

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

ing of such advertisement shall not be prima facie evidence of such actual knowledge of falsity. (R. S. c. 120, § 29. 1955, c. 54.)

Effect of amendment.—The 1955 amendment rewrote the first paragraph and inserted the words “or any other established and recognized advertising media” in the second paragraph.

Chapter 134.

Crimes against Chastity, Morality and Decency. Sunday Activities.

Sexual Crimes.

Sec. 3. Crime against nature.

Age of victim or pathic is not material.—Where the crime against nature is charged, the age of the victim or pathic is not material and there is no requirement that it be alleged. *State v. Pratt*, 151 Me. 236, 116 A. (2d) 924.

Penetration of a natural orifice of the body essential.—An indictment which charged that the defendant committed the

offense of the crime against nature by causing a female to manipulate his sexual parts was vulnerable to demurrer, since the crime against nature involving mankind is not complete without some penetration, however slight, of a natural orifice of the body. *State v. Pratt*, 151 Me. 236, 116 A. (2d) 924.

Sec. 6. Indecent liberties.—Whoever, being 21 years or more of age, takes any indecent liberty or liberties or indulges in any indecent or immoral practice or practices with the sexual parts or organs of any other person, male or female, under the age of 16 years, either with or without the consent of such male or female person, or, whoever, being 21 years or more of age, induces or procures any person under the age of 16 years to take any indecent liberty or liberties or to indulge in any indecent or immoral practice or practices with the sexual parts or organs of any person, male or female, other than the said person under the age of 16 years, shall, upon conviction thereof, be punished by imprisonment at hard labor for not less than one year nor more than 10 years. (R. S. c. 121, § 6. 1961, c. 60.)

Effect of amendment.—The 1961 amendment inserted the provisions as to an adult procuring a person under 16 to take indecent liberties with another.

Section is similar to indecent assault statutes.—This section, with its limitation of ages, elimination of consent as a defense, and limitation of the offense to indecent liberties with the sexual parts, is a statute of like general purpose with indecent assault statutes. *State v. Rand*, 156 Me. 81, 161 A. (2d) 852.

Testimony of earlier happenings, etc.

In accord with original. See *State v. Norton*, 151 Me. 178, 116 A. (2d) 635.

Sentence.—Defendant, who pleaded

guilty to an indictment in two counts charging the offense of taking indecent liberties on June 20, 1945, and the conviction and sentence for a prior similar offense in 1936 was properly sentenced for 20 years pursuant to provisions of ch. 149, § 3, since provisions of ch. 149, § 11 requiring sentence for minimum and maximum terms did not apply to prosecutions under ch. 134, § 6 for taking of indecent liberties (ch. 149, § 12). *Carr v. State*, 151 Me. 226, 117 A. (2d) 63.

Quoted in *State v. Robinson*, 153 Me. 376, 139 A. (2d) 596.

Cited in *State v. Seaburg*, 154 Me. 162, 145 A. (2d) 550.

Houses of Ill Fame. Prostitution.

Sec. 12. Prostitution, lewdness and assignation; terms of probation and parole.

No female who shall be convicted of violating any of this section shall be placed

on probation or on parole in the care or charge of any person except a woman probation-parole officer. (R. S. c. 121, § 12. 1959, c. 307, § 4.)

Effect of amendment.—The 1959 amendment deleted the words “the provisions of” following “violating any of” near the beginning of the last paragraph, and substituted “probation-parole” for “probation” near the end. As only the last paragraph was affected by the amendment, the rest of the section is not set out.

General purpose of section.—This section was occasioned by vigilance in 1919 as to social diseases and health in the immediate wake of the active hostilities of a war. *State v. Seaburg*, 154 Me. 210, 145 A. (2d) 559.

Section not limited to commercialized vice.—Neither the text nor the meaning of this section limits the impact of the law to commercialized vice. *State v. Seaburg*, 154 Me. 210, 145 A. (2d) 559.

Nor does sexual vice require commercialization to become a menace to public health in the communication or spread of venereal disease. *State v. Seaburg*, 154 Me. 210, 145 A. (2d) 559.

