

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1963 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

VOLUME 4

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**Discard Previous Supplement**

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1963

more than \$100, or by imprisonment for not more than one year, or by both. (1963, c. 301.)

**Sec. 29-B. Notice of credit revocation.**—The word “notice” as used in section 29-A includes either notice given in person or notice given in writing to the person to whom the credit card, number or device was issued. The sending of a notice in writing by registered or certified mail, duly stamped and addressed to the person at his last address known to the issuer, shall be prima facie evidence that such notice was duly received. (1963, c. 301.)

### Maritime Frauds.

**Sec. 34. Aiding sailors to desert.**—Whoever entices or persuades or attempts to entice or persuade, or aids, assists or attempts to aid or assist, a member of the crew of any vessel arriving in or about to sail from a port in this state to leave or desert such vessel before the expiration of his term of service therein shall be punished by a fine of not more than \$100, and by imprisonment for not less than 30 days nor more than 6 months. District courts shall have original jurisdiction in all cases arising under this section. (R. S. c. 120, § 34. 1963, c. 402, § 211.)

**Effect of amendment.**—The 1963 amendment substituted “District courts” for “Trial justices” in the last sentence and deleted “with municipal courts” following

“jurisdiction” in that sentence.

**Application of amending act.**—See note to § 18.

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## Chapter 134.

### Crimes against Chastity, Morality and Decency. Sunday Activities.

#### Sexual Crimes.

##### Sec. 2. Incest.

**Proof of relationship.**—Statements on the part of a child that the defendant was her father and defendant’s admission that the child was his daughter were sufficient to prove the relationship necessary to convict under this section. *State v. Beckwith*, 158 Me. 174, 180 A. (2d) 605.

The kinship between the parties may be proved by the evidence of relatives and friends and by family reputation. *State v. Beckwith*, 158 Me. 174, 180 A. (2d) 605.

**Evidence of prior and subsequent intercourse is admissible.**—Evidence tending to

show illicit intercourse by the defendant with the same person charged in the indictment, both before and after the day laid, is competent to prove the relation and mutual disposition of the parties. *State v. Beckwith*, 158 Me. 174, 180 A. (2d) 605.

**Degree of consanguinity a jury question.**—It is for the jury to determine what degree of consanguinity or affinity has been shown. *State v. Beckwith*, 158 Me. 174, 180 A. (2d) 605.

##### 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.

Cited in *Austin v. State*, 158 Me. 292, 183 A. (2d) 515.

**Sec. 6. Indecent liberties.**—Whoever, having attained his 21st birthday, 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, who has not attained his or her 16th birthday, either with or without the consent of such male or female person, or, whoever, having attained his 21st birthday, induces or procures any person who has not attained his or her 16th birthday 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 who has attained his or her 16th birthday, 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. 1963, c. 331, § 7.)

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

The 1963 amendment substituted "having attained his 21st birthday" for "being 21 years or more of age" twice and also substituted "who has not attained his or her 16th birthday" for "under the age of 16 years" three times.

**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; *Austin v. State*, 158 Me. 292, 183 A. (2d) 515.

### 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

### 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 restriction of the purport of the language employed to conclude that the legislature was singly dedicated to the prevention or

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.

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, or the literature of which contains, 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 literature involved or 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. 1963, c. 29, § 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 sentence, 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.

The 1963 amendment inserted "or the literature of which contains" in the first sentence and also inserted "literature involved or the offensive" in the second sentence.

**Sec. 25.** Repealed by Laws 1963, c. 402, § 212.

**Application of repealing act.**—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws

in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

**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 literature or 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. The district court and the superior court shall have, by complaint, original and concurrent jurisdiction of the offenses mentioned in this section. (R. S. c. 121, § 27. 1957, c. 321, § 2. 1961, c. 260, § 2. 1963, c. 29, § 2; c. 402, § 213.)

