CRIMINAL LAW ADVISORY

COMMISSION

DRAFT AMENDMENTS FOR

THE 109th LEGISLATURE,

2nd REG. SESS.

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INTRODUCTION TO THE CRIMINAL CODE REORGANIZATION

Commission member Mel Zarr has proposed a reorganization of the first three chapters of the Criminal Code. The proposal is necessitated by the current disparate arrangement of subject matters within these chapters. The reorganization seeks to place the code provisions in a more systematic fashion thereby enhancing the Code's comprehensibility for lawyers and non-lawyers alike.

The proposed reorganization consists, briefly, of the following changes. Chapter 1 (Preliminary) remains the same except for removing sections 5, 10 and 11. A new chapter, Chapter 2, "Elements of Crimes," is created which includes sections 5, 10 and 11 and other Code sections relating to "mens rea" defenses, e.g., ignorance or mistake (§52), intoxication (§58-A), and mental abnormality (§58(1-A)). The purpose of the new Chapter 2 is to bring together all code sections which concern the State's burden of proving the commission of a crime. Chapter 3 (Criminal Liability) is renamed "Criminal Liability of Accomplices and Others" and consists of only sections 57, 60, and 61. Chapter 5 (Justification) is repealed but its sections 102-108 are incorporated in the new Chapter 4 "Defenses and Affirmative Defenses." The aim here is to incorporate all the provisions which excuse criminal conduct. The defenses all share an important procedural characteristic, viz., the Defendant has the burden of production.

In addition to the above-mentioned Chapter 5 defenses in sections 102-108, the new chapter 4 includes those defenses in the current sections 52(4), (Ignorance of the Law), 54 (Duress), 55 (Consent), 58 (Insanity) and 62 (Military Orders).

DERIVATION TABLE

Showing where the subject matter of the 1980 Criminal Code Reorganization appeared in 17-A prior to the reorganization.

Reorganized Title 17-A Section	Former Title 17-A Section
1	1
2	2
3	3
4	4
6	6
7	7
8	8
9	9
10-A	53
12	12
13	13
14	14
15	15
16	16
17	17
25	5(1)
26	5(2)(B)
26	51
27	56
28	11
29	10
30	--
31	52(1) & (2)
32	58-A
33	58(1-A)
	5(2)(B)
81	5(3)
	101
82	102
83	62
84	103
85	54
86	104
87	105
88	106
89	107
90	108
91	55(2) & (3)
92	52(4)
93	58(1) & (2)
94	59

DISPOSITION TABLE

Showing where the subject matter of the
1980 Criminal Code Reorganization can be found

Former Title 17-A Section	Reorganized Title 17-A Section
1	--
2	--
3	--
4	--
5(1) & (2)(B)	25
5(3)	81(2)
6	--
7	--
8	--
9	--
10	29
11	28
12	--
13	--
14	--
15	--
51	26
52(1)(2) &(3)	31
52(4)	92
53	10-A
54	85
55(2) & (3)	91
56	27
57	--
58(1) & (2)	93
58(1-A)	33
58-A	32
59	94
60	--
61	--
62	83
101	81(3)(4)(5)
102	82
103	84
104	86
105	87
106	88
107	89
108	90

17-A M.R.S.A. §5, as amended by P.L. 1975, c.740, §16, is repealed.

17-A M.R.S.A. §10, as last amended by P.L. 1977, c.510, §§20-23, is repealed.

17-A M.R.S.A. §10-A is enacted to read:

§10-A **Immaturity**

1. No criminal proceeding shall be commenced against any person who had not attained his 18th birthday at the time of the alleged crime, except as the result of a finding of probable cause authorized by Title 15, section 2611, subsection 3, or in regard to the offenses over which juvenile courts have no jurisdiction, as provided in Title 15, section 2552.

2. When it appears that the defendant's age, at the time the crime charged was committed, may have been such that the court lacks jurisdiction by reason of subsection 1, the court shall hold a hearing on the matter and the burden shall be on the State to establish by a preponderance of the evidence that the court does not lack jurisdiction on such grounds.

COMMENT

Immaturity, formerly section 53 of the Code, like the statute of limitations (§8) or lack of subject matter jurisdiction (§7) is a jurisdictional matter. Thus, it is more appropriately placed in Chapter 1.

17-A M.R.S.A. §11 as amended by P.L. 1975, c.740, §19 is repealed.

17-A M.R.S.A. c.2 is enacted to read:

CHAPTER 2

ELEMENTS OF CRIMES

§25. Elements of Crimes Defined

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: The forbidden conduct; the attendant circumstances specified in the definition of the crime; the intention, knowledge, recklessness or negligence as may be required; and 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 by proof any facts designated as a "defense" allegation or any exception, exclusion or authorization which is set out in the statute defining the crime, 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.

COMMENT

§25 (1) is derived from §5(1), while §25(2) is derived from §5(2)(B). Taken together, they define the basic distinction between "elements" and "defenses." Since this distinction is fundamental to any scheme of criminal liability, / compare Mullaney v. Wilbur with Patterson v. New York, it should be introduced in the first section on criminal liability.

§26. Forbidden Conduct as an Element

1. Forbidden conduct must be voluntary. Voluntary conduct includes a voluntary act or a voluntary omission.

2. An omission is voluntary only if the actor fails to perform an act of which he is physically capable and which he has a legal duty to perform.

3. Possession is voluntary conduct only if the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

COMMENT

This section is derived from former §51, which, although headed "Basis for Liability", simply defined the "conduct" element of crimes.

Subsection 2 consolidates the provisions of present §51(1) and (2) dealing with omissions.

Subsection 3 is taken unchanged from present §51(3).

§27. Causing a Result as an Element

Unless otherwise provided, when causing a result is an element of a crime, causation may be found where the result would not have occurred but for the conduct of the defendant operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the defendant was clearly insufficient.

COMMENT

This section is derived verbatim from the present section 56. The forbidden conduct required by some crimes is any conduct which causes a required result. Thus, this section belongs next to the present section 51, now section 26.

§28. Culpable State of Mind as an Element

1. A culpable state of mind is required

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 a statute defining a crime in this code 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 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.

COMMENT

This is simply present §11 with a simplified introduction.

§29. Definitions of Culpable States of Mind

1. "Intentionally."

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

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

2. "Knowingly."

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

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

3. "Recklessly."

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

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

C. For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

4. "Criminal negligence."

A. A person acts with criminal negligence with respect to a result of his conduct when he fails to be aware of a risk that his conduct will cause such a result.

B. A person acts with criminal negligence with respect to attendant circumstances when he fails to be aware of a risk that such circumstances exist.

C. For purposes of this subsection, the failure to be aware of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

5. "Culpable." A person acts culpably when he acts with the intention, knowledge, recklessness or criminal negligence as is required.

COMMENT

This section is derived verbatim from the present Section 10.

§30. Evidence Which May Be Admitted To Raise a Reasonable Doubt As To Culpable State of Mind

A reasonable doubt as to a culpable state of mind may be established by evidence of ignorance or mistake, intoxication or mental abnormality.

COMMENT

There is an important distinction between so-called "mens rea defenses" and the "defenses" of Chapter 5. In a "mens rea defense" situation, the state always has the burden of proving the defendant's culpable state of mind beyond a reasonable doubt--no matter what the defendant shows or fails to show. In a "defense" situation, there is no burden on the state to disprove the defense until the defendant has met his production burden. See present §5(2)(B) and comment to present §101; see also proposed §25(2) and proposed 81(1).

Since a "mens rea defense" is theoretically and procedurally different from a "defense", it should be treated together with the mens rea element in Chapter 2.

§31 Evidence of ignorance or mistake

1. A reasonable doubt as a culpable state of mind may be established by evidence of ignorance or mistake as to a matter of fact or law.

2. Alternative A: Present §52(2)

2. Although ignorance or mistake would otherwise afford a defense to the crime charged, the defense is not available if the defendant would be guilty of another crime had the situation been as he supposed.

Alternative B: Model Penal Code, §2.04(2)

2. Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and degree of the offense of which he may be convicted to those of the offense of which he would be guilty had the situation been as he supposed.

COMMENT

Subsection 1 is derived from present §52(1)(A).

Subsection 2 gives alternative formulations. The first alternative is present §52(2). The second alternative is taken from the Model Penal Code, §2.04(2), which adds the "reducer." The reducer seems more consistent with propotionality concepts already embodied in the Code. See, e.g., present §101; comment to §1105.

§32. Evidence of Intoxication

1. In a prosecution for a crime which may be committed intentionally or knowingly where such culpable state of mind is a necessary element, the existence of a reasonable doubt as to such state of mind may be established by evidence of intoxication.

2. In a prosecution for a crime which may be committed recklessly or negligently, where such culpable state of mind is a necessary element, the existence of a reasonable doubt as to such state of mind may be established by evidence of intoxication if such intoxication is not self-induced.

3. As used in this section:

A. "Intoxication" means a disturbance of mental capacities resulting from the introduction of alcohol, drugs or similar substances into the body; and

B. "Self-induced intoxication" means intoxication caused when the actor intentionally or knowingly introduces into his body substances which the actor knows or ought to know tend to cause intoxication, unless he introduces them pursuant to medical advice or under such duress as would afford a defense to a charge of crime.

COMMENT

This is the present §58-A, with one amendment: "negligently" is inserted in subsection 2. If intoxication is not self-induced, as when someone "taps" a beer with LSD, See State v. Rice this evidence should be admissible to raise a reasonable doubt as to any required culpable state of mind, including negligence.

§33. Evidence of Mental Abnormality

A reasonable doubt as to a culpable state of mind may be established by evidence of an abnormal condition of mind.

COMMENT

This section is derived from present §58(1-A). The remainder of present §58, containing the "affirmative defense" of insanity, is transferred to Chapter 4.

The distinction between the "mens rea defense" treated here and the "affirmative defense" treated in Chapter 4 is discussed in Note, Mens Rea and Insanity, 28 Me.L. Rev. 500 (1977).

17-A M.R.S.A. c.3 is amended to read

CHAPTER 3

CRIMINAL LIABILITY OF ACCOMPLICES AND OTHERS

17-A M.R.S.A. §51 as enacted by P.L. 1975, c.499, §1 is repealed.

17-A M.R.S.A. §52 as enacted by P.L. 1975, c.499, §1 is repealed.

17-A M.R.S.A. §53 as enacted by P.L. 1975 c.499, §1 is repealed.

17-A M.R.S.A. §54 as enacted by P.L. 1975, c.499, §1 is repealed.

17-A M.R.S.A. §55 as enacted by P.L. 1975, c.499, §1 is repealed.

17-A M.R.S.A. §56 as enacted by P.L. 1975, c.499, §1 is repealed.

17-A M.R.S.A. §58 as amended by P.L. 1975, c.740, §§23-24 is repealed.

17-A M.R.S.A. §58-A as enacted by P.L. 1975 c.740, §25 is repealed.

17-A M.R.S.A. §59 as last amended by P.L. 1977, c.671 §21 is repealed.

17-A M.R.S.A. §62 as enacted by P.L. 1975, c.499, §1, is repealed.

17-A M.R.S.A. c.4 is enacted to read:

CHAPTER 4
DEFENSES AND AFFIRMATIVE DEFENSES

§81. General Rules for Defenses, Justification

1. As to any matter which a statute designates as a "defense", the defendant has the burden of producing evidence which is sufficient to raise a reasonable doubt on the issue, in which case the State must disprove its existence beyond a reasonable doubt.

2. As to any matter which a statute designates an "affirmative defense", the defendant has the burden of proof by a preponderance of the evidence.

3. Conduct which is justifiable under this chapter constitutes a defense to any crime; provided, however, that if a person is justified in using force against another, but he recklessly injures or creates a risk of injury to 3rd persons, the justification afforded by this chapter is unavailable in a prosecution for such recklessness. If a defense provided under this chapter is precluded solely because the requirement that the actor's belief be reasonable has not been met, he may be convicted only of a crime for which recklessness or criminal negligence suffices, depending on whether his holding the belief was reckless or criminally negligent.

