STATEMENT OF ATTORNEY GENERAL JOSEPH E. BRENNAN

My office has received numerous inquiries and expressions of opinion concerning the right of a private citizen to use force in the face of apparent criminal conduct. Although it would be inappropriate for me to comment on any specific matter which may come before the courts, a general explanation of the law is already necessary at this time.

When to allow citizens to use force, and how much force to allow, are among the most difficult questions confronting the criminal law. On the one hand, the state cannot leave its citizens unprotected. On the other hand, the use of force creates serious risks which the state has a responsibility to minimize. It is with respect to deadly force (or force likely to cause death or serious injury) that the need to strike an appropriate balance becomes critical.

After considerable debate, the Legislature decided to limit the use of deadly force by a private person to the following situations: (1) when its use is necessary to protect himself or a 3rd person from deadly force; (2) when its use is necessary to terminate an arson, kidnapping, robbery, or forcible sex offense; or (3) when its use is necessary to protect the sanctity of the home from an intruder who is committing a crime in the home and who refuses to leave even after a warning. The Legislature, however, decided not to allow deadly force when the sole reason for its use is the protection of personal property.

Although I cannot speak for the Legislature, I can suggest a number of reasons why it prohibited private persons from using deadly force to defend personal property. These reasons fall into two categories, namely, the danger involved and the need to make the punishment commensurate with the crime.

The authority to employ deadly force is inevitably accompanied by very serious dangers. First, there is the possibility that a well meaning citizen will mistake an innocent person for a criminal. This is not merely a theoretical possibility, for innocent individuals have been killed under these circumstances. Second, the use of deadly force often involves the use of a firearm by persons not adequately trained, with the result that bystanders become the victims. Third, deadly force by the property owner often invites a similar response by the other person. Accordingly, what begins as a property crime winds up as a homicide.

From a different perspective, one characteristic of a just society is that it endeavors to impose on those who offend against its laws punishments which are commensurate with the offenses they commit. In this context, I do not believe that there are many Maine citizens who would favor the death penalty for the crime of theft, especially when committed in a manner which does not threaten the safety of innocent persons. Yet, we create this very possibility if we allow deadly force to protect personal property.

Along similar lines, our system of sentencing attempts to distinguish among offenders. Thus, we punish the person with a long criminal record more severely than the juvenile with no prior history of misconduct. The property owner, acting in the heat of the moment, cannot make such distinctions.

The above reasons all stem from a common principle, which is that Maine law places a higher value on human life than on personal property. This principle, moreover, is firmly rooted in our history. Although it may occasionally cause hardship to innocent persons, it is a principle which I would be reluctant to abandon.

Despite my views on the use of deadly force by private citizens, I fully recognize that our criminal justice system does not always provide adequate protection against crime. To remedy this, we must make improvements at all levels of the system. Toward this end, this Office actively participates in various training and education programs designed to improve the performance of law enforcement officers and prosecutors.

In addition, a very serious problem results from the length of time it takes to move a criminal case through our court system. I have long argued that our present system is outmoded and must be made more efficient. I shall continue my efforts in that direction since I strongly believe that we cannot expect to deter crime until we put potential offenders on notice that punishment will be certain and swift. The maxim that "justice delayed is justice denied"

applies to the victim as well as the offender.

December 5, 1978

TO: Criminal Law Advisory Commission Members and Consultants

FROM: Stephen L. Diamond

RE: Commission Meeting

The next meeting of the Commission will be held on Thursday, Dec. 28, at 10 a.m. The location will be the Oblate Fathers Retreat House, 136 State St., Augusta. Lunch will be provided.

Report of the Nov. 30 Criminal Law Advisory Commission Meeting

Individuals present: Peter Ballou; Richard Cohen; Peter Goranites; Martha Harris; Melvyn Zarr; Rep. John Joyce; Stephen Diamond.

Election of officers

Chairman: Peter G. Ballou
Vice-Chairman: Gerald F. Petruccelli
Secretary-Treasurer: Richard S. Cohen
The Commission also confirmed Stephen Diamond as staff attorney.

General business

1. Discussion of Commission grant; vote to seek legislative funding for the Commission, to take effect when present grant expires.

2. Discussion of possibility of consolidating all amendments to Criminal Code and all amendments to Juvenile Code in single public laws. Purpose would be to facilitate informing both legal community and general public of recent legislative changes. Decided that Commission should write to Judiciary Committee suggesting consolidation (possibly with responsibility in Legislative Research Office).

3. Use of subcommittees to consider lengthy and/or complex legislative questions approved in principle.

4. Discussion of insanity defense. Decided that Dick Cohen and Mel Zarr should explore the possiblity of a symposium on the subject.

5. Brief presentation by Mel Zarr of proposal to reorganize Part 1 of the Criminal Code. Deferred for future consideration.

Action on drafts circulated in memo of Nov. 22, 1978 (page references correspond to that memo)

1. Page 1 - Tabled. Since problem initially raised by Justice Glassman, Peter Ballou will seek further explanation of his views on the subject.

2. Page 2 - Amendments to §§106 and 107 both approved.

3. Page 3 - Subject to renumbering, sub-§§3 and 6 approved. Sub-§§4 and 5 tabled.

4. Page 4- Substance of paragraphs B and C approved. Decided that "child snatching" by parent should be in a separate section (proposed §303). Thrust of that crime would be taking child out of State (as in present law) or refusal to surrender child on demand by law enforcement officer (demanding officer would be immunized from liability if acting in good faith). Steve Diamond to draft proposed §303 for Commission's considerations.

5. Page 5 - Tabled.

6. Page 6 - Amendments to §§451 and 452 both approved (also recommended that Commission should consider whether lack of corroboration should be an affirmative defense).

7. Page 7- Alternative draft, suggested in a letter from Jerry Petruccelli, adopted.
Alternative draft would:

(a) Retain "administrator" in paragraph B;
(b) Substitute "administrator" for "assignee for the benefit of creditors" in subparagraph (2); and
(c) Rewrite subsection 2 to read: As used in this section, "administrator" means an assignee for the benefit of creditors, a receiver, a trustee in bankruptcy or any other person entitled to administer property for the benefit of creditors.

8. Page 8 - Approved with the following change: "scheduled drug" would be substituted for "prohibited drug or substance."

9. Page 9 - Decided that §1155 should be redrafted along following lines:

(a) Court should have to specify whether consecutive or concurrent. Issue too important to make failure to specify automatically concurrent or consecutive.
(b) If court fails to specify case should be returned to court for that purpose.
(c) Generally speaking, statute should not tilt toward consecutive or concurrent; instead, it should specify factors which the court should consider. However, automatic rules in present subsections 1 and 5 would be retained.

10. Pages 10 (proposed §1155-A), 11 and 12- not considered.

To: Criminal Law Advisory Commission Members and Consultants

From: Stephen L. Diamond

Re: Report of December 28 meeting

Attendees

Peter Ballou; Dave Cox; Steve Diamond; Peter Goranites; Martha Harris; Ted Hoch; Joe Jabar; Justice Violette; Mel Zarr.

General Business

There was a general discussion of how the Commission should approach the Juvenile Code, with specific attention given a suggestion by Mike Petit of the United Way that there should be a broadly based, in-depth evaluation of how that Code is working. While there was disagreement as to the need for such an evaluation, it was agreed that it could not realistically be conducted by the Commission. It was felt that the Commission was better suited to respond to problems and proposals than to undertake an intensive study. There was some support, however, for the notion that the Commission should make every effort to keep abreast of any evaluations which are performed.