By the inclusion of lewdness in its prohibitions in § 12 and by its definition of lewdness “as any indecent or obscene act,” in § 13, it is indicated that the legislature was also comprehensively attempting to deter vice itself. It would be a drastic constriction of the purport of the language employed to conclude that the legislature was singly dedicated to the prevention or containment of physical disease. There is nothing in the statute to indicate that the carrying on of commercialized vice upon the premises is an essential to guilt nor does

the act require that for conviction more than an isolated act shall have been alleged and committed. *State v. Seaburg*, 154 Me. 210, 145 A. (2d) 559. See also notes to § 13.

By this section an added category of distinct criminal offenses was listed and created for the fundamental and accredited purposes of deterrence and punishment with rehabilitation where hopefully indicated and not only for the selective and refined object of providing a health safeguard against commercialized vice. *State v. Seaburg*, 154 Me. 210, 145 A. (2d) 559. See also note to § 13.

Intent of legislature controlling.—The legislature can be motivated by plural objectives in promulgating a law. The expressed intent of the lawmaking body is controlling. *State v. Seaburg*, 154 Me. 210, 145 A. (2d) 559.

Indictment for procuring or soliciting.—An indictment charging that defendant (first count) did attempt to induce one Blanche Gagnon to become a prostitute by offering to procure for and furnish to the said Blanche Gagnon men who would pay, etc., and (second count) that defendant did solicit and attempt to procure one Blanche Gagnon for the purpose of prostitution by offering to procure for and furnish to the said Blanche Gagnon men who would pay, etc., was defective in its failure to state to whom the offer was made. *State v. Michaud*, 150 Me. 479, 114 A. (2d) 352.

Sec. 13. “Prostitution”, “lewdness”, “assignation”, defined.

Intent of legislature by its definition of lewdness.—By the inclusion of lewdness in its prohibitions in § 12 and by its definition of lewdness “as any indecent or obscene act,” in this section, it is indicated that the legislature was comprehensively attempting to deter vice itself. It would be a drastic constriction of the purport of the language employed to conclude that the legislature was singly dedicated to the prevention or

containment of physical disease. There is nothing in the statute to indicate that the carrying on of commercialized vice upon the premises is an essential to guilt nor does the act require that for conviction more than an isolated act shall have been alleged and committed. *State v. Seaburg*, 154 Me. 210, 145 A. (2d) 559. See also note to § 12.

Sec. 16. Procuration for prostitution.

Indictment defective for failure to state to whom offer was made.—An indictment charging that defendant (first count) did attempt to induce one Blanche Gagnon to become a prostitute by offering to procure for and furnish to the said Blanche Gagnon men who would pay, etc., and (second count) that defendant did solicit and at-

tempt to procure one Blanche Gagnon for the purpose of prostitution by offering to procure for and furnish to the said Blanche Gagnon men who would pay, etc., was defective in its failure to state to whom the offer was made. *State v. Michaud*, 150 Me. 479, 114 A. (2d) 352.

Immoral Literature, Pictures, Exhibitions and Advertisements.

Sec. 24. Distribution and sale of publications or film depicting sadism, lust, etc.—Whoever sells, rents, displays for sale, loans, gives or distributes to any person or offers for sale to such a person or has in his possession, actual or constructive, any pamphlet, magazine, comic book, picture, picture book or film which contains illustrations of sadism, masochism, sexual perversion, bestiality or lust, or obscenity, indecency or immorality, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months. Under this section it shall be necessary to prove that the defendant knows, or by the exercise of reasonable diligence should know, of the offensive picture contained in the literature involved. This section shall not apply to any medical examiner, county attorney, state attorney, police officer, sheriff or physician while in the performance of their professional or official duties. (R. S. c. 121, § 24. 1957, c. 321, § 1. 1959, c. 279. 1961, c. 260, § 1.)

Effect of amendments. — The 1957 amendment rewrote this section.

The 1959 amendment substituted “any person” for “a child under 18 years of age,” substituted “person or has in his possession, actual or constructive” for “child,” added “or film” after “picture book,” deleted “fictional” after “contains” and deleted “or of physical torture of human beings” after “lust” in the first sen-

tence, added “or by the exercise of reasonable diligence should know” in the second sentence and added the third sentence.

The 1961 amendment inserted “for obscenity, indecency or immorality” and “a fine of not more than \$1,000 or by” in the first sentence and also substituted “11 months” for “30 days or by fine of not more than \$50” at the end of that sentence.