4. The fact that conduct may be justifiable under this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

5. For purposes of this chapter, use by a law enforcement officer or a corrections officer of chemical mace or any similar substance composed of a mixture of gas and chemicals which has or is designed to have a disabling effect upon human beings is use of nondeadly force.

COMMENT

Subsection 1 is derived from present §5(2)(B) and from the comment to present §101. It generalizes the rule of State v. Millett to all "defenses."

Subsection 2 is derived from present §5(3).

Subsection 3 through 5 incorporate present §101.

§82. **Public duty**

1. Any conduct, other than the use of physical force under circumstances specifically dealt with in other sections of this chapter, is justifiable when it is authorized by law, including laws defining functions of public servants or the assistance to be rendered public servants in the performance of their duties; laws governing the execution of legal process or of military duty; and the judgments or orders of courts or other public tribunals.

2. The justification afforded by this section to public servants is not precluded:

A. By the fact that the law, order or process was defective provided it appeared valid on its face and the defect was not knowingly caused or procured by such public servant; or,

B. As to persons assisting public servants, by the fact that the public servant to whom assistance was rendered exceeded his legal authority or that there was a defect of jurisdiction in the legal process or decree of the court or tribunal, provided the actor believed the public servant to be engaged in the performance of his duties or that the legal process or court decree was competent.

COMMENT

This section is derived verbatim from the present section 102.

§83. Military Orders

Conduct which the actor engages in obedience to an order of his superiors in the armed services is justifiable if the actor reasonably believes the order is lawful.

COMMENT

This section rephrases §82 in order to convert it to parallel "justification" language. It is placed next to §82 because of its theoretical similarity. The "reducer" in new §81 (3) gives effect to the provision in present §82(2).

§84. **Competing harms**

1. Conduct which the actor believes to be necessary to avoid imminent physical harm to himself or another is justifiable if the desirability and urgency of avoiding such harm outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the statute defining the crime charged. The desirability and urgency of such conduct may not rest upon considerations pertaining to the morality and advisability of such statute.

2. When the actor was reckless or criminally negligent in bringing about the circumstances requiring a choice of harms or in appraising the necessity of his conduct, the justification provided in subsection 1 does not apply in a prosecution for any crime for which recklessness or criminal negligence, as the case may be, suffices to establish criminal liability.

COMMENT

This section is derived verbatim from the present §103.

§85. **Duress**

1. It is a defense that when a defendant engages in conduct which would otherwise constitute a crime, he is compelled to do so by threat of imminent death or serious bodily injury to himself or another person or because he was compelled to do so by force.

2. For purposes of this section, compulsion exists only if the force, threat or circumstances are such as would have prevented a reasonable person in the defendant's situation from resisting the pressure.

3. The defense set forth in this section is not available:

A. To a person who intentionally or knowingly committed the homicide for which he is being tried; or

B. To a person who recklessly placed himself in a situation in which it was reasonably probable that he would be subjected to duress; or

C. To a person who with criminal negligence placed himself in a situation in which it was reasonably probable that he would be subjected to duress, whenever criminal negligence suffices to establish culpability for the offense charged.

COMMENT

Duress is theoretically quite similar to the defense of necessity in §84 hence its placement here. It is taken unchanged from present §54.

§86. **Use of force in defense of premises**

1. A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using nondeadly force upon another when and to the extent that he reasonably believes it necessary to prevent or terminate the commission of a criminal trespass by such other in or upon such premises.

2. A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using deadly force upon another when and to the extent that he reasonably believes it necessary to prevent an attempt by the other to commit arson.

3. A person in possession or control of a dwelling place or a person who is licensed or privileged to be therein is justified in using deadly force upon another:

A. Under the circumstances enumerated in section 90; or

B. When he reasonably believes that deadly force is necessary to prevent or terminate the commission of a criminal trespass by such other person, who he reasonably believes:

(1) Has entered or is attempting to enter the dwelling place or has surreptitiously remained within the dwelling place without a license or privilege to do so; and

(2) Is committing or is likely to commit some other crime within the dwelling place.

4. A person may use deadly force under subsection 3, paragraph B, only if he first demands the person against whom such deadly force is to be used to terminate the criminal trespass and the other person fails to immediately comply with the demand, unless he reasonably believes that it would be dangerous to himself or another to make the demand.

5. As used in this section:

A. Dwelling place has the same meaning provided in section 2, subsection 10; and

B. Premises includes, but is not limited to, lands, private ways and any buildings or structures thereon.

COMMENT

This section is derived verbatim from the present §104.

§87. **Use of force in property offenses**

A person is justified in using a reasonable degree of nondeadly force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking; but he may use deadly force only under such circumstances as are prescribed in sections 86, 89 and 90.

COMMENT

This section is derived verbatim from the present §105.

§88. **Physical force by persons with special responsibilities**

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

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

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

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

5. A person required by law to enforce rules and regulations, or to maintain decorum or safety, in a vessel, aircraft, vehicle, train or other carrier, or in a place where others are assembled, may use nondeadly force when and to the extent that he reasonably believes it necessary for such purposes.

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

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

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

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

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

COMMENT

This section is derived verbatim from the present §106.

§89.

Physical force in law enforcement

1. A law enforcement officer is justified in using a reasonable degree of nondeadly force upon another person:

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

B. To defend himself or a 3rd person from what he reasonably believes to be the imminent use of nondeadly force encountered while attempting to effect such an arrest or while seeking to prevent such an escape.

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

A. To defend himself or a 3rd person from what he reasonably believes is the imminent use of deadly force; or

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

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

(2) he had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest and has reasonable grounds to believe that the person is aware of this advice or he reasonably believes that the person to be arrested otherwise knows that he is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest.

(3) For purposes of this paragraph, a reasonable belief that another has committed a crime involving use or threatened use of deadly force means such reasonable belief in facts, circumstances and the law which, if true, would constitute such an offense by such person. If the facts and circumstances reasonably believed would not constitute such an offense, an erroneous though reasonable belief that the law is otherwise justifies the use of force to make an arrest or prevent an escape.

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

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

B. Deadly force only when he reasonably believes such to be necessary to defend himself or a 3rd person from what he reasonably believes to be the imminent use of deadly force, or when the law enforcement officer directs him to use deadly force and he believes such officer himself is authorized to use deadly force under the circumstances.

4. A private person acting on his own is justified in using:

A. A reasonable degree of nondeadly force upon another when and to the extent that he reasonably believes it necessary to effect an arrest or detention which is lawful for him to make or prevent the escape from such an arrest or detention; or

B. Deadly force only when he reasonably believes such force is necessary:

(1) To defend himself or a 3rd person from what he reasonably believes to be the imminent use of deadly force; or

(2) To effect a lawful arrest or prevent the escape from such arrest of a person who in fact

(a) has committed a crime involving the use or threatened use of deadly force, or is using a deadly weapon in attempting to escape; and

(b) the private citizen has made reasonable efforts to advise the person that he is a private citizen attempting to effect an arrest or prevent the escape from arrest and has reasonable grounds to believe the person is aware of this advice or he reasonably believes that the person to be arrested otherwise knows that he is a private citizen attempting to effect an arrest or prevent the escape from arrest.

5. Except where otherwise expressly provided, a corrections officer or law enforcement officer in a facility where persons are confined, pursuant to an order of a court or as a result of an arrest, is justified in using deadly force against such persons under the circumstances described in subsection 2. He is justified in using a reasonable degree of nondeadly force when and to the extent he reasonably believes it necessary to prevent any other escape from such a facility **or to enforce the rules and regulations of the facility.**

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

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

COMMENT

This section is derived from the present section 107.

§90. **Physical force in defense of a person**

1. A person is justified in using a reasonable degree of nondeadly force upon another person in order to defend himself or a 3rd person from what he reasonably believes to be the imminent use of unlawful, nondeadly force by such other person, and he may use a degree of such force which he reasonably believes to be necessary for such purpose. However, such force is not justifiable if:

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

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

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

2. A person is justified in using deadly force upon another person:

A. When he reasonably believes it necessary and he reasonably believes such other person is:

(1) About to use unlawful, deadly force against himself or a 3rd person; or

(2) Committing or about to commit a kidnapping, robbery or a forcible sex offense against himself or a 3rd person; or

B. When he reasonably believes:

(1) That such other person has entered or is attempting to enter a dwelling place or has surreptitiously remained within a dwelling place without a license or privilege to do so; and

(2) That deadly force is necessary to prevent the infliction of bodily injury by such other person upon himself or a 3rd person present in the dwelling place;

C. However, a person is not justified in using deadly force as provided in paragraph A, if:

(1) With the intent to cause physical harm to another, he provokes such other person to use unlawful deadly force against anyone; or

(2) He knows that the person against whom the unlawful deadly force is directed intentionally and unlawfully provoked the use of such force; or

(3) He knows that he or a 3rd person can, with complete safety

(a) retreat from the encounter, except that he or the 3rd person is not required to retreat if he or the 3rd person is in his dwelling place and was not the initial aggressor; or

(b) surrender property to a person asserting a colorable claim of right thereto; or

(c) comply with a demand that he abstain from performing an act which he is not obliged to perform.

COMMENT

This section is derived verbatim from the present §108.

§91. Consent

1. When conduct is a crime because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense only if:

A. Neither the injury inflicted nor the injury threatened was such as to endanger life or to cause serious bodily injury; or

B. The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

C. The conduct and the injury are reasonably foreseeable hazards of an occupation or profession or of medical or scientific experimentation conducted by recognized methods and the persons subjected to such conduct or injury have been made aware of the risks involved prior to giving consent.

2. Consent is not a defense within the meaning of this section if:

A. It is given by a person who is declared by a statute or by a judicial decision to be legally incompetent to authorize the conduct charged to constitute the crime, and such incompetence is manifest or known to the actor;

B. It is given by a person who by reason of intoxication, mental illness or defect, or youth, is manifestly unable or known by the defendant to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the crime; or

C. It is induced by force, duress or deception.

COMMENT

This section is derived from the present section 55, except that subsection 1 of section 55 is omitted because it is unnecessary.

§92. Ignorance of the Law

It is an affirmative defense if the defendant engages in conduct which he believes does not legally constitute a crime if:

1. The statute violated is not known to the defendant and has not been published or otherwise reasonably made available prior to the conduct alleged; or

2. The defendant acts in reasonable reliance upon an official statement, afterward determined to be invalid or erroneous, contained in:

(1) a statute, ordinance or other enactment;

(2) a final judicial decision, opinion or judgment;

(3) an administrative order or grant of permission; or

(4) an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the statute defining the crime. This subsection does not impose any duty to make any such official interpretation.

COMMENT

This section states the affirmative defense contained in present §52(4).

§93. Insanity

1. It is an affirmative defense if the defendant engages in conduct while he lacks substantial capacity, as a result of mental disease or defect, to conform his conduct to the requirements of the law or to appreciate the wrongfulness of his conduct.

2. As used in this section, "mental disease or defect" means any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs the processes and capacity of a person to control his actions. An abnormaility manifested only by repeated criminal conduct or excessive use of alcohol, drugs or similar substances, in and of itself, does not constitute a "mental disease or defect."

COMMENT

This section states the affirmative defense of insanity contained in present §58 (except for (1-A), which is transferred to new §33). The rephrasing is stylistic only, so as to have parallel formulations of "It is a defense. . ." The title "Insanity" is substituted to conform to §94 and the Rules of Criminal Procedure.

§94. Procedure upon plea of not guilty coupled with a plea of not guilty by reason of insanity.

1. When the defendant enters a plea of not guilty together with a plea of not guilty by reason of insanity, he shall also elect whether the trial shall be in 2 stages as provided for in this section, or a unitary trial in which both the issues of guilt and of insanity are submitted simultaneously to the jury. At the defendant's election, the jury shall be informed that 2 pleas have been made and that the trial will be in 2 stages.

2. If a two-stage trial is elected by the defendant, there shall be a separation of the issue of guilt from the issue of insanity in the following manner.

A. The issue of guilt shall be tried first and the issue of insanity tried only if the jury returns a verdict of guilty. If the jury returns a verdict of not guilty, the proceedings shall terminate.

B. Evidence of insanity shall not be admissible in the guilt of innocence phase of the trial, but shall only be admissible in the 2nd phase following a verdict of guilty.