Action on drafts in package dated Dec. 21, 1978

1. Page 1 - Decided that §301 should not apply to parents and that parental relationship should be specifically made a defense. No action on sub-¶ (6). Sub-§§3 and 5 previously approved. (Note: decision on parental liability motivated by feeling that potential for overbreath in applying §301 to parents outweighed problem posed by kidnappings.)

2. Page 2 - §302 approved.

3. Page 3 - §303 approved with substantial changes. My understanding of those changes is reflected in the enclosed draft - please let me know if my draft does not accurately reflect the decisions made at the meeting. (On a related subject, I have been informed by the Legislative Research Office that a legislator wants to introduce a bill to make it a crime for the natural parent to take a child from the adoptive parent. I have asked the Legislative Research Office to urge the legislator to submit the proposal to the Commission.)

4. Page 4 Brief discussion, but no action.

5. Page 5 - §1108 approved. A proposed §1108-A ("acquiring drugs by extortion") was distributed at the meeting. That proposal was rejected.

6. Pages 6-10 - Not considered.

7. Page 11 - Amendment to 34 M.R.S.A. §811 approved.

Action on drafts in package dated Nov. 22, 1978.

1. Page 5 - Tabled after lengthy discussion revealed that problem is more complicated then initially appeared. Crux of the problem appears to be that there is a multitude of possible dispositions including lesser aggregated thefts and lesser individual thefts, and combinations thereof.

2. Page 11 - Tabled after lengthy discussion of whether pre-trial detention, good time and gain time credits should apply to split sentence. Decided it would be preferable to consider the statute in the context of D M & C proposal to eliminate 120-day limit on Prison splits, assuming such a proposal is forthcoming.

3. Page 12 - Not considered.

17-A M.R.S.A. §303, is enacted to read:

§303 Criminal restraint by parent

1. A person is guilty of criminal restraint by parent if, being the parent of a child under the age of 16, he takes, retains or entices the child from the custody of his other parent, guardian or other lawful custodian, knowing he has no legal right to do so and with the intent to remove the child from the State or to secret the child and hold him in a place where he is not likely to be found.

2. Consent by the person taken, enticed or retained is not a defense under this section.

3. A law enforcement officer shall not be held liable for taking physical custody of a child whom he reasonably believes has been taken, retained or enticed in violation of this section and for delivering the child to a person whom he reasonably believes is the child's lawful custodian or to any other suitable person.

4. A law enforcement officer may arrest without a warrant any person who he has probable cause to believe has violated or is violating this section.

5. Criminal restraint by parent is a Class E crime.

Pkg #2

December 21, 1978

TO: Criminal Law Advisory Commission Members and Consultants

FROM: Stephen L. Diamond

RE: Meeting of December 28, 1978

Attached are additional drafts of legislation for the Commission's consideration. As you will note, the drafts pertaining to 17-A M.R.S.A. §§301, 302 and 303 are the product of the Commission's last meeting. The rest of the material is new.

I expect that the attached materials will constitute the agenda for the meeting of Dec. 28, 1978. In addition, we still have to consider the drafts on pages 5, 11 and 12 of the Nov. 22 package.

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

17-A M.R.S.A. §301, sub-3, as enacted by P.L. 1975, c. 499 §1, is repealed and the following enacted in place thereof:

3. A "hostage" is a person restrained with the intent that a third person, not the person restrained or the actor, perform or refrain from performing some act.

17-A M.R.S.A. §301, sub-§4, is enacted to read:

4. Section 1, subsection A shall apply even though the person restrained is the child of the actor.

17-A M.R.S.A. §301, sub-§5, is enacted to read:

5. Kidnapping is a Class A crime. It is, however, a defense which reduces the crime to a Class B crime, if the defendant voluntarily released the victim alive and not suffering from serious bodily injury, in a safe place prior to trial.

17-A M.R.S.A. §302, as enacted by P.L. 1975 c. 499, §1, is repealed and the following enacted in place thereof:

§302 Criminal restraint.

1. A person is guilty of criminal restraint if:

A. Knowing he has no legal right to do so, he intentionally or knowingly takes, retains or entices a person who is

(1) under the age of 14; or

(2) incompetent; or

(3) 14 years or older but who has not attained his 16th birthday, the actor being at least 18 years of age, from the custody of his parent, guardian or other lawful custodian, with the intent to hold the person permanently or for a prolonged period; or

B. He knowingly restrains another person. As used in this paragraph, "restrain" shall have the same meaning as in section 301, subsection 2.

2. It is a defense to a prosectuion under this section that the actor is the parent of the person taken, retained, enticed or restrained. Consent by the person taken, retained or enticed is not a defense to a prosecution under subsection 1, paragraph A.

3. Criminal restraint is a Class D crime.

17-A M.R.S.A. §303 is enacted to read:

§303 Criminal restraint by parent

1. A person is guilty of criminal restraint by parent if, being the parent of a child under the age of 16, he intentionally or knowingly takes, retains or entices the child from the custody of his other parent, guardian or other lawful custodian, and, knowing that he has no legal right to do so, he

A. Removes the child from the State; or

B. Fails to immediately deliver the child to a law enforcement officer, or, if the child is not in his physical custody, to take all reasonable steps to cause the child to be delivered to a law enforcement officer, after the officer has personally ordered him to do so [and has advised him that failure to do so constitutes a criminal offense].

2. Consent by the person taken, retained or enticed is not a defense to a prosecution under this section.

3. A law enforcement officer shall not be held liable for taking physical custody of a child whom he reasonably believes has been taken, retained or enticed in violation of this section and for delivering the child to a person whom he reasonably believes is the child's lawful custodian.

4. A law enforcement officer may arrest without a warrant any person who he has probable cause to believe has violated or is violating this section.

5. Criminal restraint by parent is a Class E crime.

17-A M.R.S.A. §517 is enacted to read:

§517. Possession of intoxicating liquor in a prohibited place

1. A person is guilty of possession of intoxicating liquor in a prohibited place if:

A. He possesses intoxicating liquor in an open [or closed] container at a concert, play, motion picture, sports event or any other entertainment event to which the public is invited, whether the event is indoors or outdoors, unless the place at which such event is held is licensed for the sale of intoxicating liquor for on-premise consumption and a licensee is actually selling intoxicating liquor at the event; or

B. He possesses intoxicating liquor in an open container at any of the following places:

(1) any highway, street, road, way, sidewalk or parking area to which the public has access; or

(2) any other place to which the public is invited or has access which a municipality has designated as a prohibited area by ordinance. Pursuant to this subparagraph, a municipality may provide that a particular place shall be a prohibited area only during the hours specified in the ordinance.

2. Any liquid in a container which by its label purports to contain an intoxicating liquor shall be presumed to be an intoxicating liquor.

3. Possession of intoxicating liquor in a prohibited place is a Class E crime.

29 M.R.S.A. §2189 is enacted to read:

§2189. Possession of intoxicating liquor in a motor vehicle

It shall be unlawful for the operator of a motor vehicle on a way or for any other person in a moving or stationary motor vehicle on a way, except for a passenger in a common carrier licensed for the sale of intoxicating liquor for on-premise consumption, to possess intoxicating liquor in an open container. Any liquid in a container which purports by its label to be an intoxicating liquor shall be presumed to be an intoxicating liquor. Possession of intoxicating liquor in an open container by the operator of a motor vehicle is a Class E crime; possession by any other person is a traffic infraction.

17 M.R.S.A. §2003 is repealed.

17-A M.R.S.A. §1108, as enacted by P.L. 1975, c. 499, §1, is repealed and the following enacted in place thereof;

§1108. Acquiring drugs by deception

1. A person is guilty of acquiring drugs by deception if, as a result of deception, he obtains or exercises control over what he knows or believes to be a scheduled drug, and which is, in fact, a scheduled drug.

