x
3351-3357		x	

<u>Section</u>	<u>Remain in Title 17</u>	<u>In Criminal Code</u>	<u>Repeal</u>
3401		x	
3401A		x	
3402		x	
3451-3464			x
3475			x
3476			x
3501		x	
3551-3554		x	
3601-3606	x		
3651		x	
3701-3703		x	
3751			x
3752-3758		x	
3801-3803			x
3851-3853		x	
3853A	x		
3854-3858		x	
3859	x		
3860	x		
3901		x	
3902		x	
3951-3955		x	
3956	x		
3957		x	
3958		x	
3959			x
3960		x	
3961		x	
3962	x		
3963			x
3964	x		
3965		x	
3966	x		
4001		x	

Ch. 11

Section 4. Classification of Crimes; Civil Violations

1. Except for Criminal Homicide in the First or Second Degrees, all crimes whether defined by this Code or by any other statute of the State of Maine, are classified for purposes of sentencing by this section.
2. Crimes are classified as class A, class B, class C, class D and class E crimes. In this Code each crime is specifically assigned to a class. In statutes defining crimes which are outside this Code, the class depends upon the imprisonment penalty that is provided as follows: if the maximum period authorized by the statute defining the crime.
 - A. exceeds ten years, the crime is a class A crime;
 - B. exceeds five years, but does not exceed ten years, the crime is a class B crime;
 - C. exceeds three years, but does not exceed five years, the crime is a class C crime;
 - D. exceeds one year, but does not exceed three years, the crime is a class D crime;
 - E. does not exceed one year, the crime is a class E crime.
3. If the statute outside the Code prohibits defined conduct but does not provide an imprisonment penalty it is a civil violation and is hereby expressly declared not to be a criminal offense. Civil violations are enforceable by the Attorney General, his representative, or any other appropriate public official in a civil action to

collect the amount of what may be designated a fine, penalty or other sanction, or to secure the forfeiture that may be decreed by the statute.

4. Notwithstanding the provisions of subsections 2 and 3, the sentencing class applied upon conviction of an offense defined outside this Code punishable by fine without imprisonment and which expressly provides that it may be committed by an organization, is determined by the maximum amount of the fine provided, as follows: if the maximum fine

A. exceeds \$5,000, the crime is a class B crime;

B. exceeds \$1,000, but does not exceed \$5,000, the crime is a class C crime;

C. exceeds \$500, but does not exceed \$1,000, the crime is a class D crime; and

D. does not exceed \$500, the crime is a class E crime.

Ch. 11

Section 5. Pleading and Proof

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

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

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

3. Where the statute explicitly designates a matter as an "affirmative defense", the matter so designated must be proved by the defendant by a preponderance of the evidence.

4. The existence of a reasonable doubt as to any intention, knowledge, or recklessness required as an element of a crime may be established by any relevant evidence, including evidence of an

abnormal condition of mind or intoxication. As used in this section, "intoxication" means a disturbance of mental capacities resulting from the introduction of alcohol, drugs, or similar substances into the body. Intoxication is otherwise no defense.

Ch. 11

Section 11. Requirement of Culpable Mental States; Liability Without Culpability

1. A person is not guilty of a crime unless he acted intentionally, knowingly, recklessly, or negligently, as the law defining the crime specifies, with respect to each element of the crime, except as provided in subsection 5. When the state of mind required to establish an element of a crime is specified as "wilfully", "corruptly", "maliciously", or by some other term importing a state of mind, that element is satisfied if, with respect thereto, the person acted intentionally or knowingly.

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

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

4. Unless otherwise expressly provided, a culpable mental state need not be proved with respect to:

A. any fact which is solely a basis for sentencing classification; or

B. any element of the crime as to which it is expressly stated that it must "in fact" exist.

5. If the statute defining the crime does not expressly prescribe a culpable mental state with respect to some or all of the elements of the crime, a culpable mental state is nevertheless required, pursuant to the provisions of subsections 1, 2 and 3, unless:

A. the statute expressly provides that a person may be guilty of a crime without culpability as to those elements; or

B. a legislative intent to impose liability without culpability as to those elements otherwise appears.

Chapter 11 section 13

Section 13. Lesser Offenses

The court is not required to instruct the jury concerning a lesser offense unless, on the basis of the evidence, there is a rational basis for the jury finding the defendant guilty of such lesser offense.

October 21, 1974

Chapter 28 Offenses Against Public Order

Section 15. Unlawful Prize Fighting

1. A person is guilty of unlawful prize fighting if

A. he knowingly engages in, encourages or does any act to further a premeditated fight without weapons between 2 or more persons, or a fight commonly called a ring fight or prize fight; or

B. he knowingly sends or publishes a challenge or acceptance of a challenge for such, or carries or delivers such a challenge for acceptance, or trains or assists any person in training or preparing for such fight, or acts as umpire or judge for such fight.

2. This section shall not apply to any boxing contest or exhibition

A. conducted by license and permit of the Maine State Boxing Commission; or

B. under the auspices of a non-profit organization at which no admission charge is made.

3. Unlawful prize fighting is a Class E crime.

Section 16. Subversive Activities

1. A person is guilty of subversive activities if he attempts to overthrow the government of the state or any political subdivision of the state by

A. inciting an assault on or the criminal homicide of any public servant, or arson or criminal mischief in or on any structure owned or occupied in whole or in part by the state or any political subdivision of the state; and

B. he intends to cause, or knows that there will very probably occur, such assault, homicide, arson or criminal mischief; and

C. it is, in fact, very probable that the defendant's conduct will imminently produce such an assault, homicide, arson or criminal mischief.