3. The issue of insanity shall be tried before the same jury as tried the issue of guilt. The defendant may, however, elect to have the issue of insanity tried by the court without a jury.

4. If the jury in the first phase returns a guilty verdict, the trial shall proceed to the 2nd phase. The defendant and the State may rely upon evidence admitted during the first phase or they may recall witnesses. Any evidence relevant to the defendant's responsibility, or lack thereof, under section 58, is admissible. The order of proof shall reflect that the defendant has the burden of establishing his lack of responsibility. The jury shall return a verdict that the defendant is responsible, or not guilty by reason of mental disease or defect excluding responsibility. If the defendant is found responsible, the court shall sentence him according to law.

5. This section shall not apply to cases tried before the court without a jury.

COMMENT

This section is taken from present §59, with one change: subsection (2)(B) is amended to substitute the term "insanity"; this should make clear that evidence of mental abnormality, see new § 33, is admissible in the first phase.

17-A M.R.S.A. c.5 is repealed.

15 MRSA §3003, sub-§23, as enacted by P.L. 1977, c.520, §1, is amended to read:

23. Probation. "Probation" means a legal status created by court order in cases involving a juvenile adjudicated as having committed a juvenile crime, which permits the juvenile to remain in his own home or other placement designated by ~~an agent of the Department of Mental Health and Corrections~~ the juvenile court ~~subject to being returned to the court for a commission of a new juvenile crime or~~ revocation for violation of ~~any general~~ or specific condition imposed by the court.

COMMENT

The requirement that any "placement" be imposed by the court rather than D.M.H.C. results from the belief that probation conditions should traditionally be under the control of the court. This change is consistent with the fact that the Court presently imposes all probation conditions under section 3314(2), incorporating 17-A MRSA §1204. The Department is free to seek modification of any condition under section 3314-A. The other amendments to this subsection are technical and are intended to conform the language to the terminology of sections 3314(2) and 3314-A.

15 M.R.S.A. §3101, sub-§4, ¶B as enacted by P.L. 1977, c.520, §1 is amended by adding the following sentence to read:

The Maine Rules of Evidence shall apply in the bind-over hearing.

COMMENT

The purpose of this amendment is to resolve any doubt regarding the application of the rules of Evidence in bindover hearings. The basis for the amendment stems from the critical nature of the bindover decision, see Kent v. United States 383 U.S. 541, (1966) and the recommendation of the Commission to Revise the Statutes Relating to Juveniles to conduct juvenile hearings with the same procedural safeguards afforded adults in criminal proceedings. See also proposed amendments to 15 M.R.S.A. §§3307 and 3310.

Bindover Alternative A:

15 M.R.S.A. §3101, sub- §4, ¶D is amended to read:

D. The juvenile court shall consider the following factors in deciding whether to bind a juvenile over to the Superior Court:

(1) The record and previous history of the juvenile; and

(2) The nature and seriousness of the offense, ~~whether the offense was committed in an aggressive, violent, premeditated or willful manner,~~ greater weight being given to offenses against the person than against property; and

(3) Whether the offense was committed in an aggressive, violent, premeditated or willful manner ~~juvenile's emotional attitude and pattern of living indicate that it is unlikely that future criminal conduct will be deterred by the dispositional alternatives available to the juvenile court;~~ and

(4) whether the maturity of the juvenile, as determined by a consideration of his emotional attitude and pattern of living, indicate that it is unlikely that future criminal conduct will be deterred by the dispositional alternatives available to the juvenile court; and

(5) whether the protection of the community requires commitment of the juvenile to a facility which is more secure than those available as dispositional alternatives to the juvenile court;

15 M.R.S.A. §3101, sub- §4 ¶ E is amended to read:

E. The juvenile court shall bind juvenile over to the Superior Court if, after a consideration of the factors specified in paragraph D, it finds:

(1) That there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, B, or C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it;

(2) By a preponderance of the evidence, that the maturity of the juvenile indicates that ~~the juvenile~~ he is not amenable to the dispositional alternatives available to the juvenile court.~~would be more appropriately prosecuted as if he were an adult; and~~

(3) ~~By a preponderance of the evidence, that the nature and seriousness of the alleged juvenile crime indicate that the protection of the community will require detention of the juvenile in a facility which is more secure than those available as dispositional alternatives to the juvenile court.~~

Bindover Alternative B:

15 M.R.S.A. §3101, sub- §4, ¶ D is amended to read:

D. The juvenile court shall consider the following factors in deciding whether to bind a juvenile over to the Superior Court:

(1) The record and previous history of the juvenile; and

(2) The nature and seriousness of the offense, ~~whether the offense was committed in an aggressive, violent, premeditated or willful manner~~, greater weight being given to offenses against the person than against property; and

(3) Whether the offense was committed in an aggressive, violent, premeditated or willful manner ~~juvenile's emotional attitude and pattern of living indicate that it is unlikely that future criminal conduct will be deterred by the dispositional alternatives available to the juvenile court.~~ ; and

(4) whether the maturity of the juvenile, as determined by a consideration of his emotional attitude and pattern of living, indicate that it is unlikely that future criminal conduct will be deterred by the dispositional alternatives available to the juvenile court.

15 M.R.S.A. § 3101, sub- §4 ¶ E is amended to read:

E. The juvenile court shall bind a juvenile over to the Superior Court if, after a consideration of the factors specified in paragraph D, it finds:

(1) That there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, B, or C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it;

(2) By a preponderance of the evidence, that the maturity of the juvenile indicates that ~~the juvenile~~ he is not amenable

to the dispositional alternatives available to the juvenile court.~~would be more appropriately prosecuted as if he were an adult ; and~~

~~(3) By a preponderance of the evidence, that the nature and seriousness of the alleged juvenile crime indicate that the protection of the community will require detention of the juvenile in a facility which is more secure than those available as dispositional alternatives to the juvenile court.~~

Bindover Alternative C:

15 M.R.S.A. § 3101, sub- §4, ¶ D is amended to read:

D. The juvenile court shall consider the following factors in deciding whether to bind a juvenile over to the Superior Court:

(1) The record and previous history of the juvenile; and

(2) The nature and seriousness of the offense , ~~whether the offense was committed in an aggressive, violent, premeditated or willful manner,~~ greater weight being given to offenses against the person than against property; and

(3) Whether the offense was committed in an aggressive, violent premeditated or willful manner ~~juvenile's emotional attitude and pattern of living indicate that it is unlikely that future criminal conduct will be deterred by the dispositional alternatives available to the juvenile court.~~ ; and

(4) whether the maturity of the juvenile, as determined by a consideration of his emotional attitude and pattern of living, indicate that it is unlikely that future criminal conduct will be deterred by the dispositional alternatives available to the juvenile court.

15 M.R.S.A. § 3101, sub- §4 ¶ E is amended to read:

E. The juvenile court shall bind a juvenile over to the Superior Court if, after a consideration of the factors specified in paragraph D, it finds:

(1) that there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, B, or C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it;

(2) By a preponderance of the evidence, that the maturity of

of the juvenile indicates that ~~the juvenile~~ he is not amenable to the dispositional alternatives available to the juvenile court ~~would be more appropriately prosecuted as if he were an adult~~; and

(3) By a preponderance of the evidence, ~~that the nature and seriousness of the alleged juvenile crime indicate~~ that the protection of the community will require ~~detention~~ commitment of the juvenile ~~in~~ to a facility which is more secure than those available as dispositional alternatives to the juvenile court.

COMMENT

The alternative proposals are intended to clarify the factors considered and findings required relative to a bindover decision by the juvenile court. The present bindover provision, based largely on the standards set forth in the Appendix to the Court's opinion in Kent v. United States, 383 U.S. 541 566-67(1967), is unnecessarily vague in certain instances because of the inartful juxtaposition of the Kent standards. The proposed alternatives retain the juvenile Code Commission structure and purpose with one substantive exception--the finding mandated by Paragraph E (3) that the protection of the community requires the juvenile be placed in a facility more secure than those available to the juvenile court under the disposition alternatives (that is, something more secure than the Youth Center). Each proposal resolves differently the question of public protection and security and its propriety as an issue in a bindover decision.

Alternative A relegates the public protection and security finding to the position of a factor to be considered. The public protection and security criterion relates to the amenability of the juvenile to the dispositions available under the Code. As a factor, it remains a relevant consideration without the harsh effects of its being a required finding. As a finding the public protection and security criterion at once both restricts and expands bindover: it necessarily restricts bindover to only violent juveniles or other extreme cases (a result that was probably unintended given the Juvenile Code Commission's desire to maintain a flexibility it saw lacking under prior law); yet, the public security criterion unfairly militates in favor of a bindover decision since it conditions bindover on a factor beyond the juvenile's control -- that factor being the adequacy of existing facilities.

By omission of the explicit reference to public safety and security Alternative B ensures that the focus of bindover is appropriately on the juvenile and his needs rather than on the notion of protecting the public and such ancillary considerations as the public's emotional reaction to the nature and seriousness of the juvenile's criminal actions. Thus, Alternative B would militate against bindover where the juvenile was arguably a threat to public safety but rehabilitation was possible. Yet, by ommission of the reference to the public safety and security criterion, Alternative B does not preclude its consideration. As mentioned above, the criterion relates to amenability of the juvenile to dispositional alternatives. Accordingly, where the juvenile displays a temperament that would make commitment to the Youth Center unsuccessful the public safety and security criterion would operate.

Alternative C retains the present public safety and security finding but is free from other considerations which are more appropriately factors for the Juvenile Court's bind-over findings.

15 M.R.S.A. §3103, sub-§1, ¶D, as enacted by P.L. 1977 c.664, §11 is amended to read:

If a juvenile is adjudicated to have committed an action described in paragraph B or C, willful refusal to pay a resulting fine ~~and~~ or willful violation of the terms of a resulting probation; and

COMMENT

This change is designed to implement what is thought to be the original intent. The matter is discussed at length in the 1979 Commentary to the Code.

15 MRSA §3103, sub-§1, paragraph F is enacted to read: Conduct on the part of a juvenile which constitutes an intentional refusal or failure to furnish a law enforcement officer with evidence of his name, address and age when so requested by an officer pursuant to Title 15, section 3201 sub-section 1-A.

15 MRSA §3201, sub-§1, as enacted by P.L. 1977 c.520, §1 is amended to read:

Arrests without warrants of juveniles for juvenile crimes defined by section 3103, subsection 1, paragraphs A, E and F, by law enforcement officers or private persons shall be made pursuant to the provisions of Title 17-A, sections 15 and 16.

15 MRSA §3201 §1-A is enacted to read:

Alternative A:

1-A. Enforcement of other juvenile crimes. A law enforcement officer who has probable cause to believe that a juvenile crime as defined by paragraphs B, C, or D of section 3103, sub-section 1, has been committed the officer may request that the juvenile provide such officer reasonably credible evidence of his name, address and age. Such evidence may consist of oral representations by the juvenile. If the juvenile furnishes the officer evidence of his name, address and age and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible.

During the period such verification is being attempted, the officer may require the juvenile to remain in his presence for a period not to exceed 2 hours. During this period, if the officer reasonably believes that his safety or the safety of others then present so requires, he may search for any dangerous weapons

by an external patting of the juvenile's outer clothing. If in the course of such search he feels an object which he reasonably believes to be a dangerous weapon, he may take such action as is necessary to examine such object, but he may take permanent possession of any such object only if it is subject to forfeiture. If the officer has probable cause to believe that the juvenile has on or near his person any property the possession of which is unlawful or which consists of evidence which will aid in a particular apprehension, conviction, or adjudication, the officer may search the juvenile and the area under his immediate control and seize any such property.

After informing the juvenile of the provisions of this subsection and section 3103 subsection 1, paragraph F the officer may arrest the juvenile if the juvenile intentionally refuses to furnish any evidence of his name, address, and age or if after attempting to verify the evidence as provided for in this subsection, the officer has probable cause to believe that the juvenile has intentionally failed to provide reasonably credible evidence of his name, address, and age.