2. As used in this section, "deception" has the same meaning as in section 354, subsection 2.

3. For purposes of this section, information communicated to a physician in an effort to violate this section, including a violation by procuring the administration of a scheduled drug by deception, shall not be deemed a privileged communication.

4. Acquiring drugs by deception is a Class D crime.

17-A M.R.S.A. §7, sub-§ 1, ¶A, as enacted by P.L. 1975, c. 499, §1 is amended to read:

A. Either the conduct which is an element of the crime or the result which is such an element occurs within this State or has a territorial relationship to this State; or

17-A M.R.S.A. §7, sub-§1, ¶C, as enacted by P.L. 1975, c. 499, §1 is amended to read:

C. Conduct occurring outside this State would constitute a criminal conspiracy under the laws of this State, an overt act in furtherance of the conspiracy occurs within this State or has a territorial relationship to this State, and the object of the conspiracy is that a crime take place within this State;

17-A M.R.S.A. §7, sub-§1, ¶D, as enacted by P.L. 1975, c. 499, §1 is amended to read:

D. Conduct occurring within this State or having a territorial relationship to this State would constitute complicity in the commission of, or an attempt, solicitation or conspiracy to commit an offense in another jurisdiction which is also a crime under the law of this State;

17-A M.R.S.A. §7, sub-§3, first sentence, as enacted by P.L. 1975, c. 499, §1 is amended to read:

3. When the crime is homicide, a person may be convicted under the laws of this State if either the death of the victim or the bodily impact causing death occurred within ~~this~~ the State or had a territorial relationship to the State.

17-A M.R.S.A. §7, sub-§4 is enacted to read:

4. Conduct or a result has a territorial relationship to this State if it is not possible to determine beyond a reasonable doubt that it occurred inside or outside of this State, because a boundary cannot be precisely located or the location of any person cannot be precisely established in relation to a boundary, and if the court determines that this State has a substantial interest in prohibiting the conduct or result. In determining whether this State has a substantial interest, the court shall consider the following factors:

A. The relationship to this State of the actor or actors and of persons affected by the conduct or result, whether as citizens, residents or visitors;

B. The location of the actor or actors and persons affected by the conduct or result prior to and after the conduct or result;

C. The place in which other crimes, if any, in the same criminal episode were committed;

D. The place in which the intent to commit the crime was formed.

1 M.R.S.A. §1, is amended to read:

The jurisdiction and sovereignty of the State extend to all such places within its boundaries, subject only to such rights of concurrent jurisdiction as are granted over places ceded by the State to the United States. This section shall not be construed to limit or restrict the jurisdiction of this State over any person or with respect to any subject within or without the State which jurisdiction

is exercisable by reason of citizenship, residence or for any other reason recognized by law.

EXPLANATION FOR AMENDMENTS TO §7

The intent of this amendment is to create a limited exception to territoriality as the sole basis of criminal jurisdiction. The requirement of State v. Baldwin and section 5(1) that jurisdiction must be proven beyond a reasonable doubt is retained, but territory as the basis of jurisdiction is departed from where the exact locus of a crime cannot be established and is replaced with "substantial state interest." This "interest" approach is similar to principles underlying long-arm statutes and conflicts of law in the civil area.

Under the tests proposed, the result in Baldwin (that four rape convictions were reversed because it could not be proven beyond a reasonable doubt that the crime occurred in Maine rather than New Hampshire) would be changed because both defendants and victim were from Maine, traveled from Maine and because the crime could also not be proven to have occurred in New Hampshire.

Maine has already departed further from territoriality as a basis for criminal jurisdiction than perhaps any other state. In State v. Haskell, 33 Me. 127 (1851) defendant was hired to convey goods from Maine to Boston. Somewhere along the way (it could not be proven where) he converted the goods. The delivery of the goods to defendant in Maine was considered a sufficient basis for jurisdiction, the Court stating that the defendant "shall be considered to have received the goods with a felonious intent."

More recently, in Skiriotes v. Florida, 313 U.S. 69 (1941) the Supreme Court upheld a statute (as applied to a Florida citizen) prohibiting the use of diving equipment for the taking of commercial sponges in "Gulf of Mexico" (non-Florida) waters.

EXPLANATION FOR AMENDMENT TO 1 M.R.S.A. §1

Although this very basic section would not act as a limitation on later-enacted and more specific provisions dealing with jurisdiction, it should be amended to conform with the above-proposed amendments, the long-arm statute, and the presently-existing 17-A M.R.S.A. §7. The language is taken from 1 M.R.S.A. §4, a provision enacted in 1959 to deal with territorial waters.

34 M.R.S.A. §811, first paragraph, as enacted by P.L. 1975, c. 756, §20, is amended to read:

The State shall maintain the institution located at South Windham, heretofore known as the Men's Correctional Center and hereby renamed the Maine Correctional Center, for the confinement and rehabilitation of ~~persons-under-the-age-of-18-years-with respect-to-whom-probable-cause-has-been-found-under-Title-15,-section-2511,-subsection-3,-who-have-pleaded-guilty-to,-or-have-been tried-and-convicted-of,-crimes-in-the-Superior-Court~~ boundover juveniles and persons over the age of 18 years ~~and-of-not-more-than~~ 26 years of age who have been convicted of, or who have pleaded guilty to, crimes in the courts of the State, and who have been duly sentenced and committed thereto, and women sentenced to the Maine State Prison and committed to the center. Nothing in this section shall be construed to prevent the sentencing of convicted boundover juveniles to other penal institutions in this State.

To: Joseph E. Brennan, John Paterson, Richard Cohen, Cabanne Howard, Cheryl Harrington, Dr. Henry Ryan

From: Donald Alexander 2-16-77

Subject: Legislation affecting the Office

The following is a list of legislation printed to date which directly affects the authority of the office or in which the office may have a major interest. The office has sponsored some of these bills. Those of you who developed these bills should keep aware of their progress. Some of the bills are not sponsored by the office but are on the list because they are of major interest. In advance of any public hearing on any bill where you believe the office should testify, the Attorney General should be advised of the oral presentation proposed. In some cases the Attorney General may wish to appear.

The list of bills and sponsors follows:

*L.D. 282 AN ACT Concerning Transient Sales of Consumer Merchandise Sponsor: Mrs. Boudreau

L.D. 305 AN ACT to Require Substantiation of Certain Advertising Claims, Sponsor: Senator Farley

L.D. 306 AN ACT to Amend the Maine Criminal Code as Recommended by the Criminal Law Advisory Commission, Sponsor, Senator Collins

*L.D. 323 AN ACT Appropriating Funds for Defense of Indian Claim Litigation, Sponsor, Mr. Marshall

*L.D. 325 AN ACT Concerning Solicitation Sales of Consumer Merchandise, Sponsor, Miss Brown

*L.D. 340 AN ACT Further Defining the Attorney General's Authority Under the Unfair Trade Practices Act, Sponsor, Mrs. Gill

*L.D. 341 AN ACT to Revise the Measure of Damages Under the Unfair Trade Practices Act, Sponsor, Mrs. Gill

L.D. 347 AN ACT to Increase the Penalties for Violation of State Antitrust Laws, Sponsor, Mr. Wyman

*L.D. 354 AN ACT Concerning the Administration of the Office of the Chief Medical Examiner, Sponsor, Mr. Perkins

*L.D. 364 AN ACT to Provide a Civil Penalty for the Willful Violation of the Unfair Trade Practices Act, Sponsor, Mr. Marshall

*L.D. 366 AN ACT to Insure the Confidentiality of Criminal and Professional Licensing Investigations, Sponsor, Mr. Joyce

L.D. 396 AN ACT to Provide Investigators for the Several District Attorneys, Sponsor, Senator Mangan

*L.D. 405 AN ACT Pertaining to Parens Patriae Suits by the Attorney General on Behalf of Consumers, Sponsor, Mrs. Kane

*L.D. 406 AN ACT to Clarify which Violations of Law also Constitute Violations of the Unfair Trade Practices Act, Sponsor, Mrs. Kane

L.D. 417 AN ACT to Clarify Authorization for Payment of Witness Fees for State Witnesses in Criminal Prosecutions, Sponsor, Mr. Hughes

Bills with an asterisk are bills which I am aware the office developed and decided to support.