2. Subversive Activities is a class B crime.

Ch. 28
Section 16. Subversive Activities

Out

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1. A person is guilty of subversive activities if he attempts to overthrow the government of the state or any political subdivision of the state by

A. inciting an assault on or the criminal homicide of any public servant, or arson or criminal mischief in or on any structure owned or occupied in whole or in part by the state or any political subdivision of the state; and

B. he intends to cause, or knows that there will very probably occur, such assault, homicide, arson or criminal mischief; and

C. it is, in fact, very probable that the defendant's conduct will imminently produce such an assault, homicide, arson or criminal mischief.

2. Subversive Activities is a class B crime.

Repeal

Comment

Section 3651 now punishes "any person who advocates, aids or takes any active part in the overthrow by force and violence of the Government of the United States or the State of Maine..." This section of the Code is much more narrow in order to bring the law within the requirements of the federal constitution. For example, federal legislation has preempted any state laws directed at conduct attacking the federal government. See *Pennsylvania v. Nelson*, 350 U.S. 497 (19 56). It is also the case that mere advocacy to overthrow, unaccompanied by an intent to resort to violence, may not be prohibited. See *Scales v. United States*, 367 U.S. 203 (19 61) and *Brandenburg v. Ohio*, 395 U.S. 444 (19 64).

State of Maine
October 22, 1974

Ch. 31

Section 5. Multiple Sentences

1. Other provisions of this section notwithstanding, when a person subject to an undischarged term of imprisonment is convicted of a violation of section 5 of chapter 29D, or of a crime against the person of a member of the staff of the institution in which he was imprisoned, or of an attempt to commit either of such crimes, the sentence shall run consecutively to the undischarged term of imprisonment.

2. When multiple sentences of imprisonment are imposed on a person at the same time, or when such a sentence is imposed on a person who is already subject to an undischarged term of imprisonment, the sentences shall run concurrently, or, subject to the provisions of this section, consecutively, as determined by the court. When multiple fines are imposed on a person or an organization, the court may, subject to the provisions of this section, sentence the person or organization to pay the cumulated amount or the highest single fine. Sentences shall run concurrently and fines shall not be cumulated unless otherwise specified by the court pursuant to subsections 3 and 4.

3. Unless the court sets forth in detail for the record the findings described in subsection 4, it shall not either:

A. impose consecutive imprisonment terms or cumulative fines which exceed the maximum term or the highest fine authorized for the most serious crime involved; or

B. impose consecutive imprisonment terms or cumulative fines at all.

4. The findings referred to in subsection 3 are the reasons why, having regard to the nature and circumstances of the crime, and the history and character of the defendant, the court is of the opinion that there are exceptional features to the case which require the sentence imposed.

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

A. one crime is an included crime of the other;

B. one crime consists only of a conspiracy, attempt, solicitation or other form of preparation to commit, or facilitation of, the other;

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

D. in separate trials, inconsistent findings of fact are required to establish the commission of the crimes.

Chapter 34 Sentences of ImprisonmentSection 1. Imprisonment for Criminal Homicide in the First or Second Degree

1. A person who has been convicted of a crime may be sentenced to imprisonment pursuant to the provisions of this chapter.

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

3. Upon receipt of the report and recommendations provided for in subsection 2, the court shall sentence him to the state prison for any term of years that is not less than 20.

4. A person convicted of criminal homicide in the first degree shall be sentenced to life imprisonment.

Section 2. Imprisonment for Crimes Other than Criminal Homicide in the First or Second Degree

1. In the case of a person convicted of a crime other than criminal homicide in the first or second degree, the court may sentence to imprisonment for a definite term as provided for in this section. The sentence of the court shall specify the place of imprisonment, provided that no person shall be sentenced to imprisonment in the Men's Correctional Center located at South Windham, Maine, if his

sentence exceeds 5 years or he is, at the time of sentence, more than 26 years old.

2. The court shall set the term of imprisonment as follows:

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

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

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

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

E. In the case of a class E crime, the court shall set a definite period not to exceed 6 months.

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

4. If the state pleads and proves that a class B, C, D, or E crime was committed with the use of a dangerous weapon then the sentencing class for such crime is one class higher than it would otherwise be. In the case of a class A crime committed with the use of a dangerous weapon, such use should be given serious consideration by the court in exercising its sentencing discretion.

Section 4. Release from Imprisonment

1. An imprisoned person shall be unconditionally released and discharged upon the expiration of his sentence, minus the deductions authorized under section 3.

2. A person sentenced to life imprisonment may, after having served 15 years, and annually thereafter, and a person sentenced to a term of years in excess of 20 years, may, after having served 12 years, and annually thereafter, petition the Superior Court of the county in which he is imprisoned for a reduction of his sentence to a term of years. Upon notice to the Attorney General and the victim or the next of kin of the victim, the court shall hold a hearing on the petition and may, in its discretion, reduce the sentence from life imprisonment to a term of years that is not less than 30, and reduce any other sentence to a term that is not less than 20. If the sentence is so reduced the imprisoned person shall be unconditionally released and discharged upon the expiration of the term specified in such sentence, minus such deductions authorized under section 3 as he shall have accumulated.