15 MRSA §3201 §1-A is enacted to read:

Alternative B:

1-A. Enforcement of other juvenile crimes. A law enforcement officer who has probable cause to believe that a juvenile crime as defined by paragraphs B, C, and D of section 3103, subsection 1, has been committed the officer may request that the juvenile provide such officer reasonably credible evidence of his name, address and age. Such evidence may consist of oral representations by the juvenile. If the juvenile furnishes the officer evidence of his name, address and age and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is

reasonably possible. During the period such verification is being attempted, the officer may require the juvenile to remain in his presence for a period not to exceed 2 hours.

After informing the juvenile of the provisions of this sub-section and section 3103, subsection 1, paragraph F the officer may arrest the juvenile if the juvenile intentionally refuses to furnish any evidence of his name, address, and age or if, after attempting to verify the evidence as provided for in this sub-section, the officer has probable cause to believe that the juvenile has intentionally failed to provide reasonably credible evidence of his name, address, and age.

Alternative C:

15 MRSA §3201, sub-§1, as enacted by P.L. 1977, c.520, §1 is amended by adding a new sentence thereto:

For purposes of this section, juvenile crimes defined under subsection 1, paragraphs B through D shall be deemed Class D or E crimes.

COMMENT

These proposals are designed to clarify the warrantless arrest powers of law enforcement officers for the uniquely juvenile crimes of possession of a useable amount of marijuana (§3103(1)(B)), offenses involving intoxicating liquor (§3103 (1)(C)), and violation of probation or refusal to pay a fine §3103(1)(D)). These juvenile unusual crimes are relative to Title 17-A warrantless arrest powers in that they are not readily classifiable under the Criminal Code.

Alternative C expressly classifies the offenses under the Criminal Code thereby providing for warrantless arrest powers pursuant to 17-A MRSA §15(1)(B).

Alternatives A and B, derived from 17-A MRSA §17 (Enforcement of civil violations), would empower law enforcement officers

to demand evidence of a juvenile's name, address, and age where the officer has probable cause to believe that the juvenile is engaging in conduct constituting a paragraph B, C, or D crime. As with §17 of the Criminal Code, failure to provide such information would constitute an arrestable offense. In place of issuing a citation, the officer would refer the matter to the intake worker when in his or her judgment juvenile court proceedings should be commenced (§3203).

Regarding violation of probation, present law and practice appear to provide for arrest by a probation officer, 34 MRSA c. 121, sub-c. V-A., upon notification by a law enforcement officer of a probation violation.

The policy choice of not arresting for these offenses is grounded in the Code's pervasive treatment of juveniles in a manner similar to adults. Both paragraph B and C conduct, if committed by an adult, would be civil violations. Also, alternatives A and B are consistent with the Code's present policy choice of not permitting incarceration for paragraph B and C offenses upon disposition.

The distinction between Alternatives A and B is the language regarding "stop and frisk" searches in §17 and the provision for search and seizure of contraband or other property unlawfully possessed where exigent circumstances exist relative to the destruction or concealment of potential evidence.

15 MRSA §3202 enacted by 1977 c.520 §1

Following issuance of a petition pursuant to section 3301, ~~An~~ an arrest warrant for a juvenile ~~shall~~ may be issued pursuant to Rule 4, Maine District Court Criminal Rules.

COMMENT

See Comment to section 3301(1).

15 MRSA §3203, sub-§2, ¶A as amended by P.L. 1977 c.664, §14 is further amended to read:

2. Notification of parents, guardian or custodian.

A. When a juvenile is arrested, the law enforcement officer or the intake worker shall notify a parent, guardian or legal custodian of the juvenile without unnecessary delay and inform him of the juvenile's whereabouts, the name and telephone number of the intake worker who has been contacted and, if a juvenile has been placed in a detention facility, that a detention hearing will be held within 48 hours following this placement~~, except that this paragraph does not require any such hearing to be held on~~ a or within 24 hours following Saturdays, Sundays or legal holidays which have occurred after the placement.

COMMENT

The present provision literally requires that the hearing must take place just after midnight on Monday if a juvenile has been detained on a Friday.

15 M.R.S.A. § 3203, sub-§ 7, ¶A, as enacted by P.L. 1977, c.664, § is repealed and replaced as follows:

A. A juvenile may be detained in a jail or other security facility intended or used primarily for the detention of adults only when the receiving facility:

(1) contains a separate section for juveniles;

(2) provides for no regular contact between the juveniles with the adult detainees or inmates; and

(3) has adequate staff to monitor and supervise the juvenile's activities at all times.

Juveniles detained in such adult receiving facilities shall be placed only in the separate juvenile sections.

COMMENTS

The purpose of the amendment is to clarify the restrictions placed on the detention of juveniles in adult or secure facilities. No substantive change is intended.

15 MRSA §3204, as amended by P.L. 1977 c. 664 §20 is further amended to read:

Alternative 1:

No statements of a juvenile made to an intake worker shall be admissible in evidence against that juvenile at <u>any stage</u>.

Alternative 2:

No statements... against that juvenile <u>at any stage except for purposes of impeachment</u>.

Alternative 3:

No statements... in evidence <u>in the adjudication hearing</u> against that juvenile.

Alternative 4:

No statements... in evidence <u>in the adjudication hearing</u> against that juvenile <u>except for purposes of impeachment</u>.

15 MRSA §3204 as amended by 1977 c. 664 §20 further amended by adding of new sentence thereto:

[TO ALL ALTERNATIVES ABOVE:]

<u>The provisions of this section shall be explained to the juvenile by the intake worker</u>.

<u>COMMENT</u>

This amendment is intended to clarify the policy concerning the extent to which statements to an intake worker should be privileged Presently, there exists confusion despite apparently clear language. See 1979 Comment The second sentence is added because the policy which this section is attempting to foster is unlikely to be promoted if the juvenile does not know of the possible use or nonuse of his statements.

15 MRSA §3301, sub §1, as enacted by P.L. 1977, c.520, §1, is amended by adding the following sentence after the 1st sentence:

Whenever practicable, except when a law enforcement officer believes that it is necessary to seek an arrest warrant under section 3202, the investigation shall include an interview with the juvenile.

COMMENT

The incorporation of District Court Criminal Rule 4 by section 3202 presupposes a petition, yet a petition cannot issue without proceedings under this section. Arrest is often required in situations in which an interview would be inappropriate. In other instances, however, participation of the juvenile in the intake process is desireable and conforms with present Department of Mental Health & Corrections practice.

See also 3202.

15 MRSA §3304 sub §3, ¶B as enacted by P.L. 1977, c.520, §1 is amended by adding the following sentence:

Service upon a parent, guardian or legal custodian who is out of state may be by an reasonable method ordered by the court.

COMMENT

This amendment provides a method for out of state service. It is assumed that the purpose of such service, apart from the directive of subsection 4 for the custodian to produce the juvenile, is notice rather than obtaining personal jurisdiction over the custodian. Nothing in the code seems to require the appearance of the custodian as a condition of proceeding against the juvenile.

15 MRSA §3304, sub § 6-A is enacted to read:

6-A. Effect of nonappearance of parent or custodian. The failure of a parent, guardian or legal custodian to appear in response to the summons or for a later hearing or the inability to serve such a party shall not prevent the court from continuing with the proceedings against a juvenile who is before the court.

COMMENT

This subsection is intended to make clear that service upon parents or custodians is for the purpose of providing them with notice of the proceedings and encouraging participation, but that their failure to participate should not defeat the power of the court over the juvenile. This policy seems to be implied in the last sentence of subsection 5 and the first sentence of section 3305, subsection 1.

15 MRSA §3307, sub §-1 as amended by P.L. 1977 c.664, §26, is further amended to read:

1. Except as provided in section 3310, H hearings under this Part ~~shall be held without a jury but in all other respects~~ shall be conducted as if the juvenile were an adult accused of a crime. ~~The Maine Rules shall apply in such hearings.~~

15 MRSA §3310, sub-§1, as enacted by P.L. 1977, c.520, §1 is amended to read:

1. Evidence ~~to be heard~~ and factfinding. At the adjudicatory hearing evidence will be heard pursuant to the Maine Rules of Evidence. There shall be no jury.

COMMENT

These amendments are intended to eliminate the possible conflict noted in the 1979 Commentary and to state the policy that the Rules of Evidence apply only in adjudicatory hearings. The no-jury provision is transferred to section 3310.

15 M.R.S.A. §3307, sub-§1, as amended by P.L. 1977, C.664, §26, is further amended to read:

~~Hearings under this Part~~ Adjudicatory hearings shall be held without a jury but in all other respects shall be conducted as if the juvenile were an adult accused of a crime.

The Maine Rules of Evidence shall apply in ~~such hearing~~ juvenile proceedings as if the court were conducting adult proceeding.

COMMENT

The purpose of the amendments is to clarify the application of the Rules of Evidence in juvenile proceedings. The apparent intent of the Commission to Revise the Statutes Relating to Juveniles was to require that adjudicatory hearings be conducted in the same manner as adult trials, except for the right to a jury. The amendment to the first sentence eliminates the confusing reference of "this Part," which could refer to Part 6 of Title 15, the Juvenile Code, but the reference to hearings conducted without a jury has applicability to only adjudicatory hearing. See also 15 M.R.S.A. §3310.

The second sentence is amended to apply the Rules of Evidence as they would be applied in analogous adult criminal proceeding. Thus, pursuant to Rule 1101 (b)(3), Rules would be inapplicable in detention (bail) and disposition (sentencing) hearing. The probable cause portion of the detention hearing would be subject to the provisions of 15 M.R.S.A. §3203(5)(D). By implication, the amendment to the 2nd sentence would repeal the provision in Rule 1101(b)(3) excluding the Rules in "proceedings in juvenile cases."

§3307 (2) Alternative A:

15 MRSA §3307, sub §2, ¶A as amended by P.L. 1979, c.373, §2 is repealed and replaced to read:

A. The general public shall be allowed to attend all proceedings involving charges which would constitute murder or a Class A, B or C offense if committed by an adult including all proceedings involving both a Class C or greater offense and a Class D or E offense or an offense described in section 3103, subsection 1, paragraphs B through E, when both charges arise out of the same transaction.

15 MRSA §3307, sub §2 ¶B as enacted by P.L. 1977 c.664, is amended to read:

B. The general public shall be excluded from ~~all other juvenile hearings and~~ any proceedings on a juvenile crime that would constitute a Class D or E offense, except as provided in paragraph A ~~except that-----hearing~~.

COMMENT

The policy contained in original ¶¶A and B allowed the juvenile to force two separate trials for two or more crimes arising out of the same transaction. The typical charge of this sort involves a burglary and theft committed in the course of the burglary. The provision appears to provide little gain to the privacy interests of the juveniles at a potentially great loss to judicial economy.

The specific reference to dispositional hearings is omitted since it is included in "all proceedings."

§3307(2) Alternative B:

15 MRSA §3307, sub §2, ¶A as amended by P.L. 1979, c.373, §2,is repealed and replaced to read:

A. The general public shall be allowed to attend all proceedings involving charges which would constitute murder or a Class A, B or C offense if committed by an adult including all proceedings involving both a Class C or greater offense and a Class D or E offense or an offense described in section 3103, subsection 1, paragraphs B through E, when both charges arise out of the same transaction, unless the juvenile elects to have the proceedings for the latter offense conducted separately and pursuant to paragraph B.

15 MRSA §3307 sub §2 ¶B enacted by 1977 c.664, and:

B. The general public shall be excluded from ~~all other juvenile hearings and~~ any proceedings on a juvenile crime that would constitute a Class D or E offense, except as provided in Paragraph A ~~except that ...hearing.~~

COMMENT

These amendments continue the basic policy of allowing a juvenile to have lesser offenses tried without public scrutiny, but conform the provision to that of adult cases, making joinder the norm and severence the exception to charges arising out of the same transaction.

15 MRSA §3307, sub §2, ¶C, as enacted by 1979 c.233 §1, is repealed.

15 MRSA §3301, sub-§5 ¶B, 2nd sentence as enacted by P.L. 1977 c., 664, §22, is amended to read:

The intake worker may effect whatever informal adjustment is agreed to by the juvenile, his parents, guardian or legal custodian if the juvenile is not emancipated, including a restitution contract with the victim of the crime.

COMMENT

This provision is in substance the same as that enacted by 1979 laws, c.233, §1 as paragraph C of section 3307 (2). It is here transferred to a more logical place.