DONALD G. ALEXANDER
Deputy Attorney General

DGA/ec

January 23, 1977

TO: CRIMINAL LAW ADVISORY COMMISSION MEMBERS AND CONSULTANTS

FROM: Stephen L. Diamond

RE: Agenda for Meeting of February 1, 1978

AGENDA

I. Pending Bills

1. Amendments to drug penalties - L.D.'s 1903, 2080,and 2082 (enclosed). Also L.D. 2094

2. Child pornography bill - L.D. 2017 (enclosed).

3. Bill to make assault on an officer a Class C crime.

II Commission amendments

Amendments to §1203 and §1253 (attached).

The meeting will begin at 10:00 a.m. in Ralph Lancaster's conference room at 10 Monument Square in Portland.

17-A M.R.S.A. § 1203, as last amended by P.L. 1977, C. 510, § 69, is repealed and the following enacted in place thereof:

§ 1203. Split sentences.

Alternative 1

1. Subject to the limitation in subsection 2, the court may sentence a person to an initial term of imprisonment in a designated institution to be followed by a suspended term of imprisonment with probation; provided that the aggregate of the initial term of imprisonment and the suspended term of imprisonment shall not exceed the maximum term authorized for the crime.

2. If the initial term of imprisonment imposed by the court under subsection 1 is to the State Prison, that term shall not exceed 90 days. The deductions authorized by section 1253, subsection 2, shall not apply to an initial term of imprisonment to the State Prison.

Discussion: This alternative would deny pre-trial detention deductions to persons receiving split sentences to the State Prison. Accordingly, it could result in more actual time received under the initial sentence for persons who could not make bail. This occurs under present law.

Alternative 2

Essentially the same format, but deny pre-trial detention deductions on the initial term of all split sentences.

Discussion: This would eliminate any distinctions based upon the institution to which the person is sentenced. However, it would obviously create the same possibility that persons unable to make bail would serve more time under the initial sentence.

Alternative 3

Essentially the same format, but allow pre-trial detention deductions for all split sentences.

Discussion: This would equalize the actual time received on initial sentences to the Prison. Given the 90-day limitation, however, it might severely curtail the ability of judges to impose split sentences to the State Prison, since much of the 90-day period might already have been spent in pre-trial detention in the county jail. Herein lies the gravamen of the problem.

Alternative 4

Essentially the same format, but allow pre-trial detention deductions for all split sentences and remove the 90-day limitation on initial sentences to the Prison.

Discussion: This would eliminate distinctions based upon ability to make bail without curtailing the availability of split sentences to the Prison. However, this alternative suffers from two possible problems. First, it might result in initial sentences which are too long, in that the Prison has indicated that it can deal constructively only with inmates who have either very short or relatively long sentences. Second, it enhances the possibility that split sentences will be used as parole substitutes.

17-A M.R.S.A § 1253, sub- § 1, as enacted by P.L. 1975, C. 499, § 1, is amended to read:

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

17-A M.R.S.A. § 1253, sub- § 2, as amended by P.L. 1977, C. 510, § 79, is further amended to read:

2. When a person sentenced to imprisonment ~~has been committed for pre-sentence evaluation pursuant to section 1251, subsection 2, or~~ has previously been detained to await trial, in any state or county institution, or local lock-up, for the conduct for which such sentence is imposed, such period of ~~evaluation and~~ detention shall be deducted from the time he is required to be imprisoned under such sentence. The attorney representing the State shall furnish the court, at the time of sentence, a statement showing the length of such detention, and the statement shall be attached to the official records of the commitment.

17-A M.R.S.A. § 1253, sub- § 3, as amended by P.L. 1977, C. 510, § 80, is repealed and the following enacted in place thereof:

3. Each person sentenced, or or after the effective date of this subsection, to imprisonment for more than 1 month shall earn a deduction of 10 days from his sentence for each month during which he has faithfully observed all the rules and requirements of the institution in which he has been imprisoned. Each month the supervising officer of each institution shall cause to be posted a list of all persons who have earned deductions from their sentences during the previous month. If any such person does not earn all of his deduction from his sentence in any month, a notation of such action shall be entered on a cumulative record of such actions in the person's permanent file. [The provisions of this subsection shall also apply to any period of detention which the person is entitled, under subsection 2 of this section, to have deducted from the time he is required to serve under his sentence.]

17-A M.R.S.A. § 1253, sub- § 3-A, as enacted by P.L. 1977, C. 510, § 81, is repealed.

17-A M.R.S.A. § 1253, sub- § 4, as enacted by P.L. 1975, C. 499, § 1, is repealed and the following enacted in place thereof:

4. Any portion of the time decucted from the sentence of any person pursuant to subsection 3 of this section may be withdrawn by the supervising officer of the institution for the infraction of any rule of the institution, for any misconduct or for the violation of any law of the State. Such withdrawal of deductions may be made at the discretion of the supervising officer of the institution, who may restore any portion thereof if the person's later conduct and outstanding effort warrant such restoration.

17-A M.R.S.A § 1253, sub- § 5, is enacted to read:

5. An additional 2 days a month may be deducted in the case of those who are assigned duties outside the institution or who are assigned to work within the institution which is deemed to be of sufficient importance and responsibility to warrant such deduction.

34 M.R.S.A. § 705, 1st ¶, as last amended by P.L. 1975, C.499, § 58, is repealed.

34 M.R.S.A. § 952, ~~as~~ as last amended by P.L. 1975, C. 187, is repealed.

Discussion

Although there may be others, I see two major policy questions involved in the amendments to § 1253.

1. Should the "good time" deductions of 10 days per month be applied to sentences of 6 months or less? One factor relevant to this question is whether the ratio of "good time" to "gain time" (10 to 2) will be satisfactory to the county jails.

2. Should the "good time" deductions apply to time incarcerated pending trial?

SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document No. 1903

S. P. 615 Office of the Secretary of the Senate

The Committee on Judiciary suggested by Committee on Reference of Bills. Approved for introduction by the Legislative Council pursuant to Joint Rule 24.

MAY M. ROSS, Secretary

Presented by Senator Collins of Knox

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-EIGHT

AN ACT to Increase the Penalty for Possession of Heroin.

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

17-A MRSA § 1107, sub-§ 2, as enacted by PL 1975, c. 499, § 1, is repealed and the following enacted in its place:

2. Violation of this section is:

A. A Class C crime if the drug is heroin (diacetylmorphine);

B. A Class D crime if the drug is a schedule W drug other than heroin (diacetylmorphine) or a schedule X drug; or

C. A Class E crime if the drug is a schedule Y drug.

STATEMENT OF FACT

This bill changes the classification for the crime of possession of heroin from a Class D crime to a Class C crime with a more severe penalty.

SECOND REGUALR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document No. 2080

H. P. 1999 House of Representatives, January 16, 1978

Referred to the Committee on Judiciary. Sent up for concurrence. Approved for introduction by the Legislative Council pursuant to Joint Rule 24 and 2,000 ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Hughes of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-EIGHT

AN ACT to Make Trafficking in Five Pounds or More of Marijuana a Class C Crime under the Maine Criminal Code.