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

The first 1963 amendment inserted "literature or" following "immoral." The second 1963 amendment substituted the present

last sentence in the section for one giving jurisdiction to trial justices original and concurrent with municipal courts and the superior court.

**Application of second 1963 amending act.** —Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

**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. 37-A. Beginning and end of Lord's Day for public dancing and entertainment.**—To determine when the Lord's Day begins and ends under section 38 as it applies to public dancing, diversion, show or entertainment, the hours shall be United States eastern standard time. (1963, c. 250.)

**Sec. 38. Operating business on the Lord's Day and certain holidays.**—No person, firm or corporation shall, on the Lord's Day, Memorial Day, July 4th, Labor Day, November 11th, Christmas Day and Thanksgiving Day as pro-

claimed by the Governor, keep open a place of business to the public except for works of necessity, emergency or charity.

This section shall not apply to: the operation or maintenance of common, contract and private carriers; taxi cabs; airplanes; newspapers; radio and television stations; hotels, motels, rooming houses, tourist and trailer camps; restaurants; garages and motor vehicle service stations; retail monument dealers; automatic laundries; drug stores; greenhouses; seasonal stands engaged in sale of farm produce, dairy products, sea food or Christmas trees; 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; establishments primarily selling boats, boating equipment, sporting equipment, souvenirs and novelties; motion picture theatres; sports and athletic events; musical concerts; religious, educational, scientific or philosophical lectures; scenic, historic, recreational and amusement facilities; real estate brokers and real estate salesmen; provided that this section shall not exempt the businesses or facilities specified in sections 39, 40 and 41 from closing in any municipality until the requirements of those sections have been met; stores wherein no more than 5 persons, including the proprietor, are employed in the usual and regular conduct of business; stores which have no more than 5,000 square feet of interior customer selling space, excluding back room storage, office and processing space.

For the purpose of determining qualification, a "store" shall be deemed to be any operation conducted within one building advertising as, and representing itself to the public to be, one business enterprise regardless of internal departmentalization. All sub-leased departments of any store shall for the purpose of this section be deemed to be operated by the store in which they are located. Contiguous stores owned by the same proprietor or operated by the same management shall be deemed to be a single store for the purpose of this statute.

Any person, firm or corporation found guilty of violating any of the provisions of this section shall be punished by a fine of not more than \$100 or by imprisonment for 30 days, or by both, for the first offense; and by a fine of \$500 or by imprisonment for 60 days, or by both, for the 2nd offense occurring within one year following the first conviction. Any offense subsequent to the 2nd offense and occurring within 2 years following the 2nd conviction shall be punished by a fine of not more than \$1,000 or by imprisonment for 90 days, or by both. No complaint charging violation of this section shall issue later than 5 days after its alleged commission.

Each separate sale, trade or exchange of property or offer thereof, in violation of this section, and each Lord's Day or one of the aforementioned holidays a person, firm or corporation engages in or employs others to engage in the sale, trade or exchange of property in violation of the law constitutes a separate offense.

In addition to any criminal penalties provided in this section, the Attorney General, county attorney, or any resident of a municipality in which a violation is claimed to have occurred may file a complaint with the superior court to enjoin any violation of this section. The superior court shall have original jurisdiction of such complaints and authority to enjoin such violations.

This section shall not apply to isolated or occasional sales by persons not engaged in the sale, transfer or exchange of property as a business. (R. S. c. 121, § 39. 1949, c. 440. 1953, c. 337. 1961, c. 362, § 1. 1963, c. 370, § 1.)

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

The 1963 amendment again rewrote this section.

**Editor's note.** — The case of *State v.*

*Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352, from which the following notes were taken, was decided prior to the 1963 amendment to this section.