15 MRSA §3314 sub-§1, 1st sentence as amended by P.L. 1979 C.233 §2, is further amended:

When a juvenile has been adjudicated as having committed a juvenile crime, the court shall enter a dispositional order containing one or more of the following alternatives: ~~with special attention to paragraphs B and E:~~

COMMENT

Although in many cases there is considerable value to work programs or restitution conditions, in other cases such alternatives may be inappropriate or outweighed by competing societal interests. The Criminal Law Advisory Commission believes that it is inappropriate to give special weight to any of the dispositional alternatives.

15 MRSA §3308 sub §3 as enacted by P.L. 1977 c. 520 §1 is amended to read:

3. Parties. Records of court proceedings and of the other records described in subsection 5 shall be open to inspection by the juvenile, his parents, guardian or legal custodian, his attorney, the prosecuting attorney, any court subsequently sentencing the juvenile after he has become an adult or any person preparing a presentence report for that court and to any agency to which legal custody of the juvenile was transferred as a result of adjudication.

COMMENT

The present ability to rely on juvenile adjudications of Class D or E crimes in adult sentencings is unclear. This subsection appears to open such records to the prosecuting attorney, but not to the court. The availability of records of Class C or greater crimes coupled with the lack of any policy reason to give a "clean slate" to young adults who have been engaged in continuous criminal conduct strongly suggest the use of the whole juvenile record in adult sentencing.

3-A. Victims. Records of court proceedings shall be open to inspection by a victim of a juvenile crime upon a determination by the court that the victim has a legitimate interest in maintaining a civil action for damages caused by the juvenile crime.

COMMENT

At present, the victim of a crime, unless he knows the juvenile or unless the crime is Class C or greater, so that records are open under subseciton 2, may not be able to learn the identity of a juvenile who has caused him injury.

15 M.R.S.A. §3310, sub-§2, as enacted by P.L. 1977, c.520, §1 is amended to read:

A. When it appears that the evidence presented at the hearing discloses facts not alleged in the petition, the court may proceed immediately to consider the additional or different matters raised by the evidence without amendment of the petition if all the parties consent.

B. In ~~such~~ the event all of the parties do not consent as provided in paragraph A, the court, on the motion of any party or on its own motion shall:

(1) Order that the petition be amended to conform to the evidence; or

(2) Order that hearing be continued if the amendment results in substantial surprise or prejudice to the juvenile; or

(3) Request a separate petition alleging the additional facts be filed.

COMMENT

These amendments are intended to bring this provision into line with what is believed to have been the original intent. See discussion in 1979 Commentary. If the parties consent under paragraph A, there is no need for amendment. The very existence of paragraph A indicates the desire for a more liberal procedure for the variance amendment process than that allowed by District Court Rule 3, incorporated by section 3302 and governing the content of the petition. Only when there is no consent is it necessary to provide a procedure for amendment, continuance or a new petition.

15 MRSA §3310, sub-§5, ¶A as amended by P.L. 1979 c. 373, §4 is amended to read:

A. When the court finds that the allegations in the petition are supported by evidence beyond a reasonable doubt, the court ~~may~~ shall adjudge that the juvenile committed a juvenile crime and shall, in all such adjudications, issue an order of adjudication setting forth the basis for its findings.

COMMENT

There are two purposes to this change: (1) to eliminate the implication that the court as factfinder may in effect "nullify", despite sufficient evidence; (2) to eliminate the implication that after the close of the evidence, the court may simply continue a case without adjudicating, instead of proceeding to disposition.

According to oral history, the discretion contained in this provision is rumored to have come from a concern of Judge Briggs that the military had access to juvenile records (e.g. for Class C or greater offenses) and that a juvenile could not get into the military if adjudicated.

The value of witholding ajudication is uncertain. The effect, however, is a return to the pre-Code tradition of informal juvenile proceedings. This proposal is more consonant with the Code's aim to ensure enforcement of the laws through procedures which will protect the rights of the juvenile.

15 MRSA §3311 sub §1 as enacted by P.L. 1977 c.520, §1 is amended to read:

1. Reports as evidence. For the purpose of determining proper disposition of a juvenile who has been adjudicated as having committed a juvenile crime, written reports and other material relating to the juvenile's mental, physical and social history may be received by the court along with other evidence; but the court, if so requested by the juvenile, his parent or guardian, or other party, shall require that the person who wrote the report or prepared the material appear as a witness and be subject to ~~both direct and cross~~ examination by the court and any party. In the absence of the request the court may order the person who prepared the report or other material to testify if it finds that the interests of justice require it. The parents, guardian or other legal custodian of the juvenile shall be informed that information for the report is being gathered.

15 MRSA §3311, sub-§2, as enacted by P.L. 1977, c.520, §1 is amended to read:

2. Notice of R right to ~~cross~~-examination. The court shall inform the juvenile or his parent, guardian or legal custodian of the right of ~~cross~~- examination using any written report or other material specified in subsection 1.

COMMENT

Amendments to subsections 1 and 2 reflect the fact that the person preparing the report is not called as any party's witness.

15 MRSA §3314 sub §1 ¶G as enacted by P.L. 1977 c. 520 §1 is amended to read:

G. The court may impose a fine, subject to the provisions of Title 17-A, sections 1301-1305. For purposes of this section juvenile offenses defined under section 3103, subsection 1, paragraphs B through D, shall be deemed Class E crimes.

COMMENT

This amendment provides for maximum levels of fines, according to Title 17-A classifications and classifies uniquely juvenile offenses for purposes of fines.

15 MRSA §3314, sub-§2 as amended by P.L. 1977 c.664 §38, is further amended to read:

2. Suspended sentence. The court may impose any of the dispositional alternatives provided in subsection 1 and ~~sentence~~ place the juvenile ~~to~~ on a specified period of probation which shall be subject to such provisions of Title 17-A, section 1204 as the court may order and which shall be administered pursuant to the provisions of Title 34, chapter 121, sub-chapter V-A. Revocation of probation shall be governed by the procedure contained in Title 17-A, sections 1205, 1205-A and 1206, except that section 1206, subsection 7-A shall not apply.

34 MRSA §1683 enacted by P.L. 1977, c.520, §4 is repealed.

COMMENT

This amendment eliminating the language concerning a "sentence" to probation clears up the conceptual problem that a person whose sentence is suspended cannot also be sentenced. It makes this code consistent with the Criminal Code. See also State v. Blanchard, 156 Me.30, 159 A.2d 304 (1960).

The procedures for revocation are stated here rather than in Title 34, sections 1681-83, incorporated in section 3314(2) above. Simultaneously, 34 MRSA §1683 is repealed. The new provision also makes clear that only the procedural features of Title 17-A apply. Because the suspended sentence is indeterminate, it is impossible to apply the provision in 17-A MRSA §1206(7-A) which allows imposition of less than the whole suspended sentence.

15 MRSA §3405 sub-§1 as enacted by P.L. 1979 c.512, §12 is amended by adding 2nd & 3rd sentences thereto:

The Superior Court may affirm, reverse or modify any order of the juvenile court or remand for further proceedings n an appeal of a disposition, upon a ruling that the juvenile court abused its discretion, the Superior Court shall enter a new order of disposition.

COMMENT

The repeal of section 3406 by P.L. 1979, c.512, §13, left unclear which court should enter a new order of disposition upon a successful appeal by the juvenile. This amendment restates section 3406 in simpler form.

15 MRSA §3407 Sub-§2, ¶A, as enacted by P.L. 1979, c.512, sec.14, is amended to read:

A. Decisions of the Superior Court on appeal from the juvenile court, as to matters described in section 3402, subsection 1, paragraphs A ~~and B~~ only, may be appealed to the Law Court by an aggrieved party. An appeal by the State pursuant to this paragraph shall be subject to subsections 5 and 8 of section 2115-A.

COMMENT

Second-stage appeals of orders of disposition from the Superior Court to the full 7-member Law Court were eliminated as having marginal value, particularly in light of the fact that juvenile dispositions tend to be fairly short and that the most severe disposition, commitment to the Maine Youth Center, is itself unmodifiable because it is indeterminate. Similarly, the amendment also conforms to the right of review in adult cases, which also allow only one level of appeal of sentences to a special 3-justice panel of the Supreme Judicial Court. See 15 MRSA § 2141 M.R.Crim.P. 40.

The addition of the requirement of Attorney General approval and the provision concerning attorney fees, from the statute governing appeals by the State in adult cases, section 2115-A, corrects an oversight in the 1979 amendments.

15 MRSA §3407, sub-§2, ¶C as enacted by P.L. 1979, c.512§14, is amended to read:

C. Appeals pursuant to this subsection shall be taken in the same manner as appeals ~~from~~ following a judgment of conviction of an adult in Superior Court except as otherwise provided by rule promulgated by the Supreme Judicial Court.

COMMENT

This change in terminology reflects the fact that certain appeals now allowed the State after an adult conviction under section 2115-A are not from the conviction itself but from a post-conviction order. To the extent that the procedure may differ for the State in such an appeal, see M.R.Crim.P. 37, that difference is adopted here.

29 MRSA §2303, sub-§2 is amended to read:

2. Misdemeanor. Any violation of this Title specifically defined as a misdemeanor shall be punishable as a Class E crime. ~~punished by a fine of not less than $50 nor more than $500 or by imprisonment for not more than 30 days, or by both, when no other penalty is specifically provided.~~

COMMENT

The purpose of this amendment is to conform traffic "misdemeanors" with the sentencing provisions of Title 17-A.

29 M.R.S.A. § 1311, as last amended by 1973 laws, c. 236, is repealed and replaced as follows:

§ 1311. Operating with criminal negligence.

1. A person is guilty of operating with criminal negligence if he operates a motor vehicle in any place with criminal negligence and thereby creates a substantial risk that injury could occur to another person, including a passenger in the motor vehicle so operated, or that damage could occur to the property of another. It is not necessary to prove that a person or property was actually placed in danger of injury or being damaged.

2. Operating with criminal negligence is a Class E Crime.

29 M.R.S.A. § 1314, as last amended by 1975 laws, c. 731, § 52 is repealed.

NOTE: The intent of this new section is to create a motor vehicle offense less serious than reckless conduct (with a dangerous weapon, i.e., a motor vehicle), 17-A M.R.S.A. § 211, and to replace former reckless driving and driving to endanger, both of which grew out of the same statute. Considerable confusion exists about what may appear to be a result of injury required by § 1311, the distinction, if any, between reckless driving and driving to endanger is otherwise murky.

34 M.R.S.A. § 1007, sub- § 9, as last amended by
is further amended to read:

9. Violations. Any person who ~~willfully~~ knowingly violates the terms of his release in relation to the time for reporting to his place of employment or to any other place to which he is authorized to be released under subsection 1, paragraphs A. to E or for reporting back to the county jail ~~may be punished by imprisonment for not more 60 days. If said prisoner does not return to the county jail within 48 hours from the time scheduled to return, he shall be guilty of escape under Title 17-A, section 755.~~ is guilty of a Class E crime, unless he is guilty of the crime of escape, as hereafter provided. Any person who has not returned voluntarily to the county jail within 3 hours from the time scheduled to return or any person who is arrested before voluntarily returning at any time subsequent to the violation shall be guilty of escape under Title 17-A, section 755. A person may be arrested for violations of this subsection upon probable cause without a warrant.

34 M.R.S.A. § 1007, sub- § 8, second sentence, as enacted by 1967 laws, c. 150, is amended as follows:

Any prisoner so disciplined may ~~petition either the District Court or the Superior Court for a review of such disciplinary action. Such court, after review, shall make such order as it deems appropriate~~ seek review pursuant to [new provision]

THOMAS E. DELAHANTY, II
DISTRICT ATTORNEY

STATE OF MAINE
OFFICE OF THE DISTRICT ATTORNEY
DISTRICT THREE

TWO TURNER STREET
AUBURN, MAINE 04210
TELEPHONE
207 784 0587

October 4, 1979

Peter Ballou, Esquire
Deputy District Attorney
Cumberland County Courthouse
Federal Street
Portland, Maine

Re: Proposed Amendment to the Criminal Code
T.17-A M.R.S.A. §208, Aggravated Assault

Dear Pete:

My informed sources tell me that you are still chairman of the Criminal Law Advisory Commission; accordingly, I wish to propose an amendment to section 208 of the Maine Criminal Code (Aggravated Assault) by adding a new paragraph as follows:

D. Bodily injury to a child under the age of 14, provided that the actor is at least 18 years of age.

I am prompted to request this amendment because of a recent experience on a child abuse case. For background, I've enclosed a picture used as an exhibit at trial.