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

Sec. 1. 17-A MRSA § 1101, sub-§ 17, ¶ D, as enacted by PL 1975, c. 499, § 1, is amended to read:

D. To possess with the intent to do any act mentioned in paragraph C, except that possession of **under 5 pounds of** marijuana with such intent shall be deemed furnishing.

Sec. 2. 17-A MRSA § 1103, sub-§ 2, ¶ B, as enacted by PL 1975, c. 499, § 1, is amended to read:

B. A Class C crime if the drug is a scheduled X drug; ~~or~~

Sec. 3. 17-A MRSA § 1103, sub-§ 2, ¶ C, as enacted by PL 1975, c. 499, § 1, is amended to read:

C. ~~A~~ **Except as set out in paragraph D, a** Class D crime if the drug is a schedule Y or schedule Z drug; **or**

Sec. 4. 17-A MRSA § 1103, sub-§ 2, ¶ D is enacted to read:

D. A Class C crime if the drug is marijauna in a quantity of 5 pounds or more.

Sec. 4. 17-A MRSA § 1103, sub-§ 3 is enacted to read:

3. A person shall be presumed to be unlawfully trafficking in scheduled drugs if he intentionally or knowingly possesses 5 pounds or more of marijuana.

Sec. 5. 17-A MRSA § 1106, sub-§ 3, as enacted by PL 1975, c. 499, § 1, is amended to read:

3. A person shall be presumed to be unlawfully furnishing a scheduled drug if he intentionally or knowingly possesses more than 1½ ounces **and less than 5 pounds** of marijuana.

STATEMENT OF FACT

The purpose of this bill is to make trafficking in 5 pounds or more of marijuana a Class C crime. The bill also creates a presumption that knowing or intentional possession of 5 or more pounds of marijuana is unlawful trafficking.

SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document **No. 2082**

S. P. 674 In Senate, January 17, 1978

Governor's bill. The Committee on Judiciary suggested.

MAY M. ROSS, Secretary

Presented by Senator Pray of Penobscot.

Cosponsor: Senator Pierce of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-EIGHT

AN ACT Relating to the Importation of Drugs.

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

Sec. 1. 17-A MRSA § 1101, sub-§ 17, ¶ D, as enacted by PL 1975, c. 499, § 1, is amended to read:

D. To possess with intent to do any act mentioned in paragraph C. ~~except that possession of marijuana with such intent shall be deemed furnishing~~.

Sec. 2. 17-A MRSA § 1103, sub-§ 2, ¶¶ B and C, as enacted by PL 1975, c. 499, § 1, are amended to read:

B. A Class C crime if the drug is a schedule X drug **or schedule Y drug**; or

C. A Class D crime if the drug is a ~~schedule Y or~~ schedule Z drug; **provided that unlawfully trafficking in marijuana in an amount which, in fact, exceeds one pound is a Class C crime.**

Sec. 3. 17-A MRSA § 1103, sub-§§ 3 and 4 are enacted to read:

3. The sentencing class for unlawful trafficking in a scheduled drug shall be

one class higher if the State pleads and proves that the person was unlawfully trafficking in a scheduled drug which he or an accomplice intentionally or knowingly brought into this State.

4. A person shall be presumed to be unlawfully trafficking in a scheduled drug if he knowingly possesses marijuana in an amount which, in fact, exceeds one pound.

Sec. 4. 17-A MRSA § 1106, sub-§ 2-A is enacted to read:

2-A. The sentencing class for unlawfully furnishing scheduled drugs shall be one class higher if the State pleads and proves that the person was unlawfully furnishing a scheduled drug which he or an accomplice intentionally or knowingly brought into this State.

STATEMENT OF FACT

This bill creates a presumption that a person knowingly possessing marijuana in an amount exceeding one pound does so with the intent to traffic. Trafficking in more than one pound of marijuana shall be classified as a Class C crime.

In addition, the sentencing class for the offenses of unlawfully furnishing scheduled drugs or unlawfully trafficking in scheduled drugs shall be one class higher if the State pleads and proves that the person was unlawfully furnishing or trafficking in drugs which he or an accomplice intentionally or knowingly brought into this State.

SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document **No. 2094**

S. P. 676 In Senate, January 19, 1978

Governor's Bill. The Committee on Judiciary suggested.

MAY M. ROSS, Secretary

Presented by Senator Pierce of Kennebec.

Cosponsors: Senator Pray of Penobscot, Senator Redmond of Somerset, Senator Jackson of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-EIGHT

AN ACT Relating to the Classification of Drug Offenses.

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

Sec. 1. 17-A MRSA § 1102, sub-§ 1, ¶¶ J to O are enacted to read:

J. All federal schedule 1 and 2 substances, unless listed or described in another schedule;

K. Diethylpropion or its salts;

L. Phencyclidine;

M. Lysergic acid diethylamide;

N. Lysergic acid; and

O. Lysergic acid amide.

Sec. 2. 17-A MRSA § 1102, sub-§ 2, ¶ C, sub¶¶ (8), and (9), as enacted by P. L. 1975, c. 499, § 1, are repealed and the following enacted in their place:

(8) Hashish;

Sec. 3. 17-A MRSA § 1102, sub-§ 2, ¶ H, sub-¶ (8), as enacted by P. L. 1975, c. 740, § 100, is repealed.

Sec. 4. 17-A MRSA § 1102, sub-§ 2, ¶¶ I and J, as enacted by P. L. 1975, c. 740, § 100, are reapealed.

Sec. 5. 17-A MRSA § 1102, sub-§ 3, ¶ T, as enacted by P. L. 1975, c. 740, § 101, is repealed.

Sec. 6. 17-A MRSA § 1102, sub-§ 3 ¶ V is enacted to read:

V. All prescription drugs other than those included in

schedules W or X.

Sec. 7. 17-A MRSA § 1102, sub-§ 4, ¶ A, as enacted by P. L. 1975, c. 499, § 1, is repealed.

Sec. 8. 17-A MRSA § 1103, sub- § 2, ¶¶ B and C, as enacted by P. L. 1975, c. 499, § 1 are repealed and the following enacted in their place:

B. A Class C Crime if the drug is a schedule X or

schedule Y drug; or

C. A Class D crime if the drug is a schedule Z drug.

Sec. 9. 17-A MRSA § 1104, as enacted by P. L. 1975, c. 499, § 1 is repealed and the following enacted in its place;

§ 1104. Trafficking in or furnishing counterfeit drugs

1. A person is guilty of trafficking in or furnishing counterfeit drugs if he intentionally or knowingly trafficks in or furnishes a substance which he represents to be a scheduled drug but which, in fact, is not a scheduled drug.

2. Violation of this section is:

A. A Class C crime if the substance is capable, in fact, of causing death or serious bodily injury when taken or administered in the customary or intended manner; or

B. A Class D crime if the substance is not capable, in fact, of causing death or serious bodily injury when taken or administered in the customary or intended manner.

Sec. 10. 17-A MRSA § 1106, sub-§ 2 as enacted by P. L. 1975, c. 499, § 1 is repealed and the following enacted in its place:

2. Violation of this section is:

A. A Class B crime if the drug is a schedule W drug;

B. A Class C crime if the drug is a schedule X or Y drug; or

C. A Class D crime if the drug is a schedule Z drug.

Sec. 11. 17-A MRSA § 1107, sub-§ 2, as enacted by P. L. 1975, c. 499, § 1, is repealed and the following enacted in its place:

2. Violation of this section is:

A. A Class C crime if the drug is a schedule W or X drug;

B. A Class D crime if the drug is a schedule Y drug; or

C. A Class E crime if the drug is a schedule Z drug, or other than marijuana.

STATEMENT OF FACT

The purpose of this bill is to strengthen the existing statute as it applies to penalties relating to scheduled drugs.