Sec. 27. Circulation or posting of obscene pictures, magazines, etc.; distribution of certain publications by minors; jurisdiction.—Whoever circulates, posts or causes to be circulated or posted in any conspicuous or public place any magazine, picture, handbill or poster containing obscene, indecent or immoral representations; or in any manner hires, uses or employs any minor to sell or give away, or in any manner to distribute, or who, having the care, custody or control of any minor, permits such minor to sell or give away, or in any manner to distribute any book, magazine, pamphlet or newspaper as described in this section shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than 11 months, or by both. Trial justices within their county shall have, by complaint, jurisdiction of the offenses mentioned in this section, original and concurrent with municipal courts and the superior court. (R. S. c. 121, § 27. 1957, c. 321, § 2. 1961, c. 260, § 2.)

Effect of amendments. — Prior to the 1957 amendment this section was applicable also to sale or distribution to minors of publications principally containing criminal news. The 1957 amendment deleted such provision and also increased the minimum fine from \$25 to \$50 and the maximum imprisonment from 6 months to 11 months in the first sentence.

The 1961 amendment inserted “maga-

zine” near the beginning of the first sentence, deleted the former minimum fine and increased the maximum fine from \$100 to \$1,000.

Editor’s note.—The publications, other than magazines, referred to are no longer described in this section. See now § 24 of this chapter re publications depicting sadism, lust, etc.

Lord’s Day. Memorial Day. Disturbance of Religious Meetings.

Sunday Sports, Moving Pictures and Bowling.

Sec. 38. Operating business on the Lord’s Day and certain holidays.—No person shall on the Lord’s Day, Memorial Day, July 4th, November 11th and Thanksgiving Day, as proclaimed by the Governor, keep open his place of business to the public except for works of necessity or charity.

This section shall not apply to common, contract and private carriers; taxi-

cabs; airplanes; radio and television stations; newspaper publishers; hotels, motels, rooming houses, tourist and trailer camps; restaurants; garages and motor vehicle service stations; retail monument dealers; automatic laundries; grocery stores; drug stores; bookstores; stores selling gifts or souvenirs; greenhouses; roadside stands engaged in sale of farm produce or dairy products; public utilities; industries normally kept in continuous operation including but not limited to pulp and paper plants and textile plants; processing plants handling agricultural produce or products of the sea; ship chandleries; marinas; sports; athletic events; motion picture theaters; musical concerts; religious, educational, scientific or philosophical lectures; scenic, historic, recreational and amusement facilities.

It is not intended by this section that any business or facility which is exempt from closing on the Lord's Day and the aforementioned holidays shall be permitted to remain open until it has complied with any other provision of this chapter which requires a vote of the municipality.

Any person violating this section shall be punished by a fine of not more than \$100 for the first offense, nor more than \$200 for any subsequent offense occurring within one year following a conviction. No complaint charging violation of this section shall issue later than 5 days after its alleged commission. (R. S. c. 121, § 39. 1949, c. 440. 1953, c. 337. 1961, c. 362, § 1.)

Effect of amendment.—The 1961 amendment rewrote this section.

L. 1961, amending this section, provides that the act will become effective March 1,

Effective date.—Section 4 of c. 362, P.

1962.

Sec. 38-A. Local option.—In any city or town that shall vote as hereinafter provided, it shall be lawful to keep open to the public on the Lord's Day and aforementioned holidays, other places of business not exempted under section 38. This provision shall not be effective in any municipality until a majority of the legal voters, present and voting at any regular election, so vote. The question in appropriate terms may be submitted to the voters at any such election by the municipal officers thereof, and shall by them be so submitted when thereto requested in writing by 100 legal voters therein at least 21 days before such regular election; nor shall it be effective in any town until an article in such town warrant so providing shall have been adopted at an annual town meeting. When a city or town has voted in favor of adopting the provisions hereof, said provisions shall remain in effect therein until repealed in the same manner as provided for their adoption. (1959, c. 302, § 2. 1961, c. 362, § 2.)

Editor's note.—The 1961 act adding this section renumbered former § 38-A to appear as § 38-B.

Effective date.—Section 4 of c. 362, P. L. 1961, adding this section, provides that the act will become effective March 1, 1962.