The injuries were not serious but enough to get me fired up. We charged the defendant with aggravated assault under the "extreme indifference" standard which I'm sure led to confusion on the part of the jurors as they returned a verdict of guilty of simple assault after requesting to be re-instructed several times.

The defendant's attorney filed several motions requesting us to particularize the facts underlying "extreme indifference." I'm fortunate that the judge denied his requests because I'm not sure how I would have answered.

I feel very strongly that an adult who beats on a defenseless child should be subject to a possible penalty in excess of one (1) year. I don't believe that making assaults upon children a Class B offense will be a deterrent of any type, but as a father and a prosecutor I want to be able to have the chance of locking the S.O.B. up for a while.

STATE OF MAINE
OFFICE OF THE DISTRICT ATTORNEY
DISTRICT THREE

Peter Ballou, Esquire
October 4, 1979

There is no magic in the 14 year old age limit. I picked it because I had to choose some age and it coincides with §254.

Very truly yours,

Thomas E. Delahanty, II
District Attorney

TEDII:deb

Enclosure: 1

cc: Annee Tara

February 5, 1979

Peter Ballou, Esq., Chairman
Criminal Code Revision Committee
142 Federal Street
Portland, Maine 04101

Dear Peter:

Enclosed is a copy of proposed amendments to the Maine odometer law that we would like to see enacted. I would appreciate it, if the Criminal Code Revision Committee would review this proposal, and if it approves, submit it to the legislature for its consideration.

Thank you for your assistance.

Very truly yours,

RAE ANN FRENCH
Assistant Attorney General
Consumer and Antitrust Division

RAF/sjn

Enc.

cc: Stephen Diamond, Assistant Attorney General

An Act Relating to Resetting, Tampering or Disconnecting Odometers on Motor Vehicles

Be it enacted by the people of the State of Maine, as follows:

17 M.R.S.A. § 1609-A, as amended by PL 1975, c 623, is further amended

§ 1 Information on Transfer.

* * * * *

~~Any person, firm, partnership or corporation who intentionally violates any provision of this subsection shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months, or by both.~~ An intentional violation of any provision of this subsection by any person, corporation, organization or other legal entity is a Class D crime.

§ 2 Misprepresntation. A person, firm, partnership or corporation, organization or other legal entity is guilty of misrepresentation if

A. he ~~who shall~~ disconnects, changes or tampers with the odometer of any motor vehicle with the intent to change the number of miles indicated thereon; or

B. he ~~who shall~~ intentionally offers or exposes for sale a motor vehicle the odometer reading of which differs from the number of miles the vehicle has been driven without disclosing that the actual vehicle mileage is unknown. ~~shall be punished by a fine of not more than $1000 or by imprisonment for not more than 11 months, or by both.~~

Misrepresentation is a Class D crime

§ 3 Service and Repair

* * * * *

Any failure to attach such notice to the left door frame or any removal or alteration of such notice so affixed ~~shall be punished by a fine of not more than $1000 or by imprisonment for not more than 11 months, or by both~~ is a Class D crime

EXPLANATION

The odometer reading on a motor vehicle has always been relied upon by consumers as an index to condition and value of the vehicle. In 1976 the U. S. Congress enacted odometer legislation imposing penalties of up to $50,000 or up to one year imprisonment, or both.

Because of Section 4-A of Title 17-A, the penalties under the Maine Odometer statute were automatically reduced to a Class E crime. To insure that sanctions under the Maine Odometer Law are sufficient to deter violators, the penalty for violating 17 M.R.S.A. § 1609-A should be returned to its former level of a Class D crime, i.e. not more than $1000 fine and not more than 1 year.

SENATE

SAMUEL W. COLLINS, JR., KNOX, CHAIRMAN
DANA C. DEVOE, PENOBSCOT
BARBARA M. TRAFTON, ANDROSCOGGIN

HAZEL L. DAVIS, COMMITTEE ASSISTANT

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STANLEY E. LAFFIN, WESTBROOK
JAMES A. SILSBY, ELLSWORTH
RUFUS E. STETSON, JR., WISCASSET

STATE OF MAINE
ONE HUNDRED AND NINTH LEGISLATURE
COMMITTEE ON JUDICIARY

September 6, 1979

Criminal Law and Advisory Commission
Peter G. Ballou, Esq., Chairman
Michael Saucier, Esq., Adviser
Statehouse
Augusta, Maine 04333

Dear Peter and Mike:

Many of us are concerned over the increasing evidence of sexual molestation of young children. The perpetrators seem to have something akin to a disease, and important work has been done in understanding this disease at the Johns Hopkins University Medical School and at other institutions. This work has been done both by the medical community and by psychological clinics.

I am hoping that you would see fit to include in your agenda and give serious attention to the possibility of including in the Criminal Code sentencing provisions a section that permits the judge to order as one of the alternatives treatment by injection of some of the new medicines which I term, for want of a better category, "sex hormones." There is much material available on this, as the Upjohn Company has developed some of the medical compounds that are being used in the experiments. One of the better known experimental clinics is conducted by Dr. John Money at Johns Hopkins University. It would also be wise to obtain opinions from those best qualified in medical circles here in Maine.

This might be a topic that you would want to study jointly with a committee of the Maine Medical Association, the Maine Psychiatric Association or a combination committee that included also someone from the clinical psychology professionals in the State.

Sincerely yours,

Samuel W. Collins, Jr.

SWC:NF

To Marian E. Gowen -- State Representative -- House of Representatives
Augusta, Maine

Early in spring,1979, a large number of Standish Township citizens met with District Attorney Henry Berry, Mr. Quinn, our sheriff Mr. Sharpe and Constable Coleman to discuss the problem of juvenile delinquency-crime in our area and of possible solutions.

These officials explained the recent state legislative action and the code intended as a remedy. However, they reported that the law officers' hands have been tied by the regulation (not included in the code) that even a teen-ager caught red-handed must be turned over to a caseworker who sometimes "counsels" so long that the youth goes on to commit as many as two or three additional "crimes" before he is brought to court -- if ever.

Our local garden club has a standing Community Betterment Committee, for our small but active group is concerned not only with lighting the Christmas tree at the Municipal Building and replacing the elms, but also in any problem that affects neighborhood property beauty and safety, and our young people's concern for the environment.

We wish to report a specific case that calls for, and shows the need for, prompt legislative action.

On June 3rd Mr. and Mrs. Neal Hicks of Shaw's Mill Road were notified by our excellent constable that the teen-ager who had committed a very skillful robbery at their home between 7:30 and 9:30 p.m. in December, 1978, was to appear in court with his mother at 9:00 the following morning, June 4, 1979.

The next morning the Judge was ready.The state trooper who had helped compile the evidence was there on taxpayers' time. The state-appointed defense lawyer was there on taxpayers' time. Mr. Hicks, who had to take "time-off for personal business", was there.

But the boy and his mother did not appear!

There had been two boys involved in this particular juvenile crime. The one from Standish had fled to Texas. The one from Limington had been apprehended by our constable and state trooper who had conclusive evidence of his guilt. The boy had confessed "his operations". There had, obviously, been a long delay in his being brought to court.

Obviously, also, the boy and his mother neither respected nor

feared the court order. It is now mid-July and the Hicks have not heard a word about the case since that expensive court hearing day ; nor have they recovered their stolen property.

After the March, 1979, Standish Town Meeting which voted to pay for additional officers' services, which have been faithfully and well-rendered, the law has proved just as ineffectual as it was before March in bringing offenders to justice.

In fact, aroused citizens in Sebago Lake Village are currently preparing a petition for legislative action.

Our club is small but is a very representative group of concerned citizens -- parents, grandparents, teachers, politically involved adults. In May, 18 members spent our annual meeting day at the State House. We gained understanding and respect for our representatives' problems and efforts, but we also represent that large SILENT MAJORITY that is too involved with the work of the world and paying our taxes to run to Augusta carrying placards. We expect our representatives to spend our tax money for productive legislation in doing the job for which they were elected. Thus we are making our report to our representative from Standish.

We recommend that:

1. The new juvenile code be amended to allow only duly elected officers of the law to arrange for young offenders' court hearings.

2. The code be amended to require judges to hear juvenile cases within a specified number of working days.

3. While we sympathize with young first offenders and their often astounded parents, we believe that the community has a "right to know" and that, therefore, the name of any juvenile

   A. Who fails to appear in court when his case is scheduled

   or

   B. Who is brought to court for a second proven offense

   should be published.

As the code now stands, with control of the culprit in the hands of a social service case worker (another expense for the taxpayer) it is not

only wasting taxpayers' money; it is <u>not</u> helping parents or their problem children to face their responsibility for their own behavior. It is, in fact, teaching juveniles and their guardians to have less and less respect for the laws of state and country, and it is undermining community and school morale for the vast majority of well-meaning youngsters and conscientious parents.

[illegible] Strickland, President
[illegible] Higgins, Vice President
[illegible]
[illegible] Draw[illegible]
Carolyn Tolman
E. Frances [illegible]
Irene E. Wilkins
[illegible]
Lucy M. Henry
Elizabeth H. Edwards
[illegible] H. Chase
Mary C. Hick
[illegible]
Beatrice Cousins
Ruth Bradbury
Ruth [illegible]

LR

CRIMINAL LAW ADVISORY COMMISSION

DRAFT AMENDMENTS FOR THE 109th LEGISLATURE, 2nd REG. SESS.

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TO: CRIMINAL LAW ADVISORY COMMISSION MEMBERS AND CONSULTANTS

FROM: Michael E. Saucier, Ass't A.G.

Re: Report of November 15, meeting.

Attendees: Peter Ballou, Martha Harris, Ted Hoch, Joe Jabar, John Joyce, Mel Zarr.

Action on drafts in package distributed November 1, 1979. (pages 1-73):

1. page 25: Adopted with minor correction; see page 76.
2. page 26: Tabled after discussion; Redraft page 76.
3. pages 27-34: Tabled after discussion; see Redraft page 77-78.
4. page 35: Adopted
5. page 36-39: §3103(1)(F) not adopted; Alternative B and Alternative C adopted with changes; see page 79-80.
6. page 40: Adopted
7. page 41: Adopted
8. page 42: §3203(4)(B) adopted; §3203(5-A) adopted with changes; see page 82.
9. page 43: Adopted
10. page 44: Tabled after discussion; Martha Harris preferred Alternative 1, Joe Jabar, undecided between Alternatives 2 and 3 Peter Ballou, no preference.
11. page 45: Tabled indefinitely. Consensus among the members present was that the proposed amendment was unnecessary at the present time because the current practice appears to be that of not always requiring an interview especially in cases where informal guidelines of the District Attorney's office dictate that a petition will be brought automatically.

12. pages 46-47: No Action taken

13. pages 48-49: Redraft adopted; see page 82.

14. pages 50-73: No action taken

15. pages 1-24: Discussion of the reorganization proposal led by Mel Zarr. Mel elaborated on the purposes behind the reorganization and suggested the following minor changes in the draft:

a. redraft §10-A(1) and renumber and rename it §9A. Jurisdiction over juveniles.

b. §25(1). Replace the first sentence to read: The State must prove each element of the crime beyond a reasonable doubt.

c. §25(1), 3d sentence, place in §7.

d. §25(1), 4th sentence, place in new §7-A to read: Venue may be proved by a preponderance of the evidence. The court shall determine venue.

e. §25(1) 5th sentence: delete

f. §25(2) Strike the following:
line 3: allegation or any
line 4-5: which is set out in the statute defining the crime.

g. §27 title to read: Conduct Causing a Result as an Element.

h. §27 insert "conduct" following "when" in line 1.

i. §30 minor change in title

j. §81(2) line 1: insert "as" following "designates"
line 2: replace "proof" with persuasion.

k. reserve §§93-96 for future defenses and renumber Insanity (§93) and Procedure...(§94).