It is intended that possession of dangerous drugs such as heroin, cocaine, LSD, phencyclidine and other schedule W & X drugs become a Class C crime. Furnishing these drugs is intended to become a Class B crime for schedule W and a Class C crime for furnishing X & Y drugs.

Additionally, possession of schedule Y drugs would become a Class D crime, and possession of schedule Z drugs, except marijuana, would become a Class E crime.

Schedule changes are also intended to make phencylidine, LSD, diethylpropion, or its salts, and all federal schedule 1 and 2 substances, unless otherwise described, schedule W classification.

The penalty for unlawful trafficking in schedule Y drugs is also intended to increase to a Class C crime. Trafficking in schedule Z drugs would remain a Class D crime.

SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document — No. 2017

H. P. 1937 — Office of the Clerk of the House

The Committee on Judiciary suggested. Approved for introduction by the Legislative Council pursuant to Joint Rule 24 and 2,500 ordered printed.

EDWIN H. PERT, Clerk.

Presented by: Mr. Wyman of Pittsfield.

Cosponsors: Mr. Howe of So. Portland, Mrs. Trafton of Auburn and Mr. McMahon of Kennebunk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-EIGHT

AN ACT to Prohibit Child Pornography.

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

17-A MRSA c. 12 is enacted to read:

CHAPTER 12
SEXUAL EXPLOITATION OF CHILDREN

§ 271. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Disseminate or disseminates. "Disseminate" or "disseminates" means to manufacture, issue, sell, mail, publish, circulate, exhibit, print or advertise for consideration or pecuniary profit or to offer or agree to do any of these acts for consideration or pecuniary profit.

2. For commercial use or commercial use. "For commercial use" or "commercial use" means sale, barter, trade, exchange or otherwise for consideration or pecuniary profit.

3. Minor. "Minor" means an individual under 18 years of age.

4. Sexual conduct. "Sexual conduct" means sexual intercourse, anal intercourse,

masturbation, bestiality, sadism, masochism, fellatio, cunnilingus or any other sexual activity or nudity, if that activity or nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view that depiction.

5. Simulated. "Simulated" means the explicit depiction of any sexual conduct which creates the appearance of that conduct and which exhibits any uncovered portion of the genitals, pubic area, buttocks or female breasts.

§ 272. Sexual exploitation of a minor

1. A person shall be guilty of sexual exploitation of a minor if he intentionally or knowingly does any of the following acts:

A. Employs, uses, solicits, coerces or compels a minor to engage in sexual conduct or simulated sexual conduct when that person knows, has reason to know or intends that the sexual conduct or simulated sexual conduct will be photographed, filmed, videotaped or otherwise mechanically reproduced for commercial use;

B. Photographs, films, videotapes or otherwise makes any mechanical reproduction of a minor engaging in sexual conduct or simulated sexual conduct when that person knows, has reason to know or intends that the photograph, film, videotape or mechnical reproduction will have a commercial use;

C. Being the parent, legal guardian or other person having care or custody of a minor, permits or gives approval for that minor to engage in any sexual conduct or simulated sexual conduct when that person knows, has reason to know or intends that the sexual conduct or simulated sexual conduct will be photographed, filmed, videotaped or otherwise mechanically reproduced for commercial use; or

D. Produces, directs or otherwise assists in making any photograph, film, videotape or other mechanical reproduction of a minor engaging in sexual conduct or simulated sexual conduct when that person knows, has reason to know or intends that the photograph, film, videotape or mechanical reproduction will have a commercial use.

2. Sexual exploitation of a minor is:

A. A Class A crime if the actor has been previously convicted of a violation of this section, except that any person convicted of violating this section who has previously been convicted of a violation of this section shall be sentenced to a term of imprisonment that is not less than 15 years; or

B. Otherwise, a Class B crime, except that any person convicted of violating this section shall be sentenced to a term of imprisonment that is not less than 5 years.

§ 273. Dissemination of sexually exploitive materials

1. A person is guilty of dissemination of sexually exploitive materials if he intentionally or knowingly disseminates or possesses with intent to disseminate any photograph, film, videotape or other mechanical reproduction of a minor engaging in sexual conduct or simulated sexual conduct.

2. Dissemination of sexually exploitive materials is:

A. A Class A crime if the actor has been previously convicted of a violation of this section, except that any person convicted of violating this section who has previously

been convicted of a violation of this section shall be sentenced to a term of imprisonment that is not less than 15 years; or

B. Otherwise, a Class B crime, except that any person convicted of violating this section shall be sentenced to a term of imprisonment that is not less than 5 years.

3. For the purposes of this section, possession of 3 or more of the same photograph, film, videotape or other mechanical reporduction shall give rise to a presumption that the defendant possesses those items with intent to disseminate.

STATEMENT OF FACT

The purpose of this bill is to deal with the growing problem of child pornography by making crimes of activities which exploit minors for the purpose of producing and distributing child pornography. The bill will prevent the abuse of children for pornographic purposes by parents, guardians, producers, financiers, distributors and sellers of sexually exploitive films, pictures or magazines.

TO: Criminal Law Advisory Commission
FROM: Peter Ballou and Stephen Diamond
RE: Meeting of January 21, 1977

Enclosed are an agenda and some additional amendments and correspondence.

The inclusion of certain items in the agenda stems from the fact that this will be our last meeting before the filing of the initial draft of the legislation. Accordingly, we have included matters to which the Commission has already devoted considerable time, as well as new amendments that we have been specifically requested to consider. It is hoped that we will be able to reach "final" decisions with respect to the items enumerated below.

AGENDA

1. Finalize definition of dangerous weapon (see report of the 12/22/76 meeting).
2. Amendment to §509 (enclosed).
3. Amendment to §402 (enclosed).
4. Proposed animal trespass statute (enclosed).
5. Redraft of incest amendment (enclosed).
6. Amendments to drug statutes (enclosed).
7. Theft amendments on pages 21 and 22 of the original package.
8. Amendments on pages 36 to 39 of the original package.

Any additional time will be spent on items in the original package which the Commission has not yet considered.

N.B. The location of the next meeting has been changed to the conference room at Pierce, Atwood, Scribner, Allen & McKusick. The room is located on the 10th floor of the Casco Bank Building, One Monument Square, Portland.

§509, sub-§1,

17-A M.R.S.A. §~~509~~ ¶C, is enacted to read:

C. He knowingly gives or causes to be given false information concerning an emergency to any ambulance service, or to any government agency or public utility that deals with emergencies involving danger to life or property, with the intent of inducing such service, agency or utility to respond to the reported emergency, knowing such information to be false.

17-A M.R.S.A. §402, sub-§1, ¶C, is enacted to read:

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.

COMMENT: This amendment is in response to a problem related both by the Assistant Principal of Oxford Hills High School and the Office of the Corporation Counsel of Portland. Simply stated, it concerns entry into schools by recent drop-outs and other persons who are not students. Although these persons often leave when requested, they return on a regular basis despite admonitions to remain away. Frequently, they remain on school property for a number of hours before their presence is discovered by someone in a position of authority. It is suspected that some of these persons distribute drugs while on school premises.

Given the understandable reluctance to post school property, the present trespass statute does not afford a remedy to the above problem. The proposed amendment would not seem to conflict with the intent of that statute, however, since if exclusion can be accomplished with a sign, a personal communication should also suffice. (See Model Penal Code, §221.2).

17 M.R.S.A. §3853 is enacted to read:

§3853 Permitting trespass by an animal

1. A person commits a civil violation if he negligently permits any animal, owned by him or subject to his control, to enter or remain on the property of another, after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer, or justice of the peace.

2. Proof that the animal entered or remained on the property of another and that the animal was owned or subject to the control of the defendant shall give rise to a presumption that the defendant was negligent.