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

L. 1961, amending this section, provides that the act will become effective March 1, 1962.

**History of section.**—See *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

**Section is constitutional.**—The exemptions under this section did not in a constitutional sense discriminate against a department store. *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

The classifications of this section are reasonable and do not violate "equal protection." *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

This section is not in violation of the constitutional restrictions against establishment of religion. *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

The term "works of necessity or charity" meets the test of constitutionality. *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

The legislature has the authority to enact legislation providing for a day of rest. *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

The judgment of the legislature that permissive sales on Sunday may reasonably be stated by description of the business or enterprise is not lightly to be judged an unreasonable method of regulation. *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

**Legislative intent.**—The legislature in enacting this section clearly intended to retain a day of rest and recreation with enlarged bounds of permissible business activity on Sunday to meet the conditions of today. *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

This section reflects a judgment by the legislature that with the changing times the Sunday laws of a generation past required revision. *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

**The language of this section is sufficiently definite** to enable a reasonable

person in the business world to know whether his store or enterprise falls within one or more of the categories of restaurant, drug store, book store, and stores selling gifts and souvenirs. *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

**Nature of merchandise determines category of store.**—It is not the use to which the article is or may be put that determines the category of the store, but the nature and kind of merchandise available. *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

**Department stores.**—A department store selling some of the products commonly sold in a drug store does not thereby gain the Sunday exemption of the "drug store." *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

But a department store is not forced to close because some of its business taken alone would be nonexempt or because the store as a whole does not come within the fair meaning of any category or categories described in this section. The department store if the owner so chooses, may keep open on Sunday the departments or "stores" within the exempt categories, but the non-exempt departments must be kept closed. *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

**Clothing, hardware, etc., nonexempt.**—Whatever may be the difficulties in determining whether given goods may reasonably be found and sold in a "drug store," or a "book store," or in "stores selling gifts or souvenirs," there can plainly be no question that clothing, hardware, and other types of merchandise which a defendant sold on Sunday may not be so considered. *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

**And person may enter shop to, etc.**

In accord with original. See *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

**Sec. 38-A.** Repealed by Laws 1963, c. 370, § 2.

**Editor's note.**—The repealed section, which related to local elections on keeping open places of business on the Lord's Day not exempted under § 38, derived from P. L. 1961, c. 362, § 2. The 1961 act adding the repealed section renumbered former

§ 38-A to appear as § 38-B.

**Effective date.**—Section 4 of c. 362, P. L. 1961, adding the repealed 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, § 38-B.

designated this section as § 38-A of this chapter. However, P. L. 1961, c. 362, which added repealed § 38-A, provided in § 3 that this section should be redesignated

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

**Sec. 39. Sunday sports legalized; local option.**

Cited in State v. Fantastic Fair, 158 Me. 450, 186 A. (2d) 352.

**Sec. 40. Sunday bowling legalized; local option.**

Cited in State v. Fantastic Fair, 158 Me. 450, 186 A. (2d) 352.

**Sec. 41. Sunday moving pictures legalized; local option.**

Cited in State v. Fantastic Fair, 158 Me. 450, 186 A. (2d) 352.

**Sec. 42. Public outdoor sports where admission charged on Memorial Day.**—Whoever on Memorial Day before 3:30 o'clock in the afternoon engages in any public outdoor game or sport where an admission is charged or collection is taken shall be punished by a fine of not more than \$25 or by imprisonment for not more than 10 days, or by both such fine and imprisonment. (R. S. c. 121, § 42. 1963, c. 402, § 214.)

**Effect of amendment.**—The 1963 amendment deleted the former last sentence in the section, giving jurisdiction to trial jus-

tices of all offenses under the section.

**Application of amending act.**—See note to § 27.

**Sec. 45. Prosecutions under sections 36, 39 and 43.**—Any person may prosecute for all offenses described in sections 36, 39 and 43 at any time within 6 months after the commission thereof. (R. S. c. 121, § 44. 1963, c. 414, § 140.)

**Effect of amendment.**—The 1963 amendment deleted the reference to § 38, which

now contains provisions as to prosecutions thereunder.