REDRAFT - PAGE 25; Adopted 11/15/79

15 MRSA §3003, sub-§23, as enacted by P.L. 1977, c.520, §1, is amended to read:

23. Probation. "Probation" means a legal status created by court order in cases involving a juvenile adjudicated as having committed a juvenile crime, which permits the juvenile to remain in his own home or other placement designated by ~~an agent of the Department of Mental Health and Corrections~~ the juvenile court subject to ~~being returned to the court for a commission of a new juvenile crime or~~ revocation for violation of ~~any general~~ or specific condiction imposed by the court.

REDRAFT - PAGE 26

15 MRSA §3101 sub-§4, ¶B as enacted by P.L. 1977, c.520, §1 is amended by adding the following paragraphs:

The Maine Rules of Evidence shall apply only to the probable cause portion of the bind-over hearing.

For the purpose of making the finding required by paragraph E, sub-paragraphs 1 and 2, written reports and other material may be received by the court along with other evidence, but the court, if so requested by the juvenile, his parent or guardian or other party, shall require that the person who wrote the report or prepared the material, or whose statements appear in the report or other material to appear as a witness and be subject to examination.

COMMENT

The purpose of this amendment is to specify the application of the Rules of Evidence in bind-over hearings. The proposal would apply the Rules in the probable cause portion of the hearing (thereby corresponding to the rights of adults. and the Rules would not apply where the court considers those factors relating to 3101(4)(E)

(1) &(2) findings necessary for waiver of jurisdiction.

The latter decision is a compromise necessitated by practical considerations. The nature of the evidence that must be demonstrated by the State is such that requiring all witnesses with whom the juvenile has/had contact / would be unduly burdensome. Yet the critical nature of the bindover decision dictates that certain individuals whose testimony serves as the crux of the State's case for bind-over should appear and be examined. Accordingly, provision is made to require the appearance of those people at the bindover hearing. Presumably the juvenile will have access of the reports, through discovery,to enable requests for witnesses to be made prior to the hearing.

REDRAFT- PAGES 27-34

15 MRSA §3101, sub-§4, ¶D is amended to read:

D. The juvenile court shall consider the following factors in deciding whether to bind a juvenile over to the Superior Court:

(1) The record and previous history of the juvenile; ~~and~~

(2) The nature and seriousness of the offense, ~~whether the offense was committed in an aggressive, violent, premeditated or willful manner,~~ greater weight being given to offenses against the person than against property; ~~and~~

(3) Whether the offense was committed in an aggressive, violent, premeditated or willful manner ~~juvenile's emotional attitude and pattern of living indicate that it is unlikely that future criminal conduct will be deterred by the dispositional alternatives available to the juvenile court,~~ and

(4) The emotional attitude and pattern of living of the juvenile;

(5) Whether the gravity of the offense requires prosecution of the juvenile as if he were an adult ;

(6) Whether future criminal conduct by the juvenile will be

deterred by the dispositional alternatives available to the juvenile court; and

(7) whether the protection of the community requires commitment of the juvenile to a facility which is more secure than those available as dispositional alternatives to the juvenile court;

15 MRSA §3101, sub-§4 ¶ E is amended to read:

E. The juvenile court shall bind a juvenile over to the Superior Court if, after a consideration of the factors specified in paragraph D, it finds:

(1) that there is probable cause to believe that a juvenile crime has been committed that would constitute murder or a Class A, B, or C crime if the juvenile involved were an adult and that the juvenile to be bound over committed it;

(2) By a preponderance of the evidence that due to the maturity of the juvenile and the lack of appropriate dispositional alternatives available to the juvenile court, ~~indicates that~~ the juvenile ~~would be more appropriately~~ should be prosecuted as if he were an adult ~~and~~.

~~(3) By a preponderance of the evidence, that the nature and seriousness of the alleged juvenile crime indicate that the protection of the community will require detention of the juvenile in a facility which is more secure than those available as dispositional alternatives to the juvenile court.~~

COMMENT

This redraft seeks to further specify factors relevant to the waiver of jurisdiction. The factors in sub-paragraphs 5 and 7 relative to the gravity of the offense and disposition are designed to express considerations formerly required as a finding under the present paragraph E(3). The Commission believes that the present E(3) should not be a condition of the waiver of jurisdiction because in any given case the gravity of the offense vis. the length of the disposition

available may not be a relevant consideration yet, due to the presence of other factors,bindover may be appropriate.

REDRAFT of pages 36-39 (Warrantless arrests); Adopted 11/15/79

15 MRSA §3201, sub-§1 as enacted by P.L. 1977, c.520, §1, is amended by adding a new sentence thereto:

For purposes of this section, a juvenile crime defined under subsection 1, paragraph D shall be deemed a Class D or E crime.

15 MRSA §3201 §1-A is enacted to read:

1-A Enforcement of other juvenile crimes. A law enforcement officer who has probable cause to believe that a juvenile crime

as defined by paragraphs B or C of section 3103, sub-section 1, has been committed the officer may request that the juvenile provide such officer reasonably credible evidence of his name, address and age. Such evidence may consist of oral representations by the juvenile. If the juvenile furnishes the officer evidence of his name, address and age and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible. During the period such verification is being attempted, the officer may require the juvenile to remain in his presence for a period not to exceed 2 hours.

After informing the juvenile of the provisions of this sub-section the officer may arrest the juvenile for the paragraph B or C crime if the juvenile intentionally refuses to furnish any evidence of his name, address and age,or if, after attempting to verify the evidence as provided for in this sub-section,the officer has probable cause to believe that the juvenile has intentionally failed to provide reasonably credible evidence of his name, address, and age.

COMMENT

These amendments are designed to clarify the warrantless arrest powers of law enforcement officers for the uniquely juvenile crimes of possession of a useable amount of marijuana (§3103(1)(B)), offenses involving intoxicating liquor (§3103(1)(C)), and violation of probation or refusal to pay a fine §3103(1)(D)). It is currently unclear whether officers may arrest for paragraph B-D "juvenile crimes" warrantless arrest powers for juvenile crimes are determined by section 15 and 16 of Title 17-A and because these offenses are not classifiable under Title 17-A.

The new subsection 1-A is derived from 17-A MRSA § 17 (Enforcement of civil violations). It would empower law enforcement officers to demand evidence of a juvenile's name, address and age where the officer has probable cause to believe that the juvenile is engaging in conduct constituting a paragraph B or C crime. Instead of issuing a citation, the officer would refer the matter to the intake worker, when in his or her judgment, juvenile court proceedings should be commenced. See §3203.

The policy choice of not arresting for paragraph B-C offenses is grounded in the Juvenile Code's pervasive treatment of juveniles in a manner similar to adults. Both paragraph B and C conduct, if committed by an adult, constitute civil violations. Also, subsection 1-A is consistent with the Code's present policy choice of not permitting incarceration for paragraph B and C offenses upon disposition.

With respect to paragraph D juvenile crimes, such conduct is both criminal if committed by an adult and disposition alternatives include incarceration. The amendment to subsection 1 provides warrantless arrest powers for paragraph D offenses pursuant to 17-A MRSA §15(1)(B).

[Alternative B (see page 37-38) was preferred over Alternative A (see page 36-37) because by not tracking the "stop and frisk" language of 17-A MRSA §17 and/omitting the express provision for the search and seizure of contraband or other property unlawfully possessed where exigent circumstances exist relative to the destruction or concealment of potential evidence, Alternative B, as adopted in this redraft leaves such matters to be determined on a case-by-case basis in accordance with constitutional standards.]

REDRAFT Page 42, adopted 11/15/79

15 MRSA §3203 sub § 5-A is enacted to read:

5-A Upon the request of a juvenile or his parent, guardian or legal custodian, the juvenile court shall at the juvenile's first appearance or within seven days review, for abuse of discretion, any condition of release imposed pursuant to subsection 4, paragraph B, subparagraphs (2), (3) and (4).

REDRAFT OF PAGES 48-49; adopted 11/15/79

15 MRSA §3307 is amended to read:

Publicity and record.

15 MRSA §3307, sub-§1 as amended by P.L. 1977, c.664, §26, is repealed.

15 MRSA §3310, sub-§1 as enacted by P.L. 1977, c.520, §1 amended to read:

1. Evidence ~~to be heard~~ and factfinding. At the adjudicatory hearing evidence will be heard pursuant to the Maine Rules of Evidence. There shall be no jury.

15 MRSA §3312, sub-§1, as enacted by P.L. 1977 c. 520 §1 is amended by adding the following new sentence at the end:

The Maine Rules of Evidence shall not apply in dispositional hearings.

17-A MRSA §108, sub-§2, ¶A, sub-¶ 2, as enacted by P.L. 1975 c. 740 §34 is amended to read:

(2) Committing or about to commit a kidnapping, robbery or a ~~forcible sex offense~~ violation of section 252, subsection 1, paragraph B or section 253, subsection 1, paragraph A or subsection 2, paragraph B

COMMENT

State v. Philbrick, Me., 401 A.2d 59 (1979) interpreted this provision to allow the use of deadly force during the course of a violation of section 255, unlawful sexual contact, which is actually committed with force. This amendment restricts the use of deadly force to the most serious sex offenses but arguably also expands the former provision by allowing deadly force when either rape or gross sexual misconduct is committed pursuant to serious threats rather than actual physical force. Under subsection 1 a person may still use nondeadly force to prevent a lesser sex offense which is committed with nondeadly force.

17-A MRSA §202, sub §1, as enacted by P.L. 1977, c.510, §39, is amended to read:

1. A person is guilty of felony murder if acting alone or with one or more other persons in the commission of, or an attempt to commit, or immediate flight after committing or attempting to commit murder, robbery, burglary, kidnapping, ~~aggravated arson~~, arson, rape, gross sexual misconduct, or escape, he or another participant in fact causes the death of a human being, and such death is a reasonably foreseeable consequence of such commission, attempt or flight.

NOTE

The crime of aggravated arson was repealed by 1979 Laws, c. 322, §1.

17-A MRSA §253, sub-§2, ¶C as enacted by P.L. 1975 c.499, §1 is amended to read:

C. The other person suffers from mental illness or ~~defect~~ incapacitation that is reasonably apparent or known to the actor, and which in fact renders the other substantially incapable of appraising the nature of the contact involved; or

17-A MRSA §255, sub-§1, ¶D as enacted by P.L. 1974, c.499, §1 is amended to read:

D. The other person suffers from a mental ~~disease or defect~~/illness or incapacitation that is reasonably apparent or known to the actor which in fact renders the other person substantially incapable of appraising the nature of the conduct involved.

COMMENT

These amendments eliminate the language of the insanity defense, §58(1) & (2) and replace it with the terminology of civil standards which constitute eligibility for services from the Department of Mental Health and Corrections. See 34 MRSA §2251(5)(mental illness) and 34 MRSA §§2602(4)& 2616(1) mental retardation and incapacitation.

17-A M.R.S.A. §301, sub-§1, paragraph A, sub-paragraph (6), as enacted by P.L. 1975, c. 499, §1, is repealed and the following enacted in place thereof:

(6) force a public servant or a party official, whether the person restrained or another, to perform or refrain from performing some governmental or political act or prevent a public servant or party official from performing some governmental or political act;or

COMMENT

This amendment clarifies and possibly narrows provision. Further note: this amendment was probably approved in principal by the Commission last year but didn't find its way into the Bill.

17-A MRSA §352, sub-§5, ¶E, second sentence as enacted by P.L. 1975, c.740, §54, is amended to read:

> Subject to the requirement that the conduct of the defense shall be prejudiced by lack of fair notice or by surprise, and upon a determination by the court that the proof is not sufficient to allow the trier of fact to find that some or all of the separate thefts were committed pursuant to one scheme or course of conduct, the court ~~may at any time~~ shall order that those portions of a ~~single~~ the aggregated count which are not subject to aggregation to be considered by the trier of fact as separate thefts.

COMMENT

The amendment to the second sentence states the ground for separating out component thefts from an aggregated count and also makes clear that neither aggregation nor separation need be an all or nothing matter.