3. A forfeiture of not more than $100 shall be adjudged for a violation of this section.

AMENDMENTS TO DRUG STATUTES

(1) 17-A MRSA §1102, sub-§3, sub-¶V, is enacted to read

V. All prescription drugs other than those included in schedules W or X.

(2) 17-A MRSA §1102, sub-§4, sub-¶A, is repealed and replaced by the following:

A. Marijuana

(3) 17-A MRSA §1102, sub-§4, sub-¶B, is repealed and replaced by the following:

B. All nonprescription drugs other than those included in schedules W, X, or Y as the Board of Pharmacy shall duly designate.

(4) 17-A MRSA §1102, sub-§4, sub-¶C, is repealed.

(5) 17-A MRSA §1103, sub-§2, sub-¶B, is amended to read:

B. A Class C crime if the drug is a schedule X <u>or schedule Y</u> drug; or

(6) 17-A MRSA §1103, sub-§2, sub-¶C, is amended to read:

C. A Class D crime if the drug is a ~~schedule Y or~~ schedule Z drug.

(7) 17-A MRSA §1104 is repealed and the following enacted in place thereof:

1. A person is guilty of trafficking in or furnishing counterfeit drugs if he intentionally or knowingly trafficks in or furnishes a substance which he represents to be a scheduled drug but which, in fact, is not a scheduled drug.

2. Violation of this section is:

A. A Class C crime if the substance is capable, in fact, of causing death or serious bodily injury when taken or administered in the customary or intended manner.

B. A Class D crime if the substance is not capable, in fact, of causing death or serious bodily injury when taken or administered in the customary or intended manner.

(8) 17-A MRSA §1106, sub-§2, sub-¶A and sub-¶B are amended to read:

A. A Class ~~C~~ B crime if the drug is a schedule W drug; or

B. A Class ~~B~~ C crime if the drug is a schedule X, ~~Y~~ or ~~Z~~ Y drug; or

(9) 17-A MRSA §1106, sub-§2, sub-¶C is enacted to read:

C. A Class D crime if the drug is a schedule Z drug.

(10) 17-A MRSA §1107, sub-§2, sub-¶A and sub-¶B are amended to read:

A. A Class ~~B~~ C crime if the drug is a schedule W or X drug; or

B. A Class ~~E~~ D crime if the drug is a schedule Y drug; or

(11) 17-A MRSA §1107, sub-§2, sub-¶C is enacted to read:

C. A Class E crime if the drug is a schedule Z drug, other than marijuana.

(12) 17-A MRSA §1107-A is enacted to read:

1. A person is guilty of unlawful possession of marijuana if he intentionally or knowingly possesses a quantity of marijuana which, in fact, exceeds 1 1/2 ounces, unless the conduct which constitutes such possession is expressly authorized by Title 22.

2. Unlawful possession of marijuana is a Class E crime.

17-A M.R.S.A. §556, sub-§1-A, is enacted to read:

1-A. It is a defense to a prosecution under this section that, at the time he engaged in sexual intercourse with the other person, the actor was legally married to the other person.

BELIVEAU & BELIVEAU, P. A.
ATTORNEYS AT LAW
114 STATE STREET
AUGUSTA, MAINE 04330

207-622-3157

ALBERT BELIVEAU, JR.
SEVERIN M. BELIVEAU
MICHAEL J. GENTILE
ANNEE TARA

ALBERT BELIVEAU
1887-1971

160 CONGRESS STREET
RUMFORD, MAINE 04276
207-364-4593

December 29, 1976

Criminal Law Advisory Commission
Department of the Attorney General
State House
Augusta, Maine 04333

We represent the Maine Bankers Association and we would like to propose an amendment to Title 17A MRSA, Sec. 703 (Forgery). A number of commercial banks in Maine are experiencing serious problems with forged instruments. It appears that the present sanction is an inadequate deterrent to this type of activity. We would request the Section 703 be amended to provide that the violation be a class C crime punishable by a fine of not more than $1,000 or by imprisonment for not more than five years.

I understand that the Commission will be meeting in early January and I would be very happy to meet with the Commission to discuss this matter further.

Sincerely yours,

Severin M. Beliveau

SMB/jd

STATE OF MAINE

Inter-Departmental Memorandum Date October 29, 1976

To Steve Diamond
Criminal Law Advisory Commission Dept. Attorney General

From Rep. Wayne Gray Dept. House of Representatives

Subject

This is to advise you in response to a conversation with Steve Diamond this date that the Maine Criminal Code does not provide coverage in the case where an alarm is falsely reported concerning the need for an ambulance.

We recently had such a situation in my District and the person who falsely reported the alarm was not prosecuted under the Code.

If the Criminal Law Advisory Commission would please look into this situation and let me know if substantive changes should be made in the Code, it would be greatly appreciated.

Consideration should also be given to public utility vehicles, Law enforcement, and private concerns engaged in provideing emergency services whether it be ambulance or wrecker service.

Report of Meeting of Criminal Law Advisory Commission (12/3/76)

Morning Session

The Commission dealt with the following items:

1. Amendments to probation statutes on pages 47-8. Tabled. The opposition to these amendments was based primarily on the view that they conflict with the principle of definite sentences. In this context, it was announced that the Commission has been requested to review the recommendations of the Governor's Task Force on Corrections, which proposes a number of presentence diversion programs.

2. Amendment to §1204(3) on page 49. Alternative 1 approved. There was discussion as to whether the present and proposed procedures afford defendants an adequate opportunity to contest the conditions of probation.

3. §1201(2) (1st sentence). There was concern that the ambiguous wording of this provision might lead to the apparently unintended conclusion that probation is mandated unless one of the factors enumerated in subsection 1 is expressly found to exist. It was suggested that the provision be clarified.

4. Discussion as to whether present law requires that the pre-sentence reports be shown to the defendant as well as his attorney. It was decided that this was a matter for the Criminal Rules Committee.

5. Amendments on page 50. Approved.

6. Conflict between the "good time" provision in the Code, see 17-A M.R.S.A. §1253(3) and (4), and that in 34 M.R.S.A. §952, which applies only to county jails. It was decided to contact people in the corrections field to determine whether there is any justification for differential treatment.

7. §1203(1). The view was expressed that this provision is ambiguous as to when probation begins to run under this section (when the sentence is imposed or when the defendant is released from the institution). The Commission did not specifically decide whether an amendment is necessary.

Afternoon Session

Since there were only two voting members present, the afternoon session was limited to discussion.

8. §61(2) on page 9. It was agreed that there appeared to be a problem and that the opinion of Professor Fox should be solicited. Professor Fox has been contacted and has suggested that the section be amended so as to provide that when the criminal statute expressly provides a mental state, the criminal statute should control.

9. Proposed §152(4) on page 10. There did not appear to be any significant opposition to this proposal.

10. Solicitation statute on page 11. The discussion focused on the question of whether the language of the solicitation statute is too narrow. It was decided to inquire of those members who served on the original Commission whether that body intended to so restrict the scope of the crime.

Next Meeting

Scheduled for Wednesday, December 22, at 10:00 A.M. in the Portland Public Safety Building.

JOSEPH E. BRENNAN
ATTORNEY GENERAL

RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

June 1, 1977

The Honorable Samuel W. Collins, Jr.
Judiciary Committee
State House

Dear Senator Collins:

Enclosed are the Criminal Law Advisory Commission's amendments to the homicide statutes. Along with the materials I sent Tom Downing last week, this completes the Commission's legislative package for the session.

I think some background information about the amendments may prove useful to the Judiciary Committee. The original package was drafted by the Criminal Division of the Department of the Attorney General and submitted to the Commission for its consideration. After rather extensive discussion, which took the better part of three meetings, the Commission made a number of revisions in the original draft. The final version, which is enclosed, was approved by the Commission at its meeting of May 31.