Sec. 38-B. Sunday sales of motor vehicles and mobile homes prohibited.—Any person who shall carry on or engage in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles or mobile homes; or who shall open any place of business or lot wherein he attempts to or does engage in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles or mobile homes; or who does buy, sell, exchange, deal or trade in new or used motor vehicles or mobile homes as a business on the first day of the week, commonly known and designated as Sunday, is a disorderly person. Such a disorderly person upon conviction for the first offense shall be punished by a fine of not more than \$100 or by imprisonment for not more than 10 days, or by both; and for the second offense shall be punished by a fine of not more than \$500 or by imprisonment for not more than 30 days, or by both; and for the third or each subsequent offense shall be punished by a fine of not more than \$750 or by imprisonment for not more than 6 months, or by both. If the person is the holder of dealer or transit registration plates under chapter 22, sections 26 or 26-A, such person shall also be subject to the suspension or revocation

of said plates, as provided for in chapter 22, section 27, for the violation of this section. (1959, c. 302, § 2. 1961, c. 362, § 3.)

Editor's note.—P. L. 1959, c. 302, § 2, designated this section as § 38-A of this chapter. However, P. L. 1961, c. 362, which added present § 38-A, provided in § 3 that this section should be redesignated § 38-B.

Effective date.—Section 4 of c. 362, P. L. 1961, redesignating this section, provides that the act will become effective March 1, 1962.

Chapter 135.

Crimes against Public Justice and Official Duty.

Perjury and Subornation of Perjury.

Sec. 1. Perjury; subornation of perjury, definitions.

I. GENERAL CONSIDERATION.

Elements must be charged and proved.—

The elements of perjury must be charged and proved with reference to the committed perjury or the intended perjury as the case may be. In subornation no difficulty arises in charging perjury in a pending proceeding. In attempted subornation, however, the proceedings in which the perjury is intended may or may not be pending. *State v. Potts*, 154 Me. 114, 144 A. (2d) 261.

The proceeding in which perjury is committed must be a pending proceeding. This indeed is saying no more than that the testimony must be given in a proceeding described in this section. Without such testimony so given there can be neither perjury nor subornation. *State v. Potts*, 154 Me. 114, 144 A. (2d) 261.

Effect of pending proceedings when procurement, in distinction from perjury, takes place.—It is immaterial whether a proceeding is pending when the procurement, in distinction from the perjury, takes place. The evil reached by the statute is the pro-

urement of perjury at a future time. *State v. Potts*, 154 Me. 114, 144 A. (2d) 261.

Indictment held valid. — An indictment which plainly states the limitation upon the false testimony so that the basis for separation of the false from the true is certain and clear is valid even though the indictment alleged that all the quoted testimony was false and then excepted some as true. *State v. Potts*, 154 Me. 114, 144 A. (2d) 261.

An allegation in the indictment that the suborner knew that the testimony when given would be "corruptly and willfully false and untrue" sufficiently alleges that the suborner had knowledge that the witness knew the testimony was false. *State v. Potts*, 154 Me. 114, 144 A. (2d) 261.

Form of indictment for subornation of perjury.—The form of indictment for subornation of perjury may be set forth as the procurement to commit perjury as described in the statutory form relating to perjury. *State v. Potts*, 154 Me. 114, 144 A. (2d) 261.

Sec. 2. Attempted subornation of perjury.

Elements must be charged and proved.

—The elements of perjury must be charged and proved with reference to the committed perjury or the intended perjury as the case may be. In subornation no difficulty arises in charging perjury in a pend-

ing proceeding. In attempted subornation, however, the proceedings in which the perjury is intended may or may not be pending. *State v. Potts*, 154 Me. 114, 144 A. (2d) 261.

Sec. 4. Indictment.

Elements must be charged and proved.

—The elements of perjury must be charged and proved with reference to the committed perjury or the intended perjury as the case may be. In subornation no difficulty arises in charging perjury in a pending proceeding. In attempted subornation, however, the proceedings in which the per-

jury is intended may or may not be pending. *State v. Potts*, 154 Me. 114, 144 A. (2d) 261.

The proceeding in which perjury is committed must be a pending proceeding. This indeed is saying no more than that the testimony must be given in a proceeding described in § 1. Without such testimony so