FURTHER COMMENT

An argument also can be made that the "fair notice" language is superflous, in that the very nature of aggregated theft gives notice of the underlying crimes. Moreover, in general, a defendant can only be benefited by de-aggregation.

17-A MRSA §402, sub §1,as amended by P.L. 1977,c.510,§53,is further amended to read:

§402. Criminal trespass

1. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so:

A. he enters in any secured premises;

B. He remains in any place in defiance of a lawful order to leave which was personally communicated to him by the owner or other authorized person; ~~or~~

C. He enters in any place in defiance of a lawful order not to enter which was personally communicated to him by the owner or other authorized person; or

D. He enters in any dwelling place.

2. As used in this section, "secured premises" means ~~any dwelling place,~~ any structure that is locked or barred ~~,~~ or any place from which persons may lawfully be excluded and which is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders, or which is fenced or otherwise enclosed in a manner designed to exclude intruders.

17-A MRSA §402, sub-§3 as enacted by P.L. 1975, c.499,§1, is repealed and the following enacted in its place

3. Violation of subsection 1, paragraph A, B or C, is a Class E crime. Violation of subsection 1, paragraph D, is a Class D Crime.

COMMENT

These amendments are intended only to make the structure of this section clearer. As before, a dwelling place need not actually be "secure" by locking, barring, posting or fencing. It therefore is more logically defined as a category separate from "secured premises",

especially in light of the greater penalty. No substantive change is intended.

17 MRSA §453, sub §1, §B, sub §(1), as enacted by P.L 1975, c.499, §1 is amended to read:

1. Makes any written false statement which he does not believe to be true, provided, however, that this subsection does not apply in the case of a written false statement made to a law enforcement officer by a person then in official custody and suspected of having committed a crime, except for false written statements concerning the person's identity; or

COMMENT

The exception for arrested person's should properly extend only to statements regarding the person's own conduct. False written statements concerning identity, however, may cause substantial disruptions to the criminal justice system: the arrested person may be wanted for other charges and a person's criminal record may escape notice of an ultimate sentencing court.

17-A MRSA §501, sub-§1, ¶C is enacted to read:

A person is guilty of disorderly conduct if:

1. In a public place he intentionally or recklessly causes annoyance to others by intentionally:

c. Engaging in fighting:or

COMMENT

This amendment was suggested by Assistant District Attorney Joseph H. Field. Its purpose is to facilitate the prosecution for consensual assaults occurring in public. "Fighting" is specifically included in the Model Penal Code, §250.2 and the statutes of other states: New York Penal Code §240.20; Conn.Penal Code §53a 181-182. These other provisions prohibit "engag[ing] in fighting or in violent, tumultuous or threatening behavior." Such language is omitted in the proposed amendment as vague and unnecessary.

17-A MRSA §557 as enacted by P.L.1975,c.499 §1 is repealed and replaced as follows:

1. For the purposes of this chapter, a person who in good faith provides treatment for a child or incompetent person by spiritual means through prayer alone shall not for that reason alone be deemed to have knowingly endangered the welfare of such child or incompetent person.

2. It is not a defense to a prosecution under this chapter that a person believed he had no legal duty to perform an act required under this chapter. It is a defense to a prosecution under this chapter that a person had no knowledge of the facts giving rise to a legal duty to perform an act required by this chapter.

COMMENT

The first sentence of subsection 2 is the logical corrollary to §52(4). The second sentence provides a defense which corresponds to §52(1)(A).

17-A MRSA §708, sub-§4, as amended by P.L. 1977, c.510 § 59, is further amended to read:

4. Violation of this section is a Class C crime if the actor has ~~been twice before convicted~~ two or more prior convictions of any combination of the following offenses: Violations of this section; theft or violation of section 703 or attempts thereat. For purposes of this subsection, convictions for two or more offenses charged in separate counts of the same indictment or information shall not be deemed prior convictions. Negotiating a worthless instrument is otherwise a Class D crime.

COMMENT

This amendment is intended to clarify the penalty enhancement provision.

17-A MRSA §753, sub §3, as enacted by P.L. 1977, c.510, §61, is amended to read:

3. As used in subsection 1, "crime" includes juvenile crimes as defined in Title 15 section 3103 ~~offenses~~ and crimes committed against another jurisdiction of the United States. The sentencing class for hindering the apprehension of a juvenile shall be determined in the same manner as if the juvenile were a person 18 years of age or over; provided that if the offense committed by the juvenile would not have been a crime if committed by a person 18 years of age or over, hindering apprehension is a Class E crime. For purposes of determining the sentencing class in the case of hindering apprehension of a person who has committed a crime against another jurisdiction, the class of the crime in the other jurisdiction shall be determined according to the schedule contained in section 4-A, subsection 3, of this title.

COMMENT

The amendment reflects the view that there is little rational basis for distinguishing between aiding a criminal who has committed a crime against the laws of this state and one who has committed a crime against the laws of another state or the United States. The conduct constituting the aiding or hindering must of course occur in Maine or otherwise be subject to Maine jurisdiction under section 7 of the code. Sentencing class is determined under subsection 2 by reference to the conversion schedule in section 4-A used for determining the class of crimes "outside this code".

17-A MRSA §754, sub-§3, ¶B, as enacted by P.L. 1977,c.510, §62,is amended to read:

B. The pecuniary benefit did not exceed an amount which the actor reasonably believed to be due as restitution or indemnification for harm caused by the offense.

COMMENT

The person asserting the "restitution" affirmatice defense of subsection 3 should at least be able to demonstrate that the amount sought is reasonable.

17-A MRSA §755, sub §3-A,as enacted by P.L.,1977, c.570,§64, is amended to read:

3-A. Prosecution for escape or attempted escape from any institution included in subsection 3 shall be in the county in which the institution is located. Prosecution for escape or attempted escape of a person who has been transferred from one institution to another shall be in either the county in which the institution the person was transferred from or transferred to is located. Prosecution for an escape or attempted escape for failure to return to official custody following temporary leave granted for a specific purpose or a limited period shall be in the county in which the institution from which the leave was granted is located or in any county to which leave was granted. In all cases of escape, prosecution may be in the county or division in which the person who has escaped was apprehended.

COMMENT

The amendments further broaden venue for escape to take account of persons sentenced to one institution who are then sent to a pre-release center in another county and to take account of those instances where there are important witnesses in the locality the escapee was found.

17-A MRSA §802, sub-§1, ¶B, sub-¶2, as enacted by P.L. 1975, c.499, §1 is amended to read:

1. A person is guilty of arson if he starts, causes, or maintains a fire or explosion;

B. On his own property or the property of another.

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

COMMENT

The proposal is a technical, conforming amendment designed to clarify the culpable state of mind required in this form of arson. Presumably, the retention of the word "substantial" was an oversight in the 1977 amendments to §10 which eliminated the requirement that risks, in order to demonstrate criminal culpability, be "substantial and unjustifiable" See P.L. 1977 c.510 §20. The amendment tracks the Proposed Massachusetts Criminal Code C.255, §4(b).

17-A MRSA §1203-A, sub §1, 1st sentence ~~as~~ as enacted by P.L. 1979, c.512,§41, is amended to read:

1. The court may, at the time of imposing an unsuspended term of imprisonment pursuant to section 1252, impose a term of probation, not to exceed one year, and a suspended term of imprisonment which shall exceed 120 days but shall not ~~to~~ exceed 2 years, to follow the initial unsuspended term of imprisonment. At the time of sentencing, the court shall attach conditions of probation as authorized by section 1204.

COMMENT

Under the provision as passed in 1979, it is possible to impose a sentence which, because of the lengths of the unsuspended and suspended portions, falls within the parameters of both this section and section 1203. If such a sentence is imposed it may be impossible to determine whether to apply certain provisions unique to one type of sentence rather than the other, e.g. subsection 3 of section 1203.

17-A M.R.S.A. §201, as last amended by PL 1975, c. 740, §§37-39, is repealed and the following enacted in place thereof:

§201 Murder

1. A person is guilty of murder if:

A. He intentionally or knowingly causes the death of another human being; or

B. He recklessly causes the death of another human being under circumstances manifesting extreme indifference to the value of human life; or

C. Acting alone or with one or more other persons in the commission of, or an attempt to commit, or immediate flight after committing, or attempting to commit murder, robbery, burglary, kidnapping, aggravated arson, arson, rape, gross sexual misconduct, or escape, he or another participant causes the death of a human being, and such death is a reasonably forseeable consequence of such commission, attempt, or flight; or

D. He intentionally or knowingly causes another human being to commit suicide by the use of force, duress or deception.

2. The sentence for murder shall be as authorized in chapter 51.

17-A M.R.S.A. §203, as ~~enacted~~ last amended by PL 1975, c. ~~499~~ 740, §~~1~~ 40, is repealed and the following enacted in place thereof:

§203. Manslaughter

1. A person is guilty of manslaughter if he:

A. Recklessly, or with criminal negligence, causes the death of another human being; or

B. Causes the death of another human being under circumstances which would otherwise be murder except that the actor causes the death in the heat of passion upon adequate provocation.

2. Manslaughter is a Class C crime if it occurs as the result of the reckless or criminally negligent operation of a motor vehicle. Otherwise, manslaughter is a Class A crime.

17-A M.R.S.A. §203, as ~~last amended~~ enacted by PL 1975, c. ~~740~~ 499, §~~42~~ 1, is repealed and the following enacted in place thereof:

§203 Aiding or soliciting suicide

1. A person is guilty of aiding or soliciting suicide if he intentionally aids or solicits another to commit suicide, and the other commits or attempts suicide.

2. Aiding or soliciting suicide is a Class D crime.

17-A M.R.S.A. §205, as enacted by PL 1975, c. 499, §1, is repealed.

17-A M.R.S.A. §206, as last amended by PL 1975, c. 740, §42, is repealed.

17-A M.R.S.A. §204, as last amended by PL 1975, c 499, §1, is repealed.

17-A M.R.S.A. §2151, as last amended by PL 1975, c. 740, §§114 and 115, is repealed and the following enacted in place thereof:

§2151 Imprisonment for murder

A person convicted of murder shall be sentenced to the State Prison for life or for any term of years that is not less than 30.

17-A M.R.S.A. §2154, sub-§2, as last amended by PL 1975, c. 740, §119, is repealed.

17-A M.R.S.A. §10, sub-§3, ¶'s A and B, as enacted by PL 1975, c. 499, §1, are amended to read:

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

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

17-A M.R.S.A. §10, sub-§3, ¶C, as enacted by PL 1975, c. 499, §1, is repealed and the following enacted in place thereof:

C. For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

17-A M.R.S.A. §10, sub-§4, ¶'s A and B, as enacted by PL 1975, c. 499, §1, are amended to read:

A. A person acts with criminal negligence with respect to a result of his conduct when he fails to be aware of a ~~substantial and unjustifiable~~ risk that his conduct will cause such a result.

B. A person acts with criminal negligence with respect to attendant circumstances when he fails to be aware of a ~~substantial and unjustifiable~~ risk that such circumstances exist.

17-A M.R.S.A. §10, sub-§4, ¶C, as last amended by PL 1975, c. 740, §10, is repealed and the following enacted in place thereof:

C. For purposes of this subsection, the failure to be aware of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

STATE OF MAINE

Inter-Departmental Memorandum Date November 1, 1979

To Criminal Law Advisory Commission Members and Consultants Dept.

From Michael E. Saucier, Ass't A.G. Dept. Attorney General

Subject Fall Meeting schedule

Enclosed is a packet of draft amendments for the Commission's consideration. The Commission's first meeting this fall will be on November 15 in Portland at 9:00 a.m., Room 209, Luther Bonney Hall (the undergraduate library building), University of Southern Maine, Lunch will be provided. Messages may be left with the Office of Special Programs, (Payson Smith Hall, Room 119), Tel. 780-4045. The matter of the Criminal Code Reorganization will be discussed after lunch.

The following is a tentative schedule of meetings for the remainder of the fall:

December 4, 9:00 a.m.	Augusta, Maine Bar Ass'n 124 State Street
December 18, 9:00 a.m.	Augusta, Maine Bar Ass'n 124 State Street