I shall make every effort to send you no later than next week a memorandum detailing the major changes contained in the enclosed package and the reasons for those changes.

Sincerely,

STEPHEN L. DIAMOND

SD:ld
cc: Tom Downing, Esquire
enclosures

17-A M.R.S.A. §201, as last amended by P.L. 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 knowingly engages in conduct which in fact manifests a depraved indifference to the value of human life and which in fact causes the death of another human being; or

C. 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. §202, as last amended by P.L. 1975, c. 740, §40, is repealed and the following enacted in place thereof:

§202 Felony murder

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 forseeable consequence of such commission, attempt, or flight.

2. It is an affirmative defense to prosecution under this section that the defendant:

A. Did not commit the homicidal act or in any way solicit, command, induce, procure, or aid the commission thereof; and

B. Was not armed with a dangerous weapon, or other weapon which under circumstances indicated a readiness to inflict serious bodily injury; and

C. Reaonsably believed that no other participant was armed with such a weapon; and

D. Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

3. Criminal homicide in the 3rd degree is a Class A crime.

17-A M.R.S.A. §203, as enacted by P.L. 1975, c. 499, §1, 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 while under the influence of extreme anger or extreme fear brought about by adequate provocation.

2. For purposes of paragraph B of subsection 1, provocation is adequate if

A. It is not induced by the actor; and

B. It is reasonable for a person in the actor's situation to react to the provocation with extreme anger or extreme fear.

3. 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. §204, as last amended by P.L. 1975, c. 740, §41, is repealed and the following enacted in place thereof:

§204 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 P.L. 1975, c. 499, §1, is repealed.

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

17-A M.R.S.A. §1251, as last amended by P.L. 1975, c. 740, §§114 and 115, is repealed and the following enacted in place thereof:

§1251 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 25.

17-A M.R.S.A. §1254, sub-§2, as last amended by P.L. 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.

TECHNICAL AMENDMENTS NECESSITATED BY HOMICIDE PACKAGE

17-A M.R.S.A §4, sub-§1, as repealed and replaced by P.L. 1975, c. 740, §13, is amended to read:

1. Except for ~~criminal-homicide-in-the-first-or-2nd-degree~~ murder, all crimes are classified for purposes of sentencing as Class A, Class B, Class C, Class D and Class E crimes.

17-A M.R.S.A. §8, sub-§2, first sentence, as enacted by P.L. 1975, c. 499, §1, is amended to read:

Prosecution for crimes other than ~~criminal-homicide-in-the first-or-2nd-degree~~ murder are subject to the following periods of limitation:

17-A M.R.S.A. §9, sub-§2, as enacted by P.L. 1975, c. 499, §1, is amended to read:

2. All prosecutions for ~~criminal-homicide-in-the-first-and-in the-2nd-degree~~ murder shall be prosecuted by indictment; and

17-A M.R.S.A. §15, sub-§1, ¶A, sub-¶1, as enacted by P.L. 1975, c. 740, §22, is repealed and the following enacted in place thereof:

(1) Murder; or

17-A M.R.S.A. §16, sub-§1, ¶A, as enacted by P.L. 1975, c. 740, §22, is repealed and the following is enacted in place thereof:

A. Murder; or

17-A M.R.S.A. §151, sub-§9, first sentence, as enacted by P.L. 1975, c. 499, §1, is amended to read:

Conspiracy is an offense classified as one grade less serious than the classification of the most serious crime which is its object, except that conspiracy to commit ~~criminal homicide-in-the-first-or-2nd-degree~~ murder is a Class A crime.

17-A M.R.S.A. §152, sub-§4, first sentence, as enacted by P.L. 1975, c. 499, §1, is amended to read:

Criminal attempt is an offense classified as one grade less serious than the classification of the offense attempted, except that an attempt to commit a Class E crime is a Class E crime, and an attempt to commit ~~criminal-homicide-in-the-first or-2nd-degree~~ murder is a Class A crime.

17-A M.R.S.A. §153, sub-§4, as enacted by P.L. 1975, c. 499, §1, is amended to read:

4. Solicitation is an offense classified as one grade less serious than the classification of the crimes solicited, except that solicitation to commit ~~criminal-homicide-in-the first-or-2nd-degree~~ murder is a Class A crime.

17-A M.R.S.A. §753, sub-§2, first sentence, as enacted by P.L. 1975, c.740, §1, is amended to read:

2. Hindering apprehension is a Class B crime if the defendant knew that the charge made or liable to be made against the other person was ~~criminal-homicide-in-the-first-or-2nd-degree,~~ murder or a Class A crime.

17-A M.R.S.A. §1201, sub-§1, ¶A, as repealed and replaced by P.L. 1975, c. 740, §109, is amended to read:

A. The conviction is for ~~criminal-homicide-in-the-first-degree or-criminal-homicide-in-the-2nd-degree~~ murder;

17-A M.R.S.A. §1252, sub-§1, first sentence, as amended by P.L. 1975, c. 740, §116, is amended to read:

In the case of a person convicted of a crime other than ~~criminal-homicide-in-the-first-or-2nd-degree~~ murder, the court may sentence to imprisonment for a definite term as provided for in this section, unless the statute which the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person shall be sentenced to imprisonment and required to pay the fine authorized therein.

Necessary Amendments to L.D. 306

Sec. 12 Change "criminal homicide in the first or 2nd degree" to "murder."

Sec. 14 Delete.

JOSEPH E. BRENNAN
ATTORNEY GENERAL

RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

June 8, 1977

The Hon. Senator Samuel W. Collins, Jr.
Chairman, Judiciary Committee
State House
Augusta, Maine 04333

Dear Senator Collins:

Steve Diamond has informed me that he has sent you the homicide amendments approved by the Criminal Law Advisory Commission. Accordingly, I thought this would be an appropriate time to express my views on those amendments.

For the most part, I am in complete accord with the recommendations of the Commission. There are only two aspects of the package which cause me some concern.

First, I have serious doubts as to the advisability of including the affirmative defenses in the felony murder statute (§202). Given the number of the defenses and the variety of issues which they raise, it strikes me that they could require lengthy and confusing jury instructions, especially in cases involving more than one criminal charge.

Second, I am concerned about the vagueness of the definition of "adequate provocation" in §203(2). I am not convinced that the definition will give courts and juries sufficient guidance as to what the statute intends the phrase to mean. I believe the wiser course would be to leave the term undefined and to rely on the various Maine cases which have already interpreted "adequate provocation" in the context of the prior law.

Although the Commission did not consider this issue, I would suggest that the Legislature might want to enact the homicide amendments on an emergency basis. It strikes me that the need for the changes is sufficiently imperative to warrant such a course of action.

As I indicated above, I am quite pleased with the overall

thrust of the homicide amendments approved by the Commission. I felt that it was my responsibility, however, to communicate to the Committee the few reservations that I have. To the degree that my trial schedule permits, I would be very happy to appear before the Committee to elaborate on my views and to answer any questions.

Sincerely,

RICHARD S. COHEN
Deputy Attorney General
In Charge of Law Enforcement

RSC:ks

cc: Pat Clark
cc: Peter Ballou, Esq.
cc: Committee Members

TO: Members and Consultants of Criminal Law Advisory Commission

FROM: Stephen L. Diamond

DATE: May 25, 1977

The next meeting of the Criminal Law Advisory Commission is scheduled for Tuesday, May 31, 1977 at 10 a.m. It will be held in the conference room in Ralph I. Lancaster's office at One Monument Square, Portland.

The major item on the agenda will be the completion of the homicide amendments.